COMMISSION DECISION

of 14 July 1988

authorizing agreements between Arbed SA and Unimetal SA concerning long products

(Only the French text is authentic)

(88/461/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 applications made on 18 March 1987 and 14 January 1988 by Arbed SA and Unimétal SA,

Whereas :

I

(1) Arbed SA (Luxembourg) is a steel-producing undertaking covered by Article 80 of the Treaty.

(2) Unimétal — Société Française des Aciers Longs SA — (France), a company forming part of the Usinor-Sacilor group, is a steel-producing undertaking covered by Article 80 of the Treaty.

(3) Arbed and Unimétal have applied to the Commission, pursuant to Article 65 (2) for authorization of a framework agreement, three agreements dated 7 February 1987 and a supplementary agreement dated 10 November 1987 providing for specialization and the exchange of finished products and rolling capacity, the exchange of semi-finished and emergency assistance procedures in respect of pig iron. Each undertaking will retain full autonomy in marketing its own products and products supplied by the other party within the Community. The framework agreement and the agreements of 7 February 1987 will expire on 31 December 1989. They will, however, unless notice of termination is given, be renewed by tacit agreement for a year at a time. The agreement of 10 November 1987 will expire on 31 December 1992, but will also be subject to tacit renewal.

(4) The agreements on specialization and the exchange of finished products provide that :

— Arbed will make available to Unimétal an annual rolling capacity of the order of 30 000 tonnes at its Grey mill at Differdange for the production of heavy beams ;

— Unimétal will make available to Arbed a rolling capacity at its Hayange, Rombas and Longwy mills for the production of heavy rails (minimum 5 000 tonnes per year), sheet piling (minimum 9 000 tonnes per year) and medium sections (approximately 10 000 tonnes per year) ;

— in the case of the supplementary agreement, the two undertakings will create a joint range of sheet piling sections, each concerned mill, namely Rombas and Esch/Belval, specializing in part of the range and each company being entitled to market the entire joint range throughout the Community completely independently from the other company.

The agreements provide for a certain degree of specialization and improved plant utilization in the two groups concerned, i.e. : use of the Grey mill at Arbed for the rolling of heavy beams, utilization of Unimétal's universal mill at Hayange for rolling heavy rails and utilization of the Rombas and Esch/Belval mills in a more efficient and productive way to roll sheet piling in the joint range.

Each undertaking uses its own semi-finished products to roll the tonnages intended for its partner.

(5) The agreement on the exchange of semi-finished products, based on the different products manufactured by the undertakings in question, provides that :

— Unimétal will use its Gandrange melting shop to cover part of the steel requirements for rails at the Rodange works of the Métallurgie et Minière de Rodange-Athus (MMRA) — Usine d'Arbed) and, secondarily, to cover steel requirements for sections ;

— Arbed will cover part of the requirements of Unimétal's Longwy mills in the form of blooms for direct charging into the universal mill and/or in the form 125 × 125 billets obtained by direct continuous casting and will supply tonnages of blooms and/or slabs and/or billets for mills other than the universal mill at Longwy, in particular for the Longwy wire rod mill.

The exchange of semi-finished products is based on a balanced annual tonnage of the order of 50 000 tonnes per year.

(6) The emergency assistance system for pig iron is intended to enable the partners to deal with relatively large surpluses or shortages of hot iron at a given plant resulting from operating hazards or accidents. The agreement defines the procedures to be followed in the period immediately after the accident to enable the emergency measures to start immediately.

II

(7) The agreements on specialization and the exchange of finished and semi-finished products restrict normal competition between the undertakings concerned since the parties :

(a) agree mutually to specialize in their production and, for this purpose, Unimétal undertakes to stop manufacturing sheet piling from its range and to refrain from making beam piling, while Arbed undertakes to refrain from developing its current range of flat sheet piling and from producing cold-rolled sheet piling ;

(b) agree mutually on the use of certain production facilities, and on production transfers ;

(c) agree implicitly to coordinate their policy and decisions regarding capital investments for the products covered by the agreement in question.

Thus, these agreements are covered by the prohibition in principle set out in Article 65 (1).

III

(8) However, Article 65 (2) empowers the Commission to authorize specialization agreements and agreements which are strictly analogous in nature and effect, if it finds that they satisfy the requirements specified.

(9) The agreements concerned, which relate to the specialization of production and at least implicitly to the coordination of investment, are specialization agreements or strictly analogous thereto.

(10) These agreements may therefore be authorized under Article 65 (2), but only if they make for a substantial improvement in production and distribution and are essential in order to achieve these results and are not more restrictive than is necessary for that purpose, nor must the agreements 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. So far as distribution is concerned, each undertaking will market its own products and those supplied by the other party independently.

(11) On the quesdtion of whether the agreements make for a substantial improvement in the production of the products concerned, it can be stated in general terms that the rationalization of production and implicit coordination of investment involved will bring about substantial improvements in plant utilization and operating efficiency, particularly since the large number of different sections supplied by each of the two undertakings harms their profitability. As a result, unit costs will fall and delivery times will be cut, improvements that will benefit both the contracting parties and consumers since the latter will be able, in the absence of a joint marketing agreement, to purchase their supplies from either partner and thus stimulate competition between them. Accordingly, the agreements meet the requirements of Article 65 (2) (a) which refers to production.

(12) The transfer of production, the implicit coordination of investment decisions and the exchange of finished and semi-finished products are interdependent and interrelated. If they acted individually the undertakings concerned could not attain the resulting improvements in production, or at least the same degree of improvement. The agreements submitted are therefore essential in order to achieve the improvement in production concerned and are not more restrictive than is necessary for that purpose. The agreements therefore satisfy the test of Article 65 (2) (c).

(13) To ascertain whether the agreements for which authorization is requested satisfy the tests of Article 65 (2) (c), it is necessary to consider the size of the undertakings concerned and the competition they will have to face. In so doing, it is necessary to take particular account of the fact that, unlike the situation with joint sales or merger agreements, the undertakings in question will retain commercial independence and will thus remain competitors.

(14) For the long finished products concerned, Arbed produced 1 284 000 tonnes and Unimétal 918 000 tonnes in 1986, which corresponds to 15,6 % and 11,1 % of Community production. It should however be noted that, following the shutdown at

the end of the year under review of the Trith Squint Léger beam mill, production of heavy beams by Unimétal has ceased and consequently the abovementioned production figure decreased in 1987.

(15) For sheet piling, Arbed and Unimétal together cover 43 % of Community production (240 000 tonnes). Three other major Community producers are also present on the market in question. Despite the apparently large market share, it should be emphasized that the situation on the market is bad, which means that the agreement will help to restructure the Community market for the products in question. The parties concerned also have to compete with imports from third countries and substitute products, e.g. concrete and tubular constructions. This competition will prevent Arbed and Unimétal from determining prices.

(16) The exchange of semi-finished products involves only 50 000 tonnes a year, or 55 000 tonnes crude steel equivalent, corresponding to 0,04 % of Community production.

(17) In these circumstances, the specialization agreements are not liable to give the undertakings concerned the power to determine the prices, or to control and restrict the production or marketing of a substantial proportion 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 therefore satisfy the requirements of Article 65 (2) (c).

(18) As regards the emergency assistance agreement on pig iron, it is not liable to restrict competition in the common market for the products in question since it concerns specific, mutual supplies, i.e. only operates in the event of an operating accident. Its economic justification, moreover, is based on the proximity of the ironmaking facilities of the partners and it constitutes a useful, if not essential, adjunct to the specialization and exchange of finished and semi-finished products agreements described above.

IV

(19) The Commission must ensure that all measures taken by the parties under the agreements submitted are in conformity with the authorization given by this Decision and with the provisions of the Treaty. To this end, the parties must inform the Commission of all proposed changes and additions to the agreements including, in particular, any coordination of commercial activities and the introduction of joint selling. It should therefore be provided that such changes and additions to the agreements may not be put into effect until the Commission has declared them to be admissible or has authorized them under Article 65 (2). Meanwhile the present authorization should be made subject to the condition that the parties do not coordinate their commercial activities in the Community unless and until the Commission authorizes such coordination, including its nature and extent.

(20) The agreements of 7 February on specialization, the exchange of finished and semi-finished products are intended to be valid until 31 December 1989 with the possibility of renewal. The agreement of 10 November 1987 is valid until 31 December 1992 and may also be renewed. In view of the rationalization measures proposed by the parties and the importance of the undertakings on the market, it is appropriate that authorization be granted up to 31 December 1992 in the first instance.

(21) Subject to the condition imposed, the agreements on specialization and the exchange of finished and semi-finished products are in conformity with Article 65 (2) and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreements on specialization and the exchange of finished and semi-finished products between Arbed SA, Luxembourg, and Unimétal SA, France, dated 7 February 1987 and 10 November 1987 are hereby authorized.

Article 2

The authorization referred to in Article 1 is subject to the condition that the undertakings concerned do not coordinate their commercial activities in the Community unless and until the Commission authorized such coordination, including its nature and extent, under Article 65 (2).

Article 3

The undertakings concerned shall inform the Commission forthwith of any proposed changes and additions to the agreements.

Such changes and additions shall not be put into effect until the Commission has confirmed that they are in conformity with the authorization given by this Decision, or has authorized them under Article 65 (2).

Article 4

This Decision shall apply until 31 December 1992.

Article 5

This Decision is addressed to Arbed SA, Avenue de la Liberté, L-2930 Luxembourg, and to Unimétal — Société Française des Aciers Longs — SA, Tour Coislin, 1 rue Pont-à-Seille, F-57000 Metz.

Done at Brussels, 14 July 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission