COMMISSION DECISION

of 19 December 1988

authorizing the concentration between Eschweiler Bergwerks-Verein Aktiengesellschaft, Herzogenrath, and Ruhrkohle Aktiengesellschaft, Essen

(Only the French and German texts are authentic)

(89/29/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 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 submitted jointly on 28 March 1988 by Ruhrkohle Aktiengesellschaft, Essen and Eschweiler Bergwerks-Verein Aktiengesellschaft, Herzogenrath, seeking authorization for the concentration of the two undertakings,

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

Whereas :

(1) Ruhrkohle Aktiengesellschaft (RAG) is a coal-producing undertaking within the meaning of Article 80 of the Treaty ; it was established in 1969 when 23 undertakings operating in the Ruhr coalfield in the Federal Republic of Germany combined their mining assets and transferred them to it [2]. After numerous changes in the interests held, the following undertakings currently hold shares in RAG's share capital :

- VEBA Aktiengesellschaft Bonn/Berlin 37,103 %
- BGE — Beteiligungs-Gesellschaft für Energieunternehmen, Dortmund 21,735 %
- Thyssen Stahl AG, Duisburg 12,69 %.
- Montan, Verwaltungsgesellschaft mbH, Dortmund 10 %
- Société Nouvelle Sidéchar, Paris 8,255 %
- Gewerkschaft Alte Haase, Dortmund 0,217 %
- Verwaltungsgesellschaft Ruhrkohle-Beteiligung mbH, Essen 10 %

RAG produced 58 100 000 tonnes in 1987, making it the second largest coal producer in the Community after British Coal. Total sales in 1987 (with coke converted into coal) amounted to 56 800 000 tonnes, equivalent to 18 % of the sales of all suppliers of coal and coal products in the common market (320 million tonnes). Of this figure, 51 400 000 tonnes were accounted for by sales in the Federal Republic of Germany, 4 900 000 tonnes by sales to Community countries and 500 000 tonnes by exports to non-Community countries. RAG's sales in the Federal Republic amount to some 73 % of the total sales of all indigenous coalfields in the Federal Republic.

(2) Eschweiler Bergwerks-Verein Aktiengesellschaft (EBV) is also a coal-producing undertaking within the meaning of Article 80 of the Treaty, 96,5 % of whose share capital is held by Arbed SA, Luxembourg. The Arbed group controls a number of steel-producing undertakings in the Community whose supplies of coking coal and blast-furnace coke are largely provided by EBV's mining operations in the Aachen and Ruhr coalfields.

(3) The merger is based on economic, technical and industrial policy considerations which may be summarized as follows : the level of production costs, a continuing decline in demand for coal and coal products in the Community and on non-Community markets, the technical impossibility of closing mines for only temporary periods and the need in present circumstances for public subsidizing of production will in the near future result in appropriate closure measures in the German coal mining industry. At a meeting (Kohlenrunde) held on 11 December 1987 between the Federal Government, the Governments of the Federal Länder of North Rhine-Westphalia and Saarland, the mining undertakings and the Mining and Power Industries Trade Union, it was proposed that the production capacity of the German coal mining industry should be reduced by the order of 13 to 15 million tonnes a year to take account of the decline in sales. It is intended to carry out the

[1] OJ of the ECSC No 9, 11. 5. 1954, p. 345.
[2] Commission Decision of 27 November 1969.

necessary measures (uninfluenced by owners' interests) on the basis of the principle that production should be concentrated on the most efficient plants and that the problems resulting from reduced demand for labour should be redeployed in such a way that the most favourable conditions are created for solving them. The transfer of EBV's mining assets to RAG serves this goal. Because of the exhaustion of coal deposits, production by EBV's operations in the Aachen coalfield will be halted in 1992, affecting some 5 000 persons, i.e. more than half of EBV's workforce.

(4) Consequently, the relevant increase in capacity for RAG results solely from EBV's Westfalen mine situated in the Ruhr coalfield and from the coking plant attached to it.

(5) It is intended that the transaction would take the form of RAG acquiring 96,5 % of EBV's capital from Arbed SA. In return, Arbed SA would acquire 6,5 % of RAG's shares from Ruhrkohle's own stock through acquisition of 65 % of the shares in the management company Ruhrkohle Beteiligung mbH.

(6) The main point of the transaction is the transfer of the mining assets of Arbed SA to RAG. The acquisition of RAG shares by Arbed SA is of only accessory character as it constitutes a purely financial holding with no perceptible influence on the control of RAG. Consequently, the only relevant transaction for the purposes of Article 66 (1) and the one taken as the basis for assessment is the transfer of assets.

II

(7) The transfer to RAG of Arbed's mining assets combined within EBV will result in a concentration within the meaning of Article 66 (1). Under Article 66 (2), such concentrations may be authorized if it is ensured that the proposed transaction will not give the undertakings concerned the power:

— to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for the relevant products,

— 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.

(8) In view of the above, assessment of the proposed transaction is confined to the effects which incorporation of the Westfalen mine into RAG will have on competition. The relevant production amounts to some 2 200 000 tonnes a year, i.e. approximately the tonnage of blast furnace coke supplied to Arbed's Luxembourg plants by EBV.

(9) RAG will take over a supply contract between Arbed and EBV which runs until 31 December 1999 and under which the parties have agreed that the total blast furnace coke requirement of Arbed's Luxembourg works will be supplied.

(10) The transaction will not put RAG in a position to determine prices in this respect. For reasons of competition, Community coal producers have to align their coking coal and blast-furnace coke prices on the prices (at the place of destination) of such fuels from non-Community countries. The German coalfields are able to do so only because the Federal Government grants them aid in accordance with Commission Decision (ECSC) No 2064/86 [1]. These conditions governing pricing will continue to apply unaltered to RAG even after the inclusion of EBV.

(11) In view of the more than unsatisfactory profit situation of the German coal industry as a result of rising production costs, competition from non-Community coal and alternative sources of energy and the Federal Government's growing unwillingness to grant aid, it is not to be expected that the proposed transaction will have any influence on RAG's market position. Although RAG produced some 58 million tonnes of coal in 1987 (equivalent to some 70 % of the total production of all coalfields in the Federal Republic of Germany), as the result of the Kohlenrunde meeting, which is intended to bring about a lasting solution to the abovementioned difficulties of the German coal mining industry, the absorption of the Westfalen coal mine (2 200 000 tonnes a year) will be offset by planned closures of RAG mines accounting for some 10 million tonnes a year.

[1] OJ No L 177, 1. 7. 1986, p. 1.

(12) In view of the structurally unfavourable economic conditions governing coal production and the continuing difficulties in sales, the proposed transaction will not place RAG in an artificially privileged position that would give it any significant advantage in access to markets.

III

(13) The contract to be transferred to RAG tends to restrict competition on the comon market for blast furnace coke in that it commits the parties to the exclusive supply and purchase of Arbed's requirements of blast furnace coke. However, the agreement can be authorized on the basis that it is justified by the necessity to rationalize. It is, therefore, strictly analogous to a specialization agreement. Indeed, it takes account of the particular circumstances of Arbed's Luxembourg plants which use ore mined in Arbed's French mines (Minette). This iron ore is different to the rich ore used elsewhere, requiring blast furnaces of a different design and special coke properties. In this situation only a long-term contract will ensure that Arbed's requirements are met. Additionally, the transfer of the supply contract to RAG forms part of the restructuring programme for the German coal industry, which includes the planned closure of many of EBV's operations and the employment of its workforce by RAG. The authorization can be given for the duration of the contract as it is an integral part of the merger.

(14) The proposed transaction therefore satisfies the conditions for authorization under Articles 65 and 66 and can be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The acquisition of 96,5 % of the capital of Eschweiler Bergwerks-Verein Aktiengesellschaft by Ruhrkohle Aktiengesellschaft, Essen, is hereby authorized.

Article 2

The supply contract between Arbed SA and Eschweiler Bergwerks-Verein Aktiengesellschaft is hereby authorized. This authorization is valid for the whole period of its duration, i.e. until 31 December 1999.

Article 3

This Decision is addressed to Ruhrkohle Aktiengesellschaft, Essen, and Arbed SA Luxembourg.

Done at Brussels, 19 December 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission