COMMISSION

COMMISSION DECISION

of 8 May 1990

authorizing the acquisition of the entire share capital of C. Walker and Sons (Holdings) Ltd by British Steel plc

(Only the English text is authentic)

(90/234/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 Decision No 24-54 of 6 May 1954 laying down in implementation of Article 66 (1) of the ECSC Treaty a regulation on what constitutes control of an undertaking (1),

Having regard to the request made by British Steel plc, London, on 5 October 1989 for authorization to acquire the entire issued share capital of C. Walker and Sons (Holdings), Blackburn,

Having consulted the Governments of the United Kingdom and of Ireland,

Whereas :

I. THE PARTIES

(1) British Steel plc (BS) is a public company quoted on the London International Stock Exchange with an issued share capital of £ 1 000 million. Its main activities are the production and distribution of ECSC steel products. In addition it also manufactures and distributes a range of products not covered by the ECSC Treaty and operates in the shipping and consultancy sectors. BS is therefore an ECSC undertaking as defined by Article 80 of the ECSC Treaty.

(2) In the year to 31 March 1989 BS had a turnover of £ 4 906 million of which £ 634 million related to stockholding, £ 340 million in the United Kingdom and £ 294 million elsewhere in the European Communities.

(3) In addition to its own subsidiaries BS is concentrated with a number of other producers and distributors :

ASW Holdings Group : 20 % shareholding

United Engineering Steels : 50 % shareholding

United Merchant Bar : 25 % shareholding

DSRM Group : 50 % shareholding

Templeborough Rolling Mills : 50 % shareholding

(4) C. Walker and Sons (Holdings) Ltd (Walkers) is a private United Kingdom company with a paid-up share capital of £ 3,5 million whose principal activity is the distribution of both ECSC and non-ECSC steel products. Walkers also has manufacturing activities, financial services and an airline operation. This last activity is not included in the assets to be acquired by BS. Walkers is thus also an ECSC undertaking as defined by Article 80.

(5) In the year to 3 June 1989 Walkers' turnover for the activities to be acquired by BS was £ 622 million of which £ 596 million related to stockholding. Of this total £ 531 million were realized in the United Kingdom and £ 65 million in Ireland.

II. THE NATURE OF THE TAKEOVER

(6) BS intends to acquire the entire issued share capital of Walkers thereby bringing about a concentration within the meaning of Decision No 24-54.

III. RELEVANT MARKETS

(7) Large steel stockholders, such as BS and Walkers, carry a very wide range of steel products, both those covered by the ECSC Treaty and those falling under the EEC Treaty. The most important product categories are sections, plate, hot- and cold-rolled strip, coated sheet, stainless sheet and merchant bars. These are defined as the 'ECSC stockholders

(1) OJ No 9, 11. 5. 1954, p. 345/54.

products' and tubes and bright bars the 'EEC stockholders products'. The ECSC and the EEC stockholders products together are the 'stockholder products' and constitute the relevant product market.

(8) The bulk, over 80 %, of the products sold by the two companies fall under the ECSC Treaty, however tubes and bright bars must be considered under the EEC Treaty. The ECSC and EEC products are therefore examined separately. In addition concrete reinforcement, which falls partly under the ECSC Treaty and partly under the EEC Treaty, is considered separately.

(9) In addition to the examination of the overall market situation, each important sub-market, sections and plates, strip products, stainless flat products, merchant bars, tubes and bright bars, will be examined individually to ensure that the proposed transaction will not have adverse effects at this level.

(10) The geographical market must be considered at several levels. BS and most if not all of the major integrated steelmakers in the Community have steel stockholding and trading operations outside their own national markets. BS owns stockholders in France, the Federal Republic of Germany, and the Netherlands, while Hoogovens, Krupp, Klöckner, Thyssen and Usinor Sacilor, among others, have stockholding interests in the United Kingdom. The largest stockholder in France is owned by Cockerill Sambre, the Belgian producer. These facts and the high level of import penetration, in the United Kingdom in 1988, for example, supplies from the Community and imports from third countries accounted for 33 % of ECSC stockholders product demand and 26 % of the demand for both tubes and bright bar, indicate that the Community is the relevant market. The positions on the UK and Irish national markets are also important and should be considered in detail.

(11) Stockholding is a local service. Transport costs and delays usually limit the competitiveness of a given depot to the geographical area immediately surrounding the depot. The size of this area will vary from product to product and from location to location. It is also determined by the location of competing stockholders' depots. This local effect is critical when determining the effects on competition.

(12) Although there is a definite stockholders' market in the sense that certain products are distributed through local operations to a generally local clientele, many of its customers could equally buy directly from the producing mills or buy imported steel through a steel trader. This dimension must also be examined in considering the proposed transaction.

IV. THE DEVELOPMENT OF STOCKHOLDING

(13) The proportion of steel sold through stockholders continues to grow. In the United Kingdom the percentage of total steel deliveries sold by stockholders has grown steadily from 39 % in 1979 to 59 % in 1988. It is a market sector that no producers can ignore.

(14) For producers the control of a certain proportion of the outlets for their production, whether through stockholders or other downstream outlets, wiredrawing, engineering, etc. offers the prospect of greater stability.

(15) There are a number of reasons for the development of stockholding. On the production side, the number of producing mills has been reduced and their average size increased. As a result mills prefer not to accept small orders. To improve productivity, most mills attempt to maximize the length of production runs. Stockholders offer a convenient way of disposing of long production runs and of reducing stocks at the producing works.

(16) A number of major consuming industries, including shipbuilding and coal-mining, that once bought very large quantities of steel direct from the mills, are in decline and now have much lower requirements. Technical developments have resulted in lighter, stronger, tougher steels which have reduced the tonnage requirements of industries such as automobile manufacture, rails and white goods which traditionally have bought directly from the mills.

(17) There have been developments in the nature of stockholding: many stockists now not only retail steel, they also carry out processing operations and add value. Such operations include slitting, cutting to length, profiling, etc., and relieve customers of the necessity of installing plant and employing labour. The most recent development in this field is the growth of 'just-in-time' supply where the

stockist, usually located close to a major customer's factory, provides pre-prepared material at very short notice to the customer's schedules, thereby enabling him to eliminate or greatly reduce their stocks and better control their production process.

V. ECSC PRODUCTION

(18) Walkers produces aluminized sheet. Its annual production in 1988 was [...](1) tonnes. Although BS is a major producer of coated sheet products with total production over 2 million tonnes in 1988, it does not produce aluminized sheet. Therefore the result of the transaction will be to complement BS's product range in this sector.

(19) In addition, Walkers cut special sections (guide rails) to length. These sections are rolled for them by BS on rolls owned by Walkers. Sales of this product amounted to [...] tonnes in 1988.

VI. ECSC STOCKHOLDERS

(20) If BS/Walker maintains, after the proposed transaction, the market shares currently enjoyed by BS and Walkers individually it will have less than 7 % of the Community market for all ECSC stockholder products. For no category of product will this percentage exceed 9 %. In the Community there will be competition from three larger stockholding operations with about 8 % of the Community market each and several hundred smaller stockists.

(a) BS/Walkers share of the ECSC stockholders market

EUR 12 (1988)

Product	BS/Walkers (1 000 tonnes)	EUR 12 (1 000 tonnes)	%
Plates and sections	745	9 418	7,9
Strip mill products	1 346	21 285	6,3
Stainless flat products	90	1 024	8,8
Merchant bar	210	5 907	3,5
Total	2 391	37 634	6,3

(1) In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 45 (2) of the ECSC Treaty.

(21) In the United Kingdom BS has approximately 17 % of the national market for ECSC stockholders' products and Walkers about 20 %. Thus together they will have an initial market share of about 37 %. This varies between 33 % and 39 % depending on the product in question as shown in Table (b).

(b) BS/Walkers share of the ECSC stockholders market

United Kingdom (1988)

Product	BS/Walkers (1 000 tonnes)	United Kingdom (1 000 tonnes)	%
Plates and sections	559	1 451	39
Strip mill products	1 075	2 870	37
Stainless flat products	47	133	35
Merchant bar	190	573	33
Total	1 871	5 027	37

(22) BS believes that the market share in the United Kingdom of BS and Walkers will drop from 37 % to [...] % because some customers, who now buy from both BS and Walkers, will wish to maintain, for strategic reasons, independent supply sources. This has been the case in previous takeovers, notably in the case of the acquisition by Simpsons, a BS subsidiary, of SSSD in 1983, when the initial 20 % market share for the combined operation fell to 13 % by 1985 and has stayed at this level. At the time of Walkers' takeover of GKN Steelstock in 1986 the combined market share was 20 %, this fell to 18 % over the next 12 months.

(23) BS has no stockholding operations in Ireland. However, as a result of the takeovers in 1988 of Listers and the Steel Company of Ireland, Walkers has a very strong presence. This is shown in the table below which indicates that Walkers had just under 50 % of the stockholders market in 1988 and had market shares of 59 % and 61 % for plates and sections and for strip mill products respectively.

(c) **BS/Walkers share of the ECSC stockholders market**

Ireland (1988)

Product	BS/Walkers (1 000 tonnes)	Ireland (1 000 tonnes)	%
Plates and sections	35	59	59
Strip mill products	58	95	61
Stainless flat products	2	5	40
Merchant bar	5	43	12
Total	100	202	50

VII. BRITISH STEEL AS AN ECSC SUPPLIER

(24) Walkers is BS's largest customer, in 1988 it bought over 935 000 tonnes of ECSC Treaty products. This was over 90 % of its total requirements in the United Kingdom. In Ireland BS provided some 30 000 tonnes, or 30 % of the Walker Group's needs there.

(25) In contrast, BS provided only 80 % of the requirements of its own stockholding subsidiaries in the UK and 26 % of the requirements of its own stockholding operations elsewhere in the Community.

(26) The scope for BS to increase its sales through the Walker operation is severley limited by the already very high level of purchases from BS. In fact, if the current BS practices were to be extended to the Walkers' operation there would be a fall in the tonnage of steel purchased from BS.

(27) The combined position of BS as stockholder and a direct supplier of ECSC stockholder products before and after the completion of the takeover of Walkers in the United Kingdom and Ireland is shown in Table (d) below.

(d) **BS as a direct supplier and stockholder**

ECSC stockholder products (1988)

	United Kingdom		Ireland	
	(1 000 tonnes)	% of UK total	(1 000 tonnes)	% of Irish total
BS direct sales	[...]	[...]	[...]	[...]
BS stockholder sales	[...]	[...]	[...]	[...]
(of which from BS)	[...]	[...]	[...]	[...]
Total before acquisition	[...]	[...]	[...]	[...]
Walkers' sales	[...]	[...]	[...]	[...]
(of which from BS)	[...]	[...]	[...]	[...]
Total after acquisition	[...]	[...]	[...]	[...]
Total market	[...]	[...]	[...]	[...]

(28) The share of their national markets that other similarly placed steel producers control through their direct sales and their sales through their stockholding subsidiaries are of the same order of magnitude: Usinor Sacilor, 49 %; Cockerill Sambre, 46 %; ILVA, 54 %.

VIII. APPLICATION OF ARTICLE 66 OF THE ECSC TREATY

(29) The proposed transaction is a concentration in the sense of Decision No 24-54 and therefore requires prior authorization by the Commission. This must be granted if the operation does not give the undertakings concerned the power, in respect of the products covered by the ECSC Treaty:

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

— to evade the rules of competition instituted by the ECSC Treaty, in particular by establishing an artificially privileged position involving substantial advantage in access to supplies or markets.

(30) As Walkers' production of aluminized sheet is small and as BS does not make this product, the concentration of BS's and Walkers' ECSC production operations will not change the competitive position for this product. Similarly the concentra-

tion will not effect the situation for the guide rails produced by BS and sold after cutting to length by Walkers.

(31) At the level of the European Community, BS/Walkers with its market share of less than 7 % for ECSC stockholders' products, will not be able to determine prices. In the United Kingdom and particularly in Ireland its position is stronger. However, it will not be able to determine prices for the following reasons :

— there are a large number of competing stockholders, about 400 in the United Kingdom and 30 in Ireland,

— some of these stockholders are quite large. ASD plc, the next largest, has about [...] % of the overall United Kingdom market for stockholders products and has grown very rapidly from a single depot to a nationwide network in 10 years,

— smaller stockholders have comparatively large shares in the market niches they occupy, for example Glynwed is estimated to hold [...] % of the United Kingdom market for stainless steel flat products,

— the independent stockholders, together with those controlled by other producers will control at least 63 % of the market in the United Kingdom and 50 % in Ireland,

— in Ireland, there is no change at the level of distribution as BS has no stockholding operations in this country,

— owing to the localized nature of the stockholding business, even stockholders whose operations on a national or European scale are small can provide very effective competition in their own geographical and product areas. Each BS/Walkers' depot has at least three competing stockholders in its geographical location,

— these smaller distribution operations are not necessarily tied to BS as a supplier. Some are already owned by Continental producers, and other steelmakers would be glad to increase their sales at the expense of BS by supplying independent stockholders. The competing stockholders should enjoy easy access to supplies of steel at competitive prices. Imports already account for some 33 % of United Kingdom demand for ECSC stockholder products.

(32) BS/Walkers will not be in a position to control production or the distribution of ECSC products as its share of Community output is only about 8 %. In the United Kingdom its share of production is some 65 %. However, steel is largely a commodity product where there is a little to differentiate BS's steel from that from other sources. If BS were to restrict its production so as to reduce the supply of steel to competing stockholders the shortfall could be made up by other producers both inside and outside the Community.

(33) Given the heavily capital-intensive nature of steel production a voluntary reduction of production would increase BS's unit costs, thus reducing or eliminating the possible benefits of the shortage it would create, while in the long term it could look forward to a permanent loss of market share and of its credibility as a supplier. If the reduction in production succeeded in raising price levels in the United Kingdom, it would attract additional imports.

(34) BS/Walkers will be a major outlet for BS's production. However, this will not give BS an artificially privileged position as BS/Walkers must compete in the marketplace with the independent stockholders and with those owned by other producers. BS is required, in any event, to comply with the ECSC rules for sales.

(35) Walkers already takes the large majority, over 90 % in 1988, of its steel requirements from BS so there is very little scope for BS to increase its sales through the Walkers outlets. In 1988 BS's own stockholding operations bought only 80 % of their steel from BS. If this pattern was applied to Walkers' ECSC stockholding operations, Walkers would buy some [...] tonnes less from BS.

(36) In making an assessment as to whether the proposed transaction can be authorized the Commission must take into the account the size of like undertakings.

(37) In the Community market for stockholders products as a whole there are several producers who already have a similar or larger share than the 7 % BS/Walker will have. These include Usinor Sacilor, Cockerill Sambre, Arbed, ILVA and Thyssen.

(38) Some of these companies have significant shares of their national markets, notably Usinor Sacilor [...] %, Cockerill Sambre [...] % and ILVA [...] %. The proportion of the market for ECSC stockholder products held by producers is very much higher outside the United Kingdom, averaging 63 % for the nine major producing countries

against only 21 % in the United Kingdom. The range is between 11 % in Spain and 88 % in the Federal Republic of Germany.

(39) After the completion of the takeover, about 33 % of BS's production of finished products will be sold through its stockholding subsidiaries (at present some 20 % is sold this way). Other companies have higher proportions, for instance the tonnage sold by Cockerill Sambre's stockholding arm was almost as big as its total production. Steel companies that can distribute a large part of their production through tied outlets have a more stable base upon which to plan for the future.

(40) The conditions set out in Article 66 (2) of the ECSC Treaty are therefore met and the concentration can be authorized in so far as it concerns ECSC products.

IX. REINFORCEMENT

(41) Reinforcement consists of steel for reinforcing in standard or cut lengths (ECSC products) and bent bars and mesh (EEC products). These products are supplied by reinforcement engineers to building and public works contractors. The contractors are supplied with a mix of straight and bent bars and mesh to meet their requirements. It is therefore, at the practical level, very difficult to separate the ECSC and EEC aspects of this trade. For this reason steel for reinforcement will be treated as one product, though only the ECSC aspect will be examined in this Decision.

(42) BS no longer produces steel for reinforcement itself and has no direct interest in reinforcement engineering. ASW, a company in which BS has a 20 % stake and with which it is concentrated, is a large producer, and also has two reinforcement engineering subsidiaries both of which operate in the United Kingdom.

(43) Walkers has a small reinforcement operation in the United Kingdom and a larger operation in Ireland. In the United Kingdom the combined sales will be [. . .] tonnes, giving BS and Walkers a market share of some [. . .] %.

(44) Irish consumption of steel for reinforcement is very small, 76 000 tonnes in 1988 (less than 0,7 % of Community sales) compared with an estimated 12 million tonnes in Europe. Neither BS nor ASW have any reinforcement operations in Ireland. Walkers supply approximately 77 % of this small market for reinforcement.

(45) In the three years 1986 to 1988 the Walkers reinforcement operation in Ireland has bought minimal tonnage of reinforcing bar from ASW. The local steel producer Irish Steel Ltd stopped producing reinforcing bars early in 1989 and Walkers has started to buy from ASW at a rate equivalent to approximately [. . .] tonnes a year or [. . .] % of its requirements in Ireland.

X. APPLICATION OF ARTICLE 66 OF THE ECSC TREATY TO REINFORCEMENT

(46) Under the ECSC Treaty, in the United Kingdom the combined market share does not give rise to concern. However, BS/Walkers will have a very high market share for straight bars in Ireland. This share was already held by Walkers alone before the proposed transaction. Therefore there is no change in the competitive situation at the level of distribution.

(47) The conditions set out in Article 66 (2) have been met in relation to straight bars (ECSC products) and this aspect of the proposed transaction may be authorized.

XI. EASE OF ENTRY INTO THE STOCKHOLDING SECTOR

(48) The comparative ease of entry in the stockholding market is a protection against abuses or distortions of the market. There are various levels of sophistication, but the most basic operation does not require either large amounts of finance nor high levels of expertise. New entrants looking for niches to exploit and ready to take advantage of opportunites not considered by the larger stockholders will be able to establish themselves comparatively easily.

(49) The new entrants and smaller stockholders will not be dependent on BS for their steel supplies. Other producers, primarily, but not exclusively, in the Community are keep to extend their sales. Overcapacity in the steel-producing industry, which will be an important factor once the exceptionally high demand experienced in 1988/1989 returns to more normal levels, should ensure ready availability of supplies to independent stockholders, whether new entrants or well-established operations.

XII. CONCLUSIONS

(50) The conditions set out in Article 66 (2) of the ECSC Treaty have been met so that the proposed transaction can be authorized.

(51) BS is obliged by the ECSC Treaty to comply with the ECSC pricing rules for sales outside the BS concentration. However, in the light of its high market shares in the United Kingdom and Ireland, and its position as a major supplier to these markets, BS should be required to report annually to the Commission on the prices it charges to its own stockholding subsidiaries and those it charges to competing stockholders,

HAS ADOPTED THIS DECISION:

Article 1

British Steel plc is hereby authorized under Article 66 (2) of the ECSC Treaty to acquire the entire share capital of C. Walker and Sons (Holdings) Ltd.

Article 2

British Steel shall, within three months of the end of its financial year, present to the Commission analyses by product group of the average net prices charged to those stockholding companies, in the United Kingdom and Ireland, in which it holds more than 50 % of the equity, and the range of prices for its sales to other stockholders. The analyses shall be made separately for the United Kingdom and Irish markets. The product groups shall be the following: sections, merchant bars, plates, hot-rolled coil and sheet, cold-rolled coil and sheet, hot-rolled stainless strip, cold-rolled stainless strip, galvanized sheet and other coated sheet.

Article 3

This Decision shall be published in the *Oficial Journal of the European Communities.*

Article 4

This Decision is addressed to British Steel plc, 9 Albert Embankment, London SE1 7SN.

Done at Brussels, 8 May 1990.

For the Commission

Leon BRITTAN

Vice-President