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DECISION No 25-67

of 22 June 1967

laying down in implementation of Article 66 (3) of the Treaty a regulation concerning exemption from prior authorisation

THE HIGH AUTHORITY,

Having regard to Articles 47, 66 and 80 of the Treaty;

Having regard to Decision No 25-54 of 6 May 1954 on rules for the application of Article 66 (3) of the Treaty, relating to exemption from prior authorisation *(Official Journal of the European Coal and Steel Community,* 11 May 1954, pp 346 *et seq.),* as supplemented by Decision No 28-54 of 26 May 1954 *(Official Journal of the European Coal and Steel Community,* 31 May 1954, p. 381);

Whereas under Article 66 (1), and subject to Article 66 (3), any transaction which would in itself have the direct or indirect effect of bringing about a concentration between undertakings at least one of which falls within the scope of application of Article 80, requires the prior authorisation of the High Authority; whereas the High Authority grants the authorisation referred to in paragraph (1) if it finds that the proposed transaction will not give to the persons or undertakings concerned the power to influence competition within the common market, within the meaning of Article 66 (2);

Whereas by Decision No 25-54, and with the concurring Opinion of the Council, the High Authority in accordance with Article 66 (3) exempted from the requirement of prior authorisation certain classes of transactions which would bring about concentration of undertakings and which, in view of the size of the assets or of the undertakings to which they relate, taken in conjunction with the kind of concentration which they effect, and having regard to the totality of the undertakings grouped under the same control, must be deemed to meet the requirements of Article 66 (2);

Whereas experience has shown that Decision No 25-54 should be adapted to take account of the changes which have occurred since that time in the volume of production, in economic structure, in market and competitive conditions; whereas this applies particularly to quantitative limits and to the ties which exist between Community undertakings and undertakings in other sectors and trading undertakings;

Whereas in concentrations between undertakings engaged in the production of coal and steel, the size of the industrial entity being formed depends on the volume of production of the different types of products; whereas this volume should be limited both in absolute figures and in relation to production within the Community as shown in the official statistics;

Whereas in the case of concentration between undertakings engaged in production and undertakings which are not within the scope of the Treaty, account must be taken of the privileged position which concentration can secure for Community undertakings by ensuring disposal of their products; whereas the relevant consumption of coal and steel in this respect is either the total consumption of the undertakings concerned or that of the different undertakings which are not within the scope of the Treaty but are involved in the concentration;

Whereas any concentration of undertakings in the wholesale trade which is subject to Article 66 should, in accordance with Article 80, be assessed on the basis of the volume of their sales of coal and turnover of steel, the ties which exist between a wholesale undertaking and an undertaking engaged in production not forming an obstacle to exemption for purposes of concentration with another wholesaler; whereas with regard to steel, repeated concentrations and concentrations which relate to several distribution undertakings at the same time should be limited;

Whereas special limits must be fixed for sales of scrap;

Whereas concentrations between producer undertakings and retailers and between distribution undertakings and undertakings which are not within the scope of the Treaty, may, in general, be exempted from the requirement of prior authorisation;

Whereas, as regards concentrations effected by establishing control over groups, it is impossible to define general criteria for exemption; whereas concentrations of this type should accordingly be excluded from the field of application of this Decision, whether involving joint formation of new undertakings or control over groups of existing undertakings;

Whereas the High Authority should be informed of any concentration effected within the common market for coal and steel, even if exempt from prior authorisation by virtue of this Decision; whereas the undertakings or the persons who obtained control should accordingly be required to declare any such concentration the size of which is not substantially below the limits fixed for exemption;

With the concurring Opinion of the Council of Ministers;

DECIDES:

Concentrations between producers

Article 1

Transactions referred to in Article 66 (1) which have the direct or indirect effect of bringing about concentration between undertakings engaged in production in the coal or the steel industry shall be exempted from the requirement of prior authorisation where:

1. The annual output of products specified below, achieved by all the undertakings involved in the concentration, does not exceed the following tonnages:

(a) Coal (net production screened and washed)	10 000 000 metric tons
(b) Manufactured fuels made from coal	1 000 000 metric tons
(c) Coke	3 000 000 metric tons
(d) Iron ore (gross production)	No limit
(e) Agglomerated ore	4 000 000 metric tons
(f) Pig iron and ferro-alloys	2 500 000 metric tons
(g) Crude steel (ordinary steel: ingots, semi-finished products and liquid steel)	3 000 000 metric tons
(h) Alloy and non-alloy special steels, (ingots, semi-finished products and liquid steel)	200 000 metric tons
(i) Finished rolled steel products including end products	2 400 000 metric tons

2. The annual output of undertakings involved in the concentration shall not exceed, for any of the types of steel products listed in the Annex to this Decision, 30% of the overall output of products of this type within the Community. The overall output within the Community shall be determined according to the production statistics published by the Statistical Office of the European Communities.

Concentrations between coal producers and undertakings not falling within the scope of the Treaty

Article 2

Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between:

(a) undertakings engaged in coal production; and

(b) undertakings not falling within the scope of Article 80,

if: — either the annual coal consumption, considered as a whole for all the undertakings involved in the concentration, does not exceed 5 000 000 metric tons; or

— the annual coal consumption of each of the undertakings referred to in (b) is less than 500 000 metric tons.

Concentrations between steel producers and undertakings not falling within the scope of the Treaty

Article 3

Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between:

(a) undertakings engaged in steel production, and

(b) undertakings not falling within the scope of Article 80,

if: — the annual production of undertakings referred to in (a) does not exceed 20% of the tonnages set out in Article 1 (1) for the groups of products referred to in (f) to (i); or

— the annual steel consumption of undertakings involved in the concentration does not exceed 50% of their production of these groups of products. However in respect of finished rolled steel products and end products only the groups of products listed in the Annex to this Decision shall be taken into account; or

— the undertakings referred to in (b) do not use steel as a raw material.

2. Tonnages used in the production of steel and in the upkeep and renewal of installations of the undertakings in question shall not be considered as steel consumption.

Concentrations between distributors

COAL

Article 4

1. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in coal distribution, other than sales to domestic consumers or to small craft industries (hereinafter called 'distribution undertakings') if the total volume of business dealt with annually by distribution undertakings involved in the concentration does not exceed 2 500 000 metric tons of coal.

2. 'Volume of business' means the quantities sold by the distribution undertakings for their own account and for account of third parties. Sales to domestic consumers and to the small craft industries are not to be taken into account.

STEEL

Article 5

1. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in steel distribution, other than sales to domestic consumers or to small craft industries (hereinafter called 'distribution undertakings') if:

(a) either the total annual turnover of steel—not including scrap—achieved by the distribution undertakings involved in the concentration, does not exceed 60 million units of account; or

(b) the annual turnover of steel—not including scrap—achieved by the distribution undertaking which represents one of the parties involved in the concentration does not exceed 10 million units of account. However, transactions of this type which are repeated or which involve several distribution undertakings at the same time shall only be exempted from the requirement of authorisation if the consequent total increase in turnover does not exceed 30 million units of account.

2. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in scrap distribution, if the total annual volume of business of the distribution undertakings involved in the concentration does not exceed 400 000 metric tons of scrap.

3. The turnover shall be ascertained by reference to the amount of products sold and invoiced for own account and for account of third parties. 'Volume of business' means the amounts sold by the distribution undertakings for their own account and for account of third parties.

Other concentrations exempted from authorisation

Article 6

Transactions referred to in Article 66 (1) shall be exempted from prior authorisation to the extent that they have the effect of bringing about concentration:

— between undertakings engaged in production as defined in Article 80, and undertakings which sell coal or steel exclusively to domestic consumers or to small craft industries;

— between distribution undertakings and undertakings not coming within Article 80.

Concentrations effected by providing for group control

Article 7

1. Articles 1 to 6 shall not apply to transactions referred to in Article 66 (1) which have the effect of bringing about concentration between:

(a) on the one hand, a number of undertakings of which at least one is engaged in production or distribution in the coal and steel sector, and which are not concentrated among themselves, but which in fact or in law exercise joint control (group control) over the undertaking or undertakings under (b); and

(b) on the other hand, one or several undertakings which produce, distribute or process coal or steel as a raw material.

2. Paragraph 1 shall apply where concentration results from the joint formation of a new undertaking or the establishment of joint control of an existing undertaking.

General provisions

Article 8

1. The figures to be considered in applying Articles 1 to 5 above shall be the average annual figures for production, consumption, turnover and volume of business attained during the last three financial years preceding the date of concentration.

2. In the case of undertakings which have been in existence for less than three years, the figures to be considered shall be the yearly averages calculated on the basis of production, consumption, turnover and volume of business since those undertakings came into existence.

Article 9

1. In applying Articles 1 to 7 regard shall be had to the whole of the undertakings and activities already grouped under one control or which would, as a result of concentration, be under such control.

2. Transactions within the meaning of Article 66 (1), to which several of the Articles 1 to 6 above apply, shall only be exempted from the requirement of prior authorisation if the conditions of each of the relevant Articles are satisfied.

Article 10

1. Transactions referred to in Article 66 (1) which in accordance with Articles 1 to 5 are exempted from authorisation, shall be notified to the High Authority within two months from the time when the concentration was effected.

The notification shall be made by the undertakings or persons who have acquired control.

The notification shall contain the following information:

— a description of the transaction leading to concentration;

— the description of the undertakings which will be directly or indirectly concentrated;

— an estimate of production, sales or consumption of coal or steel of the concentrated undertakings.

2. Paragraph 1 shall not apply to concentrations which achieve less than 50% of the figures required under Articles 1 to 5 of this Decision for exemption from authorisation.

Article 11

This Decision shall be published in the *Official Journal of the European Communities*. It shall enter into force on 15 July 1967.

On the same date, Decisions Nos 25-54 and 28-54 shall cease to be in force.

This Decision was considered and adopted by the High Authority at its meeting on 22 June 1967.

For the High Authority

The Vice-President

A. COPPÉ

ANNEX

(Article 1 (2) and Article 3 (1))

Permanent railway material

Sheet pilings

Wide-flanged beams

Other angles, shapes and sections, 80 mm or more and Omega sections

Tube rounds and squares

Wire rod in coils

Merchant steel

Universal plates

Hoop and strip and hot-rolled tube strip

Hot-rolled plates of 4·76 mm or more

Hot-rolled plates of 3—4·75 mm

Hot-rolled sheets under 3 mm

Coils (end products)

Cold-rolled sheets under 3 mm

Hoop and strip, cold-rolled, for making tinplate

Tinplate

Blackplate used as such

Galvanised, lead-coated and other clad sheets

Electrical sheet