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DECISION No 15/64

of 15 July 1964

on the participation of the Société rhénane d'exploitation et de manutention, Strasbourg, in joint buying agreements for fuel by wholesale coal dealers operating in southern Germany through the Oberrheinische Kohleunion Bettag, Puton & Co., Mannheim

THE HIGH AUTHORITY,

Having regard to Articles 4, 47, 65 and 80 of the Treaty;

Having regard to Decision No 19/57 of 26 July 1957 authorizing the joint buying of fuel by wholesale coal dealers operating in southern Germany *(Official Journal of the European Coal and Steel Community* No 24 of 10 August 1957, p. 352/57);

Having regard to Decision No 4/58 of 2 April 1958 extending the time limit fixed for the withdrawal of certain undertakings from the Oberrheinische Kohlenunion Bettag, Puton & Co., Mannheim *(Official Journal of the European Coal and Steel Community* No 12 of 14 April 1958, p. 169/58);

Having regard to the letter of 15 July 1958 addressed by the High Authority to the Société rhénane d'exploitation et de manutention (Sorema) in reply to its request for the extension of the time limit fixed by Decision No 4/58 of 2 April 1958 for the withdrawal of certain undertakings from the Oberrheinische Kohlenunion Bettag, Puton & Co., Mannheim *(Official Journal of the European Communities* No 12 of 4 August 1958, p. 286/58);

Having regard to Decision No 23/59 of 25 March 1959 on the provisional extension of the authorization for the joint buying of fuel by wholesale coal dealers operating in southern Germany *(Official Journal of the European Communities* No 21 of 3 April 1959, p. 420/59);

Having regard to Decision No 31/59 of 27 May 1959 on the extension of the authorization for the joint buying of fuel by wholesale coal dealers operating in southern Germany *(Official Journal of the European Communities* No 37 of 9 June 1959, p. 657/59);

Having regard to Decision No 12/60 of 18 May 1960 amending Article 2 of Decision No 31/59 *(Official Journal of the European Communities* No 36 of 28 May 1960, p. 813/60);

Having regard to Decision No 3/62 of 28 March 1962 on the extension of the authorization for the joint buying of fuel by wholesale coal dealers operating in southern Germany *(Official Journal of the European Communities* No 26 of 9 April 1962, p. 873/62);

Whereas the French dealers belonging to the Société rhénane d'exploitation et de manutention (Sorema), Strasbourg, drawing its supplies in part from the Upper Rhine region, were initially members of the Oberrheinische Kohlenunion (OKU) when it was a joint selling organization for four coalfields on the south German market; whereas the reorganization resulting from the establishment of the common market had as its aim to replace this arrangement by a joint buying ageement for the four coalfields between dealers operating in southern Germany (Decision No 19/57);

Whereas the Sorema group of French dealers had not until then engaged in commercial operations on the south German market; whereas they did not fulfil the conditions of membership of OKU laid down in paragraph 19 of its contract of association (Article 4 (2) of Decision No 19/57) and therefore could not be accepted as members of OKU (Article 6 (1) of Decision No 19/57); whereas, however, in view of the modification of the objects of OKU, it appeared justifiable, as a temporary measure, to allow these dealers to engage in commercial operations as if complying with these conditions; whereas this was the purpose of Article 19 (3) of Decision No 19/57, in which it was provided that the Decision would lapse on 31 March 1958 as regards the participation of the Sorema group of wholesale coal dealers established in France, unless the High Authority fixed a later date in a further Decision or these dealers gave proof by 31 March 1958 (or any later date which might be fixed by the High Authority) that they fulfilled the conditions laid down in paragraph 19 of the contract of association of 16 April 1956;

Whereas by Decision No 4/58 the High Authority noted that the development of sales operations in

southern Germany had been delayed on account of certain measures which had to be taken pursuant to the Franco-German Treaty on the Saar of 27 October 1956; whereas it therefore laid down that the authorization given to the French wholesale coal dealers to participate in OKU should lapse on 31 July 1958, unless the dealers concerned gave proof by that date that they fulfilled the conditions laid down in paragraph 19 of the contract of association of 16 April 1956;

Whereas, by letter of 15 July 1958, the High Authority informed Sorema that there was no justification for extending the time limit further; whereas Sorema was consequently requested to take, not later than 30 September 1958, the necessary steps to withdraw from the Oberrheinische Kohlenunion; whereas Sorema was further requested to provide the High Authority, by 15 October, with documented proof that it had fulfilled this obligation;

Whereas, in Decision No 23/59, the High Authority noted that the proof of withdrawal of the Sorema group of wholesale coal dealers established in France had not been provided; whereas the High Authority extended by two months, until 31 May 1959, the validity of Decision No 19/57, to give time to those concerned to provide the necessary proof;

Whereas, by Decision No 31/59, the High Authority noted that the Sorema group of wholesale dealers established in France had not proved that they fulfilled the conditions for membership of the Oberrheinische Kohlenunion and should therefore be excluded from it; whereas the High Authority considered, however, that there was no objection to a temporary arrangement authorizing Sorema, as an association representing the interests of these dealers, to remain in the Oberrheinische Kohlenunion until 31 March 1960;

Whereas, by Decision No 12/60, the High Authority noted that it could extend this temporary arrangement until 31 March 1962, at which time it would undertake a review of the market situation in the course of which it would be for Sorema to demonstrate, on the basis of experience gained meanwhile, whether and to what extent its membership of the Oberrheinische Kohlenunion made for a substantial improvement in distribution;

Whereas, by Decision No 3/62, the High Authority extended this temporary arrangement to a date to be fixed by a later decision; whereas Sorema had based its request for extension simply on the argument that the efficient use of transport, reloading and storage facilities for the markets bordering on the Upper Rhine region called for precise market information and, therefore, close collaboration with OKU; whereas, for its part the High Authority wished to give the Sorema group of dealers the opportunity of taking advantage of the new trading rules of the selling agencies for Ruhr coal, which afforded them, from 1 April 1961, much easier access to these sources of supply; whereas the decisive factor in the decision of the High Authority was the impossibility at that time of knowing the precise form that these new rules would take and of their effects on the French coal trade; whereas for that reason the High Authority made its authorization one of limited duration, but without setting a precise term to it;

Whereas all these decisions were aimed at allowing the Sorema group of dealers to engage in commercial operations in southern Germany and to prove that they were fulfilling the conditions laid down in paragraph 19 of the contract of association of OKU; whereas, in spite of repeated reminders, these proofs have not been forthcoming; whereas the Sorema group of dealers have not taken advantage, in order to develop their commercial operations in southern Germany, of the easier access to Ruhr coal supplies available to them under the new trading rules in force since 1 April 1961;

Whereas these rules were adopted by the two new selling agencies for Ruhr coal; whereas at the end of the coal marketing year 1962/63, the High Authority noted that a further period of one year was sufficient time to allow the Sorema group of dealers to engage in commercial operations in southern Germany; whereas, by Decision No 8/63 of 30 April 1963 *(Official Journal of the European Communities* No 71 of 11 May 1963, p. 1441/63), it therefore fixed 30 June 1963 as the date at which the temporary arrangement should end; whereas this decision was on 19 March 1964 annulled by a judgment of the Court of Justice in Case No 67/63 because it was not well founded; whereas, in consequence, the authorization of the High Authority concerning Sorema's membership of the Oberrheinische Kohlenunion (OKU) remains valid in accordance with Decision Nos 31/59 and 3/62;

Whereas the judgment of the Court of Justice leads the High Authority to consider whether it should now take a further decision on the withdrawal of Sorema pursuant to the second paragraph of Article 2 of Decision No 3/62 or whether the authorization concerning the membership of Sorema can be extended in such a way that the reservation in the second paragraph of Article 2 of Decision No 3/62 is withdrawn and only the time limit laid down in general terms in Article 1 of Decision No 3/62 is applicable to the authorization;

Whereas the agreements on joint buying concluded by the south German wholesale coal dealers who are members of OKU fall under the main prohibition of Article 65 (1) as restricting competition between these dealers in the purchase of their products; whereas this prohibition is equally valid for Sorema which, according to the findings of the Court of Justice, brings together in an association, within the

meaning of Article 48 of the Treaty, undertakings which, as wholesale coal dealers, come under the provisions of Article 65 (1);

Whereas an agreement of this nature can be authorized pursuant to Article 65 (2) if the parties to the agreement fulfil the conditions of authorization; whereas the aim and object of the agreement are the joint buying, in certain coalfields, of fuel for resale in southern Germany; whereas, consequently, only wholesale dealers operating in southern Germany could make for a substantial improvement in the distribution of these fuels (paragraph 2 (a)); whereas Sorema's membership, which in spite of the easing of conditions of access to supplies does not satisfy this criterion either directly or through the French wholesale coal dealers who are its members, is not justified; whereas in any case its participation, as a member of OKU, in the deliberations and decisions of south German wholesale coal dealers on the purchase of fuel for the south German market is not essential for the improvement of distribution in that region and has more restrictive effects than are required by the agreement (Article 62 (2) (b));

Whereas to authorize Sorema to be a party to the agreements would moreover constitute a discrimination against those dealers and associations which, in respect of OKU, are in a situation similar to that of Sorema and of its members and which like them do not engage in commercial operations in southern Germany but which cannot, pursuant to Articles 4 and 6 of Decision No 19/57, accede to the agreements;

Whereas, with reference to Decision No 3/62, the High Authority notes that it is now possible to make a longer term assesment of the effects on the French coal trade of the trading rules of the selling agencies for Ruhr coal; whereas the much easier conditions available to the French wholesale coal trade for obtaining supplies from the selling agencies for Ruhr coal have had favourable effects on the operations of the French wholesale coal trade in the common market; whereas, however, the members of Sorema have remained inactive in southern Germany and whereas, consequently, the practical effects of the agreements are contrary to the conditions required for their authorization;

Whereas in these circumstances the authorization to be a party to the agreements of the south German wholesale coal dealers, which was granted to Sorema by Decision No 31/59, cannot be maintained or extended, but must be terminated pursuant to the third and fourth subparagraphs of Article 65 (2) and Article 2 (2) of Decision No 3/62; whereas a decision in this sense should take immediate effect, as there is no reason to fix a further transitional period or time limit, particularly in view of the fact that the members of Sorema, once they fulfil the conditions laid down in paragraph 19 of the contract of association of OKU, can become members of OKU without any special authorization from the High Authority,

DECIDES:

Article 1

The authorization granted to the Société rhénane d'exploitation et de manutention, Strasbourg, to be a party to the agreement for the joint buying of fuel concluded by the wholesale dealers operating in southern Germany, through the Oberrheinische Kohlenunion Bettag, Puton & Co., Mannheim, is hereby withdrawn.

Article 2

This Decision shall be notified to the Société rhénane d'exploitation et de manutention, Strasbourg, and to the Oberrheinische Kohlenunion Bettag, Puton & Co., Mannheim, and published in the *Official Journal of the European Communities.* It shall enter into force on 30 September 1964.

This Decision was considered and adopted by the High Authority at its meeting on 15 July 1964.

For the High Authority

The President

Dino DEL BO