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DECISION No 15/67

of 14 June 1967

authorizing the joint buying of rolled steel by the wholesale steel dealers grouped within
the Stahlring Company and Stahlring GmbH, Stahleinkaufsgesellschaft

THE HIGH AUTHORITY,

Having regard to Articles 2 to 5, 47 and 65 of the
Treaty;

Having regard to the application made on 28 November 1966 by the undertakings concerned;

I

1. Whereas the following wholesale steel dealers:

- Louis Eilers & Co., Hannover-Herrenhausen
- Erich Hoselmann, Hannover
- F. W. Schwemann, Hildesheim
- Friedrich Vater & Co., Braunschweig
- Walzstahlhandel Nord, Erich Frei KG, Braunschweig
- Wullbrandt & Seele, Braunschweig
- Wilh. Gauer, Kitzingen
- Walter Herzog GmbH, Stuttgart-Wangen
- Ulrich Adam Knapp, Reutlingen
- Gebr. Lotter KG, Ludwigsburg
- Hollinde & Boudon KG, Dortmund-Hörde
- Wilh. Josten Söhne, Neuss
- August Kirberg, Wuppertal-Elberfeld
- Montan-Handelsges. Richter & Co., Düsseldorf
- J. Willems & Co., Düsseldorf-Oberkassel
- Leopold Hugo Zell, Wuppertal-Oberbarmen

applied to the High Authority on 28 November 1966, in accordance with Article 65 (2) of the Treaty, for authorization of the agreements they have entered into for the joint buying of iron and steel products for their stock requirements; whereas, to that end, the dealers concerned are forming a civil law company under the name Stahlring (hereinafter called 'Stahlring') whose seat is in Düsseldorf, and an operating company under the name Stahlring GmbH, Stahleinkaufsgesellschaft (hereinafter called 'Stahlring GmbH'); whose seat is also in Düsseldorf;

2. Whereas the object of Stahlring is cooperation between members in buying iron and steel products in the Federal Republic of Germany and abroad for their stock requirements; whereas such buying is to be effected through Stahlring GmbH;

Whereas Stahlring is directed by the general meeting of members and the board of management; whereas decisions of the general meeting of members are normally taken by a simple majority of the votes of those present; whereas the voting rights of each member are proportionate to the buying commitment entered into by him;

Whereas the supervisory board of Stahlring GmbH is appointed by the general meeting of members; whereas the supervisory board must include a member from the Northern, the Western and the Southern regions of the Federal Republic of Germany; whereas the supervisory board of Stahlring GmbH is bound by the decisions of the general meeting of members only where those decisions are taken by a majority of two-thirds of the votes of those present;

Whereas the general meeting of members, normally admits new members on a proposal from the board of management, by an unopposed majority vote of all members;

Whereas furthermore the general meeting of members approves the annual accounts submitted by the board of management; whereas any profit shown by the annual balance sheet has to be distributed;

Whereas the board of management consists of the chairman and two alternates; whereas it has entire responsibility for the conduct of the company's business; whereas it conducts the general meetings of members; whereas a special task devolving upon it is to conclude with members of Stahlring GmbH trust agreements (Treuhandverträge) and to supervise their implementation;

Whereas the contract of association of Stahlring provides as follows:

- Members undertake to promote the objects of the company and deal fairly with each other. In case of change in the net assets of a member or in his position as regards participation, that member must inform the board of management accordingly;

- Membership of the company commits each member to buy through Stahlring GmbH on the latter's delivery terms not less than 25 % of the quantity of merchant steel (including reinforcing rods), angles, shapes and sections, universal plates, heavy and medium plates, sheets and high quality sheets, according to his choice, bought during the preceding year for his stock requirements. The buying commitment must be fulfilled in such a way that an order for half the quantity involved is placed with Stahlring GmbH in each half-year. The supervisory board may increase the buying commitment, unless such increase is refused by two-thirds of the members;
- Each member undertakes to make DM 5500 per vote available to the company subject to that amount being used towards paying up the capital of Stahlring GmbH;
- Members share the expenditure incurred by Stahlring GmbH as to 50 % on the basis of their buying commitment and as to 50 % on the basis of the quantities actually bought. Where members buy quantities less than those arising from their commitment, they nevertheless share the expenditure on the basis of their commitment;
- The members share in the profit and loss of the company proportionately to the capital they have paid in;
- The company is formed for an unlimited period. Any member may withdraw from it at the end of a calendar year on six months' notice;

3. Whereas the objects of Stahlring GmbH are to buy steel and other iron and steel products and to sell those products to the members of the civil law company, Stahlring, also to support any action making for the increased use of steel and to perform any allied function;

Whereas Stahlring GmbH is empowered to set up branches within the Federal Republic of Germany and abroad, and to take shares in other undertakings;

Whereas the capital of Stahlring GmbH is DM 200 000, a quarter of which must be subscribed immediately; whereas the capital subscribed is held by trustees (Treuhänder) on behalf of Stahlring;

Whereas Stahlring GmbH is directed by the general meeting of members, the supervisory board and the management;

Whereas the supervisory board determines the policy of the business; whereas it supervises the management; whereas the supervisory board normally takes decisions by a simple majority of votes represented; whereas it draws up the annual balance sheet and decides on the distribution of net profits as shown by the balance sheet;

Whereas the management is appointed and removed by the supervisory board; whereas Stahlring GmbH is represented by a manager or by two managers jointly;

4. Whereas, in accordance with the written declarations of those concerned, joint buying takes place in such a way that each member places monthly or quarterly orders with Stahlring GmbH for its stock requirements; whereas the company combines orders by product and by size, so that the steel-works with which orders are placed may send full loads to any given destination; whereas in this way steel-works may handle larger lots for rolling and despatch; whereas the parties concerned seek, through their cooperation, to achieve rationalization of stocks by limiting them to particular categories of product; whereas the members retain their freedom of action as regards the sale of rolled steel bought jointly;

5. Whereas none of the dealers concerned is concentrated with iron and steel producer undertakings; whereas certain members control other steel dealers; whereas the dealers so controlled are not however parties to the agreements in question;

II

6. Whereas the agreements relating to Stahlring and Stahlring GmbH restrict normal competition between the dealers concerned, since the latter undertake to buy certain minimum quantities for their stocks exclusively through Stahlring GmbH; whereas furthermore they may buy their total stock requirements through that company;

Whereas those agreements have joint buying as their object; whereas they can be authorized if it is found that they satisfy the conditions laid down in Article 65 (2) (a), (b) and (c) of the Treaty;

Whereas, in accordance with those conditions, the agreements must make for a substantial improvement in the production or distribution of steel products and must be essential in order to achieve these results and be not more restrictive than is necessary for that purpose; whereas furthermore they must not 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;

7. Whereas all those concerned are wholesale steel dealers holding stocks of rolled steel; whereas in order to satisfy customers' requirements a wide range of rolled steel products of different types and sizes must be stocked; whereas the turnover of stocks varies considerably from product to product; whereas where those concerned have to buy their stock

requirements independently, they cannot in many cases order from steel-works sufficiently large lots for rolling and despatch to qualify for the price concessions made on large orders; whereas, for the same reasons, those concerned are not able, when acting independently, to obtain such favourable transport rates;

Whereas joint buying through Stahlring GmbH enables orders for members' stock requirements to be combined, so that;

- the steel-works handling the order can prepare lots for rolling and despatch which are sufficiently large to reduce production costs;
- the parties concerned can, where price is a function of quantity, avoid the higher prices charged for small quantities and take advantage of quantity rebates;
- the quantities ordered can form part of a combined load for each destination, thereby saving transport costs;

Whereas the parties propose furthermore to reduce storage costs in future by stocking fewer types of product; whereas members may have recourse, in case of need, to the stocks of neighbouring members;

Whereas substantial improvements in distribution result therefrom, in particular by way of reduced costs for those concerned; whereas joint buying also contributes to the improvement sought by the steel producing industries towards making the fullest possible use of existing production plants;

Whereas those effects can be regarded as substantial even if the parties do not go beyond their buying commitments, for joint buying is resorted to mainly for products in less demand which are ordinarily purchased in small quantities;

Whereas, in view of the relatively limited volume of business of the dealers concerned, such improvements could not be achieved without the agreements in question; whereas, furthermore, those agreements are not more restrictive than is necessary for their purpose; whereas they leave the parties considerable freedom in respect of rolled steel buying and do not restrict their actions in respect of the sale of those products;

8. Whereas, in order to assess the market position of the undertakings concerned, the characteristics of the wholesale dealer's business which is subject to regional limitations both as regards buying and selling should be taken into account; whereas the parties have set up, according to the regional location of their stocks, the Northern, Southern and Western groups, corresponding approximately to the follow-

ing Länder of the Federal Republic of Germany: Lower Saxony, Baden-Wurtemberg, Northern Rhine-Westphalia; whereas current statistics cover only rolled steel supplied to steel dealers by German steel producers; whereas a comparison between such supplies and the total quantities bought by the parties for their stocks, including quantities bought from suppliers in other Community countries, shows that for the year 1965 the percentage varies between 5 % and 25 % for the Northern, Southern and Western Groups; whereas, incomplete as is this comparison, it nevertheless indicates, for the purpose of assessing the market position of dealers who are members of Stahlring, that the order of magnitude of their purchases and sales of rolled steel does not exceed that of other steel dealers who are controlled by iron and steel undertakings;

Whereas, therefore, performance of the agreements does not give the parties the power, in respect of a substantial part of the products which are the subject of joint buying, to determine prices, or to control or restrict production or marketing in the common market, nor to shield themselves against the effective competition of other undertakings in the common market;

9. Whereas neither the parties nor the High Authority can at present forecast with certainty how the proposed joint buying scheme will develop, nor the extent to which possibilities for improving production and distribution will be used; whereas, for that reason, it is appropriate that the High Authority require members, by the end of a suitable period, to show the results achieved;

Whereas the agreements submitted for authorization are of unlimited duration; whereas the High Authority considers, however, that authorization should not extend beyond 31 December 1971;

10. Whereas the High Authority must ensure that aid-measures taken by the dealers concerned, and by management of Stahlring and Stahlring GmbH on the basis of the agreements submitted to it, should be in accordance with the authorization granted by this decision and with the provisions of the Treaty;

Whereas, to that end, it should be required of the undertakings concerned that they give immediate notification to the High Authority of any changes or additions as regards the contracts of association, the admission of new members, the withdrawal of members and any resolution concerning a change in the buying commitment of members;

11. Whereas the agreements submitted to the High Authority for authorization are consequently compatible with Article 65 (2) of the Treaty, having regard to the time restriction and the conditions imposed,

DECIDES:

Article 1

The agreements concluded by the following wholesale steel dealers:

- Louis Eilers & Co., Hannover-Herrenhausen
- Erich Hoselmann, Hannover
- F. W. Schwemann, Hildesheim
- Friedrich Vater & Co., Braunschweig
- Walzstahlhandel Nord, Erich Frei KG, Braunschweig
- Wullbrandt & Seele, Braunschweig
- Wilh. Gauer, Kitzingen
- Walter Herzog GmH, Stuttgart-Wangen
- Ulrich Adam Knapp, Reutlingen
- Gebr. Lotter KG, Ludwigsburg
- Hollinde & Boudon KG, Dortmund-Hörde
- Wilh. Josten Söhne, Neuss
- August Kirberg, Wuppertal-Elberfeld
- Montan-Handelsges. Richter & Co., Düsseldorf
- J. Willems & Co., Düsseldorf-Oberkassel
- Leopold Hugo Zell, Wuppertal-Oberbarmen

for the joint buying of rolled steel for their stock requirements, which agreements are provided for in the contract of association of 24 October 1966 of the civil law company Stahlring, as modified and amplified by the agreements of 20 April 1967, and also provided for in the contract of association of 6 July 1966 of Stahlring Gesellschaft mit beschränkter Haftung, Stahleinkaufsgesellschaft whose seat is at Düsseldorf (Notarial register No 743/1966 of Paul Reuter, Notary, Düsseldorf) are authorized by this Decision, subject to the reservations and conditions contained in the following Articles.

Article 2

The dealers concerned shall, three months after the end of the first two-year period, submit to the High Authority a report on the improvements achieved during that period in the distribution of the products covered by the agreements entered into, setting forth these improvements in detail with all relevant documentation.

Article 3

The undertakings concerned shall notify the High Authority without delay of:

- (a) any changes or additions to the contracts of association of Stahlring and Stahlring GmbH;
- (b) resolutions concerning the admission of new members;
- (c) any resolution concerning changes in the buying commitments of members provided for in paragraph 11 (2) of the contract of association of Stahlring;
- (d) the withdrawal of members.

Article 4

This Decision shall be notified to the dealers concerned and published in the *Official Journal of the European Communities*. It shall enter into force on 20 June 1967 and expire on 31 December 1971.

This Decision was considered and adopted by the High Authority at its meeting of 14 June 1967.

For the High Authority

The Vice-President

A. COPPE