

COMMISSION

COMMISSION DECISION

of 20 December 1973

approving the acquisition by August-Thyssen-Hütte AG of a majority shareholding in Rhein Stahl AG

(Only the German text is authentic)

(74/153/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 High Authority Decision No 24/54 ⁽¹⁾ of 6 May 1954 laying down in implementation of Article 66 ⁽¹⁾ of the Treaty a Regulation on what control constitutes control of an undertaking;

Having regard to the application from August-Thyssen-Hütte AG of 19 February 1973 for authorization to acquire a majority of the shares of Rhein Stahl AG;

After obtaining the comments of the Government of the Federal Republic of Germany:

Whereas:

I

1. August-Thyssen-Hütte Aktiengesellschaft of Duisburg-Hamborn (ATH) is an undertaking within the meaning of Article 80 of the Treaty having a share capital of DM 1 010 million. ATH is active in the production of steel and in the manufacture of end products from steel. As parent company of the Thyssen Group it holds shares in 166 domestic and foreign undertakings, including the following steel producing or using undertakings:

Undertaking	Nominal capital (DM million)	ATH holding %
— Mannesmannröhren-Werke AG, Düsseldorf	300	33.3
— Deutsche Edelstahlwerke GmbH, Krefeld	150	100
— Thyssen Niederrhein AG Hütten- und Walzwerke, Oberhausen	125	100
— Westfälische Union AG, Hamm	65	100
— Rasselstein AG, Neuwied	56	50
— Stahlwerke Bochum AG, Bochum	24.2	48.5
— Walzwerk 'Grillo Funke' GmbH, Gelsenkirchen	10	100
— NKF Staal BV, Alblasserdam	20 (Fl.)	49
— Wälzlagerrohr AG, Krefeld	20	50
— Blohm + Voss AG, Hamburg	61.4	64.7
— Baustahlgewebe GmbH, Düsseldorf	20	42
— Thyssen Industrie GmbH, Düsseldorf	17	100
— Vereinigte Schraubenwerke GmbH, Ratingen	12.9	50
— Thyssen Handelsunion AG, Düsseldorf	46	96
— Ets. Jouret Fers et Métaux SA, Pont-à-Celles	100 (Bfrs)	49

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

2. ATH is in a position either alone, or jointly with other shareholders, to exercise control within the meaning of Decision No 24/54 over the companies listed above. These companies are accordingly to be regarded as forming, with ATH and with each other, a concentration within the meaning of Article 66 (1).

3. In 1971/72 ex-group sales of the Thyssen Group

Undertaking	Nominal capital (DM million)	Rheinstahl holding %
— Rheinstahl Hüttenwerke AG, Essen	104.1	100
— Edelstahlwerk Witten AG, Witten	41.4	62.8
— Bergische Stahlindustrie KG, Remscheid	15	58.4
— Guß-Stahlwerk Oberkassel GmbH, Düsseldorf	5.75	100
— Rheinstahl Gießerei AG, Mülheim	21	100
— Rheinstahl Concordiahütte GmbH, Bendorf	6	100
— Rheinstahl Schmiedetechnik GmbH, Wattenscheid	8	100
— Rheinstahl Nordseewerke GmbH, Emden	18	100
— Waggon Union GmbH, Siegen und Berlin	10	50
— Rheinstahl Eggers-Kehrhahn GmbH, Hamburg	6	100
— R. Stahl Aufzüge GmbH, Stuttgart	6	75

5. Rheinstahl is in a position, either alone or jointly with other shareholders, to control the undertakings listed above. Accordingly these undertakings are to be regarded as forming a concentration with Rheinstahl and with each other.

6. In 1971, ex-group sales of the Rheinstahl Group were DM 5 100 million. The average number of persons employed was 67 000.

7. By acquiring a majority holding in Rheinstahl, ATH would obtain control over Rheinstahl. Such acquisition would therefore bring about a concentration between ATH and Rheinstahl and the companies composing the two Groups.

II

8. The position of the two undertakings on the steel market must be assessed primarily by reference to the nature and size of their respective outputs, to their shares of total production and of the market and to their future production capacity.

were DM 10 700 million. The average number of persons employed was 92 000.

4. Rheinstahl Aktiengesellschaft of Essen (Rheinstahl) is a steel producing and using undertaking with a share capital of DM 470 million. As parent company of the Rheinstahl Group, it has holdings in 83 domestic and foreign steel producing and using undertakings, including the following:

9. The output of the Thyssen and Rheinstahl Groups for 1971 is shown in the table on page 58.

It can be seen that the Rheinstahl Group's steel production is small by comparison with that of the Thyssen Group while its production of foundry pig iron is substantial. Rheinstahl production of finished products is concentrated on a limited range of products, in particular plate and sheet, wire rod, bars, and special steels.

10. The table on page 39 shows the combined share of the two undertakings in total production for, respectively, the Federal Republic of Germany, the Community of Six and, where statistics are available, the Community of Nine ⁽¹⁾:

⁽¹⁾ Since statistics in the six original states and three new Member States are not yet prepared in the same fashion, it is not possible to provide comparable figures for all product groups.

Production 1971 ⁽¹⁾

(1 000 t)

Product group	Total production		of which Special steel	
	Thyssen ⁽¹⁾	Rheinstahl	Thyssen	Rheinstahl
Pig iron	8 880	1 386		
of which:				
Pig iron for steelmaking	8 534	916		
Foundry pig iron	184	451		
Ferro-manganese etc.	162	19		
Crude steel	11 676	1 474	858	666
of which:				
High-grade carbon steels			178	111
Alloy steels			680	555
Hot-rolled wide coils (total)	4 965			
Finished products	8 628	867	439	265
of which:				
Permanent way material	107			
Broad-flanged beams	234			
Other angles, shapes and other sections	187			
Tube rounds	240	5	60	5
Wire rod	1 555	126	234	103
Bars	682	140	74	126
Universal plates	138			
Strip	268		1	
Plate and sheets (more than 3 mm)	1 271	596	32	31
Sheets (less than 3 mm)	3 152		34	
Coils (as finished products)	794		4	
End products				
Tinplate and other tinned sheet	496			
Blackplate	3			
Galvanized sheets and other coated sheets	674			
Electrical sheets	241			

⁽¹⁾ Not including Mannesmann's production which is used for its own tube production.

Production 1971 Thyssen + Rheinstahl

Product group	as % of FRD		as % of EC (6)		as % of EC (9)	
	Total	Special steels	Total	Special steels	Total	Special steels
Pig iron	34.2		13.6		11.3	
of which						
Pig iron for steelmaking	33.8		13.3			
Foundry pig iron	37.3		17.7			
Ferro-manganese etc.	53.6		17.2			
Crude steel	31.7	23.9	12.7	13.4	10.3	
of which:						
High-grade carbon steel		16.1		8.3		
Alloy steels		25.6		15.6		12.8
Hot-rolled wide coils (total)	46.8		16.8		13.5	
Finished products	32.6	29.2	12.6	13.8	10.1	
of which:						
Permanent way material	23.8	—	9.2	—	7.4	
Broad-flanged beams	39.1	—	12.4	—	6.0	
Other angles, shapes and other sections	13.2	—	5.0	—		
Tube rounds	21.9	27.2	11.8	14.2	17.0	
Wire rod	42.8	42.2	20.7	27.3		
Bars	16.7	25.9	4.8	9.7	4.2	
Universal plates	34.3	—	23.0	—	12.3	
Strip	10.0	1.1	4.6	0.3	3.6	
Plate and sheet (more than 3 mm)	40.1	34.7	18.7	9.8	14.3	
Sheets (less than 3 mm)	48.0	29.8	15.8	9.5	12.3	
Coils (as finished products)	34.0	5.1	15.6	.	.	
End products						
Tinplate and other tinned sheet	63.7		18.3		12.5	
Blackplate	4.8		2.9			
Galvanized sheets and other coated sheets	51.4		22.4			
Electrical sheets	79.8		32.2			

Thus, as a result of the proposed merger, the new Group would increase its share of production, in some cases substantially, of foundry pig iron, crude steel, wire rod, plates and sheets and special steels. For the moment, in the absence of relevant statistics for the new Member States, it is only possible to

assess the market share of the Group on the basis of supplies to the markets of the Community as originally constituted and of the Federal Republic of Germany — the main sales area of the company. It must however be presumed that the Group's share of the overall market in the Community of

Nine would necessarily be smaller — and thus more favourable in terms of the proposed merger — than in the Community of Six.

11. In foundry pig iron production the new Group, with a 14 % share (Thyssen 4 % + Rheinstahl 10 %), would be the third largest producer in the enlarged Community, coming behind two undertakings with 15 % and 14 % respectively and followed by three undertakings with 12, 11 and 9 %. The next four undertakings hold shares of 6, 5, 3 and 1 % respectively. Overall the 10 largest undertakings account for 90 %; the remaining 10 % is produced by 11 other firms.

In 1971 Thyssen-Rheinstahl's share of the market of the Community as originally constituted was also 14 % (of which one-third for its own consumption). On the foundry pig iron market of the Community there is considerable competition as a result of low-price imports from non-Member countries. In the Federal Republic of Germany, the two companies account for 33 % of the market (of which some two-fifths are for their own consumption). Four further German producers account for 58 % of the market. Imports into the Federal Republic of Germany from other Community countries and from non-Member countries account for the remaining 9 %.

12. As regards crude steel, the new Group would be the second largest producer of all steel products in the enlarged Community, accounting for 10 % (Thyssen 9 % + Rheinstahl 1 %), ranking below a producer accounting for 17 % and above six undertakings accounting respectively for 9, 8, 8, 7, 7 and 6 % and four others with between 2 and 3 %. These 12 largest steel producers account together for 83 % of crude steel production in the Community. The remaining 17 % is produced by a large number of small undertakings.

In special steels, the new Group, taken alone and ignoring production of companies in the three new Member States ⁽¹⁾ is the largest producer in the Community of Six, accounting for 13 % of the market (Thyssen 7 % and Rheinstahl 6 %), and is followed by four undertakings accounting respectively for 12, 11, 9 and 7 %. Seven further firms produce between 3.4 and 4.6 % each. The 12 largest producers account for some 80 % of total Community production. The remaining 20 % is produced by more than 60 firms, including 29 German firms.

⁽¹⁾ Comparable figures for special steel production in the new Member States are not available. Production of special steels was therefore determined by reference to the Community of Six only.

13. As regards wire rod (all products), Thyssen/Rheinstahl would be the largest Community producer, with a share of 17 % (Thyssen 16 % + Rheinstahl 1 %), followed by four firms producing 13, 10, 9 and 9 % respectively. Seven further undertakings have production figures of between 2 and 3.5 %. The 12 largest undertakings account for 78.5 % of total Community production. The remainder is produced by 34 companies.

In 1971, the two undertakings accounted for 17 % of the market in the Community as originally constituted, of which almost half was for their own consumption. In the Federal Republic of Germany they held some 29 % of the market. There are nine other German suppliers on the Federal German market, and 25 % of market demand is met by imports of wire rod from Community countries and from non-Member countries.

In the case of wire rod manufactured from special steels, the Group would be the largest producer in the original Community accounting for 27 % (Thyssen 18 % + Rheinstahl 9 %) of production. It would be followed by six firms producing 12, 9, 9, 8, 7 and 7 % respectively. The 12 largest firms account for 94 % of total Community production. At 17 % the Group's share of the market in the Community as originally constituted would be considerably lower than its share of production owing to its substantial exports to non-Member countries.

On the Federal German market the Group, with a share of production of 42 %, would also be the largest producer, followed by nine other producers, of which three produce 23, 21 and 7 % respectively. The market share of the Group would amount to 45 %, half of this however being accounted for by the Group's own consumption.

14. On the market for plate and sheet the two companies would together be the second largest producer of the nine Member States, with a 14 % share (Thyssen 10 % + Rheinstahl 4 %). The largest producer accounts for 22 %; they would be followed by five producers with 9, 9, 9, 7 and 6 % respectively and five more accounting for shares of between 2.5 and 4 %. The 12 largest firms in the enlarged Community account for 93 % of total production, the remaining 7 % being distributed among a large number of producers.

The market share of the Thyssen/Rheinstahl Group in the Community of Six would be some 12 % (of which one-fifth for own consumption). In the Federal Republic of Germany the two companies account for some 20 % of the market. Seven other German producers supply the market, while 30 % of the market is accounted for by imports.

As regards plates and sheets of special steels, the quantities concerned are very small in absolute terms and decreasing each year, so that the figures for market shares are of little evidential value. With 10% of Community production (Thyssen 5 % + Rheinstahl 5 %), the Group would be the third largest producer, coming behind two producers of 43 % and 11 % respectively and followed by five with 7, 5, 4, and 3 %. The 12 largest producers of the original Community thus account for 95 %.

15. As regards the other products shown in the table on page 39 the proposed merger would produce no significant changes.

16. The following summary makes it possible to compare the production capacity of the Thyssen/Rheinstahl Group within the Community of Six for 1971 and for 1977. It shows that the position of the Thyssen/Rheinstahl Group, both in the Community and in the Federal Republic of Germany, is likely to fall back somewhat.

17. The result of the proposed merger will be that Rheinstahl will cease to exist as an independent supplier of the steel market. On certain submarkets, particularly in the Federal Republic of Germany, the Thyssen/Rheinstahl Group will be in a very strong position. In spite of tendency towards concentration of the present oligopoly situation, there remain sufficient potential competitors on the steel market within the enlarged Community. Seven of these are of the same order of size as Thyssen/Rheinstahl, while the remaining 130 are for the most part undertakings specializing in particular products (e.g. special steels).

Having regard to the large number and to the nature of the German and foreign firms supplying the steel market in the Federal Republic of Germany, where one-third of supplies are obtained from imports, and to the resulting wide choice of supplier available to German buyers, it may be said that the undertakings involved in the concentration are not in a position to hinder effective competition, whether in their main sales area or anywhere else in the Community steel market.

Production capacity

Product	1971				1977			
	million metric tons per year		Thyssen + Rheinstahl as %		million metric tons per year		Thyssen + Rheinstahl as %	
	Community of Six	FRG	Community of Six	FRG	Community of Six	FRG	Community of Six	FRG
Pig iron	99	42	15.7	36.8	126	52	13.7	33.3
Crude steel	136	58	14.9	34.2	169	67	12.2	30.1
Coils — Total production	38	15	17.5	44.8	56	19	12.4	37.2
Finished products	108	46	15.3	34.8	135	54	13.5	32.6
Heavy sections	15	8	14.9	29.5	16	6	6.8	16.7
Bars	23	8	6.2	17.7	28	10	7.1	19.6
Wire rod	11	5	22.5	45.6	14	6	18.1	35.2
Strip (including tube strip)	8	4	7.6	16.0	9	4	7.6	17.2
Plates and sheets (to more than 3 mm) ⁽¹⁾	17	9	22.9	42.1	21	10	21.4	42.3
Sheets (less than 3 mm)	27	10	17.6	49.1	37	13	17.5	48.1
Coils (finished product)	7	3	16.4	32.7	11	4	9.8	24.5

⁽¹⁾ Including Universal plates.

Source: Survey of investment in the Community coal and steel industries, 1972 and 1973.

III

18. In 1971 the Thyssen Group used 792 000 metric tons of finished products; of these, 78 000 were obtained from outside sources, including 4 000 metric tons from Rheinstahl. Total production of finished products by the Thyssen Group was 8 600 000 metric tons.

In the same year the Rheinstahl Group used 280 000 metric tons of finished products; of these, 185 000 were obtained from outside the Group, including supplies of some 60 000 metric tons from the Thyssen Group. Rheinstahl's total production of finished products was 867 000 metric tons.

If the Thyssen and Rheinstahl Groups merged, the total tonnage of its own finished products used by the new Group would be 873 000 metric tons, or 9 % of the Group's total output of 9.5 million metric tons. Given the two companies combined annual consumption of some 1.1 million metric tons, the new Group, assuming that it was in a position to produce the necessary products itself, would be able to raise its internal consumption by the relatively slight amount of 127 000 metric tons to approximately 11 % of its output of finished products. The Group would still depend on the market for sales of 89 % of its production.

In the Community steel industry the processing by producers of their own finished products is a relatively widespread practice, involving an annual tonnage of some 1 million metric tons (undertakings active in this field include BSC, USINOR, Finsider, Fiat and ESTEL). Among medium and large-size undertakings, the Thyssen/Rheinstahl Group, with an internal consumption of some 11 % of its output of finished products, could hardly be said, even after the proposed merger, to show an undue degree of vertical integration.

Thus the increase in the scope for intra-Group sales would not be such as to give the Group a position in relation to suppliers or to the market which might be described as 'artificially privileged' within the meaning of Article 66 (2).

19. In 1971/72 the Thyssen Group's total turnover was DM 13 900 million, of which ex-Group sales accounted for DM 10 700 million. Of these, steel sales accounted for DM 6 400 million (i.e. 60 %) and the other sectors (notably special steel forging and casting, wire and sheet making, manufacture of structural members and containers, shipbuilding and production of non-metallic minerals) for DM 4 300 million (40 %).

In 1972 turnover of the Rheinstahl Group was DM 5 500 million, and ex-Group sales totalled DM 5 100 million, of which DM 800 million (15.7 %) were accounted for by steel and DM 4 300 million (84.3 %) by the other sectors (notably: iron and steel foundry, mechanical engineering, construction of complete plant, shipbuilding, and manufacture of mining, transport, construction and heating materials and equipment).

The combined turnover of the two Groups was thus DM 19 400 million. Of ex-Group sales of DM 15 800 million, DM 7 200 million, or 45.6 % related to steel and DM 8 600 million, or 54.4 %, to other sectors.

The result of the proposed merger would be to reduce the percentage of Thyssen's ex-Group sales accounted for by steel from 60 % to 45.6 %, while the share accounted for by the other sectors would increase correspondingly from 40 % to 54.4 %.

The more diversified structure of the new Group as a result of this 15 % change in the pattern of ex-Group sales would however not put it in a position, either on the steel market or on its other submarkets, where it would be able to operate a strategy independent of the market whereby it might evade the competition rules of the Treaty by some means other than through the possession of an artificially privileged position.

20. In order to preserve effective competition on oligopolistic markets the Commission must ensure that the independence and autonomy of major groups are not affected by interlocking holdings or other links;

21. ATH holds one-third of the share capital (DM 300 million) of Mannesmannröhren-Werke AG (MRW). The other two-thirds are held by Mannesmann AG. On 16 December 1969 Mannesmann and ATH entered into an Agreement establishing an unincorporated association called 'Vereinigung Mannesmannröhren-Werke AG (Vereinigung MRW)'. The purpose of the association is to enable the two partners to exercise joint control over MRW on the basis of consensus reached in a Partnership Committee consisting of representatives of each of them. The day-to-day management of the association is in the hands of the Board of Directors of Mannesmann. Mannesmann is responsible for procuring consensus decisions as to the exercise of joint control and for issuing instructions to MRW

..... (1).

Under the arrangements just described there was concluded with MRW on 13/16 March 1970 a control and Profit Transfer Agreement.

(1) The undisclosed data with respect to Vereinigung MRW form part of the trade relations between Mannesmann and ATH which are covered by trade secrecy.

Mannesmann's production consists entirely of semi-finished products for the manufacture of tubes. Part (an estimated 500 000 metric tons per year) of this production is processed under contract by ATH for MRW into hot-rolled strip and plate. Apart from this contract-processing arrangement there are no operational links or significant overlapping of markets between ATH/Rheinstahl and Mannesmann.

Through their shareholdings and Agreements Mannesmann and ATH are in a position to exercise joint control over MRW. This joint control enables the parties to coordinate their conduct as regards the production of crude steel and of products for the manufacture of tubes, and competition between them is thereby accordingly restricted. The establishment of that joint control was authorized by a Commission Decision of 21 January 1970.

22. There has been a substantial change in the circumstances on the basis of which that Decision was adopted. Mannesmann has acquired control of DEMAG and thereby increased the degree of diversification of the Group. As a result of the proposed transaction ATH will for its part greatly increase the degree of diversification of its production and will strengthen its position on the steel market.

The financial and economic power and high degree of diversification of the new ATH/Rheinstahl Group, which will be one of three largest industrial undertakings in Germany, will place it in a commanding position within the steel market oligopoly.

Having regard to the increased power of the ATH Group and to the extensive diversification of the Thyssen and Mannesmann Groups, as a result of which these Groups will become competitors in numerous markets, including markets downstream of the steel market, it is clear that the already existing opportunities for ATH to influence decisions by the Mannesmann Group will be substantially increased.

Admittedly it can be assumed for the moment that there is no significant competition between Mannesmann and Thyssen on the finished product market, since Mannesmann has withdrawn from production of finished products by transferring its rolling plant to ATH. It is impossible to tell whether Mannesmann will become a competitor again in this field, either by new investment or by acquiring control over steel producing undertakings; however, this possibility cannot be excluded. As long as joint control continues to be exercised over MRW, ATH can obstruct any move by Mannesmann in this direction and thereby keep Mannesmann out of competition on the steel market.

The arrangement for joint control over MRW consequently restricts the independence of the Mannesmann Group in relation to the ATH/Rheinstahl Group. Concerted action between Thyssen and Mannesmann, which given their present relationship is unavoidable, would result in coordinated conduct on the part of the two Groups and restrict competition between them. If competition between the two Groups is to be preserved, ATH must be largely divested of its powers in relation to the Mannesmann Group, while Mannesmann must be placed in a position where it enjoys full freedom of decision as regards its business operations. A minimum requirement for this purpose is the discontinuance of the joint control exercised by ATH and Mannesmann over MRW.

One means of achieving this is for ATH to reduce its shareholding in MRW from the present one-third to one-quarter, while at the same time provision is made to ensure that Mannesmann acquires a three-quarter holding. To the same end the unincorporated association 'Vereinigung MRW' should be dissolved and the Control and Profit Transfer Agreement between 'Vereinigung MRW' and MRW should be terminated. ATH should be prohibited from entering into any future agreements of the same kind involving MRW.

Authorization for the proposed transaction should therefore be conditional on ATH:

- reducing its shareholding in MRW to 25 %, by offering for sale to Mannesmann AG that part of its shareholding which exceeds that percentage;
- terminating the Agreement establishing the unincorporated association known as 'Vereinigung MRW', procuring the termination of the Control and Profit Transfer Agreement concluded between 'Vereinigung MRW' and MRW, and refraining from entering into similar agreements involving MRW.

ATH should be given a time limit in which to comply with these conditions. A period of one year from the date of the merger, subject to a deadline of 31 December 1974, would seem appropriate. ATH should be required to give immediate notice of such compliance. The Commission should reserve the right to review these conditions if, on the expiry of the period specified, ATH has not reduced its shareholding in MRW to 25 % and transferred the balance to Mannesmann AG.

ATH should also be prohibited from acquiring any share or shares in Mannesmann AG or in any undertaking controlled, whether alone or jointly with other shareholders, by Mannesmann AG.

23. The Thyssen Group has concluded specialization and joint-selling agreements with Fried. Krupp Hüttenwerken (FKH), Theodor Wuppermann, Ibach Stahlwerken, Eisen- und Stahlwerke Rötzel and Fürstliche Hohenzollernsche Hüttenverwaltung of Lauchenthal ('West' Rationalization Group) ⁽¹⁾.

The Rheinstahl Group has concluded specialization and joint-selling agreements with Hoesch AG and Siegner AG, of Weiswald ('Westfalen' Rationalization Group) ⁽¹⁾.

Since the Thyssen Group companies belong to the 'West' Rationalization Group and the Rheinstahl Group companies to the 'Westfalen' Group, the result of the proposed merger would be that the new Thyssen/Rheinstahl Group would belong to two competing organizations. There would then be a danger that normal competition between the Thyssen/Rheinstahl Group, Estel (Hoesch-Hoogovens) and Krupp Groups would be prevented. These three Groups account for some 22 % of crude steel production in the Community.

The proposed concentration would thus bring about a fundamental change in the circumstances on the basis of which authorization under Article 65 (2) was granted. In order to re-establish the independence and autonomy of these Groups, the Commission must require ATH and the undertakings controlled by it to withdraw, by 31 March 1974, from the West and Westfalen Rationalization Groups.

24. The existence of interlocking directorates as between the steel producing and dealing undertakings involved and other undertakings in the same sector could have an adverse effect on competition on the steel market. The dangers involved in such links are all the greater in that they might expose other groups

to the influence of the Thyssen/Rheinstahl Group, substantially strengthened as it will be as a result of the merger.

The Commission must accordingly attach to its authorization an obligation that there shall be no links by way of interlocking directorates between the steel producing and dealing companies directly or indirectly concerned and competing undertakings. This will not apply to the Mannesmannröhren-Werke AG.

In the case of steel producing or dealing undertakings controlled jointly by the Thyssen/Rheinstahl Group with other undertakings, the latter must nonetheless be free to appoint members of their management organs to the management organs of the jointly controlled undertaking.

25. In view of the size, position on the steel market and strongly diversified production structure of the Thyssen/Rheinstahl Group, any new, substantial holdings which it acquired in steel producing or dealing undertakings, or in processing undertakings using steel in large quantities, might lead to further restrictions on competition, in particular by enabling the Group to establish an artificially privileged position involving a substantial advantage in access to supplies or markets. To enable the Commission to assess the probable effects of such holdings on competition, the acquisition thereof, where 10 % or more of the shares of the undertaking concerned are involved and, in the case of an undertaking not coming within Article 80 of the Treaty, its annual steel consumption exceeds 50 000 metric tons, should be made subject to prior authorization from the Commission.

26. Subject to these obligations, the Commission finds that the proposed concentration 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 steel market, or to evade the rules of competition instituted under the Treaty, in particular by establishing an artificial privileged position involving a substantial advantage in access to supplies or markets.

The proposed transaction accordingly meets the requirements for authorization laid down in Article 66 (2) and may therefore be authorized,

⁽¹⁾ Decision Nos 71/312/ECSC and 71/313/ECSC, (OJ No L 201, 5. 9. 1971, pp. 1 and 12).

HAS ADOPTED THIS DECISION:

Article 1

August-Thyssen-Hütte AG is authorized to acquire a majority of the shares of Rhein Stahl AG.

Article 2

This authorization is given upon the following conditions:

1. August-Thyssen-Hütte shall, by offering for sale to Mannesmann AG that part of its shareholding in Mannesmannröhren-Werke AG which exceeds 25 %, reduce its shareholding in that company to the said percentage; and
2. August-Thyssen-Hütte AG shall terminate the Agreement of 16 December 1969 establishing the unincorporated association known as Vereinigung Mannesmannröhren-Werke AG, shall procure the termination of the Control and Profit Transfer Agreement concluded with Mannesmannröhren-Werke AG on 13/16 March 1970, and may not enter into any similar agreement involving Mannesmannröhren-Werke AG.

August-Thyssen-Hütte AG shall comply with these conditions by not later than a date one year from the completion of the proposed transaction or 31 December 1974 whichever is the sooner. August-Thyssen-Hütte AG shall notify the Commission that it has so complied. If on the appointed date August-Thyssen-Hütte AG has failed to transfer to Mannesmann AG the shareholding specified in condition (1) above, the Commission shall adopt a new Decision as to the conditions to which the concentration authorized by Article 1 is to be subject.

Article 3

The following obligations are attached to the authorization:

1. It shall be prohibited for August-Thyssen-Hütte AG to acquire any share or shares in Mannesmann AG or in any undertaking controlled by Mannesmann AG.
2. August-Thyssen-Hütte AG and the undertakings controlled by it shall by not later than 31 March 1974 withdraw from the Rationalisierungsgruppen West and Westfalen. The Commission shall be notified that this obligation has been met.
3. No member of a management organ of any steel producing or dealing undertaking involved in the proposed transaction may be a member of a management organ of any undertaking of a like nature not involved therein. This prohibition shall not apply in respect of Mannesmannröhren-Werke AG.

In the case of a steel producing or dealing undertaking controlled, whether directly or indirectly, jointly by August-Thyssen-Hütte AG with one or more other undertakings, it shall be permitted for a member of a management organ of any such other undertaking to be a member of a management organ of the undertaking jointly so controlled.

4. The acquisition of 10 % or more of the share capital of any steel producing or dealing undertaking, or of any steel processing undertaking whose annual consumption of steel exceeds 50 000 metric tons, shall be subject to prior authorization by the Commission.

Article 4

This Decision is addressed to August-Thyssen-Hütte AG of Duisburg-Hamborn.

Done at Brussels, 20 December 1973.

For the Commission

The President

François-Xavier ORTOLI