

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 March 1980

authorizing Hoogovens IJmuiden BV to acquire the entire share capital of IJzerhandel Hollandia BV

(Only the Dutch text is authentic)

(80/364/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 Treaty a Regulation on what constitutes control of an undertaking⁽¹⁾,

Having regard to the application dated 23 May 1979 from Hoogovens IJmuiden BV,

Having consulted the Government of the Kingdom of the Netherlands,

Whereas :

I

1. Hoogovens IJmuiden BV, IJmuiden (Hoogovens) is a steel-producing undertaking within the meaning of Article 80 of the Treaty. Hoogovens and Hoesch Werke AG, Dortmund (Hoesch), which is also a steel-producing undertaking, are both 100 % subsidiaries of ESTEL NV, Nijmegen (ESTEL). ESTEL in turn is owned as to 50 % by Koninklijke Nederlandsche Hoogovens en Staalfabrieken NV, IJmuiden (KNHS) and as to 50 % by Hoesch AG, Dortmund. The share capital of KNHS is owned as to 63 % by individual shareholders, 28.5 % by the Dutch State

and 8.5 % by the town of Amsterdam. KNHS owns 14.5 % of the share capital of Hoesch AG, the remainder being owned by a large number of shareholders.

2. Hoogovens owns *inter alia* 100 % of the share capital of Verenigde Utrechtse IJzerhandel BV, Utrecht (VUIJ), a scrap distribution undertaking within the meaning of Article 80, which owns the following subsidiary undertakings also engaged in scrap distribution :

- B.J. Nijkerk BV, Amsterdam,
- IJzerwerf Twente BV, Hengelo,
- Benjamin de Jong BV, Eindhoven.

3. Hoesch owns *inter alia* 100 % of the share capital of the scrap distribution undertaking Schrottverwertung Celler GmbH (Celler).

4. KNHS and Hoesch AG are in a position jointly to control ESTEL within the meaning of Decision No 24-54. ESTEL in turn is in a position to control Hoesch Werke and Hoogovens together with their respective subsidiaries. The undertakings mentioned in 1 to 3 above are accordingly concentrated with each other within the meaning of Article 66 (1) (ESTEL group).

5. IJzerhandel Hollandia BV, Amsterdam (Hollandia), is a scrap distribution undertaking within the meaning of Article 80. Hollandia is owned and controlled by the Algemene Bank Nederland BV through a 100 % subsidiary of the latter entitled

⁽¹⁾ Official Journal of the ECSC, 11. 5. 1954, p. 345/54.

HMR Holding BV. Hollandia controls and is concentrated with *inter alia* the following subsidiary undertakings engaged in the processing and distribution of scrap:

Simons Katendrecht BV, Rotterdam,
Hollandia Autowrakken BV, Amsterdam,
Frank Rijdsijk — Holland VoF, Hendrik Ido
Ambacht,
Nederlandse Onttinningsfabriek BV, Leeuwarden,
Belgische Onttinningsfabriek NV, Brugge.

6. Hoogovens, either itself or through a subsidiary, proposes to acquire the entire share capital of Hollandia. This transaction will enable Hoogovens to control Hollandia and will therefore bring about a concentration between Hoogovens and Hollandia within the meaning of Article 66 (1) as well as the undertakings concentrated with Hoogovens (ESTEL group).

II

7. Hoogovens, with a crude steel production of about five million tonnes a year, is the principal steel producing undertaking in the Netherlands. In the process of iron and steel-making Hoogovens uses its own circulating scrap and also purchased scrap. The other consumers of iron and steel scrap in the Netherlands are one steel company and a certain number of foundries. Supplies of bought scrap to Hoogovens and 'others' in the Netherlands in 1977 and 1978 are shown in the following table:

**Iron and steel scrap supplies to the Netherlands
iron and steel industry (including foundries)**

(million tonnes)

	1977	1978
Hoogovens	0.2	0.3
Others	0.3	0.3
	0.5	0.6

8. Hoogovens is currently responsible for about half of the total demand for ferrous scrap on the Dutch market. Hoogovens' demand for bought scrap is expected to grow during the next few years by about 135 000 tonnes a year because its available quantity of own circulating scrap will be reduced through the introduction of the continuous casting process. A further increase in the bought scrap requirement of Hoogovens is likely to occur thereafter.

9. On the supply side, the Netherlands scrap market is represented by nearly 100 Dutch processors

and dealers whose total deliveries of ferrous scrap were 1.3 million tonnes in 1977 and 1.7 million tonnes in 1978. Imports of ferrous scrap into the Netherlands (mainly made by merchants) amounted to 113 000 tonnes in 1977 and 158 000 tonnes in 1978. These imports come mainly from Belgium and the Federal Republic of Germany. The available supply of scrap on the Dutch market, therefore, considerably exceeded the internal demand and exports were substantial, amounting in 1977 to 925 000 tonnes and in 1978 to 1 190 000 tonnes, i.e. about 70 % of Dutch scrap merchants' total deliveries. The Netherlands scrap balance is summarized in Table 2 below:

The bought scrap balance (Netherlands)

(million tonnes)

	1977	1978
<i>Demand</i> from Netherlands works	0.5	0.6
For export	0.9	1.2
	1.4	1.8
<i>Supply</i> from Netherlands	1.3	1.6
From imports	0.1	0.2
	1.4	1.8

10. Hollandia is the largest of the Dutch scrap merchants and is important as a processor as well as a dealer. Total deliveries by Hollandia are about 550 000 tonnes a year (1977 and 1978). In 1978 Hollandia delivered 135 000 tonnes within the Netherlands, including 18 000 tonnes to Hoogovens, and exported 406 000 tonnes. These exports went mainly to the Federal Republic of Germany, but also to Belgium and Italy and to non-member countries, particularly Spain.

11. VUIJ is the second largest of the Dutch scrap merchants, with deliveries of 320 000 tonnes in 1977 and 470 000 tonnes in 1978. All the scrap required by Hoogovens is obtained through VUIJ, which is mainly a dealer purchasing processed scrap from other dealers and from processors, but which also itself processes a certain quantity of unprocessed scrap. The major part of VUIJ's deliveries represent supplies to Hoogovens; the remainder is exported, principally to the Federal Republic of Germany and Belgium. Together Hollandia and VUIJ are responsible for 55 % to 60 % of all supplies of ferrous scrap by Dutch merchants and for the major part of deliveries to Dutch consumers (i.e. steel works and foundries).

12. There are about 12 Dutch scrap dealers with an annual turnover between 25 000 and 100 000 tonnes a year. Most of these supply scrap to Hoogovens through VUIJ; a few of them are specialist suppliers to the other Dutch steel producer. Exports are an important feature and to a limited extent the Dutch iron foundries also provide an outlet for the Dutch scrap dealers. There are about 80 other undertakings processing or dealing in scrap; all are small, with an annual turnover below 25 000 tonnes in each case. They sell their scrap almost exclusively on the Dutch market, mainly by supplying larger merchants.

13. To sum up the position of the scrap processors and dealers other than Hollandia and VUIJ:

1. they can sell to VUIJ scrap required by Hoogovens;
2. they can sell to the other steel producer in the Netherlands if they can meet his special requirements as a producer of special steels;

3. they have export opportunities both to other Member States of the Community and to non-member countries. In recent years (1977 and 1978) they have been responsible for about 50 % of these exports, the other 50 % falling to Hollandia and VUIJ.

14. The scrap dealer Celler, since it is a member of the ESTEL group, needs to be taken into account in this examination of the effects of the proposed transaction. In particular, Celler, which deals in about 750 000 tonnes a year of ferrous scrap, acts mainly as a supplier to its own parent company Hoesch, to whom it sends about 500 000 tonnes a year. Celler's presence on the Netherlands market is minimal and it does not normally supply VUIJ/Hoogovens.

15. The following table shows the breakdown of ferrous scrap exports from and imports into the Netherlands:

Netherlands scrap exports/imports

(1 000 tonnes)

Country of destination/origin	1977		1978	
	Exports	Imports	Exports	Imports
Germany	547	56	700	39
Belgium/Luxembourg	146	24	231	70
Rest of Community	31	23	75	33
Total: Community of nine	724	103	1 006	142
Non-member countries	201	10	183	16
Grand total	925	113	1 189	158

Exports from the Netherlands to the Federal Republic of Germany and Belgium/Luxembourg account for 75 to 80 % of total Netherlands exports and are more important than deliveries to the home market. Similarly imports from the Federal Republic and Belgium/Luxembourg are more than half total scrap imports into the Netherlands. In these circumstances the relevant geographical market for this case is at least Benelux and the Federal Republic of Germany.

16. The level of and movements in scrap prices are governed mainly by the interplay of supply and demand in the international scrap market. There is a tendency for scrap prices to react upon each other round the world. At any particular moment prices will vary from one country to another within certain limits due to variations in levels of steel industry activity, freight costs and, sometimes, artificial obstacles such as government export quotas. There is, however, a

tendency for the trend in scrap prices to be the same, upwards or downwards, during a given time span. Having regard to the importance of scrap exports from the USA, the lead in these movements tends to be set by the USA scrap price. Thus, for example, when the USA scrap price falls, steel producers in scrap deficit countries in Europe such as Italy and Spain pay less for their imports of scrap from the USA and are only willing to pay a lower price for imports from the main European scrap exporting countries such as France and the Federal Republic of Germany. This has an almost immediate effect on the Netherlands scrap market, having regard to the importance, in particular, of exports to Germany for Dutch scrap merchants, because German producers in their turn now appear on the Netherlands market offering a lower price for their scrap requirements. The price which Hoogovens and other Dutch consumers have to pay for scrap also falls. The same chain of events in

the opposite direction can be observed when world scrap prices are rising and Hoogovens, for example, then has to pay more for its scrap. Thus there is a close similarity in the trends of USA, German and Netherlands scrap prices and between the prices in the last two countries.

17. In these circumstances Hoogovens, although it uses half the scrap bought in the Netherlands, and will probably use more than half in the future, cannot itself determine the price which it pays for scrap, either now or after the acquisition of Hollandia. Like every other steel producer, Hoogovens can exercise only a limited influence on the price paid. Every producer, depending on the demand for his products and the level of his scrap stocks, tends to reassess his position frequently (often monthly) and to be ready to offer more or less for scrap depending on his individual circumstances. The scrap supplier, i.e. the merchant, however, is free to accept the offer or to take a more favourable offer elsewhere. In the case of the Netherlands merchants, this may mean selling to other consumers in the Netherlands or exporting to, e.g., Germany, Belgium or Spain. These factors limit the freedom of action of Hoogovens or scrap merchants controlled by Hoogovens, who must offer prices broadly related to the market conditions prevailing at a given moment.

18. The combined deliveries of VUIJ, Hollandia and Celler in 1978 were about 1.75 million tonnes of which about 1.6 million tonnes were delivered in Benelux and the Federal Republic of Germany. This latter figure represents a share of about 12 % in the combined Benelux and Federal Republic market for bought scrap. Hollandia alone has a 2 % share in this market.

19. In the circumstances the transaction 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 market for iron and steel scrap.

III

20. Some two-thirds of the scrap tonnage delivered by VUIJ is bought and sold in processed form, that is to say, already in a size and shape suitable for charging into the furnace; only one-third of the VUIJ tonnage is bought unprocessed and then processed by VUIJ into 'chargeable' form.

The position with Hollandia, however, is the converse, since the latter processes two-thirds of its scrap tonnage and buys ready processed scrap to make up the remaining one-third of its deliveries. As a result of the transaction, therefore, Hoogovens will be acquiring for the first time a substantial processor of scrap. This change will introduce into the Netherlands a situation which already exists in other parts of the common market, in particular in the Federal Republic of Germany and in the United Kingdom where several large steel producers already own important

scrap processing/merchanting companies. These combinations are larger in terms of scrap resources than the combination Hoogovens/VUIJ/Hollandia and some of them are also entirely self-sufficient for their scrap supplies.

21. A complaint has been received by the Commission from a company which objects that the proposed transaction will enable the parties concerned, particularly Hollandia, to engage in unfair competition against other scrap processors/merchants. It is argued that Hollandia, supported by Hoogovens, is liable to bid up the buying price of scrap from the original suppliers (e.g. engineering firms or suppliers of wrecked cars) as Hollandia expands its output to meet the requirements of Hoogovens. At the same time, it is argued, the price charged by Hollandia/VUIJ to Hoogovens may be artificially low since Hoogovens would be more interested in scrap supplies being adequate than in running a profitable scrap business. Thus, it is claimed, Hoogovens may be willing to dispense with the usual profit margins in the scrap processing and merchanting sector. Independent scrap processors and merchants, however, who have to make a profit to survive, will find themselves disadvantaged, having to pay a higher price and therefore to ask for a higher selling price, while Hoogovens will disappear as a customer and export opportunities are limited.

22. The argument summarized in (21) above does not take sufficient account of the following factors:

- (a) the Netherlands scrap market is not closed: on the contrary it is part of an international market in which Dutch scrap merchants participate to the extent of 70 % of their trade;
- (b) it is not in Hoogoven's interest as a steel producer to bid up scrap prices, thus increasing the cost burden falling on the Hoogovens/VUIJ/Hollandia group;
- (c) the available supply of scrap suitable for processing in the Netherlands and the demand for scrap in the Netherlands is not changed by the proposed transaction; accordingly, in view of (b) above, Hollandia's preferred policy for supplying scrap to Hoogovens will be to reduce exports rather than to expand the scale of Hollandia's processing operations. If, as is expected, Hoogoven's total demand for bought scrap rises in the coming years, this may exert some upward pressure on prices, but this would happen whether or not the proposed transaction takes place;
- (d) Hoogovens will be investing fixed and working capital in the scrap processing sector and will naturally expect a reasonable profit to be made on that capital just as in the other parts of the business.

23. So far as the other steel producer and the iron foundries in the Netherlands are concerned, their position is not likely to be prejudiced by the proposed transaction. Supplies to them, whether from the Netherlands or from other countries, at market prices,

should continue to be assured by the international nature of the scrap trade. The other steel producer in question, as a producer of special steels, tends to require higher grade scrap than Hoogovens and the flow of such scrap from Hollandia to that other producer is not likely to be affected by the proposed transaction.

24. Having regard to the factors described in (20) to (23) above, the proposed transaction will not give the undertakings concerned the power to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to scrap supplies.

25. Accordingly, the proposed transaction satisfies the conditions for authorization set out in Article 66 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The acquisition by Hoogovens IJmuiden BV (or a subsidiary thereof) of the entire share capital of IJzerhandel Hollandia BV is hereby authorized.

Article 2

This Decision is addressed to Hoogovens IJmuiden BV, at Barbarossastraat 35, Nijmegen.

Done at Brussels, 14 March 1980.

For the Commission

Raymond VOUEL

Member of the Commission
