

COMMISSION DECISION

of 23 June 1971

on the authorization of a tariff agreement between the Société nationale des chemins de fer français (SNCF) and the Société des aciéries réunies de Burbach, Eich, Dudelange (ARBED) for the carriage of iron ore from Boulange and Algrange to Audun-le-Tiche-Mont (siding) and on the authorization of Franco-Luxembourg tariff No 3530-04 applicable to the carriage of iron ore from Boulange to Esch/Belval

(Only the French text is authentic)

(71/260/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 2 to 5 and 70 thereof;

Having regard to the letter of 29 October 1969 from the Office of the Permanent Representative of France to the European Communities, in which the French Government requests the Commission, pursuant to the fourth paragraph of Article 70 of the ECSC Treaty, to authorize a tariff agreement between the SNCF and ARBED for the carriage of iron ore by complete train loads from Boulange and Algrange to Audun-le-Tiche-Mont (siding);

Having regard to the letter of 3 February 1970 from the Office of the Permanent Representative of France to the European Communities, in which the French Government requests the Commission, pursuant to the fourth paragraph of Article 70 of the ECSC Treaty, to authorize Franco-Luxembourg Tariff No 3530-04 applicable to the carriage of iron ore by complete train loads from Boulange to Esch/Belval;

Having regard to the letter of 7 December 1970 from the Office of the Permanent Representative of Luxembourg to the European Communities in which the Luxembourg Government joins with the French Government in requesting authorization for Tariff No 3530-04;

Whereas, in their requests and according to the additional information supplied in the letter of 25 September 1970 from the Office of the Permanent Representative of France to the European Communities and in the course of a meeting held on 22 and 23 October 1970 with a French delegation, the French and Luxembourg Governments cite, in support of the tariff agreement and of Tariff No 3530-04, the interests of the railways concerned (SNCF and Chemins

de fer luxembourgeois - CFL); whereas the granting of appropriate tariff reductions is intended to prevent the creation of a private means of transport for the carriage of iron from Boulange and, as regards the carriage of ores from Algrange, the diversion of ore procurement to other mines, utilizing existing private means of transport;

Whereas, for the carriage of ore from Boulange, ARBED has available an underground railway linking the Ferdinand mine with the Esch/Belval factory, on which large quantities of ore were previously conveyed from pits now closed; whereas, to reach the pits still being worked, it would be necessary to extend the line another 2 km and install a conveyor belt 1.2 km long, for which the necessary components are already available; whereas, in the absence of appropriate tariff reductions, ARBED plans to proceed forthwith with these alterations, which would cost altogether 5.76 million French francs, including the purchase of additional vehicles and handling equipment, and could be carried out quickly; whereas the railways concerned would thereby lose 1.2 million metric tons of traffic per year;

Whereas the carriage of ore from Algrange is threatened because ARBED intends to close the Burbach mine, the iron content of the minette extracted therefrom being lower than that of the ore of other mines and the deposit being nearly exhausted; whereas after the closure of the Burbach mine, ARBED will procure a corresponding tonnage from other mines which it owns, situated closer to the Esch/Belval blast furnaces, in particular from the Montrouge mine; whereas, in that case, transport to the blast furnaces at Esch will be effected by the existing private means of transport; whereas, nevertheless, ARBED will continue to use the railway for the carriage of an annual quantity of 500 000 metric tons of ore from the Burbach mine until the reserves of that mine are exhausted, if appropriate tariff reductions are granted to the company;

Whereas under the tariff agreement the ordinary SNCF tariff would be reduced, for the carriage of ore, by 10 % on the Boulange–Audun-le-Tiche-Mont (siding) link, and by 9 % on the Algrange–Audun-le-Tiche-Mont (siding) link, and under Tariff No 3530-04 there would be a reduction of 35.7 % on ECSC international tariff No 1001 for the carriage of ore on the Boulange–Esch/Belval link;

Whereas the fourth paragraph of Article 70 of the ECSC Treaty provides that the prior agreement of the Commission is required for the application of special rates and conditions in the interest of one or more coal- or steel-producing undertakings; whereas that provision relates not only to special tariffs adopted in the interest of such undertakings, but to any special tariffs which, whatever the reason for their introduction, happen to be of advantage to one or more of them; whereas the agreement of the Commission must be given if the special tariffs comply with the principles of the Treaty and whereas such compliance may as a general rule be presumed where the special tariffs are justified specifically by the conditions of the transport market; whereas the interest of a carrier in applying a special tariff in order to retain certain traffic must, however, be disregarded if the proper functioning of the common market in coal and steel, as laid down in the ECSC Treaty, so requires;

Whereas the SNCF/ARBED tariff agreement and Tariff No 3530/04 are covered by the fourth paragraph of Article 70 of the ECSC Treaty, by reason of their limited scope and the fact that they are in the interest of the Burbach and Ferdinand ore mines and consequently of ARBED, a steel-producing undertaking;

Whereas the interest of the SNCF and of the CFL in maintaining the traffic in question cannot be denied; whereas the traffic is profitable as it involves a total of 1.7 million metric tons per year carried under advantageous operating conditions by complete train loads in privately owned wagons; whereas, even allowing for the proposed tariff reductions, this transport operation remains profitable for the railways;

Whereas, in the present case, the risk of competition from a private transport line, which ARBED could set up, is a real one; whereas its construction raises no practical problems and does not require exceptional investment by ARBED; whereas, furthermore, the construction and operation of such a means of transport would be profitable in view of the relatively low cost of transporting the ore in question; whereas equivalence of these costs and the contemplated rail charges is respected;

Whereas there is no doubt that ARBED can implement its plan to close the Burbach mine and procure corresponding quantities of iron ore from the mines nearer to the Esch/Belval blast furnaces and in particular from the Montrouge mine, using private means of transport; whereas, should use be made of the underground railway belonging to the undertaking, the cost of transporting iron ore from the Montrouge mine would be even lower than the prices fixed in the SNCF-ARBED tariff agreement on the Algrange–Audun-le-Tiche-Mont (siding) link; whereas in the absence of tariff reductions, the SNCF risks losing, without any compensation, traffic on which it could continue to count for a certain period;

Whereas the tariff measures contemplated do not affect the competitive position of producers and users of iron ore within the Community; whereas they amount merely to a reduction in intragroup transport costs comparable to that which the undertaking itself could obtain in other ways by its own means;

Whereas in these circumstances the tariff measures contemplated are not contrary to the principles of the ECSC Treaty;

Whereas the Commission must be free to review its Decision if the factors on which it is based change or no longer obtain,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

The tariff agreement concluded between the Société nationale des chemins de fer français (SNCF) and the Société des aciéries réunies de Burbach, Eich, Dudelange (ARBED) for the carriage of iron ore from Boulange and Algrange to Audun-le-Tiche-Mont (siding), and the Franco-Luxembourg Tariff No 3530-04 applicable to the carriage of iron ore from Boulange to Esch/Belval, are hereby authorized.

Article 2

If the Commission finds that this Decision is no longer justified, it shall be amended or repealed.

Article 3

This Decision is addressed to the French Republic and the Grand Duchy of Luxembourg.

Done at Brussels, 23 June 1971.

For the Commission

The President

Franco M. MALFATTI