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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 October 1978

authorizing the specialization, joint-buying and joint-selling agreements
between the Italian steel-producing undertakings Falck and Redaelli

(Only the Italian text is authentic)

(78/924/ECSC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Coal and Steel Community, and in particular Article
65 thereof,

Having regard to Commission Decision No 38/67 of
21 December 1967 authorizing the specialization,
joint-buying and joint-selling agreements between two
Italian steel-producing undertakings ⁽¹⁾,

Having regard to the application made by the under-
takings concerned on 29 August 1977, as supple-
mented by letter of 12 May 1978,

Whereas,

I

1. By Decision No 38/67 of 21 December 1967,
the Commission, acting on the basis of Article 65 (2)
of the Treaty, authorized until 31 December 1976 the
specialization, joint-buying and joint-selling agree-
ments entered into on 28 April 1967 by the steel-pro-
ducing undertakings Acciaierie e Ferriere Lombarde
Falck SpA (Falck), Milan, and Giuseppe & Fratello
Redaelli SpA (Redaelli), Milan.

2. Redaelli informed the Commission by letter
dated 29 August 1977 that the companies concerned,

seeing no reason to modify their agreements, had
decided to apply for a new Commission Decision auth-
orizing them to continue to operate them. The final
pieces of information required for evaluating the oper-
ation of their agreements were sent to the Commis-
sion on 12 May 1978.

At the time when the old authorization expired the
parties had envisaged the possible need to revise
certain aspects of the agreements. The submission of
the new request for authorization was postponed until
this possibility had been excluded.

3. The content of these agreements can be summar-
ized as follows :

Falck acquires approximately 7 % of the shares in
Redaelli. Redaelli undertakes to give Falck one seat on
the board of directors and one seat on the supervisory
board. Falck and Redaelli set up an advisory coordina-
tion committee which will submit opinions and propo-
sals on products of the same type manufactured by
both undertakings and on the following items :

- coordination of investments ;
- coordination of the various production
programmes ;
- coordination of procurement and sales policies,
and the possibility of setting up joint sales organi-
zations.

⁽¹⁾ OJ No L 24, 27. 1. 1968, p. 16.

The committee's proposals and opinions will be submitted to the management boards of both firms, which will jointly consider each final decision to be taken.

The agreements are made for an indefinite period, subject to termination by one year's notice or in the event of *force majeure*.

4. On 1 January 1978 all Redaelli's steel-producing operations were entrusted to Redaelli Siderurgia Acciai Speciali SpA (Redaelli SIDAS). Redaelli holds 72.99 % of the shares in Redaelli SIDAS and Redaelli SIDAS undertakes to honour all Redaelli's commitments under the agreement with Falck.

5. Falck has meanwhile increased its holding in Redaelli from 7 % to 14 %, and also has a 6.67 % holding in Redaelli SIDAS.

II

6. The agreements in question restrict the normal play of competition between the undertakings concerned, in so far as the latter have agreed to coordinate their investments, production programmes and procurement and sales. The agreements therefore fall within the scope of the general prohibition in Article 65 (1) of the Treaty, even though to some extent they are only framework agreements to be supplemented at a later date.

7. These agreements are intended to enable the companies concerned to specialize production by coordinating their investments and various production programmes and by joint selling and joint buying. They may be authorized under Article 65 (2) of the Treaty if and to the extent that they make for a substantial improvement in production or distribution and are essential in order to achieve this result, without being more restrictive than is necessary for that purpose. Moreover, the agreements 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 proportion of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

III

8. During the operation of the agreements, the companies concerned have specialized and cooperated as follows :

— Redaelli shut down its hot-rolled strip mill at Rogoredo, which enabled Falck to make consider-

able improvements at its mill by increasing the coil weight and the width and thickness of the strip. Consequently, during the period of the agreement, Falck was able to supply Redaelli with 68 000 tonnes of hot-rolled strip and hire-rolled some 12 500 tonnes of slab supplied by Redaelli ;

— as regards production of wire rod and rounds, Redaelli commissioned a mill for special steels in 1967 and modernized its original rod mill in 1970. This enabled it to supply Falck with approximately 65 000 tonnes of wire rod — Falck was able to shut down one of its mills in 1972 — and to hire-process 7 000 tonnes of billets for Falck.

9. The companies are planning further rationalization of existing plant at a later date in particular by increasing the capacity of Redaelli's more modern rod mill and gradually shutting down the other less profitable mills. They also intend to increase trade in products between the two companies.

10. The agreements in question have accordingly made for a substantial improvement in the production of hot-rolled strip, wire rod and rounds, and will probably continue to do so.

11. The agreements are essential if the two undertakings are to attain the objectives referred to above ; acting individually they could not bring about these improvements, at least not to the same degree ; comparable improvements could not be brought about by any other means.

The agreements are no more restrictive than is necessary for their purpose.

12. However, the Commission must be given an opportunity to examine whether the agreements will actually have the anticipated beneficial effects. The companies concerned must therefore be required to supply evidence of this after a suitable period of time.

13. Subject to this condition, the agreements satisfy the tests of Article 65 (2) (a) and (b).

IV

14. The main products manufactured by each of the contracting parties are crude steel, heavy sections, wire rod, hot-rolled strip and tube strip. In order to assess the impact of the companies concerned on the market, the Community market as a whole must be the criterion. The companies concerned take Community market shares varying between 1.1 and 2.6 % depending on the product covered by the agreement.

In Italy, which is their main market outlet, as elsewhere in the Community, they are faced with competition from other Community undertakings and undertakings from non-member countries. The market position of these competitors is, in comparison with that of the companies in question and with Community production, proportionally much stronger.

15. Falck has holdings in a number of other undertakings, and has supply contracts for semi-finished products with yet others. Neither the nature of these relationships nor of the products concerned is such as to lead to the conclusion that they strengthen those effects of the agreement in question tending to restrict competition.

16. The agreements are therefore not liable to give the companies concerned the power to determine the prices, or to control or restrict the production or marketing of a substantial proportion of steel products in the common market, or to shield them against effective competition from other undertakings; they therefore satisfy the tests of Article 65 (2) (c).

V

17. The joint-buying and joint-selling agreements are merely framework agreements. The provisions of these agreements are to be supplemented at a later date. The relevant supplementing agreements must satisfy the tests of Article 65 (2). The companies concerned must therefore apply for authorization in respect of them or for a declaration that they are within the authorization given by this Decision.

18. The Commission has to ensure that any measures taken by the companies concerned to amend or supplement these agreements and any further agreements made by them comply both with the Treaty and with the authorization given by this Decision.

The companies concerned must therefore notify the Commission forthwith of any amendments or additions to the agreements and must refrain from implementing them until the Commission has declared them to be within this authorization or has authorized them under Article 65 (2) of the Treaty.

19. The Commission must be able to review its decision after a reasonable length of time in the light of the results achieved through the cooperation of the companies concerned. Consequently, authorization should be limited to the period ending 31 December 1983,

HAS ADOPTED THIS DECISION :

Article 1

The specialization, joint-buying and joint-selling agreements entered into on 28 April 1967 by Acciaierie e Ferriere Lombarde Falck SpA, Milan, and Giuseppe & Fratello Redaelli SpA, Milan, are authorized subject to the conditions laid down in the following Articles.

Article 2

The companies concerned shall submit a report to the Commission every two financial years giving detailed information, together with supporting evidence, on the improvements made during that period by virtue of the agreements in the production and distribution of the products referred to therein.

Article 3

1. The companies shall forthwith inform the Commission of the following :

- (a) any agreements relating to the joint buying or joint selling of their products ;
- (b) any amendments or additions made to the agreements of 28 April 1967.

2. Effect shall not be given to the agreements, amendments or additions referred to in paragraph 1 until the Commission has declared that they are in conformity with the authorization given by this Decision or has authorized them under Article 65 (2) of the Treaty.

Article 4

This Decision is addressed to Acciaierie e Ferriere Lombarde Falck SpA, Milan, and Giuseppe & Fratello Redaelli SpA, Milan.

It shall have effect from the date of its notification by the Commission and shall expire on 31 December 1983.

Done at Brussels, 20 October 1978.

For the Commission

Raymond VOUEL

Member of the Commission