II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 May 1976

authorizing a joint buying agreement in respect of finished rolled steel products between the steel distribution undertakings C. Walker & Sons Ltd, J. Champion SA and NV A. Lommaert

(Only the Dutch, English and French texts are authentic)

(76/602/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 the application from the firms concerned dated 21 November 1974,

Whereas:

I

On 21 November 1974 three steel distribution undertakings within the meaning of Article 80 of the Treaty:

C. Walker & Sons Ltd, Blackburn, United Kingdom (Walker); Ets Métallurgiques J. Champion SA, Nanterre, France (Champion); and NV Algemene Handelsmaatschappij A. Lommaert, Schoten, Belgium (Lommaert);

applied to the Commission of the European Communities for authorization under Article 65 (2) of the Treaty of a joint steel buying arrangement between them.

Walker is a United Kingdom steel stockholder with a share capital of £ 350 000, held entirely by members of the Walker family.

Walker has the power to exercise control within the meaning of Decision 24/54 over the following steel stockholders:

Firm	Locality
C. Walker & Sons (Ireland) Ltd	United Kingdom
Padley Stainless Steels Ltd	United Kingdom
Mersey Steels Ltd	United Kingdom
Martin Hall Ltd	United Kingdom
Martin Hall Steel Tubes Ltd	United Kingdom
Martin Hall (London) Ltd	United Kingdom
Harrowmills Ltd	United Kingdom
Slough Tubes Ltd	United Kingdom
Dublin Steel Stockholders Ltd	Ireland
Shamrock Steel Services Ltd	Ireland

These undertakings form the Walker Group, whose consolidated turnover in 1974 totalled £ 41 418 627.

Champion is a French limited liability company with a capital of FF 12 million; it is in business as a stockholder for all steel products; 98% of its capital is held by members of the Champion family, and its 1974 turnover totalled FF 311 058 000.

Lommaert, a Belgium limited liability company in business as a steel stockholder, has a capital of Bfrs 35 million, all held by members of the Lommaert family.

Lommaert has the power to exercise direct or indirect control over the following steel stockholders:

Firm	Locality
A. Lommaert NV Algemene Handelsmaatschappij, Lanaken	Belgium
Anciens Etablissements Leduc SA, Liège	Belgium
BV IJzerhandel v/h A. Lommaert, Born	Netherlands
BV IJzerhandel v/h A. Lommaert, The Hague	Netherlands
H. Heutappel BV, Maastricht	Netherlands
Eisen- und Stahlgroßhandel Dr. Ing. A. Schneider GmbH, Heidelberg	Federal Republic of Germany
Eisen- und Stahlgroßhandel Dr. Ing. A. Schneider GmbH, Düsseldorf	Federal Republic of Germany

These undertakings form the Lommaert Group, whose consolidated turnover in 1974 totalled Bfrs 2 978 313 000.

On 1 January 1975 these undertakings entered into a cooperation agreement, the main points being:

— the parties will pool their buying of finished and end rolled steel products once the necessary facilities have been set up;

— they will regularly exchange commercial, technical, financial and administrative information, notably:

  — market research,

  — statistics on and analyses of current economic trends,

  — management information and knowhow,

  — technical knowhow, and research and development findings;

— they will encourage as far as possible staff exchanges and joint advertising;

Each of the firms involved will remain free to determine:

— sales prices,

— outlets,

— product range,

— customer selection,

— quality of after-sales service,

— technical developments,

— business expansion,

— investment programmes.

The agreement was concluded for five years from 1 January 1975 and may be renewed if all three parties so agree.

II

The agreement restricts the normal play of competition since the joint buying of finished and end rolled steel products to be taken into stock will enable the firms involved to obtain identical prices and terms of delivery, more favourable than those which they would have obtained individually.

The agreement also distorts the normal play of competition since the firms involved will regularly be exchanging commercial, technical, financial and administrative information, notably market research, statistics on and analyses of current economic trends, management information and knowhow, technical knowhow and research and development findings.

Although these last-mentioned cooperation measures taken individually would not be anticompetitive for purposes of the 'Notice on agreements, decisions and concerted practices concerning cooperation between undertakings' (1) and would therefore not be caught by Article 65 (1), their cumulative effect will

(1) OJ No C 75, 29. 7. 1968, p. 3; Corrigendum in OJ No C 84, 28. 8. 1968, p. 14.

be to make the firms involved cooperate on a broader front and then coordinate their activities beyond joint buying, so that they are likely to align their market conduct as suppliers.

This agreement, whose purpose is to give the parties a substantially stronger market position *vis-à-vis* their suppliers and a substantially better competitive position than they would have on their own in conditions of normal competition, is therefore caught by the prohibition in Article 65 (1) of the Treaty.

III

Specialization agreements or joint buying or joint selling agreements in respect of particular products may be authorized if the Commission finds that they satisfy the tests of Article 65 (2).

The agreement in question may be authorized under Article 65 (2) if it makes for a substantial improvement in the production or distribution of the relevant products, is essential in order to achieve these results and is not more restrictive than is necessary for that purpose. The agreement must not be such as 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.

IV

Walker, Champion and Lommaert are all steel distributors and generally supply small and medium firms within 80 or 100 kilometres of their depots; and these firms find it advantageous to be in close contact with their suppliers.

The geographical location of the depots of the parties to the agreement and their subsidiaries will enable them to supply users in the Benelux countries, Ireland, the United Kingdom, the northern half of France and part of Germany.

Joint buying will enable these firms:

— to place joint orders for steel products to be taken into stock, so that they can avoid surcharges on small orders and qualify for quantity discounts;

— to make a substantial improvement in their supplies and extend their product range by giving them access to each other's traditional suppliers;

— to be sure of continuous and faster supplies of products from other Community countries;

— to rationalize their buying and thus reduce costs so as to step up their efficiency and competitiveness on a broader market.

Joint buying by Walker, Champion and Lommaert will thus make for a substantial improvement in the distribution of steel products.

These results could not be obtained on the same scale if each of the firms individually bought the steel it needed. The agreements impose no restrictions as regards pricing, selection of customers or outlets, business expansion or investment programmes, where each firm remains completely free. It can therefore be concluded that the agreement is not more restrictive than its purpose requires.

The agreement thus satisfies the tests of Article 65 (2), (a) and (b).

V

In the assessment of the market shares held by the firms concerned, account should be taken of the peculiar features of the stockholder market, where there are geographic limits depending on the location of depots. The firms concerned have their registered offices and main depots in three separate Community countries. There is therefore no point in seeking a relevant market covering them all; each should be considered in relation to the market covered from its depots.

Walker's share of the United Kingdom stockholder market may be estimated at 5% in 1974, when Champion held approximately 4% of the French market and Lommaert 6% of the combined Belgian and Dutch markets. These are thus medium-sized firms. Each of them on its own market has to face competition not only from large numbers of local or regional iron and steel dealers but also from dealers under the control of the manufacturing firms, some of them holding market shares three or four times as large.

The agreement at issue is accordingly not 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 steel products sold in the common market, or to shield them against effective competition from other undertakings within the common market. It thus satisfies the tests of Article 65 (2) (c) of the Treaty.

VI

The Commission must ensure that any arrangements made by the firms involved under the joint buying agreement are consistent with the authorization given by this Decision and with the Treaty.

Walker, Champion and Lommaert must therefore be required to inform the Commission without delay of any change or addition to or extension of the agreement, and effect must not be given to any such change, addition or extension until the Commission has declared it admissible or has authorized it under Article 65 (2) of the Treaty.

The agreement which the Commission is asked to authorize satisfies the requirements of Article 65 (2) and is consistent with the other provisions of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The joint buying agreement in respect of steel products to be taken into stock entered into on 1 January 1975 between the following steel distribution undertakings:

C. Walker and Sons Ltd, Blackburn, United Kingdom; Ets Métallurgiques J. Champion SA, Nanterre, France; and NV Algemene Handelsmaatschappij A. Lommaert, Schoten, Belgium; is hereby authorized.

Article 2

The said undertakings shall without delay inform the Commission of any change or addition to or extension of the agreement, and effect shall not be given to any such change, addition or extension until the Commission has confirmed that it is consistent with the authorization given by this Decision or has authorized it under Article 65 (2).

Article 3

This Decision is addressed to the undertakings named in Article 1.

Done at Brussels, 20 May 1976.

For the Commission

A. BORSCHETTE

Member of the Commission