PUBLIC VERSION

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COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision
of 10.02.1997

authorising the acquisition by ARBED SA of sole control of

ACERALIA Corporacion Siderurgica SA

(Case IV/ECSC.1237 - Arbed/Aceralia)

(Only the English text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66(2) thereof,

Having regard to the notification made by the Arbed SA on 10 October 1997 and to subsequent information,

Whereas:

1. Arbed SA (Arbed) of Luxembourg has reached an agreement with the Spanish State undertaking Sociedad Estatal de Participaciones Industriales (SEPI) to purchase 35% of shares of Aceralia Corporacion Siderurgica (Aceralia) the Spanish steel maker currently owned 100% by SEPI. This operation, which also involves the acquisition by Aceralia of minority share holdings in Arbed and a number of its subsidiaries was notified to the Commission on 10 October 1997.

2. After examining the notification, the Commission has come to the conclusion that the proposed operation falls within the scope of Article 66 of the ECSC Treaty. In so far as the proposal concerns products or markets which do not fall within the scope of the ECSC Treaty (non-steel products, steel tubes, wire and wire products and cold-rolled flat steel products less than 500 mm in width), Council Regulation (EEC) No 4064/89[1] applies (cf. IV/M.980 - Arbed/Aceralia). The present Decision concerns only those parts of the proposal which fall within the scope of the ECSC Treaty.

I. THE PARTIES

[1] OJ No L 395, 30.12.1989, p. 1; corrigendum: OJ No L 257, 21.9.1990, p. 13.

3. Arbed is the parent company of a large group whose activities are concentrated in the production and distribution of steel (flat products, long products and stainless steel), the distribution of scrap, iron ore and coal. Arbed also has a number of joint ventures in the field of galvanised strip, SEGAL (33.33%), Ewald Giebel Luxembourg sàrl (33.33%), Galvalange sàrl (50%), Galtec NV (50%) and Bregal GmbH (50.1%). These activities fall under the ECSC Treaty. In addition it is involved in the production of tubes and wire and wire products and in engineering.

   Arbed's major share holders are the Luxembourg state, Société Générale de Belgique and the Banque Générale de Luxembourg. In 1996 the group produced 11.5 million tonnes of crude steel and had a global turnover of 5 841 million ECU.

4. Aceralia is the largest Spanish steel producer and is 100% owned by SEPI, the state institution charged with the privatisation of certain nationalised industries. It has the following holdings in ECSC undertakings, Sidmed SA (67.5%), Galmed SA(51%) and Aceria Compacta de Bizcaia SA (32.49%). In 1996 it produced 4.3 million tonnes of crude steel and had a global turnover of 2 086 million ECU.

II. THE PROPOSED TRANSACTION

5. Arbed has entered into an agreement with SEPI to purchase 35% of the shares in Aceralia and to purchase, for a nominal sum, warrants which will in certain circumstances allow Arbed to increase its holding of Aceralia shares to just over 50%. This represents the first step in the privatisation of Aceralia. In the two subsequent stages approximately 53.2% will be sold to financial institutions and the general public through the Madrid Stock Exchange and 11.8% sold by SEPI to Spanish companies with interests in the steel industry.

6. Aceralia will take a stake of 9.5% in Arbed and minority share holdings in a number of Arbed subsidiaries

III. THE CONCENTRATION

7. Both Arbed and Aceralia are undertakings within the meaning of Article 80 of the ECSC Treaty as a result of their activities in the production and distribution of steel products.

   The acquisition of the Aristrain Group's steel making operations is not covered in this decision and will be the subject of a separate notification and a separate decision.

8. During the period before the sale of shares on the Madrid Stock Exchange Arbed and SEPI have a shareholders' agreement in which SEPI agrees to support Arbed resolutions provided that Arbed abides by the agreed industrial plan. In particular SEPI will support Arbed's nominations for all the company's directors. These directors are appointed for a term of five years.

   Once SEPI has sold the remaining shares Arbed will be the industrial leader and by far the largest shareholder. A large proportion of the shares will be held by individuals (between 15% and 30%) for whom there will be limit (<0.03%) in an individual's share holding, and financial institutions (between 20% and 35%). None of these (with the exception of the Aristrain Group see below) are likely to have share holdings in excess of 5% The share holding of Aceralia in Arbed will also strengthen the community of interest between the companies.

The Aristrain Group, Aceralia and SEPI have entered into an agreement whereby, subject to the authorisation of the Arbed/Aceralia operation, the Aristrain Group will purchase 10.8% of Aceralia from SEPI and Aceralia will purchase the Aristrain Group's steel operations. Aristrain is required under the terms set out for the privatisation to support Arbed in the execution of the Industrial Plan. The operation is to be completed within six months and marks the withdrawal of the Aristrain Group from steel production. Should for any reason this operation not be completed the shares set aside by SEPI for the Aristrain Group will be sold on the Madrid Stock Exchange.

Arbed has the right after five years to exercise its warrants and obtain a share holding in excess of 50%. The warrants can be exercised earlier under certain conditions notably if a take over bid for Aceralia is made or in other legally assimilated circumstances. During the five year period before Arbed can unconditionally exercise its warrants all the directors of the company will be its nominees.

The combination of the high minority share holding, the fact that Arbed nominees will make up the entire board of the company for five years, the ability to block any attempt at a take-over, the possibility of acquiring more than half the shares after five years, the dispersed nature of most share holders and the fact that a significant portion of the shares will be held by financial institutions is sufficient to ensure that Arbed will have control of Aceralia within the meaning of Article 1 of High Authority Decision No 24-54 and hence a concentration within the meaning of Article 66(1) of the ECSC Treaty.

IV. ASSESSMENT UNDER ARTICLE 66(2)

9. The parties are engaged in the production and distribution of flat and long steel products.

The parties' businesses overlap in the following ECSC activities:

– production of unalloyed flat steel products (hot rolled wide strip, plate cut from strip, cold-rolled thin sheet and coated strip)

– production of beams and rails

– distribution of steel products

It is therefore these markets that must be examined.

A. RELEVANT PRODUCT MARKET

A.1 General remarks

Flat steel products are a separate product market from long steel products

10. The steel produced in a steelworks is cast into shape and further processed by subsequent forming into the products desired by final consumers. Rolled steel products may be subdivided into flat products (hot-rolled wide strips, band steel, universal plates, sheets and hoops) and long products (sections and steel beams, permanent way material, merchant bars and wire rods). Flat steel and long steel products are produced on different rolling mills and are bought for different purposes. Most rolling mills are purpose built for a particular end product.

Hot-rolled and cold-rolled flat steel products are separate product markets

11. Hot-rolled flat products are used less as finished products (hot-rolled sheets and hoops) than as raw material (hot-rolled wide strip, narrow strip) for the manufacture of cold-rolled flat products. Subsequent cold rolling results in a considerable reduction in thickness, greater dimensional accuracy, a smoother surface and, following work hardening, greater strength. Hot-rolled products do not have the same surface characteristics as cold-rolled products.[2] The value added by cold rolling is substantial, in the region of 30%.

12. A modern hot-rolled wide strip mills can roll to minimum thicknesses of 1.5 mm. Thinner strips and sheets, which are used especially by the motor industry and after coating by the packaging and construction industries, require subsequent further processing in cold rolling mills, where minimum thicknesses of 0.15 mm can be achieved. For these reasons, hot-rolled and cold-rolled flat products constitute separate relevant product markets.

Cold-rolled flat steel products and coated flat steel products, are separate product markets

13. Approximately 56% of all cold-rolled flat products produced in the Community is provided with a coating tailored to its end use. Such products include sheets with metallic coatings applied using a hot dip galvanising process (hot dip galvanised sheets), sheets with metallic coatings applied using an electrolytic process (electro-galvanised sheets), sheets with organic coatings and tinplate (including ECCS). Uncoated cold-rolled thin sheets have quite different characteristics from coated cold-rolled thin sheets as regards surface finish and resistance to corrosion. The value added by the coating is very substantial and comes to between 21% (hot dip galvanised sheet) and 81% (organically coated sheet), approximately 35% on average.

14. Coated and uncoated cold-rolled flat products less than 500 mm in width do not come under the ECSC Treaty (see Annex I to the Treaty). Against the background of present-day production processes and supply conditions, this distinction is no longer relevant when it comes to assessing mergers from a competition point of view. Cold-rolled flat products both less than and more than 500 mm in width are nowadays produced on the same rolling mills. Sheets of less than 500 mm in width can, moreover, be obtained by slitting wide strip. In accordance with earlier Decisions,[3] there can therefore be assumed to be, for the purpose of assessing the effects of the notified merger, uniform product markets irrespective of the products' width.

A.2 Flat products

A.2.1 Hot-rolled flat products

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2 See Decision of 21 December 1994, Case IV/M.484 -Krupp/Thyssen/Riva/Falck/Tadfin/AST, point 24.

3 See Decision of 4 September 1992, Case IV/M.239 - Avesta/British Steel/NCC/AGA/Axel Johnson, point 22; Decision of 21 December 1994, Case IV/M.484 - Krupp/Thyssen/Riva/Falck/Tadfin/AST, point 28.

15. Hot-rolled flat products comprise hot-rolled wide strip, narrow strip including slit strip, plate, quarto plate and universal plate. Hot-rolled wide strip is strip more than 600 mm in width produced from slabs in automated hot-rolled strip mills and rolled up into coils. Hot-rolled narrow strip is produced either directly in widths of less than 600 mm or by slitting hot-rolled wide strip. Plates cut from strip are made by cutting hot-rolled wide strip. Quarto plate is plate made on special quarto plate mills and is usually thicker than plate cut from hot rolled wide strip.

16. The question whether the above-mentioned products constitute separate relevant product markets or whether, owing to the considerable degree of flexibility in production, they belong in whole or in part to a single product market can in the last analysis be left open in the present case because, even taking as a basis of the narrowest product markets, the proposed merger raises no doubts from a competition point of view.

A.2.2 Uncoated cold-rolled thin sheet (cold-rolled flat products without any coating)

17. Uncoated cold rolled strip is made by cold rolling hot-rolled strip. It constitutes a separate relevant product market because they differ from hot-rolled flat products and coated flat products in terms of both product characteristics, use and prices.

A.2.3 Coated strip

18. The different product characteristics of hot-dip galvanised sheet, electro-galvanised sheet, organically coated sheet and tinplate, together with the significant price differences between the different products, indicate that coated flat products each form a separate relevant product market. The precise definition of the relevant product markets can, however, in the last analysis be left open in the present case because, even taking as a basis the narrowest conceivable product markets, the proposed merger raises no doubts from a competition point of view.

A.3 Hot Rolled Long Products

19. The parties only have overlaps in the production of steel beams and rails. These products can distinguished by their metallic specifications, their prices, and their intended use.

A.4 Distribution of steel products

20. The Commission has decided on a number of occasions that trade in steel products constitutes a separate relevant market distinct from the production of such products.[4] The distribution sector comprises stockholders and steel service centres ("SSTs"). SSTs perform mainly distribution functions, but they also provide additional services such as the custom-cutting of steel sheets. Sales through these types of outlets are of varying importance depending on the type of steel product.

B. RELEVANT GEOGRAPHIC MARKET

B.1 Hot- and cold rolled products

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4 See Decision of 21 December 1994, Case IV/M.484 - Krupp/Thyssen/Riva/Falck/Tadfin/AST, point 32.

21. In previous Decisions the Commission found that the relevant geographic market for rolled steel products comprised at least the territory of the Community.[5] The enquiries in the present case have confirmed this view. Transport costs within the Community are not significant. As the vast bulk of ECSC steel products are homogenous 'commodity' products customer preferences are not an important factor. There is significant interpenetration between the individual Member States. In 1996 the volume of intra-Community trade as a proportion of total deliveries into the Community by Community producers varied between 31% for rails and 51% for beams.

22. With the exception of supplies from Russia, Ukraine and Kazakhstan, imports of ECSC rolled steel products into the Community are not subject to any quantitative restrictions. In the present case, however, the precise definition of the relevant geographic market does not in the last analysis need to be decided because, even on the basis of a market limited to the territory of the Community, the proposed merger does not raise any doubts from a competition point of view. The proportion of third country imports for the products under consideration varied between 2% for cold rolled sheet and 17% for quarto plate.

B.2 Coated Products

23. The relevant geographic market for coated cold-rolled flat products comprises the territory of the Community. Transport costs within the Community are not significant. Owing to a lack of market entry barriers and customer preferences for certain producers in the Community, the individual Member States are characterised by significant interpenetration. In 1996 the volume of intra-Community trade as a proportion of total deliveries into the Community by Community producers represented43% for coated products

24. The relevant geographic market for galvanised flat products does not, however, extend beyond the Community. Imports from third countries into the Community are negligible and vary considerably from one flat product to another: the share accounted for by imports (quantities, 1995) comes in the case of hot dip galvanised sheet to 2.2%, in the case of electro-galvanized sheet to 1.7%, and in the case of organically coated sheet to less than 1% (on average only 1.9%). Steel producers in Central and Eastern Europe in particular are not currently, and will not be in the near future, in a position to meet the requirements of Western European customers as regards quality, dependability and service when it comes to supplying coated flat products. For producers elsewhere transport costs become increasingly important.

B.3 Distribution of steel products

25. Stockholders and SSCs perform the wholesale function of buying material in bulk from steel producers, stocking it and then, if necessary after suitable processing (cutting to size), reselling it in smaller quantities to customers who need only such quantities. Since the distribution of flat products takes place at a regional level, the relevant geographic market is a regional market. The parties to the merger are active in steel trading especially in Spain, Belgium, Germany and the United Kingdom. The impact of the proposed merger would therefore be felt mostly in those Member States.

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5 See Case IV/ECSC.969 - Fried. Krupp AG/Hoesch AG.

C. IMPACT OF THE MERGER

C.1 Hot-rolled flat products

26. In 1995 a total of approximately 35 million tonnes of hot-rolled flat products (excluding stainless) were sold in the Community (apparent consumption). Of this, hot-rolled wide strip accounted for approximately 19.7 million tonnes (56.2%), narrow strip (including slit strip) approximately 3.5 million tonnes (10%), plate approximately 2 million tonnes (5.8%) and quarto plate approximately 9.8 million tonnes (28%). Table 1 below shows the (percentage) shares of the largest producers of these products steel in EU production (1995) and in EU sales (in value terms, 1996).

Table 1:

Producer	Hot-rolled wide strip		Narrow strip and slit strip		Plate cut from strip		Quarto plate	
	Prod.	Sales	Prod.	Sales	Prod.	Sales	Prod.	Sales
ARBED	[5-15]	[5-15]	[<10]	[5-15]	[20-30]	[5-15]	0	0
CSI	[<10]	[<10]	0	0	[<10]	[<10]	[5-15]	[<10]
Total	[10-20]	[5-15]	[<10]	[5-15]	[20-30]	10-20]	[5-15]	[<10]
Usinor	10 - 20	10 - 20	n.a.	< 10	n.a.	5- 15	0	0
British Steel	< 10	10 - 20	10 - 20	< 10	< 5	< 10	< 10	5 - 15
Thyssen Krupp	10-20	10 - 20	n.a.	35 - 45	20-30	15 - 25	<10	5 - 15
Ilva	< 10	5 - 15	n.a.	< 5	< 5	< 5	10 - 20	< 10
Cockerill-Sambre	< 5	< 5	< 5	< 5	< 5	< 5	0	0
Hoogovens	< 10	< 10	< 10	< 10	< 10	5 - 15	0	0
Preussag Stahl	< 5	< 5	< 10	< 5	< 10	< 10	< 10	< 10
Voest Alpine	< 5	< 5	10 - 20	5 - 15	10 - 20	< 10	< 5	< 5
Dillinger Hütte	0	0	0	0	0	0	10 - 20	15 - 25
Third-country imports	n.a.	> 10	n.a.	< 5	n.a.	> 15	n.a.	> 10

27. As a result of the proposed merger, Arbed/Aceralia will shares of sales ranging between [<10]% for quarto plate and [10-20]% for plate cut from strip. The parties to the merger face competition in the Community from a number of financially strong competitors with significant market shares, notably Thyssen Krupp Stahl, the market leader, Usinor, British Steel, and Ilva. There is under-utilised capacity in the EU so that other producers would be able to place on the market additional tonnages of flat products should there be any attempt to restrict supplies. Imports (quantities, 1995) from non-Community steel producers are especially significant in the market quarto plate (17%) and limit the scope for anti-competitive behaviour on the part of the parties to the merger. The possibility that the proposed merger will enable the parties to determine prices or prevent effective competition can therefore be ruled out

C.2 Cold-rolled and coated strip

28. The apparent consumption of cold-rolled strip (excluding stainless steel) in the Community was approximately 12.2 million tonnes in 1995): The apparent consumption of coated sheet in the Community in 1995 was approximately 16.2 million tonnes. Of this, hot dip galvanised accounted for approximately 9.4 million tonnes (58%), electro-galvanised approximately 4.1 million tonnes (25.6%) and organically coated for approximately 2.7 million tonnes (16.4%). The markets for the production of coated strip in the Community are characterised by relatively well-utilised capacities, in 1995 utilisation rates were

67% (organically coated sheet), 80% (electro-galvanised sheet) and 87% (hot dip galvanised sheet. The following table (2) shows the percentage shares of the largest producers of cold-rolled and coated products of EU production (1995) and of EU sales (1996)

Table 2:

Producer	Cold rolled Strip		hot dip galvanised sheets		electro-galvanised sheets		organically coated sheets	
	Prod.	Sales	Prod.	Sales	Prod.	Sales	Prod.	Sales
ARBED	[5-15]	[10-20]	[<10]	[<10]	[<10]	[<10]	[<10]	[<10]
Aceralia	[5-15]	[5-15]	[5-15]	[<10]	[<10]	[<10]	[<10]	[<10]
Total	[15-25]	[20-30]	[10-20]	[5-15]	[5-15]	[5-15]	[5-15]	[<10]
Usinor-	10- 20	5 - 15	10 - 20	15 - 25	10 - 20	10 - 20	10- 20	< 10
British Steel	< 10	5 - 15	10 - 20	5 - 15	< 10	5 - 15	10 - 20	15 - 25
Thyssen Krupp	10-20	10 - 20	10-20	15 - 25	25-35	25 - 35	10-20	10 - 20
Cockerill-Sambre	< 10	5 - 15	10 - 20	5 - 15	10 - 20	5 - 15	10- 20	10 - 20
Hoogovens	< 10	< 10	< 10	< 5	0	< 5	< 10	< 5
Preussag Stahl	< 5	< 5	< 5	< 5	< 5	< 10	< 5	< 5
Voest Alpine	< 5	< 10	< 5	< 5	< 10	< 10	< 5	< 5
Ilva	< 10	5 - 15	< 10	< 10	10- 20	< 10	< 5	< 5
Third-country imports	n.a.	< 10	n.a.	< 3	n.a.	< 3	n.a.	< 3

29. As a result of the proposed merger, Arbed/Aceralia would become the largest seller of cold rolled strip in the Community. The combined share (in value terms) of Arbed/Aceralia in supplies to the Community market would be approximately [20-30] %. The parties to the merger face competition in the Community from a number of financially strong competitors with comparable market shares, notably Thyssen Krupp Stahl, Ilva, Usinor, Cockerill Sambre and British Steel. Besides the integrated steel producers, there are also a number of independent undertakings (so-called cold rollers) which specialise in the further processing of hot-rolled primary products into cold-rolled strip (including Hille & Müller KG, Wickeder Westfalenstahl GmbH, and Kaltwalzwerke Theis GmbH). In view of this market structure, it can be assumed that the scope for anti-competitive behaviour on the part of Arbed/Aceralia will be limited even after the merger. The possibility that the proposed merger will enable the parties to determine prices or prevent effective competition can,therefore, be ruled out.

30. After the merger Arbed/Aceralia will achieve a combined share (in value terms) of approximately [<10]% of the market for organically coated sheet, [5-15]% of the market for hot dip galvanised sheet, and approximately [5-15]% of the market for electrolytically sheet (see Table 2 above). These figures include sales made by Arbed of production from a number of joint ventures in the this sector. On the relevant markets the parties to the merger face competition from a number of other steel producers in the Community, notably Thyssen Krupp Stahl, Usinor, Ilva, British Steel and Cockerill Sambre. In view of this market structure it can therefore be assumed that the scope for anti-competitive behaviour on the part of Arbed/Aceralia will be effectively limited even after the merger. The possibility that the proposed merger will enable the parties to determine prices or prevent effective competition can therefore, be ruled out.

C 3 Long Products

31. In the long products area the production programmes of the parties are largely complementary. Arbed produces beams, sheet piling, rails, merchant bars and concrete re-inforcing bars while Aceralia makes beams, rails and wire rod. The only areas of overlap are therefore, beams and rails. Table 3 below shows the market shares in percentages of the major producers of these products of production and Community apparent consumption in 1996.

Table 3

Producer	Beams		Rails	
	Prod	Deliveries	Prod	Deliveries
Arbed	[20-30]	[20-30]	[<10]	[<10]
Aceralia	[<10]	[<10]	[<10]	[<10]
Total	**[25-35]**	**[20-30]**	**[5-15]**	**[5-15]**
British Steel	15-25	15-25	10-20	5-15
Aristrain	5-15	5-15		
Preussag	5-15	5-15		
Gröditzer	<10	<10		
Ferdofin	<5	<10		
Stefana	<5	<10		
Irish Steel	<5	<5		
Beltrame	<5	<5		
Saarstahl	<5	<5		
Usinor			15-25	15-25
Voest-Alpine			15-25	10-20
Thyssen	<1		10-20	10-20
Lucchini	<5	<5	<10	5-15
NMH	<1		<5	<5
Inexa			<5	<5
Others			1	
Imports	n.a.	7	n.a.	10

32 As a result of the proposed operation Arbed/Aceralia would have shares of Community sales of [20-30]% for beams, [5-15]% for rails. On the relevant markets the parties to the merger face competition from a number of other steel producers in the Community, notably, British Steel and Preussag for beams; and Voest Alpine, Usinor, Thyssen and British Steel for rails. In view of this market structure it can therefore be assumed that the scope for anti-competitive behaviour on the part of Arbed/Aceralia will be effectively limited even after the merger. The possibility that the proposed merger will enable the parties to determine prices or prevent effective competition can therefore, be ruled out.

C.4 Steel Distribution

33. So far as distribution is concerned the parties operations are complementary. Aceralia's sales are confined the Iberian Peninsular whereas Arbed has no activity in this geographic area. As the relevant geographic markets for steel distribution are the territories of the Member States the proposed operation will not change the competitive situation in respect to the distribution operation except in the UK where the combined market share of the parties will be less than 10%.

V. CONCLUSION

34. For the above reasons it must be concluded that the notified transaction will not give the parties the power to hinder effective competition or to evade the rules of competition instituted under the ECSC Treaty.

35. Inasmuch as the requirements of Article 66(2) of the ECSC Treaty are thus fulfilled, the notified transaction may be authorised,

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration between Arbed SA and Aceralia SA is authorised under Article 66(2) of the ECSC Treaty.

Article 2

To the notifying party

Done at Brussels,

For the Commission