COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2000

In the published version of this decision, some information relating to business secrets and other confidential information has been omitted. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 66 ECSC DECISION

COMMISSION OF THE EUROPEAN COMMUNITIES

Commission Decision

of 22.12.2000

**authorising RAG Aktiengesellschaft and SIDARFIN N.V.
to acquire joint control of Belgian Bunkering Considar Coal Trading N.V.**

(Case COMP/ECSC.1344 – RAG / SIDARFIN / BBCT)

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 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 notification submitted by the parties dated 21 November 2000 and to subsequent information,

Whereas:

1. On 21 November 2000, RAG Aktiengesellschaft ("RAG"), Essen, notified to the Commission under Article 66(1) of the ECSC Treaty that it intended, together with SIDARFIN N.V. ("SIDARFIN"), Ghent, to acquire joint control of Belgian Bunkering Considar Coal Trading N.V. ("BBCT").

[1] OJ of the High Authority No 9, 11.5.1954, p. 345.

I. THE PARTIES

2. RAG is active in the extraction and marketing of hard coal and the production of coke. It also holds shares in a number of international mining companies and has interests in power generation, chemicals and plastics, waste treatment and environmental services, mining technology and real estate. In 1999 the RAG group's worldwide turnover was € 13 620 million, of which € 10 265 million was achieved in Germany. In 1999 its coal production totalled over 100 million tonnes (39 million tonnes in Germany). In addition its coal trading arm handled about 20 million tonnes most of which were imports into Germany.

3. The shares in RAG are directly or indirectly held by four companies, e.on AG (approximately 39.2%), RWE AG (30.2%), Thyssen Krupp Stahl AG (20.6%) and ARBED S.A. (6.5%); approximately 3.5% of the shares are held by RAG itself.

4. SIDARFIN, a holding and management company without operating activities, is a wholly-owned subsidiary of SIDMAR N.V. ("SIDMAR") belonging to the group of ARBED S.A. ("ARBED"). The ARBED group's worldwide turnover was € 10 652 million in 1999. The SIDMAR group comprises companies active in the flat products and stainless steel sectors of the ARBED group and achieved a worldwide turnover of € 1 478 million in 1999. The ARBED group has activities in coal trading only through BBCT and an indirect 50 % stake in Coal Arbed International Trading Company (CAIT), a U.S. joint venture with RAG Coal International AG which owns the other 50 % of the shares.

5. BBCT is a coal trading company whose main activity is to import coal for the use of the various steelmaking subsidiaries of the ARBED group. BBCT has gradually broadened its trading activities to include other customers, particularly in Belgium. BBCT is a 100 % subsidiary of the holding company Considar Coal N.V. ("Considar Coal"). At present, 92,06 % of the shares of Considar Coal are owned by SIDARFIN and the remaining 7,94 % by RAG Trading GmbH, a subsidiary of RAG.

II. THE TRANSACTION

6. The proposed operation consists in the sale of 42,06 % of the share capital of Considar Coal from SIDARFIN to RAG Trading GmbH, as a result of which RAG Trading GmbH and SIDARFIN would both have a 50 % shareholding in Considar Coal N.V. and, thus, indirectly in BBCT.

III. THE CONCENTRATION

7. As a result of its involvement in the production and distribution of hard coal and hard coal products within the European Union, RAG is an ECSC undertaking within the meaning of Article 80 of the ECSC Treaty.

8. SIDARFIN and BBCT both belong to the ARBED group which is an ECSC undertaking within the meaning of Article 80 of the ECSC Treaty by virtue of its involvement in the production and distribution of steel products.

9. By each having a 50 % shareholding in Considar Coal, RAG and SIDARFIN will be able to exercise joint control over that company and, thus, indirectly over its wholly owned subsidiary BBCT. The notified transaction therefore constitutes an acquisition, by RAG, alongside SIDARFIN, of joint control over BBCT within the meaning of

Article 1 of High Authority Decision No 24-54 of 6 May 1954 and, accordingly, brings about a concentration within the meaning of Article 66(1) of the ECSC Treaty.

10. The proposed concentration requires prior authorisation according to Articles 4 and 7 of High Authority Decision No 25-67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a regulation concerning exemption from prior authorisation,[2] as amended by Commission Decision No 3654/91/ECSC of 13 December 1991.[3]

IV. ASSESSMENT UNDER ARTICLE 66(2)

11. The proposed merger shall be authorised under Article 66(2) of the ECSC Treaty if it does 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 these products; or

- 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 supplies or markets.

A. German Subsidy System

12. Before considering the relevant product and geographic markets, it is necessary to examine the system of financial assistance to the German coal industry as this has an important influence on both questions. The aid affects domestic power station coal and coking coal only. Briefly, the arrangements provide for a reduction in the total amount of aid to be paid from 10.5 billion DM in 1997 to 5.5 billion DM in 2005. The aid can compensate for the difference between production costs in German mines and the average price for imports into Germany. At the end of each year the coal companies have to demonstrate that the aid has been used for either making good the difference between world prices and the costs of producing coal from sale to the electricity and steel industries or to cover closure costs. No aid is available for coal sold to other industries or from sources outside Germany.

B. Relevant Product Markets

13. In its decision of 11 November 1999 in case COMP/ECSC.1316 – RAG/Burton, the Commission distinguished separate product markets for the distribution of steam coal for power generation, coking coal for the steel industry, and coke. BBCT and RAG are both active in trading all three types of coal products. The present operation also concerns PCI coal used in the steel industry. As there are no competition problems in this individual segment, no decision is needed whether PCI coal forms a separate product market, or is part of the market for either coking coal or steam coal.

14. In Germany, a distinction may have to be drawn between domestic and imported coal because of the subsidy regime for domestic coal. However the question may be left open, as in any case, the proposed operation will not give rise to competition concerns.

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[2] OJ No 154, 14.7.1967, p. 11.

[3] OJ L 348, 17.12.1991, p. 12.

C. Relevant Geographic Markets

15. In its recent decisions under Article 66 ECSC, especially the decision of 29 July 1998 in case IV/ECSC.1252 – RAG/Saarbergwerke/Preussag Anthrazit, the Commission considered Germany to be a distinct relevant geographic market for steam coal, coking coal and coke because as a result of the German coal subsidy regime, the conditions on the German coal market were different from those elsewhere in the Community. For the markets outside Germany, the Commission has up to now left open whether there were national markets for any type of coal. Also in the present case this question may be left open, as even under the assumption of national markets the proposed operation will not give rise to competition concerns.

D. Impact of the concentration

1. General remark

16. The overall effect of the present operation on competition is very limited, given the fact that it only concerns the participation of RAG in a company previously controlled solely by the ARBED group – and jointly controlled by this group following the concentration - which supplies mainly subsidiaries of the the said group. Furthermore, RAG and ARBED are already active in coking coal imports to Europe via a joint subsidiary, CAIT.

2. Coking coal

17. The parties' activities in coking coal imports overlap only in Belgium and Spain. Although the parties' combined market shares are periodically relatively high in these markets (Belgium: between [20-25] % and [25-30] %, Spain: between [30-35] % and [60-65] %), it has to be noted that (a) a considerable part of those market shares, namely CAIT's share (Belgium: between [5-10] % and [10-15] %, Spain: between [15-20] % and [40-45] %), is already hold by a joint venture of RAG and ARBED, and (b) the major purchaser of coking coal in both countries is the ARBED group (SIDMAR in Belgium, Aceralia in Spain). As the Commission has found in previous decisions, coking coal is available from a large number of alternative sources including producers/importers like BHP, MIM, Anglo American and traders like AMCI. Under theses circumstances, the operation does not give rise to competition problems.

18. This would be even more true if the relevant geographic market for coking coal were Western Europe excluding Germany. In the whole of the EU (including Germany), the parties' combined market shares are below 20 %, and in a Western European market excluding Germany, they should be considerably lower.

3. PCI coal

19. In PCI coal imports, the parties until very recently did not operate in the same geographic areas. Only after BBCT entered the Spanish market in the first half of 2000, the parties now have a combined market share of [50-55] % there. However, the main customer of PCI coal in Spain is also ARBED's subsidiary Aceralia. As the steel producers have a sufficient choice of alternative suppliers – all the coking coal suppliers mentioned in paragraph 17 also supply PCI coal – and considerable countervailing bargaining power, even under the narrowest possible market definition, there are no indications that the operation could give rise to competition problems. On a European scale, the parties' market share is significantly below 15 %.

4. Steam coal

20. In Belgium, one of the two markets where there are overlaps between the parties, RAG has only a minimal market share, and even the combined share of the parties remains below 30 %. As far as steam coal imports into Germany are concerned, RAG has a high market share (rising from [35-40] % in 1998 up to [50-60] % in the first half of 2000). However, as the operation will add only up to 1 % to RAG's existing share, it is unlikely to have any significant effect on a German market for imported steam coal. In addition, the main customers are large electricity utilities which are capable of dealing with large scale imports, so that no competition problems can be identified.

    Under the assumption that, in Germany, the relevant product market includes domestic production, which amounts to more than twice the volume of imported steam coal, the impact of the operation would be even more negligable, as BBCT's market share would then be less than 0,2 % in any given year.

5. Coke

21. In coke imports, the parties' market shares overlap in Germany, Belgium and France. Their combined market shares in all of these national markets are far below 15 %, and on an EU-wide scale below 5 %, so that no competition concerns occur. If domestic coke production were to be included in the relevant product market, the parties' market share would be even lower in all geographic areas with overlaps except Germany. In Germany, the parties would then have a combined market share of [50-60] %. However, given BBCT's market share of less than 1 %, the impact of the present operation on the whole of the coke market in Germany (domestic production and imports) is minimal.

6. State Aid Implications

22. State aid available to a party of a concentration may in principle influence the competitive position of the merged entity. However, the aid available to RAG under the German coal subsidy regime only refers to coal produced in Germany. It has been granted for a long time and is decreasing from year to year. Therefore, the aid is already fully reflected in RAG's existing market position in Germany. The activity added to that position by the present operation consists exclusively in imports and therefore does not benefit from the aid. Consequently, the aid cannot have any bearing on the assessment of the concentration.

V. CONCLUSION

23. In the light of the above considerations, the Commission has reached the conclusion that the proposed merger would not give rise to competition problems and that in particular it would not give RAG 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 these products; or

    - 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 supplies or markets.

24. Since the requirements of Article 66(2) of the ECSC Treaty are thus met, the proposed merger shall be authorised.

VI. STATE AID

25. This decision concerns only the application of Article 66 of the ECSC Treaty and in no way prejudges a Commission decision concerning the application of other provisions of the EC Treaty or of the ECSC Treaty and corresponding secondary legislation, in particular the application of provisions concerning state aid,

HAS ADOPTED THIS DECISION:

Article 1

The acquisition by RAG Aktiengesellschaft and SIDARFIN N.V. of joint control of Belgian Bunkering Considar Coal Trading N.V. is hereby authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

The notifying party

Done at Brussels, 22.12.2000

For the Commission