

Note by the CC on the Treaty of Paris

1. In the fifty years before its expiry on 23 July 2002, the Treaty of Paris created and maintained the European Coal and Steel Community (ECSC): the common market in coal and steel.
2. The object of the ECSC was to bring about 'conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of the Member States'.¹
3. In creating the ECSC the Treaty of Paris gave the European Commission a number of powers, including the power to impose production quotas² and the power to fix minimum and maximum prices.³ The Treaty prohibited anti-competitive agreements⁴ and the abuse of a dominant position.⁵
4. The Treaty also created a system of merger control for undertakings engaged in the production of coal and steel. Article 66(1) of the Treaty provided that the prior authorization of the Commission was required for any 'transaction' which had the direct or indirect effect of bringing about a 'concentration' within the ECSC.⁶ Concentrations not authorized by the Commission would be declared unlawful. There was an important qualification to the meaning of 'production in the coal and steel industry'. Annex 1 to the Treaty of Paris listed those products that were to be understood as either coal or steel for the purposes of the Treaty. In considering the application of the merger provisions of the Treaty of Paris it was necessary to consider whether or not the particular coal or steel products made by the undertakings in question fell within Annex 1. The production of heavy section mill products including sheet piling fell within Annex 1.
5. The effect of Article 66 was to give the European Commission exclusive jurisdiction over coal and steel mergers within the ECSC.⁷
6. Consequently, during the period of the ECSC, the merger provisions of the EC, and those of UK legislation, had no application to mergers to the extent that they fell within the ECSC. This could create difficulties as the MMC discovered in British Steel plc and C Walker & Sons (Holdings) Ltd.⁸ In that investigation the MMC was asked to investigate and report on a merger part of which fell within the exclusive jurisdiction of the European Commission by virtue of the Treaty of Paris. The consequence was

¹Article 2 Treaty of Paris.

²Article 58(1) Treaty of Paris.

³Article 61 Treaty of Paris.

⁴Article 65 Treaty of Paris.

⁵Article 66(7) Treaty of Paris.

⁶Article 66(1) provided 'Any transaction shall require the prior authorisation of the High Authority, subject to the provisions of paragraph 3 of this Article, if it has in itself the direct or indirect effect of bringing about within the territories referred to in the first paragraph of Article 79, as a result of action by any person or undertaking or group of persons or undertakings, a concentration between undertakings at least one of which is covered by Article 80, whether the transaction concerns a single product or a number of different products, and whether it is effected by merger, acquisition of shares or parts of the undertaking or assets, loans, contract or any other means of control. For the purpose of applying these provisions, the High Authority shall, by regulations made after consulting the Council, define what constitutes control of an undertaking'.

⁷Case 30/59 Steenkolenmijnen [1961] ECR1. Note also that under Article 66(3) the Commission could exempt classes of transactions from the requirements of prior authorization. Decision 25/67 created a number of classes of exempt transaction.

⁸Cm 1028 (1990).

that the MMC could only investigate and report on those parts of the merger that fell outside the Treaty of Paris.

7. Among the mergers authorized by the European Commission shortly before its expiry were those of British Steel plc and Koninklijke Hoogovens NV in 1999 which led to the creation of Corus; the merger of Hoesch Spundwand und Profil GmbH and Salzgitter AG in 2000; and the merger of Arbed SA, Aceralia Corporacion Siderurgica SA and Usinor SA, which led to the creation of Arcelor, in 2001.
8. For national merger authorities such as the Commission the principle effect of the expiry of the Treaty of Paris is that the Merger Regulation has replaced the Treaty of Paris as the jurisdictional basis for control by the European Commission of mergers in the coal and steel industry. The consequence is that mergers of coal and steel undertakings previously within the jurisdiction of the European Commission by virtue of the Treaty of Paris will now fall outside the jurisdiction of the European Commission if the merger does not meet EC turnover thresholds.⁹

⁹See Commission Communication (2002/C 152/03) at paragraph 2.2.