

Treaty establishing the European Coal and Steel Community (the 'Treaty of Paris')

Article 66

1. 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, loan, 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.

2. The High Authority shall grant the authorisation referred to in the preceding paragraph if it finds that the proposed transaction will not give to the persons or undertakings concerned the power, in respect of the product or products within its jurisdiction:

—to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products; or

—to evade the rules of competition under this Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

In assessing whether this is so, the High Authority shall, in accordance with the principle of non-discrimination laid down in Article 4(b), take account of the size of like undertakings in the Community, to the extent it considers justified in order to avoid or correct disadvantages resulting from unequal competitive conditions.

The High Authority may make its authorisation subject to any conditions which it considers appropriate for the purposes of this paragraph.

Before ruling on a transaction concerning undertakings at least one of which is not subject to Article 80, the High Authority shall obtain the comments of the Governments concerned.

3. The High Authority shall exempt from the requirement of prior authorisation such classes of transactions as it finds should, in view of the size of the assets or undertakings concerned, taken in conjunction with the kind of concentration to be effected, be deemed to meet the requirements of paragraph 2. Regulations made to this effect, with the assent of the Council, shall also lay down the conditions governing such exemption.

4. Without prejudice to the application of Article 47 to undertakings within its jurisdiction, the High Authority may, either by regulations made after consultation with the Council stating the kind of transaction to be communicated to it or by a special request under these regulations to the parties concerned, obtain from the natural or legal persons who have acquired or regrouped or are intending to acquire or regroup the rights or assets in question any information needed for the application of this Article concerning transactions liable to produce the effect referred to in paragraph 1.

5. If a concentration should occur which the High Authority finds has been effected contrary to the provisions of paragraph 1 but which nevertheless meets the requirements of paragraph 2, the High Authority shall make its approval of that concentration subject to payment by the persons who

have acquired or regrouped the rights or assets in question of the fine provided for in the second subparagraph of paragraph 6; the amount of the fine shall not be less than half of the maximum determined in that subparagraph should it be clear that authorisation ought to have been applied for. If the fine is not paid, the High Authority shall take the steps hereinafter provided for in respect of concentrations found to be unlawful.

If a concentration should occur which the High Authority finds cannot fulfil the general or specific conditions to which an authorisation under paragraph 2 would be subject, the High Authority shall, by means of a reasoned decision, declare the concentration unlawful and, after giving the parties concerned the opportunity to submit their comments, shall order separation of the undertakings or assets improperly concentrated or cessation of joint control, and any other measures which it considers appropriate to return the undertakings or assets in question to independent operation and restore normal conditions of competition. Any person directly concerned may institute proceedings against such decisions, as provided in Article 33. By way of derogation from Article 33, the Court shall have unlimited jurisdiction to assess whether the transaction effected is a concentration within the meaning of paragraph 1 and of regulations made in application thereof. The institution of proceedings shall have suspensory effect. Proceedings may not be instituted until the measures provided for above have been ordered, unless the High Authority agrees to the institution of separate proceedings against the decision declaring the transaction unlawful.

The High Authority may at any time, unless the third paragraph of Article 39 is applied, take or cause to be taken such interim measures of protection as it may consider necessary to safeguard the interests of competing undertakings and of third parties, and to forestall any step which might hinder the implementation of its decisions. Unless the Court decides otherwise, proceedings shall not have suspensory effect in respect of such interim measures.

The High Authority shall allow the parties concerned a reasonable period in which to comply with its decisions, on expiration of which it may impose daily penalty payments not exceeding one tenth of one per cent, of the value of the rights or assets in question.

Furthermore, if the parties concerned do not fulfil their obligations, the High Authority shall itself take steps to implement its decision; it may in particular suspend the exercise, in undertakings within its jurisdiction, of the rights attached to the assets acquired irregularly, obtain the appointment by the judicial authorities of a receiver of such assets, organise the forced sale of such assets subject to the protection of the legitimate interests of their owners, and annul with respect to natural or legal persons who have acquired the rights or assets in question through the unlawful transaction, the acts, decisions, resolutions or proceedings of the supervisory and managing bodies or undertakings over which control has been obtained irregularly.

The High Authority is also empowered to make such recommendations to the Member States concerned as may be necessary to ensure that the measures provided for in the preceding subparagraphs are implemented under their own law.

In the exercise of its powers, the High Authority shall take account of the rights of third parties which have been acquired in good faith.

6. The High Authority may impose fines not exceeding:

- 3 per cent of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in paragraph 4;
- 10 per cent of the value of the assets acquired or regrouped, on natural or legal persons who have evaded the obligations laid down in paragraph 1: this maximum shall be increased by one twenty-fourth for each month which elapses after the end of the twelfth month following completion of the transaction until the High Authority establishes that there has been an infringement:

—10 per cent of the value of the assets acquired or regrouped or to be acquired or regrouped, on natural or legal persons who have obtained or attempted to obtain authorisation under paragraph 2 by means of false or misleading information;

—15 per cent of the value of the assets acquired or regrouped on undertakings within its jurisdiction which have engaged in or been party to transactions contrary to the provisions of this Article.

Persons fined under this paragraph may appeal to the Court as provided in Article 36.

7. If the High Authority finds that public or private undertakings which, in law or in fact, hold or acquire in the market for one of the products within its jurisdiction a dominant position shielding them against effective competition in a substantial part of the common market are using that position for purposes contrary to the objectives of this Treaty, it shall make to them such recommendations as may be appropriate to prevent the position from being so used. If these recommendations are not implemented satisfactorily within a reasonable time, the High Authority shall, by decisions taken in consultation with the Government concerned, determine the prices and conditions of sale to be applied by the undertaking in question or draw up production or delivery programmes with which it must comply, subject to liability to the penalties provided for in Articles 58, 59 and 64.

Source: Office for Official Publications of the European Communities.