

COMMISSION DECISION

of 7 April 1975

authorizing the formation of a holding company in the commercial vehicle, bus and articulator tractor industry

(Only the German and Italian texts are authentic)

(75/452/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to High Authority Decision No 24/54 ⁽¹⁾ of 6 May 1954 laying down in implementation of Article 66 (1) of the Treaty a Regulation on what constitutes control of an undertaking;

Having regard to the application submitted by Fiat on 12 September 1974;

Having obtained the views of the Italian and German Governments;

Whereas:

1. Fiat SpA (Fiat), Turin, is a steel-producing undertaking within the meaning of Article 80 of the Treaty with a share capital of Lit 150 000 million;

2. Klöckner-Humboldt-Deutz (KHD), Cologne, is a mechanical engineering undertaking, producing, among other things, commercial vehicles and buses, with a share capital of DM 182 million, 25% of which is held by the commercial company Klöckner and Co., Duisburg, which apart from its other activities is one of the largest steel stockholders in the Community;

3. By the agreement concluded on 10 July 1974, which is to enter into force as from 1 January 1975 if authorized by the Commission, Fiat and KHD propose to transfer to a holding company formed under Dutch law and known as Industrial Vehicle Corporation (IVECO) a given part of their assets relating to commercial vehicles and buses for on-highway and off-highway use;

4. Initially, 80 % of the share capital in IVECO will be subscribed by Fiat and 20% by KHD. Whenever the capital of IVECO is increased, Fiat and KHD

will both subscribe in such a way as to preserve the four-to-one ratio in favour of Fiat. The parties will be represented on the board of directors in proportion to their shareholdings;

5. As a result of its 80% shareholding in IVECO and of its majority position on the board of directors, Fiat will be in a position to exercise sole control over IVECO's activities. It can therefore be assumed that Fiat will control IVECO within the meaning of Decision No 24/54. The transaction will therefore entail a concentration within the meaning of Article 66 (1) between Fiat and the firms transferred by KHD to the IVECO group;

6. In 1973 Fiat produced 1 550 000 metric tons of finished rolled products. In manufacturing the vehicles involved in the transaction it used approximately 180 000 metric tons of steel, i.e. about 11.6% of its total output. It used nearly 90% of its output of rolled steel products in its own processing plants;

7. During the same period KHD's steel input for the manufacture of vehicles was 11 600 metric tons — approximately 0.7% of Fiat's total output of finished rolled products;

8. A consequence of the transaction at issue is that it will be possible for Fiat to supply finished rolled products which KHD has hitherto purchased from other producers. However, any resulting expansion of FIAT's internal outlets is likely to be negligible and would not bring about any significant change in Fiat's market position as a supplier of finished rolled products;

9. The proposed transaction then, will not give Fiat the power to determine prices, to control or restrict

⁽¹⁾ OJ of the ECSC No 9, 11. 5. 1954, p. 345/54.

production or distribution or to hinder effective competition in a substantial part of the market for finished rolled steel 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;

10. The transaction consequently satisfies the tests for authorization under Article 66 (2) of the Treaty and may be authorized;

11. The effects of this concentration on the markets for commercial vehicles, buses and articulator tractors have been examined in the light of the competition rules of the EEC Treaty;

12. Any agreement or concerted practice between the parties going beyond the scope of the transaction here at issue will have to be notified to the Commis-

sion for appraisal in the light of Article 65 of the ECSC Treaty or Article 85 of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The formation of the holding company IVECO is hereby authorized.

Article 2

This Decision is addressed to Fiat Società per Azioni, Turin, and Klöckner-Humboldt-Deutz AG, Cologne.

Done at Brussels, 7 April 1975.

For the Commission

The President

François-Xavier ORTOLI
