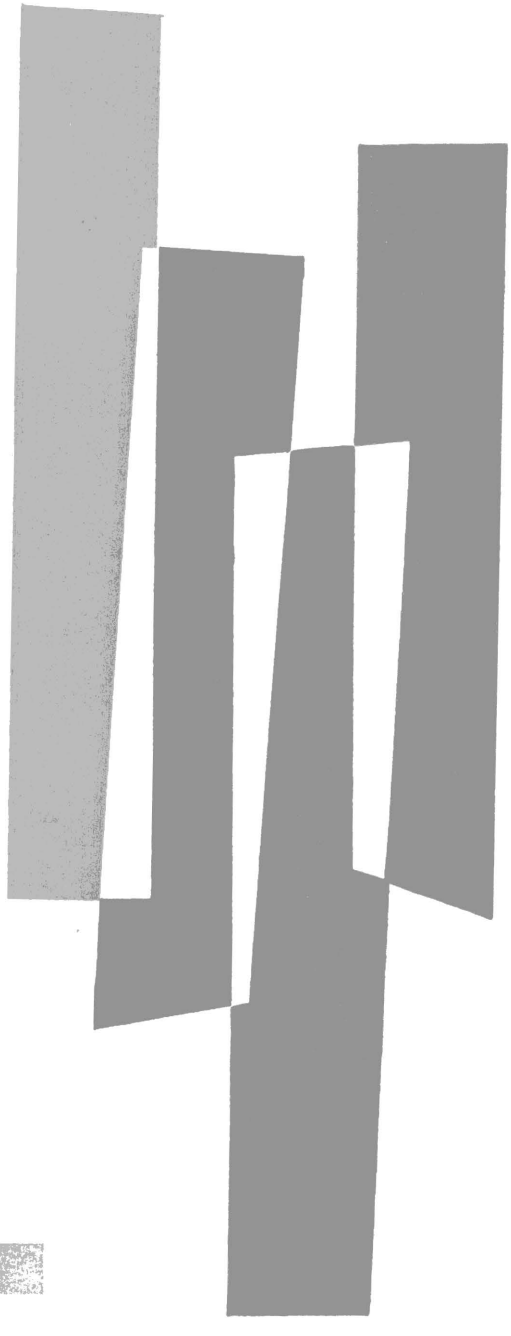
EUROPEAN
COAL AND STEEL
COMMUNITY

THE HIGH AUTHORITY

REPORT
ON
THE HIGH AUTHORITY'S POLICY
CONCERNING
CARTELS AND CONCENTRATIONS



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submitted, with the Twelfth General Report
on the Activities of E.C.S.C.,
for the consideration of the Internal Market Committee
of the European Parliament

April 20, 1964

NOTICE TO READERS

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INTRODUCTION

The High Authority has been requested by the Internal Market Committee to submit an account of its policy regarding the implementation of Articles 65 and 66 of the E.C.S.C. Treaty. It would first mention that Prof. Wagenführ's Report E.C.S.C. 1952 - 1962, (1) a special reprint of which was recently laid before the Committee, contains an exposition of the subject which fully reflects its own thinking.

Moreover, the following briefly restates, from the angle both of theory and of practice, a number of fundamental points in this connection which have already been gone into at various of the Committee's meetings.

The High Authority's function under the two Articles is to issue rulings on specific cases, either in response to applications for authorization or on its own initiative. Accordingly, its policy can best be indicated by referring to the more important of its decisions and conclusions in this regard. This in itself makes clear that the High Authority has not simply adopted a string of empirical decisions: on the contrary, a well-marked line of connected thought emerges, showing that it has adhered to a systematic policy in line with the provisions of Articles 65 and 66.

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(1) This Report is available, in the four official Community languages only (French, German, Italian and Dutch), from the Central Sales Office for Publications of the European Communities, 2, Place de Metz, Luxembourg.

In implementing the Articles, the High Authority has in each case to take account of certain basic factors and of general economic trends and developments, which may be roughly summed up as follows.

a) It is nowadays a recognized point of economic theory that the nature and degree of competition are governed by certain given elements, such as the structure of the markets concerned, the number and weight of the market operators, the elasticity of supply and demand, and considerations of location and of transport distances. The degree of competition in any particular market cannot therefore be regulated at will. This is very much the case with oligopolistic setups, of which the Community coal and steel industries are typical examples. Articles 65 and 66 have to be interpreted in the light of these built-in facts, which the Treaty cannot alter. The High Authority is required simply to see to it that competition is not more restricted than these Articles permit.

b) The structure of the coal and steel markets is dictated by certain conditions of production and competition which are only to a limited extent intercomparable. The most important factor in this respect is that the coalmining industry is so very much more tied by questions of location. In addition, production and marketing conditions have undergone radical changes since the Treaty came into force, partly as a result of alterations in transport flows.

The following points should be specially mentioned.

When the Common Market was first introduced, Community coal was still vital to the covering of the six countries' overall energy requirements. Since then, technical and economic developments have caused it to lose a great deal of ground to oil and natural gas. This substitution process has been further accelerated by changes in the transport field, and hence in transport costs, including in

particular on the one hand the movement of maritime freight-rates and on the other the installation of a growing network of pipelines. Consequently, despite persevering and successful efforts to step up productivity, the Community coalmining industry's competitive position has entirely altered.

The energy market today forms very much more a single whole than it did even a few years ago. For competition to be a working possibility in such a market, the rules of competition would need to be the same for all the energy sources. And this of course they definitely are not, as is clear if we compare the relevant provisions of the Treaty of Paris and the Treaties of Rome. It should be added that elasticity of supply differs very widely as between the coalmining, the oil and the natural-gas industry, with the obvious result that the suppliers' approach differs accordingly.

These circumstances explain the action taken by some individual Governments to avert or alleviate serious hardship to the collieries and the miners. Provided State intervention of this kind does not involve the collieries in actual restriction of competition, the High Authority can take no steps under Articles 65 and 66. This is not to say, however, that it is precluded either from continuing to investigate individual cases as they arise, or from conducting its activities as usual in accordance with other provisions in the Treaty. In these circumstances, both the High Authority and the European Parliament have repeatedly drawn attention to the desirability of amending the anti-restrictive provisions in line with the changed situation.

Articles 65 and 66 afford very little scope, however, more particularly inasmuch as they form a connected whole with Article 4 and Article 60 (see Wagenführ Report, n° 343). The Court of Justice in its legal ruling on the proposals submitted to it for the amendment

of Article 65 along these lines pointed out that the Article was indissociably bound up with the basic provisions of the Treaty. The High Authority is accordingly obliged to enforce the Treaty as it stands. It is a quite different and altogether bigger question how far a common energy policy should be framed to take account of these altered circumstances.

c) In the steel sector also the pattern has shifted considerably in the past ten years - not, admittedly, to anything like such a revolutionary extent as in the case of coal, but nevertheless enough noticeably to affect the industry's conditions of competition. A combination of technical and locational developments is mainly responsible. The technical trend - largely influenced by the fact that the same process is going on, and frequently going on faster, in countries ouside the Community - is towards increasing concentration of production in large production units.

This is not, however, necessarily synonymous with restriction of competition in the market. Although when two enterprises form a concentration competition between them of course ceases, the stronger market position occupied by the new enterprise so constituted can serve to intensify competition with others. The larger the production units become, the more, as a rule, the market too should broaden, with competition becoming fuller and keener. Generally speaking, in the appraisal of horizontal steel concentrations the relevant market is today more and more having to be taken as covering the whole northern industrial triangle, comprising the component segments of the Ruhr, the Netherlands, Belgium, Luxembourg, Northern France, Lorraine and the Saar. For competition among the enterprises is more and more extending throughout this area.

Furthermore, in judging conditions of competition in the steel market and assessing impending moves towards concentration, it is becoming necessary to take increasing account of factors concerning the Community's external trade relations.

Thus the difference between external duties on steel products and on manufactured products can decisively affect the type of co-operation, and in particular the range and scale of vertical concentrations, within the Community. It is quite possible that a reduction of duties on manufactured steel goods will encourage increased vertical concentration between Community steelmakers and manufacturers. Whether intra-national or cross-frontier concentrations will predominate will depend, among other things, on the degree of harmony among the fiscal and company-law systems in the Community.

d) The Common Market for ore has also been undergoing structural changes, partly coinciding with locational shifts in the iron and steel industry. So far, however, there has been no major impact on competition in this sector.

e) The position as regards scrap is, by and large, that the Community cannot cover its requirements in full from its own resources. When the Common Market was first introduced, a compensation scheme for imported scrap was set up to ensure equitable distribution of availabilities among all enterprises: this arrangement, which led to certain cartel-type agreements, is described in detail in the Report. How matters will develop in the future is, however, at present uncertain. It seems likely that the general weakness of the scrap markets, and the consequent inducements to speculative activity, will continue to present problems under Article 65.

f) One of the implications of these structural changes is of course (as was emphasized in particular in the Fayat Report to the European Parliament) that the criteria earlier adopted require radical revision. The structural difficulties in the coal sector and the strides being made by the alternative energy sources make nonsense of the fears which used to be voiced that the collieries might be increasingly absorbed, via concentrations, by the coal consumers. The spectre of "giantism" that is held up in some quarters in view of the tendency, for technical reasons, for production units to increase in size may be discounted, especially as it is the High Authority's principle in approving concentrations to ensure that a sufficient degree of competition is maintained. Hence in concentration policy the purely quantitative aspect takes second place to other considerations: these include in particular the elimination of interlocking directorates and of certain types of delivery contract, which would be liable to impair adequate competition among the large units.

I

THE FUNDAMENTALS

1. The coal and steel markets are, at all events at producer level, oligopolistic in character.

a) The number of producers is comparatively limited.

b) The fewness and the size of the enterprises are largely dictated by technical production conditions, and in particular by the substantial capital outlay on the installation of plant. Current technical developments, including especially the introduction of continuous rolling, large-diameter blast-furnaces and modern steelmaking methods such as the oxygen-blowing process, are not only making for a considerable extension of works' capacities, but are also influencing the enterprises' moves regarding concentration (see below).

c) Capital-intensive enterprises with high fixed costs are subject to special production and marketing conditions, which are the reason for both the unusually wide variety of competitive devices they adopt and their predilection for restricting competition.

d) The nature of concentration and of potentially restrictive inter-enterprise co-operation frequently differs very considerably according both to prevailing custom and to such factors as the state of fiscal and company law in the individual Community countries: this makes it difficult to compare degrees of concentration and the scale and implications of particular restrictive arrangements.

e) At the same time, care has to be taken in assessing the enterprise pattern at any given juncture, since experience has shown that concentrations or extensions of enterprises tend to ensue elsewhere in the market. It is thus necessary to determine how far there can be said to be sufficient existing balance in size as among competitors in the markets, with an eye both to the probable overall trend and to the probable reactions of the other competitors.

f) There are various other points to be considered in addition to the size of the enterprises and concentrations. One of the most important is the growing market interpenetration in the Community, which is reflected in the geographical delimitation of the "relevant markets" covered by High Authority Decisions. The more extensive and intensive interpenetration in the Common Market becomes, the larger the segments of it that are liable to be treated as the relevant market for the purposes of any particular Decision on cartels or concentrations.

g) It has further to be considered, taking all other circumstances into account, how far the competing enterprises are capable of taking independent, unbiased decisions concerning competition. Consequently, in accordance with the European Parliament's Resolutions on the subject, the High Authority has been making it more and more its practice to issue its authorizing Decisions subject to specific conditions regarding interlocking directorates or material links between enterprises, requiring these to be kept on a scale where they cannot interfere with the proper play of competition.

h) In appraising competition between comparatively large enterprises or groups of enterprises, or joint-selling agencies, in oligopolistic markets under E. C. S. C. jurisdiction, a different approach has to be adopted according as the competing parties are in the steel or in the coal sector. Although conditions of competition among steelmaking firms have been increasingly affected, especially of late, by locational shifts, they are still very much freer than the collieries with regard to their natural and technical production conditions, and hence to their conduct in competition. The collieries, for reasons which need not be gone into here, are not able readily to adjust themselves to changes in the market and in the pattern of competition; in addition, it must be borne in mind that they face the oil companies on unequal terms, partly because coal and oil fall under two different Treaties, and partly because the oil industry is a world organization.

i) The European Parliament's Internal Market Committee is advocating an international comparison of the structural and competitive situation of the Community iron and steel industry with that of other major producer areas. As regards comparison of prices and costs, the Wagenführ Report (Nos. 47-82) describes the practical and methodological difficulties, and seeks from available facts and figures to assemble a rough picture of the situation, which within the general terms of reference applying clears up a number of points in this connection. As regards market structure, it is proposed in the following pages to offer some additional particulars, though with the reminder that country-by-country comparisons can be misleading: apparent numerical equivalents may not be genuinely equivalent, as comparability can often be seriously affected by imponderables peculiar to the individual country in question, to its economic and social climate and its legal system.

2. Basing ourselves on these fundamentals, we can now describe, referring as appropriate to important specific cases, both the general complex of problems connected with cartels and concentrations, and the High Authority's own policy in the matter, in particular regarding the implementation of Articles 65 and 66 of the Treaty. Reference is made in the Wagenführ Report (No. 345) to the forces which in oligopolistic markets regularly produce a tendency to try to restrict competition by arranging either inter-company agreements or concentrations.

3. The Report's point is (leaving on one side, for the sake of argument, the Treaty's special provisions on the subject, and in particular its ban on discrimination) approximately as follows. The big enterprises possessing enormous plant, whose aggregate capacity frequently exceeds actual demand, are not obliged to adopt any given line in competiton. They can compete all-out or at half-throttle. But competing does not consist merely in keeping or reducing general costs to a minimum in order to be able to make more attractive offers: as conducted by enterprises with high fixed costs, it can also consist in a deliberate policy of price differentiation. Orders will be accepted the returns on which will not cover the whole cost of production, only that represented by the additional order itself, plus a varying portion of the fixed costs. For it may be considered preferable to meet at least part of the fixed costs out of an extra order - i. e. to raise the utilization rate of the enterprise's capacity - than to forgo the order.

This type of market strategy causes enterprises indirectly affected (by the loss of orders) to counter-attack in kind by pointing down their prices.

4. In recognition of this problem, the Treaty in addition to prohibiting discrimination (in Article 60) compels enterprises to publish their price schedules. This rule is, however, rendered largely ineffective if non-Community suppliers come forward with low-priced quotations based on precisely the same considerations as those just described.

Such action by outside enterprises results in their Community competitors aligning their prices downwards: this practice, which is permitted by the Treaty, is liable also - depending on the general plant utilization position and the current degree of overcapacity - very appreciably to affect the overall Community price level.

For from the transport angle the Community is wide open. Practically any point in it is easily accessible from the sea, so that even comparatively small tonnages imported from non-Community countries can have a disproportionate impact on prices throughout the internal market. It is worth bearing in mind in this connection that the Community's maritimity (1) is 7 1/2 times that of the United States.

(1) The ratio of ice-free coastline to surface area.

5. A further point is that most of the Community's coalfields and ore- and steel-producing areas lie close together within a radius of only a few hundred miles. Moreover, a large proportion of the manufacturing firms for whose custom all the steelmakers are competing are also located in or close to these same areas.

The United States has a large internal market very much less influenced by imports. Total American imports of finished rolled products in 1960 were only $\frac{1}{12}$ again as high as the Community's. In other words, whereas the Community is a market in which producers are exposed, within a comparatively small area, to competition not only from one another but also to a very notable degree from outside, the American companies enjoy a capacious internal market in which imports play a much smaller part.

It is true that the American iron and steel industry too is highly concentrated geographically, more particularly around Pittsburgh. Nevertheless, many enterprises are specially favourably situated in relation to their outlets, either because the rest of the producers are in quite different parts of the country, because they themselves are in the immediate proximity of major consumers or consumer centres, or because they are located close to the sea, the Great Lakes or other waters, which offer them cheap and reasonably reliable supply lines to their markets.

Consequently, they can afford to, and for the most part do, abide by the anti-discrimination rules in force (admittedly in many respects differently formulated than those in the E.C.S.C. Treaty): this of course in effect restrains competition, at any rate competition by price differentiation.

The fact that a very marked trend towards concentration has developed in the United States too is another matter. The growing degree of concentration is illustrated by the figures in Annex 1 and the corresponding graph in Annex 2.

The conclusion which here suggests itself for the Community is a different one: the strong stimulus given to competition when it is both possible and necessary to operate price differentiation by aligning on extra-Community quotations induces as a natural reflex efforts to restrict competition, though these are unlikely to be successful in a slackening market.

II

CARTEL POLICY

6. Having made these introductory points, we can now go on to consider more fully the High Authority's policy with regard to cartels, i. e. agreements and arrangements serving to restrict competition.

The first aspect which should be stressed (and is stressed in the Wagenführ Report) is the extremely sweeping nature of the actual prohibition in Article 65, 1. The provision that "all agreements among enterprises, all decisions of associations of enterprises and all concerted practices tending to prevent, restrict or distort the normal operation of competition" are by the terms of Article 65, 4 null and void, and "may not be invoked before any court in the member States," is drastic indeed. A firmy-welded cartel able to withstand adverse circumstances needs disciplined internal cohesion and all necessary rights at law. But if it lacks this strict internal organization and cannot coerce its members (more particularly by imposing penalties for non-compliance with its directives), in consequence of the rule that cartels not approved by the High Authority have no means of legal redress, then any illicit agreements of this kind prove extremely fragile and ineffective. This applies in particular to such for the Treaty's purposes thoroughly undesirable agreements as producers' price rings and tonnage pacts.

That Article 65 does thus operate comprehensively and directly has been borne out in practice. Its operation is thus a linchpin of the Treaty, and more especially of the basic provision in Article 2 that "the mission of the European Coal and Steel Community is ... progressively (to) establish conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity."

7. This is not, of course, to say that occasional efforts have not been detected to restrain competition by means of inter-enterprise agreements, principally in connection with stiffening competition by price differentiation, as described above. In a competitive stituation such as this, the High Authority, as the executive responsible for compliance with the Treaty, has to be continually on the alert for such attempts. There is, however, a way in which it can keep a general watch on restrictive practices, namely by checking up all the time on the prices actually charged in practice.

These indicate that, for example during the recent notable weakening of the steel market, there can have been no undisclosed restrictive practices on any scale to speak of: on the contrary, price competition has become keener and keener.

AGREEMENTS CONCERNING NON-COMMUNITY MARKETS OR WITH NON-COMMUNITY ENTERPRISES

8. Another question which has been posed in this connection is the attitude to be adopted to any restrictive agreements between Community and non-Community firms. Apart from Article 3, f, the Treaty's pricing rules do not apply to quotations to third countries. The question originally arose out of the Community steel industry's arrangement to hold regular meetings in Brussels with a view to lining up enterprises' sales approach in non-Community markets; here again this was economically dictated by the fact that, as we have seen, oligopolistic markets offer opportunities for price differentiation, notably by freight absorption.

Accordingly - although commercial policy as such remains in the hands of the Governments - the High Authority is keeping a very careful eye on the general trend in non-Community markets, more especially to see whether any concerted practices on the part of Community enterprises might be having repercussions contrary to the Treaty on competition within the Community.

Up to now, there has been nothing to suggest that this is the case.

9. Nor has there been any indication of restrictions on trade in Treaty products with non-Community countries due to any causes other than official Government measures such as, in particular, that to limit imports of non-Community coal.

We have of course to remember the very considerable practical difficulties involved in concluding price or tonnage agreements also covering non-Community markets - and that not merely by reason of the legal obstacles presented by the GATT and, indirectly, the E. C. S. C. Treaty rules. Price and tonnage cartels, to be really effective, demand more thoroughgoing measures than just action on exports.

10. Of even greater importance are the economic considerations proper. Any inter-enterprise agreement on prices and tonnages in non-Community markets is in itself highly vulnerable. Since in present circumstances there can be no question of world cartels of all producers of any size in the markets concerned, obviously only smaller-scale agreements are possible. Now a limited ring of producers adhering to price and tonnage agreements would simply be an incentive to other producers in the world to undercut them and offer larger tonnages.

Thus as things now stand, really effective cartellization extending to non-Community markets is hardly practicable, unless in respect of purely localized markets.

Moreover, the steady rise in the Community's imports of outside iron and steel products clearly demonstrates that there are no effective privately-agreed restrictions appreciably affecting trade in this sector at any rate between the Community and the rest of the world. On the contrary, the Community is faced with real problems of commercial policy, which have compelled the High Authority to take action.

INTRA-COMMUNITY AGREEMENTS

11. The implementation of Article 65 within the Community and the High Authority policy in this regard fall into two parts, viz.

(1) the prohibition of inadmissible restrictions of competition;

(2) the authorization of restrictive arrangements under Article 65,2.

Prohibitions and refusals to authorize

12. For applications for authorization rejected under Article 65 the reader is referred to the list in the Twelfth General Report (No. 253), and to the High Authority's Decisions concerning certain concerted practices in the Common Market for scrap and concerning the provision of information by the former regional bureaux of the Joint Office of Scrap Consumers (Journal Officiel des Communautés Européennes of March 12, 1960, p. 551, and March 25, 1960, p. 594).

In a number of cases in which High Authority investigations are still in progress, it is quite possible that authorization will be refused and/or certain activities prohibited.

13. The problems involved may be divided under three heads, which taken in combination provide a reasonably accurate picture of the High Authority's past and present work:

(a) the joint coal-selling arrangements (partially complicated by a number of Government measures adopted in the coal sector);

(b) certain agreements concerning scrap;

(c) attempts by some dealers to establish what would have amounted to a sales cartel.

Coal selling

14. The whole question of the joint coal-selling agencies has in recent years been largely bound up with the radical changes in the energy sector, which have in varying degrees involved the colliery companies in a full-scale structural crisis. Very understandably, efforts have been made to stem the shrinkage in sales outlets by cartellizing to the maximim, and the Governments of the countries affected have sought in various ways to alleviate if not to remedy the situation.

15. We are here concerned principally with the cartel aspect involved, which has, incidentally, been the subject for years of detailed discussion between the European Parliament and the High Authority.

The development of the coal crisis has led in two concrete cases to serious difficulties under Article 65.

(a) The Ruhr mining companies submitted a first application in December 1959 for authorization to set up a single agency to sell jointly on behalf of all the Ruhr collieries: this was withdrawn on February 29, 1960, and resubmitted with certain amendments, and with reasons appended, on May 20 following.

The High Authority found itself unable to approve the application. The companies appealed against its refusal to the Court of Justice of the Communities: the Court, however, in its judgment of March 18, 1962, dismissed the appeal and so upheld the High Authority's Decision No.16/60 of June 22, 1960 (cf. Eleventh General Report, Nos. 341 ff.).

(b) Much the same trouble occurred over the Belgian coalmining industry's efforts to establish a single tightly-knit selling agency for all the country's collieries while the Belgian coal market was temporarily sealed off under Article 37 of the Treaty. Here again the High Authority could not see its way to endorsing such a sweeping restriction of competition. In the end, the Belgian companies, after lengthy negotiations, submitted a fresh application for permission to institute much more loosely-organized joint-selling arrangements, with some companies left unaffiliated.

In view of the sizeable proportion of the industry's production represented by the unaffiliated collieries, and of the limited powers to be allowed the new agency Cobechar, the High Authority on January 16,1963, gave its approval, subject to eight specified conditions.

In both cases, therefore, the High Authority strictly observed the criteria for authorization set forth in Article 65.

16. The question remains, however, what changes, if any, need be made to the Treaty, and in particular to Article 65, to enable more effective steps to be taken to cope with the structural crisis resulting from the developments in the energy market.

As early as July 1, 1960, the European Parliament in plenary session carried a Resolution (based on a Report to it by M. Poher) of which points 7 and 8 ran as follows:

> "(The European Parliament ...)
> "is of the opinion that the provisions of the Treaty establishing the European Coal and Steel Community have proved in several respects difficult to implement, more especially with regard to pricing, cartels and concentrations;
>
> "requests the High Authority to examine as soon as possible how the Treaty could be amended to eliminate the difficulties in question, and thereupon to submit proposals on the subject, taking due account of the aims and objects of the Treaty."

A joint Council of Ministers/High Authority Study Committee was then set up, which drafted a proposal (1) for the amendment of Article 65 in accordance with the "minor revision" procedure provided for in Article 95, 3-4, and submitted this to the Court of Justice for a legal ruling (1). The Court's judgment handed down on December 13, 1961, stated that such drastic amendment of Article 65 was incompatible with Article 4 of the Treaty, and hence could not be effected by "minor revision."

Scrap

17. The High Authority also declined to approve under Article 65 certain proposed arrangements for the joint buying of scrap. While the negative Decision in question are not among the most important of its Decisions in connection with Article 65, they deserve mention an account of the principle involved, which is likely to face the High Authority with

(1) For details see Tenth General Report, No. 265.

further problems in the future. The principle is that of the competition to be postulated in weak and highly speculative markets of major importance in keeping the Community steel industry properly supplied with one of its indispensable raw materials, namely scrap.

An account of the scrap market and the scrap supply problem will be found in Nos. 486-494 of the Wagenführ Report.

The problem has several aspects. In the first place, price movements, especially where influenced by speculation, cannot be considered a normal factor in restoring market equilibrium. In the second place, the Common Market has not enough scrap of its own, which makes the scrap market more unstable than ever: the permanent "scrap gap" renders it particularly sensitive to Government intervention vis-à-vis the Community's traditional outside scrap suppliers.

Consequently, quite apart from actual official bans on scrap exports, fresh problems are bound to be constantly cropping up, of the type which an effort was made in the past to solve by setting up the compensation scheme for imported scrap, under Article 53 of the Treaty, which was authorized on May 19, 1953, and continued until December 1, 1958.

Dealers

18. Cartel problems will also come more to the fore in the trade as competition becomes keener in this sector too. The Treaty, it should be noted, totally forbids straight price cartels and agreements allocating sales areas or fixing sales quotas: for these there is no possibility of authorization.

Consequently, one group of steel dealers who had drawn up such agreements relating to a spcified portion of the market abandoned the scheme after clarifying the practical and legal position with the High Authority (1). This may be presumed to have been noted by other dealers in the Community as a precedent.

Another highly intricate case now before the High Authority concerns efforts by a number of coal-briquette producers, all of whom are at the same time dealers, to introduce certain arrangements for technical co-operation without involving restrictions counter to Article 65 on competition within the trade.

(1) See Tenth General Report, No. 275.

19. Thus by its negative Decisions and preventive action on cartels alone the High Authority has shown itself to have a clearly-defined policy, even though it is at the same time evident that this has by no means always produced a satisfactory overall economic solution to the problems presented by the various situations concerned.

Authorizations

20. On the other hand, in the course of its activities the High Authority has also issued a number of authorizing Decisions under Article 65,2.

As we are concerned to indicate the main lines of the High Authority's policy, there is no object in enumerating the many minor authorizations granted (e. g. of small selling agencies), some of which have since ceased to be required (see list following No. 253 of the Twelfth General Report). It seems preferable to show, referring where appropriate to some of the more important Decisions, how the High Authority is trying to tackle certain problems of economic policy under Article 65. There are three categories of Decisions which merit special attention in this connection, viz. the authorization of joint coal-selling and coal-buying agencies, the authorization of specialization agreements and joint-selling arrangements for certain iron and steel products, and the authorization of a system for the coal trade closely approximating to specialization.

Joint buying and selling of coal

21. Most of the main points have already been made regarding the basic problems involved in Decisions concerning joint coal-selling agencies. In addition, the Wagenführ Report (No. 336) specifies one particular difficulty presented not only by Article 65 but even, on careful examination, by Article 2. The provision in the latter that

> "the Community must progressively establish conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity, while safeguarding the continuity of employment and avoiding the creation of fundamental and persistent disturbances in the economies of the member States"

would suggest a regulating mechanism based on the principles of liberal economics. As has been pointed out on the subject of the range of action open to enterprises in an oligopolistic market, however, it is by no means

possible to count on disturbances in the Community's economic affairs balancing up of themselves. Consequently, the High Authority has tirelessly urged the need for a co-ordinated energy policy.

It has done so in particular in the interests of the coalmining industry, since in this sector, quite apart from the strategic possibilities for enterprises in an oligopolistic market, the natural and unalterable production conditions, and hence the differences in production costs, are more and more tending to rendre this basic provision of Article 2 unworkable - a point also repeatedly emphasized by the European Parliament.

22. This is not the place to describe in detail the Community coalmining industry's present structural difficulties. The High Authority is, as we know, doing its utmost to bring the member States to formulate a single common energy policy. Unless and until they do so, the factors responsible for the structural crisis will continue to operate unchecked.

The problem is that the coal crisis will not solve itself by the disappearance of uncompetitive collieries without this at once endangering other important Treaty objectives. Consequently, even the Court of Justice in its judgment upholding the High Authority's refusal to endorse the establisment of a single Ruhr coal-selling agency did not at all conclude that such extensive competition as this was necessary in the coal sector, only that there must be a certain minimum of competition among large units.

23. Ruhr coal-selling agencies. - The High Authority has approved the institution of two separate agencies for marketing Ruhr coal, which it considers definitely do ensure that minium of competition the Court has construed the Treaty as demanding. The Netherlands Government, however, has lodged an appeal against its authorizing Decision. As the matter is at present sub judice, the High Authority would confine itself to the following observations.

24. By the terms of the agreements submitted by the mining companies and the conditions on which the authorizations were issued, the two agencies must be regarded as distinct and independent bodies. Hence the great prerequisite for competition between them is present. The prohibition on interlocking directorates ensures that this precondition is observed, and will, it is hoped, make impossible any organizational temptation for the two to enter into illicit restrictive agreements. Mere suspicion that the prohibition in Article 65,1 was nevertheless being circumvented and a single Ruhr coal-selling agency being clandestinely reorganized would not have been sufficient grounds for an adverse Decision: the High Authority has guarded against such a danger (which cannot of course be altogether ruled out in the case of the two agencies, any more than with

any other independently-operating enterprises in any sector) by availing itself of the supervisory powers provided for in Article 47 of the Treaty, which are set forth in detail in the conditions accompanying the Decisions.

25. As regards the respective size of the two agencies, the High Authority had a ready-made yardstick in the Court's findings as contained in Judgment No. 13/50. The question the Court deemed itself required to answer was:

> "Beyond what point does the tonnage offered by or through a cartel constitute such a 'substantial part of the products in question within the Common Market' as to interfere with competition in that Market in a manner incompatible with the aims and objects of the Treaty?"
>
> (Compendium of Community Case Law, Vol. VIII, p. 231).

The Court found that the proportions represented by the originally envisaged single agency - ranging from 26.1% to 43.7% of the total tonnages of hard coal, hard-coal briquettes and hard-coal coke sold in the Common Market in 1959 - did, even after any "necessary minor corrections" to these figures, constitute a "substantial part" within the meaning of the question. It further compared the respective size of the major selling agencies in the Common Market for the purposes of Article 66,2, which indicates "the importance attached by the Treaty to relative enterprise size with regard to the pattern of competition," and found as follows:

> "It is a matter of public knowledge that the production of, for example, hard coal of the enterprises affiliated to the single selling agency is approximately four times as great as that of any other coalfield in the Common Market, and twice as great as the total production of the Charbonnages de France, the only other organization of comparable size"
>
> (Compendium, Vol. VIII, p. 233).

26. In the light of this, we need only recall the facts set forth in Decisions Nos. 5 and 6/63.

In the coal year 1961-62, the shares of the mining companies affiliated to the two present agencies in the aggregate sales of the products concerned in the Common Market ranged from 14.2 to 23.5% in the case of the Präsident Agency, and from 11.5 to 21.0% in the case of the Geitling Agency.

A comparison of the 1961-62 production of the companies affiliated to the two Ruhr agencies and of the Charbonnages de France works out as follows:

	Präsident Agency		Geitling Agency		Charbonnages de France	
	'000 metric tons	% of Common Market total	'000 metric tons	% of Common Market total	'000 metric tons	% of Common Market total
Hard coal	57,890	25.3	54,933	24.0	51,854	22.6
Hard-coal briquettes	1,989	14.2	1,675	12.0	4,980	35.6
Hard-coal coke	16,507	20.6	14,729	18.4	7,829	9.8

Accordingly, the Decision notes that:

"there would be no notable disproportion in size between these two agencies. On the contrary, the Common Market would contain two new units similar, even though not actually equal, in size."

27. Oberrheinische Kohlenunion. - A number of competitive problems have also arisen with regard to joint buying of coal and joint processing of that coal into briquettes and other valorized products. As will be recalled, the High Authority's first important move in this connection was, in the course of negotiations concerning the remodelling of coal distribution in South Germany, to secure the separation of the distribution network from the colliery companies, by authorizing the Oberrheinische Kohlenunion as a joint-buying association of South German coal dealers under Article 65, with the proviso that the independent dealers, i. e. those not affiliated to particular collieries, must have a majority of the votes.

It can of course be objected that this arrangement offers no assurance that it is not a camouflaged continuation of the earlier system. The High Authority, constantly mindful of this danger, kept any such possibility well within bounds by intensive check-ups: however, it has found that the Oberrheinische Kohlenunion is in point of fact developing more and more into the body the authorizing Decision designed it to be - an independent joint-buying association of South German coal dealers.

This outcome must be rated a High Authority success in implementing Article 65 of the Treaty, in line with the latter's general aims and objects, in such a way as to remodel a given state of affairs in accordance with a constructive market-pattern policy, so that it tends of its own accord to conform with the system sought by the Treaty. Instead of destroying an existing arrangement performing a useful economic function, the High Authority conducted lengthy discussions with the firms of dealers concerned, and finally got it settled that they should take over the Oberrheinische Kohlenunion as an association specifically of dealers, protected against undue influence on the part of the producers, and hence no longer serving to impair or distort competition among the collieries and their selling agencies in the producers' interests.

Steel specialization agreements

28. The stiffening competition in the steel market has led, as well as to a trend towards increased concentration (see following Section), to agreements designed to promote rationalization of steel production and distribution. Thus the High Authority has approved two agreements between the German steel firms Salzgitter AG. and Ilseder Hütte concerning specialization in the production and joint selling of merchant bars and wire-rod (Decisions Nos. 5/61 and 7/61).

29. The further intensification of competition both inside and outside the Community suggests that more agreements of this kind are likely to be on the way. Plans have come to the High Authority's knowledge for a specialization agreement which several major German steelmaking enterprises hope to conclude in respect of merchant bars and other steel shapes. This would raise quite a far-reaching problem of economic policy, touching the interests of producers, dealers and consumers alike. The producers in wishing to allocate rolling tonnages, e. g. for merchant bars, among several plants in order to permit continuous rolling of the same dimensions are very naturally concerned primarily to economize on costs. Savings on production costs, however, are in the dealers' and consumers' interests also, particularly if the rationalization of production enables delivery dates to be shortened and hence the volume of dealers' stocks to be reduced. It goes without saying that the agreements in question must not be so wide in scope as to endanger the degree of competition prescribed by the Treaty. Such competition is essential if the Communitys operational effiency are to be turned to the general account, i. e. shared with the consumer.

Coal trade

30. By its Decision approving an agreement for a delimitation of functions between the French coal wholesale and retail trades, which it rules to be closely comparable with a specialization agreement, the High Authority has taken an extremely important step in a major matter of principle. Constant efforts are being made to see that suppliers do not as a general rule compete against their customers, i. e. that wholesalers do not at the same time operate as retailers.

So long as this is left to the discretion of the individual firm, there is no problem from the point of view of the Treaty's provisions on competition. But it is a different matter where agreements are contracted delimiting respective functions. There are many such agreements in the Community, and the High Authority found itself required to decide whether it should regard Article 65 as applying to these or not.

It treated the French coal trade's division by agreement into a wholesale and a retail block as a test case enabling it to issue a ruling of far-reaching importance. In this it laid down that such agreements, though quite customary, did constitute restrictions of competition within the meaning of Article 65,1 of the Treaty, and accordingly required authorization under Article 65,2.

It is in no way the High Authority's intention to put obstacles in the way of agreements or combinations to institute a reasonnable allocation of functions. By issuing this Decision, however, it has equipped itself to ensure that these are not more restrictive than is necessary for their purpose.

III

CONCENTRATION POLICY

31. Concentrations are broadly speaking of two kinds,

- horizontal concentrations, between enterprises carrying on the same activity (one steel plant with another);

- vertical concentrations, between enterprises operating at successive stages of the economic chain (e.g. a steel plant with a manufacturing firm, a colliery with a firm of dealers).

HORIZONTAL CONCENTRATIONS

32. As can be seen from the list in the Twelfth General Report (second table following No. 254), a number of sizeable horizontal concentrations have been authorized, particularly between steelmaking enterprises. Some of them, as is explained more fully in Nos. 354 ff. of the Wagenführ Report, are properly speaking reconcentrations, part of the reversal of the post-war decartellization of German steel firms. There have, however, also been large-scale concentrations elsewhere in the Community, namely the Cockerill-Ougrée merger in Belgium and the establishment of the Société Mosellane de Sidérurgie, Paris.

Horizontal concentrations of this kind have faced the High Authority with some difficult problems regarding the implementation of Article 66. Since most of the enterprises concerned were already substantial producer units in their own right, one question to be decided was at what point such a concentration would infringe the requirements of Article 66 owing to the sheer weight of the intending participants.

As was noted in our introductory remarks, this does not depend solely on their absolute size and importance as such, but also on their relative importance vis-à-vis other enterprises, i.e. on the market pattern: this involves appraising the production programme.

The problem is rendered peculiarly complicated by the fact that market and production conditions do not stand still, but are developing all the time. Community crude-steel production has risen from

41,900,000 metric tons in 1952 to 72,700,000 in 1962: inevitable, this has affected the market pattern. Enterprises which before the war possessed as wide a variety of plant and production lines as they needed have found themselves compelled by the new production and market conditions not only to turn out larger tonnages, but also to broaden their range of products. This had given a very considerable impetus to the forming of concentrations.

Consequently, the already oligopolistic market has become more closely-knit than ever. This, however, by no means necessarily means a lessening in competition: on the contrary, a smaller number of more powerful competitors can even result in its intensification.

33. The great question is at what point a compact oligopoly consisting of a limited number of large enterprises can be deemed to involve the danger of ossification in the competition required by Article 66, 2, either because this handful of major operators prefer to consider one another's interests to such an extent that effective competition ceases, or because the biggest combines of all become undisputed market leaders to be meekly imitated by the rest.

In dealing with this problem, there are no absolute rules to refer to, and no past accumulations of experience to use in evaluating the situation with an eye to the future. All the High Authority can do is assess, taking careful account of all the factors involved, the changes likely to occur in the market pattern as a result of projected concentrations. For this, however, it does have quite a number of useful pointers permitting a reasonably objective appraisal of the situation.

34. First, there is the trend in the enterprises' position in relation to one another. The Wagenführ Report makes clear that despite the number of concentrations to date there is no reason for concern on this score: its graph on p. 57 shows the market pattern today to be considerably more balanced than, for instance, before the war.

35. The same applies when we compare the degree of concentration for the Community steelmaking enterprises as a whole with that in the other major producer areas, the United States, Britain and Japan.

Annex 1 gives the respective production and capacity percentages. From these a graph has been plotted (Annex 2), using the device customarily employed to show the degree of concentration in a particular economic sector, the Lorenz curve: that is to say, the more evenly production is spread over the individual enterprises in that sector, the more evenly the curve rises, until in the ideal case of absolutely equal distribution it figures on the graph as a diagonal. Where on the other hand there are a multitude of small firms and a few very lage ones, the curve

(indicating cumulatively the production of the whole sector) is at first very shallow and towards the end rises steeply.

This method, then, if we disregard the actual enterprise sizes concerned, can well be used to show the degree of concentration in different countries. Our graph indicates (as do the conclusions of the Wagenführ Report) that in the Community iron and steel production is more evenly divided among the individual enterprises than it is in any other three areas.

36. This is one valuable pointer suggesting that the trend towards concentration in the Community steel sector is in accordance with the requirements of Article 66. The fact that the actual size of the Community enterprises is very often greater than that of their opposite numbers in Britain, and usually much smaller than that of the corresponding American corporations, is a comparatively minor consideration -- especially if it is borne in mind that the British industry has its Iron and Steel Board to co-ordinate and, so far as may be, specialize its production, so that concentrations for this purpose are in many cases unnecessary.

The relevant market

37. In weighing up projected concentrations the High Authority has not, however, simply gone by the weight of the enterprises in the Community overall. It has examined the sales situation for the enterprises from the geographical angle, and determined for each case the "relevant market", as in American anti-trust practice.

This means that the market influence of a given enterprise is calculated assuming that the resulting restriction of competition will affect a smaller area in relation to the Common Market as a whole, and will hence be less advantageous to the enterprises concerned.

38. The relevant market for the purpose of assessing a restriction of competition is the market in which the enterprises operate and carry on or are exposed to effective or potential competition. This market has to be determined with respect both to the particular products and to geographical extent.

39. As regards products, the principle is that the relevant market covers products which the consumer can use interchangeably for the same purpose. Thus for instance in the case of the Société Mosellane de Sidérurgie (Somosid) it was found that broad-flanged beams were

more and more competing with, and even supplanting, the other types of beam: hence it is possible to define a single relevant market for both categories.

40. Geographically, the relevant market is usually the area in which the enterprise in practice sells most of its production. In this market it is a seller, in competition with the other sellers there, and it frames its sales policy in accordance with the conditions there prevailing.

However, the market so defined proves too constricted when the enterprise in working out its sales policy has also to take account of the potential emergence of further competitors. This is very much the case where, in view of the existence of large-scale, up-to-date production capacities, of the type and cheapness of the products, and of considerations of price in relation to transport costs, this potential additional competition is liable to materialize at any time. When this is so, the boundaries of the relevant market have to be drawn as far beyond the enterprise's main selling area proper as may be indicated by the conditions of the potential competition in question.

Consequently, it is not possible to define the relevant market geographically with complete accuracy, only to establish its apporximate boundaries, which the High Authority has to do on the basis of its knowledge of each particular case.

41. The relevant markets determined according to these criteria need not, of course, remain the same indefinitely and in all eventualities: they may well have to be extended, if only owing to increased market interpenetration, as well as to radical changes in production methods, and hence in production costs.

With the progressive consolidation of the Common Market, the relevant markets for steel at any rate may be expected to widen steadily, until they become increasingly co-extensive with the Common Market itself. This of course means a greater number of competitors, and greater actual and potential competition.

42. In addition, it should be noted that when the relevant market in question has been determined considerable difficulty is often experienced in determining the respective shares of the market. Frequently an accurate geographical breakdown of delivery statistics is not available for all the parties concerned. Even in considering potential competitors, or in connection with projected new joint ventures, it is necessary to refer to the production figures.

43. In the High Authority's early days the concept of the relevant market did not arise. In deciding whether proposed restrictions of competition were permissible, the High Authority did in each case take into consideration the position in respect of the national as well as of the Common Market, though without specifically stating the reasons for the distinction. The shares of the enterprises concerned in both markets were calculated, and the conclusion reached that these did not offer such scope as to be inadmissible under Article 66, 2. That is to say, the High Authority made no attempt to examine and determine which market was the really relevant one: it merely indicated the maximum (Common Market) and the minimum (national market). It was only able to do this because all the applications quite obviously fulfilled the conditions for authorization.

In the Sidmar case, however, this procedure was not practicable. For one thing, as Sidmar was a new enterprise to be launched jointly by a consortium of existing firms, there were no previous delivery connections to go by; for another, the Belgian market could clearly not be treated as the relevant market since, other considerations apart, the new enterprise's comparatively high-grade flat products were manifestly intended to be sold well beyond Belgium's frontiers. The conditions for the production and sale of these of themselves create a very sizeable market, in which each producer is most vitally concerned by the potential competition of the rest: each is compelled in making policy decisions to take into account what the others might do, even if they have not, or have only occasionally, competed with him closer home. Accordingly, the relevant market defined in this case was the whole northern industrial triangle.

In the case of the concentration August Thyssen-Hütte/Phoenix-Rheinrohr, a distinction had to be made between flat products on the one hand and finished rolled products other than flats on the other. In consideration of the sales conditions, the Federal Republic of Germany was decided to be the relevant market for the latter, and a larger area (on the same grounds as those applying in the case of Sidmar) for the former: purely for the sake of statistical simplicity, this larger area was not the northern industrial triangle, but the whole Common Market less Italy.

In the case of Somosid the question was to determine the relevant market for beams, wire-rod and merchant bars. With regard to these products, it was found that the enterprises to be concentrated were in competition with all Community enterprises selling to France, Belgium, Luxembourg, the Saar en south-west and south Germany. These areas were accordingly taken as the relevant market.

Market influence of the major enterprises

44. This problem always arises when one out of a fair number of competing firms occupies a specially strong position in all or certain of the markets concerned. Article 66 unequivocally insists that any application by such a firm for authorization to concentrate with another cannot be considered if the position in question is a "dominant" one.

The question remains, however -- and the Wagenführ Report restated it (in No. 362) with reference to the August Thyssen-Hütte/ Phoenix-Rheinrohr case, then still pending -- precisely where the line is to be drawn between permissible and impermissible market influence, i.e. up to what point authorization can be granted, or, as the Report puts it, "whether a concentration representing some 20% of German crude-steel production still qualifies for authorization (due account of course being taken of all other facts, and in particular of the enterprise structure)."

45. The point is not, as the High Authority has emphasized in a memorandum to the Internal Market Committee, to draw a hard-and-fast line. This would not indeed be possible: there are far too many factors to be considered, varying in incidence from case to case, and often needing to be rapidly reassessed in the light of changes in production techniques and market patterns. This is true of any share in the market of any product: it is especially true in the case concerned, inasmuch as crude-steel has properly speaking no "market", but is merely the criterion for the general importance of a steelmaking enterprise and its rolling potential. The market shares of finished rolled products have to be determined case by case, taking into account all the circumstances specifically involved.

Consequently, it is not even possible to indicate a size that could be cited as a valid criterion in all cases and for all products.

It may be added that the reason why the figures for enterprises' crude-steel capacity or production are constantly recurring in country-by-country comparisons is -- aside from their guidance value -- that crude-steel is a genuinely comparable indicator.

46. With regard to the "size" of the Thyssen-Phoenix concentration, the first point to be noted is that the crude-steel indicator, to have any significance at all, must be related not to German but to Community crude-steel production overall. The proportion then works out not at 20% but at barely 10%. In considering the products to be affected by the Decision, the High Authority came to the conclusion that the market share resulting from the concentration could not possibly, in all the

circumstances, constitute a threat to competition, since there would continue to be a sufficient number of competitors whose shares would afford an adequate counterpoise to maintain it.

In addition, the High Authority bore well in mind that even a concentration whose share in each of the individual product markets is not unduly large can nevertheless endanger the maintenance of that minimum of competition which the Treaty insists and the Court confirms to be necessary, if it does not fulfil the general prerequisites for competition in an oligopolistic market. From this point of view the High Authority regarded as the three prime essentials:

- that the individual market operators should be independent of one another;
- that the incentive to independent action should not be destroyed by their having advance knowledge of one another's reactions, since only uncertainty as to their competitors' future behaviour, and hence uncertainty as to the effects of any given step in their own market policy, can prevent ossification (i.e. in this type of market restriction) of competition;
- that individual enterprises or associations of enterprises should not be able to evade the rules of competition in force under the Treaty.

In these respects also the High Authority concluded that it could, in virtue of the general discretion allowed it by the Treaty, approve the concentration, subject to various conditions, which are set forth in detail in the Twelfth General Report (No. 240).

Its finding was therefore that the concentration in question did not overstep the bounds laid down by the Treaty with respect to the establishment of unduly powerful positions in the market.

Joint ventures and group effects

47. The increasing emphasis on the installation of capital-intensive, continuously-operating steelworks and rolling-mills has led to various projects for doing this as a joint arrangement between two or more existing steel companies.

One well-known instance is the establishment by several French steel enterprises, before the Treaty came into force, of the big flat-products company Sollac. Another important case of this kind, also concerning joint production of flats, was the establishment of Sidmar by a group of Belgian, Luxembourg and French firms, on which the High Authority issued a major Decision of principle.

48. The Sidmar case was the first to demonstrate that the restrictions of competition likely to result, through direct and indirect concentrations, from such joint ventures must be considered as a group effect, so that the shares of the market and/or shares of production concerned had to be taken into account in assessing the overall restriction involved (cf. Eleventh General Report, No. 349, and Wagenführ Report, No. 369). The High Authority in this particular instance, however, concluded that in all the circumstances the conditions for authorization were fulfilled, notwithstanding the group effect.

49. In the case of Somosid, on the other hand, granted the existence of a group effect competition would have been restricted in respect of such very large shares of production that the project could hardly have been authorized. Accordingly, a number of steelmaking firms with financial interests in the holding companies controlling the joint enterprise were debarred, by a condition attached to the authorization, from representation on the Board and administration of the latter. In this way they were prevented from participating with inside knowledge of Somosid's current business affairs in discussions and decisions concerning investment, production and marketing policy. The restrictive effects of this co-operative arrangement were thus brought within authorizable limits (cf. Twelfth General Report, No. 242).

The Somosid case clearly illustrates what a helpful instrument the power to attach such conditions is for the High Authority to approve concentrations which are desired by the enterprises and in line with the aims and objects of the Treaty.

50. The restriction of competition liable to result from groupings of this kind is of course not immediately comparable with complete suppression of competition such as would follow, say, a merger. All the same, it is not impossible that a group of enterprises launching a joint venture will in certain fields not only not compete with the new company but also discontinue or limit their competition with one another. This depends largely on the relation between the new enterprises's and the founder enterprises' production programmes.

If all the enterprises concerned make the same or interchangeable products and sell them in the same relevant market, competition among them in respect of these products is admittedly not bound, but very likely indeed, to be restricted.

Other groupings

51. The question of group formation and group concentration is thus very far from being solved. With the march of technical progress the High Authority will certainly be confronted by fresh problems, particularly in those parts of the Common Market, such as France and Belgium, where groupings by means of interlocking participations between producer enterprises have been a favourite device for concentration.

In other countries -- especially Germany, where the trend towards concentration has up to now taken more the form of monolithic combines -- this problem is accompanied by another (due to the same technical reasons), namely the probability of an extension of the system of long-term contracts for the supply of semis, for such purposes as ensuring better utilization of hot wide-strip capacity. This problem, which cannot be gone into here, may in some circumstances also have to be considered with reference to Article 65.

In both cases, care will have to be taken, by close examination as to eligibility for authorization and by making any necessary stipulations in such authorizations as are granted, to ensure that the technical improvements attainable through group action or through long-term supply contracts are in fact as far as possible attained, without involving the establishment of such close interconnections among the major groups as to make continued effective competition among them impossible.

52. Lastly, there is one further possible new development to which the High Authority is devoting particular attention -- the acquisition of holdings in Community enterprises by firms in third countries, and more especially in the United States.

One main aim here must be to see that this does not lead to indirect intra-Community concentrations on a scale incompatible with Article 66. It is not intended to imply that the presence of third-country enterprises within the Common Market will necessarily result in restrictions of competition: on the contrary, the higher degree of product specialization frequently associated with these enterprises may well give rise to an intensified substitution race. Moreover, the effect may even be -- take for instance the recent announcement that a new enterprise is to be started in Belgium by two American steel firms -- to increase the number of competitors, which would also serve rather to heighten than to lessen competition.

VERTICAL CONCENTRATIONS

53. Finally, as can be seen from the second table following No. 254 of the Twelfth General Report, the High Authority has also approved a considerable number of vertical concentrations. Most of these have so far been of very limited economic importance: only a handful of concentrations between enterprises in the coal and steel sectors and manufacturing or trading firms have been on any scale to speak of.

54. Link-ups between steelmaking and manufacturing enterprises have for the most part amounted to nothing more ambitious than, for example, the acquisition of a controlling interest in a shipyard.

In quite a number of cases steel firms have taken over small manufacturing businesses: the concentrations were often almost incidental, the manufacturers having been previously the steelmakers' customers and now surrendering control to them, frequently for such reasons as that owing to family or other circumstances they were either unwilling or unable to continue operating independently.

Taken all in all, these concentrations have so far been of minor importance for the purposes of Article 66. In particular, there has never been any serious question of "establishing an artificially-privileged position" within the meaning of Article 66, 2.

55. However, there do exist in the Community a few vertical concentrations in which the manufacturing side is as large or larger than its E.C.S.C. counterpart. Practically all of these were established before the Treaty came into force. The Wagenführ Report (No. 46) puts their number at seven and their aggregate crude-steel production at 29% of the Community total.

56. Vertical concentrations between producer enterprises and raw-materials suppliers have also been inconsiderable in scale, nor, in view of the general trend in the Community coalmining and iron-ore industries in particular, does there seem at present any likelihood of larger ones being planned.

57. In order that the High Authority shall not be burdened so much in future with the examination of small and unimportant concentrations, its Cartels and Concentrations Department is now studying whether the dividing-line below which minor concentrations (especially vertical ones) do not require prior authorization has not been fixed too low. After all, what matters for the purposes of Article 66 is not that every little

vertical concentration should be checked beforehand, but that prior authorization should be applied for where Community enterprises in considerable numbers are making a regular policy of linking up with smaller firms ahead or astern of them in the production chain.

The point is not to insist on prior authorization of the odd case of this kind, but to keep a check on the cumulative effects of whole series of such concentrations, as for instance where mining companies or big coal wholesalers acquire control of large numbers of medium-rank wholesale firms or of retail businesses.

It will admittedly be no easy matter to work out formulas covering and defining the cumulative effect of vertical concentrations in the many fields in which these can be effected. Nevertheless it is absolutely essential to the legal security of the enterprises concerned that this should be done.

The High Authority will report to the European Parliament in due course on the progress achieved in this regard.

ANNEXES

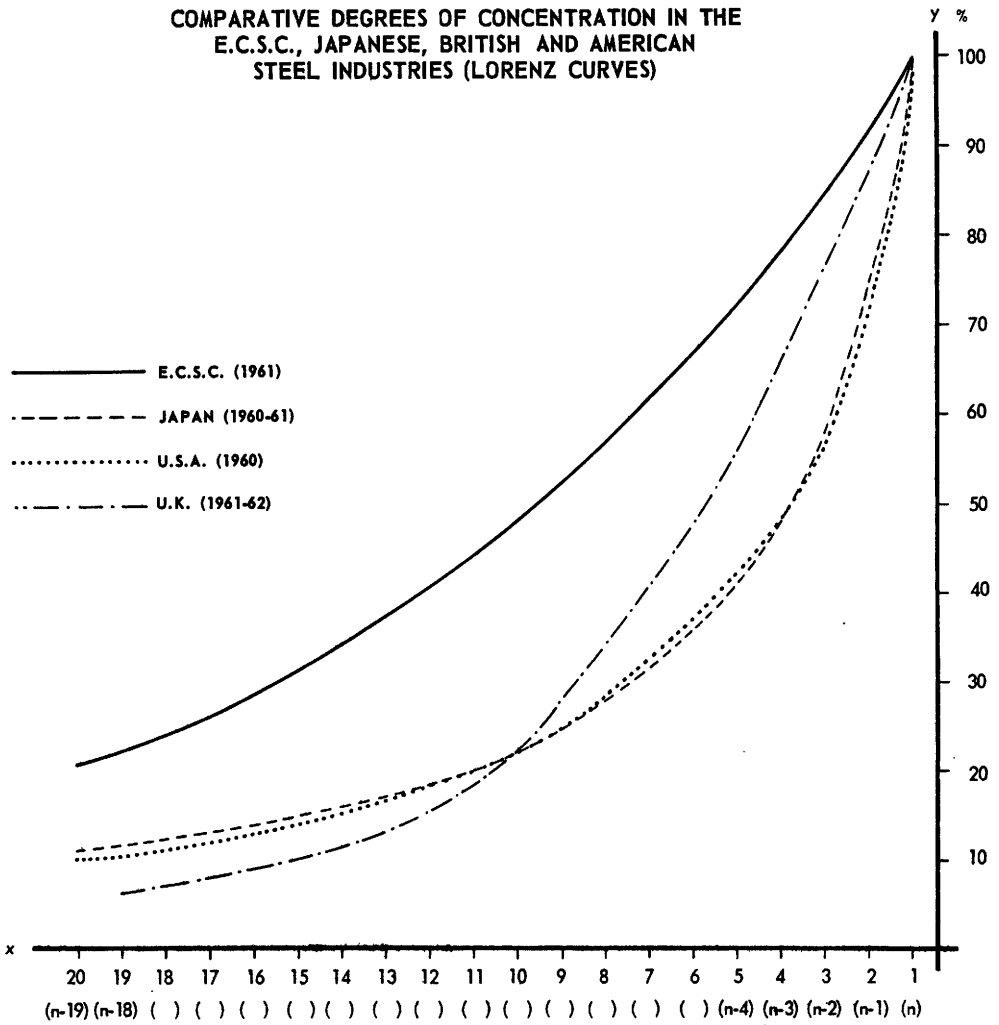
Annex 1

Comparative Distribution of Steel Production among the 20 Largest Enterprises of the Community, Japan, Britain and the United States, 1960-62

Order of enterprises or groups of enterprises	E.C.S.C. % (1)	E.C.S.C. % (2)	Japan 1960-61 %	U.K. 1961-62 %	U.S.A. 1960 %
1	7.9	9.7	24.7	12.-	28.2
2	7.2	7.9	17.2	11.6	15.5
3	6.7	7.2	10.4	10.1	8.6
Top 3	21.8	24.8	52.3	33.7	52.3
4	5.8	6.7	6.9	10.1	5.5
5	5.4	5.8	4.5	8.6	4.7
6	5.1	5.1	4.3	6.6	4.6
7	5.-	5.-	3.8	6.6	4.6
8	4.7	4.7	3.6	6.3	4.4
9	4.3	3.9	2.8	6.1	2.-
10	3.9	3.4	1.6	4.1	1.9
Top 10	56.-	59.4	79.8	82.1	80.-
11	3.4	3.2	1.4	2.5	1.6
12	3.2	3.-	1.4	2.2	1.4
13	3.-	2.9	1.2	1.5	1.3
14	2.9	2.9	1.2	1.4	1.3
15	2.9	2.3	0.9	1.1	1.1
16	2.3	2.2	0.8	1.-	1.-
17	2.2	1.8	0.8	1.-	1.-
18	1.8	1.8	0.7	1.-	0.8
19	1.8	1.7	0.7	0.8	0.7
20	1.7	1.6	0.6	...	0.7
Top 20 (U.K. top 19)	81.2	82.8	89.5	94.6	90.9
All other enterprises	18.8	17.2	10.5	5.4	9.1
	100 %	100 %	100 %	100 %	100 %

Note: The E.C.S.C. figures show the distribution (1) before and (2) after the August Thyssen-Hütte/Phoenix-Rheinrohr concentration. Although this was finally authorized only in 1963, for the sake of comparability 1961 has been used as the reference year for both columns.
The E.C.S.C. Lorenz curve in the accompanying graph has been plotted from the figures in the first column.

Annex 2



In the theoretical case of completely equal distribution of production throughout a sector, the curve would appear on the graph as a diagonal (see subsection 35 of text, and explanatory note following).

Annex 3

Explanation of Graph Showing Comparative Degrees of Concentration in the E.C.S.C., Japanese, British and American Steel Industries (Annex 2)

The steel firms concerned appear on the abscissa.

x may be any figure from 1 to n, n being the number of enterprises and concentrations of enterprises in the Community, Japan, Britain and the United States respectively.

As the very small enterprises are commonly too specialized to be relevant for purposes of comparison (e.g. producing only or principally special steels), the accompanying graph relates only to the 20 largest enterprises in each area. These are given on the abscissa from left to right in ascending order of magnitude.

The ordinate, read against the curves, indicates in each case the cumulative production of the enterprises, by the formula n-(x-1).

Thus for example if x=1, i.e. if all the enterprises are taken together (n-(x-1)=n), this brings us out at the end of the curve, 100% of production.

If x=2, we come to the point on the curve concerned which shows the cumulative production of all the enterprises in question except the largest one of all; if x=5, that of all except the four largest, and so on.