

COMMISSION DECISION

of 21 January 1972

on the authorization of special Deutsche Bundesbahn tariffs for the carriage of combustible solids from Ahlen (Westphalia) to Alsdorf (Kreis Aachen)

(Only the German text is authentic)

(72/93/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 2 to 5 and 70 thereof;

Having regard to the verbal note of 19 August 1970 from the Permanent Representative of the Federal Republic of Germany to the European Communities by which the German Government, in accordance with the provision of the fourth paragraph of Article 70 of the ECSC Treaty, requested the Commission of the European Communities to authorize the special tariff which the Deutsche Bundesbahn propose to apply to the carriage of coal from Ahlen (Westphalia) to Alsdorf (Kreis Aachen);

1. Whereas the Anna coking plant in Alsdorf, which belongs to the Eschweiler Bergwerks-Verein, a subsidiary of the ARBED group, at present receives supplies of coking coal from:

- the coalfield adjoining the Kempenland (Campine) district of Belgium (1971 - an estimated 270 000 metric tons);
- the collieries which the Eschweiler Bergwerks-Verein owns in the Aachen coalfield (1971) - an estimated 2.1 million metric tons);
- the Erin mine owned by the Eschweiler Bergwerks-Verein at Castrop-Rauxel (Westphalia) (1971 - an estimated 164 000 metric tons);
- the Westfalen mine owned by the Eschweiler Bergwerks-Verein at Ahlen (1971 - an estimated 270 000 metric tons);

Whereas the Anna coking plant and the collieries owned by the Eschweiler Bergwerks-Verein are not independent but are divisions of that undertaking;

Whereas these various sources of supply enable the Anna coking plant to work to full capacity; whereas an increase in production obtained otherwise than by

normal measures of rationalization and modernization, that is to say by measures of substantial new investment, is not foreseen for the immediate future;

Whereas coal from the Aachen coalfield and from Kempenland is prepared for coking in the mixer owned by the Eschweiler Bergwerks-Verein at Alsdorf; whereas Eschweiler Bergwerks-Verein at present delivers about 270 000 metric tons of coal from the Aachen coalfield to the mixer of Kempense Steenkolenmijnen NV at Zolder, for the same purpose; whereas, for the past three years, this two-way exchange of equal quantities has been steadily increasing in volume; whereas for the year 1972 the two sides have agreed to exchange 300 000 metric tons; whereas the cost of carriage of coal from Belgium and from the Aachen coalfield on the Alsdorf/Zolder route is Bfrs 76.60/DM 5.60 under international tariff No 1232, which is competitive with other modes of transport;

Whereas carriage of coking coal from Ahlen (Westphalia) to Alsdorf is at present effected exclusively by rail; whereas the Deutsche Bundesbahn applies, in accordance with general tariff Nos 180 and 206, a rate of DM 14.10/metric ton; whereas it proposes to introduce a special tariff bringing this rate down to DM 11.60/metric ton; whereas the Federal Government has requested authorization for this tariff;

2. Whereas the application, the additional information provided at the meetings of 21 September 1970 and 2 June 1971 between representatives of the Commission of the European Communities and of the German Government, and the information contained in the verbal note of 16 April 1971, indicate that the German Government puts forward the particular economic interests of the Deutsche Bundesbahn in support of the special tariff; whereas on this matter the German Government declares as follows:

If the Anna coking plant used only coal from the Aachen coalfield and from Kempenland - which it

could well do – its production costs would, because of lower costs of carriage, be less than the production costs resulting from the present coking coal intake involving use of coal from the Westfalen mine if carried at normal tariff rates. The lowering of the rate to DM 11.60 would not however enable total parity to be achieved between production costs for the different intake combinations. The production of coke from dearer a mix including coal from the Westfalen mine would remain somewhat dearer, although the difference in cost would be so light as no longer to exclude the continued use of coal from that mine for the Anna plant on a long-term basis. Moreover, the special tariff would enable the cost of carriage of coal from the two production centres of the Eschweiler Bergwerks-Verein in Westphalia (Erin and Westfalen) to be approximated, and would give the coking plant greater flexibility of supply. If the special tariff is not authorized, the Eschweiler Bergwerks-Verein intends to stop supplying the Anna coking plant with Ahlen coal which would be replaced by coal from the Aachen coalfield with the result that the latter would cease deliveries of coal to Zolders. The obligations under the exchange contract concluded with Kempense Steenkolenmijnen NV would be fulfilled with the Ahlen coal from the Westfalen mine released by this change.

Carriage of the latter quantities of coal to Zolder would very probably be effected by inland waterway and, according to the offers made to the Eschweiler Bergwerks-Verein, the cost of carriage would then lie between DM 9 and DM 10/metric ton;

In these circumstances the Deutsche Bundesbahn aims, by applying the special tariffs, to continue to effect the carriage of coal from Ahlen to Alsdorf, an operation which, in spite of the 18 % reduction on the normal tariff, would remain profitable for the Deutsche Bundesbahn. What is involved is programmed carriage under favourable operating conditions (e.g. two-way traffic), by complete train loads with large capacity, self-unloading trucks. Receipts of DM 11.60/metric ton would more than cover costs. Non-authorization of the tariff would, on the other hand, cause the Deutsche Bundesbahn to lose income in excess of DM 4 million per year;

3. Whereas the fourth paragraph of Article 70 of the ECSC Treaty provides that the prior agreement of the Commission is required for the application of special internal rates and conditions in the interest of one or more coal- or steel-producing undertakings; whereas that provision relates not only to special tariffs adopted in the interest of such undertakings but to any special tariffs which, whatever the reason for their introduction, happen to be of advantage to one or more of them; whereas the agreement of the Commission must be given if the special tariffs comply with the principles of the Treaty; whereas such compliance may as a general rule be presumed where

the special tariffs are justified specifically by the conditions of the transport market; whereas the interest of a carrier in applying a special tariff in order to retain certain traffic must, however, be disregarded, if the proper functioning of the common market in coal and steel, as laid down in the ECSC Treaty, so requires.

Whereas the special tariff falls under the fourth paragraph of Article 70 of the ECSC Treaty, because owing to its limited field of application it is of material benefit only to the Eschweiler Bergwerks-Verein, that is to say, to a particular undertaking of the coal, iron and steel industry; whereas the advantage derived by the Eschweiler Bergwerks-Verein from the operation does not lie so much in the actual reduction in the cost of carriage of coal from Westphalia; whereas the main positive effect of the tariff for the Eschweiler Bergwerks-Verein is that it enables that undertaking to obtain optimum internal conditions of purchase and sale in line with the long-term policy of the undertaking.

Whereas the interest which the special tariff holds for the Deutsche Bundesbahn cannot be contested; whereas, given these circumstances, the Eschweiler Bergwerks-Verein would in fact have to make its decision to continue supplying coal from the Westfalen mine depends on some DM 2.50 difference between the normal tariff and the special tariff requested; whereas it seems equally incontestable that in such circumstances the Eschweiler Bergwerks-Verein would be in a position to undertake the supplying of the Anna coking plant, at present working at full capacity, simply by increasing the proportion of coal from the Aachen coalfield; whereas, on the other hand, such a readjustment would not necessarily involve an increase in Belgian supplies;

Whereas if these intentions were carried out, the Deutsche Bundesbahn would lose the not inconsiderable volume of traffic from Ahlen to Alsdorf, with consequential reduction in receipts; whereas, moreover, it would no longer take part in the carriage of coal from Aachen to Zolder, which would be terminated; whereas, in compensation for the loss of traffic from Ahlen to Alsdorf the Deutsche Bundesbahn might, at best, acquire an equivalent traffic of coal from Ahlen to Zolder; whereas the income from that operation would correspond to a part of the proceeds from the application of an international competitive tariff and would be less than that resulting from the application of the proposed special tariff;

Whereas if, through application of the special tariff, the Deutsche Bundesbahn could retain the present traffic, the operation would remain profitable for it because of favourable costs; whereas, if the various courses open to the Deutsche Bundesbahn in the matter are compared, the existence of the risk it is trying to counter by means of the special tariff and

of the advantage this measure holds for the Deutsche Bundesbahn are indisputable;

Whereas there is no need to fear that the introduction of the special tariff would impair the proper functioning of the common market in coal and steel;

Whereas the advantage of approximately DM 680 000 per year which the special tariff would bring to the Eschweiler Bergwerks-Verein does not disturb competition between Community coking coal producers; whereas the collieries of Westphalia and of the Aachen coalfield are owned by the Eschweiler Bergwerks-Verein; whereas those collieries are not independent but are fully integrated divisions of that undertaking; whereas the market expectations of other coal producers, in particular Kempense Steenkolenmijnen NV, are not affected; whereas the Kempenland collieries are indeed interested in expanding their exchanges with Kempense Steenkolenmijnen; whereas up to the present the Eschweiler Bergwerks-Verein has satisfied that interest by increasing its purchases from year to year, notwithstanding the supplies from Ahlen to the Anna coking plant; whereas the introduction of the special tariff will not affect these exchanges, the volume of which is on the increase;

Whereas, furthermore, the effective support that the measure in question brings to the Eschweiler Bergwerks-Verein in its capacity of coke producer does not distort competition between other coke producers; whereas, indeed, even without a special tariff that company, by obtaining coking coal from another combination of sources, would be in a position to market the same amount of coke and at the same cost;

Whereas, in these circumstances, the proposed tariff is compatible with the principles of the ECSC Treaty and should therefore be authorized;

Whereas the Commission reserves the right to review its decision on this matter at any time, if the grounds on which the decision is based should change or no longer obtain; whereas the measure and its authorization should in any case be reviewed within three years' time; whereas consequently, this authorization should be of limited duration,

HAS ADOPTED THIS DECISION:

Article 1

The application of a special tariff for the carriage of coal from Ahlen (Westphalia) to Alsdorf (Kreis Aachen) by the Deutsche Bundesbahn is authorized until 31 December 1974.

Article 2

If the Commission finds that this Decision is no longer justified, it shall be amended or repealed.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 January 1972.

For the Commission

The President

Franco M. Malfatti