COMMISSION DECISION

of 23 December 1992

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/33.814 — Ford/Volkswagen)

(Only the English and German texts are authentic)

(93/49/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 6 and 8 thereof,

Having regard to the notification of an agreement relating to multi-purpose vehicles made on 4 February 1991 by Ford of Europe Inc., Brentwood, United Kingdom and Volkswagen AG, Wolfsburg, Germany,

Having regard to the summary of the notification published [2] in accordance with Article 19 (3) of Regulation No 17,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

A. The proceedings

(1) This Decision relates to a 'foundation agreement' between the two motor vehicle manufacturers Ford of Europe (Ford) and Volkswagen AG (VW) on the setting up of a joint venture company (JV) for the development and production of a multi-purpose vehicle (MPV) in Portugal. The parties subsequently submitted Joint Venture Agreements executing the foundation agreement ('the agreement').

B. The parties

(2) Ford is a subsidiary of the Ford Motor Company, Dearborn, USA, whose principal business is the manufacture, assembly and sale of motor vehicles and related parts. Ford Motor Company's worldwide turnover for 1990 was US$ 97,6 billion. In 1990 the Ford group was rated fifth in the Community passenger car market, with a market share of 11,6 %.

(3) VW was the leading car manufacturer in the Community in 1990 with a market share of 15,5 % representing sales of 2 049 000 units. Its turnover in 1990 was DM 65,3 billion.

(4) Ford and VW are already cooperating in a joint venture in South America (Autolatina). This cooperation does not involve the production of MPVs.

C. The agreement

(5) The agreement commits Ford and VW to the joint development, engineering and manufacture of a MPV. The two partners will set up a JV (Autoeuropa) which will be owned in equal shares and jointly controlled. Ford and VW will invest a total of approximately US$ 2,9 billion in the whole project; all costs relating to the development, engineering and manufacture of the MPV will be shared equally. It is intended that the JV will last at least as long as the MPV's projected life cycle of about 10 years.

(6) The plant which will house the JV, is to be built on a green field site near Setúbal, Portugal, and will commence its production of MPVs in January 1995. The product development will be predominantly carried out by VW in Germany while Ford will mainly be responsible for the manufacturing and plant engineering. The JV will have a capacity of 830 units per day representing an annual production of 190 000 units. Both partners will supply engines and transmissions whilst most of the remaining parts will be purchased form external suppliers.

(7) The parties have agreed to differentiate their MPVs in order to preserve their brand image and to make their versions of the MPV distinguishable

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 182, 13. 7. 1991, p. 8.

to their customers. The product differentiation will, *inter alia*, concern:

— engines: VW will equip all its versions with its own engines and engine control systems. Ford will do the same for its standard versions (which will make up an estimated 75 % of its total MPV sales). For the remaining diesel and top models (2,8 litre engines), Ford will fit its vehicles with VW engines,

— design: with regard to the exterior design, the differentiation will involve the front appearance (bonnet, headlights, foglamps, radiator grille and corporate logos), side stripes, wheel covers, rear lights, applique as well as metallic paint. The differentiation concerning the interior design will concern the instrument panels (by colour, instrumentation and graphic design), steering wheels, gear knobs, seat trim fabrics and colours, inside door panel and side panel trim fabrics and colours.

The partners will, furthermore, have different series line-ups (VW will offer five, Ford will offer three) and offer different optional extras (e.g. trip computer, sliding roofs, air conditioning).

(8) Ford and VW have committed themselves to each purchase fixed quantities (normally one half of the JV's production) of MPVs and parts from the JV on a 'cost plus basis', with shortfall penalties being payable if minimum quantities are not purchased. The partners are entirely free as to the distribution of the vehicles. They will independently distribute their respective MPVs through their own networks and under their own brand names.

D. The relevant market

(9) An MPV can be described as a vehicle designed to carry up to seven persons in three rows or, alternatively, five persons with considerable space for luggage. Foldable and removable seats in the second and third row provide for high flexibility which makes the MPV suitable for both leisure and work. An MPV can be recognized by its distinctive design and its specific features making ride and handling correspond to passenger car standards.

(10) The MPV occupies the gap between conventional five-door estate cars and light vans. However, due to improved space efficiency, it can be generally distinguished from estate cars by its greater 'family carrier' comfort. The MPV can also be distinguished from commercial vehicles, which are not primarily designed for the transport of persons, by its passenger car-like conception and its usually lower height.

(11) Therefore, the MPV constitutes a relatively new and distinctive market segment by virtue of its specific product features although a certain interchangeability with cars from neighbouring segments exists.

(12) Ford is already offering a MPV with its US-manufactured model 'Aerostar'. The sales of this comparatively old model, which was constructed for and successfully sold on the US market have, however, remained negligible in Europe (less than 1 % of the MPV market segment in 1990). Ford and Nissan are currently cooperating in the US to develop a successor model for the 'Aerostar' for the US market. Furthermore, Ford is involved in some cooperation with Mazda in which it also has a minority shareholding. Mazda is a producer of MPVs, although presently it is not supplying these products in the Community.

VW's model 'Caravelle' cannot be regarded as a true MPV as described above. The 'Caravelle' was derived from a commercial vehicle and does not possess all the abovementioned characteristics for a MPV, predominantly lacking the car-like comfort, handling, speed and MPV flexibility.

(13) The MPV market segment in Europe is dominated by the Renault 'Espace' of which an updated version has been released recently. The 'Espace' goes back to a concept developed by Matra SA (Matra) which assembles the vehicle and distributes it through the distribution network of Renault and under the latter's name. All other competitors of the Renault 'Espace' are either Japanese or US-produced. In 1990 the market shares of the participants in the MPV segment in the Community were the following:

— Renault: 54,7 %,

— Chrysler Voyager: 15,6 %,

— Mitsubishi Space Wagon: 12,0 %

— Nissan Prairie: 7,6 %

— Toyota Previa: 3,9 %,

— Toyota Space Cruiser: 2,9 %.

(14) The MPV market segment (with a current volume of less than 100 000 units is negligible in comparison to the overall car market) has been identified by most analysts and producers as a segment within the car market which is likely to expand significantly in Europe in the medium to long term. However, the total number of sales in the Community is not expected to go beyond 350 000 units by 1995.

(15) Entry to the market segment can generally be regarded as relatively difficult in view of the considerable investment necessary for both development and production. An economically viable production also demands a certain minimum capacity which has been estimated by the parties involved in this case, as well as other producers, to be in excess of 110 000 units per year. However, several MPV projects are currently under consideration and further entries into the MPV market segment can be expected before the end of the century.

E. State aid

(16) The Portuguese Government notified their proposal to provide financial aid to the JV in June 1991. The Commission decided in a separate procedure not to raise any objections to the proposed aid measure on the basis of Article 92 (3) of the Treaty. This decision is currently the subject of an appeal by Matra to the European Court of Justice.

II. COMMENTS OF THIRD PARTIES

(17) Following the publication pursuant to Article 19 (3) of Regulation No 17, the Commission received comments from Matra. Matra, at the same time, launched a separate complaint pursuant to Article 3 of Regulation No 17 against the project. It holds the view that the agreement between Ford and VW infringes Articles 85 and 86 of the Treaty and does not meet the conditions for an exemption pursuant to Article 85 (3). It mainly argues that the agreement will have as its effect a considerable restriction of competition without contributing to a promotion of technical or economic progress as the MPV envisaged by the JV would be produced under common production methods and technology and would not represent substantial product innovation. The agreement could also not be considered as indispensable within the meaning of Article 85 (3) because Ford and VW should be able to penetrate the MPV market segment independently. Both undertakings should, in principle, be in possession of the financial resources as well as the necessary technology to develop and produce an MPV individually. Contrary to the statements published in the Commission's Notice of 13 July 1991, the production of an MPV would become profitable well below an annual production of 110 000 units. Furthermore, Matra alleges that the agreement between Ford and VW infringes Article 86 of the Treaty. The cooperation would lead to a dominant position of the two companies in the MPV market segment and enable them — taking into account the economies of scale and the extent of State aid involved — to eliminate competition in this sector by, for example, raising the entry barriers or exercising predatory behaviour which would have to be considered abusive.

III. LEGAL ASSESSMENT

A. Article 85 (1)

(18) The agreement between Ford and VW as to the setting up of the JV in Portugal for the joint development and production of MPVs falls within the scope of Article 85 (1) which, *inter alia*, prohibits all agreements between undertakings which may affect trade between Member States and which have as their object or effect the restriction of competition.

(19) Ford and VW are important competitors in the European and world car markets; both offer a wide and, for the most part, competing range of motor vehicles. In view of their financial, technical and research capacities, either company is, in principle, capable of producing a MPV on its own.

(20) The development of new models is one of the key elements of competition in the car sector and a determining factor for the success of a manufacturer in the market. Any agreements between competitors likely to restrict this activity have to be regarded as serious restrictions of competition. The joint development and production of an MPV by Ford and VW which involves an enormous investment of the parent companies and furthermore the obligation to buy fixed quantities of MPVs from the JV means that neither parent company would have any economic interest in independent activities in this field.

(21) The cooperation between Ford and VW will furthermore lead to an extensive exchange and

sharing of, *inter alia*, technical know-how which could affect the competitive behaviour of the two partners in neighbouring market segments like those of estate cars or light vans.

(22) The agreement will appreciably affect trade between Member States as it was concluded between two internationally active car manufacturers concerning the joint development and production of a product which is to be sold throughout the Community.

B. Article 85 (3)

(23) The envisaged JV between Ford and VW is characterized by the following elements:

— the MPV market segment has relatively low volume and will, at least in the medium term, stay that way despite positive forecasts (recital 14),

— neither Ford nor VW have until now been a supplier in the MPV market segment worth mentioning (recital 12),

— the structure of the segment in question is characterized by the clearly leading position of one supplier not exposed to any considerable competition from (other) European suppliers (recital 13),

— the vehicle will be produced in a new and modern plant (recital 6),

— the JV will have extremely positive effects on the infrastructure and employment in one of the poorest regions in the Community (recital 36).

Taking into account the exeptional circumstances of the case, the notified agreement between Ford and VW fulfils the four conditions for an exemption pursuant to Article 85 (3):

1. *Improvement of production of goods or promotion of technical or economic progress*

(24) The cooperation makes available an advanced vehicle designed to meet the requirements of European consumers which will be separately offered by the partners in differentiated versions throughout the Community.

(25) Both companies have at their disposal extensive know-how in the field of research as well as car automation. The cooperation allows the partners to complement one another as to their engineering resources and technical expertise. This will result in an improvement in the production of goods through a rationalization of product development and manufacturing. Technical progress will be promoted due to a pooling of the existing technical knowledge and its conversion into a significantly improved, and in several aspects, innovative MPV. Production of MPVs in the Community will be improved by the establishment of an entirely new and most modern manufacturing plant using the latest production technology (e.g. a fully automated framing and weld line, an extra-large 1 200 tonne tandem press, robots). The implementation of a new component supply concept will allow computer-controlled deliveries feeding the production line resulting in minimum inventories and no delays. A 30-hectare industrial park next to the plant will be created to give the major suppliers (representing over 700 different components) direct access to the plant. This new concept aims to become the most efficient 'Just-in-time' component logistic system in the world, producing better results than the Japanese invented 'Kanban' component delivery system.

(26) The MPV produced by the JV constitues a continuous development of technical progress of production in the Community. It will set new standards in the MPV segment in several respects compared to its competitors. The vehicle will feature, *inter alia*, a newly developed front/rear suspension system, a new axle and sunroof concept as well as comprehensive passenger safety systems. It will also be considerably improved with respect to environmental requirements, for example, potentially hazardous materials (e.g. CFCs, PVC) in the final product will be either drastically reduced or totally eliminated. Furthermore, the extent of recyclability will be significantly increased and the MPV is also envisaged to lead the segment with regard to low emissions and fuel consumption.

2. *Fair share to consumers*

(27) The European consumer can be expected to benefit directly from the JV. As a result of the cooperation, mainly due to the sophisticated production technology and the economies of scale, the consumer will be offered two versions of a high-quality and reasonably priced MPV which will be distributed in the whole Community through the extensive sales networks of the

partners. Ford and VW will be forced to pass on the benefits to the consumer, because as a result of their entry, along will that of other manufacturers into the expanding MPV segment, there will be increased competitive pressure on all suppliers leading to a more balanced segment (see recitals 37, 38 and 39). Moreover, with VW and Ford further competitive European car manufacturers will be present in this market segment.

3. *Indispensability of restrictions*

(28) The JV between the two major car manufacturers, Ford and VW, to produce a MPV can be considered as indispensable for the period of exemption in the light of the exceptional circumstances of the case in question and the conditions the Commission considers necessary for an exemption to be granted.

(29) The cooperation enables the partners to competitively offer a high-quality product, designed for the specific needs of European consumers, in the relatively new and low volume MPV market segment in a comparatively short time. The examination of the case leads the Commission to accept the partners' arguments that the beneficial results of the cooperation could not, to that extent, be achieved otherwise. The partners, each acting on its own, could not develop and produce the MPV in the same conditions so rapidly and efficiently in Portugal as their cooperation will enable them to do.

(30) Neither partner has currently a sufficient capacity at its disposal for a production of the size projected for their JV on the basis of the concept described above. The cooperation, furthermore, enables the partners to complement each other as to their engineering personnel and technical expertise, as such a project requires a considerable amount of skilled manpower. For this purpose, Ford will, *inter alia*, make manufacturing engineering staff available while VW is able to sufficiently provide skilled product engineering staff. This will allow the partners to concentrate on certain tasks and thus to operate more efficiently.

(31) The partners presented to the Commission the total investment costs which would be required if they were to develop and produce an MPV individually on the proposed basis with separate annual sales which they project at between 80 000 and 90 000 MPVs each. The minimum number of units for production of a MPV based on the concept described above to become economically viable was estimated by the companies concerned as being in excess of 110 000 annually. This figure, although always depending on the particular circumstances of each case, corresponds to statements of competitors in a similar case concerning the MPV segment currently being investigated by the Commission. Taking into account the investment required by either company for separate development and production of an MPV as well as the unit production necessary for profitability, it could not be expected that the companies, acting on their own, would achieve a reasonable return in view of their anticipated sales and with regard to the low volume of the MPV segment in comparison with other market segments. Even if the companies were to achieve their sales targets, the joint project is not expected to make profits for several years, despite its economies of scale and considerable financial aid from the Portuguese government.

(32) In this context, the Commission accepts the view that a satisfactory penetration of the MPV segment by the partners individually cannot be achieved by a simple adaptation of already existing models like the Ford 'Aerostar' (which has not sold well in the Community) or the VW 'Caravelle'. The 'Aerostar' was initially designed as a commercial vehicle and later converted into an MPV for the US market, which differs substantially from the European MPV market segment. Due mainly to very advanced road networks, larger car parking facilities and far lower fuel costs, US customers are considerably less concerned with parking and congestion problems and with the dynamics and manoeuvrability of an MPV. Therefore, the specific requirements of European consumers for, *inter alia*, aerodynamic designs, faster and smaller engines, reduced fuel consumption, increased manoeuvrability, fuel efficient diesel engines and right-hand-drive versions cannot be met by the 'Aerostar'. These aspects would require an entirely new concept which cannot be achieved by simple adaptation. The same applies to the comparatively large and heavy 'Caravelle' (with up to nine seats) which would also need a substantial redesign in order to

lose its image as a light van and to provide the vehicle with the typical MPV characteristics, especially with passenger car-like handling.

It is, finally, and for similar reasons also not possible to produce an MPV of the projected kind by a simple adaptation of the partners' existing break models (e.g. Passat, Sierra). In particular, the platform of the break models are too narrow and too short to achieve the key design characteristics of a MPV (seating of up to seven persons in three rows, considerably higher gross vehicle weight).

(33) This assessment of the Ford/VW joint project is not affected by the fact that Matra, as well as certain Japanese producers, were able to penetrate the MPV segment individually, since their situation is not comparable to those of the parties to the Joint Venture.

Matra has, since the mid-1980s when the 'Espace' was introduced and the MPV segment developed, always held a strong leading position with an average share of above 50 % of the MPV segment, exposed only to limited competition from non-European suppliers and always far ahead of its next closest competitor (see recital 13). Its position has enabled it to be profitable with a comparatively low annual production. Moreover, Matra had to enter into cooperation with Renault to distribute its vehicles. Renault is also a supplier of key components for the 'Espace'.

The Japanese suppliers are in a different situation in so far as they can profit from considerable economies of scale due to a strong and largely closed national market. The Japanese MPVs constitute in some respects a compromise between the different requirements of the European and the US market. For these reasons and due to their competitive pricing strategies, the Japanese sell a certain amount of MPVs in Europe. However, they sell far more units in the USA, the biggest MPV in the world.

(34) The restrictions of competition to be caused by the cooperation between Ford and VW are limited to what is indispensable for the functioning of the JV. Both partners are free as to the distribution of their MPVs which will be sold separately under their respective trademarks and in differentiated versions. The partners may use all intellectual property rights independently and are free to initiate design changes of their models without the knowledge of the other partner. However, in order to achieve and secure the minimum effects on competition, to maintain a certain level of product differentiation, and to limit potential spill-over effects of the cooperation, the Commission intends to impose a number of conditions and obligations (see recital 41). The Commission will also reconsider its decision taking into account the development of the MPV segment after the period of exemption has expired.

(35) The MPV cooperation between Ford and Nissan expressly provides for the right of the partners to market the product worldwide. Ford intends to offer a certain amount of these MPVs in the Community to customers at the upper end of the MPV market segment. Nissan has also recently introduced, with its 'Serena' model, another MPV to the Community. The existing cooperation between Ford and Mazda does not exclude competition between them in the MPV sector, as is demonstrated by a dumping complaint in the US on the part of Ford and others against Japanese producers of MPVs including Mazda.

(36) In the assessment of this case, the Commission also takes note of the fact that the project constitutes the largest ever single foreign investment in Portugal. It is estimated to lead, *inter alia*, to the creation of about 5 000 jobs and indirectly create up to another 10 000 jobs, as well as attracting other investment in the supply industry. It therefore contributes to the promotion of the harmonious development of the Community and the reduction of regional disparities which is one of the basic aims of the Treaty. It also furthers European market integration by linking Portugal more closely to the Community through one of its important industries. This would not be enough to make an exemption possible unless the conditions of Article 85 (3) were fulfilled, but it is an element which the Commission has taken into account.

4. *No elimination of competition*

(37) The cooperation between Ford and VW will not lead to an elimination of competition in the MPV segment. Having regard to the leading position of the Renault 'Espace', it will, on the contrary, stimulate competition through the creation of an additional choice in this area and lead to a more

balanced structure in the MPV market segment. There will also be increased competition concerning price and quality over the next five to ten years with the further penetration of the segment by Japanese producers as well as other new entrants.

(38) Taking into account that competition in the European car markets also takes place on the distribution level, the Commission considers that the product differentiation and profit margins in the MPV segment will leave sufficient scope for a certain degree of competition between Ford and VW despite the fact that they will purchase their versions of the MPVs from the JV, in principle, at the same price. The level of product differentiation achieved in the production of the MPV concerning both visual and technical elements, which will be further expanded, is considered by the Commission in this case as being the minimum necessary to ensure that Ford and VW can develop their own identity and pursue their individual sales strategies in the MPV sector. For the following reasons at least it can be expected that Ford and VW will in fact enter into direct competition with each other. First, the partners have the incentive of incremental sales profits through increased individual sales as the agreement does not provide for profit sharing. Second, the mass producers strategy in the car sector is to offer their customers the whole range of products in order to establish or reinforce a brand loyalty and not just a model loyalty. This overall competition will force Ford and VW to compete directly also in the MPV segment.

C. Article 86

(39) Article 86 applies only where undertakings abuse an already existing dominant position. In the given case the partners do not hold a dominant position in the MPV segment. And even if such a position existed the mere risk of an abuse, as alleged by Matra, would not justify the application of Article 86. Notwithstanding this, the cooperation between Ford and VW will, for the abovementioned reasons, not lead to a dominant position within the meaning of Article 86.

In the light of the conditions of competition in the MPV segment it is not likely that the cooperation, despite the State aid granted to the project and the economies of scale resulting from it, will create such competitive advantages as to enable Ford and VW to prevent effective competition being maintained by giving them the power to behave to an appreciable extent independently of competitors in the MPV segment. In this context, the Commission — contrary to Matra's statement — does not see, despite some uncertainty regarding the various forecasts of MPV demand in the Community, that supply will dramatically exceed demand over a significant period of time from now to the end of the century. And even if such a situation occurs, overcapacity in the circumstances of the case in question could only lead to increased competition without creating new dominant positions. The Renault 'Espace' has been the leading product in the MPV segment since its introduction in the mid-eighties. Due to its high quality and reputation, it has always headed the segment with a significant lead over its nearest competitors. On the basis of a reinforced cooperation with Renault, Matra will develop and offer a new type of the 'Espace' in 1995 and will, therefore, remain an important competitor in the MPV segment. Ford and VW will, together with other suppliers (new entrants as well as Japanese producers), ensure an effective degree of competition in the MPV market segment.

(40) The comments submitted to the Commission by Matra, which also presented its arguments in an oral hearing on 15 June 1992, in response to the Commission notice of 13 July 1991 do not, for the abovementioned reasons (see particularly recitals 23 *et seq.*), give rise to any assessment of the notified agreement other than that set out above.

D. Articles 6 and 8 of Regulation No 17

(41) Pursuant to Article 8 (1) of Regulation No 17, a decision in application of Article 85 (3) of the Treaty has to be issued for a specified period and may be subject to conditions and obligations. Article 6 (1) of the same Regulation obliges the Commission to specify the date from which the decision shall take effect. In accordance with this Article, in the case in question the decision can take effect from the date of notification, i. e. 4 February 1991. Taking into account all relevant circumstances of this case and particularly to allow the high investments of the parties concerned to become profitable, the decision has to cover a period of 10 years after the production has commenced which approximately corresponds to the life cycle of an MPV. This decision has to be subject to a number of conditions and obligations which the Commission feels it should impose in

order to comply with its task under Article 8 (3) of Regulation No 17, as well as to secure the preconditions for a decision under Article 85 (3) in the case in question. In this context the Commission takes into consideration that the car sector is not only characterized by a dense network of relations between suppliers in the component area, but, above all, by increasing horizontal cooperation, including the common production of vehicles. Moreover, a number of suppliers hold shares in competitors. These conditions/obligations have to ensure, *inter alia*, that a certain level of product differentiation is maintained in order to enable the partners to actively compete against each other on the distribution level (see recital 38). In particular, the Commission takes the view that the engines, as a vital component of the MPV, should be different. Under the special circumstances of this case as outlined above it has been accepted, however, that Ford acquires a certain percentage of specific VW engines for a limited time-span. The partners should also be free to order the quantities which they require independently of each other from the JV. In order to limit the potentially negative effects of the joint project on the overall competition between the partners, the Commission feels it is appropriate to oblige them to take certain precautions concerning the exchange of sensitive information between them and the JV. In view of the abovementioned situation in the car sector the partners must also inform the Commission about their future cooperation with other car producers or suppliers as well as the use of licences acquired in connection with their project. So as to avoid a division of the market and to make the supply of MPVs from other Member States easier for European consumers, the partners must — according to their assurances *vis-à-vis* the Commission — offer their MPVs throughout the Community and apply for an EC type-approval for these vehicles. Finally, the Commission, in view of its experience, requires the partners to provide for effective separation in the event of the exemption not being extended,

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to the 'foundation agreement' between Ford of Europe Inc. ('Ford') and Volkswagen AG ('VW'), notified on 4 February 1991, as well as to the subsequently signed agreements which execute this aforementioned agreement.

Article 2

The exemption granted in Article 1 shall be subject to the following conditions/obligations:

A. Conditions

1. The parent companies shall maintain between the MPVs produced by the joint venture at least the differences between the engines which are described in the notification. Ford may not use VW diesel and petrol engines in more than 25 % of Ford's MPVs over any three-year year period.

2. The parent companies shall establish appropriate procedures and safeguards to ensure that all competitively sensitive, non-public, information including their annual quantity requirements, marketing programmes and strategies, distribution policies, wholesale/retail prices, and their intentions regarding standard and optional features, does not reach employees of the other parent company, and reaches only those employees of the joint venture who have a need to know in order to ensure the proper functioning of the joint venture. Employees who have a need to know shall sign a confidentiality agreement that obliges them

   (a) not to use such competitive information for purposes other than those related to the joint venture; and

   (b) not to pass on such information to employees of the other parent company.

3. Any proposal by either parent company not to market its MPV in any Member State shall require prior Commission approval.

4. If the joint venture agreement is terminated each parent company shall grant or procure the granting of all technology licences (patented or not) necessary to enable the other parent company to continue to make MPVs separately.

5. The parent company shall not expand the range of products to be produced by the Joint Venture without prior approval of the Commission from MPV to other categories of vehicles.

B. Obligations

1. On an annual basis, following the first year of production, the Joint Venture company shall submit a report to the Commission showing its total production

volume of built-up MPVs divided up by model and engine specification. Also on an annual basis, following the first year of production, each of the parent companies shall submit to the Commission a separate report showing its wholesale sales of joint venture-produced MPVs on a State-by-State basis within the Community and an estimate of its market shares in each Member State plus its total exports of MPVs from the Community.

2. Each parent company is obliged:

(a) to inform the Commission before signature of any agreement concerning

— any acquisition of shares in any new jointly owned operation,

— any investment in a new product line in an existing jointly owned operation,

— any future joint research projects

in the car sector with any other company that would have an appreciable effect on competition within the European Economic Area;

(b) to report to the Commission annually as to how they comply with each of the conditions in this Decision.

'Parent company' means the Ford Motor Company Inc., USA, and Volkswagen AG, Germany, and the group of companies owned or controlled by each of them.

Article 3

The exemption takes effect from the date of notification of the agreement until 31 December 2004.

Article 4

This Decision is addressed to the following undertakings:

1. Ford of Europe, Incorporated,
Eagle Way,
Brentwood,
GB-Essex CM13 3BW;

2. Volkswagen AG,
D-W-3810 Wolfsburg.

Done at Brussels, 23 December 1992.

For the Commission

Leon BRITTAN

Vice-President