COMMISSION DECISION

of 11 November 1994

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

(IV/34.410 — Olivetti-Digital)

(Only the English and Italian texts are authentic)

(Text with EEA relevance)

(94/771/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 application for negative clearance or exemption, submitted on 30 July 1992 by Digital Equipment Corporation and Ing. C. Olivetti & C., SpA concerning a series of agreements relating to a cooperation in the computer systems market,

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. Introduction

(1) On 30 July 1992, Digital Equipment Corporation (hereinafter 'Digital') and Ing. C. Olivetti & C., SpA (hereinafter 'Olivetti') notified to the Commission a cooperation agreement in the field of computer systems, for the purpose of obtaining negative clearance or alternatively an exemption pursuant to Article 85 (3). Digital was to make available to Olivetti its Alpha AXP technology based on its new RISC (reduced instruction set computer) microprocessor and Olivetti would commit itself to the Alpha AXP technology for all its computer platform offerings and related software except the line of products based on Intel-type microprocessors. Furthermore, Olivetti would purchase computer system products from Digital including but not limited to Alpha AXP products. Digital, for its part, would continue to purchase from Olivetti personal computers (PCs) for its European operations on the basis of a pre-existing Purchase Agreement, which has not been notified to the Commission.

(2) This technological cooperation was accompanied by the acquisition by Digital of approximately 8 % of Olivetti's share capital (the 'Share Purchase Agreement') and by the proportional representation of Digital on Olivetti's board of directors (the 'Shareholders' Agreement'). The two latter agreements were concluded between Digital and Olivetti's parent company, CIR. On 24 August 1994, Digital announced that it had sold on the open market all shares it owned in the common stock of Olivetti. Therefore, the 'Share Purchase Agreement' and the 'Shareholders' Agreement' have come to an end. According to Digital, its sale of Olivetti shares will not have repercussions on the notified technological cooperation between the parties. In the present decision, the Commission will assess the notified arrangements in their entirety. Obviously, however, the assessment of the 'Share Purchase Agreement' and the 'Shareholders' Agreement' refers only to the period for which those agreements were in force.

B. The parties

(3) Olivetti of Ivrea, Italy, is a worldwide group in the information technology field with a global offering and with focus on personal information devices, notebook computers, laptop computers, personal computers, Intel-based computing platforms, entry-level RISC computers and special and general-purpose impact and non-impact printers. According to published data, in 1992, Olivetti was the second-largest European supplier of computer system products with a revenue of US$ 5 762 million, almost 1 400 million of which arose from PCs.

(4) Digital of Maynard, Massachusetts, United States of America, is a worldwide group which is principally active in the field of design, manufacture, sale and servicing of networked computer systems, associated peripheral equipment and related network, communications and software products.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No C 276, 14. 10. 1993, p. 14.

(5) CIR of Leiní (Turin), Italy, is an Italian industrial holding company controlled by Cofide-Compagnia Finanziaria de Benedetti SpA and owning 44,3 % of Olivetti as on 31 December 1991.

C. The products and the market

(6) The products the subject of the agreements in this case are Digital's Alpha AXP computer system components, including microprocessors, boards and systems, software and peripherals, and related information and know-how. Alpha AXP is a new generation of RISC architecture which has been designed, and will be used by the Parties, for manufacturing a full range of computer systems from palmtops to mainframes. Alpha AXP architecture is planned to be a prominent standard and a platform for the major current and future computer operating systems, particularly the Microsoft New Technology (MsNT) and the Unix OSF/I. To that end, Digital is, *inter alia*, actively pursuing a policy of licensing its technology to both chip and computer manufacturers. In particular, Digital has granted a manufacturing licence for Alpha AXP microprocessors to Mitsubishi Electric Corporation, Japan.

(7) Traditionally, microprocessors were manufactured following a complex instruction set computer (CISC) technology providing a large instruction set containing commands that perform many complex functions. Since the early 1980s, a new kind of microprocessor technology based on RISC microprocessors has been developed. The philosophy of RISC technologies is to provide a limited instruction set containing commands that perform only simple operations but much faster than in the CISC technology. This facilitates the addition to the computer system of certain performance-enhancing feature, and may also result in reduced manufacturing cost due to the microprocessors' reduced volumes, compared with CISC architecture, for any given level of performance. The optimization of performance requires, however, that as well as the RISC microprocessor being installed in the computer system, specific system software (operating system and compiler) be created to make the best use of the potential capabilities of the particular microprocessor concerned.

The product markets

(8) In the light of the foregoing, the Commission considers that the relevant product markets in this case are both the market for RISC technology including microprocessors, other hardware, software and know-how (the products directly involved in the notified operation) and the markets for the various computer system end-products that incorporate RISC technology (the products indirectly involved in the operation).

(9) As far as RISC-technology based computer systems are concerned, it is worth noting that, to date, RISC has been used practically only in workstations, where its speed is highly beneficial. In desktop computers, RISC is still at a disadvantage compared to CISC because most of the applications currently on the market work with CISC. However, RISC is expected to penetrate significantly the desktop market shortly, due to the insurgence of more and more RISC microprocessors and to the introduction of 'Windows NT', the new operating system of Microsoft Corporation which allows RISC architectures to run highly successful applications usable to date only by CISC-based microcomputers.

(10) The market for RISC technology appears to be highly dynamic. Most chip producers are developing RISC microprocessors: examples are MIPS, recently merged into Silicon Graphics Inc. (RX 00), Sun Microsystems (Sparc) and Motorola (MC 88000). Furthermore, some major computer producers have entered into alliances for the development of RISC technologies: IBM, Apple and Motorola for the development of Power PC architecture; Hewlett-Packard, Hitachi, Samsung and Winbond for the development of Hewlett-Packard Precision Architecture.

According to the International Data Corporation of London, Sun has been by far the most successful supplier of RISC-based computers (namely workstations) with a share of over 50 % of the market segment in the Community in 1991, followed by MIPS and IBM. According to *Personal-Computer-Markets* of 3 November 1993, worldwide sales of RISC-based workstations grew by 44,6 % to reach US$ 17,5 billion in 1992 from US$ 12,1 billion in 1991. Hewlett-Packard maintained its lead in this market, but its share fell by 3,9 percentage points to 30,8 %, followed by Sun und MIPS with 25,1 % and 20,0 % respectively.

The geographic market

(11) From an economic point of view, given the considerable volumes of worldwide trade, the small importance of transport costs and the absence of any significant trade barriers, the relevant geographic market for this case may be considered to be the world as a whole.

D. The notified Agreements

'Strategic Alliance Agreement'

(12) This agreement contains the following provisions:

(a) Commitment of Olivetti to Digital's Alpha AXP technology

Digital will provide Olivetti with hardware parts based on Alpha AXP technology as well as software specifically designed to be executed on Alpha AXP processors, and will disclose to Olivetti the future evolution of Alpha AXP architecture and related technology.

To the extent technically feasible, Olivetti will utilize the Alpha AXP technology for all of its computer platform offerings and related software, except the line of products based upon Intel-type microprocessors. Olivetti will shift all of its offerings other than Intel computers to Alpha AXP architecture, and will adopt Digital's OSF and Microsoft's NT as primary operating systems for its Alpha AXP products.

According to Article 2 (6) of the Agreement, Olivetti and Digital base their strategic cooperation on the assumption that, for each product segment and during each six-month period, Digital's Alpha AXP products will be at the least in the same range of price and performance as the RISC technologies provided by other leading RISC vendors.

(b) Purchasing commitments

Olivetti commits itself to making purchases of Alpha AXP products from Digital according to two alternative formulations (whichever formulation results in the greater purchases being applied). They are:

(i) as a proportion of Olivetti's requirements, Olivetti will, from 1 April 1993 onward and throughout the term of the Agreement, make at least 50 % of its purchases of non-Intel platforms for resale from Digital (that is, the Volume of this commitment is uninfluenced by the volumes of Olivetti's purchases of Intel-type platforms, of purchases of other platforms for its own use, or of its own manufacture of any products); and

(ii) in terms of value, purchases of Alpha AXP products from Digital must amount to at least:

— US$ 80 million by 30 June 1994,

— a further US$ 80 million by 31 October 1995, and

— a yet further US$ 80 million by 31 July 1996.

In addition, Olivetti commits itself to purchase a further US$ 70 million in unspecified non-Alpha AXP products by 30 June 1994.

In none of the above commitments are products, quantities or prices specified.

(c) Cooperation and product technology planning

The Parties will jointly evaluate the possibility of entering into further cooperations to make their architectures more compatible and to develop and promote operating systems and software.

The Parties intend to conduct joint Intel-product planning reviews aimed at exploring the feasibility of a cooperative purchasing arrangement for Intel-based PCs and subassemblies on a worldwide basis.

The Parties will discuss a possible acquisition and promotion of ISV (independent software vendors) applications, to run on Alpha AXP.

(d) Services

The Parties will explore areas to optimize their service organizations. In particular, it is agreed that Digital will provide its service expertise to Olivetti, to enable Olivetti to install and maintain the Alpha AXP products, and Olivetti will continue to assist Digital with regard to the PCs purchased by Digital.

(e) Committees

The Parties have formed the following four committees aimed at facilitating the implementation of the Agreement: an Alliance Committee for the general issues of the cooperation which will coordinate the activities of the other three committees, a product committee for personal computers, a product committee for Alpha AXP products and a service committee for the service area.

(13) The 'Strategic Alliance Agreement' will last for five years and be automatically renewed for a further five years unless either party notifies the other to the contrary.

'Share Purchase Agreement and Shareholders' Agreement'

(14) Under the 'Share Purchase Agreement', Digital acquired approximately 8 % of the share capital of Olivetti. The purchase and sale of the shares took place in two equal lots. The acquisition of the second lot was planned for mid-1994 but was accelerated and took place in mid-1993. In August 1994 Digital sold all shares it owned of the common stock of Olivetti.

(15) Under the 'Shareholders' Agreement', for so long as Digital owned at least 25 million shares of Olivetti's common stock, Digital had a proportionate representation on Olivetti's board of directors (at least one member).

(16) Digital was free to exercise the voting rights pertaining to its Olivetti shares. It could not, however, purchase any interest in Olivetti which would have resulted in a holding of more than 10 %. Digital could not deposit its shares in any voting trust or enter into any other arrangements with third parties with respect to the holding of its

Olivetti shares or the exercise of its voting rights. CIR had a right of first refusal in the event that Digital elected to dispose of Olivetti shares. CIR did not exercise this right.

(17) The 'Shareholders' Agreement' had a maximum duration of five years.

E. Observations from interested third parties

(18) The Commission has received no observations from interested third parties following the publication of the notice pursuant to Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(19) Article 85 (1) prohibits, *inter alia*, all agreements between undertakings which may affect trade between Member States and which have as their object or effect the restriction of competition. The Commission considers that the notified agreements between Digital and Olivetti, which are 'undertakings' within the meaning of Article 85 (1), together form one arrangement for cooperation in the relevant field, which arrangement falls partly inside and partly outside the scope of Article 85 (1). In particular:

'The Strategic Alliance Agreement'

(20) The commitment of Olivetti to the Alpha AXP technology

The five-year commitment of Olivetti to shift all of its offerings other than Intel computers to Alpha AXP architecure and to adopt Digital's OSF and Microsoft's NT as primary operating system software does in principle restrict the freedom of Olivetti in choosing its technology. However, the Commission considers that, given the specific circumstances listed below, the effects of this Agreement are not to be considered restrictive of competition.

(a) Olivetti does not currently possess any comparable RISC technology, nor sufficient financial resources to develop one. However, the sale of RISC-based Central Processing Units (CPUs) is expected to increase substantially in the coming years. Olivetti therfore needs a full-line offering of RISC computers to maintain its position as a leading European supplier. Given this situation, the choice of Olivetti to use exclusively Digital's Alpha AXP technology as RISC architecture will nor have any restrictive impact on Olivetti's actual or potential development of an alternative RISC technology.

(b) Given the amount of investment in R&D, training of employees, manufacturing processes etc. required for the development of a full-line offering of RISC computers, it is very likely that Olivetti, even without a contractual obligation, would initially choose only one RISC technology. In fact, Olivetti would never have sufficient economic resources to offer a second line of RISC products. For the same reason, Olivetti, once the choice has been made, would not shift quickly to another RISC technology (that would mean changing its offerings). The five-year commitment is consistent with the time needed to develop new products and with the amount of investment involved. After five years Olivetti will be free to renew its commitment, to negotiate a shorter term or to move to another technology.

Thus, it can be concluded that the commitment does not restrict Olivetti's competitive freedom beyond what is inherent in any choice of a specific RISC platform. This is further demonstrated by the inclusion in the Agreement of a clause (Article 2.6) according to which Alpha AXP products will be, at the least, in the same range of price/perfomance as other RISC platforms. This clause protects Olivetti against Digital's abusively exploiting Olivetti's position by applying discriminatory or exececssive prices.

On the basis of the above considerations, the Commission takes the view that Olivetti's five-year commitment to the Alpha AXP technology falls outside Article 85 (1).

(21) The purchasing commitments of Alpha AXP technology-based products

Olivetti undertakes to purchase from Digital US$ 80 million of Alpha AXP products by 30 June 1994 and a further US$ 80 million of Alpha AXP products per year for two more years. These purchases, for which the conditions in terms of price and volumes have not been agreed between Digital and Olivetti in advance, clearly restrict Olivetti's freedom to choose its supplier and affects competition between Digital and its future licensees of Alpha AXP technology who, for four years, would be deprived of an important potential customer in Olivetti. The same reasoning applies to the obligation on Olivetti to purchase from Digital, in the form of Alpha AXP products, 50 % of Olivetti's computer system platforms which are not Intel platforms and which are purchased from third parties for resale (see paragraph 12 (b)).

A distinction must be drawn between a commitment by a computer manufacturer to use for a relevant part of its products components produced according to a given technology which is the property of another manufacturer of computer system products, and a commitment to purchase those components in substantial amounts from that manufacturer.

Digital's announced strategy of selling and licensing its RISC technology to several computer manufacturers would allow Olivetti to choose another supplier for the Alpha AXP products. However, the duration of the first purchasing commitment described above (four years) and the fact that Olivetti's commitment to buy from Digital 50 % of its non-Intel platforms acquired for resale, originally in force from 1 April 1993 to 25 June 1997 (the termination date of the contract) is tacitly renewable for a further five years aggravate the foreclosure effect of this covenant. It is therefore likely that until 25 June 2002 half at least of Olivetti's requirements for RISC platforms will be satisfied by Digital.

The arrangement affects trade between Member States in that the end-products indirectly involved in this case (see paragraph 8) are traded in large volumes across the whole territory of the Community. Moreover, there may, during the term of the arrangement, be Alpha AXP licensees situated in the Community whose potential for supplying Alpha AXP components (namely the products directly involved in this case), to Olivetti would be restricted by the arrangement.

Accordingly, the Commission considers that Olivetti's purchasing commitment in respect of Alpha AXP products falls within Article 85 (1).

(22) The residual purchasing commitment

Olivetti has agreed to purchase from Digital non-Alpha AXP products to an amount of at least US$ 70 million by 30 June 1994. In this context it has to be noted that:

— this obligation remains valid in any case, without considering the quality, quantity or the prices of Alpha AXP products delivered by Digital, factors which allow Olivetti to cease complying with its purchasing obligations of Alpha AXP products ('Strategic Alliance Agreement'), clause 6.1.7),

— this clause enters into force even if Alpha AXP technology is not yet available. Olivetti's US$ 80 million purchases of Alpha AXP products will be credited to the aggregate 150 million purchase obligation, even if these purchases are made after 30 June 1994,

and

— the non-Alpha AXP Digital products concerned are not specified. Olivetti may choose.

In the Commission's opinion, the above considerations show that this purchasing commitment is not related to the supply of Alpha AXP products and that Digital is not using it to reinforce its position or weaken Olivetti's position in a particular market segment.

Therefore, Olivetti's commitment to purchase from Digital US$ 70 million of non-Alpha AXP products before the end of June 1994 must be considered a separate supply contract. The limited duration (two years) and the amounts involved in comparison with Olivetti's annual expenditure on third parties' products and components [1] lead to the conclusion that this Agreement does not have as its object or effect an appreciable restriction of competition and therefore is not caught by the prohibition laid down in Article 85 (1).

(23) Cooperation fields (except services)

The Parties have agreed to examine the possibility of further cooperation, in several fields. The relevant clauses of the Agreement are very general and only represent the desire of the Parties to explore the possibilities of entering into further specific agreements which are not covered by the notification. This decision should not, therefore, prejudice the view which the Commission may take of such future agreements, if any.

(24) Services

The cooperation that the Parties have agreed in the field of service is ancillary to the reciprocal purchasing commitments in so far as it is capital for each party to be able to organize an efficient after-sales service for the products it purchases from the other party. Furthermore, this cooperation is not likely to result in a limitation of competition in the specific market of services because it is limited to the transfer of the know-how necessary to carry out maintenance on Alpha AXP products (for Olivetti) and on Olivetti's PCs (for Digital). A service committee will provide the necessary vehicle for this cooperation. Replying to a request for information from the Commission, the Parties have stated that the other joint activities initially envisaged (servicing of third-party medium-sized computers, sharing of repair facilities), have been dropped.

Article 85 (1) is, therefore, not applicable to the cooperation arrangements entered into by the Parties in the field of services.

(25) The committees

In answer to a request for information from the Commission, the Parties have stated that all the committees agreed upon (see paragraph 12(e)) are completely independent of Olivetti's board of directors and that, within them, all decisions are negotiated and made by consensus.

(1) According to data supplied by Olivetti, in 1992 the values of Olivetti's purchases of components were US$ [business secret] for Intel products and US$ [business secret] for non-Intel products.

In those circumstances, the Commission is of the opinion that the setting-up and operation of the committees fall outside the scope of Article 85 (1). In fact, the committees seem to be neither structures likely to be used for commercial cooperation between the Parties, nor vehicles for the coordination of competitive behaviour. They are all necessary for the successful implementation of the cooperation and are basically intended to assist Olivetti to use the Alpha AXP technology and products and to accomplish the technical cooperation.

'The Share Purchase Agreement and the Shareholders' Agreement'

(26) Digital acquired approximately 8 % of Olivetti's shares and, as long as it owned at least 25 million shares of Olivetti's common stock, it was represented on Olivetti's board of directors.

In this context, the Commission notes that for as long as these agreements were in force:

(a) Digital was not allowed to purchase any interest in Olivetti which would have resulted in a holding of more than 10 %. Digital was prohibited from entering into voting arrangements with third parties in respect of its Olivetti shares. There were no veto rights that could have given Digital, immediately or at a later stage, a controlling power over Olivetti. In fact, Olivetti continued to be under the sole control of CIR which still held 31,07 %. CIR's right of first refusal with respect to any proposed sale by Digital of its Olivetti shares shows CIR's intention of keeping as much control as possible of the company.

The Commission concludes that Digital's minority share acquisition of Olivetti would not have led to a change in the control of Olivetti.

(b) The Parties claim and show evidence that the board of directors of Olivetti has delegated all of its operative functions to Olivetti's Chairman and General Manager.

The board meets only four times per year, to review financial matters (approval of the balance sheet, of emoluments and of the half-yearly financial statement to be provided to the Italian securities authority) or to discuss general issues. With the exception of the Chairman, the Vice-Chairman and the Managing Director of Olivetti, none of the board members has an operational function at Olivetti.

According to the Parties, Olivetti's board is not involved in decisions on the development of new products or their pricing. In support of this allegation, the Parties have stated that the board was informed of the present agreements with Digital only after they had been concluded. There are no operating issues that have to be approved by the whole board of Olivetti.

As a consequence, the Commission is of the opinion that, in so far as the functions of Olivetti's board of directors were confined to those described above, it is unlikely that Digital's representation on Olivetti's board of directors would have led to a coordination of competitive behaviour or to an exchange of competitive information.

(27) In conclusion, the Commission takes the view that, as long as the functions and tasks of Olivetti's board of directors were limited to those described by the Parties, the arrangements embodied in the 'Share Purchase Agreement' and the 'Shareholders' Agreement' did not have as their object or effect the prevention, restriction or distortion of competition in the meaning of Article 85 (1).

B. **Article 85 (3)**

(28) The overall impact of the notified arrangement on the structure of competition in the Community is positive. Its essential result will be the appearance of Olivetti as an additional competitor on the market for RISC computers, an appearance which would be impossible without some arrangement for acquiring that type of technology (see paragraph 20). This benefit is not countered by any opportunity to coordinate the competitive behaviour of the Parties on the market (see paragraphs 23, 24, 25 and 27). Not only is there no provision for Digital to influence, or to acquire confidential knowledge of, Olivetti's commercial decisions: there is also no limitation of Digital's right to exploit the licensed technology in the Community, whether directly, through its own substantial business there, or by licensing it to other manufacturers (see paragraph 6).

(29) Within the context of that overall positive impact on competition, the Commission is nevertheless of the opinion that the purchasing commitment of Alpha AXP-technology-based products contained in the 'Strategic Alliance Agreement' is caught by Article 85 (1). However, this provision fulfils the four conditions allowing the Commission to grant an individual exemption pursuant to Article 85 (3).

Improvement of production of goods or of promotion of technical or economic progress

(30) The purchasing commitment under examination will encourage Digital to commit itself to large-scale

production and contribute to a more rapid dissemination of Digital's advanced Alpha AXP technology. This increased availability on the market of computer systems built on Alpha AXP technology will favour the spread of software programs especially designed to work with RISC CPUs, thus promoting technical progress.

The benefits for consumers

(31) European consumers of computer system products will receive a fair share of the benefits resulting from the commitment under examination inasmuch as innovative products of high quality will, thanks to that commitment, be available in a greater quantity and at a lower price on the European market. As with all microprocessors, production costs of Alpha AXP are higly dependent on volumes. Thanks to the purchasing commitment, Digital will be able to produce more Alpha AXP products at a lower cost. Given that competition on the market for RISC-based products is expected to grow considerably in the near future as a consequence of the entry into this market of new products stemming from alliances which are taking place in this market (see paragraph 10), the Parties will no doubt pass on in a reasonable measure to consumers the benefits of this commitment, through competitive prices.

Indispensability of the restrictions

(32) The larger-scale production by Digital of the new products, and their enhanced and rapid penetration of the market, which are the main conditions for the attainment of those benefits for consumers, can only be ensured by an adequate purchasing commitment to support Digital's cash-flow over the critical period of start-up of production of this new generation of products. Therefore, it may be concluded that the Alpha AXP-related purchasing arrangement does not restrict competition more than is indispensable to the attainment of the advantages mentioned above.

No substantial elimination of competition

(33) First, although the commitment reduces the scope for Alpha AXP licensees to supply the relevant products to Olivetti, this does not amount to a substantial elimination of competition on the market for those products: Olivetti is only one among many manufacturers that might be willing to acquire Alpha AXP products to satisfy their need to offer RISC-based computers.

Secondly, the commitment will not lead to an elimination of competition in the segment for RISC-based computers. There are several other RISC computers available on the market, based on different technologies developed by different undertakings or groups of undertakings (see paragraphs 7 to 10). On the contrary, in view of the current leading position on the European market of computer system products based on the Sparc and Hewlett-Packard Precision Architecture technologies, the commitment will stimulate competition through the dissemination of a new generation of products based on a new technology in this area which will compete in terms of price and quality with those already on the market.

Furthermore, considering the open nature of the Alpha AXP architecture and its conformity to accepted industrial standards, its dissemination will contribute to the development of information technology production across Europe (namely software products), with a consequent increase in competition in all information technology market segments.

C. Duration of the exemption

(34) Pursuant to Article 8 of Regulation No 17, a decision in application of Article 85 (3) of the Treaty needs to be issued for a specified period. Pursuant to Article 6 of that Regulation, the date from which such a decision takes effect cannot be earlier than the date of notification. In accordance with those Articles, in the present case, the decision, in so far as it grants exemption, should take effect from the date of notification to the end of the contemplated period of the purchasing obligation, that is from 30 July 1992 to 25 June 2002.

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the information at its disposal, the Commission has no grounds for action pursuant to Article 85 (1) of the EC Treaty in respect of the following notified agreements entered into by Olivetti and Digital:

— the 'Share Purchase Agreement' signed on 25 June 1992,

— the 'Shareholders' Agreement' signed on 26 August 1992, and

— the 'Strategic Alliance Agreement', signed on 25 June 1992, with the exception of the purchasing commitment concerning products based on Alpha AXP technology.

Article 2

In accordance with Article 85 (3) of the EC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable for the period from 30 July 1992 to 25 June 2002 to the purchasing commitment concerning products based on Alpha AXP technology contained in the 'Strategic Alliance Agreement' entered into by Olivetti and Digital on 25 June 1992.

Article 3

This Decision is addressed to:

1. Ing. C. Olivetti & C., SpA,
   Via Jervis, 77,
   I-10015 Ivrea (To);

2. Digital Equipment Corporation,
   146, Main Street,
   Maynard, Massachusetts 01754,
   United States of America;

3. CIR,
   Strada Volpiano, 53,
   I-10040 Leiní (To).

Done at Brussels, 11 November 1994.

For the Commission

Karel VAN MIERT

Member of the Commission