

COMMISSION DECISION
of 5 December 1983
relating to a proceeding under Article 85 of the EEC Treaty
(IV/29.329 — VW-MAN)
(Only the German text is authentic)
(83/668/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 Greece, and in particular Articles 4, 6 and 8 thereof,

Having regard to the notifications jointly made to the Commission by Volkswagenwerk AG, Wolfsburg, and Maschinenfabrik Augsburg-Nürnberg AG, Munich, on 4 November 1976 and 5 September 1977, concerning collaboration between them in the commercial vehicles sector,

Having decided on 10 December 1982 to open proceedings in the case,

Having published a summary of the notifications ⁽²⁾, in accordance with Article 19 (3) of Regulation No 17,

After consultation with the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

- (1) On 25 August 1977 Volkswagenwerk AG (VW) and Maschinenfabrik Augsburg-Nürnberg (MAN) signed a Cooperation Agreement concerning commercial vehicles in the 6 to 9 tonnes weight range and components for commercial vehicles. On 5 September 1977 they notified the Agreement to the Commission under Article 4 of Regulation No 17, having already notified, on 4 November 1976, a preliminary memorandum of understanding signed on 14 October of the

same year. On 29 November 1982 the parties amended the Agreement so as to limit their cooperation in the distribution field and on 3 February 1983 informed the Commission of the amended Agreement.

The parties seek a declaration under Article 85 (3) of the Treaty that Article 85 (1) of the Treaty is inapplicable to the notified agreements.

- (2) The object of the cooperation, within the limits agreed on 29 November 1982, is to enable both VW and MAN to extend their respective product ranges to commercial vehicles in the 6 to 9 tonnes class. Hitherto VW's commercial vehicle range ('Transporter' vans and the LT series) had all been under this weight class, while MAN's had all been above it, in the 10 to 40 tonnes range.

Under the Agreement the parties undertake:

- to develop, manufacture and distribute a joint range of commercial vehicles of between 6 and 9 tonnes maximum gross weight, with each partner specializing,
- to supply each other with sub-assemblies, components and parts for fitting in the partners' own commercial vehicle ranges.

- (3) The joint range to be developed, manufactured and distributed by the parties on a work-sharing basis comprises a range of cab-over-engine truck models in the following weight classes:

- 6 to 6,5 tonnes with a four-cylinder MAN diesel engine,
- 7,5 to 8 tonnes with a four-cylinder MAN diesel engine,
- 7,5 to 8 tonnes with a six-cylinder MAN diesel engine, and
- 9 tonnes with a six-cylinder MAN diesel engine.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 337, 23. 12. 1982, p. 3.

Each party agrees to supply the other, and any other manufacturer who is granted manufacturing rights (see paragraph 10), with sub-assemblies, components and parts of his manufacture for building the joint range and as spare parts therefor.

- (4) Each party also agrees to supply the other, and any other manufacturer who is granted manufacturing rights (see paragraph 10), with sub-assemblies, components and parts of his manufacture for building the other's own commercial vehicle range and as spare parts therefor.
- (5) The development work for the joint range is to be divided between the partners as follows:
 - VW is to develop the cab, clutch, gearbox, rear axle, drive shafts, electrical systems and standard bodies;
 - MAN is to develop the engines, front axle, chassis, brakes, wheels and tyre type and special bodies including tippers.
- (6) The joint range is to be assembled by both parties in their respective works, with each partner supplying the other with the sub-assemblies, components and parts for whose manufacture or procurement he is responsible. Only sub-assemblies, components and parts manufactured or procured by the party responsible for the particular item in question may be used for the production of the joint range.
- (7) The vehicles of the joint range will bear both the 'VW' and 'MAN' trade marks.
- (8) The distribution is left to MAN, under the supervision of a cooperation committee jointly formed by the two partners. In Germany distribution of the joint range will be almost exclusively through the MAN sales organization.
- (9) Elsewhere the joint range will be distributed by the import companies MAN uses to market its own range in the country concerned. VW has the option of appointing the same importers to distribute its range as well. The importers generally have the name 'VW-MAN Truck

and Bus' or the equivalent in the local language. VW has small shareholdings in the companies (under 15 %). The remainder of the equity is held by MAN and other individuals and companies, including VW and MAN importers.

- (10) Both sides agree not to compete in any form, directly or indirectly, against the models in the joint range with other commercial vehicles in the 6 to 9 tonnes authorized weight class. They also accept restrictions on their use outside the cooperative venture of industrial property rights, manufacturing rights or know-how arising out of the joint development programme: the licensing of such rights and the transfer of such know-how to third parties require the consent of the other party where the third party is to use the rights or know-how for vehicles in the 6 to 9 tonnes range. This applies regardless of whether the industrial property rights existed before the collaboration began or were acquired later, whether individually or jointly.
- (11) Disputes arising out of the Agreement are subject to an arbitration clause, with the further possibility of reference to the courts. The Cooperation Agreement is concluded for an indefinite period, which can be terminated from the end of any year upon 36 months' notice, the first possible termination date being 31 December 1987.
- (12) In 1981 the parties held the following estimated shares of the Community market in terms of new vehicle registrations:

VW LT series:	10,8 %,
VW-MAN joint series:	4,5 %,
MAN trucks:	10,5 %.

The parties' main competitors are Daimler Benz, Ford, Iveco and Renault VI. All these hold bigger shares of the Community market than do VW and MAN.

The market is characterized by the extremely high market shares of some producers in their home markets. In Italy Iveco in 1981 had 77,5 % of the market (trucks upwards of 3,5 tonnes), in Germany Daimler Benz had 71,2 %

(trucks of between 6 and under 8 tonnes), in France Renault had 45 % (trucks over 5 tonnes) and Ford in Britain had over 35 % (trucks of between 3,5 and 7,5 tonnes). VW and MAN's market shares in Germany were much smaller than this. In 1981 they accounted for the following percentages of the new registrations:

VW LT series:	19,1 %,
VW-MAN joint series:	8,4 %,
MAN trucks:	23,1 %.

- (13) No comments were received from third parties in response to the Commission's notice pursuant to Article 19 (3) of Regulation No 17.
- (14) This Decision does not cover the parties' standard form agreements with importers, dealers and repairers appointed to handle the distribution and servicing of the joint range and the VW and MAN ranges of commercial vehicles, which the parties also notified to the Commission.
- (15) The parties have stated that they no longer require a formal decision by the Commission under Article 85 (3) with respect to the period between 4 November 1976, the date of the first notification, and 3 February 1983.

II. LEGAL ASSESSMENT

- (16) The agreements between the parties have as their **object or effect** a restriction of competition within the common market and may affect trade between Member States. However, the prohibition contained in Article 85 (1) can in this case be declared inapplicable by virtue of Article 85 (3).
- (17) The restriction of competition within the meaning of Article 85 (1) arises from the provision of the Cooperation Agreement prohibiting either party from developing or producing commercial vehicles in the 6 to 9 tonnes weight class independently of the other party. Since both parties were, before embarking on the cooperation, already engaged in commercial vehicle production (VW of vehicles up to 5 tonnes and MAN of those of 10 tonnes and over), both were potentially capable of expanding into the 6 to 9 tonnes range.
- (18) The work-sharing in the development and production of components for the joint range has the **object and effect** of bringing about specialization by the parties. This may go beyond the joint range to affect the partners' own commercial vehicle ranges, leading to a gradual standardization of these ranges. It will usually turn out cheaper to use the standard components developed for the joint range than to carry out new independent development (see paragraph 4 above). As a result, the competition between VW and MAN on technical innovation will decrease and the consumer's range of choice between vehicles with different technical characteristics will be reduced.
- (19) The ban on using, in the production of the joint VW-MAN range, any other sub-assemblies, components and parts than those manufactured or procured by the partner responsible for the particular item concerned limits the number of third parties awarded contracts to supply particular components. The resulting diminution of competition on the demand side will work to subcontractors' disadvantage.
- (20) The common distribution arrangements for the joint VW-MAN range involve a restriction of competition on sales. Inside Germany the joint range will be marketed by MAN together with its own commercial vehicle range. Abroad the same applies except that in this case VW can also grant the same importers the distribution rights for the VW range. These arrangements will restrict competition between the parties' commercial vehicle ranges.
- (21) Less-extensive restrictions of competition are also present at the dealership and servicing level. Within Germany, only a few dealers and repairers in the VW network sell the joint range as well as VW's own commercial vehicle range which goes up to 6 tonnes. Abroad, especially in countries where the parties have traditionally held only fairly small shares of the commercial vehicle market, it is more common for the same dealers and repairers to sell and service the VW range as well as the joint VW-MAN ranges.
- (22) The restrictions accepted by the parties in relation to industrial property rights, manufacturing rights and know-how (paragraph 10) constitute a further restriction of competition.

However, these clauses restricting the use of rights and know-how are limited to the life of the Agreement. After its expiry, the parties can continue to use each other's inventions and industrial property rights in return for appropriate royalties and will also be able to claim, on reasonable terms, non-exclusive manufacturing rights for the sub-assemblies, components and parts developed and/or produced by the other party.

- (23) The agreements between VW and MAN are also liable to affect trade between Member States, since both companies do business throughout the common market and their cooperation is likely to alter the position of firms from other Member States, whether other commercial vehicle suppliers — who will be affected on the German market as well as on their home territory — or makers and suppliers of components. The flow of trade between Member States will be diverted from the course it would otherwise have followed in the absence of the cooperation.
- (24) However, there are several grounds for supposing that the agreements fulfil the conditions of Article 85 (3).
- (25) The cooperation contributes to improving the production of goods. The new product which the parties are bringing on to the market to compete with the established ranges of other truck manufacturers is being manufactured under arrangements that provide for extensive specialization in the production of components.
- (26) The parties' agreement not to develop or produce vehicles in the same weight class, except in the context of the Cooperation Agreement, without the other party's consent or to fit sub-assemblies, components and parts in the joint range other than those produced or procured by the party responsible (paragraphs 17 to 19) will ensure longer production runs and increased productivity for each party, especially as the parties will use some of the same standardized sub-assemblies, components and parts for fitting in their own commercial vehicle ranges as well as for the joint VW-MAN range.
- (27) The pooling of general development work and the work-sharing in the development of individual components (paragraph 18) will cut development costs and make it easier for the

partners to enter the market in the joint range weight class.

- (28) The distribution of the joint range together with MAN's commercial vehicle range (paragraphs 20 and 21) also contributes to improving the distribution of goods within the meaning of Article 85 (3). MAN has an established truck distribution network, whereas most of VW's network is not technically equipped for truck servicing. It would be uneconomic to set up a separate distribution network for the relatively small number of units of the joint range expected to be sold.
- (29) Although the cooperation involves restrictions of competition between VW and MAN that are of some importance given that they embrace not only components but also finished vehicles and distribution, on the credit side it holds substantial advantages which outweigh those restrictions of competition. For the most part the cooperation restricts only potential competition. In practice, competition between the parties prior to their cooperation was only on a small scale, since their commercial vehicle ranges were — and still are — only to a limited extent comparable.
- (30) The cooperation does not involve vehicles already being manufactured by either party but is intended to put on the market a new range of vehicles which will extend the parties' product ranges. It enables them to offer a full range of commercial vehicles. This is necessary. If they are to compete with the large truck manufacturers who have been selling a full range of commercial vehicles for many years and who dominate the market in some parts of the Community (see paragraph 12). The cooperation between VW and MAN on the joint range will improve the structure of supply and increase competition.
- (31) The restrictions of competition contained in the Cooperation Agreement (paragraphs 17 to 22 above) are indispensable for the success of the venture. This is true both of the ban on competition with the joint range and of the obligation to use in its production only components manufactured or procured by the party responsible (paragraphs 17 to 19, 22 and 26), since otherwise the parties could not be expected to concentrate their development and production efforts on the joint programme as they are likely to do with the

restrictions. The linking of distribution of the joint range to that of MAN products (paragraphs 20, 21 and 28) is also indispensable to the venture. The alternatives, the setting up of a separate distribution and servicing network for what is only a small segment of the truck market in the 6 to 9 tonnes range or parallel distribution of the joint range through both the VW and MAN networks, are either uneconomic or impossible on technical grounds.

(32) The restrictions on the disposal of industrial property rights, manufacturing rights and know-how (paragraph 22) are designed to keep the results of the development work mainly for the cooperation itself and to keep them from third parties who are also in the 6 to 9 tonnes truck business. This action is an indispensable element in ensuring the success of the joint range in competition with the vehicles of other manufacturers. The restrictions prevent any competitive leads the parties may gain over their competitors because of new technical solutions found in developing or manufacturing the joint range being dissipated and hence lost by one party acting unilaterally.

(33) **These restrictions do not go further than is necessary, since each party is free to grant manufacturing rights and licences for parts developed or produced by him to other manufacturers who are to use them only in connection with vehicles outside the joint range weight class.** The parties are also guaranteed the right to unrestricted use of know-how after expiry of the Agreement, since the rights of user are not subject to any time limit, the parties have options on each other's manufacturing rights and there is provision for the agreement of appropriate royalties and conditions in the event of the options being exercised.

(34) Consumers are likely to be allowed a fair share of the resulting benefits, because the more intense competition that is generated will tend to ensure that part of these benefits is passed on to them.

(35) The cooperation does not afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question. In fact, it involves a new supplier entering the market for 6 to 9 tonne trucks. It is unlikely that VW and MAN could in the foreseeable future obtain market shares big

enough to oust competition in part of the truck market, in view of the strong positions held by other large manufacturers (see paragraph 12).

(36) In accordance with Article 6 (1) of Regulation No 17, an exemption of the cooperation between VW and MAN from the application of Article 85 (1) should take effect from 3 February 1983, the date on which the parties informed the Commission of the amended Agreement under which they have abandoned the more extensive cooperation agreed originally (see paragraphs 1 and 15).

(37) In accordance with Article 8 (1) of Regulation No 17 and with a view to the particular circumstances of the case, the exemption is granted for a period of 15 years, i.e. until 31 December 1998. New truck models take an extremely long time to develop and also tend to remain in production and on sale for a long time (long intervals between model changes). The substantial investment undertaken by the parties therefore requires a relatively long period before it will yield a satisfactory return on capital employed. A similarly long time-scale is involved in establishing the new product on the market against competition from the other big commercial vehicle makers. The parties must be able to count on the enforceability and continuance of the Agreement during this time. A period of 15 years appears therefore appropriate.

(38) To enable the Commission to satisfy itself that the tests of Article 85 (3) continue to be fulfilled during the period of the exemption, it is necessary to impose on the parties under Article 8 (1) of Regulation No 17 the obligation to notify the Commission of any substantial amendment of the terms of the notified Agreement and of any extension of their collaboration such as, in particular, if VW were to appoint the importers who distribute the joint range and MAN's range of commercial vehicles in the common market to distribute the VW commercial vehicle range as well,

HAS ADOPTED THIS DECISION:

Article 1

1. The provisions of Article 85 (1) of the EEC Treaty are hereby declared inapplicable, by virtue of

Article 85 (3) of the Treaty, to the Cooperation Agreement of 25 August 1977 between Volkswagenwerk AG and Maschinenfabrik Augsburg-Nürnberg AG, as amended by the Agreement of 29 November 1982.

2. The declaration of inapplicability in paragraph 1 shall apply from 3 February 1983 until 31 December 1998.

Article 2

The undertakings to which this Decision is addressed shall inform the Commission immediately in the event of:

1. any substantial amendment or addition being made to the notified Agreements;
2. Volkswagenwerk AG entering into an agreement with importers in the common market who distribute the commercial vehicles of the joint

range or of Maschinenfabrik Augsburg-Nürnberg AG to distribute VW commercial vehicles as well.

Article 3

This Decision is addressed to:

1. Volkswagenwerk Aktiengesellschaft, Postfach, D-3180 Wolfsburg 1;
2. Maschinenfabrik Augsburg-Nürnberg Aktiengesellschaft, Postfach 500620, D-8000 Munich 50.

Done at Brussels, 5 December 1983.

For the Commission
Frans ANDRIESSEN
Member of the Commission