

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 31 July 1991

declaring the compatibility of a concentration with the common market

(Case No IV/M012 Varta/Bosch)

Council Regulation (EEC) No 4064/89

(Only the German text is authentic)

(91/595/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings <sup>(1)</sup>, and in particular Article 8 (2) thereof,

Having regard to the request of the German *Bundeskartellamt* of 18 March 1991 for referral of the case according to Article 9 (2) of the aforesaid Council Regulation,

Having regard to the Commission Decision of 12 April 1991 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations <sup>(2)</sup>,

## I. CONCENTRATION

- (1) The proposed concentration was notified on 25 February 1991. It concerns the creation of a new company, Starterbatterie GmbH, by Varta Batterie AG (Varta) and Robert Bosch GmbH (Bosch), to which the companies will transfer their starter battery business. Varta will acquire a 65 %, and Bosch a 35 % interest in the new company.
- (2) The notified operation is a concentration within the meaning of Article 3 (1) (b) and (2) of Council Regulation (EEC) No 4064/89.
- (3) Varta and Bosch will control the new company jointly. A specific agreement concluded by the parties (*Rahmenvertrag*) provides for participation of both parent companies in the management and supervisory board of the new company. In particular, both parties will have the right to appoint managing directors of the joint venture. A number of decisions directly related to the management of the new company will have to be taken by a 75 % majority. This applies, for example, to the approval of detailed budget plans for the joint venture and to the appointment and dismissal of the directors and members of the executive and supervisory boards of the subsidiaries of the new company, thus ensuring the influence of both parties in the management of Starterbatterie GmbH. Furthermore, Varta and Bosch will be equally represented on the supervisory board of the joint venture.

<sup>(1)</sup> OJ No 395, 30. 12. 1989, p. 1, amended version : OJ No L 257, 21. 9. 1990, p. 13.

<sup>(2)</sup> OJ No C 302, 22. 11. 1991, p. 6.

- (4) The new company will perform on a lasting basis all the functions of an autonomous economic entity. Starterbatterie GmbH will carry on the development, production and distribution of starter batteries. It will be economically independent of its parent companies and will be responsible for its own commercial policy.
- (5) Varta and Bosch will transfer all their national and international starter battery activities to the joint venture, including product-related R&D, production and distribution facilities, and will withdraw from such activities. Although Bosch will sell some starter batteries produced by the joint venture through its distribution network for other automotive parts, it will act as a commission agent only on the instructions and for the account of Starterbatterie GmbH. From an economic point of view, it cannot be considered likely that one of the companies will re-enter the market as an independent supplier. Varta will continue to produce other battery products (traction, stationary consumer batteries), whereas Bosch will continue its traditional activity as a producer of automotive parts. Nevertheless, the Commission does not have any indication that the creation of the joint venture will have anti-competitive effects on the abovementioned activities of the two companies. In this respect there is no risk of coordination of the competitive behaviour of the undertakings which remain independent.

## II. COMMUNITY DIMENSION

- (6) The proposed concentration has a Community dimension. Worldwide turnover (Varta: ECU 1 billion, Bosch: ECU 15 billion) and Community-wide turnover (Varta: ECU 0,7 billion Bosch: ECU 11 billion) of the parties for 1989 exceed Article 1 (2) of Regulation (EEC) No 4064/89 thresholds. Neither Varta nor Bosch achieve more than two-thirds of their Community turnover in one and the same Member State.

## III. THE PARTIES

- (7) Varta is the most important battery producer (starter batteries, industry batteries, consumer batteries) in Germany and one of the most important battery manufacturers in the Community. As far as starter batteries are concerned, the company is active in every Member State as a supplier to vehicle producers as well as to retailers.
- (8) Bosch is *inter alia* a worldwide producer of automotive parts, including starter batteries; telecommunication equipment and consumer goods. Up to

now, Bosch has offered starter batteries mainly to the replacement market, where it is well represented all over Europe. Bosch supplies the original equipment market for starter batteries mainly in Spain, through its Spanish subsidiary Femsa.

## IV. DECISIONS TAKEN BY THE COMMISSION DURING THE PROCEEDINGS

### 1. The Decision to initiate proceedings

- (9) After examination of the notification, the Commission concluded that the notified operation raised serious doubts as to its compatibility with the common market. It therefore decided on 12 April 1991 to initiate proceedings pursuant to Article 6 (1) (c) of Regulation (EEC) No 4064/89.

### 2. The Statement of Objections

- (10) Following investigations carried out amongst a broad range of undertakings operating in the affected markets as competitors or customers, the Commission sent the parties, on 24 May 1991, a Statement of Objections in which it raised objections regarding the replacement market for starter batteries in Germany and Spain.
- (11) The objections set out in the Statement of Objections may be summarized as follows:

#### (a) *Relevant product market*

- (12) The starter battery sector has to be divided into two distinct product markets:
- the original equipment market, which comprises the supply of starter batteries for vehicle producers for the initial equipment of new vehicles;
  - the replacement market, which comprises the supply of replacement batteries to the retail market for the equipment of used cars.
- (13) In general terms the distinction between the two product markets is not mainly based on a difference in the product itself or on the function of the product. It resides mainly in the fact that the conditions of competition differ significantly on the two markets, as a consequence of which the producers have to adapt their commercial and entrepreneurial policies to the different requirements of the two sales markets.
- (14) In general terms, the original equipment market is characterized by its specific demand side, the automobile industry, which gives the market specific features. In particular, supply to the original equipment market implies a steady demand of a reduced number of battery types [Bosch (<40), Varta (>100)] by a small number of clients. According to

the notification of the parties concerned Varta sold [...] %<sup>(1)</sup> and Bosch [...] % of their respective sales volume to five clients of the original equipment market. As to the nature of the product, batteries for the original equipment market have to correspond to the specifications required by the car manufacturers (Bosch, Varta, letter of 8 March 1991, page 4), they are supplied charged and on specific pallets (Bosch, letter of 30 October 1990, page 2). The quality and standard including zero-defect reliability of the products is prescribed and controlled by the car manufacturers. Supply to the original equipment market is generally linked to R&D cooperation for new products with the car manufacturers which enables the suppliers to follow the latest technical developments in the market. Distribution on the original equipment market means just-in-time delivery to a small number of clients.

- (15) Supply to the replacement market, on the other hand, implies strong seasonal fluctuations in demand for a larger number of battery types (Bosch : >200, Varta : <300), with a variety of different distributors ranging from purchase organizations, wholesalers, car producers and department stores to ultimate dealers. As to the nature of the product, replacement batteries, even if sold to car manufacturers, are adapted to current standards so that the same type can be used in some cars of different producers (Varta, Bosch, letter of 8 March 1991, page 4). They are mainly delivered as dry batteries. The quality and standards are not controlled by the customers (Varta, Bosch, letter of 8 March 1991, page 5) nor is there any feedback or cooperation as to R&D for new products. Distribution to the sales markets requires the existence of a distribution and service network system because a number of clients require delivery to the local outlets and service.

- (16) The distinction between the original equipment market and the replacement market is common practice in the industry (Bosch, letter of 30 October 1990, page 2). It has in general terms been confirmed by the Court of Justice for heavy goods vehicle tyres [see Court of Justice, *Industrie Michelin v. Commission*<sup>(2)</sup>]. The parties in the present case consider that such a differentiation cannot be justified but have nevertheless in practice made a clear distinction between the two markets. In the organization of their new joint venture they establish separate divisions for the original equip-

ment and replacement market with different managing directors (*Rahmenvertrag* 3.1.).

(b) *Relevant geographical markets*

- (17) The replacement markets for starter batteries in Germany and Spain are still considered as national markets. Investigation has shown sufficiently homogeneous conditions of competition in both countries, which differ appreciably from the conditions of competition in the other Member States, to establish separate geographic markets.
- (18) Two factors indicate this :
- the market shares of the manufacturers are very different in each Member State,
  - as shown by the information communicated by the parties and their competitors, the manufacturers are able to charge in Germany and Spain for the same types of batteries different prices to those which they charge in the other Member States.
- (19) These differences, which continue to exist despite the absence of any specific legal barriers, may be attributed to a range of causes which taken as a whole establish appreciably different conditions of competition in the various Member States.
- (i) *Nature and characteristics of the product*
- (20) Different product ranges reflecting different requirements of the demand side are sold in the various Member States.
- (21) Starter batteries are adapted to the specific electrical requirements of the different types of vehicles. Despite the fact that one type of replacement battery can be used for a number of different types of cars, more than 400 different types of replacement batteries are currently produced in the Community. Each type varies in relation to size, power, etc.
- (22) The importance of sales of these different types varies in the respective Member States. The different stock of cars in the different Member States influences the battery types sold in the Member States. The four large producers, Varta, Bosch, CEAC and Magneti Marelli, having together more than 50 % of the market in Germany, Spain, France and Italy, were asked for their 10 most popular battery types (best sellers) in each of these Member States, where about 20 million batteries were sold in 1990. The results are the following :

<sup>(1)</sup> In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 17 (2) of Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets.

<sup>(2)</sup> 1983 ECR. 3461.

— the total number of different battery types included in the 10 best sellers of the four suppliers in the four Member States mentioned above is 77,

— 59 of these types are among the best sellers in one Member State (volume : 2,3 million),

— 11 types are among the best sellers in two Member States (volume : 1 million),

— three types are among the best sellers in three Member States (volume : 0,5 million),

— four types are among the best sellers in all four Member States (volume : 2,3 million).

(23) Given the large variety in types offered in the Community, replacement batteries cannot be regarded as homogeneous products. Therefore the different product ranges sold in the various Member States constitute a structural difference in the conditions of competition.

(24) A change in this respect cannot be expected in the near future. This is particularly because the national product range of replacement batteries is related to the stock of vehicles in a country, the composition of which has not significantly changed in the last few years. Taking into account that the life-cycle of a battery of a new car is approximately five years, even a strong alignment in the stock of new vehicles would have only a very small effect on the replacement battery markets within the near future.

#### (ii) Buyer preferences

(25) The preferences of buyers for branded replacement starter batteries are evident in every Member State and they differ significantly in brands favoured.

(26) On the Italian market all large suppliers sell their batteries — with a few exceptions — under their own brand. In Spain and Germany the share of manufacturer brands is estimated at above 80 %. In France, the share of manufacturer brands has declined in the past as a result of the expansion of modern distribution systems. According to Fiat's estimates, it is currently about 60 % of the sales volume. Generally, shares in value terms are higher than shares in volume terms, because of the higher prices charged for manufacturer brands.

(27) The fact that suppliers use different brands in different Member States can be demonstrated by the information provided by Bosch and Varta. In Germany Bosch sells (a very substantial share) of its branded batteries under the 'Bosch' label whereas

in France and Spain it sells (a very substantial share) and (a very substantial share) respectively under its 'FEMSA' label. In Spain and Germany Varta sells (a substantial share) and (a substantial share) respectively of its branded batteries under the 'Varta' label, whereas it sells in France (a substantial share) under its brand 'Baroclem' (Varta, Bosch, 8 March 1991, Annexes 1a and 1b).

#### (iii) Structure of the demand side

(28) An important element establishing different conditions of competition is the structure of the demand side. There are substantial differences in the spread and importance of the different distribution channels present in each Member State.

(29) This is confirmed by the notifying parties as well as by competitors and checked by an investigation. The results of this investigation show, for example :

— the share of the replacement batteries sold through the own distribution network of battery producers differs from more than 20 % in Member State [...] and in Member State [...] to less than 10 % in Member State [...] and in Member State [...];

— replacement batteries sold through the distribution channels of the vehicle producers, their dealers or importers account for about 20 % of the market in France and 15 % in Germany but less than 10 % in Spain and less than 5 % of the Italian market;

— the distribution channel of independent dealers of automotive parts is in every Member State the most important distribution channel but its share in the total replacement market differs from about 40 % in France to above 80 % in Italy. Also within this distribution channel the structure of the clients is very different. In Italy and Spain this distribution channel is characterized in particular by a large share of ultimate dealers, followed by wholesalers; in Germany and the United Kingdom it is dominated by wholesalers; and in France by purchasing organizations of wholesalers;

— department stores and supermarkets are significant only in France (above 20 % of the market) but not in Spain, Germany and Italy (less than 5 %);

— oil companies have a small share in the German and French market (about 5 %) but are of no relevance in Spain, Italy and the United Kingdom (less than 1 %).

- (30) Although a tendency towards concentration on the demand side is to be expected, particularly in Germany and Spain where modern distribution systems are not yet very important, it cannot be considered that these developments will lead to radical change in the structure of the distribution systems in these Member States in the near future.

(iv) Supply side and barriers to entry

- (31) The concentration of supply varies considerably from one Member State to another. The more supply is concentrated in one market, the more difficult it will be for actual or potential competitors to increase their market shares or to penetrate a market. Market-related barriers do still exist, which is confirmed by the fact that although there have been no legal or other trade barriers to entry for batteries within the European Community for years (apart from customs duty levied in Spain until 31 December 1992), significant market penetration in the five largest Member States in most cases only became possible through acquisition of a national company or of an existing plant. Tudor, after an unsuccessful attempt to enter the German market on its own, has acquired the German company Hagen.

(c) *Market dominance*

- (32) The proposed concentration would give the new entity a dominant position in Germany and Spain, with the result that effective competition would be significantly impeded, because of the following factors:

*The German market*

The market share of the new entity would amount to 44,3 %.

The lead of the order of (> 25 %) over the next largest competitors would be considerable.

The other competitors are small and medium-sized battery specialists.

Varta/Bosch has greater financial strength than the most important competitors.

The new entity has leading production capacity in comparison with its nearest competitors and furthermore the existing use of capacity by its nearest competitors is already high.

The other large European producers on the German market have only small market shares.

*The Spanish market*

The market share of the new entity would amount to 44,5 %.

The existence of an equally strong competitor, Tudor SA, could lead for several reasons to alignment of the behaviour of both competitors.

In particular the absence of other large actual competitors able to counter any alignment of the behaviour of the main competitors on the Spanish market is noted.

**V. CHANGES AFTER SENDING THE STATEMENT OF OBJECTIONS**

- (33) Following the Statement of Objections an oral hearing of the parties was held. As a result the Commission maintained its objections as to the German market.

- (34) Since the Statement of Objections was sent, the following factual changes have occurred:

- Fiat has acquired the French battery producer CEAC, which has a market share of between 2 and 5 % in Germany;
- the Fiat group has entered into an agreement to acquire via CEAC the German battery producer Sonnenschein. Sonnenschein has a market share of between 5 and 10 % in Germany,

and the following commitments have been entered into by Varta:

- Varta has informed the Commission that it will cut its cooperative links with the Deta/Mareg group of companies. It will, for this purpose, within an agreed period:
  - terminate its licence agreement with the Deta/Mareg group and will not prolong Deta/Mareg's right to use any of Varta's property rights. Any new licence agreements on starter batteries will only be concluded with the consent of the Commission,
  - end any overlapping between membership of the management and supervisory board of Varta on the one hand and of the Deta/Mareg group on the other hand.

**VI. IMPLICATIONS OF FACTUAL CHANGES AND COMMITMENTS IN THE AFFECTED MARKETS**

- (35) The abovementioned concentration projects of Fiat (CEAC and Sonnenschein) and Varta's commitment constitute an important change in the market

structure and have an influence on the assessment of the concentration project Varta/Bosch as far as the creation of a dominant position is concerned. They do not however influence the Commission's overall assessment of the definition of the relevant product and the relevant geographic markets.

- (36) The Advisory Committee on Concentrations expressed on 17 July 1991 the majority opinion that the factual changes were insufficient to alter the appraisal given in the Statement of Objections. The Commission has taken the utmost account of the Advisory Committee's opinion in drawing up this Decision.

#### 1. Relevant product market

- (37) As to the relevant product market, the parties have claimed that the original equipment sector and the replacement sector for starter batteries belong to the same product market. They have nevertheless confirmed, before the oral hearing, that technical and qualitative differences exist between the two markets, and they have organized the new joint venture by clearly separating the directorates dealing with the original equipment activities and those dealing with the replacement market activities. Given the reasons set out in the Statement of Objections and the fact that distinguishing between the original equipment market and the replacement market for starter batteries is common practice in the industry, the Commission maintains its original assessment.

#### 2. Relevant geographic market

- (38) The parties further stated that the relevant geographic market for replacement batteries is the European market. They object to the Commission's appraisal that different conditions of competition exist in different Member States. In particular they attack the following criteria put forward to establish the existence of these different conditions of competition:

- (39) (a) As to the nature and characteristics of the product, the parties state that batteries are homogeneous products and that no different product ranges are offered in different Member States. Nevertheless, Varta has provided information about the 20 most popular battery types (best sellers) it sells in the five largest Member States (Germany, Spain, France, Italy, United Kingdom). Analysis of these shows that only a very small number of battery types are best sellers in more than one Member State. The results were the following:

- the total number of different battery types included amongst the 20 best sellers in the five Member States mentioned above is 77; these represent 69 % of the total volume of sales (volume: [...] million),
- 62 of these types are among the best sellers in one Member State (volume: [...] million),
- eight types are among the best sellers in two Member States (volume: [...] million),
- three types are among the best sellers in three Member States (volume: [...] million),
- two types are among the best sellers in four Member States (volume: [...] million),
- one type is among the best sellers in five Member States (volume: [...] million).

- (40) Furthermore it cannot be expected, as the parties presume, that the differences in the product ranges existing in the different Member States will decrease to a significant extent, because in the last 20 years the percentage share of imported vehicles has increased. On the one hand, vehicle imports into the Member States can be very different. Approximately one third of imports into Germany are, for example, Japanese cars, which is not the case for France and Italy. On the other hand, it cannot be expected that a strong rapprochement of the different product ranges will take place in the near future.

- (41) (b) With regard to the assessment of existing consumer preferences and in particular to the importance of brands in the German market, the estimates of the Commission (about 80 %) and the parties (78,8 %) correspond as to the share of the manufacturer's brand in the market. Furthermore the parties have declared that they sell (a very substantial share) % (Bosch) and about (a very substantial share) % (Varta, dual brands included) of their batteries under their own brands (Varta, Bosch, letter of 8 March 1991, Annexes 1a and 1b) in Germany.

- (42) (c) As to the structure of the supply side, the parties claim that the Commission has not sufficiently taken into consideration the imports into the German and Spanish markets. For the German market the proportion of imports in value is estimated by the Commission to be about 15 %, by the parties to be 16,4 %, having increased since 1975 and been stagnant in the last years. This difference cannot be considered substantial enough to change the general assessment.

- (43) (d) The parties further claimed that the Commission should have based its analysis on the import volume in units. With regard to the question whether the assessment has to be based on the imports measured in value or in volume, the Commission considers that, in particular in this case, only the figures in value are reliable. Firstly there is large uncertainty in the import quotas in terms of volume: the official import statistics are measured in weight not in units which makes further estimates necessary; and they include group internal imports (e.g. Varta's group internal exchange of starter batteries within the Community amounts to [...] million batteries) and sales to competitors (more than [...] million batteries in the Community). Secondly, import figures in volume do not reflect the qualitative significance from a competitive point of view. Figures in volume do not weight the different types of batteries, e.g. batteries for motor cycles or trucks. Therefore it is considered as justified and necessary to base the assessment on imports in value as they reflect the evaluation of the market for the product concerned and take into account all other elements influencing competition.

### 3. Market dominance

- (44) The abovementioned factual changes have, in contrast, an impact on the legal assessment as to whether the concentration would create a dominant position for the new entity on the German market.

#### (a) *Acquisitions by Fiat*

- (45) Fiat/Magneti Marelli's acquisition of CEAC and Sonnenschein would change the structural market conditions in several respects.
- (46) Due to the acquisitions of CEAC and Sonnenschein, Fiat's market share in Germany will increase from 1 % to more than 10 %.
- (47) More important than the pure increase of market share is the substantial material change of the competitive potential that accompanies this increase.
- (48) Before the two acquisitions, Fiat/Magneti Marelli's, as well as CEAC's, market potential in Germany was largely restricted although both companies had financial strength and, with regard to Fiat, also spare capacity. The reason for this restricted market potential was that Fiat and CEAC did not have a physical presence in the German market. In particular they did not have well-known German brands and they had at their disposal only a marginal distribution network. Fiat and CEAC therefore had to be considered in Germany as a kind of niche supplier, e.g. for wholesalers specialized in the

distribution of French or Italian automotive parts. In this respect they could not be regarded as a real alternative to the other suppliers in the market, such as Varta, Bosch, Deta/Mareg, Hoppecke, Tudor/Hagen or Sonnenschein, offering well-known brands and having distribution networks.

- (49) Before the acquisition, Sonnenschein's market potential was even weaker than indicated by its market share because it faced considerable financial difficulties and was confronted with ecological problems. It had planned to reduce its production capacity despite an existing full capacity use.
- (50) The concentration of Fiat, CEAC and Sonnenschein will create substantial synergy effects which give rise to the expectation that the competitive potential of the new entity will be more important than the current market shares achieved through the merger might indicate. In particular, Fiat will be able to compensate its competitive shortcomings. It will have access to a well-known German brand and to all distribution channels. By that improved market access, Fiat's financial strength and its spare capacity will be able to have, for the first time, an impact on the German market. Due to the merger of Fiat/CEAC/Sonnenschein, a strong competitor will emerge whose competitive potential will be significantly larger than the sum of the separate potential of each of the companies before the merger.

#### (b) *Ending the cooperation with Deta/Mareg*

- (51) Ending the cooperation between Varta and Deta/Mareg will influence the competitive relationship between the two groups in the sense that Deta/Mareg will be able to become an independent operator on the German market, and to enter into effective competition with the new entity Varta/Bosch.
- (52) Before 1977 Deta/Mareg belonged, like Varta, to the Herbert Quandt group of companies. This group was then split up, as a result of which Varta and Deta/Mareg were separated and are now controlled by different members of the Quandt family. According to the information available to the Commission, the two new groups are not linked by cross-shareholding or by any other means that would establish any legal relationship between them.
- (53) Nevertheless, there are two factual elements which can be considered as influencing the competitive relationship between the two groups of companies. Firstly, there is an overlapping membership between the supervisory boards of the two groups. Secondly, Varta and Deta/Mareg have concluded an automatically renewable licence agreement, the complexity of which far exceeds licence agreements that commonly exist between different producers in this industry. The agreement does not,

as can usually be found, refer to a specific technical application or area, but comprises a commitment to cooperation on a full scale ranging from mutual exchange of know-how on the production process, product development, respective use of patents and other intellectual property rights, exchange of R&D, to technical support in the form of exchange of experts for the respective production facilities. The agreement itself states the influence that Varta possesses in Deta and Mareg.

(54) Because of this comprehensive technical cooperation and the personal links on the supervisory boards, a relationship of mutual consideration has been and could be maintained which excludes effective competition between the two companies in the sales markets.

(55) The dissolution of this comprehensive agreement between Varta and Deta/Mareg is considered to break up the cooperative relationship between the two groups. It leads the way for Deta/Mareg to become an independent producer in the market.

(56) Given the complexity of the licence agreement it is considered that this factual change cannot be achieved by immediate dissolution, but has to take into account a certain transitional period during which the companies involved can adapt themselves to the future termination of their cooperation. In this respect the envisaged dissolution would have an immediate effect on the strategies and the competition concept of the companies.

(c) *Impact on competition*

(57) Both factual changes, the increase of the market potential of Fiat in the German market as well as the dissolution of the cooperative relationship between Varta and Deta/Mareg, give rise to the expectation that after the merger Varta/Bosch will not have an appreciable scope of action uncontrolled by its competitors.

(58) In the Statement of Objections, the creation of a possible dominant position of the new entity in the German market was concluded on the basis of an overall appraisal of a number of structural market criteria which primarily favoured the strong market position of the companies. In addition to the market share of 44 % and the lead of about (25 %) over the next competitor, particular account was taken of the fact that the next competitors for the new entity in terms of market share were small and medium-sized companies with far less financial strength and smaller production capacity. Furthermore, the strongest of these competitors, Deta/Mareg with a market share of over 10 %, was not considered to be an independent competitor in

relation to Varta/Bosch because of its comprehensive cooperative links with Varta. It was also taken into account that the big European competitors Fiat and CEAC, being only marginally represented in Germany, could not be expected to gain importance because of their lack of physical presence in the German market. These structural conditions will be different after the factual changes come into force.

(59) Although the market share of Varta/Bosch as well as the lead over the next competitor will remain high, the new entity will face in the future a different competitive environment in two respects.

(60) Fiat will not only be Varta/Bosch's second-strongest competitor in terms of market shares (more than 10 %), but above all it will have in future a number of competition parameters which were in the past only accessible to the national producers like Varta, Bosch, Hoppecke, Deta/Mareg, Tudor/Hagen: Fiat will be able to offer a well-established German brand in a downstream market, which is still significantly characterized by brand preferences. Fiat will through the Sonnenschein network have a physical presence in the German market and thereby be able to react in a rapid and flexible way to clients' demands. It can enlarge its access to the sales market by taking advantage of Sonnenschein's traditional supply relationships. Consequently, the possible scope for action by Fiat in the market is significantly opened in the sense that it will allow competitive moves into all other segments of the market.

(61) This improved access through Sonnenschein into the market will now give Fiat/CEAC the choice to use to a significant extent its financial strength and spare capacity also in the German market, which it could not do before because of its restricted clientele.

(62) Previously, the high combined market share of Varta/Bosch together with the above structural factors supported a possible creation of a dominant market position. However, through the factual changes these structural factors now favour its second most important competitor. As a result it is now at least doubtful if a market share of 44 % and the current lead over the next competitor is sufficient to prove a dominant position.

(63) Furthermore, Deta/Mareg will become an independent player in the near future in the German market. Given the complexity of the licence agreement described above, the termination of the cooperation and the overlapping membership in the supervisory board is considered to be significant. The fact that the links will be terminated only



after a certain period of time does not contradict this appraisal. It will enable the Deta/Mareg group to adapt its commercial strategy to the new situation and thus foster its development as an independent player or as a cooperative partner for a new competitor in the market. Furthermore it has to be expected that the dissolution process will start already in the near future following the need to adapt to the post-cooperation period. This might be accelerated by the specific dynamics which can be expected through the integration of the new five Länder into the German economy.

#### 4. Conclusion

- (64) Under these conditions the Commission deems the concentration of Varta/Bosch compatible with the common market,

HAS ADOPTED THIS DECISION :

#### *Article 1*

The proposed concentration notified by Varta Batterie AG and Robert Bosch GmbH is hereby declared compatible with the common market, subject to the obligations set out in Article 2.

#### *Article 2*

In order to ensure independence between Deta/Mareg and Varta/Bosch the following obligations are attached to this Decision :

- (a) Varta will terminate the licence agreement with Deta/Mareg at the earliest possible termination date. The agreement provides for termination on 31 December 1993. With the coming into effect of the termination,

any right to use intellectual property rights will also terminate.

Any new licence agreements on starter batteries shall be concluded only with the consent of the Commission ;

- (b) Varta shall ensure that there will be no overlapping membership of the boards (supervisory, management board) of Varta and Deta/Mareg. This obligation will come into force with the next appointment of the Varta supervisory board in the summer of 1993 ;
- (c) For the purpose of this Article,
- (i) Varta means Varta AG, Varta Batterie AG and any company controlled by any part of the Varta Group ;
- (ii) Deta/Mareg means Delton AG, CEAG Industrie-Aktien und Anlagen AG, Deta Akkumulatorenwerke GmbH, Mareg Akkumulatoren GmbH and any company controlled by the Delton/CEAG/Deta/Mareg group of companies.

#### *Article 3*

This Decision is addressed to :

Varta Batterie AG,  
Am Leineufer 51,  
D-3000 Hannover 21,  
and

Robert Bosch GmbH,  
D-7000 Stuttgart 10.

Done at Brussels, 31 July 1991.

*For the Commission*

Leon BRITTAN

*Vice-President*