

*Case No IV/M.1283 -  
VOLKSWAGEN /  
ROLLS-ROYCE /  
COSWORTH*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/08/1998

*Also available in the CELEX database  
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/08/1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1283 – Volkswagen / Rolls-Royce / Cosworth  
Notification of 27 July 1998 pursuant to Article 4 of Council Regulation No 4064/89

1. On 27 July 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> by which the Volkswagen AG (“Volkswagen”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Rolls-Royce Motor Holding Limited and Rolls-Royce Motor Cars Inc. (“Rolls-Royce”) as well as the engine businesses operated under the name of Cosworth, including Cosworth Racing Inc. and Cosworth Engineering Inc. (“Cosworth”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :
  - for Volkswagen: the design, manufacturing and distribution of passenger cars and commercial vehicles;
  - for Rolls-Royce: the design, manufacturing and distribution of luxury passenger cars under the brand names of Rolls-Royce and Bentley;
  - for Cosworth: the design, development and manufacturing of car and racing engines and engine parts.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13, as last amended by Regulation (EC) No 1310/97, OJ L 180, 9.7.1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

4. Prior to the transactions in question, Rolls-Royce Motor Holding Limited and Rolls-Royce Motor Cars Inc. were wholly-owned subsidiaries of Vickers PLC (renamed Vickers Engineering PLC on 6 July 1998 – “Vickers”), a UK-based company focusing on the propulsion and defence sectors. The Cosworth business was operated as a division of Vickers and Cosworth Racing Inc./Cosworth Engineering Inc. were owned by Vickers. Volkswagen acquired Rolls-Royce on 3 July 1998 and agreed to acquire, through its subsidiary Audi AG, the Cosworth business on 11 July 1998. In application of Article 5 (2), second sub-paragraph of Council Regulation (EEC) No 4064/89, both acquisitions have to be treated as one and the same concentration and therefore Rolls-Royce and Cosworth together as the acquired entity.
5. The rights to the ‘Rolls-Royce’ name and marque for motor cars did not form part of the above transactions. These rights were acquired separately by BMW AG, a German car producer, from Rolls-Royce plc, a UK-based aero engine and energy group. BMW AG subsequently granted a licence to Rolls-Royce Motor Cars Ltd, now owned by Volkswagen, to use the ‘Rolls-Royce’ name and marque until 31 December 2002. As a result, Volkswagen will produce and distribute cars under the ‘Rolls-Royce’ name until 2002. After 1 January 2003, BMW AG will have full use of this name. Volkswagen will also manufacture and distribute luxury cars under the ‘Bentley’ name immediately and will continue to do so after 1 January 2003.

## II. COMMUNITY DIMENSION

6. Volkswagen, Rolls-Royce and Cosworth had a combined aggregate world-wide turnover in excess of ECU 5,000 million in 1997 (Volkswagen, ECU 57 649 million; Rolls-Royce and Cosworth together, ECU [...]²). Volkswagen had a Community-wide turnover in excess of ECU 250 million (ECU [...]³). According to the notifying party, the aggregate Community-wide turnover of Rolls-Royce and Cosworth, after deduction of internal turnover, also exceeded ECU 250 million (ECU [...]⁴). Volkswagen does not achieve more than two-thirds of its Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

## III. COMPETITIVE ASSESSMENT

### A. Relevant product markets

7. The operation affects the passenger car and car engine sectors.

#### *Passenger cars*

8. In previous decisions concerning the car sector, the Commission has left it open as to whether the market for all passenger cars can be considered the relevant product market, or whether it might be appropriate to subdivide this market in several segments, such as the

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<sup>2</sup> Deleted for publication. Less than ECU 600 million.

<sup>3</sup> Deleted for publication. Between ECU 35 000 and 45 000 million.

<sup>4</sup> Deleted for publication. Less than ECU 300 million.

luxury car segment, which could constitute distinct product markets<sup>5</sup>. However, in this case a final delineation is not required because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

#### *Car engines*

9. As far as Cosworth designs and manufactures high performance racing engines for motor sport applications and cylinder heads/cylinder blocks for supply to OEMs, its activities do not overlap with those of Volkswagen. Both Cosworth and Volkswagen design and produce complete engines for supply to other vehicle manufacturers. The overlap between both companies' activities is limited to this market.

#### B. Relevant geographic markets

##### *Passenger cars*

10. The Commission has hitherto left it open whether the relevant geographic market for passenger cars is national, Europe-wide or world-wide. It is not necessary to decide this question in the present case because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

##### *Car engines*

11. The parties submit that the market for the design and production of car engines is at least Europe-wide. This is in line with the Commission's assessment with respect to other car components supplied to OEMs<sup>6</sup>. Competition in this sector takes place at least at a European level. Cosworth has in the past designed and developed engines for various European car manufacturers.

#### C. Assessment

##### *Passenger cars*

12. In the overall passenger car market, Volkswagen submits that it sold 2.4 million cars in the EEA in 1997, giving it a market share of 17.2%. Rolls-Royce sold [...] <sup>7</sup> cars EEA-wide. In those individual EEA countries in which Volkswagen's share of passenger car sales exceeded 15% in 1997, the notifying party submits that Rolls-Royce's sales did not exceed [...] <sup>8</sup>. Rolls-Royce attained its highest market share in the UK with [...] <sup>9</sup>, compared to Volkswagen's share of 8.7%. Therefore, the addition of Rolls-Royce's sales to Volkswagen's is negligible at European level.

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<sup>5</sup> Decision of 14 March 1994, Case no IV/M.416 – BMW/Rover; Decision of 24 May 1996, Case no IV/M.741 – Ford/Mazda; Decision of 22 December 1997, Case no IV/M.1036 – Chrysler/Distributors; Decision of 22 July 1998, Case no IV.M.1204 – Daimler-Benz/Chrysler.

<sup>6</sup> Decision of 5 December 1995, Case no IV/M.666 – Johnson Controls/Roth Frères; Decision of 5 February 1996, Case no IV/M.686 – Nokia/Autoliv; Decision of 19 February 1996, Case no IV/M.694 – SKF/INA/WPB; Decision of 29 April 1997, Case no IV/M.912 – Siemens/HUF.

<sup>7</sup> Deleted for publication. Less than 1500.

<sup>8</sup> Deleted for publication. Less than 0.1%.

<sup>9</sup> Deleted for publication. Less than 0.1%.

13. In the luxury car segment, the degree to which the parties' products overlap can be left open. If a wide definition of this segment is considered, comprising Volkswagen's top-of-the-range model – the Audi A8 – as well as Rolls-Royce's significantly more expensive models, then Volkswagen had a market share of [...] <sup>10</sup> in the EEA in 1997 while Rolls-Royce's share amounted to [...] <sup>11</sup>, according to the information provided by the notifying party. In those individual EEA countries in which Volkswagen's share of luxury car sales exceeded 15% in 1997, Rolls-Royce's sales did not exceed [...] <sup>12</sup>. In the UK where most of Rolls-Royce's European sales were made, Rolls-Royce's market share was [...] <sup>13</sup> while Volkswagen's was [...] <sup>14</sup>. If a narrower market definition is considered, distinguishing between the lower end and the top end of the luxury car segment, then the parties' products do not overlap at all, given the price difference between Audi's most expensive model and Rolls-Royce's cheapest model.
14. When continuing the acquired business under the 'Bentley' name after 1 January 2003, it might be likely that Volkswagen will pursue a strategy of extending its position at the top end of the luxury car segment beyond the traditional Rolls-Royce customer base. This would increase competition in this segment.

#### *Car engines*

15. According to the notifying party, Cosworth supplied [...] <sup>15</sup> own-designed engines to third car manufacturers in 1997. Volkswagen sold [...] <sup>16</sup> engines to other vehicle manufacturers in 1997. Therefore, the accretion to Volkswagen's sales is limited. In addition, given that car manufacturers equip the vast majority of their vehicles with own engines and have substantial engine development and production capacities, they are normally able to substitute supplied engines with their own engines if necessary.
16. In conclusion, in view of the respective market positions of Volkswagen and Rolls-Royce/Cosworth, the proposed concentration will not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA passenger car or car engine markets or any substantial part thereof.

#### IV. ANCILLARY RESTRICTIONS

17. Sections 12.1 (a) and (b) of the Rolls-Royce Agreement of 7 May 1998 impose on the seller and his subsidiaries certain non-competition obligations with respect to the manufacturing and selling of luxury cars (defined as cars selling at a retail price of more than ECU 140 000) for a period of [...] <sup>17</sup> years, limited to the geographic areas in which the seller had primarily sold luxury cars before the transaction. Section 12.1 (c), in connection with

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<sup>10</sup> Deleted for publication. Less than 15%.

<sup>11</sup> Deleted for publication. Less than 2%.

<sup>12</sup> Deleted for publication. Less than 2%.

<sup>13</sup> Deleted for publication. Less than 5%.

<sup>14</sup> Deleted for publication. Less than 5%.

<sup>15</sup> Deleted for publication. Less than 2000.

<sup>16</sup> Deleted for publication. Less than 50000.

<sup>17</sup> Deleted for publication.

section 12.4 (a), adds a non-solicitation obligation, also for a period of [...] <sup>18</sup> years, with regard to those employees of the companies sold whose duties relate to the manufacture, production, distribution and sale of luxury cars. Section 12.2 of that Agreement essentially contains an undertaking by the seller and his subsidiaries not to use, or associate themselves with, the brand names transferred, and a confidentiality clause.

18. Sections 18.1 and 18.2 of the Cosworth Agreement of 11 July 1998 prohibit the seller and his subsidiaries from using any of the intellectual property rights transferred. Sections 19.1 and 19.2 impose on the seller and his subsidiaries non-competition obligations relating to the businesses being transferred for a period of [...] <sup>19</sup> years, limited to those geographic areas in which these businesses are operating. Section 19.4 prohibits the seller from using the brand name transferred or similar names.
19. The notifying party submits that these restrictions are necessary for the implementation of the transaction as they are principally designed to protect the know-how and goodwill being purchased. Their purpose is to guarantee the transfer of the full value of the assets purchased, particularly the intangible assets which are of significant value. Under these circumstances, the above restrictions can be considered as being covered by the concentration.

## V. CONCLUSION

20. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,

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<sup>18</sup> Deleted for publication.

<sup>19</sup> Deleted for publication.