

***Case No IV/M.1452 -
FORD / VOLVO***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/03/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.03.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Dear Sirs,

Subject: Case No IV/M.1452 – FORD/VOLVO

Notification of 2nd March 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 2 March 1999, the Commission received a notification of a proposed acquisition of sole control, within the meaning of Article 3(1)(b) of the Council Regulation, by Ford Motor Company ('Ford') of Volvo Personvagnar Holding AB/Volvo Car Corporation ('Volvo'), which is a fully-owned subsidiary of AB Volvo.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Ford is a US company principally involved in the manufacture and distribution of automotive vehicles.

4. Volvo is a Swedish company principally involved in the manufacturing and distribution of passenger cars.

II. CONCENTRATION

5. Ford acquires control of the whole of Volvo, and therefore the transaction constitutes a concentration within Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. Ford and Volvo have a combined aggregate world-wide turnover of more than EUR 5 billion¹. Each of them have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

a) Manufacture and supply of passenger cars

7. The concentration affects the passenger car sector. Passenger cars serve the general purpose of individual transport of passengers on public roads, and unlike commercial vehicles, are not primarily designed for commercial use.
8. In previous decisions concerning the passenger car market, the Commission has held it possible to subdivide this market, on the basis of a number of objective criteria like engine size or length of cars, in several segments which could constitute distinct product markets. However, a final definition was not required, and the exact market definition was left open (Decisions of 14 March 1994, Case no IVM.416 – BM/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 M.1204-Daimler-Benz/Chrysler. Decision of 6th November 1998 – Toyota/Daihatsu). The narrowest segmentation previously used by the Commission is the following :

- A: mini cars
- B: small cars
- C: medium cars
- D: large cars
- E: executive cars
- F: luxury cars
- S: sport coupés
- M: multi purpose cars
- J: sport utility cars (including off-road vehicles)

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

9. The boundaries between segments are blurred by factors other than the size or length of cars. These factors include price, image and the amount of extra accessories. Also, the tendency to offer more options like ABS, airbags, central locking etc. in small cars further dilutes the traditional segmentation. Customers choose their cars using a combination of parameters, such as brand, size, equipment and price. On the other hand, segmentation is generally used by the industry and it still seems to be regarded as an important indicator for the positioning of a car in the market place. In particular some differences still exist in price, technology and engineering requirements within the market. For the purposes of the competitive analysis of the present case, it is not necessary to further delineate the relevant product market, because in all the alternative market definitions considered, effective competition would not be significantly impeded, as explained below.

b) Wholesale and retail distribution of motor vehicles

10. In previous decisions (e.g. Decision of 26.01.1992, Case IV/M.182 – Inchape/IEP) the Commission has distinguished between the wholesale and retail distribution of motor vehicles. At the wholesale level, distributors or importers distribute vehicles to dealers, which latter retail the vehicles to final customers.
11. The wholesale function is often carried out by subsidiaries of the manufacturers themselves. Some vehicle brands (e.g. Asian) are distributed by independent distributors/importers, although independent importers have to ensure consistency with the central marketing strategies developed by manufacturers.
12. At the retail level, vehicles are sold to final customers by dealers, who are often independent, although may be subject to exclusive agreements with manufacturers (under EU Regulation 1475/95).
13. In previous decisions the Commission has also distinguished between the distribution of passenger cars and commercial vehicles.

B. Relevant Geographic Market

a) Manufacture and supply of passenger cars

14. The notifying parties are of the view that the relevant geographic market is at least the EEA.
15. From a supply-side perspective, production in the car industry is international or even global in its outlook (Decision of 24 May 1996, Case IV/M.741 – Ford/Mazda). From a customer perspective, recent years have brought a progressive harmonisation of the competitive environment within the Community with respect to technical barriers, restrictions concerning distribution systems, and the transparency of car pricing. However, differences remain with regard to prices, vehicle taxation, distribution systems and penetration rates of major competitors within the Member States. In the present case, the exact definition of the relevant geographic market can be left open since, in all the alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area, as explained below.

b) Wholesale and retail distribution of motor vehicles

16. In previous cases² the Commission has left open the question of whether the geographical market for these activities in European or national. In the present case it is not necessary to determine the exact geographic market since even in the narrowest geographical market the operation would not raise any serious doubts as to its compatibility with the Common market (see assessment below).

C. Competitive Assessment

a) Manufacture and supply of passenger cars

17. Unlike Ford, which is active in all of the above-mentioned passenger car segments, Volvo is active in only three segments, namely large cars ('D'), sport coupés ('S') and executive cars ('E').
18. In the overall market for passenger cars at EU level, the operation would lead to an increase in Ford's share from [between 10 and 15%] to [between 10 and 15%]. In the overall market for passenger cars at national level, Ford's share will remain below 25% in all countries except Sweden where the share will grow from [between 10 and 15%] to [between 25 and 30%]. In Sweden the combined entity's major competitors would be Volkswagen with [between 20 and 25%] and General Motors with [between 10 and 15%].
19. As far as the large car segment ('D') is concerned, at EU level, Ford's share post-merger will grow from [between 10 and 15%] to [between 15 and 20%]. At national level, Ford's share will remain below 25% in all countries except Sweden where it will be increased from [between 10 and 15%] to [between 25 and 30%]. (This combined share will be slightly above Volkswagen's current share which is [between 25 and 30%]).
20. As far as the sports coupé segment ('S') is concerned, at EU level Ford's share post-merger will grow from [between 15 and 20%] to [between 15 and 20%]. At national level Ford's share will remain below 25% in most countries with the following exceptions:
- Denmark: Ford [between 40 and 45%] plus Volvo [between 0 and 5%]; thus [between 40 and 45%] combined
- Finland: Ford [between 25 and 30%] plus Volvo [between 0 and 5%]; thus [between 30 and 35%] combined
- Portugal: Ford [between 40 and 45%] plus Volvo [between 0 and 5%]; thus [between 40 and 45%] combined
- Sweden: Ford [between 15 and 20%] plus Volvo [between 10 and 15%]; thus [between 30 and 35%] combined

² Case IV/M.182 Inchape/IEP; Case IV/M.326 Toyota Motor Corp/Walter Frey/Toyota France

21. The combined shares are not such as to cause dominance concerns, especially since the increase in Ford's share as a result of the concentration is marginal, except in Sweden, where post-merger Ford would still have only one-third of the market.
22. Moreover, the S class is one of the smallest segments in the market for passenger cars. At national level, it may represent a volume of no more than a few hundred cars. This is in particular the case in Denmark (some 500 units representing 0.4% of the national market for passenger cars), Finland (some 700 units representing 0.9% of the national market for passenger cars) and Sweden (some 1,000 units representing 0.6% of the national market for passenger cars). Slight changes in the volume of cars sold can have important effects on the corresponding share. Such changes happen in particular when a new model is introduced as customers in the S class are quite often influenced by trend and novelty.
23. As far as the executive car segment ('E') is concerned, Ford's share post-merger, would increase from [between 0 and 5%] to [between 10 and 15%] at the EU level. At national level Ford's share will remain below 25% in most countries, with the following exceptions:
- Denmark: Ford [between 0 and 5%] plus Volvo [between 25 and 30%]; thus [between 30 and 35%] combined
- Finland: Ford [between 0 and 5%] plus Volvo [between 45 and 50%]; thus [between 45 and 50%] combined
- The Netherlands: Ford [between 0 and 5%] plus Volvo [between 25 and 30%]; thus [between 25 and 30%] combined
- Norway: Ford [between 0 and 5%] plus Volvo [between 30 and 35%]; thus [between 30 and 35%] combined
- Sweden: Ford [between 0 and 5%] plus Volvo [between 55 and 60%] thus [between 60 and 65%] combined
24. In Denmark, Finland, the Netherlands and Norway, the combined shares are not such as to cause dominance concerns. In Sweden, the relatively high combined share is the result of Swedish consumers' preference to buy Swedish in this segment. The increment resulting from the acquisition is small (Ford [between 0 and 5%]); Ford has not been {[focused on] or [deleted]} the EU executive car segment (as can be seen from its EU share of only [between 0 and 5%], as opposed to its all-segment EU share of [between 10 and 15%], which represents individual shares of more than 10% in all other segments except 'J'). [...] and in 1998 discontinued its 'executive' model (the 'Scorpio') and eliminated the corresponding manufacturing capacity. Indeed, Ford's stated intention in purchasing Volvo is to fill this 'gap' in its model range. Additionally, in 1999 Ford will launch a new Jaguar model, the 'S-type' in an attempt to further penetrate the executive car segment. Historically, Jaguar cars have belonged to the 'luxury cars' ('F') segment, and the 'S-Type' would have to penetrate the 'E' segment from a zero-base; Ford forecasts that in the year 2000 only [...] units would be sold in Sweden, representing an additional market share of only [between 0 and 5%]. It is also to be noted that Ford may launch a 'Lincoln' brand executive car in the near future, but this would target mainly the UK and German markets, and would constitute (unlike Jaguar) an entirely new brand in the EU, and as such require an even longer time period to achieve market penetration.

25. As far, then, as the 'executive' car segment in Sweden is concerned, the existing high market share of Volvo [between 55 and 60%] would be only temporarily increased, by the residual sales of 'Scorpio' models (that is, depletion of dealers' existing stocks); the introduction of the new Jaguar 'S-Type' would result in only a marginal increase in market share in this segment over the foreseeable future, with no guarantee of long-term success, and no guarantee that any degree of success would not be at the expense of sales of existing Volvo 'executive' models. Furthermore, the second biggest market share [between 15 and 20%] is held by the large General Motors Group, and Volvo's own 1998 share of [between 55 and 60%] represents a downwards trend from [between 60 and 65%] in 1997 and [between 60 and 65%] in 1996.
26. In any event, since the main differentiating features of car segments 'A' through to 'E' are size, power, and levels of equipment, it seems likely that adjacent segments exercise a degree of competitive constraint on each other; thus, post-merger, Ford would not be able to exercise market power in the Swedish 'executive' car segment, since customers could switch to the large car ('D') segment, where Ford's post-merger share would be less than 30%, and about level with that of Volkswagen (see above). Post-merger Ford's share of the Swedish 'D' and 'E' segments combined would be about 40%.

b) Wholesale and retail distribution of motor vehicles

27. As far as wholesaling is concerned, the majority of Ford-owned brands (i.e. Ford, Mazda, and Jaguar vehicles) are distributed by subsidiaries, with some vehicles (mainly Mazda) distributed by independent distributors.
28. Under an agreement between Volvo and Renault dating from 1994, Volvo imports and distributes, at the wholesale level, Renault-manufactured cars and commercial vehicles in Denmark, Finland, Norway and Sweden. Even taking into account this distribution agreement with Renault (which post-merger would pass to Ford, but could be terminated at any time with two years' notice) Ford's highest share of the passenger car wholesale market in any Member State would be Sweden, with approximately one-third of the market. Again, even on the basis of the wholesaling of cars by segments (i.e. A-J, see above) there is no possibility of the operation leading to a dominant position within any individual segment in any Member State; in particular, Renault has relatively low shares of cars sold in the four Nordic countries where its cars are distributed by Volvo, whatever the segment concerned. As far as commercial vehicles are concerned, since Ford is only acquiring Volvo's passenger car business, the concentration's only effect would be through the agreement with Renault, which would lead to a post-merger commercial vehicle wholesale market share of under 15% of all four Nordic countries concerned.
29. As far as retailing is concerned, most activities are in the hands of independent dealers. Both Ford and Volvo control a few dealers in the EU, but these shares are insignificant (Ford at most [between 0 and 5%] in the UK of cars or commercial vehicles, Volvo at most [between 0 and 5%] of cars in Finland). The only overlap between Ford and Volvo is in Germany, where combined shares of the retail market are a fraction of one percent.

V. ANCILLARY RESTRAINTS

30. The notifying party has asked for the following provisions of the purchase agreement to be declared ancillary to the concentration:

a) Trademarks:

The Volvo trademark enshrines the Volvo brand and is therefore a very important element of the transaction. It is currently used by AB Volvo in several areas of business (most notably heavy duty trucks, buses and passenger cars).

Both Ford and AB Volvo must be able to use the Volvo trademark albeit in different areas of business. The Volvo trademark will therefore be transferred to a newly formed company jointly owned by AB Volvo and Ford. This company will grant AB Volvo and Ford an exclusive, world-wide and perpetual license to use the Volvo trademark in their respective area of business.

b) Other intellectual property rights:

Ford will acquire AB Volvo's intellectual property rights used exclusively in the passenger car business and the intellectual property rights used in the passenger car business and the remaining business.

Ford and AB Volvo will grant each other non-exclusive or exclusive world-wide royalty-free perpetual and irrevocable licenses on these intellectual property rights.

c) Non-compete obligation:

AB Volvo undertakes not to compete with Ford for a period of five years with respect to any business 'which competes with the business as conducted or planned to be conducted as of the closing date' and for a period of two years with respect to any business 'which manufactures, sells or distributes (A) any products or services manufactured, offered or under development by the business at the closing date or (B) any products or services with respect to which buyer is permitted... to use the shared trademark'.

d) Continuing relationship:

AB Volvo will continue to supply certain products and to provide certain services to Volvo. These products and services include, for instance, the use of the test track, real estate office, safety centre, leased properties, catering facility, etc. These arrangements can be terminated by either Ford or AB Volvo on two year notice.

31. In so far as they are restrictive of competition the above provisions are directly related and necessary to the implementation of the concentration, since they are aimed at guaranteeing the transfer to Ford of the full value of the business acquired.

VI. CONCLUSION

32. The overlap between the product ranges of Ford and Volvo is limited. The merger will only have a limited effect on the industry's level of concentration. In particular, there are no indications that the merger will raise entry barriers in the passenger car market

or any distinct part of it. Therefore, the proposed concentration will not create or strengthen a dominant position.

33. 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,