

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 July 1983

relating to a proceeding under Article 85 of the EEC Treaty (IV/30.437 —
Rockwell/Iveco)

(Only the Dutch, English and Italian texts are authentic)

(83/390/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 notification made on 18 August
1981 by Rockwell International Corporation Pitts-
burgh, Pennsylvania, USA and Iveco Industrial
Vehicles Corporation BV, Amstelveen, Netherlands,
pursuant to Article 4 of Regulation No 17, requesting
that the set of agreements consisting of a main agree-
ment, which was made effective as of 13 June 1981,
and a number of further agreements, should be
declared exempt from the application of Article 85 (1)
by virtue of paragraph 3 of that Article,

Having regard to the summary of the notification
published pursuant to Article 19 (3) of Regulation No
17 in the *Official Journal of the European Communi-
ties*⁽²⁾,

Having heard the Advisory Committee on Restrictive
Practices and Dominant Positions pursuant to Article
10 of Regulation No 17,

Whereas :

I. THE FACTS

A. Subject of the decision

This decision concerns the joint production and
marketing of rear drive axles for trucks by Rockwell
International Corporation (hereinafter referred to as
Rockwell), a producer of automotive components and
the truck manufacturer Iveco Industrial Vehicles
Corporation BV (hereinafter referred to as Iveco). The
cooperation comprises the establishment and opera-
tion of a joint venture company (hereinafter referred to
as the JVC).

B. The undertakings

1. Rockwell is a United States Company with inter-
ests in several industrial areas. One of them is the
manufacture and sale of automotive components, espe-
cially of rear-drive axles for trucks, where Rockwell is
the most important supplier on the US market. In
1981 the automotive business segment contributed
about 22 % to Rockwell's total sales of \$ 7 billion (7,4
billion ECU)⁽³⁾. In Europe Rockwell has five wholly-
owned subsidiaries and interests of up to 50 % in
three other companies, all engaged in the automotive
industry.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 171, 9. 7. 1982, p. 11.

⁽³⁾ All conversions are calculated at the rate of 4. 8. 1982, OJ
No C 201, 5 August 1982, p. 1.

Among these, Rockwell-Maudslay Ltd, UK, which Rockwell purchased from British Leyland in 1972, is the only Rockwell subsidiary in the EEC which manufactures and sells on-highway truck axles. It originally produced only British Leyland-designed truck axles in the UK but now also supplies Rockwell-designed axles to ...⁽¹⁾ other truck manufacturers. In addition, Rockwell (US) sold ... axles in 1980 and ... in 1981 to truck manufacturers in the EEC.

2. Iveco is a holding company incorporated under Netherlands law with several subsidiaries in different Member States and is wholly owned by IHF-International Holding of Fiat, a member of the Fiat Group. It ranks second among producers of commercial vehicles of 3,5 tonnes GVW and more in the EEC and Western Europe, with a market share of about 17,2 % in 1981, after Daimler-Benz with approximately 26 %⁽²⁾.

The Iveco Group sells its trucks under the names Iveco, Fiat, OM, Unic, Magirus-Deutz and Lancia. In 1981 consolidated sales of the Fiat Group amounted to Lit 22 000 billion (16,653 billion ECU). The Iveco group has four plants for the manufacture and assembly of axles or axle components, which satisfy the axle requirements of the group. Three of them are in Italy, the fourth is at the Magirus-Deutz factory at Ulm, Federal Republic of Germany. So far, Iveco has not sold its axles to third parties.

3. As the joint venture company the parties use an already existing Iveco subsidiary, Omevi Officine Meccaniche Veicoli Industriali SpA founded in 1980 with its registered office in Turin, the objects of which are manufacture and sale of automotive components. In this company Rockwell has taken a minority share through a 100 %-subsidiary. After a transitional period, Rockwell will hold 60 % of the shares as against Iveco's 40 %. The corporate name of the company will then be changed to 'Rockwell CVC SpA'. The final share capital of the company will be Lit 48 billion (36,335 million ECU). Each of the parties is given proportional representation on the board of directors. The consent of two-thirds of the board of directors is required for certain major decisions concerning the activities of the JVC.

⁽¹⁾ Pursuant to Article 21 (2) of Regulation No 17, turnover figures are not published in the Official Journal.

⁽²⁾ This figure only refers to commercial vehicles of 6 tonnes GVW and more.

The production facility to be used by the JVC will be a plant in Cameri, Italy, previously used by the Iveco subsidiary Vispa for the assembly of buses.

C. The products

Axles form, with engines and transmissions, the most important and vital part of a vehicle.

The European truck industry uses two types of truck axles: carrier reduction axles for light and medium-weight trucks and hub reduction axles for heavier trucks. Carrier reduction axles are either single-reduction (one set of loaded gears at the crown wheel and pinion) or double-reduction (two sets of gears). A hub reduction axle contains three sets of actively-loaded gears between the transmission and the wheels. In recent years Rockwell has developed a new series of single-reduction axles to match the higher technical requirements arising from the development of more fuel-saving and noiseless truck engines. Such engines operate at lower speed and so require lower numerical axle ratios to give the vehicle an adequate top speed. This is difficult to achieve with hub-reduction and double-reduction axles since their technique makes it almost impossible to obtain the desired low axle ratios; therefore special overdrive ratios, which reduce the efficiency of the engine, have to be used. The single-reduction axles designed by Rockwell operate the transmission in direct drive, which is its point of maximum efficiency, and have at the same time the necessary strength to drive fully-laden trucks at an efficient cruising speed.

The current Iveco axle range consists of double- and hub-reduction axles. It is not fully rationalized with regard to materials and interchangeability of components.

D. The purpose of the JVC

1. The construction of a new axle manufacturing plant in Europe of the size envisaged by the JVC would cost at least \$ 200 million (209,6 million ECU) according to the estimate of the parties. Compared with this the cost of establishing the JVC will be considerably lower since already existing facilities and machines can be used. In addition to the capital investment of Lit 48 billion (36,335 million ECU) Rockwell and Iveco expect that further financial commitments to the JVC will amount to approximately Lit 135 billion (102 million ECU) during the first three or four years of operation, to be borne by both parties.

Having regard to the importance of the necessary investment and to the structure of the European axle market (see F below), Rockwell believes that an attempt at further market penetration could only be ventured with a strong partner who will purchase most of the initial production. Iveco intends to obtain access to Rockwell's axle technology in order to save expensive developments on its own account. Both partners are convinced that in the near future smaller truck manufacturers in particular will be compelled to purchase certain major components such as axles from specialized producers, in view of the high cost of further innovation. The long-term aim of the parties is thus to sell about 50 % of the JVC's production to truck manufacturers other than the Iveco subsidiaries.

2. The activities carried on by the JVC will consist of the manufacture and marketing of rear-drive axles for commercial vehicles of 7 tonnes GVW and above, including components and spare parts. Its future production is designed to replace — with certain exceptions — the integrated axle production of the Iveco subsidiaries and their current axle range. For this purpose Rockwell communicates to the JVC its know-how in the manufacture of single-reduction axles. Six axles of the present Rockwell axle range have been chosen to be produced by the JVC. The company will continue to manufacture some of the current Vispa axles under a Vispa licence, as well as certain components and spare parts for the Iveco group's light commercial vehicle axles and hub reduction axles. Rockwell and Iveco have agreed to consider later whether to expand the company's product line into the hub-reduction axles currently manufactured by Magirus-Deutz, by acquisition of the latter's assets.

3. Before the JVC can commence full-range production it will take some time to transfer the appropriate equipment from the three existing axle facilities of the Iveco subsidiaries in Italy to the Cameri plant. During that preparatory stage, the JVC will only manufacture certain components for some Iveco axles, while Iveco will continue to produce the rest for itself. After this phase the JVC will commence production of the Rockwell axles by stages. The last (sixth) Rockwell axle is scheduled to go into production about one and one-half years after the first one. The partners anticipate that the Iveco subsidiaries will still purchase the greater part of the company's total production at that time.

E. The agreements

1. (a) On 18 August 1981 Rockwell and Iveco notified to the Commission a set of agreements, con-

sisting of a basic agreement made effective on 13 June 1981, and a number of further agreements the conclusion of which is provided for in the basic agreement on which they depend. The parties declared that all agreements together form a composite whole of which all parts are essential for carrying out the joint venture.

(b) On 2 March 1982 the 'Closing' took place whereby the parties signed a 'Closing Agreement' and all the abovementioned agreements the implementation of which at the closing date was provided for in the basic agreement.

2. The essential parts of this set of agreements are :

(a) the basic agreement between Rockwell and Iveco, which provides for the formation of a joint subsidiary and governs the relationship between the parent companies as well as their relationships *vis-a-vis* the JVC; the basic agreement also contains the obligation for the Iveco subsidiary Vispa to grant a licence for its axle technology to the JVC;

(b) a 'Shareholders' Agreement' between the two subsidiaries of the parties, which hold the shares in the JVC, containing provisions governing their representation on the administrative board of the JVC and the appointment and powers of its management, the distribution of dividends and the protection of the minority shareholder;

(c) a 'Technology Licence Agreement' between Rockwell and the JVC;

(d) a 'Trademark Licence Agreement' between Rockwell and the JVC;

(e) three purchase/supply agreements between the JVC and the Iveco subsidiaries Magirus-Deutz, Unic and Vispa, under which the latter are obliged — apart from certain exceptions — to satisfy their total axle requirements from the JVC, whereas the JVC undertakes to supply them according to their needs;

(f) two distribution agreements under which the JVC becomes the non-exclusive distributor for the axles currently produced by Magirus-Deutz (for seven years) and Rockwell-Maudslay (for six years); furthermore the JVC has the right to solicit orders for axles manufactured by Rockwell in the US as set out in the 'Rockwell US Representative Agreement'; the initially agreed exclusivity of these agreements has been abandoned by the parties.

3. To ensure the success of the joint venture, and to protect their investment, the parent companies have provided for certain restrictions on their own behaviour as competitors and on the scope of action of the JVC. They have agreed to expand axle manufacturing capacity in Western Europe, Africa and the Middle East — save for the exceptions mentioned below — only through the JVC. Moreover, the consent of both Rockwell and Iveco is required if the JVC intends to make investments in manufacturing facilities other than the Cameri plant. If an opportunity to increase axle sales in the abovementioned territory requires further capital investment outside Italy, the parties will endeavour to make the investment through the JVC with pro rata capital contributions or with contributions from Rockwell alone or through another 60 % / 40 % joint venture undertaking. If Iveco does not agree to any of these alternatives, Rockwell is free to make the investment alone and to communicate its axle technology to the undertaking formed as the vehicle for the investment.

4. (a) According to the 'Technology Licence Agreement' Rockwell grants to the JVC its technology for single-reduction rear-drive axles. This technology is mainly based on know-how; there are no significant patents on the Rockwell axle range. According to Rockwell its know-how comprises three basic areas:

(aa) *The design of the axles*

optimizes gear cutting, bearing life, lubrication and bolted connections. Rockwell has established an empirical data bank which makes it possible, in particular, to develop and size the gears, which are the key components of single-reduction axles, since they provide the axle reduction ratio. This data bank is also used for designing the lubrication flow and for the selection and specification of appropriate bearings.

(bb) *The selection of proper materials*

is of utmost importance in order to reduce weight and to provide the required strength and durability at acceptable cost. Rockwell constantly tests new lighter-weight or friction-reducing materials and has built up the know-how through its research, metallurgical technology and failure-analysis in order to specify the material which provides the optimal mix of the said factors.

(cc) *The manufacturing processes*

which Rockwell has developed mainly concern the sequence of machining and

the metal treatment, in particular hardening operations, which are decisive in optimizing the relationship between durability, ease of machining and cost.

(b) The 'territory' to which the licences refer is separated into three areas. They are defined as follows:

— 'Territory A': Italy,

— 'Territory B': Western Europe, including the whole EEC, the Middle East and several African countries,

— 'Territory C': The Eastern Bloc.

The kind of licence Rockwell will grant to the JVC for the respective territories is shown in the following table:

Territory \ Scope	A	B	C
Manufacture	exclusive	non-exclusive	non-exclusive
Sale	exclusive	exclusive	non-exclusive

Moreover, the JVC has the right to use worldwide the products covered by this agreement as a part of other equipment. The exclusive licences are exclusive also with respect to Rockwell itself.

(c) The JVC may sublicense the technology to any wholly-owned subsidiary located in Territories A, B or C. It may also grant sublicences to Iveco subsidiaries or licensees whenever commercially necessary to enable Iveco fully to exploit business opportunities in the truck licensing field. Rockwell has agreed not to withhold its consent as the majority shareholder of the JVC in such a case.

(d) The JVC shall in turn grant to Rockwell a licence to use outside the Territory all improvements in the transferred technology made by the JVC, such licence to be exclusive in the USA, Canada and Mexico and to be non-exclusive in all other countries during the term of the Technology licence.

(e) The licence will continue in force for 10 years. On expiry the JVC will have a perpetual, irrevocable, royalty-free, non-exclusive licence to manufacture and sell the products covered by the Technology agreement in the Territory and use them world-wide, including the right to sublicense to others. In addition, Rockwell will continue to furnish supplementary information to the JVC for a period of three years after the expiry date. The JVC will make a lump-sum payment for the licence.

5. Pursuant to the additional Trademark Licence Agreement the JVC is granted a royalty-free, non-exclusive licence to use the 'Rockwell' trademark for an initial term of five years and for as long thereafter as Rockwell has effective control of the JVC.

6. Since not all Iveco axles are to be replaced by Rockwell-designed axles, the Iveco subsidiary Vispa also transfers its axle technology to the JVC. The relevant provisions have been inserted in the basic agreement. According to them, Vispa shall grant the JVC a royalty-free, exclusive licence to manufacture in Italy and a royalty-free, non-exclusive licence to sell in the Territory those Vispa-designed axles which are to be produced by the JVC. Certain axles are already listed, and the production and sale of other Vispa-designed axles can be taken over by the JVC subject to written notice to Vispa. The JVC has the right to grant sublicences subject to a corresponding right by Vispa in certain cases. The licence will last for 10 years. On termination, the JVC shall retain a perpetual, royalty-free, non-exclusive licence to manufacture and sell in the Territory and for worldwide use.

7. The JVC has entered into purchase/supply agreements with each of Iveco's operating subsidiaries, namely Vispa (Italy), Unic (France) and Magirus-Deutz (Germany). For a period of seven years starting with the commencement of commercial production at the Cameri plant of all the six specified Rockwell axle models but no more than eight years from commencement of commercial production of the first such axle model, those subsidiaries will — with certain restrictions — be obliged to satisfy their total requirements of axles from the JVC. The JVC undertakes the reciprocal obligation to supply the Iveco subsidiaries according to their needs.

F. The market

The demand for rear-drive truck axles in Europe, which depends upon the number of trucks produced, is for the most part satisfied by the truck manufacturers themselves. They account for approximately 95 % of production (1981 : 96,1 %) ⁽¹⁾. The large European truck producers have always endeavoured to make as many of their own key truck components as possible, and therefore all have their own axle manufacturing plants to satisfy their axle requirements. They do not normally sell their axles to third parties, and purchase axles from independent manufacturers only for special applications; independent manufacturers such as Rockwell-Maudslay and its competitors have therefore been unable in the past to achieve a substantial share of total European production.

The competitors of Rockwell-Maudslay on the free European axle market also belong to important industrial groups. Eaton is a US-based company, almost half its total turnover in 1981 of \$ 3,2 billion (3,3 billion ECU) was achieved with automotive components, primarily with heavy-duty truck components like transmissions, axles and brakes. Guest, Keen and Nettlefolds Ltd (GKN) is an industrial group with its headquarters in the United Kingdom; 33 % of its 1980 turnover of £ 1,9 billion (3,5 billion ECU) was realized in the sector of automotive components. SOMA, the third independent competitor, is part of the French Valeo group, which had in 1981 a total turnover of FF 6,9 billion (1 billion ECU); SOMA primarily produces axles and components for transmissions for trucks and had a turnover in 1981 of FF 590 million (89,7 million ECU).

⁽¹⁾ European rear-drive axle production :

1981	Gross vehicle weight in tonnes			Total	%
	5 — 12	12 — 16	+ 16		
Truck Manufacturers	142 200	86 100	223 100	451 300	96,1
Eaton	...	...	...	...	...
GKN	...	...	...	...	...
SOMA	...	...	...	...	...
Rockwell	...	...	...	...	...
Total	148 700	89 900	231 200	469 700	100

(Figures submitted by the parties)

The 'free' axle-market on which the independent axle manufacturers compete is therefore very limited compared with total production of axles in the EEC. Since the axles produced by the truck manufacturers are normally not sold to other truck manufacturers, they must be disregarded when the volume of the 'market' is to be determined. The truck manufacturers only appear on the market for their final products, commercial vehicles, of which the axles are merely components. On this market Iveco had in 1981 a share of approximately 17,2 %, second to Daimler-Benz with 26 %.

In contrast to this the situation in the United States, Rockwell's home market, is completely different. US truck manufacturers regularly buy in a large proportion of components, including key components such as engines, transmissions and axles, rather than make them themselves. Their customers are regularly given the opportunity to choose between the products of several independent manufacturers of key components. The truck manufacturer then assembles the truck according to the wishes of the customer. Independent manufacturers thus have a substantial share in the production of certain components: about 70 % of total production in the case of rear-drive truck axles.

G. Observations of third parties

The Commission did not receive any observations from third parties after the publication of a summary of the agreements concerned.

H. LEGAL ASSESSMENT

Article 85 (1)

1. The basic agreement between Rockwell and Iveco providing for the formation of a joint venture company (JVC) to manufacture and sell rear-drive axles for heavy commercial vehicles and the accompanying agreements fall within the scope of Article 85 (1) of the Treaty. They may, however, be exempted under Article 85 (3) since its requirements are satisfied.

2. The set of agreements notified by Rockwell and Iveco form a composite whole. It contains provisions governing both the relationship between the parties and their vertical relationship with the JVC controlled by them.

3. As far as the horizontal relationship between Rockwell and Iveco is concerned, Article 85 (1) applies

because both undertakings are to be considered at least potential competitors on the market concerned.

- (a) Both parties already manufactured, prior to the conclusion of the agreement, those products which the JVC is to produce in future. Rockwell is already represented on the free European axle market by its exports from the United States and by its subsidiary Rockwell-Maudslay. Iveco must likewise be regarded as a — potential — competitor on the European axle market, although it has not yet sold its axles to third parties. Its spare capacity would make it possible to increase production to satisfy such demand.
- (b) Even after the entry into force of the agreements, a potential competitive relationship between Rockwell and Iveco continues to exist. Iveco's subsidiaries Magirus-Deutz and Vispa will continue their activities in neighbouring product areas. This circumstance will enable it in effect to resume independent activity in the field in question.

Rockwell continues to have axles produced for the European market by its subsidiary Rockwell-Maudslay. In other geographical markets, particularly the United States, it retains its position as an important supplier and could, as in the past, export to the European market.

4. The agreement on the formation of the JVC has as its object and effect a restriction and distortion of competition within the common market. The supply structure on the market concerned is changed, since the parties forgo the opportunity of manufacturing individually the products in question and selling them on the market in competition with one another. Furthermore the agreements contain express obligations, which are considered by the parties to form an indispensable part of their arrangement and which restrict Rockwell, Iveco and the JVC in their competitive behaviour.

5. In detail, the agreements contain the following restrictions:

- (a) Besides its own axles the JVC will also market — on a non-exclusive basis — those axles still produced independently by Rockwell-Maudslay and Magirus-Deutz. As a consequence Rockwell and Iveco do not use, to the agreed extent, the opportunity to sell these axles on their own account and do not pursue an independent market policy.
- (b) Rockwell has undertaken for the duration of the 'Technology Licence Agreement' to grant no further manufacturing licences for Italy and no further distribution licences for 'Territory B'. Iveco grants the JVC an exclusive manufacturing licence

for Italy in respect of the Vispa-designed axles. Rockwell and Iveco are therefore no longer free to enter into contractual relations with other prospective licensees in the territories concerned.

- (c) Under the basic agreement, Rockwell and Iveco have committed themselves throughout the life of the agreement to carry out investment in the field of activity of the JVC with a view to expanding capacity in Territories A and B in principle through the JVC alone. Where investment is to be made in plant other than that in Cameri, the agreement of both partners is needed. Only where they are unable to reach agreement on an investment project outside Italy under the prescribed procedure is Rockwell entitled to make the investment on its own. This results in a restriction of the independent competitive potential of the parties which increases in importance as their expectations are fulfilled and the free axle market enters an expansionary phase.
- (d) Under the purchase/supply agreements between the JVC and the Iveco subsidiaries, the latter are obliged for up to eight years from the beginning of production of the first Rockwell axle to satisfy, with certain restrictions, their whole requirements from the JVC. Consequently they are legally prevented by the express purchasing obligation from satisfying at least part of their axle requirements from other manufacturers. Having regard in particular to the period of these agreements, this is likely to reduce the sales opportunities of other axle manufacturers.

6. The restrictions on competition referred to above have appreciable repercussions on the free axle market in the Community. This is due to the fact that the JVC will acquire a significant share of this market, since it will satisfy the largest part of Iveco's considerable rear-drive axle requirements.

7. The agreements are likely to affect trade between Member States to an appreciable extent, since the JVC is intended to sell axles to truck manufacturers throughout the common market.

Article 85 (3)

The agreements discussed above satisfy the conditions for exemption laid down in Article 85 (3).

The cooperation entails economic benefits for the production of the goods concerned and for consumers, which could not be achieved in the absence of the joint venture and which outweigh its disadvantages.

Improvement of production and distribution, promotion of technical and economic progress

8. In view of the present structure of the European axle market, the emergence of a new and efficient competitor through the joint venture is an advantage of an objective nature, which improves production and sales of the goods concerned.

By transferring Iveco's existing capacity to the JVC, the cooperation enables that capacity to be used more fully than in the past, since the JVC's production is intended to satisfy not only the requirements of the Iveco subsidiaries but also those of other truck manufacturers. A rationalization of production is likely to result from this high-volume production as well as from the smaller number of components, which characterizes the Rockwell axle range.

Through the joint venture, moreover, Iveco gains access to Rockwell's axle technology and can dispense with expensive new developments on its own account. The joint exploitation of complementary industrial know-how by a specialist axle manufacturer and an experienced truck manufacturer should contribute to increased technical progress in the goods concerned.

Therefore the JVC will have the necessary capacity to meet demand from other truck manufacturers and will be able to offer them a new series of axles based on Rockwell's technology. The additional distribution of Magirus-Deutz and Rockwell-Maudslay axles allows a broader range of products to be offered. As a result, the joint venture is likely to offer to third truck manufacturers an interesting alternative to their integrated axle production and consequently can become an effective stimulus to the free axle market.

Benefit to the consumers

9. The agreements allow consumers a fair share of the resulting benefit.

First of all, the technical and economic advantages stemming from the cooperation are of benefit to purchasers of rear-drive truck axles, as technologically advanced products are offered to them. Moreover, it can be assumed that the JVC will be compelled to pass on to its customers the resulting savings in production costs. The potential customers are truck manufacturers, i.e. equally large undertakings, most of which are themselves experienced in the field of axle production and will cease or limit such production only if it is clearly to their advantage to do so.

Secondly, purchasers of trucks are also likely to benefit from the cooperation. The joint exploitation of specialized knowledge in the field of axle and truck manufacture ensures that the requirements of truck users are taken into account as far as possible in the design of axles. In view of the large proportion of the total cost of manufacturing a truck accounted for by rear-drive axles, and in view of the strong competition between truck producers in the EEC, a beneficial effect on truck consumer prices is also to be expected.

Indispensability

10. The agreements contain no restrictions which are not indispensable to the attainment of the said objectives for the duration of the exemption.

- (a) The formation of the joint subsidiary is indispensable to the success of the venture since it is the only way of attaining the objective of the entry of a new and effective competitor by limiting the considerable business risk due to the market structure and investment expenditure.

Other alternatives, less restrictive of competition, would not be apt to attain the benefits which are expected of the JVC.

In the case of a simple subcontracting agreement with Rockwell, Iveco would be highly dependent on its partner's reliability, but would have no direct influence on its production. In view of the large number of axles that Iveco, as Europe's second-largest truck manufacturer, requires, this alternative could not provide a reasonable, adequate solution.

A simple assignment of know-how would not be an alternative either. Rockwell's participation in the JVC ensures that the latter will be provided for several years with up-to-date information, which is of particular importance in view of rapid technical development. This advantage will result from Rockwell's own interest in the prosperity of the JVC. It would be less certain if Rockwell were merely to grant Iveco the right to exploit its know-how.

- (b) The special circumstances of the present case justify the extension of the field of activity of the JVC to the distribution of jointly manufactured products. It is the aim of the parties to penetrate a hitherto underdeveloped market and inject life into

it. This calls for a considerable marketing and sales effort. A precondition for the commercial success of the JVC is the willingness of other truck manufacturers to cease at least part of their own axle production. A decision such as this with far-reaching business implications requires exhaustive and protracted negotiations during which potential customers must be convinced of the technical and economic advantages of purchasing rear-drive axles from an outside source.

These particular difficulties in obtaining customers and the necessary expenditure in time and effort and technical considerations militate in favour of the need for joint marketing through the JVC. Rear-drive axles for commercial vehicles are not finished products in the sense that they can be installed without any difficulty. A customer will place an order only after extensive testing and will, if necessary, expect plans to be drawn up for the incorporation of special design features by the supplier. This calls for close technical cooperation with the customer which can be better achieved by the producer itself, which is the JVC.

The same comments apply to the fact that the JVC will also have the right to distribute the axles produced by Magirus-Deutz and Rockwell-Maudslay on a non-exclusive basis. It is clearly the present aim of the parties to concentrate their interests as to the manufacture of rear-drive axles in Europe to the largest possible extent on the JVC, although they still continue to produce axles independently in a rather small area. On the other hand, the distribution agreements allow the JVC to offer a broader range of products to its prospective customers. The agreements, however, do not exceed what is absolutely necessary for this purpose, since the parties remain free to resume their sales independently, if it seems to them more advantageous.

- (c) The exclusivity of the rights conferred on the JVC by the technology agreements and the resulting prohibitions on competition imposed on the parties can be regarded as indispensable to the attainment of the objectives of the agreements. The particular difficulties outlined above in developing the market and obtaining customers require that the JVC be protected in its effort to acquire its own share of the market and set about the investment.

Since the exclusive rights acquire importance in practice only after the end of the preparatory phase, and then gradually until the last of the six Rockwell axles to which the licence agreement applies has gone into series production, the period of 11 years does not appear to be excessive.

- (d) The restrictions on investment provided for in the basic agreement must likewise be regarded, for the period of exemption, as indispensable. For the operation to be a success, the JVC needs to be certain during the initial stages of its development that the partners are concentrating their economic interests in the field in question on the JVC and are not making separate investments which might jeopardize its financial basis. The obligation on the parties to take joint action in the event of an opportunity to make further investment is relaxed, moreover, in so far as Rockwell is authorized, following rejection by Iveco of the alternatives provided for in the agreement, to make the investment alone.

The level of investments necessary for the formation of the JVC and the fact that, in this case, it is estimated that a long time must elapse before the JVC's capacity is adequately utilized and its products are introduced onto the market are grounds for regarding the restriction on investment until the end of the period of exemption as indispensable.

- (e) The agreements provide that the Iveco subsidiaries are obliged for a period of seven years starting from the commencement of production of all Rockwell axles, but no more than eight years from commencement of production of the first axle, to satisfy their total axle requirements from the JVC. This obligation is also indispensable to the attainment of the JVC's objectives over the period referred to.

The parties anticipate that the Iveco subsidiaries will initially purchase by far the largest share of the JVC's total production. Even at the end of the first stage, this proportion will, according to the parties' estimates, still amount to at least 60%. The parties' investment decisions and expectations of profitability are based on the certainty of such guaranteed sales. Having regard to the difficulties that are likely to be encountered in finding further customers, the abovementioned obligation therefore has a direct bearing on the economic success of the JVC during the initial phase. At the end of this period, however, the Iveco subsidiaries must be

contractually free to satisfy their axle requirements from whatever source they consider to be most advantageous.

The exclusion of competition

11. The agreement does not afford the parties an opportunity to exclude competition in respect of a substantial proportion of the goods in question.

- (a) On the objectively relevant market, which comprises rear-drive axles for medium-weight and heavy commercial vehicles of from seven to 16 tonnes GVW and above, about 95% of total European axle production is accounted for by the truck manufacturers, who satisfy their own requirements through integrated production. The remaining 5% is accounted for by 'free' axle manufacturers, who sell axles to various truck manufacturers. On this limited (free) European market, Rockwell held in 1981 a share of approximately ...% through its subsidiary Rockwell-Maudslay, as against its competitors with about ...% (Eaton), ...% (SOMA) and ...% (GKN).

As a result of the extensive shift by Iveco away from axle production on its own account the JVC will acquire a very significant share of the market, since from the beginning of its entry it will satisfy Iveco's rear-drive axle requirements.

- (b) Nevertheless, even after the cessation by Iveco of production on its own account, the proportion of production accounted for by truck manufacturers themselves amounts to about 80% of total axle production in the common market. All other major European truck manufacturers still supply themselves with rear-drive axles and hence remain independent of the free axle manufacturers. The latter must likewise take account of this circumstance irrespective of their market shares. Therefore, the JVC in any case will be compelled to adopt a competitive stance on the market in question.

As a result, it may reasonably be expected that the competitiveness of the other independent axle manufacturers will not be jeopardized by the entry of a strong competitor onto the market. This holds true, in particular, if the JVC succeeds in inducing truck manufacturers to change their policy regarding production on their own account and to purchase axles from third parties and in starting a trend which creates a more competitive situation on this market, from which the other free axle manufacturers could also benefit.

Weighing of the advantages and disadvantages

In view of the special structure of the axle market in the Community and the fact that the newly formed JVC can be expected to act as a stimulus, the advantages resulting from this cooperation outweigh considerably the harmful effects it entails.

Duration of the exemption and obligations

12. Pursuant to Article 8 (1) of Regulation No 17, a Commission decision in application of Article 85 (3) of the Treaty shall be issued for a specified period.

The salient characteristics of the joint venture described above are the high level of investment by the parties and the extensive commitments entered into by them. There is also a likelihood that the undertaking will experience difficulties in introducing its products onto the market. This being so, the venture requires a sufficiently long period of exemption for it to be able to develop from the economic point of view. Having regard to the re-equipping stage of about three years which will end with the commencement of production, a period of 11 years in total appears appropriate. It will thus extend to the end of the first production phase, at the end of which the parties' obligations under the licence and supply agreements also expire. Since the parties set their venture in train on 2 March 1982 with the conclusion of the Closing Agreement and the other agreements dependent on the basic agreement, it is advisable to make the exemption effective as from 2 March 1982. It will thus end on 1 March 1993.

13. Pursuant to Article 8 (1) of Regulation No 17, conditions and obligations may be attached to a decision granting exemption.

- (a) The agreements, particularly, the technology agreements, make no provision for the dissolution of the JVC, for whatever reason. Although the parties themselves do not consider this question, steps must be taken to ensure that each of them may in that event continue to use such technical know-how as was in the possession of the JVC up to that point, or which it has itself acquired, and which is necessary for separate continuation of production. Both companies must therefore be able, after the dissolution of the JVC, to compete with one another without any temporal or geographical restrictions. To guarantee this outcome, the decision granting exemption must contain an obligation to that effect.
- (b) So that the Commission can perform its supervisory duties pursuant to Article 8 (2) of Regulation

No 17, the undertakings to whom this Decision is addressed must be under an obligation to notify to it any amendment or addition to the agreements as well as all awards by arbitration tribunals,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3), the provisions of Article 85 (1) of the Treaty establishing the European Economic Community are hereby declared inapplicable for the period 2 March 1982 to 1 March 1993 to the basic agreement which became effective on 13 June 1981 between the companies Iveco Industrial Vehicles Corporation BV and Rockwell International Corporation (hereinafter called the parent companies) on the formation of the joint subsidiary Omevi Officine Meccaniche Veicoli Industriali SpA (hereinafter called the Joint Venture Company) and to the accompanying agreements between the parent companies or subsidiaries of them and the Joint Venture Company.

Article 2

The declaration of exemption contained in Article 1 shall be subject to the following obligations:

1. If the Joint Venture Company is wound up or if, following the termination of the Technology Licence Agreement between Rockwell and the Joint Venture Company and of the supply agreements between the Joint Venture Company and Iveco's subsidiaries, Vispa, Unic and Magirus-Deutz, either Rockwell or Iveco wishes to use the technology of the Joint Venture Company, the undertakings to which this Decision is addressed shall grant to each other the benefits of the patent rights licensed and the know-how transferred to and obtained by the Joint Venture Company.

If any financial compensation is required for the benefit so afforded, such financial compensation shall be calculated on terms not less favourable than the most favourable terms applicable under any agreement licensing or transferring to any third party the same patents or know-how.

2. The undertakings to which this Decision is addressed shall inform the Commission forthwith of any amendment or addition to the agreements referred to in Article 1, and of any change in the scope, nature or extent of the cooperation between them, including any changes arising as a result of arbitration, and any transfer of shares in the Joint Venture Company.

Article 3

This Decision is addressed to the following undertakings :

- Iveco Industrial Vehicles Corporation BV,
5, Prof. Bavinklaan, Amstelveen, NL-Netherlands,
- Rockwell International Corporation,
600 Grant Street, Pittsburgh, Pennsylvania,
USA,

— Omevi Officine Meccaniche Veicoli Industriali
SpA,
Via Puglia 35, Turin,
Italy.

Done at Brussels, 13 July 1983.

For the Commission
Frans ANDRIESEN
Member of the Commission
