

***Case No COMP/M.6083 -  
FIAT/ GM/ VM MOTORI JV***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 29/03/2011

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## EUROPEAN COMMISSION

Brussels, 29.3.2011

C(2011) 2297 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

### To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6083 - FIAT/ GM/ VM MOTORI JV  
Notification of 22 February 2011 pursuant to Article 4 of Council  
Regulation No 139/2004<sup>1</sup>**

1. On 22 February 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Fiat Powertrain Technologies S.p.A., Italy ("FPT"), a wholly-owned subsidiary of Fiat S.p.A., Italy ("Fiat"), and General Motors Automotive Holdings, S.L., Spain ("GMAH"), a wholly-owned subsidiary of General Motors Company, USA ("GM") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking VM Motori S.p.A., Italy ("VM Motori") by way of purchase of shares.

#### **I. THE PARTIES**

2. The Fiat Group is active in the manufacture and supply of cars, commercial vehicles and agricultural and construction equipment business. In addition, Fiat is active on the automotive components markets and, through FPT, in the design, manufacture and distribution of engines for automotive, industrial, marine and power generation applications as well as the manufacture and sale of transmissions.<sup>2</sup>

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> A transmission is the mechanism by which power is transmitted from an engine to the axle in a motor vehicle.

3. On 1 January 2011 the Fiat Group underwent an important corporate reorganisation with the demerger of Fiat's capital goods business from Fiat's other businesses. This reorganisation resulted in the creation of two distinct business units: Fiat Industrial S.p.A. ('Fiat Industrial') and Fiat S.p.A ('Fiat'). Fiat Industrial comprises Fiat's agricultural and construction equipment activities (Case New Holland, 'CNH'), its commercial vehicle business (Iveco) and FPT's industrial and marine business line whilst Fiat retains Fiat Group Automobiles, Ferrari, Maserati, Fiat's automotive component and production equipment businesses, FPT's passenger and commercial vehicle business line and other minor interests.<sup>3</sup>
4. As at the date of the corporate reorganisation the shareholders of Fiat Industrial and Fiat were identical, Fiat's shareholders received one share in Fiat Industrial for each share they owned in Fiat. Although the composition of the shareholder base of Fiat Industrial and Fiat may change over time as the companies are listed separately and the shares in both companies trade independently of each other, it is assumed for the purposes of the present decision that Fiat Industrial and Fiat are affiliated companies and are therefore treated for the purposes of the present decision as a single economic entity. This is reasonable given the relatively short period that has elapsed since the corporate reorganisation and is in line with the position adopted by the parties in the notification. This approach is also appropriate for the competitive assessment of the proposed transaction given the links between each of Fiat Industrial and Fiat and VM Motori.
5. GM is a global automotive manufacturer that operates in the design, manufacture and marketing of automobile vehicles and provides related services. GM currently exercises joint control over VM Motori together with Penske Corporation following the acquisition of a 50% interest from the latter in 2007.<sup>4</sup>
6. VM Motori is active in the design, manufacture and sale of diesel engines for automotive, industrial, agricultural, stationary and marine use.

## **II. THE OPERATION**

7. The proposed transaction will result in Fiat acquiring joint control with GM of VM Motori through the purchase of the 50% shareholding in VM Motori currently held by the Penske Corporation.<sup>5</sup>

## **III. CONCENTRATION**

8. The management structure as well as a number of other aspects relating to the structure and operation of VM Motori will be regulated by a Shareholders' Agreement that will become effective upon the closing of the proposed transaction. VM Motori will be managed by a board of directors consisting of [...] directors. [...] These governance rights will give FPT and GMAH joint control of VM Motori. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

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<sup>3</sup> Fiat also holds a controlling stake in Chrysler (see Case COMP/M.5518 *Fiat/Chrysler*, Commission decision of 24 July 2009). Chrysler is not active in the manufacture or sale of diesel engines.

<sup>4</sup> Case COMP/M.4832 *Penske/GM/JV*, Commission decision of 29 September 2007.

<sup>5</sup> Penske's acquisition of joint control (together with DaimlerChrysler) over VM Motori was approved by the Commission in 2003 (see Case COMP/M.3087, *Penske/DaimlerChrysler/VM Motori*, Commission decision of 13 February 2003).

#### IV. EU DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>6</sup> [Fiat EUR [...]; GM EUR [...]; VM Motori EUR [...]]. Two of them have an EU-wide turnover in excess of EUR 250 million [Fiat EUR [...]; GM EUR [...]; VM Motori EUR [...]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

#### V. COMPETITIVE ASSESSMENT

10. The proposed transaction will give rise to horizontal overlaps between the diesel engine manufacturing activities of VM Motori and FPT which is the only other company within Fiat active in the production of diesel engines (or other engines). In addition, there are a number of vertical links between these diesel engine activities and Fiat's upstream component businesses (Magneti Marelli and Teksid) and downstream activities in passenger cars and tractors (Fiat Group Automobiles and CNH respectively).

##### I. Relevant product markets

###### *I.I. Diesel engines*

11. Diesel engines generate rotary motion which can be used in a large variety of applications. The choice of engine for each application depends on a variety of factors, such as size, power, weight, speed, torque and cost.
12. In previous decisions relating to mergers in the diesel engine sector, the Commission has left open the exact definition of the relevant product market. It has, however, considered it appropriate to segment the relevant market for diesel engines by end-use application as follows: industrial (construction, agricultural, material handling, earth-moving equipment), on-highway trucks (light, medium and heavy duty trucks and other commercial vehicles), power generators ('GenSets') and marine applications (ships).<sup>7</sup> The Commission also considered diesel engines for automotive applications (cars) to constitute a separate segment.<sup>8</sup>
13. Within each end-use application, the Commission has further considered subdivisions by power ranges and separately looked at diesel engines with power ranges of (i) 40-300 kW, (ii) 301-1000 kW, and (iii) greater than 1000 kW.<sup>9</sup> For industrial (including agricultural) and marine applications, the Commission subsequently refined its analysis and considered the following power ranges: (i) 19-37 kW, (ii) 37-75 kW, (iii) 75-130 kW, and (iv) 130-560 kW.<sup>10</sup>

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<sup>6</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p.1).

<sup>7</sup> COMP/M.5157 – *Volkswagen/Scania*, para. 18; COMP/M.2127 – *DaimlerChrysler/Detroit Diesel Corporation*, paras. 20, 26, 30; IV/M.1094 – *Caterpillar / Perkins Engines*, para. 14.

<sup>8</sup> COMP/M.2127 – *DaimlerChrysler/Detroit Diesel Corporation*, para. 26.

<sup>9</sup> COMP/M.2127 – *DaimlerChrysler/Detroit Diesel Corporation*, para. 20.

<sup>10</sup> COMP/M.5157 – *Volkswagen/Scania*, para. 19.

14. The power ranges for GenSets are typically expressed in kilo-volt amperes (kVA) because GenSets produce electric as opposed to mechanical power. In the past, the Commission has considered the following power ranges for GenSets: (i) 7-150 kVA, (ii) 150-1 000 kVA, (iii) 1 001-2 500 kVA, and (iv) greater than 2 500 kVA.<sup>11</sup>
15. The parties submit that it is appropriate to segment the relevant product market for diesel engines by end-use applications. The segmentation of diesel engines by end-use application is customary in the industry, and both VM Motori and FPT market their diesel engines on the basis of these segments. As FPT internally classifies all engines for stationary applications as “GenSets”, the parties have proposed to use the power range segmentation that is generally used for diesel engines for industrial applications for all engines for stationary applications (including GenSets). The parties point out that VM Motori does not manufacture any diesel engines for industrial, agricultural and stationary applications with a power exceeding 130 kW. On this basis, the parties submit that the relevant product markets for diesel engines in the present case are the following:
- (i) Diesel engines for automotive applications (cars) with power ranges of (a) 50-110 kW (70-150 hp) and (b) 110-147 kW (150-200 hp);
  - (ii) Diesel engines for industrial applications with power ranges of (a) 19-37 kW, (b) 37-75 kW, and (c) 75-130 kW;
  - (iii) Diesel engines for agricultural applications with power ranges of (a) 19-37 kW, (b) 37-75 kW, and (c) 75-130 kW;
  - (iv) Diesel engines for marine applications with power ranges of (a) 19-37 kW, (b) 37-75 kW, (c) 75-130 kW, and (d) 130-560 kW;
  - (v) GenSets with a power range of (a) 19-37 kW, (b) 37-75 kW, and (c) 75-130 kW.
16. The market investigation in the present case has broadly confirmed the appropriateness of segmenting the relevant product market for diesel engines by end application and further subdivisions by power ranges within each end-use application. For the purposes of the present decision, however, the exact definition of the relevant product market for diesel engines can again be left open as the proposed transaction would not raise concerns under any alternative definition.

### *I.II. Passenger cars*

17. In previous decisions relating to mergers in the car industry, the Commission has left open the question of whether the market for passenger cars can be considered to be a single relevant market or whether individual segments, defined by reference to objective criteria, such as engine size or length of vehicle, could constitute separate product markets.<sup>12</sup> The parties submit that only two of these segments, M (MPVs) and J (SUVs), are relevant for the assessment of the present case as VM Motori supplies automotive diesel engines only for use in MPVs and SUVs.

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11 IV/M.1094 – *Caterpillar/Perkins Engines*, para. 16.

12 COMP/M.5250 – *Porsche/Volkswagen*, para. 18. See also, for example, IV/M.741 – *Ford/Mazda*; IV/M.1204 – *Daimler Benz/Chrysler*; IV/M.1452 – *Ford/Volvo*; COMP/M.2832 – *General Motors/Daewoo Motors*; and COMP/M.5061 – *Renault/Russian Technologies/Autovaz*.

18. For the purposes of the present decision, however, the precise scope of the product market definition for passenger cars can be left open as the proposed transaction would not raise concerns under any delineation.

### *I.III. Agricultural machinery*

19. Previously, within agricultural machinery, the Commission has defined separate relevant product markets for (i) orchard, vineyard, narrow and specialty tractors (“O, V&N” tractors) and (ii) standard tractors.<sup>13</sup> The parties submit that the relevant product market in this case is the market for the manufacture and sale of O, V&N tractors as VM Motori supplies diesel engines only for O, V&N tractors.

### *I.IV. Diesel Engine Control Systems*

20. The Commission has previously distinguished gasoline engine control units from diesel engine control units and argued that diesel engine control units should be further segmented to distinguish control units used in engines for cars and light commercial vehicles (‘LCVs’) from control units used in engines for heavy vehicles.<sup>14</sup> The parties submit that the relevant markets within the broad category of diesel engine control systems on which the proposed transaction should be assessed are the following:

- (i) Diesel engine control units (ECUs): Diesel engine control units manage the sensors and engine actuators in diesel engines.
- (ii) Diesel engine throttle bodies: The throttle body is the part of the air intake system that controls the amount of air flowing into the engine in response to driver input.
- (iii) Diesel engine intake manifolds: The intake manifold is the engine part that transmits air from the air filter to the engine air valves.

21. For the purposes of the present decision, however, the precise scope of the relevant product markets can be left open as the proposed transaction would not raise concerns under any delineation.

### *I.V. Cast Metal Engine Components*

22. In previous decisions, the Commission has distinguished cast metal components for passenger cars and LCVs from similar components for heavy vehicles but has left open whether there could be separate product markets for each type of cast automotive component (engine blocks, cylinder heads, crankshafts, etc). However, the Commission has found previously that components cast from iron are a separate product market from components cast from aluminium.<sup>15</sup>

23. For the purposes of the present decision, however, the precise scope of the relevant product markets can be left open as the proposed transaction would not raise concerns under any delineation.

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13 COMP/M.1571 – *New Holland/Case*, paras. 10-13.

14 COMP/M.4878 – *Continental/Siemens VDO*, paras. 18-24; COMP/M.5142 – *Bosch/Mahle / JV*, para. 17.

15 IV/M.139 – *VIAG/EB Brühl* paras. 10 and 11; IV/M.1485 – *Carlyle/Hansel*, para. 6; IV/M.1189 – *Teksid/Norsk Hydro Produksjon/Meridian*, para. 13; and COMP/M.4500 – *Nemak/TK Aluminium “A”*, paras. 9-17.

## II. Relevant geographic markets

### I.I. Diesel engines

24. The Commission has concluded in past decisions that the relevant geographic markets for diesel engines are at least EEA-wide in scope.<sup>16</sup> The parties consider that the relevant geographic market may even be wider than the EEA as diesel engines are manufactured at relatively few locations around the world and shipped to customers globally.
25. For the purposes of the present decision, however, the exact definition of the relevant geographic market for diesel engines can be left open as the proposed transaction would not raise concerns even if the relevant geographic market were restricted to the EEA.

### I.II. Passenger cars

26. The Commission has in the past left open whether the relevant geographic market for passenger cars is international (at least EEA-wide) or national.<sup>17</sup> As the proposed transaction would not raise concerns even on the basis of a narrow definition (that is to say national), the precise scope of the geographic market can be left open for the purposes of the present decision.

### I.III. Agricultural machinery

27. The parties submit that the market for O, V&N tractors is likely to be EEA-wide as O, V&N tractors are purchased on an EEA-wide scale, there are only relatively few production sites for agricultural machinery of this type, and the products are shipped from these locations to customers throughout the EEA.
28. In COMP/M.1571 – *New Holland/Case*, the Commission found indications that the markets for agricultural machinery, '*despite a clear tendency towards a broader geographic dimension*' could still be national, citing the existence, in some cases, of substantial price differences from one Member State to another.<sup>18</sup>
29. For the purposes of the present decision, however, it is not necessary to come to a conclusion regarding the exact definition of the relevant geographic market for O, V&N tractors as the proposed transaction would not raise concerns even if the relevant geographic market were found to be no broader than national.

### I.IV Automotive components (diesel engine control systems and cast metal engine components)

30. The Commission has consistently found the relevant geographic markets for automotive components to be at least EEA-wide.<sup>19</sup> The parties submit that certain component

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16 COMP/M.5157 – *Volkswagen/Scania*, para. 18; COMP/M.2127 – *DaimlerChrysler/Detroit Diesel Corporation*, paras. 20, 26.

17 COMP/M.5250 – *Porsche/Volkswagen*, para. 39 (passenger cars); COMP/M.5157 – *Volkswagen/Scania*, para. 24 (for trucks, including LCVs). See also, for example, IV/M.1452 – *Ford/Volvo*, paras. 14-15, COMP/M.5061 – *Renault/Russian Technologies/Autovaz*, paras. 13-14.

18 COMP/M.1571 – *New Holland/Case*, para. 31.

19 For example, IV/M.937 – *Lear/Keiper*, paras. 13-14; IV/M.1189 – *Teksid/Norsk Hydro*, paras. 14-15; and COMP/M.3486 – *Magna/New Venture Gear*, paras. 24-28.

markets could even be worldwide in scope but this issue can be left open for the purposes of the present decision as the proposed transaction would not give rise to concerns under either alternative.

### **III. Competitive assessment**

31. On the basis of the product market definitions suggested by the parties, the proposed transaction would give rise to the following horizontally affected markets:
- (i) Diesel engines for automotive applications (EEA): (a) 55-110 kW and (b) 110-147 kW ; and
  - (ii) Diesel engines for agricultural applications (EEA): 75-130 kW
32. The following relevant markets would also be vertically affected by the proposed transaction:
- (i) Upstream: diesel engines for automotive uses (EEA): (a) 55-110 kW and (b) 110-147 kW ; and  
Downstream: MPVs (Italy);
  - (ii) Upstream: diesel engines for agricultural applications (EEA): (a) 19-37 kW and (b) 37-75 kW; and  
Downstream: O, V&N tractors (EEA).

#### **I. Horizontally affected markets**

##### **I.I. Diesel engines for automotive applications**

33. As can be seen in the following table, the increments in market shares brought about by the proposed transaction on the relevant markets for the manufacture and sale of diesel engines in the EEA in 2009 between Fiat and VM Motori are relatively limited.<sup>20</sup>

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20 Source: Form CO. As the proposed transaction does not lead to the combination of any undertaking controlled by GM (with the exception of VM Motori) with any undertaking controlled by Fiat Group, the parties do not consider the other activities of GM Group in the production of diesel engines to be relevant for the purposes of determining whether the concentration gives rise to horizontally affected markets within the meaning of the Form CO. It should be noted that market share information provided in respect of GM is hypothetical in the sense that it relates solely to sales to Saab which was acquired by Spyker in 2010. In the relevant reference year 2009, GM did not have any sales on the merchant market for automotive diesel engines in the EEA and the figures reported in the table above are calculated on the basis of the 2009 internal sales of GM Group to Saab against the 2009 merchant market. For completeness, it should also be noted that DMAX, GM's joint venture with Isuzu Motors Ltd in the US, also manufactures diesel engines for marine applications. In 2010, DMAX sold [...] marine diesel engines to [...]. These are currently DMAX's only sales of marine diesel engines in the EEA. Before 2010, DMAX only supplied marine diesel engines to customers located in the US.

	Total EEA Merchant Market (Units)	VM Motori		Fiat Group		GM Group		Combined %
		Units	%	Units	%	Units	%	
<b>Automotive (total)</b>	[...]	[...]	[0-5]%	[...]	[20-30]%	[...]	[0-5]%	[20-30]%
50-110 kW (70-150 hp)	[...]	[...]	[0-5]%	[...]	[20-30]%	[...]	[0-5]%	[20-30]%
110-147 kW (150-200 hp)	[...]	[...]	[10-20]%	[...]	[0-5]%	[...]	[5-10]%	[20-30]%
<b>Industrial (total)</b>	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[0-5]%
19-37 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[0-5]%
37-75 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[0-5]%
75-130 kW	[...]	[...]	[0-5]%	[...]	[5-10]%	[...]	[...]	[5-10]%
<b>Agricultural (total)</b>	[...]	[...]	[10-20]%	[...]	[0-5]%	[...]	[...]	[10-20]%
19-37 kW	[...]	[...]	[10-20]%	[...]	[...]	[...]	[...]	[10-20]%
37-75 kW	[...]	[...]	[10-20]%	[...]	[0-5]%	[...]	[...]	[10-20]%
75-130 kW	[...]	[...]	[0-5]%	[...]	[10-20]%	[...]	[...]	[10-20]%
<b>Marine (total)</b>	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[5-10]%
19-37 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[0-5]%
37-75 kW	[...]	[...]	[...]	[...]	[0-5]%	[...]	[...]	[0-5]%
75-130 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[5-10]%
130-560 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[5-10]%
<b>GenSets (total)</b>	[...]	[...]	[0-5]%	[...]	[5-10]%	[...]	[...]	[5-10]%
19-37 kW	[...]	[...]	[0-5]%	[...]	[5-10]%	[...]	[...]	[5-10]%
37-75 kW	[...]	[...]	[0-5]%	[...]	[0-5]%	[...]	[...]	[5-10]%
75-130 kW	[...]	[...]	[0-5]%	[...]	[10-20]%	[...]	[...]	[10-20]%

34. In the 55-110 kW and 110-147 kW power ranges for automotive applications, the increments resulting from the proposed transaction are [0-5]% and [0-5]% respectively. Post merger, Fiat (FPT/VM Motori) will still account for less than 25% of the relevant EEA-wide market for diesel engines for automotive uses. Post merger, significant competition from independent suppliers will remain on the merchant market for automotive diesel engines in the EEA, in particular from Ford, PSA and Renault.
35. According to the parties, the merchant market for diesel engines for automotive applications is relatively small in comparison with the overall production volume of such engines in the EEA. This is because most diesel engines for automotive applications are produced in-house by major passenger car manufacturers for captive use within their downstream car manufacturing businesses. The market investigation has shown this to be the case for a number of major car manufacturers.
36. In light of the relatively limited increments arising from the proposed transaction and in the absence of concerns in the market investigation, it is concluded that notified operation does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement in respect of the market for the supply of diesel engines for automotive applications.

#### I.II. Diesel engines for agricultural applications

37. The increment in market share arising as a result of the combination of FPT and VM Motori is not significant ([0-5]%) and post merger, Fiat (FPT/VM Motori) will still account for less than 25% of the relevant EEA-wide market.

38. Post merger, significant competition from independent suppliers will remain on the merchant market for agricultural diesel engines with a power range from 75-130 kW, in particular from John Deere, Deutz, AGCO Sisu Power, Perkins and Yamz.
39. In light of the above considerations and in the absence of concerns in the market investigation, it is concluded that notified operation does not raise serious doubts as to its compatibility with the internal market and with the EEA Agreement in respect of the market for the supply of diesel engines for agricultural applications.

## **II. Vertically affected markets**

### **II.I. Automotive diesel engines/MPVs**

40. As far as passenger cars are concerned, if the relevant markets were defined as national in scope, the share of Fiat (including Chrysler) would only exceed 25% in one relevant market: MPVs in Italy where Fiat's share in 2009 was [20-30]%.<sup>21</sup>
41. The vertical relationship between Fiat Group and VM Motori will not give rise to concerns of input foreclosure. VM Motori only supplies diesel engines to one passenger car manufacturer for use in one MPV model, the Chrysler Voyager. As Fiat Group controls Chrysler, this supply relationship will become captive as a result of the proposed transaction and will, therefore, no longer be capable of input foreclosure.
42. The only third-party purchaser of VM Motori's diesel engines for automotive applications is LTI (the maker of London taxis). Post merger, neither Fiat Group nor VM Motori will have an incentive to cease supplies to LTI or to supply LTI at sub-competitive terms as Fiat Group does not manufacture an automotive vehicle that could substitute the London taxi. It therefore appears that concerns relating to input foreclosure as a result of the proposed transaction can be excluded.
43. In a similar fashion, it appears that customer foreclosure concerns with respect to passenger cars can be excluded as the combination of Fiat and VM Motori will not restrict the customer base of VM Motori's competitors for automotive diesel engines. Fiat Group Automobiles does not currently source any diesel engines from VM Motori. Moreover, Fiat Group could not easily switch engine suppliers and source its demand for automotive diesel engines from VM Motori because no Fiat Group vehicle platform has been designed to accommodate a VM Motori engine. Chrysler, on the other hand, already sources all the diesel engines that it requires for the production of the Voyager from VM Motori. The internalisation of this supply relationship will not deprive any competing engine manufacturers of a source of demand that would otherwise be available.

### **II.II Agricultural diesel engines/O, V&N tractors**

44. Assuming that the relevant downstream market for O, V&N tractors is EEA-wide, Fiat (CNH) estimates its market share in 2009 to be [20-30]% on the basis of a total EEA market volume of [...] units. On a national basis, Fiat estimates its shares in the four major wine growing Member States, which accounted for more than 80% of its total EU turnover for this product in 2009, to be the following: France [20-30]%; Germany [20-30]%, Italy [20-

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<sup>21</sup> At an EEA-wide level, Fiat Group's market shares (including Chrysler) in 2009 in the MPV and SUV segments were [5-10]% and [0-5]% respectively.

30]% and Spain [10-20]%. As the parties have remarked, however, since the upstream market for diesel engines is at least EEA-wide, there would be no foreclosure effects specific to national markets.

45. In the 19-37 kW power range, VM Motori only accounted for about [10-20]% of the supplies of diesel engines for agricultural applications in the EEA and only for about [10-20]% of such supplies in the 37-75 kW segment. With Lombardini, Yanmar and Vladimir, at least three independent suppliers of engines will remain in the 19-37 kW power range segment post merger that could easily pick up any demand from competitors of CNH if VM Motori no longer provided agricultural diesel engines to other manufacturers of O, V&N tractors on competitive terms.
46. In the 37-75 kW power range segment, a more specific concern was expressed by a competing manufacturer of diesel engines for agricultural applications that Fiat would with the acquisition of VM Motori add a type of engine in the 37-75 kW power range currently lacking in FPT's portfolio that could be used downstream by CNH *inter alia* in the production of agricultural tractors. It was suggested that this would make CNH's product offering more competitive on the downstream market for the type of tractors using this diesel engine and, depending on CNH's demand, could increase the risk of input foreclosure for CNH's competitors as VM Motori's production capacity could be fully utilised by CNH.
47. VM Motori does not currently supply any diesel engines to CNH. Fiat notes that the types of diesel engines designed and manufactured by VM Motori are generally too small to be fitted in the agricultural machinery produced by CNH although they could in theory be used in some of the smaller agricultural machinery from CNH's product range such as the Compact Tractor.<sup>22</sup> Even if CNH were to decide to use a VM Motori engine in a future version of its Compact Tractor, such a development would not necessarily raise competition concerns. In the first instance, the partial internalisation within the Fiat Group of the mark up on the sale of diesel engines to CNH could enable CNH to be more competitive on the downstream market – as indicated by the competitor - which would be to the benefit of consumers.
48. Secondly, even if CNH were to monopolise VM Motori's output of this type of diesel engine, there would be at least seven competing engine suppliers post merger, with Deutz and Deere accounting for much larger shares of supply than VM Motori that could pick up demand no longer met by VM Motori. In this regard it should be noted that during the market investigation, manufacturers of O, V&N tractors have highlighted the number of alternative suppliers to VM Motori and have not expressed any concerns relating to possible input foreclosure.<sup>23</sup>
49. Likewise the vertical relationship between Fiat Group and VM Motori will not give rise to concerns of customer foreclosure with respect to agricultural machinery as CNH currently sources all its requirements for diesel engines for O, V&N tractors in the relevant power ranges in-house from FPT. There is therefore no risk that an independent

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<sup>22</sup> According to Fiat, it would not be economically viable to redesign the current version of CNH's Compact Tractor to accommodate a VM Motori engine as this would substantially increase the production cost of each Compact Tractor.

<sup>23</sup> In addition, a strategy of foreclosure would not be in the interest of VM Motori's jointly controlling shareholder GM, which lacking any downstream activities of its own in the manufacture of agricultural machinery, would not have the incentive to foreclose certain manufacturers of O, V&N tractors.

supplier of agricultural diesel engines to CNH could be replaced by VM Motori as a result of the transaction.

### **III. Other vertical overlaps with Fiat Group's upstream automotive components**

50. Fiat is active in the production and supply of engine parts through its subsidiaries Magneti Marelli (engine control systems) and Teksid (cast metal engine components).
51. Magneti Marelli's share (excluding captive sales) on the relevant EEA-wide upstream markets for (parts of) diesel engine control systems were below [0-5]% in 2009, while Teksid estimates its shares on the EEA market to have been not higher than [10-20]% for any component.
52. The market investigation has shown there are many alternative suppliers for the types of component supplied by Magneti Marelli as well as Teksid and companies active downstream in the production and supply of diesel engines have not raised any foreclosure concerns.
53. Therefore, taking into account the relatively low market shares of Magneti Marelli and Teksid on the upstream markets, VM Motori's position on the downstream markets and the absence of concerns in the market investigation, it is concluded that the proposed transaction does not raise any vertical foreclosure issues.

### **VI. CONCLUSION**

54. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*

*(signed)*

*Joaquín ALMUNIA*

*Vice-President*