

***Case No COMP/M.1571 -  
NEW HOLLAND / CASE***

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/10/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.10.1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M. 1571-NEW HOLLAND/CASE**

Notification of 15.09.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 15.09.1999 the Commission received a notification of a transaction whereby New Holland N.V. ("New Holland") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Case Corporation ("Case").
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89<sup>1</sup> and, in view of the undertakings submitted by the parties, does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

**I. THE PARTIES**

3. New Holland is a company incorporated under the laws of the Netherlands, active in the manufacture and distribution of agricultural machinery and construction equipment. It is controlled by Fiat SpA ("Fiat").
4. Case is a company incorporated in the USA, active in the manufacture and distribution of agricultural machinery and construction equipment.

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<sup>1</sup> OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

## II. CONCENTRATION

5. Following the conclusion of an Agreement and Plan of Merger, Case will be merged with a wholly owned subsidiary of Fiat, and New Holland will acquire all the issued and outstanding shares of the merged entity. It is therefore concluded that the proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion (Fiat, EUR 45,769m; and Case, EUR 5,485m). Both of them have a Community-wide turnover in excess of EUR 250 million (Fiat, EUR 32,390m; and Case, EUR 1,387m), 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.

## IV. COMPATIBILITY WITH THE COMMON MARKET

### A. Agricultural machinery sector

#### *Relevant product markets*

7. Both New Holland and Case manufacture and distribute a number of agricultural machinery products : tractors, combine harvesters, forage harvesters, and large square balers.

#### Tractors

8. Tractors are the basic piece of equipment for the mechanisation of the farm unit. They are all capable of performing the same basic range of farming functions, such as ploughing, harrowing, drilling, etc. They come under a broad continuum of products, offering different levels of power, specification and weight at different price levels.
9. The parties submit that a distinction can be drawn between orchard, vineyard, narrow and speciality (“O, V&N”) tractors on the one hand, and standard tractors on the other hand. They also submit that, within each of these two categories, all products may be combined into a single product market, because of i) the existence of a competitive chain of substitution within tractors of different power, specification and weight, and ii) a substantial degree of supply-side substitutability, as tractor manufacturers can exploit commonality in design, technology and components between different tractor types, and have in recent years extended their tractor ranges upwards and downwards.
10. This conclusion has been broadly confirmed by the results of the Commission enquiry. In particular, it appears that standard tractors and O, V&N tractors correspond to different applications, are used by different types of customers and are often not produced by the same types of manufacturers. For instance, although Case manufactures an extensive range of standard tractors, it does not manufacture O, V&N tractors and sources them from another manufacturer, Agritalia.
11. There also appears to be a substantial degree of supply-side substitutability within standard tractors, as manufacturers either produce the whole range of products or

appear to be able to do so and switch between categories at short notice. Furthermore, although standard tractors of different size and power may be used for different applications (arable, livestock or mixed) or by different users (small family or part-time farming, mid-sized professional farming, or cash-crop farming and contractors), customers appear to be prepared to move up or down the horsepower scale, depending on other aspects (e.g. durability, reliability, after-sale servicing, financing, etc.) of the package offered. Consequently, it appears that standard tractors can be combined into a single product market.

12. Finally, there also appears to be a significant level of supply-side substitutability within O, V&N tractors, as most current manufacturers produce tractors to appeal to any potential customers in the O, V&N market, and as, in view of the limited sales volumes of such products, manufacturers seem to have created product ranges with substantial modularity and commonality of production, thus providing short-notice market mix response capabilities. Consequently, and although each type of product (e.g. vineyard tractors, or orchard tractors) corresponds to specific uses and is generally purchased by specific customers, there would also appear to be a single product market for O, V&N tractors.
13. Overall, the results of the Commission enquiry appear to point in favour of distinct product markets for each of standard tractors, and O, V&N tractors.

#### Combine harvesters

14. Combine harvesters combine cutting, threshing, separating, cleaning and unloading operations for a variety of crops, primarily, small grains (wheat, barley, oats), maize, oilseeds and rice. They also come under a continuum of products that differ according to power, specification and price.
15. The parties submit that, although combine harvesters can use different technologies, and although rice and maize applications require certain modifications, all combine harvesters can be combined into a single product market.
16. This has been broadly confirmed by the results of the Commission investigation, as manufacturers of combine harvesters appear to have the capability to produce the full variety of products, and customers appear to be prepared to buy products of different power, weight and technology, depending on other aspects (e.g. durability, reliability, after-sale servicing, financing, etc.) of the package on offer.
17. It appears therefore that all products can be combined into a single product market for combine harvesters.

#### Forage harvesters

18. Forage harvesters perform chopping operations for grass, maize (and to a lesser extent, wheat) for the production of silage and the harvesting of maize corn. They usually come into three types : self-propelled forage harvesters, trailed harvesters and mounted harvesters.
19. The parties submit that all forage harvesters can be included within a single product market, on the basis that all forage harvesters perform the same functions and that there is a high degree of supply-side substitutability, as the production of forage harvesters

relies upon an assembly approach and manufacturers may produce their entire range on one single production line.

20. Some of the third parties who responded to the Commission enquiry did not consider self-propelled forage harvesters to be substitutable with trailed or mounted forage harvesters. In particular, they indicated that manufacturers of trailed and mounted forage harvesters are normally not able to produce self-propelled products. They also indicated that self-propelled forage harvesters are higher performance products than trailed and mounted products. It should also be noted that, unlike self-propelled products, trailed and mounted forage harvesters require an additional piece of equipment (usually, a tractor) for their use.
21. However, it is not necessary to further delineate the relevant product markets for forage harvesters because, in all alternative market definitions considered, the operation will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the EEA or a significant part of it.

### Balers

22. Balers perform “packaging” functions in relation to hay, straw and forage. The parties submit that, although balers come into three categories (small square balers, large square balers and large round balers), all balers can be included into a single product market.
23. However, it appears from the Commission investigation that small square balers would form a distinct product market, on the basis that some manufacturers of the larger products (e.g. Case or Krone) do not produce small square balers, and that customers of the larger products are generally large farmers or contractors, which would not consider the smaller balers.
24. Similarly, most of the competitors who responded to the Commission enquiry also pointed to differences in the performance and use between large square balers and round square balers, as large round balers seem to be versatile products, and large square balers higher performance machines. The prices for large square balers also appear to be more than three times as high as those for large round balers. And some manufacturers of large square balers (such as Case) do not manufacture large round balers.
25. Overall, the results of the Commission enquiry appear to point in favour of distinct product markets for each of small square balers, large round balers and large square balers form distinct product markets.

### *Relevant geographic markets*

26. The parties submit that the geographic markets for agricultural machinery are at least EEA-wide, on the basis that production is usually concentrated on few sites, that prices are usually similar across Member States, and that, apart from a few national specific requirements, products are more and more identical within Europe.
27. The existence of EEA-wide markets would be supported by the fact that EC directives have largely harmonised the legal requirements for agricultural equipment sold in the EEA (with only a small number of differences between Member States remaining), that

transport costs only account for a small fraction of the price of the products concerned, that the large suppliers manufacture at a limited number of locations and distribute from those plants throughout the EEA, and that prices appear to converge towards similar levels all over the EEA.

28. However, according to some of the third parties who responded to the Commission enquiry, there also appear to remain some national specifications, for instance in the field of road usage or safety requirements; and there also seems to remain national customer preferences for certain product configurations. As a result, there appear to remain national differences in product configuration (for instance in trailer brake systems or trailer hitches for tractors, transmission, etc.).
29. Furthermore, having an effective distribution network appears to play a key role in the sale of agricultural products, because customers cannot afford to wait in the event of breakdown and therefore need a local dealer and after-sale servicing provider, and because customers, who change products frequently, usually require the seller to trade in their used equipment and therefore generally only approach distributors. Given that distribution is organised on a national basis, through networks of exclusive distributors (whether independent third parties or affiliates) and exclusive local dealers, and that the establishment of an effective distribution networks requires heavy and time consuming investments, it therefore appears that the market positions of competitors are largely dependent on national factors. This is further confirmed by the results of the Commission enquiry, which show that there is a high degree of dealer loyalty in the field of agriculture machinery. Distribution appears thus to result in strong national barriers to entry.
30. Finally, there seems to remain national preferences for certain brands, primarily as a result of the historic inheritance of local manufacturing presence. These may be at the origin of the presence of considerable market share variations from country to country. For instance, although Renault's share of sales of standard tractors does not exceed 5% in the EEA, it reaches 17% in France. And similarly, although Krone's share of sales of balers does not exceed 4% in the EEA, it reaches 50% in Finland.
31. In the light of the above, and despite a clear tendency towards a broader geographic dimension, the results of the Commission enquiry appear to point in favour of national geographic markets for agricultural equipment. This would be further indicated by the existence, in some cases, of substantial price differences from one Member State to another : [...]

#### *Competitive assessment*

##### Standard tractors

32. The operation will not raise competition concerns in most countries, as the parties will remain subject to competition from other large manufacturers (such as SLHD, John Deere and Agco) with substantial market shares, and as, in view of the strong fluctuations of market shares, there would appear to be sufficient competition.
33. However, the merged entity will have strong market shares (in terms of volumes) in Belgium and Luxembourg [between 40% and 45%], the United Kingdom [between 40% and 45%], Austria [between 45% and 50%], Denmark [between 45% and 55%] and Iceland [between 50% and 55%]. In most of these countries and of the last five

years, the parties' combined market shares have been over [between 35% and 45%], and have been more than twice as high as those of the next largest competitor.

34. Given the apparent substantial brand and/or dealer loyalty in the agricultural machinery sector and the importance of a dense and well-developed after-sales network as explained above, the merged entity' market position would not be easily contested by other competitors. Furthermore, new entry seems relatively unlikely in the short term, given the heavy financing and time required for the establishment of an effective distribution network. Entry would be even more unlikely as the tractor market is expected to decline by approximately 18% by 2007.
35. In the light of the above, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the above national markets for standard tractors.

#### O,V&N tractors

36. The operation will lead to high market shares in the Netherlands [between 35% and 40%], Portugal [between 40% and 45%], Austria [between 45% and 50%], Belgium and Luxembourg [between 50% and 55%], and Iceland [between 45% and 55%].
37. However, In Iceland, on average, only [between 0 and 5] units have been sold annually over the last 11 years. Market shares therefore do not necessarily reflect the actual market power of the competitors in that country. Instead, it should be noted that the parties have provided only [between 0 and 5] (i.e., approximately [between 10% and 15%]) of the [between 30 and 35] units purchased since 1988, and that, by contrast, Agco has provided [between 20 and 25] (i.e. approximately [between 65% and 70%]) units during the same period.
38. Furthermore, in the Netherlands, Austria, Belgium and Luxembourg, the operation will result to small overlaps, as Case's market shares in these countries do not exceed [between 0% and 5%], and, in view of the strong fluctuations of market shares, there would appear to be sufficient competition in these countries.
39. Finally, in Portugal, the merged entity will remain subject to the competition from other large manufacturers, such as SLHD ([between 25% and 35%] of sales in 1997); and, in view of the strong fluctuations of market shares (over the last five years, the parties' combined market shares have moved between [between 40% and 45%] in 1994 and [between 15% and 20%] in 1995), there appears to be sufficient competition in that Member State.
40. In the light of the above, it can therefore be concluded that the operation will not create or strengthen a dominant position on the markets for O,V&N tractors as a result of which effective competition will be significantly impeded in the EEA or a significant part of it.

### Combine harvesters

41. The merged entity will have strong market positions in France [between 40% and 45%], Italy [between 50% and 55%] and Portugal [between 60% and 65%], and its market shares will be more than [between 55% and 65%] higher than those of its next largest competitor. Although Case's market share is relatively small in Italy, it will add up to the already very high market shares of New Holland, which have exceeded [between 45% and 55%] for all of the last ten years, and which have been consistently more than twice as high as those of New Holland's next largest competitor.
42. Furthermore, the merged entity's market position would not be easily contested by other competitors given the apparent substantial brand or dealer loyalty in the agricultural machinery sector and the importance of a dense and well-developed after-sales network as explained above.
43. And finally, new entry seems relatively unlikely in the short term, given the heavy financing and time required for the establishment of an effective distribution network, and the apparent maturity of these markets.
44. As indicated above, there is also a clear trend towards broader (and possibly EEA-wide) geographic markets for agricultural machinery. In that context, the Commission notes that the operation will result in a high degree of concentration at AEA level, with two companies (the merged entity and Claas) holding individually between 30% and 35% of sales, with the next largest competitor, John Deere, only accounting for 15% of sales. In view of the stability of market shares over the last 8 years and of the apparent brand and/or dealer loyalty in the agricultural machinery sector, it appears that Claas and the parties' positions will not be challenged by other competitors. Furthermore, new entry seems relatively unlikely in the short term, given the heavy financing and time required for the establishment of an effective distribution network, and the apparent maturity of the market.
45. In addition, given the symmetry of market shares in the EEA, Claas and the merged entity would appear to have similar manufacturing cost structures. This suggests that they also have incentives to adopt similar pricing policies. The parties argue that parallel pricing behaviour is not possible, on the grounds that i) manufacturers do not set the retail prices, which are ultimately defined by the dealers, and ii) that there is no price transparency, as the actual retail prices result from price negotiations and often involve trade in of used equipment. However, given that manufacturers can strongly influence the retail prices through the setting of wholesale prices and of recommended price lists, and that such recommended price lists are usually publicly available, parallel competitive behaviour appears to be feasible.
46. In the light of the above, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the above markets for combine harvesters.

### Forage harvesters

47. The parties' activities only overlap in the field of self-propelled forage harvesters. The operation will not raise competition concerns in most countries, as the parties will

remain subject to competition from other large manufacturers (primarily Claas and John Deere) with substantial market shares, and as, in view of the strong fluctuations of market shares, there would appear to be sufficient competition.

48. In Belgium and Luxembourg, the parties' combined share of sales will reach [between 35% and 40%]. However, firstly, there appears to be no scope for single dominance, because of the presence of Claas ([between 50% and 55%] of sales). And secondly, there also appears to be no scope for collective dominance between Claas and the parties. This is because Case's market shares have considerably eroded over time (decreasing from [between 30% and 35%] in 1991 to [between 0% and 5%] in 1998) and now only account for [between 0% and 5%] of sales, which indicates that the operation does not appear to have a material effect on competition in Belgium and Luxembourg. In that context, and given the presence of strong fluctuations in the market shares of Claas and New Holland, which suggest the presence of effective competition between these two market players before the transaction, it can be concluded that the operation will not provide incentives for parallel behaviour between Claas and the merged entity. This is further suggested by the strong market shares asymmetries between the merged entity ([between 35% and 40%]) and Claas ([between 50% and 55%]).
49. In the light of the above, it can therefore be concluded that the operation will not create or strengthen a dominant position on the markets for forage harvesters as a result of which effective competition will be significantly impeded in the EEA or a significant part of it.

#### Large square Balers

50. The parties' activities in balers only overlap in the field of large square balers. The operation will not raise competition concerns in most national markets, as the parties will remain subject to competition from other large manufacturers (such as Claas) with substantial market shares, and as, in view of the strong fluctuations of market shares, there would appear to be sufficient competition.
51. However, the merged entity will have high market shares in Belgium and Luxembourg [between 55% and 60%], Italy [between 50% and 55%], France [between 35% and 45%], the Netherlands [between 55% and 60%] and the United Kingdom [between 40% and 45%]. Furthermore, although Case's market share is relatively small in Belgium and Luxembourg, it will add up to the already very high market shares of New Holland, which have exceeded [between 40% and 50%] for all of the last five years, and which have consistently been approximately twice as high as those of New Holland's next largest competitor. And in France, the parties' combined market shares have steadily increased over time, climbing from [between 30% and 35%] in 1995 to [between 35% and 45%] in 1998, while that of their largest competitor, Claas, have eroded from [between 25% and 30%] to [between 20% and 25%] over the same period.
52. Furthermore, the merged entity's market position would not be easily contested by other competitors, given the apparent substantial brand or dealer loyalty in the agricultural machinery sector and the importance of a dense and well-developed after-sales network as explained above.
53. And finally, new entry seems relatively unlikely in the short term, given the heavy financing and time required for the establishment of an effective distribution network.

The operation could therefore create or strengthen a dominant position by the parties in these markets.

54. In the light of the above, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the above national markets for large square balers.

## **B. Construction equipment sector**

### *Relevant product markets*

55. In the *New Holland/Orenstein&Koppel* decision<sup>2</sup>, the Commission indicated that the construction equipment sector could traditionally be subdivided into light equipment products, primarily used for small scale construction and/or maintenance works, and heavy construction products, primarily used for large scale construction and building works, including infrastructure works. The *New Holland/Orenstein&Koppel* decision concerned exclusively heavy construction equipment, and the geographic market was considered to be EEA-wide.
56. The general division of construction equipment into light and heavy has broadly been confirmed by the results of our investigation.

### Heavy construction equipment

57. The parties both manufacture and distribute heavy (12-60 tonnes) excavators and heavy (60-500 hp) loaders.
58. Heavy excavators consist of a rotating base, and of an articulated arm protruding from the base. The operator sits in a cab mounted on the base. The articulated arm being possibly fitted with a number of different attachments, heavy excavators can perform digging, lifting and carrying operations. Heavy excavators can be categorised into wheeled excavators and tracked excavators, with models within each category differing from one another according to weight, range, power, etc.
59. Heavy loaders are machines fitted with a hydraulically controlled arm and bucket (or other attachment) which perform moving and loading functions. Heavy loaders can be subdivided into wheeled loaders and crawler loaders, with models within each type differing from one another according to weight, range, power, etc.
60. In line with the *New Holland/Orenstein&Koppel* decision, the parties submit that all heavy excavators can be included into a single product market for heavy excavators, and that all heavy loaders can be included into a single product market for heavy loaders. This is based on the fact that, within heavy excavators and within heavy loaders, there exists a chain of substitution linking all models, and there is a high level of supply-side substitutability (due to strong commonality of technological base and components between products of different weight and power).
61. The results of our investigation broadly confirm these product market definitions. However, it is not necessary to further delineate the product markets for heavy excavators or heavy loaders, because in all alternative segments considered, the

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<sup>2</sup> See case IV/M.1235-New Holland/Orenstein & Koppel

operation should not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or a significant part of it.

#### Light construction equipment

62. According to the parties, light construction equipment includes five product groups: skid steer loaders, mini and midi excavators, small wheel loaders, backhoe loaders and telescopic handlers.
63. The parties submit that all of these products can be included into a single product market for light construction equipment, on the basis that the five product types are widely interchangeable and that all types of equipment are substantially able to perform each other's functions. For instance, products in all groups can perform loading functions, products in 3 groups (wheeled excavators, backhoe loaders and skid steer loaders) can perform excavating functions, etc.
64. However, most of the third parties who responded to the Commission enquiry do not support this conclusion, and consider that each of the five product groups corresponds to a separate product market. In particular, it appears that not two products can perform exactly the same functions, that there are substantial price variations from one product group to another, and that products within different groups are used by different customers. It also appears from the Commission investigation that a hypothetical small (5-10%) but permanent relative price increase in either product group would not lead customers to switch to products or combination of products within different product groups to such an extent as to make the price rise unprofitable.
65. It would therefore appear that each product group would form a distinct product market, and that there should be no need to further delineate the distinct product markets for light construction equipment.

#### *Relevant geographic markets*

66. The parties submit that the relevant geographic market for any type of construction equipment is EEA-wide, because suppliers tend to operate on a world-wide basis with products being manufactured in a limited number of facilities and exported to distributors, because national preferences or technical standards are not sufficiently important to generate barriers to trade between different Member States, because prices and market shares tend to be similar in the EEA, and because transportation costs are not significant.
67. Most of the third parties who responded to the Commission enquiry confirmed the existence of EEA-wide geographic markets for construction equipment. The existence of an EEA-wide market is as well supported by the fact that EC directives have largely harmonised legal requirements for construction equipment, that transport costs only accounts for a small fraction of the price of the product concerned, that large suppliers manufacture at a limited number of locations and distribute from those plants throughout the EEA, and that wholesale prices appear to converge towards similar levels all over the EEA.
68. Furthermore, distribution appears to play a less significant role than in agricultural machinery markets : firstly, direct central sales seem to be widespread in the

construction equipment sector; and secondly, entry into national markets appears to be possible, given i) the presence of a substantial number of multi-brand dealers, ii) the need for fewer dealers than in agricultural machinery and iii) recent examples of entry (e.g., Komatsu).

69. In the light of the above, it is therefore concluded that the markets for construction equipment are EEA-wide.

*Competitive assessment*

Heavy construction equipment

70. The merged entity's market shares in the EEA will not exceed [between 25% and 30%] for heavy excavators, and [between 10% and 15%] for heavy loaders. Furthermore, in each market, the merged entity would face competition from other large manufacturers, such as Caterpillar ([between 15% and 20%] of sales of heavy excavators, and [between 20% and 25%] of sales of heavy loaders, Komatsu ([between 10% and 15%] of sales of heavy excavators, and [between 10% and 15%] of sales of heavy loaders) and Volvo Construction Equipment ([between 20% and 25%] of sales of heavy loaders)
71. In the light of the above, the operation will not create or strengthen a dominant position in heavy construction equipment as result of which effective competition would be significantly impeded in the EEA or a significant part of it.

Light construction equipment

72. The operation will not raise competition concerns on the markets for skid steer loaders, light excavating equipment, wheel loaders or telescopic handlers, as the merged entity's market shares will not exceed [between 20% and 25%], and as it will face competition from other large equipment manufacturers, such as Caterpillar, Melroe, Komatsu, Volvo or JCB.
73. However, with regard to backhoe loaders, the operation will result in two companies (the merged entity and JCB) holding respectively [between 30% and 40%] and [between 35% and 40%] of the market, with the next largest competitor, Caterpillar, only accounting for [between 10% and 15%] of sales. In view of the stability of market shares over the last 3 years, and of some apparent dealer loyalty in the light construction equipment sector, it appears that JCB and the parties' positions will not be challenged easily by either actual or potential competitors. Furthermore, given the market shares symmetry, JCB and the merged entity would appear to have similar cost structures and therefore similar competitive incentives. And finally, although there appears to be no price transparency on the market, as distribution is in the hands of dealers, and sales of new products often involve trade ins of used equipment and price negotiations, manufacturers can strongly influence retail prices through the setting of wholesale prices and recommended retail prices. Consequently, after the transaction, JCB and the merged entity could both have the incentives and the market power to carry out parallel anti-competitive behaviour.
74. In the light of the above, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the EEA market for backhoe loaders.

## V. UNDERTAKINGS SUBMITTED BY THE PARTIES

75. In order to remove the concerns raised by the operation, the parties have submitted a number of undertakings, which will be described and analysed below.

### A. Agricultural machinery sector

#### *Large square balers*

76. New Holland will procure that Case divests its range of large square balers to a third party. The divestment will include the assignment of intellectual property rights (including the rights to the Fortschritt brand name), of assets and personnel used or engaged in the manufacture and/or research and development of Case's large square balers as well as of supply contracts.

77. Furthermore, New Holland will inform all Case dealers in the EEA that they are free indefinitely to distribute the Large Square Baler Business products on behalf of the purchaser of the Large Square Baler Business; and, for a given period, New Holland will not supply large square balers that compete directly with the Large Square Baler Business products to Case dealers in Belgium, Luxembourg, France, Italy, the Netherlands and the UK.

78. These undertakings concern all of Case's activities in large square balers in the EEA. Consequently, they will eliminate the overlap between Case and New Holland's activities in balers in the EEA, and therefore remove the competitive concerns identified above. The opening up of Case's dealer networks in the EEA will also make the purchaser a viable competitor, with the capacity to be a significant force in large square balers.

79. In the light of the above, it can be concluded that, subject to the full compliance with the undertakings submitted by the parties, the operation will not create a dominant position in the markets for balers.

#### *Combine harvesters*

80. New Holland will divest its Laverda non-hillside range of combine harvesters to a third party. The divestment will include the assignment of all intellectual property rights (including brand name) and know-how, of the Laverda production plant at Breganze (Italy) and of personnel employed at the plant, as well as of supply contracts.

81. In addition, New Holland will inform all New Holland dealers in the EEA that they are free indefinitely to distribute the Laverda Combine Business products on behalf of the purchaser of the Laverda Combine Business; and, for a given period, New Holland will not supply combine harvesters to New Holland dealers in the EEA that compete directly with the products of the Laverda Combine Business.

82. At the national level, the undertakings submitted by the parties will result in a substantial reduction of the merged entity's market shares in all of the countries where competition concerns were identified. Furthermore, in each country, the parties will remain subject to competition from other market players (such as Claas, John Deere, Agco, etc.), some having market shares in excess of 15%. And finally, the opening up of New Holland's dealer networks in the EEA will make the purchaser a viable competitor, with the capacity to be a significant force in combine harvesters.

83. The Commission also notes that, in the context of an evolution towards wider geographic markets, and according to the figures provided by the parties, the undertakings will also eliminate most of the overlap resulting from the proposed transaction.

84. In the light of the above, it can be concluded that, subject to the full compliance with the commitments submitted by the parties, the operation will not create a dominant position in the markets for combine harvesters.

*Standard tractors*

85. New Holland will procure that Case divests its MX-C and CX range of tractors to a third party. The divestment will include the assignment of intellectual property rights and know-how, of Case's production plant at Doncaster (UK) and of personnel employed at the plant, as well as of supply contracts.

86. In addition, New Holland will inform all Case dealers in the EEA that they are free indefinitely to distribute the MX-C/CX Tractor Business products on behalf of the purchaser of the MX-C/CX Tractor Business; and, for a given period, will not supply to Case dealers in Austria, Belgium, Luxembourg, Denmark, the United Kingdom and Iceland tractors that compete directly with the products of the MX-C/CX Tractor Business. New Holland will also inform its dealers in Denmark that they are free indefinitely to distribute the MX-C/CX Tractor Business products on behalf of the purchaser of the MX-C/CX Tractor Business.

87. With relation to Austria, New Holland will also :

- (1) either supply the purchaser of the MX-C/CX Business (the "Purchaser") or a third party upon an arms-length and non-discriminatory basis Steyr 900 Series/Case IH CS 48 and 58 tractors for sale in Austria;
- (2) or licence the Purchaser or a third party to apply intellectual property rights and know-how in and to the 900 Series upon an arms-length and non-discriminatory basis for the purposes of manufacturing the 900 Series for sale in Austria;
- (3) or finally divest the 900 Series either to the Purchaser or a third party. The divestment will include the an assignment of intellectual property rights and know-how, of assets and personnel used or engaged in the manufacture and/or research and development of Case's large square balers, as well as of supply contracts.
- (4) inform all Case dealers in Austria that they are free indefinitely to distribute 900 Business products on behalf of the relevant party; and, for a given period, will not supply to Case dealers in Austria tractors that compete directly with the products of the 900 Business.

88. These undertakings will result in a substantial reduction of the merged entity's market shares in all of the countries concerned, all the more as the parties would divest the Doncaster facility, which, according to the data provided by the parties, appears to be one of the most cost-effective plants in Europe. Furthermore, in each country, the parties will remain subject to competition from other market players (such as John Deere, Agco, SLHD, Valmet, etc.), some having market shares in excess of 15%. And finally, the opening up of Case's dealer networks in the EEA will make the purchaser a viable competitor, with the capacity to be a significant force in tractors.

89. In the light of the above, it can be concluded that, subject to the full compliance with the commitments submitted by the parties, the operation will not create a dominant position in the markets for standard tractors.

**B. Construction equipment sector**

*Backhoe loaders*

90. New Holland will divest its Fermecc brand of backhoe loaders to a third party. The divestment will include the assignment of all intellectual property rights (including brand name) and know-how, of the Fermecc production plant and of personnel employed at the plant, as well as of supply contracts. It will also include a divestment of Fermecc's distribution assets (i.e. the existing contractual links with dealers appointed to distribute Fermecc products across the EEA).
91. At EEA level, according to the figures provided by the parties, the Fermecc brand's market position is comparable to that of New Holland's products. The undertakings will therefore eliminate the overlap resulting from the proposed transaction. And finally, the purchaser of the divested business will have the capacity to be a significant force in backhoe loaders.
92. In the light of the above, it can be concluded that, subject to the full compliance with the commitments submitted by the parties, the operation will not create a dominant position in the markets for backhoe loaders.

**VI. CONCLUSION**

93. For the above reasons, and on condition that the undertakings described in the Annex to the present decision are fully complied with, 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 Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

Pursuant to Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No. 4064/89 (as amended) (the “Regulation”), New Holland N.V. (“New Holland”) hereby gives the commitments set out below (the “Commitments”) to the Commission of the European Communities (the “Commission”) in respect of its proposed acquisition of Case Corporation. The Commitments shall take effect on receipt of the Commission’s decision declaring the concentration compatible with the common market pursuant to Articles 6 (1)(b) and 6(2) of the Regulation (the “Decision”).

## I COMMITMENTS RELATING TO RELEVANT BUSINESSES

### 1. **LARGE SQUARE BALERS**

#### **Divestment of Case’s Neustadt large square baler business**

1.1 New Holland will procure that Case divests its range of large square balers to a third party. The divestment will take the form of an assignment of all patents, copyrights, know-how and confidential information including the rights to the Fortschritt brand name in and to Case’s large square balers. The divestment will also include the assignment of any jigs and tools and other assets used or engaged in the manufacture and/or research and development of Case's large square balers and the rights to employment contracts of any personnel engaged in the manufacture and/or research and development of Case's large square balers. The subject matter of the above divestment is hereafter referred to as the "Neustadt Large Square Baler Business" and the divestment as the "Neustadt Large Square Baler Divestment". New Holland will procure that Case uses all reasonable endeavours to secure the assignment to the purchaser of the Neustadt Large Square Baler Business of any third party agreements for the supply of goods or services relating to the manufacture of the Neustadt Large Square Baler Business products.

1.2 As a part of the Neustadt Large Square Baler Divestment New Holland will inform all Case dealers in the EEA that they are free indefinitely to distribute the Neustadt Large Square Baler Business products including spare parts on behalf of the purchaser of the Neustadt Large Square Baler Business and to carry out related maintenance and servicing. In addition, New Holland undertakes that for such period as the purchaser may reasonably require (taking account of the purchaser's existing dealer network) but in any event for a period of not less than [...] from the date of the divestment of the Neustadt Large Square Baler Business that it will not supply large square balers that compete directly with the Neustadt Large Square Baler Business products to Case dealers in Belgium, Luxembourg, France, Italy, the Netherlands and the UK. If a Case dealer in the above territories is not distributing large square balers as a result of the above arrangements (because the purchaser has elected not to seek to exercise the option to use Case dealers for distribution of the Neustadt Large Square Baler Business products) then the dealer in question will be free to source directly competing large square baler product(s) from New Holland.

1.3 New Holland requires the option to seek to source, on an OEM basis, Neustadt Large Square Baler Business products produced by the third party purchaser following the divestment under 1.1 above for sale outside the EEA.

## 2. COMBINES

### **Divestment of New Holland's non-hillside Laverda combine range.**

2.1 New Holland will divest its Laverda non-hillside range of combine harvesters to a third party. The divestment will take the form of an assignment of all patents, copyrights, know-how and confidential information including the rights to the Laverda brand name in and to New Holland's non-hillside Laverda combines. The divestment will also include the assignment of all land, buildings and fixtures making up the Laverda production plant at Breganze, Italy and all jigs and tools and other assets at the plant and the rights to employment contracts of all personnel employed at the plant. New Holland will use all reasonable endeavours to secure the assignment to the purchaser of the Laverda Combine Business (as defined below) of any third party agreements for the supply of goods or services relating to the manufacture of the Laverda Combine Business products. In any event, New Holland will terminate these contracts for the supply of goods or services. The subject matter of the above divestment is hereafter referred to as the "Laverda Combine Business" and the divestment as the "Laverda Combine Divestment". Subject to the purchaser's agreement, New Holland may request the purchaser to manufacture at Breganze New Holland's hillside combines. The Laverda Combine Divestment will include a perpetual licence upon arms-length and non-discriminatory terms of all intellectual property rights relating to the Laverda Combine Business which are shared with other New Holland combine harvesters currently made by New Holland, which intellectual property rights will not be included in the divestment (the "Laverda Combine Divestment Licence"). As a part of the Laverda Combine Divestment:-

(i) New Holland will inform all New Holland dealers in the EEA that they are free indefinitely to distribute the Laverda Combine Business products including spare parts on behalf of the purchaser of the Laverda Combine Business and to carry out related maintenance and servicing;

(ii) New Holland undertakes that for such period as the purchaser under (i) above may reasonably require (taking account of the purchaser's existing dealer network) but in any event for a period of not less than [...] from the date of the divestment of the Laverda Combine Business that it will not supply combine harvesters to New Holland dealers in the EEA that compete directly with the products of the Laverda Combine Business which, for the avoidance of doubt, will not include existing other non-competing New Holland combine harvesters currently supplied to such dealers in addition to the Laverda Combine Business products; and

(iii) if a New Holland dealer in the EEA is not distributing Laverda Combine Business products as a result of the above arrangements (because the purchaser has elected not to seek to exercise the option to use New Holland dealers for distribution of the Laverda Combine Business products) then the dealer in question will be free to source directly competing combine harvester products from New Holland.

2.2 New Holland requires the option to seek to source, on an OEM basis, Laverda Combine Business products produced by the third party purchaser following the divestment under 2.1 above for sale outside the EEA.

### 3. TRACTORS

#### **Divestment of Case's MX-C and CX tractor ranges and Doncaster plant**

3.1 New Holland will procure that Case divests its MX-C and CX range of tractors to a third party. The divestment will take the form of an assignment of all patents, copyrights, know-how and confidential information in and to Case's MX-C and CX ranges. The divestment will also include the assignment of all land, buildings and fixtures making up the production plant at Doncaster, UK and all jigs and tools and other assets at the plant and the rights to employment contracts of all personnel employed at the plant. New Holland will use all reasonable endeavours to secure the assignment to the purchaser of the MX-C/CX Tractor Business (as defined below) of all third party agreements for the supply of goods or services relating to the manufacture of the MX-C/CX Tractor Business products. The subject matter of the above divestment is hereafter referred to as the "MX-C/CX Tractor Business" and the divestment as the "MX-C/CX Tractor Divestment". The MX-C/CX Tractor Divestment will include a perpetual licence upon arms-lengths and non-discriminatory terms of all intellectual property rights which are shared between the Case MX-C and CX tractors and other Case products, which intellectual property rights will not be included in the divestment (the "MX-C/CX Divestment Licence"). Without limitation to the foregoing, the MX-C/CX Tractor Divestment will not include the rights to transmission and cab components which are used in other Case tractors; the supply of MX-C and CX transmission systems and cabs to the purchaser will be handled in accordance with 3.2 below. The MX-C/CX Tractor Divestment cannot include the rights in and to the brand names MX-C and CX since Case does not own these. However, New Holland/Case will use reasonable endeavours to obtain the right to sub-licence the use of the brand name MX-C to the purchaser for use in the EEA and will cease to use the names MX-C or MX in the EEA in relation to competing products to the MX-C or CX. In addition, Case will cease to use and will give up its rights to use the brand name CX in the EEA.

3.2 New Holland will supply to the purchaser under 3.1 above upon an arms-length and non-discriminatory basis the transmission systems and the tractor cabs as required for application in CX and MX-C tractors.

3.3 As part of the MX-C/CX Tractor Divestment:-

(i) New Holland will inform all Case dealers in the EEA that they are free indefinitely to distribute the MX-C/CX Tractor Business products including spare parts on behalf of the purchaser of the MX-C/CX Tractor Business and to carry out related maintenance and servicing;

(ii) New Holland undertakes that for such period as the purchaser under (i) above may reasonably require (taking account of the purchaser's existing dealer network) but in any event for a period of not less than [...] from the date of the divestment of the MX-C/CX Tractor Business that it will not supply to Case dealers in Austria, Belgium, Luxembourg, Denmark, the UK and Iceland tractors that compete directly with the products of the MX-C/CX Tractor Business which, for the avoidance of doubt, will not include existing other non-competing Case tractors currently supplied to such dealers in addition to the MX-C/CX Tractor Business products; and

(iii) if a Case dealer in any of the territories identified in (ii) above is not distributing MX-C/CX Tractor Business products as a result of the above arrangements (because the purchaser has elected not to seek to exercise the option to use Case dealers for distribution

of the MX-C/ CX Tractor Business products) then the dealer in question will be free to source directly competing tractor products from New Holland.

3.4 New Holland requires the option to seek to source, on an OEM basis, MX-C and CX tractors produced by the third party purchaser following the divestment under 3.1 above for sale outside the EEA.

### **Steyr (Case) 900 Series**

3.5 New Holland will procure that Case will:

(i) supply the purchaser of the MX-C/CX Business (the "Purchaser") or a third party upon an arms-length and non-discriminatory basis Steyr 900 Series/Case IH CS 48 and 58 tractors and/or upgrades of any of these models and related spare parts (the "900 Series") for sale upon an OEM basis by the Purchaser or a third party in Austria (the "900 Series Supply Agreement"); or

(ii) licence the Purchaser or a third party to apply the Intellectual Property Rights (as defined in (iii) below) in and to the 900 Series upon an arms-length and non-discriminatory basis for the purposes of manufacturing the 900 Series for sale in Austria (the "900 Series Licence");

(iii) for the purposes of (ii) above, Intellectual Property Rights shall mean all patents, copyrights, know-how and confidential information relating to the 900 Series and necessary for its manufacture;

(iv) if the Purchaser or a third party does not enter into an arrangement under either (i) or (ii) above, New Holland will procure that Case divests the 900 Series either to the Purchaser or a third party. The divestment will take the form of an assignment of all patents, copyrights, know-how and confidential information in and to the Case 900 Series. The divestment will also include the assignment of any jigs and tools and other assets used or engaged in the manufacture and/or research and development of Case's 900 Series and the rights to employment contracts of any personnel engaged in the manufacture and/or research and development of Case's 900 Series. The subject matter of the above divestment is hereafter referred to as the "900 Business" and the divestment as the "900 Divestment". The 900 Divestment will include a perpetual licence upon arms-length and non-discriminatory terms of all intellectual property rights relating to the 900 Business which are shared between the 900 Business and other Case/Steyr products, which intellectual property rights will not be included in the divestment (the "900 Series Divestment Licence"). New Holland will use all reasonable endeavours to secure the assignment to the Purchaser or a third party (as appropriate) of the 900 Business of all third party agreements for the supply of goods or services relating to the manufacture of the 900 Business products;

(v) as part of the arrangements under (i) or (ii) above, Case will license the relevant party to apply (for a transitional period of not less than [...] from the date of the agreement) the Case/Steyr names to the 900 Business products, provided that the relevant party acts reasonably in relation to the Case/Steyr names so as to protect their integrity and provided that the relevant party distributes products bearing the Case/ Steyr names only through Case dealers in Austria.

3.6 As a part of the 900 Series Supply Agreement, the 900 Series Licence or the 900 Divestment (as the case may be):-

(i) New Holland will inform all Case dealers in Austria that they are free indefinitely to distribute 900 Business products on behalf of the relevant party and to carry out related maintenance and servicing;

(ii) New Holland undertakes that for such period as the relevant party under (i) above may reasonably require (taking account of the relevant party's existing dealer network) but in any event for a period of not less than [...] years from the date of the relevant agreement or the 900 Divestment that it will not supply to Case dealers in Austria tractors that compete directly with the products of the 900 Business which, for the avoidance of doubt, will not include existing other non-competing Case/ Steyr tractors currently supplied to such dealers in addition to the 900 Business products;

(iii) if a Case dealer in Austria is not distributing 900 Business products as a result of the above arrangements (because the purchaser has elected not to seek to exercise the option to use Case dealers for distribution of the 900 Business products) then the dealer in question will be free to source directly competing tractor products from New Holland.

#### **Access to Danish distribution**

3.7 New Holland will inform all New Holland dealers in Denmark that they are free to distribute indefinitely the products of the MX-C/CX Tractor Business including spare parts on behalf of the purchaser of the MX-C/CX Tractor Business and to carry out related maintenance and servicing.

#### **4. BACKHOE LOADERS**

4.1 New Holland proposes to divest all patents, copyrights, know-how and confidential information including the rights to the Fermec brand name relating exclusively to the Fermec range of backhoe loaders and industrial tractors built in the Fermec plant and all land, fixtures and fittings, jigs and tools and people employed at the plant and related distribution assets (i.e. the benefit of the existing contractual links with dealers appointed to distribute Fermec products across the EEA) (the "Fermec Backhoe Business" or, as appropriate, the "Fermec Backhoe Divestment"). The Fermec Backhoe Divestment will include a perpetual licence upon arms-length and non-discriminatory terms of all intellectual property rights relating to the Fermec Backhoe Business which are shared with other construction equipment products made by Case, which intellectual property rights are not included in the Fermec Backhoe Divestment (the "Fermec Backhoe Divestment Licence"). In addition, New Holland will use all reasonable endeavours to secure the assignment to the purchaser of the Fermec Backhoe Business of all third party agreements for the supply of goods or services relating to the manufacture of the Fermec Backhoe Business products. In any event, New Holland will terminate these contracts for the supply of goods or services.

## **II PROCEDURAL COMMITMENTS**

5. The Neustadt Large Square Baler Divestment, the Laverda Combine Divestment, the MX-C/CX Tractor Divestment, the 900 Divestment and the Fermec Backhoe Divestment are hereafter collectively referred to as the "Divestments".

6. The 900 Series Supply Agreement and the 900 Series Licence are hereafter collectively referred to as the “Agreements”.

**Interim position**

7. Pending completion of the Divestments, New Holland undertakes:

7.1 to use reasonable efforts to ensure that, so far as relevant, the Divestments are managed as distinct and saleable businesses;

7.2 to use reasonable efforts to ensure that the Divestments are maintained, pursuant to good business practices, at their current level, including that all contracts necessary to preserve them at such level are entered into or continued in accordance with their terms, consistent with good business practice and the ordinary course of business;

7.3 to use reasonable efforts to maintain sufficient administrative and management functions relating to the Divestments;

7.4 not to obtain from the management of the Divestments any business secrets, know-how or commercial information of a confidential or proprietary nature relating solely to the Divestments, other than: as approved by the Commission; in the ordinary course of business; or as may be reasonably required to allow New Holland to comply with the Commitments. Notwithstanding any of the Commitments in this paragraph 7.4, New Holland may receive on a regular basis from the management of the Divestments aggregate financial information necessary to permit it and/or Case Corporation and/or any member of its group to prepare consolidated financial reports, tax returns and personnel reports;

7.5 to use reasonable efforts to provide and maintain so far as relevant sufficient working capital and any existing lines of credit for the Divestments.

8. Paragraph 7 above shall cease to apply to the 900 Divestment if the 900 Series Licence or the 900 Series Supply Agreement is entered into.

### **Timing of and conditions relating to Divestments**

9. New Holland undertakes, subject to the provisions set out below, to effect the sale of the Divestments to one or more independent third party purchasers approved by the Commission within [...] from the date of the Decision. The Commission may, upon New Holland's request, showing good cause, grant a further period, of up to [...], within which a sale or all sales may be effected. For the avoidance of doubt, where more than one proposed purchaser of all or part of the Divestments is approved by the Commission, New Holland shall be free to select the purchaser of its choice. This paragraph shall cease to apply to the 900 Divestment if the 900 Series Licence or the 900 Series Supply Agreement is entered into.

10. For proposed purchasers of all or part of the Divestments to meet with the Commission's approval pursuant to paragraph 9 above, such purchasers shall be viable undertakings unconnected to and/or independent of New Holland and Case Corporation, possessing the financial resources and proven expertise enabling them to maintain and develop all or such part or parts of the Divestments as they acquire as active competitive forces in the relevant territories.

11. New Holland shall have complied with paragraph 9 above if, within the relevant period stated therein (or any extension thereof), a binding sale contract or contracts conditional only upon necessary regulatory or other approvals has/have been entered into in relation to the Divestments, provided that such sale or sales is or are to be completed within [...] from the date of the Decision.

12.1 New Holland undertakes to enter into the Laverda Combine Divestment Licence, the MX-C/CX Divestment Licence, the 900 Series Divestment Licence and the Fermec Backhoe Divestment Licence at the same time as it enters into, respectively, the Laverda Combine Divestment, the MX-C/CX Tractor Divestment, the 900 Divestment and the Fermec Backhoe Divestment and undertakes that the Laverda Combine Divestment Licence, the MX-C/CX Divestment Licence, the 900 Series Divestment Licence and the Fermec Backhoe Divestment Licence will take effect at the same time as respectively, the Laverda Combine Divestment, the MX-C/CX Tractor Divestment, the 900 Divestment and the Fermec Backhoe Divestment. This paragraph shall cease to apply to the 900 Series Divestment Licence if the 900 Series Supply Agreement or 900 Series Licence is entered into.

12.2 New Holland undertakes to procure that, so far as relevant, all other arrangements related to the Laverda Combine Divestment, the MX-C/CX Tractor divestment, the 900 Divestment and the Fermec Backhoe Divestment, including without limitation opening-up of access to dealers and termination of third party supply agreements, are entered into at the same time and take effect at the same time as the related divestment. In cases in which these arrangements require an agreement with the relevant purchaser, the agreement will be entered into at the same time as the related divestment.

### **Timing of and conditions relating to Agreements**

13 New Holland undertakes to enter into or to procure that Case enters into either of the Agreements with one or more independent third parties approved by the Commission within [...] from the date of the adoption of the Decision. New Holland undertakes to enter into or to procure that Case enters into the 900 Series Divestment within [...] from the expiry of the

[...] period referred to in the previous sentence. New Holland remains free to start negotiating the 900 Series Divestment from the adoption of the Decision. The obligation to enter into the 900 Series Divestment shall cease to apply if the 900 Series Licence or the 900 Series Supply Agreement is entered into within the [...] deadline from the adoption of the Decision referred to above.

14. For proposed contracting parties in relation to the Agreements to meet with the Commission's approval pursuant to paragraph 13 above, such parties shall be viable undertakings unconnected to and/or independent of New Holland and Case Corporation, possessing the financial resources and proven expertise enabling them to use the rights granted by such of the Agreements as they enter into to develop active competitive forces in the relevant territories.

#### **COMMISSION APPROVAL**

15. Any contract entered into pursuant to these Commitments shall be made conditional as to its terms and conditions upon the prior express approval of the Commission. The Commission shall communicate its approval of the contract, or any reasons for its non-approval thereof, to the Trustee (as defined below) within 10 working days of receipt of the contract. If the Commission does not make such communication within such period the contract shall be deemed to have been approved.

#### **Trustee**

16. New Holland shall immediately after the Commission has notified it of the Decision, appoint a trustee (the "Trustee") in accordance with the provisions below:

16.1 New Holland shall propose to the Commission, within 10 working days of the Decision, the names of at least two institutions independent from it to be appointed as Trustee;

16.2 the Commission shall have the discretion to approve or reject one or all of the names submitted. If only one name is approved New Holland shall appoint or cause the institution concerned to be appointed as Trustee. If more than one name is approved New Holland shall be free to choose the Trustee to be appointed from among the names approved. The Commission will indicate in writing its approval or rejection of all names within 10 working days of the proposal of such names being made. Any names which are not rejected within this period shall be deemed to have been approved;

16.3 if all the names submitted are rejected, New Holland shall submit the names of at least two further such institutions (“the further names”) within 10 working days of being informed of the rejection. The Commission shall have the discretion to approve or reject (on reasonable grounds) one or all of the further names submitted. If only one such further name is approved by the Commission, New Holland shall appoint or cause the institution concerned to be appointed as Trustee. If more than one further name is approved New Holland shall be free to choose the Trustee to be appointed from among the approved names. The Commission will indicate in writing its approval or rejection of the further names within 10 working days of the proposal of such names being made. Any names which are not rejected within this period shall be deemed to have been approved;

16.4 if all further names are rejected by the Commission, the Commission shall nominate an institution, which shall be suitably qualified, and New Holland will appoint or cause this institution to be appointed as Trustee;

16.5 the 10 working day periods referred to in this paragraph may be extended by the Commission by five working days.

17. Immediately upon appointment of the Trustee, New Holland shall give the Trustee a mandate whose terms shall have been previously agreed with the Commission, and which may not be altered without the express written consent of the Commission and which will include the following functions:

17.1 monitoring the operation and management of each part of the Divestments in order to report on their continued viability, marketability and competitiveness. For the purpose of, and to the extent necessary for such monitoring, the Trustee will have access to the personnel and facilities as well as documents, books and records of the Divestments;

17.2 providing to the Commission a written report in the English language, with a copy to New Holland, every month concerning the monitoring of the operation and management of the Divestments and on developments in New Holland's negotiations with potential purchasers of all or part of the Divestments and with contracting parties in relation to the Agreements during the preceding month. So far as it relates to developments in negotiations the report shall include confirmation as relevant when such Divestments are entered into or completed and when such Agreements are entered into or take effect. In addition to these reports the Trustee shall promptly report in writing to the Commission if it concludes on reasonable grounds that New Holland is failing to fulfil its obligations under paragraph 7 above;

17.3 at any other time, providing to the Commission, at its request, a written or oral report in the English language, with a copy to New Holland if the report is written, on matters referred to in paragraph 17.2 above;

17.4 promptly notifying the Commission in writing in the English language, with a copy to New Holland, of the identity and characteristics of any proposed purchasers (subject to the consent of such proposed purchasers) with whom New Holland is negotiating the sale of all or part of the Divestments and of the identity and characteristics of any proposed contracting parties (subject to the consent of such proposed contracting parties) with whom New Holland is negotiating to enter into either or both of the Agreements. This notification shall include all relevant information to allow the Commission to consider the suitability of the proposed purchaser or proposed contracting party pursuant to paragraphs 10 or 14 above. This notification shall also indicate to the Commission whether the Trustee believes that each proposed purchaser or proposed contracting party would satisfy the requirements set out in paragraphs 10 or 14 above;

17.5 providing to the Commission a contract for approval in accordance with paragraph 15 above;

17.6 carrying out the functions described in paragraphs 20 to 23 inclusive below;

17.7 when each of the Commitments listed in paragraphs 1 to 4 above inclusive have been satisfied providing evidence to the Commission that they have been satisfied. New Holland will provide to the Trustee all assistance reasonably necessary to enable it to provide such evidence to the Commission including access to the personnel and facilities as well as documents, books and records of the Divestments;

17.8 ceasing to perform its duties as Trustee after the completion of the sale of the last of any part of the Divestments and the taking effect of the last of the Agreements.

18. In order to agree the Trustee's mandate as required by paragraph 17 above, New Holland shall submit a draft of the mandate (which shall be in the English language) to the Commission. The Commission will indicate in writing its approval or rejection of the draft within 10 working days of receipt of the draft. If the Commission does not within 10

working days of receipt of the draft reject the draft in writing, then the draft shall be deemed approved. The 10 working day periods referred to in this paragraph may be extended by the Commission by five working days.

19. Upon receipt of details of proposed purchasers or contracting parties pursuant to paragraph 17.4 above, the Commission will promptly (and in any event within 10 working days of being informed) indicate if it considers any such purchasers/contracting parties to be suitable in accordance with paragraphs 10 or 14 above. If the Commission does not indicate in writing within 10 working days of being informed in accordance with paragraph 17.4 above of the identity and characteristics of a proposed purchaser or contracting party, that it considers such purchaser or contracting party unsuitable, then that purchaser or contracting party shall be deemed suitable. The Commission's determination or deemed determination as to suitability shall operate as the approval (or non approval) for the purposes of paragraphs 9 or 13 above as the case may be. The 10 working day periods referred to in this paragraph may be extended by the Commission by five working days.

20. In the event that the Divestments have not been effected within [...] of the Decision (or within any agreed extension thereto), New Holland undertakes to give the Trustee an irrevocable mandate to find a purchaser for those Divestments which have not been effected for the best possible price and other terms within a further [...] (or within such longer period as the Commission, upon request of the Trustee, agrees). New Holland undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of this task by the Trustee and shall be kept informed by the Trustee of all negotiations regarding finding a purchaser for the relevant Divestments. For the avoidance of doubt this paragraph does not apply if a Divestment has been EFFECTED BUT NOT completed. This paragraph shall cease to apply to the 900 Divestment if the 900 Series Licence or the 900 Series Supply Agreement is entered into.

21. New Holland will sign or will procure the signature of a binding sale contract with a purchaser found by the Trustee pursuant to paragraph 20 above. If this sale contract relates to the Laverda Combine Divestment, New Holland will sign or will procure the signature of the Laverda Combine Divestment Licence with the purchaser. If this sale contract relates to the MX-C/CX Tractor Divestment, New Holland will sign or will procure the signature of the MX-C/CX Divestment Licence with the purchaser. If this sale contract relates to the Fermec Backhoe Divestment, New Holland will sign or will procure the signature of the Fermec Backhoe Divestment Licence with the purchaser. If this sale contract relates to the 900 Divestment, New Holland will sign or will procure the signature of the 900 Series Divestment Licence with the purchaser. Approval of the Commission shall be obtained by the Trustee in accordance with the provisions described at paragraph 15 above.

22. In the event that the Agreements have not been entered into within [...] of the Decision (or within any agreed extension thereto), New Holland undertakes to give the Trustee an irrevocable mandate to find a contracting party for those Agreements which have not been entered into for the best possible price and other terms within a further [...] (or within such longer period as the Commission, upon request of the Trustee, agrees). New Holland undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of such task by the Trustee and shall be kept informed by the Trustee of all negotiations regarding finding a contracting party for the relevant Agreements. This paragraph shall cease to apply to the 900 Series Supply Agreement if the 900 Series Licence is entered into or the 900 Divestment is effected and shall cease to apply to the 900 Series Licence if the 900 Series Supply Agreement is entered into or the 900 Divestment is effected.

23. New Holland will sign or will procure the signature of a binding contract with a contracting party found by the Trustee pursuant to paragraph 22 above. Approval of the Commission shall be obtained by the Trustee in accordance with the provisions described at paragraph 15 above.

24. The Trustee's professional charges and expenses will be paid by New Holland.

**General**

25. Any of the Divestments may be made in isolation or together [...].

26. Any of the Agreements may be entered into in isolation or together [...]

27. Any of the Commitments may be replaced by a commitment of equivalent effect, subject to the prior approval of the Commission.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'R. de Vries', written in a cursive style.

for and on behalf of  
New Holland NV