

***Case No COMP/M.2369 -  
CNH / FHE***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 26/06/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.06.2001

SG (2001) D/289378

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2369 – CNH/FHE**

**Notification of 18. 05. 2001 pursuant to Article 4 of Council Regulation No. 4064/89**

1. On 18.05.2001, the Commission received a notification of a proposed concentration by which CNH Global N.V. (“CNH”), controlled by New Holland and ultimately by the Fiat Group, acquires sole control of Fiat Hitachi Excavators S.p.a. (“FHE”). FHE is currently jointly controlled by CNH and Hitachi Construction Machinery Co. (“Hitachi”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

#### **I. THE PARTIES AND THE OPERATION**

3. CNH, incorporated in the Netherlands, produces and distributes agricultural machinery and construction equipment. FHE, incorporated in Italy, manufactures construction equipment.
4. The current transaction consists in a change from joint control of FHE by CNH and Hitachi, to sole control of FHE by CNH, by virtue of the termination of a shareholder's agreement between CNH and Hitachi. As a result all decisions of the shareholders board of directors regarding the business plans of FHE will be made at the sole discretion of CNH the majority shareholder (57%).

#### **II. CONCENTRATION**

5. The acquisition of sole control of FHE by CNH constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### III COMMUNITY DIMENSION

6. The aggregate world-wide turnover of the Fiat Group for the year ending 31 December 2000 was approximately €57 192 million (excluding its share of FHE turnover). The aggregate world-wide turnover of FHE for the year 2000 was in €725 million.
7. In the year to 30 June 2000, the Fiat Group had an aggregate turnover of €[...] million in the European Union. The Community wide turnover of FHE in 2000 was €[...] million.
8. The undertakings concerned 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, in application of Art. 1§2 of Council Regulation No 4064/89.

### IV ASSESSMENT

9. The operation consists of the acquisition of sole control of the FHE joint venture by the Fiat Group through the withdrawal of Hitachi from its management from the joint venture [...]. The Fiat Group will enter into agreements (which will not constitute a merger in the sense of the Regulation) with another partner to develop new products. For a transitional period Hitachi will continue to supply the hydraulic technology and components necessary for FHE's current production and related service activities.
10. In previous cases<sup>1</sup> the Commission defined the relevant product markets as follows:
  - (I) heavy excavators;
  - (II) heavy loaders;
  - (III) heavy levelling machines (further segmented by product type: (a) dozers and (b) graders);
  - (IV) light construction equipment (further segmented by product type: (a) light excavators; (b) skid steer loaders; (c) mini wheel loaders; (d) backhoe loaders).

The Commission's investigation in the present case has confirmed that these market definitions remain valid.

11. The parties submit that the relevant geographic market, for any type of construction machinery, is at least EEA-wide, due to the facts that suppliers tend to operate on a world-wide basis with products manufactured in a limited number of facilities and then exported to distributors and that transport costs are not significant. This geographic definition of the market is consistent with the Commission's previous decisions.
12. In clearing the two earlier merger operations involving New Holland, the Commission assessed the combination of FHE's activities with those of New Holland, and thus with those of CNH. In the intervening period there has been no significant change in market structure or market shares. The present operation consists of the acquisition by the Fiat

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<sup>1</sup> IV/M. 1235, New Holland/Orenstein & Koppel, and M. 1571, New Holland/Case

Group of sole control of FHE, a company which it already jointly controls and which therefore would involve no addition of market shares. The Fiat Group's market shares for any of the relevant product markets in the EEA are below [...] with the exception of backhoe loaders [...] which are not produced by FHE. Furthermore, there are strong competitors (Caterpillar, Liebherr, Komatsu, etc). [...].

13. The proposed operation will not, therefore, change the existing market situation and will not create or strengthen a dominant position.

## **V. ANCILLARY RESTRAINTS**

14. CNH requests that the contractual provisions listed below be considered directly related and necessary to the implementation of the concentration.

### Transitional co-operation between Hitachi and FHE

15. Hitachi and FHE undertake to continue their current co-operation on the production and distribution of the range and models of excavators currently produced by FHE using Hitachi's technology, until [...]. However, the parties have the possibility of prolonging this period by mutual agreement.
16. Within this transitional period, Hitachi undertakes to continue to provide the technology needed by FHE to produce the current range of excavators, in compliance with EU technical regulations, using the FHE trademark, and to provide maintenance technology and related assistance.
17. This provision is directly related to and necessary for the implementation of the proposed operation because it allows for the continuing production and maintenance of the current range of FHE excavators. However the Commission regards this provision as being ancillary only for a maximum period of four years, being a sufficient period to allow FHE to find an alternative partner to Hitachi and to introduce replacement products.

### Non-competition Provision

18. Hitachi undertakes to continue its non-competition undertaking with FHE in relation to the sale and advertising of Hitachi construction equipment products and related parts which compete with those produced by FHE within the EEA and elsewhere.
19. In particular, Hitachi shall not conclude any contract, or reply to any request for contract, from any FHE or other dealer, in order to recruit the latter as a future Hitachi dealer or to sell, offer to sell or advertise any Hitachi construction equipment product, (with the exclusion of certain activities, products and dealers expressly agreed), as long as Hitachi is a shareholder of FHE.
20. Hitachi undertakes neither to sell, nor to offer for sale, any construction equipment product (other than those expressly agreed) until either the launch of the new range of FHE products without Hitachi technology, or [...], whichever is the earlier.
21. The Commission considers that these provisions are directly related to and necessary for the implementation of the concentration, in order to guarantee to CNH the full value of the assets transferred and may therefore be considered as ancillary to the proposed operation.

Components Supply Agreement

22. Hitachi undertakes to continue the supply of Hitachi components currently used for the production of machines, which, based on Hitachi technology, are currently manufactured by FHE. This agreement does not have a determined period.
23. Such a supply agreement is necessary to ensure continuity of supply for a period for a transitional period while FHE develops its new range of products. However the Commission considers that it can be considered ancillary to proposed operation only for a period of four years.

**VI. CONCLUSION**

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

For the Commission

Mario MONTI  
Member of the Commission