EUROPEAN COMMISSION
DG Competition

Case M.9163 - DA AGRAVIS MACHINERY / KONEKESKO EESTI / KONEKESKO LATVIJA / KONEKESKO LIETUVA / KONEKESKO FINNISH AGRIMACHINERY TRADE BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 25/03/2019

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying parties

Subject: **Case M.9163 – DA AGRAVIS MACHINERY HOLDING / KONEKESKO EESTI / KONEKESKO LATVIJA / KONEKESKO LIETUVA / KONEKESKO FINNISH AGRIMACHINERY TRADE BUSINESS**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 4 February 2019**,** the European Commission (the "Commission") received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which Danish Agro Group ("Danish Agro") through its subsidiaries DA Agravis Machinery Holding A/S ("DA Agravis") and Danish Agro Machinery Holding A/S ("Danish Agro Machinery") (together "the Notifying Parties"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Konekesko Eesti AS, SIA Konekesko Latvija, UAB Konekesko Lietuva, and assets of Konekesko Oy in Finland, which constitute the whole of Kesko Group's

1 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.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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agrimachinery business (Konekesko Oy).[3] Danish Agro and the Konekesko Oy's subsidiaries and assets ("Konekesko" or the "Targets") are hereinafter referred to as the "Parties".

1. THE PARTIES

(2) DA Agravis and Danish Agro Machinery are part of the Danish Agro, a Danish co-operative owned by approximately 10,000 Danish farmers. Danish Agro operates mainly within the sale of animal feedstuff mixes, premix and vitamin mixes, fertilizer, pesticides, seed and agricultural machinery. It also purchases crops from farmers, primarily in Scandinavia, Finland, the Baltic countries, the northern part of Germany, Poland and the Czech Republic.

(3) AS Konekesko Eesti, SIA Konekesko Latvija and UAB Konekesko Lietuva are agricultural machinery trade companies domiciled respectively in Estonia, Latvia and Lithuania. These companies are owned by Konekesko Oy, which ultimately belongs to the Kesko Group, a Finnish retailing conglomerate. The Finnish target comprises the agricultural machinery business of Konekesko Oy in Finland. The Targets primarily focus on the import, sale and after-sales service of agricultural machinery to end-users such as farmers and independent entrepreneurs who offer services to farmers, such as harvesting.

2. THE OPERATION

(4) On 10 February 2017, DA Agravis and Konekesko Oy concluded a framework agreement pursuant to which DA Agravis acquired 45% of the shares of AS Konekesko Eesti, SIA Konekesko Latvija and UAB Konekesko Lietuva, i.e. of each of the three Baltic undertakings. The framework agreement also granted DA Agravis a call option to the remaining 55% shares in each of the three Baltic undertakings. DA Agravis exercised its call option, by a call notice, on 25 May 2018, subject to merger clearance. The full purchase price for 100% of the shares of the three Baltic undertakings is around […]. This transaction is referred to as the "Baltic transaction".

(5) On 10 February 2017, Danish Agro Machinery and Koneskeko Oy concluded in parallel an agreement pursuant to which Danish Agro Machinery was granted a call option to Konekesko Oy's Finnish agrimachinery trade business. Danish Agro Machinery exercised its call option, by a call notice, also on 25 May 2018, subject to merger clearance. The purchase price of Konekesko's Finnish agrimachinery business is around […].

3. CONCENTRATION

(6) The proposed acquisition of the three Baltic undertakings together with the proposed acquisition of Konekesko's Finnish agrimachinery business are to be treated as one and the same concentration arising on the date of the last transaction, according to Article 5(2), sub-paragraph 2 of the Merger Regulation.

[3] Publication in the Official Journal of the European Union No C 55, 12.2.2019, p. 20.

(7) Firstly, through each of the proposed transactions, Danish Agro acquires sole control over the three Baltic undertakings and of the Finnish assets, within the meaning of Article 3(1)(b) of the Merger Regulation. Secondly, the transactions will take place within a two-year period between the same undertakings, Danish Agro and Konekesko Oy. The acquisitions of each of the three Baltic undertakings and of the Finnish assets are hereinafter referred to as "the Transaction".

4. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million[4] (Danish Agro EUR 4 267 million; Targets EUR 164 million). In each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million.[5] In each of these same Member States, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million, and the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million.[6] None of the undertakings concerned achieves more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction has therefore a Union dimension pursuant to Article 1(3) EUMR.

5. PROCEDURE

(9) For the assessment of the Transaction, the Commission has made use of the available means of investigation pursuant to Article 11 of the Merger Regulation. In particular, the Commission sent extensive questionnaires to competitors, suppliers (brand manufacturers of agricultural machinery) and customers and held conference calls with brand manufacturers and customers. The Commission also sent a request for information to the national competition authorities of Finland and Estonia, as the Notifying Parties had previously separately notified the proposed acquisition of Konekesko's Finnish assets and the Estonian agricultural machinery business to each respective authority.

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4 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.4.2008, p. 1).

5 The combined aggregated turnover is EUR 757.9 million in Finland; EUR 196.9 million in Estonia; EUR 133.2 million in Latvia; 202.4 EUR million in Lithuania.

6 In Finland: Danish Agro EUR 726.8 million; Target EUR 30.5 million. In Estonia: Danish Agro EUR 156.7 million; Target EUR 40 million. In Latvia Danish Agro EUR 87.4 million; Target 44.4 EUR million. In Lithuania: Danish Agro EUR 157.3 million; Target EUR 43.9 million.

6. RELEVANT MARKETS

6.1. Introduction to the industry and the Parties' activities

6.1.1. Agricultural machinery

(10) Agricultural machinery comprises a number of machines for agricultural use. Both the Notifying Parties and the Targets are active in the distribution and retail sale of tractors, combine harvesters, forage harvesters, balers, grass machines and telescopic handlers:

(a) Tractors are self-propelled machines that can be fitted with different implements and used for a variety of agricultural uses. There are different kinds of tractors, ranging from small narrow-track tractors with up to 100 HP that can operate e.g. between rows in a vineyard or be used in production of vegetables or in orchards ("specialty tractors"), to tractors with normal track width and up to 100 HP for use on grasslands and other terrain where lightweight tractors are more suitable ("small standard tractors") and standard tractors with above 100 HP suitable for use in large fields with heavier implements, e.g. ploughs, harrows or seed drills and ("standard tractors");[7]

(b) Combine harvesters are self-propelled machines that combine three separate harvesting operations into one single process (reaping, threshing and windrowing) and which are used to harvest a variety of grain (e.g. wheat, oats, rye, barley, corn);[8]

(c) Forage harvesters are self-propelled machines used to make silage by chopping grass and crop into small pieces, passing the chopped material through a blower into a large trailer (which is hauled by a tractor next to the forage harvester);[9]

(d) Balers are machines that are used to compress, cut and rake crop (e.g. hay or silage) into compact balers that are easy to handle, transport and store. Balers are hauled by tractors;[10]

(e) Grass machines are machines used for harvesting (cutting) grass. After the grass is cut by the grass machine, it is dried and can either be baled by a baler or chopped by a forage harvester;[11]

(f) Telescopic handlers are material handling machines that can be fitted with specialist tools (such as buckers, pallet forks or booms) and used inside stables (e.g. for providing feed to the farm animals), outside (e.g. for moving manure) or in the fields (e.g. for loading big hay bales onto trailers, loading grain from

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7 Form CO, paragraphs 132-139.
8 Form CO, paragraph 145.
9 Form CO, paragraph 150.
10 Form CO, paragraph 148.
11 Form CO, paragraph 153.

silos unto trucks or lifting big bags with seed when filling the seed drills for sowing).[12]

(11) Agricultural machinery is used in the farming industry by farmers and agricultural contractors (the end-users in the value chain).[13] There are a number of manufacturers of agricultural machinery, with both global and regional brands, such as John Deere, AGCO (with the Valtra, Fendt and Massey Fergusson brands), Case IH, New Holland and Claas.[14] At the wholesale level, manufacturers tend to conclude (often exclusive) distribution agreements with independent distributors for specific geographies (typically on a national basis).[15] These distributors are responsible for importing agricultural machines subject to their respective distribution agreements, and at the retail level, for setting up national marketing strategies and engaging with customers, including for the retail sale of agricultural machinery and provision after-sales services.[16]

(12) The Notifying Parties are active in the distribution and retail sale[17] of agricultural machinery (including under the John Deere brand) in Finland and Estonia respectively. In Latvia and Lithuania, DA Agravis has limited imports of trade-in used agricultural machinery, mainly from Denmark.[18] The Targets are active in the distribution and retail sale of agricultural machinery in Finland, Estonia, Latvia and Lithuania. Each of the Targets has concluded exclusive distribution agreements with Claas in each of Estonia, Finland, Latvia and Lithuania.[19]

(13) The Parties are also active in the distribution and retail sale of implements for agricultural machinery. Implements are tractor-compatible not self-propelled tools that can be fitted on a tractor to enable it to perform a variety of tasks for agricultural uses. Implements include sprayers, harrows, manure spreaders, sowing machines (seed drills) and wagons.[20]

(14) The Parties are also active in the distribution and retail sale of spare parts for agricultural machinery. Spare parts are used to replace broken and worn-out spare parts in agricultural machinery. Spare parts can be 'original' (i.e. produced by the same manufacturer that has produced the agricultural machinery in question) or 'non-original' (i.e. manufactured by manufacturers that may not manufacture agricultural machinery themselves).[21]

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12 Form CO, paragraphs 142-143.
13 Form CO, paragraph 68.
14 Form CO, paragraphs 81 – 87.
15 Form CO, paragraphs 90, 96.
16 Form CO, paragraph 188.
17 Given that the parties are at the same time distributors and retailers of agricultural machinery, the terms “distributor” and “retailer” are used interchangeably throughout this decision.
18 Form CO, paragraphs 96.
19 Form CO, paragraph 96.
20 Form CO, paragraph 155.
21 Form CO, paragraphs 169-171.

(15) In addition to their activities in the distribution and retail sale of agricultural machinery, implements and spare parts, the Parties are also active in the provision of after-sales services for agricultural machinery in Estonia and Finland.[22]

6.1.2. Other products

(16) Danish Agro is also active in the sale of animal feedstuff mixes, premix and vitamin mixes, fertilizer, pesticides, seed, energy and the purchase of crops from farmers in Estonia and Latvia. The Targets are not active in any of these activities in either country.

(17) The Targets are active in the distribution of: (i) construction and material handling equipment in Estonia, Finland, Latvia and Lithuania; and (ii) forestry machinery in Estonia, Latvia and Lithuania. Danish Agro is not active in any of these activities in either Finland, Estonia, Latvia or Lithuania.

6.2. Relevant product markets

6.2.1. Retail sale of agricultural machinery

6.2.1.1 Distinction between different types of agricultural machines

(A) The Notifying Parties' arguments

(18) The Notifying Parties submit that the relevant market should be defined as an overall market for the sale of agricultural machinery, since all brand agreements with global and regional manufacturers oblige the distributors to represent a full product line from the specific brand and all of the global competitors market similar product portfolios.[23] Nevertheless, if necessary, plausible segmentations based on machine type can be made, i.e. (i) standard tractors, (ii) harvesting machines, (iii) telescopic handlers, (iv) balers, (v) forage harvesters and (vi) grass machines.[24]

(B) The Commission's assessment

(19) In previous decisions, the Commission has identified distinct relevant product markets for (i) standard tractors, (ii) specialty tractors, (iii) combine harvesters, (iv) forage harvesters, and (iv) balers at the wholesale level.[25]

(20) The results of the market investigation suggest that the segmentation of the agricultural machinery markets by machine type is warranted in the present case.

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22 Form CO, paragraphs 507.

23 Form CO, paragraph 126.

24 Form CO, paragraphs 126-130.

25 Case M.1571 – *New Holland/Case*, paragraphs 8-25; Case M.3287 – *AGCO/Valtra*, paragraph 11 for the sale of standard tractors at the retail level.

(21) First, a large majority of market respondents expressing a view in the market investigation consider that a distinction by type of machinery, and in particular between (i) standard tractors, (ii) specialty tractors, (iii) combine harvesters, (iv) forage harvesters and (v) balers can be observed at retail level.[26]

(22) Second, whereas the majority of responding manufacturers offer their full agricultural product portfolio in each of the countries concerned, a not insignificant number of them do not offer some of the products in some of the countries.[27] As the Notifying Parties themselves state, "*global manufacturers such as John Deere, New Holland, Case IH and AGCO do <u>in some countries</u> offer a full range of products including, inter alia, agricultural machinery and different types of implements*"[28] and "*Claas <u>does not offer a full range</u> of products <u>in any country</u>.*"[29]

(23) Moreover, whilst the majority of responding competitors consider it "very important", "important" or at least "relevant" that a distributor offer a full range of agricultural machinery, a significant number of competitors stated that this was in fact "not relevant".[30] Also, the majority of customers who responded to the Commission's market investigation deemed the offer of a full range of agricultural machinery to be even less relevant than did some of the competitors.[31]

(24) Third, the end-use of the relevant agricultural machine is considered to be important by market participants. The different categories of agricultural machinery are not substitutable from a demand-side perspective, even with modifications.

(25) For example, when asked whether a self-propelled forage harvester could be used interchangeably with a trailed or mounted harvester[32] in combination with a tractor, a large majority of manufacturers, competitors and customers that responded to the Commission's market investigation stated that this is not the case.[33] As a number of Estonian customers explained, the main advantages of a self-propelled forage harvester are "*productivity*", which allows "*work [to be] done more qualitatively and quicker*", ability of " *handling large quantities in short period of time*" and also the "*ability to do more contracting during the season*".[34]

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26 Responses to Q1 – Questionnaire to Manufacturers, question 7; Responses to Q2 – Questionnaire to Competitors, question 5; Responses to Q3a – Questionnaire to Customers in Finland, question 3; Responses to Q3b – Questionnaire to Customers in Estonia, question 3.

27 Responses to Q1 – Questionnaire to Manufacturers, question 5.

28 Form CO, paragraph 84 (emphasis added).

29 Form CO, paragraph 85 (emphasis added).

30 Responses to Q2 – Questionnaire to Competitors, question 11.

31 Responses to Q3a – Questionnaire to Customers in Finland, question 6; Responses to Q3b – Questionnaire to Customers in Estonia, question 6.

32 A trailed or a mounted harvester is not a self-propelled machine: it consists of specific implements that are mounted on, and trailed by, a tractor.

33 Responses to Q1 – Questionnaire to Manufacturers, question 8; Responses to Q2 – Questionnaire to Competitors, question 6; Responses to Q3a – Questionnaire to Customers in Finland, question 4; Responses to Q3b – Questionnaire to Customers in Estonia, question 4.

34 Responses to Q3b – Questionnaire to Customers in Estonia, question 4.1.

(26) Market participants consider self-propelled forage harvesters to be more powerful and efficient, which makes them particularly suitable for larger farms, for which trailed or mounted harvesters are not seen as suitable substitutes. As one Finnish customer explained: "*The self-propelled forage harvester is the only viable option for our annual silage harvesting rate (2000ha / year). The power of other methods, and the quality of the feed, do not meet our needs*".[35] Self-propelled forage harvesters are also significantly more expensive, and are generally not seen as comparable with trailed or mounted harvesters in terms of quality. As another Finnish customer explained: "*Self propelled is lot more efficient, but more expensive, need less workers and forage quality is significantly better/more solid*".[36]

(27) By way of a further example, grass machines are also considered to be a separate product, distinct from other types of agricultural machinery.[37] According to the respondents to the Commission's investigation, grass machines tend to be purchased and used by farmers who focus on dairy farming – other farmers do not have a particular need for grass machines.[38] The customer base for this type of machinery is therefore significantly different from other types of agricultural machinery. Furthermore, similar to forage harvesters, grass machines are not considered to be substitutable with other types of agricultural machinery. As one Estonian customer explains: "*It is not possible to substitute grass machines with other machines, as other machines do not enable to achieve the same quality of end-product. Substitution may be possible for small farms, but not for large farms, for which time is of essence*".[39]

(28) For these reasons, the Commission finds that a distinction based on the type of agricultural machinery is appropriate for the assessment of this Transaction.

6.2.1.2 Distinction between new and used machinery

(A) The Notifying Parties' arguments

(29) According to the Notifying Parties, almost all customers trade in used machinery to the distributor when buying a new machine, and distributors can then resell used machinery to other customers. The Notifying Parties submit that both new and used machines can fulfil the same overall functions and purpose and can therefore be considered substitutable, even if newer machines may have newer and more efficient technology and there is in many cases a considerable difference in the price of new and used machines.[40]

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35 Responses to Q3a – Questionnaire to Customers in Finland, question 4.1.

36 Responses to Q3a – Questionnaire to Customers in Finland, question 4.1.

37 Responses to Q1 – Questionnaire to Manufacturers, question 10; Responses to Q2 – Questionnaire to Competitors, question 7; Responses to Q3a – Questionnaire to Customers in Finland, question 5; Responses to Q3b – Questionnaire to Customers in Estonia, question 5.

38 Responses to Q1 – Questionnaire to Manufacturers, question 10.1; Responses to Q2 – Questionnaire to Competitors, question 7.1; Responses to Q3a – Questionnaire to Customers in Finland, question 5.1; Responses to Q3b – Questionnaire to Customers in Estonia, question 5.1.

39 Responses to Q3b – Questionnaire to Customers in Estonia, question 5.1.

40 Form CO, paragraph 129.

(B) The Commission's assessment

(30) The results of the market investigation clearly show that there are distinct relevant product markets for new and used agricultural machinery. The vast majority of responding manufacturers, competitors and customers stated that there are clear differences between new and used machinery.[41] Whilst some respondents indicate that the customer base is in general the same, others have pointed to the differences in prices to explain that there are different end-customers for new and used machinery.[42]

(31) Overall, there appear to be different conditions of competition on the markets for new and used machinery. For example, one competitor explained that "*Usually used machines market is not interfering with new machines sales*".[43] This was echoed by a manufacturer, who stated that "*Older machines do usually not compete against new equipment*".[44] Furthermore, there is more evidence of cross-border sales of used machinery than of new machinery,[45] as also confirmed by the Notifying Parties: "*The import of new machines on retail level is non-existent, wher[e]as some limited import of used machines on retail level does take place*."[46]

(32) Furthermore, new agricultural machinery is typically covered by a warranty, typically for the first 12 months following its first exploitation, during which after-sales services can be provided free of charge.[47] Used agricultural machinery is not covered by such a warranty.

(33) Finally, whilst the distribution agreements between manufacturers and distributors/retailers of agricultural machinery tend to be exclusive with regard to the retail sale of new agricultural machinery, such limitation may not apply with regard to used agricultural machinery. Therefore, distributors/retailers may accept different brands of agricultural machinery as trade ins (and therefore also resell these different brands of used agricultural machinery), whereas their exclusive distribution agreements with particular manufacturers mean that they may only sell those specific brands of new agricultural machinery.[48]

(34) For these reasons, the Commission finds that a distinction between new and used machinery, for each of the types of agricultural machinery at issue in this case, is appropriate for the assessment of this Transaction.

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41 Responses to Q1 – Questionnaire to Manufacturers, question 7.2; Responses to Q2 – Questionnaire to Competitors, question 5.3; Responses to Q3a – Questionnaire to Customers in Finland, question 3.3; Responses to Q3b – Questionnaire to Customers in Estonia, question 3.3.

42 Responses to Q1 – Questionnaire to Manufacturers, question 7.2, question 11.2.1; Responses to Q2 – Questionnaire to Competitors, question 5.3; Responses to Q3a – Questionnaire to Customers in Finland, question 3.3; Responses to Q3b – Questionnaire to Customers in Estonia, question 3.3.

43 Responses to Q2 – Questionnaire to Competitors, question 8.2.1.

44 Responses to Q1 – Questionnaire to Manufacturers, question 11.2.1.

45 Responses to Q2 – Questionnaire to Competitors, question 14.1, question 15.

46 Form CO, paragraph 240.

47 Form CO, paragraph 362, 510, 646; Parties' response to RFI 8.

48 Form CO, paragraphs 75, 129; Responses to Q1 – Questionnaire to Manufacturers, question 4, questions 4.1-4.4.

6.2.1.3 Distinction based on size or other parameters

(A) The Notifying Parties' arguments

(35) The Notifying Parties submit that there is one single market for agricultural machinery, with possible segmentations by type of machinery. Nevertheless, the Notifying Parties also provide detail regarding the different sizes and corresponding uses of tractors, distinguishing between small standard and specialty tractors with up to 100 HP, and large standard tractors with over 100 HP.[49]

(B) The Commission's assessment

(36) Whereas some market participants (in particular manufacturers and competitors) suggested a further segmentation within each type of agricultural machinery based on size or horse power, capacity or performance levels, the majority of the respondents to the Commission's investigation did not think that a further segmentation on the basis of these, or any other factors, is required.[50] A reason given by market participants is that such factors are rather differentiating factors within the different agricultural machinery categories. It appears that customers are prepared to move up or down the horsepower scale, depending on other aspects (e.g. durability, reliability, after-sales servicing, financing, etc.).

(37) In light of the results of the market investigation, the Commission does not deem it necessary in the present case to further segment the relevant product markets for different types of agricultural machinery by size, power, capacity or any other parameters.

6.2.2. Retail supply of implements

6.2.2.1 Distinction between different types of implements

(A) The Notifying Parties' arguments

(38) The Notifying Parties submit that the market for the retail sale of implements comprises retail sale of all types of implements compatible with tractors, consisting of sprayers, harrows, manure spreaders, sowing machines, semiliquid manure spreaders and wagons.[51]

(39) The Notifying Parties argue that primarily different manufacturers produce implements and agricultural machinery, and that manufacturers of implements are more numerous than manufacturers of agricultural machinery.[52] According to the Notifying Parties, all implements are compatible with and can be fitted to all global brands of tractors regardless of brand.[53] Further, whilst there is generally no substitution between the different types of implements as these have different features

49 Form CO, paragraphs 132, 134-135, 137-139.

50 Responses to Q1 – Questionnaire to Manufacturers, question 7.3; Responses to Q2 – Questionnaire to Competitors, question 5.2; Responses to Q3a – Questionnaire to Customers in Finland, question 3.2; Responses to Q3b – Questionnaire to Customers in Estonia, question 3.2.

51 Form CO, paragraph 155.

52 Form CO, paragraph 156.

53 Form CO, paragraph 157.

and purposes, in the Parties' view, implements are generally regarded as one product group by the end-users, and are offered as one combined portfolio of products by distributors.[54]

(B) The Commission's assessment

(40) Whilst the majority of manufacturers that expressed a view during the Commission's market investigation consider there to be one single product group of implements at retail level,[55] the majority of responding competitors stated that implements should be sub-divided into different categories, since different implements have different end-uses (from grass harvesting to soil preparation and seeding, feeding, transportation etc.) and different end-customers.[56]

(41) Ultimately, the question of whether there are distinct relevant product markets for different types of implements can be left open, as no competition issues arise under any plausible market definition.

6.2.2.2 Distinction between new and used implements

(A) The Notifying Parties' arguments

(42) The Notifying Parties submit that there is a single overall market for the retail sale of implements, but that a plausible segmentation can be made between new and used implements.[57] In the Notifying Parties' view, as in the case of agricultural machinery, when buying a new implement many customers trade in used implements, which the distributors then sell on to other customers.[58]

(B) The Commission's assessment

(43) Whilst the majority of manufacturers that responded to the Commission's market investigation consider new and used implements to be part of the same product market at retail level,[59] the majority of responding competitors suggested that a distinction should be drawn between new and used implements, since used implements retail at a lower price than new implements and there are customers who would not even consider purchasing one or the other.[60]

(44) Ultimately, the question of whether there are distinct relevant product markets for new and used implements can be left open, as no competition issues arise under any plausible market definition.

54 Form CO, paragraph 158.
55 Responses to Q1 – Questionnaire to Manufacturers, question 11.
56 Responses to Q2 – Questionnaire to Competitors, question 8, question 8.1.
57 Form CO, paragraphs 156, 159.
58 Form CO, paragraph 161.
59 Responses to Q1 – Questionnaire to Manufacturers, question 11.2.
60 Responses to Q2 – Questionnaire to Competitors, question 8.2, question 8.2.1.

6.2.3. Retail supply of spare parts

6.2.3.1 The Notifying Parties' arguments

(45) The Notifying Parties submit that the market for retail sale of spare parts constitutes a distinct relevant product market, comprising original and non-original spare parts.[61] According to the Notifying Parties, most distributors sell spare parts from various brands, even if they are authorised to sell only one specific brand of agricultural machinery, since spare parts from various brands are required to service the traded-in used machines.[62] Whilst there is no substitution between the various types of spare parts, the Notifying Parties submit that distributors offer spare parts as one combined portfolio and market these as a collective group of products to their customers.[63]

6.2.3.2 The Commission's assessment

(46) The majority of market participants that expressed a view agree that spare parts are generally considered as one product group in the agricultural machinery business. Whilst end-users must normally use original spare parts for repairs within the first 12 months of the lifetime of an agricultural machine for such repairs to fall within the manufacturer's warranty,[64] suitable non-original spare parts may be used for repairs outside the warranty or upon its expiry. The exact relevant product market definition can however be left open, as no competition issues arise under any plausible market definition.

6.2.4. Provision of after-sales services

6.2.4.1 The Notifying Parties' arguments

(47) The Notifying Parties submit that the market for the provision of after-sales services for agricultural machinery constitutes a separate relevant market, since access to the after-sales services is decisive for the farmers' choice of machinery and since distribution agreements with manufacturers oblige distributors to establish and maintain a network of after-sales locations where agricultural machines of that specific brand can be serviced.[65]

6.2.4.2 The Commission's assessment

(48) Whilst the majority of manufacturers that responded to the Commission's investigation consider that there is a separate product market for the provision of after-sales services,[66] the majority of competitors that expressed a view consider that the provision of after-sales services cannot be separated from the retail sale of

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61 Form CO, paragraph 178. The Notifying Parties submit that agricultural machines have comparable features to construction machinery (both being high-technology products sold to specific commercial customer groups) and points to the decision in Case 35918 – *Central Parts/JCB+1*, where the Commission identified distinct relevant product markets for original and non-original spare parts for construction machinery (Form CO, paragraphs 173, 175).

62 Form CO, paragraph 176.

63 Form CO, paragraph 177.

64 Form CO, paragraph 181.

65 Form CO, paragraph 186.

66 Responses to Q1 – Questionnaire to Manufacturers, question 13, question 13.1.

agricultural machinery.[67] As one competitor in Finland put it: "*All machines will require after-sales services at some point. After sales and sales go hand in hand and cannot be seprated* [sic]".[68] This is echoed also by some manufacturers: "*It's* [after-sales services] *connected to sale of new equipment*"[69] and "*The after sales service is very linked to the new machinery sales, and can not be separated, especially when the new engine emission and safety norms deployed to require substantial technical knowledge to assure the customer satisfaction*."[70]

(49) Ultimately, the exact relevant product market definition can be left open, as no competition issues arise under any plausible market definition.

6.2.5. Conclusion on relevant product markets

(50) The Commission finds that for the purposes of the present decision, different types of agricultural machinery constitute separate relevant product markets, namely (i) standard tractors, (ii) specialty tractors, (iii) combine harvesters, (iv) forage harvesters, (v) balers, (vi) grass machines, and (vii) telescopic handlers. The Commission considers that for the purposes of the assessment of the Transaction it is appropriate to further segment these product markets between new and used machinery.

(51) The Commission further considers that for the purpose of assessing the Transaction the distinction between different types of implements as well as between new and used implements can be left open, since no competition issues arise under any plausible market definition.[71] For the same reason, the question whether original and non-original spare parts belong to the same market and whether after-sales services constitute a separate market from the sales of agricultural machinery can also be left open.

6.3. Relevant geographic markets

6.3.1. The Notifying Parties' arguments

(52) The Notifying Parties submit that the markets for the retail sale of agricultural machinery (including the plausible segments) are national.[72] The Notifying Parties submit that in Finland, Estonia, Latvia and Lithuania, the wholesale and retail structure is integrated, such that the distributors are responsible for the import of agricultural machines, setting up national marketing strategies, conducting retail sales and providing after-sales services.[73]

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[67] Responses to Q2 – Questionnaire to Competitors, question 10, question 10.1.

[68] Responses to Q2 – Questionnaire to Competitors, question 10.

[69] Responses to Q1 – Questionnaire to Manufacturers, question 13.1.

[70] Responses to Q1 – Questionnaire to Manufacturers, question 13.1.

[71] To the extent that the narrowest plausible markets are affected, they are addressed in the competitive assessment part of this Decision.

[72] Form CO, paragraph 241.

[73] Form CO, paragraph 188.

(53) According to the Notifying Parties, distribution agreements in these countries grant distributors exclusivity within the national borders to market and sell branded agricultural machinery.[74] Moreover, agricultural machinery needs to be serviced and repaired by highly trained personnel with expert knowledge, with the requisite training and education of personnel being to a high degree national and with manuals and instructions being required to be delivered to the customers in the official language of the country where the machinery is placed on the market.[75] Finally, the Notifying Parties note that cross-border retail sales of agricultural machinery are limited (and occur mainly for used machinery).[76]

(54) With regard to the retail sale of implements and spare parts, and for the provision of after-sales services, the Notifying Parties submit that the relevant geographic markets are national, but can be left open, as the Transaction does not significantly affect competition under any plausible market definition.[77] In the Notifying Parties' view, customers prefer to purchase implements and spare parts and to have their agricultural machinery serviced from distributors and other retailers in proximity to them (since especially during peak periods, it is important for farmers to be able to source spare parts for, and repair, their machinery at short notice) and distribution agreements for implements are organised on a national level (with only minor imports of implements in the countries concerned by the Transaction).[78]

6.3.2. The Commission's assessment

(55) In previous decisions, the Commission has defined the relevant geographic market for agricultural machinery at the retail level as national in scope.[79] In particular, it was found that there are national specifications (e.g. road usage or safety requirements), national customer preferences for certain product configurations, as well as national distribution networks with exclusive distributors and dealers (with a high degree of dealer loyalty among customers) and national preferences for certain brands, primarily as a result of the historic inheritance of local manufacturing presence.[80] Furthermore, access to retailers with local presence and expert knowledge was found to be decisive for customers' choice of agricultural machinery.

(56) The results of the market investigation in the present case confirm the Commission's previous findings and the Notifying Parties' view that the geographic markets for the retail sale of agricultural machinery, as well as of implements, spare parts and for the provision of after-sales services, are national in scope. A large majority of market participants that responded to the Commission's market investigation confirmed that distributors tend to sell, and customers tend to source, agricultural machinery on a

[74] Form CO, paragraphs 239, 632-634.
[75] Form CO, paragraph 238.
[76] Form CO, paragraph 240.
[77] Form CO, paragraphs 243, 246, 248.
[78] Form CO, paragraphs 242, 244, 247.
[79] Case M.1571 – *New Holland/Case*, paragraphs 27-31; confirmed in Case M.3287 – *AGCO/Valtra*, paragraphs 14-16 for the sale of standard tractors at the retail level.
[80] Case M.1571 – *New Holland/Case*, paragraphs 28-30; confirmed in Case M.3287 – *AGCO/Valtra*, paragraphs 14-16 for the sale of standard tractors at the retail level.

national basis.[81] The results of the market investigation confirm that: (i) customers rely on after-sales services whose proximity and availability are among the key factors for choosing agricultural machinery, (ii) distribution agreements for agricultural machinery in Finland, Estonia, Latvia and Lithuania tend to contain national territorial exclusivity clauses, and (iii) there are only limited cross-border sales (mostly of used machinery) at retail level.[82]

(57) For these reasons, the Commission finds that the markets for the retail sale of different types of agricultural machinery, implements, spare parts and for the provision of after-sales services are national in geographic scope.

6.4. Conclusion on the relevant product and geographic market definition

(58) For the purposes of assessing the Transaction, the Commission considers that each type of agricultural machinery is a separate product market, which should be further segmented by new and used machinery. All these product markets are national in scope. On the other hand, for the purpose of assessing the Transaction, the Commission leaves open the precise product market definitions for implements, spare parts and after-sales services. Like the agricultural machinery markets, these markets – independently of further segmentation – are national in scope.

7. COMPETITIVE ASSESSMENT

7.1. Horizontal non-coordinated effects

7.1.1. Analytical framework

(59) The Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[83] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.[84]

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81 Responses to Q1 – Questionnaire to Manufacturers, question 12; Responses to Q2 – Questionnaire to Competitors, question 14; Responses to Q3a – Questionnaire to Customers in Finland, question 7; Responses to Q3b – Questionnaire to Customers in Estonia, question 7.

82 Responses to Q1 – Questionnaire to Manufacturers, question 3.3, questions 3.3.1-3.3.4, question 13, question 14, question 17; Responses to Q2 – Questionnaire to Competitors, question 14, question 15; Responses to Q3a – Questionnaire to Customers in Finland, question 8, question 11, question 14, question 14.1; Responses to Q3b – Questionnaire to Customers in Estonia, question 8, question 11, question 14, question 14.1.

83 OJ C 31, 5.2.2004, p. 5.

84 Given (i) the differentiated nature of products falling in the various categories of agricultural machinery and other agricultural products concerned by the Transaction, (ii) the asymmetric structures of the relevant markets, as well as (iii) the fact, that customers tend to compare offers for agricultural machinery and negotiate prices on an individual level, the Commission considered that the Transaction did not require a detailed assessment of coordinated effects.

(60) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[85]

(61) The Horizontal Merger Guidelines list a number of factors, which may influence the rise of substantial non-coordinated, effects from a merger, such as: the large market shares of the merging firms; the fact that the merging firms are close competitors; the limited possibilities for customers to switch suppliers; or the fact that the merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of those factors need to be present to make significant non-coordinated effects likely and this is not an exhaustive list.[86]

7.1.2. Estonia

(62) In Estonia, the Transaction gives rise to several affected markets taking into consideration all possible product market segmentations, namely for the retail sale of (i) new standard tractors, (ii) new and used combine harvesters, (iii) new and used forage harvesters and (iv) new balers, as well as for (v) original spare parts and for (vi) the provision of after-sales services.[87] However, with the exception of the markets for new combine harvesters, used combine harvesters, new forage harvesters and new balers, the Transaction results in small to moderate combined market shares (not above around 30%), as shown in Table 1 below.

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85 Horizontal Merger Guidelines, paragraph 24.

86 Horizontal Merger Guidelines, paragraph 26.

87 There are also horizontal overlaps in the Parties' activities in the retail sale of used agricultural machinery, used standard tractors, used balers, non-original spare parts, new grass machines and new telescopic handlers. However, as the Parties' combined market shares on these markets (on all possible product market segmentations) is below 20%, these markets are not affected markets and will not be assessed further.

Table 1 – Market Size and Market Shares in Estonia in 2017

	Market shares (% by value and by volume)								Market size	
	Danish Agro		Target		Combined		Main competitor		Value (million €)	Volume (units)[88]
	Value	Volume	Value	Volume	Value	Volume	Value	Volume		
Standard Tractors	[10-20]	[5-10]	[5-10]	[0-5]	**[10-20]**	**[10-20]**	[10-20]	[10-20]	88.1	1 139
New	[10-20]	[10-20]	[5-10]	[5-10]	**[20-30]**	**[20-30]**	[10-20]	[10-20]	52.9	485
Used	[0-5]	[0-5]	[0-5]	[0-5]	**[5-10]**	**[5-10]**	[5-10]	[10-20]	35.2	654
Combine harvesters	[20-30]	[10-20]	[30-40]	[20-30]	**[50-60]**	**[40-50]**	[30-40]	[30-40]	31.5	187
New	[20-30]	[20-30]	[30-40]	[30-40]	**[60-70]**	**[60-70]**	[20-30]	[30-40]	23.5	87
Used	[0-5]	[0-5]	[30-40]	[20-30]	**[30-40]**	**[20-30]**	[40-50]	[40-50]	8	100
Forage harvesters	[20-30]	[20-30]	[50-60]	[50-60]	**[70-80]**	**[70-80]**	[10-20]	[10-20]	2.9	10
New	[20-30]	[20-30]	[50-60]	[50-60]	**[70-80]**	**[70-80]**	[10-20]	[10-20]	2.5	8
Used	[0-5]	[0-5]	[50-60]	[50-60]	**[50-60]**	**[50-60]**	np	np	0.4	2
Balers	[10-20]	[10-20]	[5-10]	[10-20]	**[20-30]**	**[30-40]**	0.0*	0.0*	3.4	82
New	[20-30]	[10-20]	[10-20]	[5-10]	**[30-40]**	**[20-30]**	0.0*	0.0*	2.2	77
Used	[0-5]	[0-5]	[0-5]	[0-5]	**[5-10]**	**[5-10]**	0.0*	0.0*	1.2	NP
Implements										
Swathers or rakes, new	-	-	-	-	**[20-30]**	-	-	-	-	-
Sprayers, new	-	-	-	-	**[20-30] - [30-40]**	-	-	-	-	-
Spare parts	[10-20]	[5-10]	[10-20]	[10-20]	**[20-30]**	**[10-20]**	[10-20]	[10-20]	27.0	np
Original	[10-20]	[10-20]	[10-20]	[10-20]	**[20-30]**	**[20-30]**	0.0*	0.0*	18.9	np
Non-original	[0-5]	[0-5]	[5-10]	[5-10]	**[5-10]**	**[5-10]**	0.0*	0.0*	8.1	np
After-sales services	[5-10]	[10-20]	[10-20]	[10-20]	**[10-20]**	**[30-40]**	[10-20]	[10-20]	9.5	125 000
Additional information										
Agricultural machinery	[10-20]	[5-10]	[10-20]	[10-20]	**[20-30]**	**[10-20]**	[10-20]	[10-20]	142.2	1 899
New	[10-20]	[10-20]	[10-20]	[10-20]	**[30-40]**	**[20-30]**	[10-20]	[10-20]	94.9	1 108
Used	[0-5]	[0-5]	[5-10]	[5-10]	**[10-20]**	**[5-10]**	[10-20]	[10-20]	47.2	791

Source: Form CO[89]

(63) In the last three years (2015-2017), the Parties' combined market shares across all these segments have been relatively stable and have generally grown, with a slight decrease in 2017, with the exception of new combine harvesters, new forage

88 The Parties calculated market shares by volume on the basis of units sold, with the exception of after-sales services, for which the Parties used overall man hours available on the market (excluding after-sales services provided in-house).

89 np = not provided
* The Notifying Parties attribute the remainder of the market share to other competitors without providing any individual market shares:

- for balers: A.Tammel AS, Agri Partner OÜ, Ala Talutehnika OÜ, Rodnas OÜ and Saare Talutehnika OÜ;
- for spare parts: the suppliers listed above and others such as A ja M Varustus OÜ, Agroparts OÜ, Astla OÜ, Eesti Agritehnika OÜ, Intrac Eesti AS, Leho Kaubandus OÜ, Sike Agri OÜ, Specagra OÜ, Starfield OÜ, Stokker Agri OÜ and Türi Bel-Est OÜ).

** The Parties were not able to provide an accurate total number (or even an estimate) of units sold. Hence, there are no reliable market shares for the retail sale of used balers in 2018.

harvesters and new balers, where the combined market shares have grown also in 2017.

(64) According to the data the Parties could retrieve for 2018,[90] there has been a small decrease in the Parties' combined market shares for new combine harvesters, and new balers, and an increase in the combined market shares for, new forage harvesters, new standard tractors and after-sales services, as shown in Table 2 below.

Table 2 – Market Size and Market Shares in Estonia in 2018

	Market shares (% by value and by volume)								Market size	
	Danish Agro		Target		Combined		Main competitor		Value (million €)	Volume (units)[91]
	Value	Volume	Value	Volume	Value	Volume	Value	Volume		
Standard Tractors	[10-20]	[5-10]	[5-10]	[0-5]	[20-30]	[10-20]	[10-20]	[10-20]	74.9	956
New	[20-30]	[10-20]	[5-10]	[5-10]	[30-40]	[20-30]	[20-30]	[10-20]	44.9	407
Used	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]	[5-10]	[10-20]	[10-20]	30.0	549
Combine harvesters	[10-20]	[10-20]	[30-40]	[30-40]	[50-60]	[40-50]	[20-30]	[10-20]	43.4	220
New	[10-20]	[10-20]	[30-40]	[30-40]	[50-60]	[50-60]	[10-20]	[10-20]	32.5	121
Used	[5-10]	[5-10]	[20-30]	[20-30]	[30-40]	[30-40]	[30-40]	[20-30]	10.9	99
Forage harvesters	[20-30]	[10-20]	[30-40]	[80-90]**	[50-60]	[90-100]**	0.0*	np	3.2	15**
New	[40-50]	[20-30]	[50-60]	[80-90]	[90-100]	[90-100]	0.0	0.0	1.5	10
Used	[0-5]	np	[20-30]	np	[20-30]	np	0.0*	np	1.7	5
Balers**	[5-10]	[5-10]	[5-10]	[10-20]	[10-20]	[20-30]	0.0*	0.0*	3.4	83
New	[10-20]	[5-10]	[5-10]	[5-10]	[20-30]	[10-20]	0.0*	0.0*	2.2	77
Spare parts	[5-10]	[5-10]	[10-20]	[10-20]	[20-30]	[10-20]	0.0*	0.0*	27.0	np[92]
Original	[10-20]	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	0.0*	np	18.9	np
Non-original	[0-5]	[0-5]	[5-10]	[5-10]	[5-10]	[5-10]	0.0*	np	8.1	np
After-sales services	[10-20]	[10-20]	[10-20]	[20-30]	[20-30]	[30-40]	np	np	9.5	125 000
Additional information										
Agricultural machinery	[10-20]	[5-10]	[10-20]	[5-10]	[20-30]	[10-20]	[10-20]	[10-20]	141.2	1 755
New	[10-20]	[10-20]	[10-20]	[10-20]	[30-40]	[20-30]	[10-20]	[5-10]	95.0	1 055
Used	[0-5]	[0-5]	[5-10]	[5-10]	[10-20]	[10-20]	[10-20]	[10-20]	46.2	700

Source: Notifying Parties' response to RFI 6[93]

90 Notifying Parties' response to RFI 6.

91 The Parties calculated market shares by volume on the basis of units sold, with the exception of after-sales services, for which the Parties used overall man hours available on the market (excluding after-sales services provided in-house).

92 The Notifying Parties submit that due to the price difference of spare parts, the market size in terms of volume (by units sold) has no statistical value. The Parties have therefore provided their estimate of their market shares taking into consideration that the value of their parts is slightly more than the market average, which means that they have a slightly lower market share by volume than by value. This observation applies similarly in respect of the total market size for original and non-original spare parts.

93 See footnote 89 for key.

7.1.2.1 The Notifying Parties' arguments

(65) The Notifying Parties submit that post-Transaction, no competition concerns would arise despite the high combined market shares, especially in new combine harvesters and new forage harvesters, as the Parties would not be able to affect prices or quality of the goods and would face competition from other distributors of agricultural machinery (e.g. Tatoli AS) with global brands (e.g. New Holland, Case IH, Massey Ferguson, Valtra, Fendt).[94] In particular, with regard to combine harvesters, the Notifying Parties submit that there are a number of players on the market, including long-established companies such as Astla OÜ and Rodnas OÜ, as well as new entrants, such as Intrac Eesti AS, which has recently entered the market with the Massey Ferguson brand.[95] With regard to forage harvesters, the Notifying Parties submit that this is a new product on the Estonian market and that even though only a few competitors are currently active in the retail sale of forage harvesters in Estonia, there are more market players capable of market entry.[96]

(66) The Notifying Parties argue that post-Transaction, their respective activities with regard to the retail sale of Claas and John Deere agricultural machinery (including forage harvesters and combine harvesters) will continue to be conducted independently of, and in competition with, each other, since this is also a requirement of the two manufacturers. Specifically, the Notifying Parties propose that the merged entity create separate divisions for Claas and John Deere agricultural machinery, with separate managing directors and boards of directors, who, along with the employees, IT systems and sales and financial controls, will be independent from the other division. The information as regards the divisions' budgets, sales strategies and sales targets will not be exchanged with the management of the other division, other than in an aggregated and general form, which in the Notifying Parties' view would prevent specific strategies, sales and targets from being identified. The retail outlets would be separate geographically for each of Claas and John Deere branded agricultural machinery, […].[97] In the Notifying Parties' view, if the Parties cease to compete fiercely with each other and underperform in relation to either Claas or John Deere, the respective distribution agreement(s) may be awarded to another distributor and given the importance of these distribution agreements to the Parties (relative to their overall sales), neither Party is prepared to risk losing its respective distribution agreement.[98]

(67) The Notifying Parties also submit that farmers increasingly consolidate into large professional businesses that are price-conscious and demanding customers, often organising tenders for the purchase of agricultural machinery. According to the Notifying Parties, these customers can easily change from one brand or distribution to another, should the latter offer better terms, features or prices. In the Notifying Parties' view, price and quality prevail over brand loyalty, which the Notifying Parties

94 Form CO, paragraphs 409-413.
95 Form CO, paragraph 470.
96 Form CO, paragraphs 479-481.
97 Form CO, paragrpahs 400-401; Parties' Response to RFI 8.
98 Form CO, paragraphs 400-401, 407-408, 410, 471, 482.

think is confirmed by the varying market shares of the market participants in different market segments.[99]

7.1.2.2 The Commission's assessment

(68) The Commission notes the Notifying Parties’ arguments with regard to the proposed separation of the John Deere and Claas retail activities within the merged entity post-Transaction, which in the Notifying Parties’ view, would ensure continued fierce competition between the retail sale of John Deere and Claas branded agricultural machinery post-Transaction. In the Commission's view, however, even if followed, the proposed arrangements are not likely to be sufficient in order to dispel competition concerns. The proposed arrangements do not prevent the exchange of all commercially sensitive information as regards the respective brands: even aggregated sales data and sales targets data could give the other division a good idea of its competition and further increase the transparency on the market, especially where, as shown below, the Parties are close competitors who already today have significant market shares, especially in combine harvesters and forage harvesters.

(69) Furthermore, since both proposed divisions (for Claas and John Deere brands) would be under single common ownership post-Transaction, the merged entity would have significant incentives to maximise its revenue by ensuring that both divisions achieve sales targets set by the manufacturers, but not necessarily exceeding any one of these sales targets if doing so would mean that the other sales target would not be achieved. In other words, the merged entity would have the incentives to ensure that each division competes only to the extent that doing so would not risk the other division to underperform.

(70) Overall, therefore, the Commission finds that holding the retail sales activities of the John Deere and Claas branded agricultural machinery separate will not ensure that these retail sales activities will continue to compete post-Transaction in the same way as they do prior to the concentration.

(A) Combine harvesters

(71) The Parties have significant combined market shares in new combine harvesters in Estonia: [60-70]% by value and [60-70]% by volume in 2017 (Danish Agro: [20-30]% by value and [20-30]% by volume, and Target: [30-40]% by value and [30-40]% by volume in 2017). The Parties' combined market shares are estimated to have reduced slightly to [50-60]% by value and [50-60]% by volume in 2018. The Parties had a combined market share of [40-50]% in 2015 and [50-60]% in 2016 by value.

(72) The Parties' combined market shares in used combine harvesters were [30-40]% by value and [20-30]% by volume in 2017, and are estimated to have increased slightly to [30-40]% by value and [30-40]% by volume in 2018. The increment in used combine harvesters is small: [0-5]% by value and [0-5]% by volume in 2017, increased to [5-10]% by value and [5-10]% by volume in 2018.

99 Form CO, paragraphs 404-405.

(73) However, to the extent that trade-ins influence the sales of used machines, the Commission cannot exclude that the merged entity would have more market power in the used segments than its market share suggests.

(74) The Transaction would create the number one distributor/retailer of new combine harvesters in Estonia, with more than twice as large market share as its largest competitor Tatoli AS ([20-30]% by value and [30-40]% by volume in 2017, decreasing to [10-20]% by value and [10-20]% by volume in 2018). The other competitors on the market, Agriland OÜ ([0-5]% by value and [0-5]% by volume in 2017, increasing to [5-10]% by value and [5-10]% by volume in 2018), and Astla OÜ, Intrac Eesti AS and Rodnas OÜ, to which the Notifying Parties collectively attribute a [5-10]% market share by value in 2017 and [20-30]% by value in 2018,[100] are not likely to exert a significant competitive pressure on the merged entity post-Transaction.

(75) The Transaction would therefore result in a significant concentration on the market for new combine harvesters and eliminate an important competitive force in Estonia.

(76) The Commission finds that post-Transaction, the merged entity would be able to successfully raise prices without fear of losing customers to their competitors for the following reasons.

(77) First, the results of the market investigation show that the Parties are close competitors. The majority of customers and competitors that responded to the Commission's market investigation consider that the Parties are close competitors that offer similar prices and similar quality of products and services, and because their networks have a similar reach.[101] Furthermore, the results of the market investigation indicate that the Parties are close competitors specifically in the retail sale of combine harvesters in Estonia. The majority of Estonian customers that responded to the Commission's investigation consider the Parties to be the strongest suppliers of combine harvesters.[102] The other suppliers of combine harvesters in Estonia are considered by customers to either have very little experience with this type of agricultural machine, or to offer combine harvesters of lower quality or of higher price.[103] As one Estonian customer explained: "*others have very low presence in Estonia and may have problems with securing the swift supply of spare parts and after-sales services*".[104] The availability of spare parts and after-sales services are deemed by customers to be particularly important in their choice of agricultural machinery retailer.[105]

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100 Form CO, page 131; Notifying Parties' Response to RFI 6.

101 Responses to Q2 – Questionnaire to Competitors, question 22; Responses to Q3b – Questionnaire to Customers in Estonia, questions 9, 10 and 24.

102 Responses to Q3b – Questionnaire to Customers in Estonia, question 24.

103 Responses to Q3b – Questionnaire to Customers in Estonia, questions 24 and 25.1.

104 Responses to Q3b – Questionnaire to Customers in Estonia, question 25.1.

105 Responses to Q3b – Questionnaire to Customers in Estonia, question 11, question 14, question 14.1.

(78) Second, the market investigation has also revealed that customers tend to be brand loyal.[106] When asked what they would do if their preferred brand were to be discontinued, the majority of customers indicated that they would be more likely to look for another dealer that would offer the discontinued brand.[107] This was the view shared also by the majority of competitors that responded to the Commission's market investigation.[108]

(79) Third, customers in Estonia are not likely to exercise a sufficient degree of countervailing buyer power, as they have limited options to source combine harvesters elsewhere. Combine harvesters are large and expensive machines, which are not likely to be sourced by customers abroad. For example, only a couple of Estonian customers responding to the Commission's investigation stated that they could source combine harvesters from abroad, whereas for the majority of Estonian customers this would not be an option.[109] This view is shared also by the responding competitors, the vast majority of whom do not consider imports from abroad as a viable option for customers in Estonia.[110]

(80) Fourth, new market entry is not very likely. The market for the retail sale of combine harvesters in Estonia is relatively small and the machinery is expensive. The brands of both combine harvesters and of the retailers of these machines currently on the market are well known and trusted by customers – building a new brand is difficult and likely to be very time consuming. For example, as several manufacturers explain, finding a new distributor is not easy, as it would require "*a lot of time*, *effort and money*", with the manufacturer also having to "*invest a lot in training of a new distributor*" in addition to ensuring that the new distributor satisfies some of its requirements, including that they be committed to the manufacturer's brand.[111]

(81) Finally, several market participants have expressed concern regarding the impact of the Transaction. Several customers, competitors and manufacturers have indicated that they expect an increase in prices of combine harvesters, and a decrease in choice or quality of service, in Estonia post-Transaction.[112] Some customers and competitors have also expressed concern as regards the impact that the Transaction will have, specifically as a result of bringing the two brands, John Deere and Claas under single ownership. For example, an Estonian competitor stated that the Transaction will have a big impact on its business (and ability to compete) if Danish Agro were to have both these brands.[113]

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106 Responses to Q2 – Questionnaire to Competitors, question 28; Responses to Q3b – Questionnaire to Customers in Estonia, question 15.

107 Responses to Q3b – Questionnaire to Customers in Estonia, question 15.

108 Responses to Q2 – Questionnaire to Competitors, question 28.

109 Responses to Q3b – Questionnaire to Customers in Estonia, question 25.

110 Responses to Q2 – Questionnaire to Competitors, question 45.

111 Responses to Q1 – Questionnaire to Manufacturers, question 6.3.

112 Responses to Q1 – Questionnaire to Manufacturers, question 67.2, question 68.2, question 69.2; Responses to Q2 – Questionnaire to Competitors, question 49.2, question 50.2, question 51.2; Responses to Q3b – Questionnaire to Customers in Estonia, question 26, question 26.1.

113 Responses to Q2 – Questionnaire to Competitors, question 48.

(82) In circumstances where the customers are brand loyal, view the quality of combine harvesters supplied by other retailers in Estonia as lower, or the quality and reach of the other retailers' networks as more limited than the Parties', and absent a credible source of imports or possible market entry, such customers are more likely to accept a price increase. Moreover, in circumstances where two retailers with two competing brands that are close competitors are placed under single ownership, the merging entity is likely to be able to successfully increase prices on one of the brands, without fear of losing customers, since any lost sales are likely to be captured by the other brand under its ownership.

(83) For these reasons, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new and used combine harvesters in Estonia due to horizontal non-coordinated effects.

(B) Forage harvesters

(84) The Parties have significant combined market shares in new forage harvesters in Estonia: [70-80]% by value and [70-80]% by volume in 2017 (Danish Agro: [20-30]% by value and [20-30]% by volume, and Target: [50-60]% by value and [50-60]% by volume in 2017).The Parties' combined market shares are estimated to have increased to [90-100]% by value and [90-100]% by volume in 2018. The Parties' combined market shares were relatively stable since the Notifying Parties started supplying new forage harvesters in Estonia in 2016, when the Parties achieved a combined market share of [70-80]% by value. There is no overlap in the retail sale of used forage harvesters, since the Notifying Parties have not made any sales of used forage harvesters in Estonia in either 2017 or 2018.

(85) The Transaction would create the number one distributor/retailer of new forage harvesters in Estonia, with a market share in 2017 more than seven times as large as its largest competitor's, Agriland OÜ ([10-20]% by value and [10-20]% by volume). The only other competitor identified by the Notifying Parties on the Estonian market, Oilseeds Tehnika OÜ, is estimated to have a market share below 10% by value. These competitors are therefore not likely to exert a significant competitive pressure on the merged entity post-Transaction.

(86) Similarly to combine harvesters, to the extent that trade-ins influence the sales of used machines, the Commission cannot exclude that the merged entity would quickly increase its position in the used segment as well.

(87) The Transaction would therefore result in a very significant concentration on the market for new forage harvesters and eliminate an important competitive force in Estonia.

(88) The Commission finds that post-Transaction, the merged entity would be able to successfully raise prices without fear of losing customers to their competitors for the following reasons.

(89) First, as noted above in recital (77) above, the results of the market investigation show that the Parties are close competitors. Furthermore, the results of the market investigation indicate that the Parties are each other’s closest competitors specifically

in the retail sale of forage harvesters in Estonia. All of the Estonian customers and the vast majority of competitors that expressed a view in the course of the Commission's investigation consider the Parties to be closest competitors either because they offer similar prices, similar quality (in products and services), or because their networks have a similar reach.[114] The customers in Estonia considered that the other suppliers of self-propelled forage harvesters have very little experience with this machine or are not yet known on the market, are of lower quality or of higher price.[115] As one Estonian customer explained: "*others have very low presence in Estonia and may have problems with securing the swift supply of spare parts and after-sales services*".[116] As noted in recital (77) above, the availability of spare parts and after-sales services are deemed by customers to be particularly important in their choice of agricultural machinery retailer.

(90) Second, as noted in recital (78) above, the market investigation has also revealed that customers tend to be brand loyal.[117] When asked what they would do if their preferred brand were to be discontinued, the majority of customers indicated that they would be more likely to look for another dealer that would offer the discontinued brand.[118] This was the view shared also by the majority of competitors that responded to the Commission's market investigation.[119]

(91) Third, customers in Estonia are not likely to exercise a sufficient degree of countervailing buyer power, as they have limited options to source forage harvesters elsewhere. Forage harvesters are large and very expensive machines, which are not likely to be sourced by customers abroad. For example, only a couple of customers responding to the Commission's investigation have stated that they could source self-propelled forage harvesters from abroad, whereas for the majority of customers this would not be an option.[120] This view is shared also by the responding competitors, the vast majority of whom do not consider imports from abroad as a viable option for customers in Estonia.[121]

(92) Fourth, new market entry is not very likely. The market for the retail sale of self-propelled forage harvesters in Estonia is small and the machinery is very expensive. The brands of both forage harvesters and of the retailers of these machines currently on the market are well known and trusted by customers – building a new brand is difficult and likely to be very time consuming. For example, as noted above in recital (80), several manufacturers explain that finding a new distributor is not easy, as it would require "*a lot of time, effort and money*", with the manufacturer also having to "*invest a lot in training of a new distributor*" in addition to ensuring that the new

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[114] Responses to Q3b – Questionnaire to Customers in Estonia, questions 9, 10, 10.1 and 20.

[115] Responses to Q3b – Questionnaire to Customers in Estonia, question 24.

[116] Responses to Q3b – Questionnaire to Customers in Estonia, question 21.1.

[117] Responses to Q2 – Questionnaire to Competitors, question 28; Responses to Q3b – Questionnaire to Customers in Estonia, question 15.

[118] Responses to Q3b – Questionnaire to Customers in Estonia, question 15.

[119] Responses to Q2 – Questionnaire to Competitors, question 28.

[120] Responses to Q3b – Questionnaire to Customers in Estonia, question 21.

[121] Responses to Q2 – Questionnaire to Competitors, question 38.

distributor satisfies some of its requirements, including that they be committed to the manufacturer's brand.[122]

(93) Finally, several market participants have expressed concern regarding the impact of the Transaction. Some customers and competitors have indicated that they expect an increase in prices of forage harvesters, and a decrease in choice or quality of service, in Estonia post-Transaction.[123] Some customers and competitors have also expressed concern as regards the impact that the Transaction will have, specifically as a result of bringing the two brands, John Deere and Claas under single ownership. For example, an Estonian competitor stated that the Transaction will have a big impact on its business (and ability to compete) if Danish Agro were to have both these brands.[124]

(94) In circumstances where the customers are brand loyal, view the quality of forage harvesters supplied by other retailers in Estonia as lower, or the quality and reach of the other retailers' networks as more limited than the Parties', and absent a credible source of imports or possible market entry, such customers are more likely to accept a price increase. Moreover, in circumstances where two retailers with two competing brands that are each other's closest competitors are placed under single ownership, the merging entity is likely to be able to successfully increase prices on one of the brands, without fear of losing customers, since any lost sales are likely to be captured by the other brand under its ownership.

(95) For these reasons, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new and used forage harvesters in Estonia due to horizontal non-coordinated effects.

(C) New standard tractors

(96) The Parties' combined market shares in new standard tractors are estimated to be [30-40]% by value and [20-30]% by volume in 2018. The Parties' combined market shares have been quite stable over the last three years: [30-40]% in 2016 and [20-30]% in 2017 by value, and [20-30]% in 2016 and [20-30]% in 2017 by volume.

(97) In Estonia, there are currently a number of other distributors offering new standard tractors, including Tatoli AS with the New Holland brand ([10-20]% by value and [10-20]% by volume), Taure AS with the Valtra brand ([10-20]% by value and [10-20]% by volume), Agriland OÜ with the Fendt brand ([10-20]% by value and [10-20]% by volume) and Dotnuva Baltic AS with the Case IH ([5-10]% by value and [0-5]% by volume). The Notifying Parties attribute the remainder (almost a quarter) of the market to other distributors. Therefore, post-Transaction, several alternative suppliers will remain on the market, including strong suppliers such as Tatoli AS and Taure AS.

122 Responses to Q1 – Questionnaire to Manufacturers, question 6.3.

123 Responses to Q2 – Questionnaire to Competitors, questions 49.2, 50.2 and 51.2; Responses to Q3b – Questionnaire to Customers in Estonia, question 29 and 31.

124 Responses to Q2 – Questionnaire to Competitors, question 48.

(98) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of standard tractors in Estonia due to horizontal non-coordinated effects. In any event, the horizontal overlap between the Parties' activities in the retail sale of standard tractors in Estonia is eliminated by the Final Commitments proposed by the Parties, as discussed in Chapter 8.

(D) New balers

(99) The Parties' combined market shares in new balers were [20-30]% by value and [30-40]% by volume in 2017 and are estimated to have decreased to [20-30]% by value and [10-20]% by volume in 2018. The Transaction would result in a [10-20]% increment in new balers (on the basis of 2017 markets shares, the increments in 2018 are lower). These market shares are relatively modest. Furthermore, a number of alternative suppliers of new balers are available in Estonia, including A.Tammel AS, Agri Partner OÜ, Ala Talutehnika OÜ, Rodnas OÜ and Saare Talutehnika OÜ.

(100) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new balers in Estonia due to horizontal non-coordinated effects. In any event, the horizontal overlap between the Parties' activities in the retail sale of new balers in Estonia is eliminated by the Final Commitments proposed by the Parties, as discussed in Chapter 8.

(E) Implements

(101) According to the Notifying Parties' estimates, the only affected markets by the Transaction are (i) the retail sale of new swathers and rakes and (ii) the retail sale of new sprayers[125]. In these markets, the Parties have a combined value market share of respectively [20-30]% and between 20% to 30%. Hence, under the narrowest market definition, no competition concerns arise as a result of the Transaction. First, the Parties' combined market shares are modest, not exceeding 30%. Second, there are a number of alternative suppliers of implements on the Estonian market, including those that do not also manufacture agricultural machinery.[126] Third, the majority of market participants that expressed a view in the Commission's investigation do not expect an increase in prices or a decrease in choice or quality of implements in Estonia post-Transaction.[127]

(102) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of implements in Estonia due to horizontal non-coordinated effects. In any event, the horizontal overlap between the Parties' activities

[125] Under any other plausible market definition – overall implements retail market, overall new implements retail market, overall used implements retail market; segments for each type of implements and sub-segments for new and used type of implement market – the Parties combined market shares do not reach 20% or there is a share transfer (as only one of the Parties is present).

[126] Form CO, paragraph 89.

[127] Responses to Q1 – Questionnaire to Manufacturers, question 67.2, question 68.2, question 69.2; Responses to Q2 – Questionnaire to Competitors, question 49.2, question 50.2; Responses to Q3b – Questionnaire to Customers in Estonia, question 27.

in the retail sale of implements in Estonia is eliminated by the Final Commitments proposed by the Parties, as discussed in Chapter 8.

(F) Spare parts

(103) According to the Notifying Parties’ estimates, on the narrowest possible market definition, the Parties' combined market share for the retail sale of original spare parts in Estonia in 2017 was [20-30]% by value and [20-30]% by volume. The Parties' combined market shares for the retail sale of non-original spare parts is less than 10% both by value and by volume. If the retail sale of original and non-original spare parts is considered together, the Parties' combined market share in 2017 was [20-30]% by value and [10-20]% by volume. The Parties' combined market shares are therefore modest and in any event not exceeding 30% even on the narrowest market definition.

(104) Even on the narrowest market definition, no competition concerns arise as a result of the Transaction. First, the Parties' combined market shares are modest, not exceeding 30%. Second, there are a number of alternative suppliers of spare parts on the Estonian market such as A.Tammel AS, Agri Partner OÜ, Ala Talutehnika OÜ, Rodnas OÜ, A ja M Varustus OÜ, Agroparts OÜ, Astla OÜ, Eesti Agritehnika OÜ, Intrac Eesti AS, Leho Kaubandus OÜ, Sike Agri OÜ, Specagra OÜ, Starfield OÜ, Stokker Agri OÜ and Türi Bel-Est OÜ. Third, the majority of market participants that responded to the Commission's investigation expected there to be no change in price or quality as a result of the Transaction.[128]

(105) For these reasons, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of spare parts in Estonia due to horizontal non-coordinated effects. In any event, the horizontal overlap between the Parties' activities in the retail sale of spare parts in Estonia is eliminated by the Final Commitments proposed by the Parties, as discussed in Chapter 7.

7.1.3. Finland

(106) In Finland, Danish Agro distributes agricultural machinery, implements, spare parts, as well as offers after-sales services, representing several brands, including the global brands John Deere and Krone. The Target also offers agricultural machinery, implements, spare parts, as well as after-sales services, representing several brands, including the global brand Claas.

(107) In Finland, the Transaction gives rise to several affected markets taking into consideration all plausible product market segmentations, namely for the retail sale of (i) new and used standard tractors, (ii) new and used specialty tractors; (iii) new and used combine harvesters, (iv) new and used forage harvesters and (vi) new and used balers, as well as for (vii) new, used and overall new and used implements, (viii) original and overall original and non-original spare parts and for the provision of after-sales services.[129] However, with the exception of the markets for combine

[128] Responses to Q3b – Questionnaire to Customers in Estonia, question 28, question 28.1.

[129] There are also horizontal overlaps in the Parties' activities in the retail sale of used agricultural machinery and used balers. However, as the Parties' combined market shares on these markets (on all possible product

harvesters (new and used), forage harvesters (new and used), new specialty tractors and new implements, the Transaction results in small to moderate combined market shares (not above 30%), as shown in Table 3 below.

Table 3 – Market Size and Market Shares in Finland in 2017

2017	Market size		Danish Agro		Target		Combined		Main Competitor	
	Value (million €)	Volume (units)	Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)	Volume (%)
Standard tractors (new+used)	231.8	4638	[10-20]	[10-20]	[0-5]	[0-5]	**[20-30]**	**[10-20]**	[50-60]	[50-60]
New standard tractors	115.9	1582	[10-20]	[10-20]	[5-10]	[0-5]	**[20-30]**	**[10-20]**	[50-60]	[50-60]
Used standard tractors	115.9€	3056	[10-20]	[10-20]	[0-5]	[5-10]	**[20-30]**	**[10-20]**	[50-60]	[50-60]
Specialty tractors (new+used)	15.9	816	[10-20]	[10-20]	[10-20]	[10-20]	**[20-30]**	**[30-40]**	[10-20]	[10-20]
New specialty tractors	11	371	[10-20]	[20-30]	[10-20]	[10-20]	**[30-40]**	**[30-40]**	[10-20]	[10-20]
Used specialty tractors	4.9	445	[10-20]	[10-20]	[5-10]	[10-20]	**[20-30]**	**[30-40]**	[10-20]	[10-20]
Combine harvesters (new+used)	33.3	392	[10-20]	[5-10]	[10-20]	[20-30]	**[30-40]**	**[20-30]**	[20-30]	[20-30]
New combine harvesters	15.9	136	[10-20]	[5-10]	[20-30]	[10-20]	**[30-40]**	**[20-30]**	[20-30]	[20-30]
Used combine harvesters	17.3	256	[10-20]	[5-10]	[10-20]	[20-30]	**[30-40]**	**[20-30]**	[20-30]	[20-30]
Forage harvesters (new+used)	6.1	26	[30-40]	[40-50]	[30-40]	[30-40]	**[70-80]**	**[80-90]**	[10-20]	[10-20]
New forage harvesters	4.6	15	[50-60]	[50-60]	[10-20]	[20-30]	**[70-80]**	**[70-80]**	[20-30]	[20-30]
Used forage harvesters	2.1	11	[40-50]	[50-60]	[10-20]	[10-20]	**[50-60]**	**[70-80]**	[10-20]	[20-30]
Balers (new+used)	16.7	343	[10-20]	[10-20]	[0-5]	[0-5]	**[20-30]**	**[20-30]**	[10-20]	[10-20]
New balers	10	147	[20-30]	[10-20]	[0-5]	[5-10]	**[20-30]**	**[20-30]**	[10-20]	[10-20]
Used balers	6.7	196	[10-20]	[10-20]	[0-5]	[0-5]	**[10-20]**	**[10-20]**	[10-20]	[10-20]
Implements (new+used)	195	12600	[20-30]	[20-30]	[0-5]	[0-5]	**[20-30]**	**[20-30]**	[20-30]	[20-30]
New implements	150	5040	[20-30]	[30-40]	[0-5]	[0-5]	**[30-40]**	**[30-40]**	[20-30]	[30-40]
Used implements	45	7560	[20-30]	[20-30]	[0-5]	[0-5]	**[20-30]**	**[20-30]**	[30-40]	[30-40]
Spare Parts (original)[130]	68	(a)	[10-20]	(a)	[5-10]	(a)	**[20-30]**	**(a)**	[30-40]	(a)
Additional Information:										
Agricultural machinery (new+used)	388.8	10816	[10-20]	[10-20]	[5-10]	[5-10]	**[20-30]**	**[10-20]**	[30-40]	[20-30]
New agricultural machinery	212.9	5113	[10-20]	[10-20]	[5-10]	[0-5]	**[20-30]**	**[10-20]**	[30-40]	[10-20]
Used agricultural machinery	175.8€	5703	[10-20]	[10-20]	[0-5]	[5-10]	**[20-30]**	**[10-20]**	[40-50]	[30-40]

(a) no data provided

Source: Parties' estimates (Form CO).

market segmentations) is below 20%, these markets are not affected markets and will not be assessed further.

130 The Target does not sell non-original spare parts. The market shares of the Notifying Parties are overestimated in the sense they also include the sales of non-original spare parts.

(108) In the last three years (2015-2017), the market shares have been relatively stable with the exception of standard tractors, where the Target has lost market share in 2017, and balers where both Parties have been losing market share. According to the data the Parties could retrieve for 2018,[131] there has been a small decrease in the combined Parties' market shares for specialty tractors (new and used), combine harvesters (new and used) and an increase in the market shares for balers (new and used), as shown in the table below.

Table 4 – Market Size and Market Shares in Finland in 2018

2018	Market size		Danish Agro		Target		Combined		Main Competitor	
	Value (million €)	Volume (units)	Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)	Volume (%)	Value (%)	Volume (%)
Standard tractors (new+used)	218.6	3929	[10-20]	[10-20]	[0-5]	[0-5]	**[20-30]**	**[10-20]**	[60-70]	[60-70]
New standard tractors	111.6	1304	[10-20]	[10-20]	[5-10]	[0-5]	**[20-30]**	**[10-20]**	[60-70]	[60-70]
Used standard tractors	107	2625	[10-20]	[10-20]	[0-5]	[0-5]	**[20-30]**	**[10-20]**	[60-70]	[60-70]
Specialty tractors (new+used)	16.9	865	[10-20]	[20-30]	[5-10]	[0-5]	**[20-30]**	**[20-30]**	[10-20]	[10-20]
New specialty tractors	11.3	380	[10-20]	[20-30]	[5-10]	[5-10]	**[20-30]**	**[30-40]**	[10-20]	[10-20]
Used specialty tractors	5.6	485	[10-20]	[20-30]	[0-5]	[0-5]	**[10-20]**	**[20-30]**	[10-20]	[10-20]
Combine harvesters (new+used)	36	419	[10-20]	[5-10]	[10-20]	[10-20]	**[20-30]**	**[20-30]**	[20-30]	[20-30]
New combine harvesters	17	139	[10-20]	[5-10]	[20-30]	[10-20]	**[30-40]**	**[20-30]**	[20-30]	[20-30]
Used combine harvesters	19	280	[10-20]	[5-10]	[10-20]	[10-20]	**[20-30]**	**[20-30]**	[20-30]	[20-30]
Forage harvesters (new+used)	7.9	30	[50-60]	[50-60]	[10-20]	[20-30]	**[70-80]**	**[70-80]**	[20-30]	[20-30]
New forage harvesters	4.6	15	[50-60]	[50-60]	[10-20]	[20-30]	**[70-80]**	**[70-80]**	[20-30]	[20-30]
Used forage harvesters	5.9	15	[60-70]	[40-50]	[10-20]	[20-30]	**[70-80]**	**[70-80]**	[20-30]	[20-30]
Balers (new+used)	17.1	397	[20-30]	[20-30]	[5-10]	[0-5]	**[30-40]**	**[20-30]**	[10-20]	[10-20]
New balers	10.5	201	[20-30]	[10-20]	[5-10]	[5-10]	**[30-40]**	**[20-30]**	[10-20]	[10-20]
Used balers	6.6	196	[20-30]	[20-30]	[0-5]	[0-5]	**[20-30]**	**[20-30]**	[10-20]	[10-20]
Implements (new+used)	201	12490	[20-30]	[30-40]	[0-5]	[0-5]	**[20-30]**	**[30-40]**	[20-30]	[30-40]
New implements	150	5030	[20-30]	[20-30]	[0-5]	[0-5]	**[20-30]**	**[30-40]**	[30-40]	[20-30]
Used implements	51.2	7460	[20-30]	[30-40]	[0-5]	[0-5]	**[20-30]**	**[30-40]**	[20-30]	[30-40]
Spare Parts (original)[132]	69.2	(a)	[10-20]	(a)	[5-10]	(a)	[20-30]	(a)	[30-40]	(a)
Additional Information:										
Agricultural machinery (new+used)	383	10236	[10-20]	[10-20]	[5-10]	[0-5]	**[20-30]**	**[10-20]**	[30-40]	[20-30]
New agricultural machinery	212	4960	[10-20]	[10-20]	[5-10]	[0-5]	**[20-30]**	**[10-20]**	[30-40]	[10-20]
Used agricultural machinery	171.	5276	[10-20]	[10-20]	[0-5]	[0-5]	**[20-30]**	**[10-20]**	[40-50]	[30-40]

(a) no data provided

Source: Parties' estimates. (RFI no. 6)

131 Notifying Parties' response to RFI no. 6.

132 The Target does not sell non-original spare parts. The market shares of the Notifying Parties are overestimated in the sense they also include the sales of non-original spare parts.

(109) For the majority of the product markets involved, where the combined market share of the Parties is below or equal to 30%, the market share increment brought by the Transaction is also relatively small. In relation to the market for implements (where the combined market share is below 35%), the increment is very small ([0-5]%) given that the Target is hardly present.

(A) Specialty tractors

(110) With regards to new specialty tractors, there has been a decrease in the Parties' combined market share both in value and in volume from 2017 to 2018: the value market share decrease from [30-40]% to [20-30]% and the volume market share from [30-40]% to [30-40]%. As shown in the tables above, both Danish Agro and the Targets have decreased their sales of new specialty tractors in Finland in the last two years. In Finland, there are currently five other distributors offering specialty tractors (J-Trading, Otto Brandt, Agritek, Hako Ground & Garden and Husqvarna), including products from international brands manufacturers such New Holland, Case IH.[133] Hence, post-Transaction, customers have several alternative suppliers they can switch to in case of a price increase.

(111) With regards to used specialty tractors, the Parties' presence is even smaller and their sales have also decreased between 2017 and 2018: the value combined market share decreased from [20-30]% to [20-30]% and the volume combined market share from [30-40]% to [20-30]%. Similarly to the new specialty tractors market, there are several other alternative suppliers of used specialty tractors, to which customers could switch in case of a price increase.

(112) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new and used specialty tractors in Finland due to horizontal non-coordinated effects.

(B) Combine harvesters

(113) With the exception of value market shares for new combine harvesters ([30-40]% in 2018 and [30-40]% in 2017), the Parties' combined market shares for new (volume) and used (value and volume) combine harvesters are moderate. Moreover, the second most important supplier in Finland, Agritek, is not very far from the Parties, with market shares between [20-30]% in both market segments, new and used combine harvesters. Furthermore, in Finland there are currently four other distributers supplying new combine harvesters (AGCO Suomi, Agritek, HCP Finland and Turun Konekeskus), including products from other global brands such as Sampo-Rosenlew, Massey Ferguson and New Holland.[134] In addition, AGCO has recently introduced green-harvesting machinery of another global brand manufacturer in Finland, Fendt,[135] and according to another competitor, "*Agco is going to be important player in the future with new models of Fendt and MF combines*".[136] To the extent that trade-

[133] Form CO, pages 91, 92 and 100.
[134] Form CO, pages 91, 92 and 100.
[135] AGCO's response to the Commission's request for information of 15.02.2019, question 4.
[136] Response to Questionnaire Q2 – Questionnaire to Competitors, question 41.1.

ins influence the sale of used combine harvesters, it is reasonable to expect that this competitive dynamic will also have a positive effect in the used combine harvesters market. Hence, post-Transaction there are several alternative suppliers, both in new and used market segments, to which customers can turn to in case of a price increase by the merged entity.

(114) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new and used combine harvesters in Finland due to horizontal non-coordinated effects.

(C) Forage harvesters

(115) As regards the markets for forage harvesters (new and used), the Transaction will not only combine the two main distributors/retailers but will also reduce the supply to two distributors/retailers, the merged entity with very large market shares (70%-80%) and Agritek with a much smaller market share (20%-30%). However, the Parties' combined market share overstates their market power. For the following reasons, the Commission considers that the merged entity would not be able to profitably increase prices or otherwise exercise market power.

(116) First, and particularly with regard to new forage harvesters, in Finland there has been a concentration of farmland.[137] This not only translates in larger customers with more buying power but also, and in particularly in the case of forage harvesters, it means that farmers are able to use larger machines, instead of the smaller ones. Demand for smaller forage harvesters has kept a few brand manufacturers of larger forage harvesters away from the Finnish market for new forage harvesters.[138] With demand patterns likely to change towards larger machines, expansion of the portfolio of brands already represented in Finland is likely. For example, a competitor expressed its intent to start selling specifically new combine and new forage harvesters.[139]

(117) Second, and particularly with regard to used forage harvesters, customers in Finland also seem to purchase used forage harvesters from abroad.[140] Given that in Finland there are several independent repairers and after-sales service providers capable of servicing these machines, farmers and entrepreneurs also acquire used machines abroad. Contrary to Estonia, in Finland imports of used forage harvesters seem to exert a competitive constraint on the purchase of used forage harvesters. When asked what the reaction would be in case the merged entity were to increase prices, several Finnish customers said they would purchase forage harvesters from abroad.[141] Some

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137 According to the Natural Resources Institute Finland, LUKE, whilst the farmland in Finland has increased the number of farms receiving any kind of support has decrease from 95,596 in 2006 to 51,616 in 2016. Given that all farmers in Finland receive some kind of support, this shows that there has been a trend in consolidating farmland- See Annex 7.1 (C) of the Form CO – Report, Agricultural and Food Sector in Finland 2016/17 from LUKE.

138 Notifying Parties' reply to RFI no 11, question 3; Competitor's response of 18.02.2019 to a Commission's request for information sent on 15.02.2019.

139 Response to Questionnaire Q2 – Questionnaire to Competitors, question 30.1.

140 According to the Parties' own repairs services, 5 machines were imported in 2017 and 2 used machines were imported in 2018 - Notifying Parties' reply to RFI no 11, question 1.

141 Responses to Questionnaire Q3a – Questionnaire to Finnish Customers, question 21.

competitors and manufacturers also consider customers purchasing from abroad a possible reaction of customers.[142]

(118) Overall, the majority of competitors,[143] customers[144] and all brand manufacturers,[145] who participated in the Commission's market investigation, expressed no concerns regarding the impact the Transaction would have in Finland. Although a few customers mentioned the possibility of a price increase, the majority consider the Transaction will either not change the competitive environment in terms of price, quality and choice; or will have a positive impact, in particular in the after-sales markets. One customer commented: "[i]*n my opinion, the transaction strengthens the aftermarket and maintenance of the brands represented by both heads. The Finnish market is quite small, so there is a need for good after-sales services. Prices are unlikely to have an impact, because the European market is open*".[146] Another customer stated: "*I think it is good to become a strong new player investing in Finland, this will affect prices by lowering prices as it increases competition and improves after-sales service*".[147] Moreover, the Finnish customers also consider that the number of distributors, including in forage harvesters, combine harvesters will be sufficient post-transaction to maintain the same level of competition.[148]

(119) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new and used forage harvesters in Finland due to horizontal non-coordinated effects.

7.1.4. Latvia

(120) Danish Agro presence in Latvia is limited to a few internet sales of used tractors and new balers. Danish Agro's agricultural machinery business has no distribution agreement covering the Latvian territory nor physical presence in Latvia (no sales outlets, no repair shops or repair vehicles). In 2017, Danish Agro's market share in the used tractors market was [0-5]% and in the new balers, market was [0-5]%.

(121) Koneskesko is the exclusive distributor of Claas machinery in Latvia. Its market share in the used tractors segment is [0-5]%. Konekesko has a market share above 20% only in the following markets: new balers ([40-50]%), new forage harvesters ([50-60]%) and new combine harvesters ([40-50]%). None of the combine and forage harvesters

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142 Responses to Questionnaire Q2 – Questionnaire to Competitors, question; 38 and Responses to Questionnaire Q1 – Questionnaire to brand Manufacturers, question 28.

143 Responses to Questionnaire Q2 – Questionnaire to Competitors, questions 49.1, 50.1 and 51.1; and Competitor's response of 19.02.2019 to a Commission's request for information sent on 15.02.2019.

144 Responses to Questionnaire Q3a)-Questionnaire to Finnish Customers, question 26, 27, 28 and 29; and Customer's response of 19.02.2019 to a Commission's request for information sent on 15.02.2019; and Customer's response of 28.02.2019 to a Commission's request for information sent on 15.02.2019.

145 Responses to Questionnaire Q1- Questionnaire to Manufacturers, questions 67.1, 68.1 and 69.1

146 Customer's response of 19.02.2019 to a Commission's request for information sent on 15.02.2019, question 9.

147 Responses to Questionnaire Q3a – Questionnaire to Finnish Customers, question 33; and Customer's response of 19.02.2019 to a Commission's request for information sent on 15.02.2019, questions 11, 12 and 13.

148 Responses to Questionnaire Q3a – Questionnaire to Finnish Customers, questions 30, 31 and 32.

markets are however "affected markets", since in these cases the Transaction results in a market share transfer from Konekesko to Danish Agro.

(122) The Transaction gives rise to one affected market for new balers. The Parties' combined value market share is [40-50]%.[149] The increment market share is however very small ([0-5]%). In addition, there are six other distributors offering several branded products, including John Deere products. None of the respondents to the market investigation raised concerns in relation to the horizontal overlaps resulting from the proposed transaction in Latvia.

(123) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market as regards its impact on competition for the retail sale of new balers in Latvia due to horizontal non-coordinated effects.

7.1.5. Lithuania

(124) Danish Agro presence in Lithuania is limited to a few internet sales of used combine harvesters. Danish Agro's agricultural machinery business has no distribution agreement covering the Lithuanian territory nor physical presence in Lithuania (no sales outlets, no repair shops or repair vehicles). In 2017, Danish Agro's value market share in the combine harvesters market was [0-5]%.

(125) Konekesko is the exclusive distributor of Claas machinery in Lithuania. Its value market shares are relatively small in most of all the plausible market segmentations (below 20%), with the exception of the new combine harvesters market ([30-40]%) and the new forage harvesters market ([50-60]%).[150] These markets are however not affected markets, for the Transaction results in a market share transfer from Konekesko to Danish Agro.

(126) The markets where the activities of the Parties overlap are not affected markets under any plausible segmentation.[151] Moreover, in Lithuania there are five other distributors offering several branded products, including John Deere products. In addition, all five distributors offer combine harvesters and at least three of them offer forage harvesters.[152] For these reasons, the Transaction does not raise serious doubts as regards the Parties' horizontal overlaps in Lithuania due to horizontal non-coordinated effects.

7.2. Conglomerate effects

(127) A competitor of the Parties in Lithuania and Latvia claimed that post-Transaction Danish Agro would have significant market power being the main supplier of both agricultural machinery and agricultural inputs (*e.g.* seeds, pesticides and fertilizers) as

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149 The volume market shares are lower: new agricultural machinery ([10-20]%); used and new balers market ([20-30]%); new balers market ([30-40]%).

150 The volume market shares are in the same range. As regards forage harvesters, Konekesko's market share reflects the sale of two machines in 2017, as this is a new market in Lithuania.

151 The Parties' combined value market share in the overall machinery market is below 10%, in the new and used combine harvesters market is circa [10-20]%, and in the used combine harvesters market is below 5%.

152 Responses to Questionnaire Q2 - Questionnaire to Competitors, questions 1 and 2.

well as a purchaser of crops. According to this competitor, Danish Agro could combine the offer of these products and offer "*a reduction of sales prices for agricultural machinery and compensation of this reduction by increased prices for the inputs or reduced grain purchasing prices.*"[153] A competitor in Estonia has also approached the Estonian Competition Authority with a similar complaint.[154]

(128) The Commission has therefore assessed any potential conglomerate effects that may arise as a result of the Transaction in the Baltic countries.

7.2.1. Analytical Framework

(129) According to paragraph 92 to the Non-Horizontal Merger Guidelines, "[w]*hereas it is acknowledged that conglomerate mergers in the majority of circumstances will not lead to any competition problems, in certain specific cases there may be harm to competition*". For instance, foreclosure effects may arise when the combination of products in related markets may confer on the Merged Entity the ability and incentive to leverage a strong market position from one market to another closely related market by means of tying or bundling or other exclusionary practices.[155]

(130) The Non-Horizontal Merger Guidelines distinguish between bundling, which usually refers to the way products are offered and priced by the Merged Entity and tying, usually referring to situations where customers that purchase one good (the tying good) are required to also purchase another good from the producer (the tied good).[156]

(131) While tying and bundling as such are common practices that often have no anticompetitive consequences[157], in certain circumstances such practices may lead to a reduction in actual or potential competitors' ability or incentive to compete. This may reduce the competitive pressure on the Merged Entity allowing it to increase prices or deteriorate supply conditions in other ways.[158]

(132) In assessing the likelihood of such a scenario, the Commission examines, first, whether the merged firm would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third, whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.[159] In practice, these factors are often examined together as they are closely intertwined.

7.2.2. The Notifying Parties' views

(133) Confronted with the complaints, the Notifying Parties argue that it would not have the ability nor the incentive to adopt such foreclosure strategy for the following reasons. First, the sale of agricultural machines and the sale of agricultural supplies are not complementary businesses. Second, there is no demand for the joint provision of

153 Responses to Questionnaire Q2 - Questionnaire to Competitors, question 52.1 and 53.1.
154 Estonian Competition Authority's response to the Commission article 11 (6) request for information.
155 Non-Horizontal Merger Guidelines, paragraph 93.
156 Non-Horizontal Merger Guidelines, paragraph 97.
157 Non-Horizontal Merger Guidelines, paragraph 93.
158 Non-Horizontal Merger Guidelines, paragraph 93.
159 Non-Horizontal Merger Guidelines, paragraphs 111 to 118.

agricultural machinery and agricultural supplies and the demand for each type of product is different. Third, Danish Agro would not have an incentive to combine such businesses since such a combination would not result in additional value nor in a reduction of costs.[160]

7.2.3. The Commission's assessment

(134) Given the nature of the products involved – agricultural machinery on the one hand and seeds, fertilizers, pesticides, or (the purchase of) crops on the other hand -, the merged entity would not be able to leverage its position in one market to foreclose competitors in another by technically tying the products. Given the different times and frequency at which these products are purchased contractual tying also seems very unlikely. If the merged entity were ever to adopt such a foreclosure strategy, it would most likely condition the sales of its products by mixed bundling: where the products are available both separately and jointly but where the sum of the stand-alone price is higher than the bundled price.[161] The Commission hence will focus its analysis on this possibility.

(135) In its assessment, the Commission realised that most of the facts and reasons apply across the different geographic markets mentioned by the complainants. For this reason, the Commission will not present a separate assessment for each geographic market but will highlight the differences whenever necessary.

(136) For the reasons presented below, the Commission considers that the merged entity would not have the ability nor the incentive to foreclose its rivals by combining its sales of agricultural machinery with other agricultural inputs, nor somehow condition those sales on the purchase of crops, in order to foreclose its rivals, causing a detrimental effect on competition.

(137) Firstly, machinery on the one hand and inputs like seeds and fertilizers on the other hand are not complementary products, are purchased for different purposes and, as mentioned above, are purchased at different moments in time and with different frequency (the life cycle of an agricultural machine is between 10 to 15 years; whilst most of the agricultural inputs mentioned above are purchased on a yearly basis). This is even more evident when it comes to conditioning the sale of machinery on the purchase of crops. Moreover, the common customer base for these different products is limited to farmers, as the independent entrepreneurs who offer services to the farmers are not interested in the other products the merged entity has on offer, nor are the potential suppliers of crops. Hence, given the nature of products involved, the merged entity would have difficulties in linking the products together.

(138) Secondly, in order to leverage its position from one market to another, the merged entity has to have market power in the market of the product to which the sale is tied. The merged entity will not have such strong market position in any plausible agricultural machinery market, as explained below.

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160 Notifying Parties' response to RFI no.8, question 15.

161 Non-Horizontal Merger Guidelines, paragraph 96.

(139) In Estonia, with the exception of the markets for forage harvesters (whether new and used taken together ([70-80]%), new only ([70-80]%) or used only ([50-60]%)), combine harvesters (whether new and used taken together ([50-60]%), new only ([60-70]%) or used only ([30-40]%)) and new balers ([30-40]% in 2017, reduced to [20-30]% in 2018) the Parties' combined market shares are below 30% in any other agricultural machinery market.[162] Furthermore, as noted above and discussed in more detail in Chapter 8, the Notifying Parties have offered commitments, which would lower the merged entity's market shares and its market power in these markets.

(140) In Lithuania, with the exception of the markets for new combine and new forage harvesters, the merged entity has a market share below 30% in any other market for agricultural machinery.[163] This means that there are other alternative suppliers to which customers can switch in case they do not want the conditional sale (bundle, tying, discount) the merged entity could allegedly offer. Also in relation to combine harvesters and forage harvesters – where the new entity has a market share of [30-40]% and [50-60]% respectively - the merged entity would not have the ability to adopt such a strategy. The lack of complementarity of the products still applies and the pool of common customers is smaller, as some of them are not farmers but service providers.

(141) In Latvia, with the exception of the markets for new and used balers, and new balers, used and new forage harvesters ([30-40]%), new forage harvesters ([50-60]%); used and new combine harvesters ([40-50]%), the merged entity has market shares below 30% in any other agricultural machinery market.[164] Also for the above mentioned market, there are other alternative suppliers to which customers can switch in case they do not want the conditional sale (bundle, tying, discount) the merged entity could allegedly offer. Moreover, in the case of balers and harvesters the common pool of customers is also smaller since these machines are also sold to service contractors who are not farmers.

(142) With no market power on any plausible market for agricultural products, the merged entity would not be able to leverage its position on these markets to gain more sales on the market for other agricultural inputs or to get lower prices when purchasing the crops. Thirdly, the merged entity would not have any incentive to make the sale of agricultural machinery conditional on the sale of inputs or the purchase of crops, for

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162 As regards the markets and plausible segmentations thereof related to the supply of agricultural inputs (such as feed, fertilizers, pesticides) as well as the market for the purchase of crops, the Notifying Parties only have a market share above 30% in relation to the sale of compound feed for pigs. Given that the Targets are not present on these markets nor on any market upstream or downstream of these types of agricultural supplies (including feed for pigs), these are not affected markets. In any event, it makes no economic sense to make the sale of these products conditional on the sale of machines given that the products are not complementary, are used for different purposes, purchased with different frequencies; the target customers are not necessarily the same and the prices are very different.

163 The merged entity also has no market share above 30% in any market, or plausible segmentation thereof, related to the supply of agricultural inputs (such as feed, fertilizers, pesticides) as well as related to the purchase of crops. In any event, it makes no economic sense to make the sale of these products conditional on the sale of machines.

164 As regards the markets and plausible segmentations thereof related to the supply of agricultural inputs (such as feed, fertilizers, pesticides) as well as the market for the purchase of crops, the merged entity only has a market share above 30% in relation to the sale of compound feed for pigs. In any event, it makes no economic sense to make the sale of these products conditional on the sale of machines.

such strategy would most likely not be profitable. Given the higher prices of machines (in particular forage harvesters) compared with the agricultural inputs, it would be very difficult to compensate the loss made in the machinery (due to price reductions) with gains in sales of agricultural inputs. It would also be very hard and unlikely that the merged entity would successfully propose a discount on an agricultural machine in exchange for a lower price in the purchase of a crop.

(143) For these reasons, the Commission finds that the Transaction does not raise serious doubts as to its compatibility with the internal market due to conglomerate effects.

8. PROPOSED REMEDIES

8.1. Introduction

(144) In order to remove the serious doubts arising from the Transaction in Estonia, as described in Section 7.1.2.2, the Notifying Parties submitted commitments modifying the Transaction on 4 March 2019 (the "Initial Commitments").

(145) In addition, the Notifying Parties have entered into related commitments, *inter alia* regarding the separation of the divested businesses from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested businesses, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

(146) The Commission launched a market test of the Initial Commitments on 6 March 2019, seeking responses from manufacturers, competitors, and customers in Estonia. Following the feedback received from market participants in the market test and the Commission's initial assessment, the Notifying Parties submitted a revised set of commitments on 18 March 2019 (the "Final Commitments").

8.2. Initial Commitments

8.2.1. Description of the Initial Commitments

(147) First, the Initial Commitments consist of the divestment of the Notifying Parties activities of distribution and retail sale of agricultural machinery, implements, spare parts and provision of after-sales service in Estonia as operated by DA Agravis' subsidiary Baltic Agro Machinery ÖÜ (including the distributorship agreement with John Deere) in Estonia (the "Divestment Business"), which includes:

(a) all tangible assets, including the outlet in Järvamaa and current stock of agricultural machinery and spare parts of the Divestment Business;[165]

(b) all intangible assets (including intellectual property rights) of the Divestment Business, including the infrastructure, texts and pictures of the current webpage of the Divestment Business, which will be migrated to the Purchaser;[166]

[165] Initial Commitments, paragraph 5 and Schedule to the Initial Commitments, paragraphs 1 and 2 (a).
[166] Initial Commitments, paragraph 5 and Schedule to the Initial Commitments, paragraph 2 (b).

(c) all contracts, agreements, leases, customer orders, commitments and understandings of the Divestment Business;[167] including but not limited to:

Distribution agreements

- the written distribution agreement with John Deere Walldorf GmbH & Co. KG,
- the written exclusive distribution agreement with Fliegl Agrartechnik GmbH,
- the written exclusive distribution agreement with Kramer-Werke GmbH,
- the oral distribution agreements with Samson Agro A/S, TeeJet Technologies Denmark, Köckerling GmbH & Co. KG, Ludwig Bergmann International Sales GmbH, Bomford Turner Ltd., Fransgard Maskinfabrik A/S, Conor Engineering Ltd., Holmer Maschinenbau GmbH and Antti Teollisuus.

(148) DA Agravis will take best efforts to fulfil and keep the distribution agreements with the Divestment Business.[168]

Lease agreements (real estate)

- With regard to the premises used in Tartu by the Divestment Business, the Initial Commitments include the commitment by DA Agravis through its subsidiary AS Baltic Agro to enter, upon the request of the Purchaser, into a written sub-lease agreement on market terms and on terms not less favourable than the terms under the main lease by AS Baltic Agro with the lessor.
- DA Agravis shall at the request of the Purchaser be obliged to assign the lease of the premises located in Rae Vald, Estonia, currently leased by the target Konekesko Eesti AS to the Divestment Business subject to the lessor's approval. DA Agravis assumes to defray reasonable costs related to the relocation of the Divestment Business within Rae Vald. In case the lessor does not approve the assignment of the lease to the Purchaser and the Purchaser does not have at its disposal facilities for the continuance of the activity currently conducted by the Divestment Business from the outlet in Rae Vald, the Purchaser shall be entitled to continue the lease of the latter leasehold for an interim period of 6 months from Closing.[169]

Leasing contracts

- Lease agreements with SWEDBANK in relation to 13 service vans.
- Lease agreements with SEB in relation to 23 cars and 6 service.

[167] Initial Commitments, paragraph 5 and Schedule to the Initial Commitments, paragraphs 2 (c) and (d).
[168] Schedule to the Initial Commitments, paragraph 2 (d).
[169] Schedule to the Initial Commitments, paragraphs 2 (d) and 3 (d).

- agricultural machines which the Divestment Business subleases to their customers;[170]

(d) the historical customer records and all other records;[171]

(e) all personnel, including key personnel, which includes central management, except for the CEO and CFO.[172]

(149) Second, with regard to the trademark "Baltic Agro Machinery" owned by DA Agravis and in order to facilitate re-branding, the Initial Commitments include the commitment, at the Purchaser's request, to redirect from the domain "balticagromachinery.com" to the new domain of the Purchaser for a period up to 6 months from Closing. Also, the Initial Commitments allow, upon request of the Purchaser, to use the name "Baltic Agro Machinery" to rebrand the Divestment Business in Estonia for a period of up to 6 months from Closing ("re-branding period"). Further, upon request of the Purchaser, DA Agravis and Affiliated Undertakings commit to refrain from using the name "Baltic Agro Machinery" or a name confusingly similar to "Baltic Agro Machinery" in Estonia for a period of 12 months from Closing ("black-out period").[173]Third, the Initial Commitments contain related commitments, including those regarding the separation of the Divestment Business from the businesses retained, the preservation of the viability, marketability and competitiveness of the Divestment Business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.[174]

(150) Fourth, the Initial Commitments offered by the Notifying Parties contain purchaser criteria that are more expansive than those contained in the Commission's standard model for divestiture commitments. The additional purchaser criterion requires the purchaser to obtain written acceptance from John Deere for the continuance of the John Deere distribution agreement on terms no less favourable than under the current ownership of DA Agravis. The additional purchaser criterion is complemented by the commitment by the Notifying Parties not to contract with John Deere for a distributorship of new John Deere agricultural machinery in Estonia for a period of 10 years.[175]

(151) The Notifying Parties consider that the Initial Commitments would eliminate the entire overlap in Estonia in the markets for combine harvesters and forage harvesters in which the Commission has preliminarily expressed serious doubts as to the compatibility of the transaction with the internal market. According to the Notifying Parties, the Divestment Business is largely an autonomous business. It includes all the necessary tangible and intangible assets that enable it to compete effectively on a stand-alone basis (with distribution agreements including most importantly the distribution agreement with John Deere, distribution outlets, leased service vehicles, stock, key personnel and customer records.

[170] Schedule to the Initial Commitments, paragraph 2 (d).
[171] Initial Commitments, paragraph 5 and Schedule to the Initial Commitments, paragraph 2 (e).
[172] Initial Commitments, paragraph 5 and Schedule to the Initial Commitments, paragraphs 2 (f) and (g).
[173] Schedule to the Initial Commitments, paragraph 2 (b).
[174] Initial Commitments, paragraphs 7 ff. and 18 ff.
[175] Initial Commitments, paragraph 16.

8.2.2. Results of the market test

(152) The results of the market test were generally positive. However, only a limited number companies expressed an interest in purchasing the Divestment Business.

(153) All of the respondents that expressed a view indicated that (i) the Initial Commitments were adequate for the Purchaser to become a viable competitor in the Estonian markets for agricultural machinery, implements, spare parts and after-sales services,[176] and (ii) that the Initial Commitments would ensure that post-transaction there would remain sufficient competition in Estonia in the retail sales of agricultural machinery in general and forage harvesters and combine harvesters in particular.[177] Notably, among market participants expressing favourable views were several who had previously indicated concerns in their replies to the Commission's market investigation. One market participant stated: "*If Danish Agro doesn't control 2 both Claas and John Deere, then there would be sufficient competition*."[178] Further, a vast majority of the respondents that expressed a view indicated that they did not see any difficulties or risks in the implementation of the divestiture of the retail business and/or distributorship agreements to the new purchaser.[179]

(154) With respect to the duration of the re-branding period, a vast majority of respondents who provided a view considered both the re-branding period as well as the black-out period to be sufficiently long for the Purchaser to re-brand the Divestment Business.[180] An Estonian customer stated: "*It is very easy to contact their customer to let them [k]now about the name change*."[181] A manufacturer explained: "*Even a shorter period (e.g. 6 month[s]) is long enough to inform the market about the change of naming and establish a new name/brand*."[182] Only two respondents stated that they would prefer longer re-branding periods. A manufacturer replied in this regard in relation to the 6 months re-branding period: "*In general 6 months is short – a 12 months would be more realistic*". Further, a potential purchaser explained also in reference to brand licensing period: "*This is the minimum term. Longer period might be required depending on other conditions, such as relocation of the premises, etc*"[183] and further stated with regard to the black-out period: "*Agricultural machinery market has a long cycle compared to other industries. It takes at least two years (two seasons) to get used to major changes*."[184]

(155) As regards personnel, when being asked for employees they considered important to the Divestment Business, the vast majority of respondents only named personnel included in the Initial Commitments, including in particular manager and Sales

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176 Responses to Q5 – Questionnaire on Proposed Remedies, question 1.
177 Responses to Q5 – Questionnaire on Proposed Remedies, question 4.
178 Response to Q5 – Questionnaire on Proposed Remedies, question 4.1.
179 Responses to Q5 – Questionnaire on Proposed Remedies, question 2.
180 Responses to Q5 – Questionnaire on Proposed Remedies, question 5 and 6.
181 Response to Q5 – Questionnaire on Proposed Remedies, question 5.1.
182 Response to Q5 – Questionnaire on Proposed Remedies, question 6.1.
183 Response to Q5 – Questionnaire on Proposed Remedies, question 5.1.
184 Response to Q5 – Questionnaire on Proposed Remedies, question 6.1.

Director, who was mentioned several times.[185] One potential buyer also named the CEO and CFO as "*critical*" to the Divestment Business.[186]

(156) Several respondents that expressed a view considered it necessary for a suitable purchaser to have experience in the agricultural machinery market.[187] One manufacturer explained in this regard: "*Farming is a niche and requires knowledge of the industry, to understand the mechanisms and culture of this industry*."[188]

(157) However, only a limited number of companies expressed an interest in purchasing the Divestment Business.[189] One respondent explained that in their experience it was not easy to sell an agricultural machinery distribution business in Estonia for three reasons. *Firstly*, most of the current distributors are already selling one of the leading agricultural machinery brands and manufacturers do not approve of a distributor if they are already selling a competing brand. *Secondly*, for outside investors, the Estonian market is not very attractive as it is rather small and with little growth and development opportunities. *Thirdly*, an investor would have to make big investments for relatively little return.[190]

(158) Lastly, in parallel to the market test, a response of the Notifying Parties to a request for information revealed that the Divestment Business would share the same outlet in Tartu with the Retained Business following the merger.[191]

8.2.3. Commission's assessment of the Initial Commitments

8.2.3.1 Scope of the Divestment Business and removal of competition concerns

(159) The Initial Commitments include the entire activities as operated by OÜ Baltic Agro Machinery in the distribution and retail sale of agricultural machinery, implements, spare parts and in the provision of after-sales services in Estonia.

(160) The Initial Commitments, therefore, remove the entire overlap between the Parties' activities in each of the markets for the retail sale of (i) new and used forage harvesters in Estonia, and (ii) new and used combine harvesters in Estonia, in which the Commission raised serious doubts as to the compatibility of the Transaction with the internal market.

8.2.3.2 Viability and competitiveness of the Divestment Business

(161) The Commission considers that, based on the evidence on file and the results of the market test, the Initial Commitments are in general suitable to lead to the divestment of a viable and competitive business. The Baltic Agro Machinery business operates as

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185 Responses to Q5 – Questionnaire on Proposed Remedies, question 3.

186 Responses to Q5 – Questionnaire on Proposed Remedies, questions 1.1, 3 and 4.1.

187 Responses to Q5 – Questionnaire on Proposed Remedies, question 7.1.

188 Response to Q5 – Questionnaire on Proposed Remedies, question 7.1.

189 Response to Q5 – Questionnaire on Proposed Remedies, question 8; Non-confidential summary of a call with a potential buyer dated 15 March 2019; Non-confidential summary of a call with a potential buyer dated 13 March 2019; Non-confidential e-mail of a potential buyer dated 14 March 2019.

190 Non-confidential summary of a call with a potential buyer dated 15 March 2019.

191 Notifying Parties' response to RFI 10 on 6 March 2019.

a stand-alone business within Danish Agro and DA Agravis, including through separate sales outlets and repair shops and personnel.

(A) Re-branding periods

(162) Two respondents to the market test raised concerns with respect to the duration of the re-branding and black-out periods, as summarized in paragraph (154).

(163) The Commission finds that the time periods offered by the Notifying Parties in the Initial Commitments are sufficient to re-brand the Divestment Business. First, the responses to the initial market investigation as well to the market test demonstrate that the brands of machinery manufacturers are considerably more relevant to customers than the brands of the distributors. Second, the majority of respondents to the market test expressed a view that the duration of both periods (re-branding and black-out) is sufficiently long to make customers aware of the new company name.[192] Furthermore, the Estonian market and the potential customer base are relatively small. Several market participants credibly explained that the duration of both periods is sufficiently long to make customers aware of the new company name.[193]

(B) Key personnel

(164) In light of the results of the market test, the Commission considers that the key personnel included in the Initial Commitments is sufficiently comprehensive, as it includes all of the main personnel including in particular the manager and Sales Director. While a single potential buyer named the CEO and CFO of Baltic Agro Machinery OÜ as critical to the Divestment Business, the Notifying Parties credibly explained to the Commission that the Manager and Sales Director is effectively acting as the CEO of Baltic Agro Machinery OÜ, while the official CEO and CFO are responsible for several subsidiaries within the Danish Agro Group and are not involved in the daily operations of the Divestment Business.[194] Hence, the Commission does not consider them critical to the Divestment Business in order to establish the Divestment Business as a competitor in Estonia.

(C) Premises in Tartu

(165) The Commission finds that the Initial Commitments are not sufficient with respect to the premises of the Divestment Business in Tartu. Since the Divestment Business would have to share the building with the retained business, this would impair the viability and competitiveness of the Divestment Business as well as its ability to establish itself as a new competitor on the agricultural machinery market.

8.2.3.3 Purchaser criteria

(166) The Commission considers that the additional purchaser criterion of written acceptance by John Deere of the continuance of the distribution agreement (see paragraph (150)) is necessary in the circumstances of the case at hand. The transfer of

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192 Response to Q5 – Questionnaire on Proposed Remedies, questions 5, 5.1, 6 and 6.1.
193 Response to Q5 – Questionnaire on Proposed Remedies, question 5.1 and 6.1.
194 Form RM, para. 65 ff.

the distributorship agreement with John Deere, which is the main brand sold by the Divestment Business, is critical for the viability of the Divestment Business.

(A) Purchasers

(167) Only a limited number of respondents to the market test expressed an interest to purchase the Divestment Business. Moreover, in order to successfully develop the Divestment Business, the potential purchaser would need to obtain the consent of John Deere. Against this background, the Commission cannot conclude with the pre-requisite degree of certainty that the Notifying Parties will find a suitable purchaser for the Divestment Business, within the divestiture period.

8.2.3.4 Conclusion

(168) The Commission therefore considers that the Initial Commitments would not be suitable to remove the serious doubts raised by the Transaction in a clear-cut manner.

8.3. Final Commitments

8.3.1. Description of the Final Commitments

(169) To address the shortcomings of the Initial Commitments, the Notifying Parties submitted their revised version in the form of Final Commitments. The main modifications included in the Final Commitments with respect to the Initial Commitments are the following:

(a) With regard to the purchaser, the inclusion of an upfront buyer requirement limited to the Baltic transaction.[195]

(b) With regard to the premises in Tartu, DA Agravis commits, upon request of the Purchaser, to lease the premises for an interim period of 6 months from Closing. In this 6 months period, DA Agravis commits, at the request of the Purchaser, to use best efforts to guide and assist the Purchaser in finding new suitable premises in Tartu for the continuance of the Divestment Business. In the event that the Purchaser does not succeed in finding new suitable premises in Tartu within said 6 months period, DA Agravis commits, at the request of the Purchaser, to promptly and no later than 6 months following the expiry of the first 6 months period assign suitable and comparable premises in Tartu for the continuance of the Divestment Business. If no suitable and comparable premises in Tartu are available, DA Agravis commits to assign, at the expiry of the second 6 months period, the premises in Tartu located at Kogre tee 7, Tartu 61708 to the Purchaser, either as a purchase on market terms or as a lease on market terms at the option of the Purchaser, for the continuance of the Divestment Business. The interim lease period shall be extended accordingly until new suitable and comparable premises have been assigned and in no event exceeding more than 12 months from Closing. DA Agravis commits to defray reasonable costs related to the physical moving of the Divestment Business

[195] Final Commitments, paragraph 3.

from the current premises in Tartu to the new premises in Tartu for the Divestment Business.

8.3.2. Commission's assessment of the Final Commitments

(170) With regard to the amendments included in the Final Commitments, the Commission considers the following.

(171) The Commission finds that the upfront buyer requirement with regard to the Baltic transaction removes all concerns regarding potential competitive harm arising due to DA Agravis not finding a suitable purchaser for the Divestment Business within the divestiture period.

(172) The Commission considers that the Final Commitments are suitable to remove the Commission's concerns in relation to the premises in Tartu. The Commission finds that the new solution will ensure that the Divestment Business is able to establish itself as a new competitive force and a stand-alone business on the agricultural machinery market. The Commission takes into account that the current premises do not contain any significant adaptations (e.g. for the repair of vehicles) and do not operate under special permissions (e.g. environmental permits) which could make it difficult to find new appropriate premises.[196]

8.4. Conclusion

(173) For the reasons outlined above, the Commission considers that the Final Commitments are capable of removing serious doubts as to the compatibility of the Transaction with the internal market.

9. CONDITIONS AND OBLIGATIONS

(174) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market

(175) The fulfilment of the measures that gives rise to the structural change of the market is a condition, whereas the implementing steps that are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

[196] As per response of the Notifying Parties' to RFI of 15 March 2019, dated 15 March 2019.

(176) In accordance with the basic distinction between conditions and obligations described in the preceding paragraph, the commitments in Section B of the Final Commitments set out in the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(177) The full text of the Final Commitments is attached to this Decision as the Annex and forms an integral part of this Decision.

10. CONCLUSION

(178) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the Final Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

Annex

2019.03.18

Case M.9163 – DA AGRAVIS MACHINERY HOLDING / AS KONEKESKO EESTI / SIA KONEKESKO LATVIJA / UAB KONEKESKO LIETUVA

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), DA Agravis Machinery Holding A/S and Danish Agro Machinery Holding A/S (the "***Notifying Parties***") hereby enter into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering the acquisition of AS Konekesko Eesti, SIA Konekesko Latvija, UAB Konekesko Lietuva and the assets and activities related to distribution and sale of agricultural machinery in Finland from Konekesko Oy (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in the Schedule.

   Baltic Transaction: DA Agravis Machinery Holding A/S' proposed acquisition of the sole control of AS Konekesko Eesti, SIA Konekesko Latvija and UAB Konekesko Lietuva.

   Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of 3 months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

DA Cash Pool: the cash pool established by Danish Agro a.m.b.a. with all its subsidiaries meaning that Danish Agro a.m.b.a., as the ultimate parent company in the group, finances the daily operation of its subsidiaries, including the Divestment Business, by providing overdraft facilities from the said cash pool to these subsidiaries. The facility under the cash pool with the Divestment Business is limited to EUR […] including accrued interest.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by DA Agravis Machinery Holding A/S and who has/have received from DA Agravis Machinery Holding A/S the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at […].

Effective Date: the date of adoption of the Decision.

Finnish Transaction: Danish Agro Machinery Holding A/S' proposed acquisition of the sole control of the assets and activities related to distribution and sale of agricultural machinery in Finland from Konekesko Oy.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by DA Agravis Machinery Holding A/S for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by DA Agravis Machinery Holding A/S, and who has/have the duty to monitor DA Agravis Machinery Holding A/S' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Parties and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

DA Agravis Machinery Holding A/S, incorporated under the laws of Denmark, with its registered office at Kornmarken 1, 8464 Galten, Denmark and registered with the Commercial/Company Register at the Danish Business Authority under number 36 90 70 37.

Section B. The commitment to divest and the Divestment Business

<u>Commitment to divest</u>

2. In order to maintain effective competition, DA Agravis Machinery Holding A/S commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, DA Agravis Machinery Holding A/S commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If DA Agravis Machinery Holding A/S has not entered into such an agreement at the end of the First Divestiture Period, DA Agravis Machinery Holding A/S shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.

3. The Baltic Transaction shall not be implemented before DA Agravis Machinery Holding A/S or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 18. Whereas the Finnish Transaction can be implemented by Danish Agro Machinery Holding A/S from the Effective Date.

4. DA Agravis Machinery Holding A/S shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, DA Agravis Machinery Holding A/S or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and

(b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

5. In order to maintain the structural effect of the Commitments, the Notifying Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

<u>Structure and definition of the Divestment Business</u>

6. The Divestment Business consists of the activities of distribution and sale of agricultural machinery, implements, spare parts and provision of after-sales service in Estonia as operated by OÜ Baltic Agro Machinery. In Estonia, OÜ Baltic Agro Machinery is an authorised dealer of John Deere products. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel.

7. In addition, the Divestment Business includes the benefit, for a transitional period of up to 12 months after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which DA Agravis Machinery Holding A/S or its Affiliated Undertakings supply products or services to the Divestment Business unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the operations.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Notifying Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, DA Agravis Machinery Holding A/S undertakes:

   (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to DA Agravis Machinery Holding A/S' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, DA Agravis Machinery Holding A/S shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. DA Agravis Machinery Holding A/S must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. The Notifying Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) it is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by DA Agravis Machinery Holding A/S have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by DA Agravis Machinery Holding A/S and do not report to any individual outside the Divestment Business.

10. Until Closing, DA Agravis Machinery Holding A/S shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which DA Agravis Machinery Holding A/S is retaining. Immediately after the adoption of the Decision, DA Agravis Machinery Holding A/S shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the

Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by DA Agravis Machinery Holding A/S. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 6(c) of these Commitments. The Commission may, after having heard DA Agravis Machinery Holding A/S, require DA Agravis Machinery Holding A/S to replace the Hold Separate Manager.

11. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise DA Agravis Machinery Holding A/S' rights as shareholder in the legal entity or entities that constitute the Divestment Business (except for its rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling DA Agravis Machinery Holding A/S' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of DA Agravis Machinery Holding A/S. Upon request of the Monitoring Trustee, DA Agravis Machinery Holding A/S shall cause such members of the boards to resign.

<u>Ring-fencing</u>

12. DA Agravis Machinery Holding A/S shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by DA Agravis Machinery Holding A/S before the Effective Date will be eliminated and not be used by DA Agravis Machinery Holding A/S. This includes measures vis-à-vis DA Agravis Machinery Holding A/S' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. DA Agravis Machinery Holding A/S may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to DA Agravis Machinery Holding A/S is required by law.

<u>Non-solicitation clause</u>

13. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 2 years after Closing.

<u>Due diligence</u>

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, DA Agravis Machinery Holding A/S shall, subject to customary confidentiality

assurances and non-solicitation undertakings and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Business;

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

15. DA Agravis Machinery Holding A/S shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). DA Agravis Machinery Holding A/S shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

16. DA Agravis Machinery Holding A/S shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(b) The Purchaser shall have the financial resources, whether as equity or loan capital, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

(c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business;

(d) The Purchaser has obtained written acceptance from John Deere for the continuance of the John Deere distribution agreement on terms not less favourable than under the current ownership of DA Agravis Machinery Holding A/S. DA Agravis Machinery Holding A/S or any of its Affiliated Undertakings will not for a period of 10 years from the Effective Date contract with John Deere for a distributorship of new John Deere agricultural machinery in Estonia.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When

DA Agravis Machinery Holding A/S has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. DA Agravis Machinery Holding A/S must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

19. DA Agravis Machinery Holding A/S shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Parties commit(s) not to close the Concentration before the appointment of a Monitoring Trustee.

20. If DA Agravis Machinery Holding A/S has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by DA Agravis Machinery Holding A/S at that time or thereafter, DA Agravis Machinery Holding A/S shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:
    (i) at the time of appointment, be independent of the Notifying Parties and its/their Affiliated Undertakings;
    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
    (iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by DA Agravis Machinery Holding A/S

23. No later than two weeks after the Effective Date, DA Agravis Machinery Holding A/S shall submit the name or names of one or more natural or legal persons whom DA Agravis Machinery Holding A/S proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, DA Agravis Machinery Holding A/S shall submit a list of one or more persons whom DA Agravis Machinery Holding A/S proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, DA Agravis Machinery Holding A/S shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, DA Agravis Machinery Holding A/S shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by DA Agravis Machinery Holding A/S

25. If all the proposed Trustees are rejected, DA Agravis Machinery Holding A/S shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom DA Agravis Machinery Holding A/S shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or DA Agravis Machinery Holding A/S, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by DA Agravis Machinery Holding A/S with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that DA Agravis Machinery Holding A/S does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by DA Agravis Machinery Holding A/S before the Effective Date is eliminated and will not be used by DA Agravis Machinery Holding A/S and
- decide whether such information may be disclosed to or kept by DA Agravis Machinery Holding A/S as the disclosure is reasonably necessary to allow DA Agravis Machinery Holding A/S to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and DA Agravis Machinery Holding A/S or Affiliated Undertakings;

(iii) propose to DA Agravis Machinery Holding A/S such measures as the Monitoring Trustee considers necessary to ensure DA Agravis Machinery Holding A/S' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending DA Agravis Machinery Holding A/S a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending DA Agravis Machinery Holding A/S a non-confidential copy at the same time, if it concludes on reasonable grounds that DA Agravis Machinery Holding A/S is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending DA Agravis Machinery Holding A/S a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price, […], the Divestment Business by way of a sale and purchase of 100 % of the shares in the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 15 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of DA Agravis Machinery Holding A/S, subject to the Notifying Parties' unconditional obligation to divest at […] in the Trustee Divestiture Period. The Divestiture Trustee shall in any event procure that the following terms are included in the sale and purchase agreement (as well as in any ancillary agreements):

(i) The Divestiture Trustee shall ensure that the Purchaser of the Divestment Business undertakes as a condition for Closing in the sale and purchase agreement to settle via cash payment the Divestment Business' debt under the DA Cash Pool together with accrued interests as per Closing to Danish Agro a.m.b.a.;

(ii) The Divestiture Trustee shall ensure that the Purchaser of the Divestment Business undertakes a condition according to which the Divestment Business' store, repair and service shop located at Tehnika 5, Tartu 51014, Estonia is either (i) moved to another location of the Purchaser within 6 months from Closing or (ii) at the expiry of said 6 months period moved to the premises assigned at the Purchasers request by DA Agravis Machinery Holding A/S or to other premises contracted by the Purchaser within a new 6 months period. If no suitable and comparable premises in Tartu is available at the expiry of the latter 6 months period, DA Agravis Machinery Holding A/S shall at the request of the Purchaser be obliged to assign the premises in Tartu currently owned and operated by Konekesko Eesti AS located at Kogre tee 7, Tartu 61708 to the Purchaser, either as a purchase or as a lease on market terms at the option of the Purchaser, for the continuance of the Divestment Business. The Purchaser will be able to continue the lease of the current premises located at Tehnika 5, Tartu 51014, Estonia for an interim period until the Purchaser has moved to another location of the Purchaser or DA Agravis Machinery Holding A/S has assigned a suitable and comparable premises and in no event exceeding more than 12 months from Closing;

(iii) The Divestiture Trustee shall ensure that the Purchaser of the Divestment Business undertakes a condition according to which the Divestment Business' store, repair and service shop located at Rukki tee 8, Lehmja küla, Rae vald, 75306, Harjumaa, Estonia is either (i) moved to another location of the Purchaser or (ii) moved to the building located at Põrguvälja tee 3a, Pildiküla, Rae vald, 75308 Harjumaa, Estonia, from which Konekesko Eesti AS currently operates, to the extent that the lessor approves the Purchaser, in the absence of which the Purchaser can continue the lease of the outlet for an interim period of 6 months from Closing; and

(iv) The Divestiture Trustee shall ensure that the name and brand "Baltic Agro Machinery" remains with Danish Agro Group and that the purchaser will not maintain or acquire any rights to the name or the brand "Baltic Agro Machinery" or any other corporate identities derived from "Baltic Agro Machinery". As an action for Closing, the purchaser shall change the name of the Divestment Business to a new name which is not confusingly similar to "Baltic Agro Machinery".

31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Parties.

III. <u>Duties and obligations of the Parties</u>

32. DA Agravis Machinery Holding A/S shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of DA Agravis Machinery Holding A/S' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and DA Agravis Machinery Holding A/S and the Divestment Business shall provide the Trustee upon request with copies of any document. DA Agravis Machinery Holding A/S and the Divestment Business shall upon request make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

33. DA Agravis Machinery Holding A/S shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. DA Agravis Machinery Holding A/S shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. DA Agravis Machinery Holding A/S shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each

stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

34. DA Agravis Machinery Holding A/S shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, DA Agravis Machinery Holding A/S shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. DA Agravis Machinery Holding A/S shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to DA Agravis Machinery Holding A/S for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

36. At the expense of DA Agravis Machinery Holding A/S, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to DA Agravis Machinery Holding A/S' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should DA Agravis Machinery Holding A/S refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard DA Agravis Machinery Holding A/S. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served DA Agravis Machinery Holding A/S during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. DA Agravis Machinery Holding A/S agrees that the Commission may share Confidential Information proprietary to DA Agravis Machinery Holding A/S with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

38. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

39. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

    (a) the Commission may, after hearing the Trustee and DA Agravis Machinery Holding A/S, require DA Agravis Machinery Holding A/S to replace the Trustee; or

    (b) DA Agravis Machinery Holding A/S may, with the prior approval of the Commission, replace the Trustee.

41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from DA Agravis Machinery Holding A/S or, in appropriate cases, on its own initiative. Where DA Agravis Machinery Holding A/S requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall DA Agravis Machinery Holding A/S be entitled to request an extension within the last month of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

duly authorised for and on behalf of
DA Agravis Machinery Holding A/S and Danish Agro Machinery Holding A/S

SCHEDULE

1. The Divestment Business as operated to date has the following legal and functional structure:

Baltic Agro Machinery OÜ, reg. no. 10346159, is an Estonian limited company with registered place of business and management at Tehnika 9, Türi 72213, Järvamaa, Estonia. The Divestment Business is owned by DA Agravis Machinery Holding A/S, which in turn is ultimately owned by Danish Agro a.m.b.a. and is, currently, part of the Danish Agro Group.

The main activity of the Divestment Business is sale of agricultural machinery and spare parts from John Deere in Estonia. In addition, the Divestment Business is active with sale of implements and spare parts from various brands and provision of service repairs of agricultural machinery and implements in Estonia.

The management and the activities of the Divestment Business are operated from three locations in Estonia placed at the following addresses:

- Tehnika 9, Türi 72213, Järvamaa, Estonia
- Tehnika 5, Tartu 51014, Estonia
- Rukki tee 8, Lehmja küla, Rae vald, 75306, Harjumaa, Estonia

The three aforementioned locations are each structured with a sales store/showroom, a spare parts stock and a service repair shop.

In addition to the three locations, the Divestment Business has 17 specialized service repair vehicles, which provide service and repairs to the customers at their premises.

The Divestment Business owns its outlet located at Tehnika 9, Türi 72213, Järvamaa, Estonia.

The two other outlets located at Tehnika 5, Tartu 51014, Estonia and Rukki tee 8, Lehmja küla, Rae vald, 75306 Harjumaa, Estonia, are rented by the Divestment Business of AS Baltic Agro, an Affiliated Undertaking.

In respect of the outlet located at Tehnika 5, Tartu 51014, Estonia the Divestment Business has a sub-lease from AS Baltic Agro who in turn has a lease agreement with a third party. The lease agreement between AS Baltic Agro and said third party expires at the end of […].

A chart of the Divestment Business' organization is attached as **annex 1**, which illustrates each function within the Divestment Business and the employees working the said functions.

2. **In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:**

(a) the following main tangible assets:

An overview of the Divestment Business' most important tangible assets is annexed as **annex 2 (A1)**.

An overview of the current stock of agricultural machinery and spare parts of the Divestment Business is annexed as **annex 2 (A2)**.

A schedule of the receivables of the Divestment Business is annexed as **annex 2 (A3)**.

The enclosed annexes will be updated as per Closing.

(b) the following main intangible assets:

An overview of all assets, including the intangible assets, owned by the Divestment Business is annexed as **annex 2 (B)**. The annex will be updated as per Closing.

The infrastructure, texts and pictures of the current webpage of the Divestment Business will be migrated to the Purchaser. The current corporate identities of the Divestment Business of the webpage, which are based on the corporate identities of Danish Agro Group, and any reference to Danish Agro Group/Affiliated Undertakings from the webpage shall be completely removed from the webpage no later than 1 month from Closing.

At the Purchaser's request, DA Agravis Machinery Holding A/S shall procure that the domain "balticagromachinery.com" will redirect to the new domain of the Purchaser for a period of up to 6 months from Closing.

At the Purchaser's request, DA Agravis Machinery Holding A/S shall procure that the Purchaser is allowed to use the name "Baltic Agro Machinery" to rebrand the new identity of the Divestment Business in Estonia for a period of up to 6 months from Closing. Other than the names used by the Danish Agro Group at the Effective Date, DA Agravis Machinery Holding A/S and Affiliated Undertakings will at the Purchasers request refrain from using the name "Baltic Agro Machinery" or a name confusingly similar to "Baltic Agro Machinery" in Estonia for a period of 12 months from Closing. However, DA Agravis Machinery Holding A/S or an Affiliated Undertaking shall be entitled to register the name "Baltic Agro Machinery" as a defensive, protective measure.

(c) the following main licences, permits and authorisations:

The Divestment Business has a licence to Microsoft Navision.

(d) the following main contracts, agreements, leases, commitments and understandings:

Written distribution agreements

- Distribution agreement with John Deere Walldorf GmbH & Co KG
- Exclusive distribution agreement with Fliegl Agrartechnik GmbH
- Exclusive distribution agreement with Kramer-Werke GmbH

DA Agravis Machinery Holding A/S will take best efforts to fulfil and keep the above-mentioned distribution agreements with the Divestment Business.

Oral distribution/supplier agreements

The Divestment Business has oral agreements with the following manufacturers/suppliers:

- Samson Agro A/S
- TeeJet Technologies Denmark
- Köckerling GmbH&CoKG
- Ludwig Bergmann International Sales GmbH
- Bomford Turner Ltd
- Fransgard Maskinfabrik A/S
- Conor Engineering Ltd
- Holmer Maschinenbau GmbH
- Antti Teollisuus

DA Agravis Machinery Holding A/S will take best efforts to fulfil and keep the above-mentioned distribution agreements with the Divestment Business.

Lease agreements (real property)

AS Baltic Agro and the Divestment Business will conclude a written sub-lease agreement on market terms for the sub-lease of the outlet located at Tehnika 5, Tartu 51014, Estonia at terms not less favourable than the terms under the main lease by AS Baltic Agro with the lessor.

DA Agravis Machinery Holding A/S shall at the request of the Purchaser be obliged to assign the lease of the premises located at Põrguvälja tee 3a, Pildiküla, Rae vald, 75308 Harjumaa, Estonia currently leased by Konekesko Eesti AS to the Divestment Business/Purchaser subject to the lessor's approval. DA Agravis Machinery Holding A/S further assumes to defray reasonable costs related to the relocation of the Divestment Business from Rukki tee 8, Lehmja küla, Rae vald, 75306 Harjumaa, Estonia to the premises located at Põrguvälja tee 3a, Pildiküla, Rae vald, 75308 Harjumaa, Estonia. In the event that the lessor of Konekesko Eesti AS' current lease located at Põrguvälja tee 3a, Pildiküla, Rae vald, 75308 Harjumaa, Estonia will not approve the assignment of the lease to the Purchaser and the Purchaser does not have at its disposal facilities for the continuance of the activity currently conducted by the Divestment Business from the outlet located at Rukki tee 8, Lehmja küla, Rae vald, 75306 Harjumaa, Estonia, the Purchaser shall be entitled to continue the lease of the latter leasehold for an interim period of 6 months from Closing.

Leasing contracts

At this point, the Divestment Business has leased 13 service vans from SWEDBANK. All these service vans are leased on operational leasing contracts. An overview of the vans leased from SWEDBANK is annexed as **annex 2 (D1)**.

In addition, the Divestment Business leases 23 cars and 6 service vans from SEB. These vehicles are leased on operational leasing contracts as well. An overview of the vans leased from SEB is annexed as **annex 2 (D2)**. The remaining leased machines that appear in said annex are agricultural machines, which the Divestment Business subleases to their customers.

(e) the following customer, credit and other records:

The historical customer records and all other records will be included in the Divestment Business.

(f) the following Personnel:

All personnel mentioned in the organization scheme annexed as annex 1 and currently working for the Divestment Business save for […] (CEO) and […] (CFO), cf. para b in this schedule, will be transferred to the purchaser of the Divestment Business.

A list of the Personnel is annexed as **annex 2 (F)**.

(g) the following Key Personnel:

The following personnel employed by the Divestment Business shall be considered "Key Personnel":

First Name	Last Name	Job Title
[…]	[…]	Manager/Sales Director
[…]	[…]	Accountant
[…]	[…]	Marketing Manager
[…]	[…]	Aftermarket Manager
[…]	[…]	Product Manager Tractors
[…]	[…]	Product Manager Combines and Harvesters
[…]	[…]	Product Manager Turf Equipment
[…]	[…]	Product Manager Farm Implements
[…]	[…]	Used Equipment Manager
[…]	[…]	Sales administrator
[…]	[…]	Marketing Assistant
[…]	[…]	Service Manager/Technical adviser
[…]	[…]	Workshop Manager Tartu
[…]	[…]	Workshop Manager Türi
[…]	[…]	Workshop Manager Jüri
[…]	[…]	Product Manager Non John Deere Brands
[…]	[…]	Product Manager Grain Handling

The "Hold Separate Manager" shall be […].

3. The Divestment Business shall not include:

(a) […] (CEO) and […] (CFO).

(b) Any rights to the name and the brand "Baltic Agro Machinery" or any other corporate identities derived from "Baltic Agro Machinery".

(c) The domain "balticagromachinery.com". At the Purchaser's request, the domain "balticagromachinery.com" will redirect to the new domain of the Purchaser for a period of up to 6 months from Closing.

(d) The leased premises located at Tehnika 5, Tartu 51014, Estonia will not be included in the Divestment Business. The Purchaser shall though be entitled to continue the lease of the current premises located at Tehnika 5, Tartu for an interim period of 6 months from Closing. In this 6 months period, DA Agravis Machinery Holding A/S shall at the request of the Purchaser use best efforts to guide and assist the Purchaser in finding new suitable premises in Tartu for the continuance of the Divestment Business. In the event that the Purchaser do not succeed in finding new suitable premises in Tartu within said 6 months period, DA Agravis Machinery Holding A/S shall at the request of the Purchaser promptly and no later than 6 months following the expiry of the first 6 months period be obliged to assign a suitable and comparable premises in Tartu for the continuance of the Divestment Business. If no suitable and comparable premises in Tartu is available, DA Agravis Machinery Holding A/S shall at the expiry of the second 6 months period be obliged to assign the premises in Tartu located at Kogre tee 7, Tartu 61708 to the Purchaser, either as a purchase on market terms or as a lease on market terms at the option of the Purchaser, for the continuance of the Divestment Business. The interim lease period shall be extended accordingly until new suitable and comparable premises has been assigned and in no event exceeding more than 12 months from Closing. DA Agravis Machinery Holding A/S assumes to defray reasonable costs related to the physical moving of the Divestment Business from Tehnika 5, Tartu 51014, Estonia to the new premises in Tartu for the Divestment Business.

(e) The leased premises located at Rukki tee 8, Lehmja küla, Rae vald, 75306, Harjumaa, Estonia will not be included to the extent that the purchaser resolves either (i) to move the outlet to another location of the purchaser or (ii) move the outlet to the premises located at Põrguvälja tee 3a, Pildiküla, Rae vald, 75308 Harjumaa, Estonia from which Konekesko Eesti AS currently operates. Option (ii) is subject to the lessor's approval of the purchaser/the Divestment Business as new lessee in the absence of which the lease of the premises located at Rukki tee 8, Lehmja küla, Rae vald, 75306, Harjumaa, Estonia can continue for an interim period of 6 months from Closing.

4. **If there is any asset or personnel which is not be covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.**

Annexes 1-2

[…]