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***Case No IV/M.009 -  
FIAT GEOTECH /  
FORD NEW HOLLAND***

Only the Italian text is authentic This is an unofficial english translation.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 08.02.1991

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TRANSLATION

MERGER PROCEDURE  
ARTICLE 6(1) (b) DECISION

PUBLIC VERSION

Registered with advice of delivery

Notifying party

Dear Sirs,

Subject: Case No. IV/M009 - Fiat Geotech/Ford New Holland  
Your notification of 7 January 1991 pursuant to Article 4 of Council Regulation No. 4064/89

1. The above notification concerns the acquisition by Fiat (through its affiliate Fiat Geotech) of the whole activity of Ford Motor in the field of agricultural machinery and earth moving machines, which is carried out by its subsidiary Ford New Holland (FNH).
2. According to the agreement signed on 19 December 1990, both parties will create a new undertaking grouping Ford New Holland and its subsidiaries and Fiat Geotech, in which Fiat will hold at a first stage 80% of the capital and 100% of the ordinary shares and Ford will keep 20% and limited voting rights. Fiat will purchase the remaining 20% share of Ford in two further stages, taking place the second and fourth year from the closing time. Ford will withdraw from the markets concerned by the proposed concentration.
3. In addition, Ford will transfer to the holding company or its affiliates, within two years from closing, its "European Affiliate Assets", which are seven marketing centres in Europe currently managed within Ford Motor corporate structure. In the meantime, these Assets will continue to act as distributors of FNH products. Furthermore, other minor equity interests and assets are included within the framework of the overall deal.

I. THE OPERATION IS A CONCENTRATION UNDER THE MERGER REGULATION

4. The notified operation is a concentration in the sense of Article 3(1)(b) as Fiat will acquire control of the new holding company and Ford will withdraw from the markets concerned.

Community dimension

5. The notified operation is of a Community dimension since in 1989 the aggregate worldwide turnover of Fiat Spa was 33.2 billion Ecu (of which Fiat Geotech accounted for 1.9 billion) and FNH was 2.3 billion Ecu, and the aggregate Community-wide turnover of Fiat Spa was 29.3 billion Ecu (Fiat Geotech 1.2 billion) and FNH 605 million Ecu, of which not more than two-thirds was achieved within one and the same Member State.

6. On these grounds the Commission finds that the notified concentration falls within the scope of the Merger Regulation.

Ancillary restraints

7. In addition to the main contract, the parties have subscribed to the following agreements which have an effect on the Community market:

- an exclusive licence agreement for the use of the Ford oval trademark on tractors and on FNH signs for a four-year period and for the use of the Ford trademark in block letters on FNH machines and signs for a ten-year period;
- a transitional services agreement by virtue of which Ford agrees to provide to Fiat, upon its request and during a four-year period, all those services that FNH enjoys at present in the Ford group.

8. In addition, Ford agrees not to operate, whether directly or indirectly, in the production and sale of agricultural and industrial tractors, agricultural machinery and earth moving equipment for five years after closing.

9. The abovementioned agreements can be considered directly related and necessary to the implementation of the concentration and thus, to the extent that they are restrictions, are covered by the Commission Notice on restrictions ancillary to concentrations.

II. NO SERIOUS DOUBTS AS TO THE COMPATIBILITY OF THE CONCENTRATION WITH THE COMMON MARKET

The relevant markets

10. The sector principally affected by the notified operation is the agricultural machinery industry. In addition, however, it also concerns the earth moving machinery industry to the extent that both parties are present in this sector.

11. The agricultural machinery sector affected by this operation can be divided into three product markets, of which the tractor market is by far the most significant (78% of the total of the sector in the EEC in 1989), the other two being combine harvesters and hay and forage machines (13% and 9%, respectively, in the EEC in 1989). The three products are clearly distinguishable by function, price and technical design. Nevertheless, a number of producers, including both parties to the notified operation, supply all three products, and the overall market behaviour of these "full liners" tends to reflect a global strategy prevailing within the industry. In addition, full liners distribute their products through a single dealer network, thereby enabling the latter to provide a full range of products to the farmer.

12. A common feature of all three markets is the steady decline in volume of sales in the EEC over the last ten years, a trend which is likely to continue. There is at present considerable overcapacity in all three markets within the Community, and a degree of rationalisation is currently in progress within the industry as a whole.

13. Within the earth moving machinery sector, only backhoe loaders are affected by the notified operation, this being the only product line produced by FNH, and which accounted for around 20 million ECU of its annual turnover in the EEC in 1990. Following the concentration the new group will have around 10% share of this market, which does not give rise to any competition concerns.

a) The tractor market

14. Tractors are the basic piece of equipment for mechanisation of the farm unit. They are a source of mobile power which is linked to other machines or implements in order to accomplish a wide variety of agricultural operations. It is accepted that tractors constitute a single market, although they cover different lines according to their size, horsepower and special applications, where not all producers are equally active.

15. The two most important product lines are "conventional" and "special" tractors, which account for about 70% of the world demand in volume and where all the major manufacturers are present. The majority of Fiat Geotech's production is in these two lines and also "crawler" tractors (a particular variety specifically designed for wet and hilly areas). FNH is present in the "conventional" and "special" lines, but also offers "micro" and "heavy 4x4" tractors.

16. The first question to be posed in order to assess the impact of the concentration concerns the definition of the geographical market, that is, whether there is a European-wide market or different national markets. However, the question may be left open because the increase in market shares of Fiat that will result from the concentration does not lead to the creation or strengthening of a dominant position in either the EEC or the different Member States.

17. At present, Fiat is in the leading position in the tractor market in Italy (market share in value estimated from list prices at 41.4% in 1989), as well as in the EEC (16.9%). With the acquisition of FNH, Fiat will improve its position in the EEC (24.6%) and to a small extent in Italy (44.1%) and will also have the greatest market share in France (22.8%) and the United Kingdom (21.5%).

18. As a whole, however, it can be said that the Fiat and FNH organisations are complementary due to their different geographical penetration (Fiat is stronger in Italy, Spain and France, FNH in the United Kingdom, Denmark and Ireland) as well as to their different product ranges. Moreover in all the large markets (France, Germany, Italy, United Kingdom and Spain) except for Italy, the new group would have a market share below 25%. In the case of Italy, the addition of FNH would add very little to the position already established by Fiat on this market. Such an increase would not lead to the creation or strengthening of a dominant position taking into account the decline in Fiat sales/market share since 1985 and the fact that this is a shrinking market. Furthermore, there are a number of strong and technically advanced competitors on this market, such as John Deere, the world market leader in both tractors and agricultural machinery as a whole, Case and Massey Ferguson. These competitors have distribution facilities throughout the Community, which enables them to take advantage of any market opportunities that may arise. For these reasons, the new group will not be in a position as a result of which effective competition would be significantly impeded in the common market or a substantial part thereof.

b) Combine harvester market

19. Combine harvesters are complex machines which combine cutting, separating, clearing and unloading operations for cereals and other types of seed crop. There are four main product lines currently available on the market in order to meet individual requirements which differ according to crop, geographic and climatic variations as well as the size of the farm area to be harvested. The trend in the EEC is for fewer but larger machines to be purchased in comparison to the past, matching the trend for farms themselves and the fact that the large majority of machines are purchased by independent contractors.

20. The main suppliers, Fiat, FNH, Claas, John Deere and Deutz, are present in most of the markets of individual Member States. Their respective market shares in these markets, however, vary due to a number of factors including different product requirements in particular countries or parts thereof, the presence of traditional or "home" suppliers and, significantly, the existence of established dealer networks.

21. However, the barriers to a Community market are relatively few. Registration, as such, is not necessary in most Member States although type approval may be necessary in order to comply with certain formalities (eg road regulations). In addition, while some variation exists in the list prices of individual suppliers in different Member States, effective net prices charged to dealers and ultimate consumers are broadly similar.

22. Taken together, these factors indicate in general that while national markets may not yet have entirely disappeared, particularly in some Member States (see below), their relative importance vis-à-vis an emerging Community market is declining.

23. Within the Community, the new group would become the market leader with 34% of the market in value for 1990, followed closely by Claas with less than 30%, then John Deere with less than 20%, and KHD and Case with less than 10%. However, these market shares have shifted considerably in recent years as the market has shrunk in volume. As a result of this decline, producers are currently rationalising production and seeking other means to deal with problems of overcapacity, including strengthening their dealer networks in areas where they are currently relatively weak in order to increase

their market share in these areas. It is to be noted in this context that some of these producers are powerful competitors in the agricultural machinery sector as a whole. For these reasons, it is considered that the notified operation would not confer on the new group a dominant position on the Community market. At the same time, however, the Commission is conscious of the increased level of concentration on the combine harvester market resulting from this operation, which would necessitate very close scrutiny of any further additional mergers on this market in future.

24. The possible existence of a Community market, however, may be qualified in relation to particular Member States where specific characteristics demonstrate the continued existence of a national market. This would seem to have been the case up to now in Italy for the following reasons: the traditional home supplier is Fiat, which remains the market leader at present. Its market share, however, has been much eroded in recent years [ ]<sup>(1)</sup>.

25. More significantly, Fiat has maintained in Italy a very long-standing exclusive purchasing arrangement with Federconsorzi (Fedit), a national grouping representing 72 Consorzi Agrari Provinciali (CAP) and around 2,000 local branches locally. Fedit has acted as a central purchasing organisation for all agricultural machinery, the arrangement being that it has purchased exclusively from Fiat which has, in turn, supplied its products exclusively to Fedit. As a result, Fiat products have been distributed via a very extensive network which operates throughout the whole country and which has close links with local farmers. In addition, since Fedit is a non-profit making organisation, its representatives have been able to sell Fiat products with little, if any, dealer margin, which has resulted in low prices for the final consumer.

26. Access to local dealers is a prerequisite to market entry in this particular market as suppliers must be able to guarantee purchasers an after-sales service which ensures the reliability of the machine(s) during the short harvest season. As a result, the existence of the Fiat-Fedit relationship, which has no equivalent in any other Member State, has operated as a barrier to entry to other competitors. For this reason, combined with the others given above, therefore, it is considered that the Italian market is another relevant geographic market to be analysed for the purposes of the present case.

27. The initial result of the concentration on the Italian market would be to create a structure whereby the parties, collectively, would achieve a market share of 58%, followed by Claas and John Deere with between 10 and 20% each. The Commission has concluded, however, that this will not create a dominant position as a result of which effective competition would be significantly impeded in Italy, for the following reasons.

28. Firstly, Fiat's share of the Italian market has declined significantly in recent years, a decline which accelerated in 1990. This is due partly to the fact that Fiat has been particularly strong in Central and Southern Italy, areas which are most vulnerable to the present rationalisation process in the agricultural sector as a whole, and partly to the success of certain competitors' machines in the most productive area in Northern Italy.

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<sup>(1)</sup> Decreasing between 10 and 20%.

29. Secondly, prices for Fiat combine harvesters in Italy have been comparatively low, while at the same time Fiat has lost market share. Furthermore the low level of prices has to some extent discouraged competitors from seeking to penetrate this market more actively. If, however, the new group were to raise its prices, this might be expected to lead to a response from competitors on the Italian market on the basis that competitors would consider it worthwhile to increase their presence on this market, particularly given the current overcapacity in the sector.

30. Thirdly, following discussions with the Commission's services, Fiat has terminated its relationship with Fedit. This relationship was considered to have the effect of linking one producer to the most important source of outlets on the Italian market. Exclusive arrangements of the kind which existed in this case are normally considered to infringe the EEC competition rules. Fiat has informed the organisation that it will not enter into future supply arrangements of the kind referred to above. In its place, Fiat intends to offer each "consorzio" the possibility to enter into a distribution agreement for their respective territories. Those that accept the Fiat offer will therefore deal directly with the company in future. The others will be free to enter into distribution arrangements with competitors. In addition, with regard to the current FNH dealers in Italy, Fiat has decided to inform each of them in writing, upon closing of the concentration, that they have the option to terminate their current distribution agreement. This option is to be exercised within 15 days of receipt of the letter, with effect six months thereafter.

31. As a result of these changes, the Commission considers that the context in which the notified operation must be considered changes. More specifically, an important barrier to entry to the Italian market at the level of distribution has been removed, which was a focus of concern to competitors and thus provides them with the possibility to expand their own dealer networks or enter the market. On this basis, the Italian market can be expected to evolve more in line with the Community as a whole.

32. For all of the above reasons, therefore, the Commission concludes that the concentration will not create a dominant position on the combine harvester market in Italy as a result of which competition would be significantly impeded.

c) Hay and forage machines market

33. Hay and forage machines perform some or all tasks connected with the harvesting of these products, depending on their level of sophistication. They can be classified into three main categories: moving equipment, shredder loaders and balers.

34. The most important feature of this market is the high number of producers that are active in it (about a hundred in the EEC), although they generally supply the domestic market and specialise in only one of the above mentioned categories, or even in certain types within these categories. For example, in the subsector of balers, individual producers of this kind achieved in 1989 market shares in value estimated from list prices of around 50% in Italy, Ireland and Greece, respectively.

35. With regard to the main producers that are present in the tractor and combine harvester markets and considering their overall hay and forage machine production, their market shares in value in 1989 at the Community level were as follows: Claas, just below 20%, and John Deere, FNH and Hesston (Fiat), between 5 and 10% each. The

combined market share of the new group that would result from the concentration would be 16%.

36. With respect to the different Member States, Claas is also in the leading position in Italy, France, Belgium and Germany, with market shares in value ranging from 15% to 35% in 1989. The concentration will not lead to a market share of the Fiat/FNH grouping in excess of 25% in any country except for Denmark (32%).

37. Based on these facts, the Commission has found that this concentration raises no serious doubts as to its compatibility with the common market in any of the agricultural machinery markets which have been analysed.

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For the above reasons and pursuant to Article 6(1)(b) of Council Regulation No. 4064/89, the Commission has therefore decided

- (1) not to oppose the concentration, and
- (2) to declare it compatible with the common market.

For the Commission