



EUROPEAN COMMISSION
DG Competition

Case M.11382 - AGCO / TRIMBLE / JV

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/03/2024

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.11382 - AGCO / TRIMBLE / JV
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Madam or Sir,

- (1) On 19 February 2024, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which AGCO Corporation ('AGCO', United States) and Trimble Inc. ('Trimble', United States) acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a business combining their respective activities in the area of precision agriculture products (the 'JV', United States)³.

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').

³ OJ C, C/2024/1797, 27.2.2024.

1. THE PARTIES

- (2) **AGCO** is a global manufacturer and distributor of agricultural equipment and related software solutions. AGCO's stock is traded on the New York Stock Exchange and the company is not controlled by any individual person or entity.
- (3) **Trimble** is a global technology company. It is active across multiple industries, including agriculture, building, civil and infrastructure construction, geospatial, survey and mapping, natural resources, utilities, transportation, and government. Trimble is listed on the NASDAQ and is not controlled by any individual person or entity.
- (4) The **JV** is a newly created joint venture. The JV will be active in the development and supply of precision agriculture products. In particular, Trimble will contribute its precision agriculture business to the JV, including the Bilberry and Müller Elektronik businesses. Trimble will not contribute a limited number of Global Navigation Satellite System ('GNSS') and guidance technologies (such as certain receiver models, GNSS boards and positioning engines),⁴ which will be made available to the JV based on supply agreements with Trimble. AGCO will contribute its JCA Technologies business, which develops technology platforms for agricultural machines, implement controls and electronic system components.

2. THE OPERATION

- (5) On 28 September 2023, AGCO and Trimble (the 'Parties') signed a Sale and Contribution Agreement (the 'Agreement'). Pursuant to the Agreement, on closing:
 - (a) Trimble will sell to AGCO 85% of the 100% membership interests it holds in its subsidiary Trimble Solutions LLC;
 - (b) Trimble and AGCO will contribute to Trimble Solutions LLC the businesses within the scope of the JV.
- (6) Upon implementation of the Agreement, although AGCO will hold 85% of Trimble Solutions LLC's interests, Trimble will retain a veto power on the approval of the company's annual budget. Moreover, Trimble will supply to the JV GNSS and guidance technologies that are critical to its operations. It follows that AGCO and Trimble will jointly control the JV through Trimble Solutions LLC.⁵
- (7) The JV will be a full-function joint venture within the meaning of Article 3(4) of the Merger Regulation. In particular, the JV will have management dedicated to its day-to-day operations, personnel (including in excess of 800 employees) and financial resources to perform its business. The JV will operate independently on the market, supplying the large majority of its products and services to third party OEMs and dealers. Also, the JV has not been established for a limited period of time and is envisaged to operate on a lasting basis.

⁴ Annex 14.5.9.

⁵ See in particular points 69 and 77 of the Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (AGCO: EUR 12 014 million; Trimble: EUR 3 491 million). Each of them has a Union-wide turnover in excess of EUR 250 million (AGCO: EUR [...]; Trimble: EUR [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.⁶ The notified operation therefore has a Union dimension.

4. MARKET DEFINITION

- (9) The concentration concerns the markets for precision agriculture products – where the JV will be active – and the markets for agriculture machinery – where AGCO is active.

4.1. Precision agriculture products

- (10) Precision agriculture, also known as precision farming or smart farming, is an advanced farming approach that utilizes technology, data analytics and management practices to optimize the efficiency, productivity and sustainability of agricultural operations. It involves the precise application of inputs such as water, fertilizers and pesticides, based on real-time data and analysis of factors such as soil characteristics, weather conditions and crop health. The goal of precision agriculture is to maximize yields, minimize resource wastage, reduce environmental impact and improve overall profitability for farmers.
- (11) Precision agriculture operations require the utilization of specific hardware and software products to be installed on board of agriculture machinery, such as tractors, combines, harvesters and sprayers. These products include in particular:
- (a) receivers that interact with the GALILEO GNSS satellite constellation covering the EEA to provide accurate positioning,
 - (b) terminals that interact with the person operating the machine by receiving commands and displaying information based on GNSS coordinates,
 - (c) steering devices that interact with the machinery's wheels to control the direction of the vehicle's movement based on the data received from the receiver and/or terminal,
 - (d) application controls that interact with the machinery's nozzles to regulate the application of water, fertilizers, pesticides or other inputs based on the data received from the receiver and/or terminal;
 - (e) other components (modems, electronic control units and software) ensuring the interoperation and coordination of the abovementioned devices on a given piece of machinery and across the fleet.
- (12) These products are sold to final users through three main channels. *First*, in case of vertically integrated OEMs, precision agriculture products and agriculture machinery are produced by the same companies, combined in the factory, and sold to users. *Second*, independent suppliers of precision agriculture products can sell their solutions to agriculture machinery OEMs for factory installation on their

⁶ Turnover calculated in accordance with Article 5 of the Merger Regulation.

machinery. *Third*, both vertically integrated OEMs and independent suppliers can sell their precision agriculture products to dealers for aftermarket installation on agriculture machinery.⁷

- (13) The following subsections assess the relevant market definition for each different category of precision agriculture products, as well as bundles thereof.

4.1.1. *Product market definition*

4.1.1.1. GNSS receivers

- (14) GNSS receivers are electronic devices used to receive signals from satellites orbiting the Earth and determine the receiver's precise location, velocity and time information. Receivers are essential for accurately determining the location of farming equipment – such as tractors and harvesters – within the field.

- (15) In a previous case, the Commission focused its assessment on receivers for military applications.⁸

- (16) In line with that precedent, the Parties submit that, for the purpose of this case, receivers should be segmented by sector. The assessment should therefore focus on receivers for agricultural applications. These receivers are distinguished from those used in other sectors because of their level of accuracy, their rugged housing and their design allowing easy installation on the rooftops of agricultural machinery.

- (17) The Parties' internal documents – as well as the several market participants interviewed during the Commission's investigation – generally refer to an overall category of receivers for agricultural applications, without any meaningful sub-segmentations. In particular, receivers for agricultural applications are generally characterized by similar levels of accuracy, which is typically within the range of 2 cm.⁹

- (18) For the purpose of this case, the Commission will conservatively assess the transaction based on the narrowest plausible market definition, that is the market of GNSS receivers for agricultural applications. However, it can be left open whether these products belong to a broader product market encompassing receivers for other applications, because the transaction would not raise concerns either way.

4.1.1.2. Terminals

- (19) Terminals (or 'displays' or 'monitors') are devices mounted within the farm machinery cabin to allow the user to operate and monitor the machine and implements.

⁷ The factory and aftermarket channels are described in more detail in Section 4.1.1.9 below.

⁸ Commission decision on 13 March 2020, Case M.9434 *UTC / Raytheon*, Section 5.1.

⁹ Minutes of a call on 8 December 2023.

- (20) The Commission has previously assessed the market definition of liquid crystal displays ('LCDs')¹⁰ and has considered a global market for small and medium displays.
- (21) The Parties submit that terminals for agricultural applications have particular hardware and software features and should be distinguished from terminals more broadly.
- (22) The Commission investigation confirmed that terminals for agricultural applications are not substitutable with terminals used in other sectors.
- (23) On the demand side, these terminals are characterized by specific hardware configurations allowing their interoperability with the agricultural machinery and with other components of the precision agriculture infrastructure. More importantly, terminals are the components that generally run the software allowing the operation of that infrastructure (to the extent that is not hosted on the cloud), which is one of the most critical elements of precision agriculture operations.¹¹ Some market participants also described a further segmentation between terminals for precision agriculture applications and other terminals for agricultural applications. While the former includes guidance applications interacting with the GNSS receiver and the steering mechanism of the machine, the latter are less sophisticated and cheaper monitors displaying basic information about the machine's operations such as speed, fuel level, etc.¹²
- (24) On the supply side, none of the market participants interviewed by the Commission believes that suppliers of generic terminals (or terminals used in other economic sectors) can exert any meaningful competitive pressure on suppliers of terminals for precision agriculture applications by switching supply from generic terminals to those for precision agriculture applications.
- (25) No other relevant subsegmentations were described by market participants or in the Parties' internal documents. In particular, all terminals for agriculture application generally have the same standardized dimensions, falling within a small range (e.g., 7 to 12 inches).¹³
- (26) For the purpose of this case, the Commission will conservatively assess the transaction based on the narrowest plausible market definition, that is the market of terminals for precision agriculture applications. However, it can be left open whether these products belong to a broader product market encompassing terminals for other applications, because the transaction would not raise concerns either way.

4.1.1.3. Steering devices

- (27) Steering devices provide automatic steering of the machine based on inputs received from the precision agriculture system.

¹⁰ Commission decision on 22 September 2009, Case M.5589 *Sony Corporation / Seiko Epson*, paras. 9 ff.

¹¹ Responses to market reconstruction exercise.

¹² Email correspondence on 4 March 2024.

¹³ Form CO, para. 6.80.

- (28) AGCO does not sell steering devices in the EEA, therefore no horizontal relationship exists in this area.
- (29) Trimble only sells steering devices as part of complete guidance systems in the aftermarket. Since Trimble makes no meaningful sales to OEMs,¹⁴ no vertical relationship exists in this area.
- (30) Therefore there can be no affected market in relation to steering devices, irrespective of the market definition.

4.1.1.4. Application controls

- (31) Application controls are devices installed on agriculture machinery controlling the application of inputs (such as water, fertilizers and pesticides) through the machinery's nozzles. These devices are typically installed on self-propelled machines or implements that apply inputs across the field (such as sprayers and planters) but are not installed on machines that do not (such as tractors or harvesters).
- (32) AGCO does not sell section controls in the EEA, therefore no horizontal relationship exists in this area.
- (33) Trimble only sells section controls as part of (or for installation only on) its complete guidance systems, and in any case only in the aftermarket. Since Trimble makes no sales to OEMs, no vertical relationship exists in this area.
- (34) Therefore there can be no affected market in relation to section controls, irrespective of the market definition.

4.1.1.5. Modems

- (35) Modems are devices enabling the transmission of data based on different telecommunication protocols, such as LTE, cellular networks, or Wi-Fi. Modems on agriculture machinery enable the precision agriculture systems to exchange data (such as design updates, GNSS corrections, and product information) within the farm operations and on the cloud.
- (36) AGCO does not sell any meaningful quantity of modems in the EEA,¹⁵ therefore a horizontal relationship in this area is virtually non-existent.
- (37) Trimble only sells modems as part of (or for installation only on) its complete guidance systems, and in any case only in the aftermarket. (Moreover, Trimble does not produce modems itself, but just rebrands private label modems manufactured by [...].) Since Trimble makes no sales to OEMs, no vertical relationship exists in this area.
- (38) Therefore there can be no affected market in relation to modems, irrespective of the market definition.

¹⁴ [Description of Trimble's limited sales to OEMs]. Therefore, irrespective of the precise market definition, the sale of such a small volume [...] cannot amount to any meaningful market share.

¹⁵ In 2023, AGCO only sold [...] units in the entire EEA territory.

4.1.1.6. Electronic control units

- (39) Electronic control units ('ECUs') are specialized embedded systems used in vehicles and various other applications to control and manage various functions and subsystems. ECUs are essentially akin to small computers that receive inputs from sensors, process data and then send commands to actuators or other control devices to perform specific functions. They play an important role in modern vehicles by controlling various systems such as the engine, transmission, braking, steering, suspension and more.
- (40) In past decisions the Commission assessed the relevant market for ECUs in the automotive sector, distinguishing between ECUs for different applications, such as ECUs for diesel injection systems,¹⁶ transmission controls and airbag controls.¹⁷ However, there is no precedent regarding ECUs in the agricultural sector.
- (41) The Parties submit that it is not possible to sub-segment ECUs according to their use. Accordingly, it is neither possible nor appropriate to make a distinction similar to that of the Commission's automotive precedents.
- (42) The Commission's prenotification interviews with market participants provided some support for the Parties' arguments. In particular, the relevant market may not be limited to specific applications within the agricultural sector (as it is the case in the automotive sector) but may actually extend beyond the agricultural sector. In fact, market participants explained that agricultural ECUs have similar requirements to ECUs used for construction machinery and other off-road sectors and there is a wide range of alternative suppliers for these products.¹⁸
- (43) The Commission however considers that the precise market definition can be left open, as the transaction would not raise competition concerns irrespective of the product market definition.

4.1.1.7. Software

- (44) Market participants explained that software for the operation of precision agriculture hardware is sold as part of the hardware itself. In particular, software for guidance applications is sold as part of a terminal and cannot run on terminals of a different supplier. Similarly, application control software is sold as part of application control hardware and cannot run on hardware of a different supplier.¹⁹ Therefore, software for precision agriculture applications is not considered to be a separate product market.

4.1.1.8. Distinction between standalone products and bundled products

- (45) The abovementioned precision agriculture products are sold either on a standalone basis or as bundled solutions. For instance, suppliers and integrators often sell 'guidance systems' typically including one GNSS receiver and one display, and possibly a steering device and one or more ECUs.

¹⁶ Commission decision on 27 July 2012, Case M.6640 *Delphi / FCI MVL*, para. 34.

¹⁷ Commission decision on 29 November 2007, Case M.4878 *Continental / Siemens VDO*, para. 12.

¹⁸ Email correspondence on 4 March 2024.

¹⁹ See responses to market reconstruction exercise.

- (46) The Commission assessed whether guidance systems and other bundles of precision agriculture products should be considered as separate product markets.
- (47) According to the Notice on Market Definition, “*the Commission may examine whether the bundle constitutes a relevant product market distinct from the individual products, by assessing substitutability between the bundle and the individual products (for instance, by assessing whether customers would source the individual products separately in the event of a degradation of the supply conditions of the bundle).*”²⁰
- (48) The Commission investigation in this case showed that there is significant substitutability between the individual precision agriculture products and bundles thereof.
- (49) *First*, individual components (also from different suppliers) can be easily assembled to create bundled solutions, and vice versa bundled solutions can be disassembled to use their components in different systems. These operations generally do not require the assistance of suppliers and are often done by dealers in the aftermarket channel.²¹
- (50) *Second*, both OEMs and dealers can and do purchase precision agriculture products either individually or in a bundle,²² and switch between the two solutions depending on short term needs. For instance, Trimble explained that one of its main OEM customers of individual components made a one-off purchase of bundled systems when in need of inventory, to make sure to meet demand for machines fitted with guidance technology. Also, prices of bundles are the combination of prices for components included therein.²³
- (51) *Third*, only few suppliers have the necessary breadth of portfolio to provide bundled solutions. Most of them only or mainly supply standalone components to be assembled with other suppliers’ components at the factory or in the aftermarket.
- (52) *Fourth*, several companies act as integrators buying individual components (also from different suppliers) and combining them into complete solutions before reselling them to dealers or OEMs.²⁴ The solutions offered by these integrators further facilitate the substitution of individual components with bundled products.
- (53) The Commission therefore considers that bundles of precision agriculture products, such as complete guidance systems, do not belong to separate product markets.

²⁰ Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ C, C/2024/1645, 22.2.2024, point 103.

²¹ Minutes of a call on 14 February 2024.

²² Minutes of a call on 8 December 2023.

²³ Response to RFI 3, question 4.

²⁴ Minutes of a call on 12 December 2023; minutes of a call on 5 March 2024.

4.1.1.9. Distinction between factory and aftermarket channel

- (54) Precision agriculture products may be supplied either directly to OEMs for factory installation on their machines or to dealers for aftermarket installation on machines of different brands.²⁵
- (55) In its past decisional practice concerning agriculture machinery, the Commission distinguished between the markets for the supply of components to OEMs and to dealers in consideration of the distinct customer base in each channel.²⁶ For the following reasons, the same approach is appropriate in this case.
- (56) *First*, customers in the two channels often have different requirements. On the one hand, OEMs generally procure individual products that they combine in their own proprietary solutions. They often make considerable investments in joint research and development with their suppliers of precision agriculture products to achieve customized solutions tailored to their machinery.²⁷ On the other hand, dealers generally procure brand-agnostic precision agriculture products for installation on machinery of different suppliers, often as ready-to-install bundles of different precision agriculture products.²⁸ Irrespective of the products' features, the factory and aftermarket channels are also distinguished by commercial and marketing considerations. In particular, in the factory channel demand is concentrated among few large and sophisticated OEMs purchasing relatively large volumes. Conversely, demand in the aftermarket is fragmented across a very high number of local dealers purchasing relatively smaller volumes. A market participant also noted that it is sometimes easier to introduce innovative products in the aftermarket because OEMs are generally reluctant to adopt new solutions before they have been tested in the market.²⁹ Therefore, although the same categories of products are offered in the two channels,³⁰ these are characterized by significant differences in terms of product development and customization and roads-to-market.
- (57) *Second*, the factory and aftermarket channels are not only characterized by different customers (OEMs and dealers, respectively) but also different suppliers. In particular, OEMs generally do not buy precision agriculture products from their direct competitors. This means that strong vertically integrated players like John Deere and CNH have a considerable market position in the aftermarket channel (including for installation on their competitors' machinery) but they do not have a substantial presence in the OEM channel (except for their own self-supply). Even if certain suppliers are active across the two channels, many of them tend to focus on one or the other. For instance, Topcon is considered to be stronger in the OEM channel, while AG Leader is more focused on the aftermarket.³¹

²⁵ The aftermarket installation of a precision agriculture product of an OEM on the machinery produced by another OEM is sometimes referred to as 'retrofit.'

²⁶ Commission decision on 24 March 2003, Case M.10821 *Yokohama Rubber CO / Trelleborg Wheel Systems Holding*, para. 28.

²⁷ Minutes of a call on 5 March 2024; responses to eRFI question C.10.

²⁸ Minutes of a call on 29 January 2024.

²⁹ Minutes of a call on 14 February 2024.

³⁰ Responses to eRFI questions C.9 and C.10.

³¹ Minutes of a call on 14 February 2024; responses to eRFI question C.10.

(58) Therefore, for the purpose of this case, the Commission considers that the factory and aftermarket channels are separate product markets.

4.1.2. *Geographic market definition*

(59) The Commission's market investigation confirmed the Parties' claim that the geographic scope of the markets for precision agriculture products is at least EEA-wide.

(60) Market participants observed transportation costs or regulatory requirements are not meaningful barriers to cross-border trade.³² This is partially confirmed by the fact that Trimble's products are often manufactured in [...] or [...] and then imported in Europe.³³

(61) However, market participants also described a certain differentiation of market conditions in Europe compared to other geographic areas. This is not due to any difference in manufacturing processes, technologies or end-uses, which are more or less comparable everywhere in the world. Instead, the main differentiating factor is the relative strength and market penetration of each supplier's distribution network³⁴. This is also confirmed by the fact that Trimble's position is relatively stronger in Europe, where it relies on a well-established dealership network.³⁵

(62) For the purpose of this case and based on the above, the Commission will assess the transaction based on an EEA-wide market.

4.2. **Agricultural machinery**

(63) Agricultural machinery comprises a number of machines for various agricultural applications. They are broadly distinguished in two categories:

(a) Power unit machinery typically has its own engine powering the vehicle, *e.g.*, tractors, combine harvesters, forage harvesters, self-propelled sprayers, and self-propelled spreaders.

(b) Implements are farming equipment that is not equipped with a power unit and is attached to a tractor to perform a range of agricultural operations. Implements include pull-type sprayers and spreaders, planters, seeders, etc.

4.2.1. *Product market definition*

(64) In past decisions the Commission has considered that the market for the distribution and retail sale of agricultural machinery should be segmented by machinery type – separating as between tractors, combines, forage harvesters, balers, and other implements.³⁶

³² Minutes of a call on 6 December 2023; minutes of a call on 8 December 2023.

³³ Form CO, para. 6.22.

³⁴ Suppliers with one single location in one EEA Member States can easily sell their products across the EEA (minutes of a call on 14 February 2024).

³⁵ Minutes of a call on 6 December 2023; minutes of a call on 8 December 2023.

³⁶ Commission decision on 28 October 1999, Case M.1571 *New Holland / Case*, paras. 7 ff.t Commission decision on 12 December 2003, Case M.3287 *AGCO / Valtra*, para. 8 ff.

- (65) The Parties submit that the transaction should be reviewed on the basis of an overall market for agricultural machinery market, without distinguishing by machinery type. This is because the Parties do not overlap in the sale of agricultural machinery and the vast majority of Trimble’s precision agriculture components are agnostic to the type of machinery on which they are installed.
- (66) These arguments are not convincing. First, the absence of overlaps between the Parties’ activities is irrelevant for the purpose of market definition. Second, the fact that Trimble’s products are compatible with different types of machinery does not mean that those different types of machinery can be grouped together in the same product market. Particularly (but not exclusively) for the analysis of the potential impact of a hypothetical foreclosure strategy in the downstream markets, it does matter that some of the downstream products are not substitutable with each other, even if they are combined with the same upstream inputs.
- (67) The Commission’s investigation did not identify any reasons to deviate from the market definition outlined in its precedent. Therefore, for the purpose of this case, the Commission will consider different types of agriculture machinery to belong to separate product markets. In particular, the analysis will focus on the market for machinery including precision agriculture products in which AGCO is active in the EEA, that is tractors, combines, forage harvesters and self-propelled sprayers.

4.2.2. *Geographic market definition*

- (68) In its precedent the Commission has defined the geographic markets for agricultural machines as national at the retail level.³⁷
- (69) The Parties consider that there is no need to segment the geographic market more narrowly than the EEA.
- (70) The majority of respondents to the market investigation observed that prices and features of agricultural machinery generally differ between different EEA Member States.³⁸ Certain market participants also noted that certain types of agriculture machinery must be adapted to the specific soil conditions, which may be considerably different across countries.³⁹
- (71) The Commission’s investigation therefore confirmed the market definition outlined in its precedent. Therefore, for the purpose of this case, the Commission will consider the markets for agriculture machinery to have a national scope at the retail level.
- (72) Nonetheless, the Commission will consider market shares in these markets at the EEA level when this approach is more appropriate to assess the effects of the transaction. (In particular, as described in Section 5.3.1 below, a hypothetical input foreclosure strategy against machinery OEMs in the factory channel would impact their entire supply in the EEA. In fact the JV would not be able to know where the machinery including its products will eventually be sold by its customers, and therefore it cannot target this strategy at the OEMs’ products sold in a specific local

³⁷ Commission decision on 25 March 2019, Case M.9163 *DA Agravis Machinery Holding*, para. 52 ff.

³⁸ Responses to eRFI question C.7.

³⁹ Minutes of a call on 11 January 2024.

area. The downstream impact of that strategy is therefore better assessed at the EEA level.)

5. COMPETITIVE ASSESSMENT

5.1. Market share analysis and affected markets

5.1.1. Market reconstruction

- (73) The Parties submitted market share estimates for the markets of precision agriculture products, as outlined in the previous sections. However, the Commission was not able to confirm the accuracy of those estimates during its preliminary contacts with market participants. Indeed, several market participants submitted market share estimates that differed significantly from the analysis conducted by the Parties.⁴⁰
- (74) The Commission therefore carried out a market reconstruction exercise, collecting sales data from several suppliers to compile market share estimates for the different precision agriculture products. For suppliers that could not be covered in the market reconstruction exercise, the Commission assumed that their market shares are as estimated by the Parties.
- (75) The results of the market investigation exercise for precision agriculture products are summarized in Table 1 below, along with the Parties' market share estimates for agriculture machinery.

Table 1 Market share estimates

	Precision agriculture products – Factory channel		
	Receivers	Terminals	ECUs
AGCO	0%	<1%	<1%
Trimble	[40-50]%	[70-80]%	[10-20]%
Combined	[40-50]%	[70-80]%	[10-20]%

	Precision agriculture products – Aftermarket channel		
	Receivers	Terminals	ECUs
AGCO	[0-5%]	[0-5%]	0%
Trimble	[20-30%]	[20-30%]	[10-20]%
Combined	[30-40%]	[20-30%]	[10-20]%

⁴⁰ Minutes of calls on 8 December 2023 and 26 January 2024.

Agriculture machinery				
	Tractors	Combines	Forage harvesters	Self-prop. sprayers
AGCO	EEA: [20-30]% National: up to [50-60]%	EEA: [5-10]% National: up to [20-30]%	EEA: [0-5]% National: up to [10-20]%	EEA: [10-20]% National: up to [20-30]%
Trimble	0%	0%	0%	0%

(76) In light of these market share estimates, the transaction gives rise to the following affected markets.

5.1.2. *Horizontally affected markets*

(77) The following markets – in which both Parties are active – are horizontally affected.

- (a) Factory sales of terminals
- (b) Aftermarket sales of receivers
- (c) Aftermarket sales of terminals

(78) On the other hand, the overlaps in the markets for factory sales of ECUs and aftermarket sales of modems⁴¹ do not give rise to affected markets as a result of the application of point 25(g) of the introduction of Annex I to Commission Implementing Regulation (EU) 2023/914 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings⁴².

5.1.3. *Vertically affected markets*

(79) The following vertically related markets are affected.

- (a) The upstream markets for the factory sales of receivers and terminals in the EEA (where the JV's shares exceed 30%) and the downstream markets for tractors (and categories thereof), combines, forage harvesters and self-propelled sprayers in the EEA Member States (where AGCO is active).
- (b) The upstream markets for the factory sales of receivers, terminals and ECUs in the EEA (where the JV will be active) and the downstream markets for tractors in certain EEA Member States (where AGCO's shares are above 30%).⁴³

5.2. **Horizontal effects**

5.2.1. *Terminals (factory channel)*

(80) The market of factory sales of terminals is technically affected because of the JV's high market share of [70-80%]. However, AGCO's sales in this market are

⁴¹ See footnote 15 above.

⁴² OJ L 119, 5.5.2023, p. 22.

⁴³ As explained in Section 5.4 below, sales in the aftermarket will be considered as part of the assessment on conglomerate effects.

[description of AGCO's limited presence in this market] The transaction therefore does not result in any significant impediment of effective competition in this market.

5.2.2. *Receivers (aftermarket channel)*

- (81) In the market for the aftermarket sales of receivers, the Parties will post-transaction hold a moderate share of [30-40]%, with a limited increment corresponding to AGCO's share of [0-5%].
- (82) AGCO is not a meaningful competitor in this market. First, AGCO only supplies a very limited number of receivers in this market ([...] in 2023, accounting to a share of [0-5%]). Second, AGCO does not produce those receivers itself, but outsources them from independent suppliers. Third, receivers sold by AGCO in the aftermarket are exclusively installed on AGCO's own machinery. These products therefore do not compete for customers of other OEMs and are more akin to AGCO's self-supply.
- (83) In any event, post-transaction there will be at least two other strong and well-established competitors – John Deere and CNH – with positions comparable to the Parties in this market.
- (84) The transaction therefore does not raise competitive concerns with respect to the aftermarket sales of receivers.

5.2.3. *Terminals (aftermarket channel)*

- (85) In the market for the aftermarket sales of terminals, the Parties will post-transaction hold a moderate share of [20-30]%, with a limited increment corresponding to AGCO's share of [0-5%].
- (86) AGCO is not a meaningful competitor in this market. First, AGCO only supplies a very limited number of terminals in this market ([...] in 2023, with a market share of [0-5%]). Second,. Third, terminals sold by AGCO in the aftermarket are [largely] installed on AGCO's own machinery. These products therefore do not significantly compete for customers of other machinery OEMs and are more akin to AGCO's self-supply.
- (87) In any event, post-transaction there will be at least two other strong and well-established competitors – John Deere and CNH – with positions comparable to the Parties in this market.
- (88) The transaction therefore does not raise competitive concerns with respect to the aftermarket sales of terminals.

5.3. Vertical effects

- (89) As noted above, vertical relationships exist between the JV's activities in the upstream markets of precision agriculture products and AGCO's activities in the downstream markets of agriculture machinery. In particular, the JV will supply certain critical precision agriculture products – particularly receivers and terminals – to machinery OEMs competing against AGCO. Conversely, AGCO will continue to procure precision agriculture products – particularly receivers – from the JV's competitors.

- (90) Vertical relationships between the parties to a concentration can result in two forms of anticompetitive foreclosure. The first is where the combination is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the combination is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).⁴⁴

5.3.1. *Input foreclosure*

- (91) In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines: (i) whether the Parties would have, post-transaction, the ability to substantially foreclose access to inputs, (ii) whether they would have the incentive to do so, and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.

5.3.1.1. Ability to foreclose

- 5.3.1.1.1. The JV holds a significant degree of market power in the markets for the supply of receivers and terminals in the factory channel

- (92) For input foreclosure to be a concern, the vertically integrated firm resulting from the merger must have a significant degree of market power in the upstream market. It is only in these circumstances that the merged firm can be expected to have a significant influence on the conditions of competition in the upstream market and thus, possibly, on prices and supply conditions in the downstream market.⁴⁵

- (93) The Commission considers that, in the present case, a hypothetical input foreclosure strategy would concern the upstream inputs of receivers and terminals to downstream OEMs (that is, in the factory channel⁴⁶), because the JV will have a significant degree of market power and will not face competition from any comparable competitor.⁴⁷

- (a) With respect to **receivers**, the JV will hold a market share of [40-50%] in the market for factory sales in 2023. The only other meaningful competitor in this market is Hexagon, [information about Hexagon's market share]. However, Hexagon [information on the competitors' relative positions]. In particular, market respondents [information on the competitors' relative positions].⁴⁸ Market participants also described Hexagon as a smaller and less well-established competitor. They also noted that Hexagon is a 'pure player' mainly focusing on the supply of receivers, but is unable to provide broader product solutions comparable to the JV's.⁴⁹ One of the JV's main

⁴⁴ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, C 265 18.10.2008 (the 'Non-Horizontal Merger Guidelines'), point 30.

⁴⁵ Non-Horizontal Merger Guidelines, point 35.

⁴⁶ With respect to potential anticompetitive effects in the aftermarket channel, see Section 5.4 below.

⁴⁷ Non-Horizontal Merger Guidelines, point 35.

⁴⁸ Responses to eRFI question C.13.

⁴⁹ Minutes of a call on 8 December 2023, minutes of a call on 26 January 2024.

customers for receivers is not even aware of Hexagon's presence in this market.⁵⁰

- (b) With respect to **terminals**, the JV will hold an even higher market share of [70-80%]. Topcon would be the only other meaningful player in this market, but with a much smaller position. Similarly, to Hexagon, Topcon [information on the competitors' relative positions]⁵¹ and is generally considered to be a smaller and [information on the competitors' relative positions] supplier.⁵²
- (94) The strong market power held by the JV in these segments is also apparent from the very high margins that it is able to extract from its customers ([...] for receivers and [...] for terminals).⁵³
- (95) Market participants also remarked that switching to a different supplier would not be easy and would require significant costs. This is because customers often make considerable investments in their commercial relationships with their suppliers of receivers and terminals, particularly in the form of joint R&D efforts and customization of products.⁵⁴
- (96) Finally, the majority of respondents to the market investigation expect that new entrants, if any, would make only limited inroads in the market of precision agriculture products and are unlikely to become credible competitors of the JV.⁵⁵
- (97) Conversely, the Commission considers that the JV will not have sufficient market power to sustain an input foreclosure strategy in the market for the factory sales of ECUs.⁵⁶ The Commission was not able to compile reliable market share estimates during the market reconstruction exercise given the high number of suppliers active in this segment. However, the JV's main customers for ECUs (accounting for the large majority of the JV's sales of these products in the factory channel) explained that they could easily switch to the several alternative suppliers of ECUs active in the markets, such as Continental and Sontheim. They also confirmed that they have no concerns in relation to the supply of ECUs by the JV post-transaction.⁵⁷
- (98) The following subsections will therefore focus on potential input foreclosure strategies concerning the supply of receivers and terminals.

5.3.1.1.2. Receivers and terminals are important inputs for agriculture machinery OEMs

- (99) Receivers and terminals are essential components of precision agriculture systems. Without receivers, no accurate positioning is possible. Agriculture machinery

⁵⁰ Minutes of a call on 11 January 2024.

⁵¹ Responses to eRFI question C.13.

⁵² Minutes of a call on 8 December 2023.

⁵³ Response to RFI 3. Data for the EEA in 2023.

⁵⁴ Minutes of a call on 15 January 2024; minutes of a call on 5 March 2024.

⁵⁵ Responses to eRFI question C.15.

⁵⁶ See also fn 14 above with respect to Trimble's negligible upstream supply of steering devices.

⁵⁷ Email correspondence with customers on 4 March 2024.

therefore could not be steered at the high level of precision (generally within 2 cm) that is required to avoid gaps or overlaps in the application of inputs across the field and to minimize the crop damage caused by the machine's tires. Terminals are also an essential component of precision agriculture systems. Not only because they allow the user to interact with the system and the machine, but also because they host the software applications that enable guidance and other precision agriculture functionalities. In fact, as explained by market participants, the software elements are often the most sophisticated and differentiating features of precision agriculture systems (and their development is one of the main barriers to entry in this market).⁵⁸ Without access to receivers and terminals, machinery OEMs cannot assemble any workable precision agriculture systems.

- (100) In turn, precision agriculture systems are an increasingly important feature of agriculture machinery. An overwhelming majority of the respondents to the market investigation indicated that precision agriculture systems are an important consideration for farmers acquiring a new piece of machinery, and farmers may decide not to buy a given brand of machinery if it is not compatible with their preferred precision agriculture system.⁵⁹ This was also confirmed by several market participants during the Commission's preliminary contacts with the market.⁶⁰ Market participants also submitted statistical analysis produced by independent research institutes showing that satellite guidance systems are one of the most important criteria in terms of buying decisions for new tractors (with 70% of final users considering this criterion to be important or very important).⁶¹
- (101) A foreclosure strategy affecting receivers and terminals for precision agriculture systems would therefore deprive downstream competitors of a very important input for their products.

5.3.1.1.3. The JV may engage in different forms of input foreclosure

- (102) Input foreclosure may occur in various forms. A combined entity may decide not to deal with its actual or potential competitors in the vertically related market. Alternatively, the combined entity may decide to restrict supplies and/or to raise the price it charges when supplying competitors and/or to otherwise make the conditions of supply less favourable than they would have been absent the combination. Further, the merged entity may opt for a specific choice of technology which is not compatible with the technologies chosen by rival firms. Foreclosure may also take more subtle forms, such as the degradation of the quality of input supplied.⁶²
- (103) In the present case, each of these different forms of foreclosure are possible and are to a certain extent expected by market participants.
- (104) *First*, the JV may decide to discontinue its supplies of receivers and terminals to AGCO's competitors altogether. In fact this would be in line with past behaviour of

⁵⁸ Minutes of a call on 8 December 2023.

⁵⁹ Responses to eRFI question C.1.

⁶⁰ Minutes of a call on 15 January 2024; minutes of a call on 26 January 2024.

⁶¹ Email correspondence on 15 January 2024.

⁶² Non-Horizontal Merger Guidelines, point 33.

other independent suppliers of precision agriculture products, who have discontinued their supplies to machinery OEMs after being acquired by one of them (including, for instance, when AGJunction was acquired by Kubota).⁶³ In fact certain OEM customers of the JV have already received notices of termination of their agreements.⁶⁴

- (105) *Second*, the JV may opt for a partial foreclosure strategy, by limiting the volumes supplied, increasing the prices of its products or degrading their quality. Indeed the majority of respondents to the Commission’s investigation expect that the JV will probably degrade its offering to AGCO’s competitors in the future.⁶⁵ This degradation could occur in different ways. The JV could decide to prioritize resources for internal projects, with new development efforts being primarily aimed at fulfilling AGCO’s requirements. The JV could also decide to focus its marketing efforts on the aftermarket channel to the detriment of the factory channel. In fact, according to market participants, this is precisely what happened when AGCO acquired the precision agriculture supplier Precision Planting in 2017. More generally, this strategy would be in line with the general marketing policies of existing vertically integrated players, who mainly supply their precision agriculture products to their own machine manufacturing operations and to the aftermarket, but do not sell substantial volumes to competing machinery OEMs.⁶⁶
- (106) *Third*, the foreclosure strategy may hinge on the JV’s specific choice of technology. For instance, besides degrading its supplies of precision agriculture products to AGCO’s rivals, the JV may also degrade the interoperability between its own products and the competing third-party products installed on those rivals’ machinery. The degradation may in particular affect these products’ ability to exchange data and operate in a coordinated manner across farm operations. This would be particularly problematic in so called ‘mixed fleets’, that is fleets including machinery and precision agriculture technology from different suppliers. Indeed the issue of product interoperability was raised by several market participants during the investigation.⁶⁷
- (107) That said, even if the Parties were to foreclose supply of precision agriculture products to downstream OEMs in the factory channel, the customers of those OEMs could still retrofit their machinery with precision agriculture products bought in the aftermarket channel. However, the brand-agnostic products available in the aftermarket may not offer the same performances of brand-specific, factory-installed products tailored to those OEMs’ machinery.⁶⁸

5.3.1.1.4. Conclusion

- (108) In conclusion the Commission considers that the JV will have the ability to engage in an at least partial (and possibly complete) foreclosure strategy in the markets for the supply of receivers and terminals to OEMs.

⁶³ Minutes of a call on 15 January 2024; minutes of a call on 5 March 2024.

⁶⁴ Responses to eRFI question D.2.

⁶⁵ Responses to eRFI question D.1.

⁶⁶ Responses to eRFI question D.2.

⁶⁷ Minutes of a call on 8 December 2023; minutes of a call on 15 January 2024.

⁶⁸ Responses to eRFI question C.10.

5.3.1.2. Incentive to foreclose

- (109) The incentive to foreclose depends on the degree to which foreclosure would be profitable. The vertically integrated firm will take into account how its supplies of inputs to competitors downstream will affect not only the profits of its upstream division (in this case, the JV), but also of its downstream division (in this case, AGCO). Essentially, the combined entity faces a trade-off between the profit lost in the upstream market due to a reduction of input sales to (actual or potential) rivals and the profit gain, in the short or longer term, from expanding sales downstream or, as the case may be, being able to raise prices to consumers.⁶⁹
- (110) The trade-off is likely to depend (i) on the level of profits the combined entity obtains upstream and downstream and (ii) on the extent to which downstream demand is likely to be diverted away from foreclosed rivals (diversion ration) and the share of that diverted demand that the downstream division of the integrated firm can capture (capture ratio).⁷⁰
- (111) In this case, the profits generated by the JV's upstream sales (€ [...]for receivers, € [...] for terminals) are dwarfed by the profits generated by AGCO's downstream sales (€ [...]for tractors, € [...] for combines, € [...] for forage harvesters and € [...]for sprayers).⁷¹ This is an indication that the Parties will have an incentive to forego at least some of the upstream sales of precision agriculture products in order to maximize the downstream sales of agriculture machinery (although not all pieces of machinery necessarily include factory installed precision agriculture products).
- (112) The Parties' economic submissions did not attempt any precise quantification of the diversion and capture ratios as a consequence of a hypothetical input foreclosure strategy.⁷² Nonetheless, given the very high differential between upstream and downstream profits, it may well be possible that the foreclosure strategy would turn out to be profitable. This would be more likely the case in downstream markets where both AGCO and the likely targets of this strategy have meaningful market shares (*i.e.* tractors and self-propelled sprayers), because the number of customers lost by the targets and recaptured by AGCO would be higher. At the same time, however, not all customers of the foreclosed rivals would be affected by this strategy because, as explained below, only some of the machines sold by those rivals include the JV's products.
- (113) The Parties point out that some statements in their internal documents would show [...]. In particular, a document lists [...] as one of the goals of the JV. Another slide in a presentation shows that [...].⁷³ However, it is unclear whether these isolated and generic statements are sufficiently reliable, particularly in the face of strong contrary indications based on actual profit data and past behaviour of vertically integrated suppliers in the same markets (as described above).

⁶⁹ Non-Horizontal Merger Guidelines, point 40.

⁷⁰ Non-Horizontal Merger Guidelines, points 41 and 42.

⁷¹ Response to RFI 3. Data for the EEA in 2023.

⁷² Economic analysis of vertical effects dated 16 February 2024.

⁷³ Economic analysis of vertical effects dated 16 February 2024.

- (114) In conclusion, the Commission considers that there are indications that an input foreclosure strategy may be profitable and therefore the Parties would have an incentive to pursue such strategy.

5.3.1.3. Overall likely impact on competition

- (115) In general, a vertical overlap will raise competition concerns because of input foreclosure when it would lead to increased prices in the downstream market thereby significantly impeding effective competition. Anticompetitive foreclosure may occur when a vertical combination allows the parties to increase the costs of downstream rivals in the market thereby leading to an upward pressure on their sales prices. If there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because they are themselves vertically integrated or they are capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the combined entity and therefore prevent output prices from rising above pre-transaction levels.⁷⁴
- (116) When it comes to the sale of **receivers** in the factory channel, the input foreclosure strategy would have a rather narrow impact in the downstream market, mostly limited to one single customer. In particular:
- (a) [...] % of receivers sold by the JV in this market in 2023 were delivered to AGCO, which is a Party to the transaction and therefore not a potential target of the foreclosure strategy.
 - (b) [...] % of those products were sold to [Customer A]. [Information about Customer A's business]. [Customer A] therefore has considerable in-house capabilities to produce receivers and it is unlikely to be significantly harmed by an input foreclosure strategy on the part of the JV.
 - (c) The remaining [...] % of those products were sold to the downstream competitor [Customer B], who is therefore the only likely competitor affected by a foreclosure strategy.⁷⁵
- (117) [Customer B] competes against AGCO in the downstream market of [Information on Customer B's downstream activities]. However, its market shares overstate the potential impact of the conduct on the downstream markets because Trimble's products are not pre-installed on all machinery sold by [Customer B].⁷⁶ The share of downstream products affected by the input foreclosure strategy would therefore be more limited.
- (118) This limited impact is unlikely to result in increased prices in the downstream markets. This is particularly because of the presence of strong and well-established players – such as CNH, John Deere and Kubota – holding combined shares of up to [50-60] % for tractors, [40-50] % for combines and [20-30] % for forage harvesters.⁷⁷ These vertically integrated competitors do not buy receivers from

⁷⁴ Non-Horizontal Merger Guidelines, points 47, 48 and 50.

⁷⁵ Annex QP 5.6.

⁷⁶ Email correspondence on 7 March 2024.

⁷⁷ Form CO, Annex 8.1

Trimble and/or have access to in-house supply of terminals and are therefore insulated from a hypothetical input foreclosure.

- (119) Also, when it comes to the sale of **terminals** in the factory channel, the hypothetical input foreclosure strategy would still have a rather narrow impact in the downstream markets. In particular:
- (a) [...] % of terminals sold by the JV in this market in 2023 were delivered to [Customer C]. [Customer C] mainly competes against AGCO in the market of [Information on Customer C's downstream activities]. However, in its response to the Commission's market investigation, [Customer C] explained that sufficient alternative suppliers would be available in case of input foreclosure on the part of the JV, and such a strategy would not have a negative impact in the downstream market. Also, [Customer C] does not expect any significant effect on competition as a result of the transaction.⁷⁸
 - (b) [...] % of those products were sold to [Customer D]. However, [Information on Customer D's procurement].⁷⁹ This customer therefore will not be a potential target of input foreclosure in the future.
 - (c) [...] % of those products were sold to [Customer B]. However, as explained above, the potential impact of the conduct on the downstream markets would be limited by the fact that Trimble's products are not necessarily pre-installed on all machinery sold by [Customer B].⁸⁰
 - (d) The remaining [...] % of those products were sold to a long tail of smaller local OEMs with average annual purchases of just c. €[...], which are not reported having meaningful combined market shares in downstream markets where AGCO is active.
- (120) An input foreclosure strategy affecting the supply of terminals is therefore unlikely to result in increased prices in the downstream markets, also in light of the presence of several vertically integrated suppliers such as CNH, John Deere and Kubota. These vertically integrated competitors – holding combined shares of up to [50-60] % for tractors, [40-50] % for combines and [20-30] % for forage harvesters⁸¹ – do not buy terminals from Trimble and are therefore insulated from a hypothetical input foreclosure.

5.3.1.4. Conclusion

- (121) In conclusion, the Commission considers that while the Parties may well have the ability and incentive to engage in an input foreclosure strategy, that strategy would not have a significant detrimental effect on competition in the downstream markets.

5.3.2. Customer foreclosure

- (122) In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines: (i) whether the combined entity would have the ability to foreclose access to downstream markets by reducing its purchases from its

⁷⁸ Responses to eRFI questions D.3, D.5 and H.1.

⁷⁹ [...].

⁸⁰ Email correspondence on 7 March 2024.

⁸¹ Form CO, Annex 8.1

upstream rivals, (ii) whether it would have the incentive to reduce its purchases upstream and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.⁸²

5.3.2.1. Ability to foreclose

- (123) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company which is an important customer with a significant degree of market power in the downstream market.⁸³ AGCO generates [...] % of downstream sales of products compatible with precision agriculture products in the EEA (excluding vertically-integrated players). Therefore, while AGCO accounts for a large share of the customer base of precision agriculture suppliers, a majority of this base will remain contestable post-transaction.
- (124) AGCO is currently a significant customer of three precision agriculture products: receivers, terminals and ECUs.
- (125) The Commission considers that AGCO would only be able to engage in a customer foreclosure strategy in the upstream market for receivers, where it procures a sizeable volume of products from a rival of Trimble. In particular, in 2022 AGCO bought [...] receivers from [Supplier A], accounting for [...] % of AGCO's procurement of these products. [Supplier A] is a direct competitor of Trimble, which in fact supplied the remaining [...] % of receivers procured by AGCO. Because AGCO is by far the largest non-vertically integrated downstream customer, [Supplier A] would have to win a large number of new customers to compensate the loss of its business with AGCO.
- (126) By contrast, the Commission considers that AGCO would not be able to engage in a customer foreclosure strategy in the upstream markets for terminals and ECUs.
- (a) In the market for **terminals**, AGCO sources the large majority of its products ([...] %, [...] units in the EEA in 2022) from [Supplier B]. [Supplier B] is a distributor of a broad range of electronic components from several manufacturers and is not considered to be a direct competitor of the JV or a supplier of precision agriculture solutions more generally. It was never mentioned by market participants as an important player in the precision agriculture space. In fact its products are sold to customers in a broad range of different industrial sectors outside agriculture. [Supplier B] is therefore unlikely to be harmed by any foreclosure strategy on the part of AGCO.
- AGCO also procures a small amount of its terminals ([...] %, [...] units) from [Supplier C]. However, [Supplier C] did not express any concerns about AGCO's procurement of these terminals post-transaction. In fact these products are different from (and not in competition with) those offered by Trimble and [Supplier C] expects AGCO to maintain these (albeit limited) purchases in the future. Actually, [Supplier C] expects that, post-transaction, its sales of products competing against Trimble may actually increase,

⁸² Non-Horizontal Merger Guidelines, point 59.

⁸³ Non-Horizontal Merger Guidelines, point 61.

because AGCO's competitors currently buying from Trimble may want to diversify their sources of supply.⁸⁴

- (b) In the market for ECUs, AGCO procures products from several companies including [...] (with a share of [10-20]% for ECUs for agriculture applications in the EEA), [...] ([10-20]%), [...] ([10-20]%), as well as [...] and [...]. None of these suppliers is considered to be a direct competitor of the JV or a supplier of precision agriculture solutions more generally. They were never mentioned by market participants as important players in the precision agriculture space. In fact their products are sold to customers in a broad range of different industrial sectors outside agriculture. These suppliers are therefore unlikely to be harmed by any foreclosure strategy on the part of AGCO.

- (127) The following subsections therefore focus on a potential customer foreclosure strategy targeting [Supplier A]'s sales of receivers to AGCO.

5.3.2.2. Incentive to foreclose

- (128) The incentive to foreclose depends on the degree to which it is profitable. The merged entity faces a trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so, for instance, because it allows the merged entity to raise price in the upstream or downstream markets.⁸⁵

- (129) Today, [Supplier A] is the main supplier of receivers to AGCO, far surpassing Trimble. In particular, AGCO's internal documents show that the take up of [Supplier A]'s receivers on AGCO's machinery has constantly increased from [...]% in 2017 to [...]% in 2023, with a corresponding decline of Trimble's take up.⁸⁶ According to internal documents, this trend was due to [...].⁸⁷⁸⁸

- (130) However, AGCO's incentive to stop procuring its receivers from the upstream rival [Supplier A] is apparent from the fact that, in the context of the establishment of the JV, AGCO made plans to [description of AGCO's plans to influence sales to move significantly towards a predominantly Trimble offering out of the factory on AGCO' new products].⁸⁹

Figure 1 AGCO's internal document on [...]

[...]

Source: Draft Form CO on 29 November 2023, Annex 14.5.11.

⁸⁴ Minutes of a call on 26 January 2024.

⁸⁵ Non-Horizontal Merger Guidelines, point 68.

⁸⁶ Draft Form CO on 29 November 2023, Annex 14.5.11.

⁸⁷ Response to QP 2, Annex 21.1

⁸⁸ Draft Form CO on 29 November 2023, Annex 14.5.11.

⁸⁹ Draft Form CO on 29 November 2023, Annex 14.5.11.

- (131) This strategic decision was implemented on [...] – just [...] after the signing of the Agreement for the establishment of the JV with Trimble – when AGCO [confidential information about AGCO’s procurement strategy].⁹⁰
- (132) The Commission therefore concludes that AGCO has the ability and incentive to source its required receivers from the JV and stop purchasing from its upstream rival, and indeed has already taken concrete steps in that direction.

5.3.2.3. Impact on competition

- (133) Foreclosing rivals in the upstream market may have an adverse impact in the downstream market and harm consumers. By denying competitive access to a significant customer base for the foreclosed rivals’ (upstream) products, the transaction may reduce their ability to compete in the foreseeable future. As a result, rivals downstream are likely to be put at a competitive disadvantage, for example in the form of raised input costs. In turn, this may allow the combined entity to profitably raise prices or reduce the overall output on the downstream market.⁹¹
- (134) Based on the information available to the Commission, it is not clear whether the loss of AGCO as a customer would reduce [Supplier A]’s ability to compete in the upstream market of receivers in the foreseeable future. However, during its investigation the Commission reviewed confidential information concerning [Supplier A]’s sales in this market and concluded that the share of downstream products affected by a hypothetical customer foreclosure strategy would not be sufficiently large to allow AGCO to profitably raise prices for its machinery. This is particularly the case given that AGCO’s main competitors downstream are vertically integrated and therefore do not need to rely on [Supplier A]’s supplies of receivers. These competitors in particular include CNH, John Deere and Kubota, which together account for [30-40]% of downstream sales of machinery compatible with precision agriculture products in the EEA.

5.3.2.4. Conclusion

- (135) The Commission concludes that AGCO would have the ability and incentive to engage in a customer foreclosure strategy. But based on the above, this strategy is unlikely to significantly impede competition in the downstream markets.

5.4. Conglomerate effects

- (136) As explained above in Section 5.3, the transaction gives rise to vertical relationships to the extent that precision agriculture products (such as those produced by the JV) are sold as an input to manufacturers of agriculture machinery (such as AGCO) for factory installation.
- (137) However, precision agriculture products are also sold to dealers for aftermarket installation. In this channel, precision agriculture products and agriculture machinery (possibly from different suppliers) are purchased and combined by farmers with the assistance of dealers.

⁹⁰ Annex QP 2.22.2.

⁹¹ Non-Horizontal Merger Guidelines, point 72.

- (138) In this channel, therefore, the transaction gives rise to conglomerate – rather than vertical – effects. This is because the precision agriculture products offered by the JV and the machinery offered by AGCO are seen as complementary products that are purchased by the same set of customers (that is, dealers for further resale to farmers) for the same end use.⁹²
- (139) The main concern in the context of conglomerate combinations is that of foreclosure. The combination of products in related markets may confer on the combined entity the ability and incentive to leverage a strong market position from one market to another by means of tying or bundling or other exclusionary practices. In assessing the likelihood of such a scenario, the Commission examines, (i) whether the combined firm would have the ability to foreclose its rivals, (ii) whether it would have the economic incentive to do so and, (iii) whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.⁹³

5.4.1. *Ability to foreclose*

- (140) The most immediate way in which a combined entity may be able to use its power in one market to foreclose competitors in another is by conditioning sales in a way that links the products in the separate markets together.⁹⁴
- (141) In this case, the Parties may leverage the JV's market power in precision agriculture products for aftermarket installation to increase sales of AGCO's machinery, either by bundling those products together or otherwise hindering the aftermarket combination of the JV's products with the machinery of AGCO's rival.⁹⁵ Indeed it seems that some type of leveraging strategies are generally put in practice by vertically integrated OEMs in this market. A large majority of respondents to the market investigation indicated that machinery OEMs generally incentivize their customers to buy both agriculture machinery and precision agriculture products of their own brand, for instance granting discounts or other more favourable conditions.⁹⁶ Around half of market participants explained that precision agriculture products offered by vertically integrated OEMs for aftermarket installation on rivals' machinery generally have some limitations compared to those available on the OEMs' own machinery (such as additional fees required to unlock certain features), and the Parties are likely to impose similar limitations on the JV's products sold in the aftermarket.⁹⁷
- (142) In order for a hypothetical leveraging strategy to be successful, the new entity must have a significant degree of market power. In addition, the effect can only be expected to be substantial when at least one of the parties' products is viewed by

⁹² Non-Horizontal Merger Guidelines, point 91.

⁹³ Non-Horizontal Guidelines, points 93 and 94.

⁹⁴ Non-Horizontal Merger Guidelines, point 95.

⁹⁵ Conversely, the Parties are unlikely to leverage AGCO's position in the machinery markets to foreclose competitors in the markets of precision agriculture products, because AGCO's position (including under national delimitations) is relatively less strong than Trimble's in their respective markets.

⁹⁶ Responses to eRFI questions C.5 and C.6.

⁹⁷ Responses to eRFI questions C.11 and E.1.

many customers as particularly important and there are few relevant alternatives for that product.⁹⁸

- (143) In this case, some of the considerations made when assessing the JV's market power in the factory channel (see Section 5.3.1.1 above) are also relevant in the aftermarket channel. In particular, precision agriculture products are key inputs for final customers and an important driver of the purchasing choices relating to agriculture machinery.⁹⁹ Trimble generates considerable margins in this channel (up to [...]%)¹⁰⁰) indicating that the company may have some market power.
- (144) However, differently from the factory channel, Trimble does not have particularly high market shares in the aftermarket channel. This is because the main vertically integrated players – such as CNH and John Deere, who have no substantial presence in the factory channel – do sell their precision agriculture products on a standalone basis in the aftermarket. Unlike AGCO's products, the precision agriculture products of CNH and John Deere are often installed on machinery produced by other OEMs. For this reason, in the aftermarket channel, the JV holds relatively lower market shares of [30-40]% for receivers and [20-30%] for terminals, with at least two other players having comparable positions.
- (145) Trimble's shares are even lower in the other aftermarket segments for precision agriculture products. In particular, Trimble sold only [...] application controls units and [...] modem units in the EEA in 2023. These volumes are several times smaller than the number of units supplied for either product by other respondents to the market reconstruction exercise (which only covered a small number of suppliers of these products). Moreover, Trimble does not produce modems itself, but just rebrands private label modems manufactured by [...]. Finally, no concerns were raised by any market participants in relation to these products.
- (146) Also, the Parties' internal documents show [confidential information about expected market share trends].¹⁰¹
- (147) There are also some indications that barriers to entry are lower in the aftermarket because dealers are generally less demanding customers compared to OEMs. Indeed, recent entry from smaller players (particularly from the Asian markets) is mostly focused on the aftermarket channel.¹⁰²
- (148) Finally, a large majority of respondents to the market investigation indicated that a sufficient number of alternatives would be available in case the JV decided to limit aftermarket installation of its products on the machinery of AGCO's competitors.¹⁰³
- (149) On balance, the Commission considers that the Parties are not likely to have the ability to foreclose rival machinery OEMs in the aftermarket channel.

⁹⁸ Non-Horizontal Merger Guidelines, point 99.

⁹⁹ Responses to eRFI question C.1.

¹⁰⁰ Response to RFI 3 Question 4. Data for the EEA in 2023.

¹⁰¹ Response to QP 6, Annex 2.

¹⁰² Minutes of a call on 6 December 2023.

¹⁰³ Responses to eRFI question E.3.

5.4.2. Incentive to foreclose

- (150) The incentive to foreclose rivals through bundling or tying depends on the degree to which this strategy is profitable. The combined entity faces a trade-off between the possible costs associated with bundling or tying its products and the possible gains from expanding market shares in the markets concerned or, as the case may be, being able to raise price in those markets due to its market power.¹⁰⁴
- (151) Similarly to the factory channel, the JV's profits from precision agriculture products in the aftermarket channel (up to € [...] per unit for complete guidance systems) are considerably smaller than AGCO's profits from agriculture machinery (€ [...] for tractors, € [...] for combines, € [...] for sprayers and € [...] for forage harvesters). This is an indication that the Parties may have an incentive to forego at least some of the sales of precision agriculture products in order to maximize the downstream sales of agriculture machinery.
- (152) However, a bundling strategy would be incompatible with one of the main goals of the transaction, which is to make Trimble's products as widely available as possible in the aftermarket channel. In particular, internal documents describe in great detail the Parties' 'mixed fleet strategy', that is their plans to promote the adoption of Trimble precision agriculture products in fleets including machinery of rival OEMs. This would involve Trimble's products [...] and becoming [...] including third-party machinery.¹⁰⁵ Other internal documents show the JV's intention to become [...].¹⁰⁶ The JV's business plans also forecast a steady increase of aftermarket sales in the coming years, emphasizing that its product offering [...].¹⁰⁷ The Parties' public statements also show that the transaction would "strengthen AGCO's commitments to mixed-fleet operators by having more supported machines and compatibility than any other ag OEM"¹⁰⁸ and provide "a full suite of advanced technologies for farmers everywhere regardless of the brand" and "put technology on more than 10,000 models from almost any OEM."¹⁰⁹ The Parties' stated "commitment to brand-agnostic retrofit solutions" would be incompatible with any strategy aimed at bundling those solutions with AGCO's machinery, or hindering their compatibility with rivals' machinery.
- (153) Several market participants confirmed that post-transaction the JV will probably have an incentive to make its products available for aftermarket installation on third-party machinery. In particular, dealers noted that the Parties will probably aim to reach as many customers as possible in the aftermarket and they trust that Trimble's products will remain brand-agnostic (or "colour blind") post-transaction.¹¹⁰ The same opinion is shared by an important association of European farmers.¹¹¹

¹⁰⁴ Non-Horizontal Merger Guidelines, point 105.

¹⁰⁵ Response to QP 2, Annex 25.4.

¹⁰⁶ Form CO, Annex 5.4.19.

¹⁰⁷ Draft Form CO on 29 November 2023, Annex 14.5.4.

¹⁰⁸ Analyst call on 28 September 2023.

¹⁰⁹ Earnings call on 31 October 2023.

¹¹⁰ Minutes of a call on 29 January 2024.

¹¹¹ Minutes of a call on 19 February 2024.

(154) On balance, the Commission considers that the Parties are not likely to have the incentive to foreclose rival machinery OEMs in the aftermarket channel.

5.4.3. *Overall likely impact on prices and choice*

(155) Leveraging may result in a significant reduction of sales prospects faced by single-component rivals in the market. The reduction in sales by competitors is not in and of itself a problem. Yet, in particular industries, if this reduction is significant enough, it may lead to a reduction in rivals' ability or incentive to compete. It is only when a sufficiently large fraction of market output is affected by foreclosure that the combination may significantly impede effective competition. If there remain effective single-product players in either market, competition is unlikely to deteriorate following a conglomerate combination.¹¹²

(156) As noted above, strong single-product players will remain in the aftermarket channel of precision agriculture products. In particular, both CNH and John Deere (which is seen as a market leader in precision agriculture solutions) sell their precision agriculture products on a standalone basis for aftermarket installation of rivals' machinery.

(157) It is true that the Parties expect some increment of AGCO's market shares as a result of the combination, ostensibly resulting from cross-selling opportunities unlocked by the distribution of Trimble's products by AGCO's dealers.¹¹³ However, internal documents produced in the ordinary course of business estimate that market share increase to be around [0-5]% at the global level,¹¹⁴ which is unlikely to lead to a reduction in rivals' ability or incentive to compete.

(158) The Commission therefore considers that the transaction is unlikely to have a significant impact on effective competition.

5.4.4. *Conclusion*

(159) In conclusion, the Commission considers that the transaction's conglomerate effects would not result in a significant impediment of effective competition.

5.5. Access to commercially sensitive information

(160) The combined entity may, by vertically integrating, gain access to commercially sensitive information regarding the upstream or downstream activities of rivals. For instance, by becoming the supplier of a downstream competitor, a company may obtain critical information, which allows it to price less aggressively in the downstream market to the detriment of consumers. It may also put competitors at a competitive disadvantage, thereby dissuading them from entering or expanding in the market.¹¹⁵

¹¹² Non-Horizontal Merger Guidelines, points 111 and 113.

¹¹³ Economic analysis of vertical effects dated 16 February 2024.

¹¹⁴ Draft Form CO on 29 November 2023, Annex 14.5.2.

¹¹⁵ Non-Horizontal Merger Guidelines, paragraph 78.

5.5.1. *Data on joint projects with AGCO's competitors*

- (161) Since many years, Trimble develops precision agriculture products together with OEMs active in the production of agricultural machinery and/or implements. Those companies include OEMs such as Claas, Horsch, Dammann, IWN, Grimme, Krone and Amazone. In those projects, Trimble has access to competitive sensitive information on R&D and new features relating to the joint development, information on products' launch dates, market positioning and selling propositions.
- (162) The Parties submit that there are strict controls within Trimble to limit the flow of information gathered for that specific purpose from OEMs. Further, OEMs would provide access only to the extent that information is required by Trimble in order to understand how to perform its obligations under the collaboration project and this information is only provided with the express permission of the OEM. Furthermore, such information is also contractually protected through confidentiality clauses and therefore through the general enforcement mechanisms for termination and breach of contract.¹¹⁶
- (163) For the reasons set out below, the Commission considers that this does not give rise to serious doubts:
- (164) *First*, the Parties have submitted the underlying contracts of the cooperation agreements between Trimble and AGCO's rival OEMs that show that those relationships are typically protected by strict confidentiality provisions including clauses on damages and penalties. [Details of confidential contractual provisions.] Trimble is therefore prevented from sharing this information with other teams internally who are not working on the cooperation project and also not with AGCO post-transaction.¹¹⁷
- (165) *Second*, this has also been confirmed by the market investigation, where a majority of respondents did not express concerns about Trimble sharing commercially sensitive data acquired through the cooperation with OEMs with AGCO.¹¹⁸
- (166) As a results, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the access to data on joint projects with AGCO's competitors.

5.5.2. *Data gathered through Trimble's products*

- (167) In addition to this, Trimble's farm management software as well as Trimble's Precision IQ Display also gather and store sensitive customer data, including [...].¹¹⁹
- (168) The Parties submit that the collected information is not commercially sensitive information which could provide it (or AGCO post-transaction) with a competitive advantage, especially as the number of users is low. As a result, Trimble would not

¹¹⁶ Response to RFI 3 Question 2.

¹¹⁷ Response to RFI 6 Question 7.

¹¹⁸ Responses to eRFI, Question G.1.

¹¹⁹ Response to RFI 3 Question 1.

rely on this information for marketing insights and instead uses publicly available information such as the number of registrations.¹²⁰

- (169) For the reasons set out below, the Commission considers that this does not give rise to serious doubts.
- (170) *First*, this data is not considered to be particularly sensitive, given that it is not confidential data obtained directly from competitors, but rather market intelligence received from final users that have consented giving their data to Trimble. *Second*, due to the limited number of users and the limited nature of the data, it is highly doubtful whether this would indeed be useful for the combined entity post transaction. This is confirmed by the fact that [...].¹²¹ *Third*, the Parties confirmed that under Trimble's current Software Terms it would not be permitted to share this data with AGCO post transaction.¹²²
- (171) In the light of above, the Commission considers that the transaction will likely not raise serious doubts with regards to data sharing of information gathered through Trimble's products.

6. CONCLUSION

- (172) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

¹²⁰ Response to RFI 3 Question 1.

¹²¹ Response to RFI 3 Question 1.

¹²² Email correspondence with the Parties on 8 March 2024.