

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

FIAT S.p.A., FIAT ACQUISITION
CORPORATION, NEW HOLLAND N.V., NEW
HOLLAND NORTH AMERICA, INC., and
CASE CORPORATION,
Defendants.

Civil No: 99 2927

Entered: March 16, 2000

Filed:

FILED

MAR 17 2000

NANCY MAYER WHITEHEAD, CLERK
U.S. DISTRICT COURT

FINAL JUDGMENT

WHEREAS, plaintiff, the United States of America ("United States"), and defendants Fiat S.p.A., Fiat Acquisition Corporation, New Holland N.V., New Holland North America, Inc., and Case Corporation, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

AND WHEREAS, plaintiff requires defendants to make a certain divestiture for the

purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the plaintiff that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. DEFINITIONS

As used in this Final Judgment:

A. "Fiat" means defendant Fiat S.p.A, an Italian corporation with its headquarters in Turin, Italy, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. "Fiat Acquisition" means Fiat Acquisition Corporation, a subsidiary of Fiat, and its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. "New Holland N.V." means defendant New Holland N.V, a Netherlands corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

D. "New Holland" means defendant New Holland North America, Inc., a subsidiary of New Holland N.V. and a Delaware corporation, with its headquarters in New Holland, Pennsylvania, its successors and assigns, its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

E. "Case" means Case Corporation, a Delaware Corporation with its headquarters in Racine, Wisconsin, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

F. "HFI" means Hay and Forage Industries, the hay and forage equipment manufacturing joint venture between Case and Hesston Corporation, which has a plant located in Hesston, Kansas.

G. "Hay and Forage Assets" means Case's ownership interest in HFI.

H. "2WD Assets" means New Holland's Genesis line of two-wheel-drive ("2WD") tractors, including:

- (1) all tangible assets that comprise the 2WD Assets business in North America, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the 2WD Assets; all licenses, permits and authorizations issued by any governmental organization for the 2WD Assets; all contracts, teaming arrangements, agreements, leases, commitments and understandings relating to the 2WD Assets, including supply agreements; all lists and credit records of ultimate customers; repair

and tractor performance records and all other records relating to the 2WD Assets; and the sale of the New Holland Winnipeg, Manitoba, Canada plant;

- (2) any and all intangible assets used in the development, production, servicing and sale of 2WD Assets, including, but not limited to: (a) the Genesis brand name and all other intellectual property rights used exclusively in connection with the 2WD Assets; (b) with respect to all other intellectual property rights used in connection with both the 2WD Assets and other nondivested New Holland assets, a transferable, paid-up license, exclusive in the 2WD Assets field of use; (c) all existing licenses and sublicenses relating exclusively to the 2WD Assets; and (d) a transferable, paid-up sublicense, exclusive in the 2WD Assets field of use, to all other existing licenses and sublicenses relating to the 2WD Assets. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals, and all research data concerning historic and current research and development relating to the 2WD Assets.

I. "4WD Assets" means New Holland's Versatile line of four-wheel-drive ("4WD") tractors and its tracked tractor line that is in development, including:

- (1) all tangible assets that comprise the 4WD Assets business in North America, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all other assets used exclusively in connection with the 4WD Assets; all licenses, permits and authorizations issued by any governmental organization for the 4WD Assets; all contracts, teaming arrangements, agreements, leases, commitments and understandings relating to the 4WD Assets, including supply agreements; all ultimate customer lists and credit records; and all other records relating to the 4WD Assets; and a sale of the New Holland Winnipeg, Manitoba, Canada plant;
- (2) any and all intangible assets used in connection with the 4WD Assets, including, but not limited to: (a) the Versatile brand name and all other intellectual property rights used exclusively in connection with the 4WD Assets; (b) with respect to all other intellectual property rights used in connection with both the 4WD Assets and other nondivested New Holland assets, a transferable, paid-up license, exclusive in the 4WD Assets field of use; (c) all existing licenses and sublicenses relating exclusively to the 4WD Assets; and (d) a transferable, paid-up sublicense, exclusive in the 4WD Assets field of use, to all other existing licenses and sublicenses relating to the 4WD Assets. Intellectual property rights comprise, but are not limited to, patents, licenses and sublicenses, technical information, computer

software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals, and all research data concerning historic and current research and development relating to the 4WD Assets.

J. “Divested Assets” means “Hay and Forage Assets,” 2WD Assets” and “4WD Assets.” The sale of each of the Divested Assets shall include the purchaser’s right to reasonable access to the technical, service, production and administrative employees of the defendants for a period not to exceed 12 months from the date of purchase.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale of all or substantially all of their assets or of lesser business units that include the Divested Assets, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. DIVESTITURES

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of the Complaint in this matter, or within five (5) days after notice of entry of this Final Judgment, whichever is later, to sell the Divested Assets as viable, ongoing businesses to a purchaser or purchasers acceptable to the United States in its sole discretion.

B. Defendants shall use their best efforts to accomplish said divestiture as expeditiously as possible. The United States, in its sole discretion, may extend the time period for any divestiture for an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants shall make known promptly, by usual and customary means, the availability of the Divested Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divested Assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make such information available to the United States at the same time that such information is made available to any other person.

D. Defendants shall permit prospective purchasers of the Divested Assets to have reasonable access to personnel and to make inspection of the Divested Assets; access to any and all zoning, building, and other permit documents and information; and access to any and all financial, operational, or other documents and information as is customarily provided as part of a due diligence process.

E. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ any Defendants' employee who works at the Divested Assets, or whose principal responsibility concerns the Divested Assets.

F. Defendants shall not take any action, direct or indirect, that would impede in any way the operation of any business connected with the assets to be divested, or take any action,

direct or indirect, that would impede the divestiture of any asset for two years after the divestiture.

G. Defendants shall not take any action, direct or indirect, that would prevent or discourage in any way any dealer from distributing the Divested Assets for two years after the divestiture. Nothing in this provision, however, shall prevent the defendants from promoting and selling in the ordinary course of business products that compete with the Divested Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV of this Final Judgment, or by a trustee appointed pursuant to Section V, shall include all the Divested Assets operated in place pursuant to the Hold Separate Stipulation and Order. Such divestiture shall be accomplished by selling or otherwise conveying the Divested Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the Divested Assets can and will be used by the purchaser as part of a viable, ongoing business, engaged in the manufacture and distribution of: 2WD tractors, 4WD tractors, and/or hay and forage equipment. Each divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser that has satisfied the United States in its sole discretion, that it: (1) has the capability and intent of competing effectively in the development, production and sale of the divested asset; (2) has the managerial, operational, and financial capability to compete effectively in the manufacture of the divested asset; and (3) is not hindered by the terms of any agreement between the purchaser and defendants which gives defendants the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere with the ability of the purchaser to compete.

I. In connection with any divestiture of 4WD Assets and/or 2WD Assets pursuant to

Section IV of this Final Judgment, or by a trustee appointed pursuant to Section V, not accompanied by the sale of the Winnipeg plant, the defendant shall offer the purchaser a short-term, transitional agreement, not to exceed two years in length, to manufacture and deliver to the purchaser in a timely manner, the purchaser's requirements for Genesis and/or Versatile series tractors and parts, on such terms and conditions as are reasonably designed to enable the purchaser(s) to compete with defendants in the sale of 4WD and 2WD tractors, and are acceptable to the United States in its sole discretion.

J. Under each divestiture pursuant to Section IV of this Final Judgment, or by a trustee appointed pursuant to Section V, defendants retain the right to negotiate a transitional supply agreement to manufacture and deliver to defendants in a timely manner defendants' requirements for Genesis and Versatile tractors and hay and forage equipment. Such agreements shall not include the use of the Versatile or Genesis trade names and shall not last for a term longer than, for 2WD or 4WD tractors, 24 months from the filing of the Hold Separate Stipulation and Order in this case, and for hay tools and forage equipment, 18 months from the filing of the Hold Separate Stipulation and Order in this case. Transfer pricing shall be based on auditable cost data and such agreements shall include terms and conditions reasonably designed to enable the defendants to compete with purchaser(s) in the sale of 4WD tractors, 2WD tractors and hay tools and forage equipment. The terms and conditions of any such agreements must be acceptable to the United States in its sole discretion. Such agreements may only be amended with the prior approval of the United States in its sole discretion.

V. APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested the Divested Assets within the time

specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestitures of the Divested Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divested Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and V of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe and the trustee shall account for all monies derived from the sale of the Divested Assets sold and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and

agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divested Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory or other approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial or other information relevant to the Divested Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective purchasers of the Divested Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divested Assets,

and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the Divested Assets.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) the trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee or the defendants deem confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and shall list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the

subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by defendants under the provision in Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

B. Purchasers of the 2WD Assets and 4WD Assets must be identified simultaneously by the defendants, or by the applicable trustee, in order that the proposed divestitures may be reviewed jointly by the United States.

VII. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and

every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or V of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Section IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divested Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit buyers for the Divested Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Divested Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate the Divested Assets as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the Divested Asset, and maintain the Divested Assets in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any

changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after the divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the Divested Assets and to effect the divestitures.

VIII. HOLD SEPARATE ORDER

Until the divestiture required by the Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Divested Assets.

IX. FINANCING

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X. COMPLIANCE INSPECTION

For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

- (1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and

documents in the possession or under the control of defendants, who may have counsel present, relating to any matter contained in this Final Judgment and the Hold Separate Stipulation and Order; and

- (2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections V, VI, VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United

States shall give ten (10) calendar days' notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated March 16, 2000



United States District Judge