

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530
Plaintiff,

v.

FIAT S.p.A.,
Corso Marconi 10
Turin, Italy

FIAT ACQUISITION CORPORATION,
Corso Marconi 10
Turin, Italy

NEW HOLLAND N.V.,
World Trade Center
Tower B, 10th Floor
Amsterdam Airport
The Netherlands

NEW HOLLAND NORTH AMERICA, INC.,
1209 Orange Street
Wilmington, DE 19801

and

CASE CORPORATION,
700 State Street
Racine, WI 53404
Defendants.

CASE NUMBER 1: 99CV0297

JUDGE: James Robertson

DECK TYPE: Antitrust

DATE STAMP: 11/04/1999

COMPLAINT

The United States of America, acting under the direction of the Attorney General
of the United States, brings this civil action to obtain equitable relief against defendants and

alleges as follows:

1. The United States seeks to prevent the proposed acquisition of defendant Case Corporation (“Case”) by defendants Fiat S.p.A. (“Fiat”) and Fiat subsidiaries, New Holland N.V., New Holland North America, Inc. (“New Holland”), and Fiat Acquisition Corporation (“Fiat Acquisition”) pursuant to an Agreement and Plan of Merger (“Agreement”) entered into by defendants on May 15, 1999.

2. Case and Fiat are two of only five manufacturers of four-wheel-drive (“4WD”) and large two-wheel-drive (“2WD”) tractors in the United States and Canada. Fiat and a Case joint venture are two of only three significant manufacturers of large and small square balers and they are two of only four significant manufacturers of self-propelled windrowers in the United States and Canada. If the proposed acquisition is permitted, Fiat and one other competitor will control about 80 percent of the 4WD tractor market and about 90 percent of the large 2WD tractor market in the United States and Canada. The merged firm and its joint venture partner would control about 65 percent of the small square baler market, about 90 percent of the large square baler market, and about 60 percent of the self-propelled windrower market in the United States and Canada.

3. The acquisition will eliminate the head-to-head competition between Fiat and Case which has benefited consumers. In addition, given the small number of competitors, Fiat’s acquisition of Case substantially increases the likelihood that the remaining dominant firms in these markets will tacitly collude in a non-competitive manner. Higher prices are likely to result from the elimination of an independent, significant competitor. For these reasons, the proposed acquisition threatens to harm customers in the approximately \$1.5 billion tractor markets and the

approximately \$250 million small square baler, large square baler and self-propelled windrower (collectively “hay and forage equipment”) markets.

4. Unless the merger is blocked, Fiat’s acquisition of Case will likely lead to higher prices, lower quality and less innovation for farmers and other purchasers of 4WD tractors, large 2WD tractors, large square balers, small square balers, and self-propelled windrowers in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

5. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a) and 1345.

7. Fiat, which owns 71 percent of New Holland N.V. which in turn owns New Holland, is a foreign corporation which does business within the District of Columbia. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. §1391(d).

8. Case is a Delaware corporation which does business in the District of Columbia. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. §1391(c).

9. Fiat and Case are engaged in interstate commerce and in activities substantially affecting interstate commerce.

II. THE DEFENDANTS

10. Fiat is a foreign corporation organized and existing under the laws of Italy, with

its corporate headquarters and principal place of business in Turin, Italy. Fiat is an international automotive, construction and agricultural equipment company that manufactures cars, trucks, construction equipment, tractors, and hay and forage equipment. Fiat reported revenues of \$56.6 billion in 1998.

11. Fiat Acquisition is a wholly owned subsidiary of Fiat.

12. New Holland N.V. is a foreign corporation incorporated in the Netherlands with its corporate headquarters in London, England. New Holland N.V. produces construction equipment, tractors, hay and forage equipment, and other agricultural equipment. It is the third largest supplier of agricultural equipment in the United States and Canada. New Holland N.V. reported revenues of \$5.7 billion in 1998.

13. New Holland is a Delaware corporation with its corporate headquarters and principal place of business in New Holland, Pennsylvania. New Holland manufactures 4WD and large 2WD agricultural tractors at its Winnipeg, Manitoba, Canada plant and hay and forage equipment at its plants in New Holland, Pennsylvania, Grand Island, Nebraska, and Zedelgum, Belgium.

14. Case is a corporation organized and existing under the laws of the state of Delaware with its corporate headquarters and principal place of business in Racine, Wisconsin. Case manufactures 4WD tractors at its plant in Fargo, North Dakota and large 2WD agricultural tractors at its plant in Racine, Wisconsin. Case owns 50 percent of Hay and Forage Industries (“HFI”), a joint venture that produces large square balers, small square balers, and self-propelled windrowers at a plant in Hesston, Kansas. HFI sells the equipment it manufactures to Case and its joint venture partner for distribution and sale under each company’s respective trade name. In

1998, Case reported revenues of \$6.1 billion.

III. THE PROPOSED TRANSACTION

15. On or about May 15, 1999, Fiat entered into the Agreement pursuant to which it would acquire Case for approximately \$4.3 billion. Under the Agreement, Fiat Acquisition and Case will merge, with Case being the surviving entity. New Holland N.V. will subsequently acquire all the issued and outstanding shares of the surviving entity.

IV. TRADE AND COMMERCE

A. Relevant Product Markets

16. Agricultural tractors are used primarily on farms for a variety of applications, including pulling implements to till soil and to plant and cultivate crops. Agricultural tractors are produced in a range of horsepower (“hp”) and may be either wheeled or tracked. In general, as the size and weight of the implement increases, the horsepower of the tractor required to pull it increases as well. 4WD tractors are manufactured in higher horsepower ranges than large 2WD tractors, and they deliver greater traction for pulling large implements.

17. Rubber-tracked agricultural tractors, first introduced in 1987, are available in horsepower ranges comparable to those of 4WD tractors and large 2WD tractors. Although they tend to be more expensive than their wheeled counterparts, tracked tractors are sometimes preferred where soil compaction caused by wheeled tractors is particularly undesirable and for operation on hillsides where traction is especially important. Since tracked tractors are available in horsepower ranges comparable to 4WD tractors and large 2WD tractors, and some farmers regard them as reasonable substitutes for wheeled tractors, they are included in the markets for 4WD tractors and large 2WD tractors described below.

1. 4WD Tractors

18. 4WD tractors are high horsepower (205 hp to 425 hp) wheeled or tracked tractors. They are used mostly for heavy-duty farm applications, including tilling, cultivating, and pulling large implements. Because they pull the largest farm implements, 4WD tractors are more efficient for tilling and cultivating a large number of acres and are used principally by the farmers with the largest acreage farms. However, 4WD tractors are difficult to maneuver because of their size and weight.

19. Measured in terms of engine horsepower, power in 4WD tractors is distributed evenly among four equal-sized wheels or sets of wheels, rather than primarily to the rear wheels as in 2WD tractors. 4WD tractors are typically manufactured at higher horsepower ranges than 2WD tractors.

20. A small but significant increase in the price of 4WD tractors would not cause a significant number of current 4WD tractor purchasers to substitute other types of tractors.

21. The development, production, and sale of 4WD tractors is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

2. Large 2WD Tractors

22. Large 2WD tractors are typically used to pull medium-sized implements for farm applications that do not require the heavy-duty performance of a 4WD tractor. The horsepower of large 2WD tractors is measured in power take off (“PTO”), the power the tractor generates to operate an implement. In general, PTO is about 85 percent of engine horsepower. Large 2WD tractors range from 140 PTO hp up to about 235 PTO hp. Large 2WD tractors are typically smaller, lighter, and more versatile than 4WD tractors.

23. Many large 2WD tractors are sold with mechanical front-wheel-assist (“FWA”), a feature which transfers some power to the front wheels of 2WD tractors. FWA does not generate the same power obtained from a true 4WD tractor since only limited power is transferred and the front wheels of a 2WD tractor are considerably smaller than the rear wheels.

24. Smaller 2WD tractors do not provide the horsepower needed to effectively pull the same size implements as those pulled by large 2WD tractors.

25. A small but significant increase in the price of large 2WD tractors would not cause a significant number of current large 2WD tractor purchasers to substitute other types of tractors.

26. The development, production, and sale of large 2WD tractors is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

3. Hay and Forage Equipment

a. Small Square Balers

27. Small square balers are generally defined by the agricultural equipment industry as balers that produce a bale of hay with a rectangular face less than two square feet in size. Small square balers collect hay after it has dried in the field, compact it into square bales, tie the bales together with twine, and eject them one by one onto the ground for subsequent collection or transportation. Small square balers are most popular among small farms because the small bales can be easily handled manually.

28. A small but significant increase in the price of small square balers would not cause a significant number of current small square baler purchasers to substitute other types of balers.

29. The development, production, and sale of small square balers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

b. Large Square Balers

30. Large square balers are generally defined by the agricultural equipment industry as balers that produce a bale of hay with a rectangular face that measures greater than four square feet in size; the bales are usually eight feet in length. Large square balers collect hay after it has dried in the field, compact it into square bales, tie the bales together with twine, and eject them one by one onto the ground for subsequent collection or transportation. Large square bales weigh 1000 pounds or more and, because of their ease in stacking and handling, are favored by large commercial hay operations that must transport their hay.

31. A small but significant increase in the price of large square balers would not cause a significant number of current large square baler purchasers to substitute other types of balers.

32. The development, production, and sale of large square balers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

c. Self-Propelled Windrowers

33. Self-propelled windrowers are a type of hay harvesting equipment typically used by commercial hay operators. A self-propelled windrower cuts hay, breaks it up for faster drying and lays it on the ground in long columns called windrows so that the hay can dry quickly. Self-propelled windrowers are primarily used by large operations that cut a large amount of hay or cut frequently enough to justify the investment in a dedicated piece of machinery.

34. A small but significant increase in the price of self-propelled windrowers would not cause a significant number of current self-propelled windrower purchasers to substitute other

types of hay harvesting equipment.

35. The development, production, and sale of self-propelled windrowers is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

36. New Holland manufactures 4WD and large 2WD tractors at a facility in Winnipeg, Manitoba (Canada) and imports them into the United States. It also imports large square balers to the United States from Zedelgum, Belgium; manufactures small square balers at a facility in New Holland, Pennsylvania; and manufactures self-propelled windrowers at a facility in Grand Island, Nebraska. Case manufactures 4WD tractors at a plant in Fargo, North Dakota and 2WD tractors at a plant in Racine, Wisconsin. Through its joint venture, Case distributes small square balers, large square balers, and self-propelled windrowers manufactured at the HFI facility in Hesston, Kansas. All of these products are sold by Case and New Holland throughout the United States and Canada.

37. Throughout the United States and Canada, customers are likely to pay higher prices for 4WD and large 2WD tractors, small square balers, large square balers, and self-propelled windrowers as a result of the acquisition.

38. A foreign producer would face significant difficulty in establishing a distribution system to market 4WD and large 2WD tractors in the United States and Canada. For this reason, foreign producers are unlikely to expand sales of 4WD and large 2WD tractors into the United States and Canada in the event of a small but significant price increase.

39. The United States and Canada is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

1. Tractors

40. New Holland and Case compete against one another to sell 4WD and large 2WD tractors to farmers, to provide high quality and service, and to develop new tractor products. This direct competition between Case and New Holland benefits farmers through lower prices, improved service, and greater innovation. If the combination of Case and New Holland is permitted, this competition would be eliminated.

41. The proposed acquisition will reduce competition substantially in the manufacture and sale of 4WD and large 2WD tractors in the relevant geographic market. Only five firms sell 4WD and large 2WD tractors in the United States and Canada. In the highly concentrated 4WD tractor market, Case has a share of about 27 percent; New Holland has a share of about 13 percent based on 1998 unit sales. Using a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”), defined and explained in Appendix A, combining Case and New Holland would substantially increase the already high concentration in the 4WD tractor market. The HHI for the 4WD tractor market is about 3025. After the proposed acquisition, the HHI level would increase by about 665 points, resulting in a post-merger HHI of about 3690.

42. The market for large 2WD tractors is also highly concentrated. In that market, Case has a share of about 25 percent and New Holland has a share of about 10 percent based on 1998 unit sales. Combining Case and New Holland in the large 2WD tractor market would substantially increase the already high concentration in that market. The HHI for the large 2WD tractor market is about 3950. After the proposed acquisition, the HHI level would increase by about 510 points,

resulting in a post-merger HHI of about 4460.

43. The proposed acquisition likely would cause a substantial reduction in competition which is likely to lead to a substantial price increase in the markets for 4WD and large 2WD tractors because of the increased likelihood of tacit collusion that would result from the elimination of a significant competitor.

2. Hay and Forage Equipment

44. New Holland and Case -- including Case's participation in HFI -- compete against each other to sell small square balers, large square balers and self-propelled windrowers to farmers, to provide high quality and service, and to develop new hay and forage equipment products. Direct competition between Case and New Holland benefits farmers through lower prices, improved service, and greater innovation. If the combination of Case and New Holland is permitted, this competition would be eliminated.

45. The proposed acquisition will reduce competition significantly in the manufacture and sale of large square balers, small square balers, and self-propelled windrowers in the United States and Canada. Four firms account for substantially all of the large and small square balers sold in the United States and Canada; and together with a fifth firm, they account for substantially all of the self-propelled windrowers sold in the United States and Canada.

46. In the large square baler market, New Holland has a market share of about 16 percent and Case has a share of about 31 percent based on 1998 unit sales. Combining Case and New Holland would substantially increase the already high concentration in the large square baler market. The HHI for the large square baler market is about 3240. After the proposed acquisition, the HHI level would increase by about 995 points, resulting in a post-merger HHI of about 4235.

47. In the small square baler market, New Holland has a market share of about 47 percent and Case has a share of about 10 percent based on 1998 unit sales. Combining Case with New Holland would substantially increase the already high concentration in the small square baler market. The HHI for the small square baler market is about 3365. After the proposed acquisition, the HHI level would increase by about 900 points, resulting in a post-merger HHI of about 4265.

48. In the self-propelled windrower market, New Holland has a market share of about 18 percent and Case has a share of about 19 percent based on 1998 unit sales. Combining Case with New Holland would substantially increase the already high concentration in the self-propelled windrower market. The HHI for the self-propelled windrower market is 2215. After the proposed acquisition, the HHI level would increase by about 670 points, resulting in a post-merger HHI of about 2885.

49. The proposed acquisition likely would cause a substantial reduction in competition and a substantial price increase in the markets for hay and forage equipment because of the increased likelihood of tacit collusion that would result from the elimination of a significant competitor.

D. ENTRY

1. 4WD and Large 2WD Tractors

50. Entry into the 4WD and large 2WD tractor markets would not be timely, likely or sufficient to deter any exercise of market power resulting from the merger. Entry would take several years and require a large capital investment in equipment and facilities.

51. Entry into the 4WD or large 2WD tractor markets likely would take three to five years to develop at least one family of tractors which would include several models of varying

horsepower ranges. Case spent three years to develop the MX Series Magnum tractors, one of several families of tractors in its line, in plants that it already owned.

52. A significant barrier to entry into the 4WD and large 2WD tractor markets is the need to establish a distribution organization. It would take many years for a new entrant to build a dealer network sufficient to succeed as a mainline equipment distributor. Many farmers require quick access to parts and service in order to keep critical-use equipment in operation. The existence of an extensive dealer network is one of the reasons why many farmers choose a particular brand of farm equipment. Farmers also rely on previous experience with a manufacturer and dealer in determining the reliability of parts and equipment. Brand recognition also would be a significant barrier for every new entrant to overcome.

53. Substantial excess capacity at the production facilities of current 4WD and large 2WD tractor manufacturers also makes entry unlikely. Excess capacity often deters potential market entrants because existing manufacturers could increase output, lowering price and profit margins. The potential for lower profit margins, for investors considering entry, is a strong deterrent to attempted entry.

2. Hay and Forage Equipment

54. Entry into the small square baler market, large square baler market and the self-propelled windrower market would not be timely, likely or sufficient to deter any exercise of market power resulting from the proposed transaction. Entry would take several years and require a large capital investment in equipment and facilities.

55. Entry into the hay and forage equipment industry is also difficult because of the need to establish a distribution system. It would likely take many years for a new entrant to build a

competitive dealer network and a substantial investment would be required. Many farmers require quick access to parts and service to keep critical-use equipment in operation. The existence of an extensive dealer network is one of the reasons why many farmers choose a particular brand of farm equipment. Farmers also rely on previous experience with a manufacturer and dealer in determining the likely reliability of parts and equipment. Brand recognition also would be a significant barrier for every new entrant to overcome.

56. Entry into these markets will be difficult in part because current market participants are operating at substantially less than capacity. Excess capacity often deters potential market entrants because existing manufacturers could increase output, lowering price and profit margins. The potential for lower profit margins, for investors considering entry, is a strong deterrent for attempted entry.

V. VIOLATION ALLEGED

57. The transaction will likely have the following effects among others:
- a. Competition generally in the manufacture and sale of 4WD tractors in the United States and Canada would be substantially lessened;
 - b. Competition generally in the manufacture and sale of 2WD tractors in the United States and Canada would be substantially lessened;
 - c. Competition generally in the manufacture and sale of small square balers, large square balers and self-propelled windrowers in the United States and Canada would be substantially lessened;
 - d. Actual and potential competition between New Holland and Case in the manufacture and sale of 4WD tractors in the United States and Canada

- would be eliminated;
- e. Actual and potential competition between New Holland and Case in the manufacture and sale of large 2WD tractors in the United States and Canada would be eliminated;
 - f. Actual and potential competition between New Holland and Case in the manufacture and sale of hay and forage equipment in the United States and Canada would be eliminated;
 - g. The prices for 4WD tractors would likely increase in the United States and Canada, and the quality and innovation of 4WD tractors would likely decline;
 - h. The prices for large 2WD tractors would likely increase in the United States and Canada, and the quality and innovation of large 2WD tractors would likely decline;
 - i. The prices for large square balers, small square balers and self-propelled windrowers in the United States and Canada would likely increase, and the quality and innovation would likely decline.

58. Unless restrained, the proposed acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI. REQUESTED RELIEF

Plaintiff requests:

- 1. That Fiat's proposed acquisition of Case be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

2. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out the Agreement or from entering into or carrying out any agreement understanding or plan, the effect of which would be to combine the businesses or assets of the defendants;

3. That plaintiff be awarded its costs of this action; and

4. That plaintiff receive such other and further relief as the case requires and the Court deems proper.

Respectfully Submitted,

FOR PLAINTIFF UNITED STATES:

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Dated: November 4th, 1999.

APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. *See Merger Guidelines* ¶ 1.51.