ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

a. Relevant records may be disclosed to an administrative forum, including Ad Hoc forums, which may or may not include an Administrative Law Judge, and which may or may not convene public hearings/proceedings, or to other established adjudicatory or regulatory agencies, *e.g.,* the Merit Systems Protection Board, or other agencies with similar or related statutory responsibilities, where necessary to adjudicate decisions affecting individuals who are covered by this system, including (but not limited to) decisions to effect any necessary remedial actions, *e.g.,* disciplinary and/or other appropriate personnel actions.

b. A record may be disclosed to the National Archives and to the General Services Administration during a records management inspection conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Information can be retrieved by surname.

SAFEGUARDS:

Information is stored in filing cabinets and office automation equipment in secured rooms or in guarded buildings, and is used only by authorized, screened personnel. Passwords are required to access the automated data.

RETENTION AND DISPOSAL:

Records in this system are retained and disposed of in accordance with General Records Schedule 23.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of the Inspector General, Department of Justice, 950 Pennsylvania Avenue, NW, Room 4261, Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Make requests for access to records from this system in writing to the system manager, and clearly mark both the letter and envelope ''Privacy Act Request.''

CONTESTING RECORD PROCEDURES:

Make all requests to contest or amend information maintained in the system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

Employees of the Department of Justice Office of the Inspector General.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–31689 Filed 12–6–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Fiat S.p.A., Fiat Acquisition Corporation, New Holland N.V., New Holland North America, Inc., and Case Corporation; Proposed Final judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16 (b) through (h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States of America* v. *Fiat S.p.A., Fiat Acquisition Corporation, New Holland N.V., New Holland North America, Inc., and Case Corporation,* Civil No. 1:99CV02927JR on November 4, 1999. On November 19, 1999, the United States filed a Competitive Impact Statement. The Complaint alleged that the proposed acquisition of certain assets of Case Corporation (''Case'') by Fiat S.p.A. would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the markets for two-wheel-drive and four-wheel-drive agricultural tractors, large square balers, small square balers and self-propelled windrowers. The proposed Final Judgment, filed at the same time as the Complaint, requires New Holland and Case, among other things, to do the following: (1) Sell New Holland's Versatile line of our-wheel-drive tractors; (2) sell New Holland's Genesis line of large two-wheel-drive agriculture tractors; and (3) sell Case's interest in Hay & Forage Industries (''HFI''), a joint venture that sells hay tools. The proposed Final judgment requires that the purchaser of the divested assets continue to operate them in the manufacture and distribution of four-wheel-drive, large two-wheel-drive tractors and hay tools. The Competitive Impact Statement describes the Complaint, the proposed Final judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within 60 days of the date of this notice. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations.

Hold Separate Stipulation and order

It is hereby stipulated by and between the undersigned parties, by their respective attorneys that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

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. ''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.

C. ''HFI'' means Hay and Forage Industries, the hay and forage equipment manufacturing joint venture between Case and AGCO Corporation (''AGCO'') whose plant is located in Hesston, Kansas.

D. ''Hold Separate Assets'' means the assets required to be divested under the proposed Final Judgment, as defined in

Section II.J of the proposed Final Judgment.

II. Objectives

The proposed Final Judgment filed in this case is meant to ensure Fiat's prompt divestiture of certain assets to remedy the effects that the United States alleges would otherwise result from Fiat's proposed acquisition of Case. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, the Hold Separate Assets be maintained and operated as independent, economically viable, ongoing business concerns in the manufacture and sale of tractors and hay and forage equipment until the required divestitures are complete.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

C. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event the United States has withdrawn its consent, as provided in Paragraph IV.A above, or if the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, or if the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the proposed Final Judgment bave been accomplished:

A. Fiat shall preserve, maintain, and operate the Hold Separate Assets as viable competitive businesses, with management and direction of research, development, production, sales, and operations of such assets held entirely separate, distinct and apart from those of Fiat. Fiat shall not coordinate with the management of the Hold Separate Assets in its production, marketing or sale of any products with that of any of the Hold Separate Assets that Fiat will own as a result of the acquisition of Case. Within fifteen (15) days of the entering of this Hold Separate Stipulation and Order, Fiat will inform the United States of the steps taken to comply with this provision.

B. Fiat shall not influence or attempt to influence any operational or financial decision of HFI and shall not obtain, directly or indirectly, any information, except information that is clearly necessary for Fiat to comply with federal, state or local laws and regulations or financial information that has been made available to potential purchasers. Fiat or Case Corporation shall cause the Case-appointed members of the HFI Management Committee to resign and shall assign to AGCO Case's right to appoint members of the HFI Management Committee pending the divestiture. If AGCO agrees that the current Case-appointed HFI General Manager continues in his position, Fiat and Case will ensure that he complies with the firewall specified in Section V.D. In the event that the current Case-appointed HFI General Manager resigns his position as HFI General Manager, Fiat or Case shall assign to AGGO Case's right to appoint the HFI General Manager. In addition, Fiat or Case shall immediately vest all unvested pension and other equity rights of the current Case-appointed HFI General Manager and provide that employee all benefits the employee would be entitled to if terminated without cause. Within ten (10) working days of the entering of this Hold Separate Stipulation and Order by the Court, Fiat will inform the United States of the steps to comply with this provision.

C. Fiat shall take all steps necessary to ensure that the Hold Separate Assets will be maintained and operated as ongoing, economically viable and active competitors in the development, production and sale of tractors and hay and foraging equipment, that the management of the Hold Separate Assets will not be influenced by Fiat, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Hold Separate Assets including the performance and decision-making functions regarding internal research and development, sales and pricing, will be kept separate and apart from the business of Fiat. Fiat's influence over the Hold Separate Assets shall be limited to that necessary to carry out Fiat's obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment.

D. Defendants shall construct and maintain in place a firewall that prevents any information about the Hold Separate Assets, including but not limited to information about AGCO's and defendants' requirements, purchases, or future requirements for tractors and for hay and foraging equipment manufactured by HFI, from flowing to any employee of defendants not involved in the operation of the Hold Separate Assets. To implement this provision, defendants shall identify those employees involved in the operation of the Hold Separate Assets, and all employees not so identified shall be prohibited from receiving any information from or about the Hold Separate Assets, including but not limited to defendants' and AGCO's requirements, purchases, or future requirements for tractors and for hay and foraging equipment from HFI. All identified employees who receive any such information shall be prohibited from passing on such information to employees not so identified.

E. Fiat shall, within ten (10) business days of the filing of the Complaint, submit to the Department of Justice a document setting forth in detail the procedures to effect compliance with

Paragraph D. The Department of Justice shall have the sole discretion to approve the compliance plan and shall notify defendants within three (3) business days whether it approves of or rejects the compliance plan. In the event that the compliance plan is rejected, the reasons for the rejection shall be provided to defendants and defendants shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by the Department of Justice and implemented by defendants.

F. Fiat shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as viable, ongoing operations, consistent with current business plans.

G. Fiat shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as viable, ongoing operations, consistent with current business plans.

H. Fiat shall use all reasonable efforts to maintain and increase the sales of the Hold Separate Assets, including funding at previously approved levels for 1999 for internal research and development, sales, marketing, and support for the Hold Separate Assets.

I. Fiat shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the proposed Final Judgment.

J. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this Hold Separate Stipulation and Order, works for Case or Fiat and whose primary responsibility relates to the Hold Separate Assets.

K. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint one or more persons from current management, acceptable to the United States in its sole discretion, who shall have complete managerial responsibility for the Hold Separate Assets, subject to the provisions of this Hold Separate Stipulation and Order and the proposed Final Judgment, until such time as this Hold Separate Stipulation and Order is terminated. In the event that such manager(s) is unable to perform his or her duties, Fiat shall appoint from the current management of the Hold Separate Assets, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Fiat fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

L. Fiat shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestiture pursuant to the proposed Final Judgment to a suitable purchaser.

M. This Hold Separate Order and Stipulation shall remain in effect until the divestitures required by the Final Judgment are complete, or until further Order of the Court.

Dated: November 4, 1999.

For Plaintiff United States of America
Joan Farragher, Esquire,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20005, (202) 307–0001.

For Defendants
Steven C. Sunshine, Esq.,
Counsel for Fiat S.p.A., New Holland N.V., New Holland N.A., and Fiat Acquisition Corp., Sherman & Sterling, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2604, (202) 508–8022.

Richard J. Favretto, Esq.,
Counsel for Case Corporation, Mayer, Brown & Platt, 1909 K Street, NW., Washington, DC 20006, (202) 263–3000.

So Ordered:

Dated:

_____

United States District Judge

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 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, 4 WD 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 manufacturer 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 affect 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 investments 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 or 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 their 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 the 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 defined 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), of 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 _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 14 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

1. Nature and Purpose of the Proceeding

On November 4, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of Cases Corporation (''Case'') by Fiat S.p.A. (''Fiat''), and Fiat subsidiaries, Fiat Acquisition Corporation (''Fiat Acquisition''), New Holland, N.V., and North Holland North America, Inc. (''New Holland''), would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. the Complaint alleges that the acquisition likely would substantially reduce competition in the manufacture and sale of four-wheel-drive (''4WD'') tractors and large two-wheel-drive (''2WD'') tractors, and in the manufacture and sale of small square balers, large square balers, and self-propelled windrowers (collectively ''hay and forage equipment''), in the United States and Canada. The Compliant seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) injunctive relief preventing consummation of the proposed acquisition; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When it filed the Complaint, the United States also filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which would settle the lawsuit. The proposed Final Judgment permits Fiat and its subsidiaries to acquire Case, but requires divestitures that will preserve competition in the five relevant product markets alleged in the Complaint. The proposed Final Judgment orders defendants to divest New Holland's Genesis line of 4WD tractors; New Holland's Versatile line of 2WD tractors and its line of tracked tractors that is currently in development; and Case's ownership interest in Hay and Forage Industries (''HFI''), a joint venture that makes hay and forage equipment.

Defendants must accomplish the divestitures within one hundred and fifty (150) calendar days after the filing of the Compliant, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to purchasers acceptable to the United States. If the defendants do not do so within the time specified in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it might deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States.

In addition, under the terms of the Hold Separate Stipulation and Order, defendants must hold specified assets separate and apart from their other businesses until the required divestitures have been accomplished. Until the required divestitures are accomplished, defendants must preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns.

The parties have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Fiat is an Italian corporation 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.

Among Fiat's subsidiaries are New Holland N.V., New Holland, and Fiat Acquisition. 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 manufactures 4WD agricultural tractors, large 2WD agricultural tractors and hay and forage equipment.

Case is a Delaware corporation with its headquarters and principal place of business in Racine, Wisconsin. Case manufactures 4WD tractors and large 2WD agricultural tractors. Case also owns 50 percent of HFI, a joint venture which produces hay and forage equipment. HFI sells the equipment it manufactures to Case and its joint venture partner for distribution and sale under each company's respective trade names. In 1998, Case reported revenues of $6.1 billion.

On or about May 15, 1999, Fiat entered into an Agreement and Plan of Merger (''Agreement'') to 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. This transaction, which would eliminate head-to-head competition between Case and New Holland and increase concentration in already highly concentrated markets for tractors and hay and forage equipment precipitated the government's suit.

B. The Markets

1. Tractors. 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 high horsepower (205 hp to 425 hp) tractors used mostly for heavy-duty farm applications, including tilling, cultivating, and pulling large implements. Large 2WD tractors are lower horsepower tractors that are typically used to pull medium-sized implements for farm applications that do not require the heavy-duty performance of a 4WD tractor.

2. Hay and Forage Equipment. A self-propelled windrower cuts hay, breaks it up for faster drying and lays it on the ground in long columns called windows that the hay can dry quickly. Balers collect hay after it has dried in the field, compact it into square bales, tie the bales together with twine, and eject them onto the ground for subsequent collection or transportation. A small square balers produces a bale of hay with a rectangular face less than two square feet in size; a large square baler generally produces an eight-foot long bale of hay with a rectangular face that is more than four square feet in size.

C. Harm to Competition as a Result of the Proposed Transaction

The Complaint alleges that the acquisition would eliminate head-to-head competition between Fiat and Case in markets for 4WD tractors, large 2WD tractors, small square balers, large square balers, and self-propelled windrowers in the United States and Canada. The Complaint also alleges that the acquisition would significantly increase concentration in these markets. As a result of this increased concentration and reduced competition, farmers would likely face higher prices, lower quality, and less innovation in markets for 2WD tractors, large 2WD tractors, small square balers, and self-propelled windrowers. Furthermore, entry by new companies would not be timely, likely, or sufficient to prevent these anticompetitive effects.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Requirements

The provisions of the proposed Final Judgment are designed to preserve competition in markets for tractors and hay and forage equipment in the United States and Canada. To preserve competition in the markets for 4WD and 2WD tractors, Section IV.A of the proposed Final Judgment orders defendants to divest New Holland's Genesis line of large 2WD tractors, New Holland's Versatile line of 4WD tractors, and its line of tracked tractors that is currently in development. To preserve competition in the markets for small square balers, large square balers, and self-propelled windrowers, Section IV.A of the proposed Final Judgment also orders defendants to divest Case's interest in HFI.

B. Short-Term Supply Agreements for Tractors

New Holland produces in Genesis line of large 2WD tractors and Versatile line of 4WD tractors at its Winnipeg, Manitoba, Canada plant. Section IV.A of the proposed Final Judgment requires New Holland to offer the Winnipeg plant for sale. Should the divestiture of either the large 2WD or the 4WD lines be unaccompanied by the sale of the Winnipeg plant, under Section IV.1, the purchaser of the large 2WD or the 4WD line shall be offered a short-term transitional supply agreement, not to exceed two years in length, to manufacture and deliver the purchaser's requirements for Genesis to Versatile series tractors and parts on terms and conditions designed to enable the purchaser to compete effectively with defendants in the sale of 4WD and large 2WD tractors. The terms and conditions of this agreement must be acceptable to the United States in its sole direction.

Section IV.J of the Final Judgment provides that, under each divestiture, defendants retain the right to negotiate a transitional supply agreement under which this purchaser of the divested assets would manufacture and deliver to defendants in a timely manner defendants' requirements for 4WD and large 2WD tractors and hay and forage equipment. Defendants have independent distributors whose viability may be affected, in the absence of such a supply agreement, by the unavailability of 4WD and large 2WD tractors and hay and forage equipment during a limited transition period. A purchaser may also find it in its best interest to enter into such a transitional supply agreement to achieve sufficient manufacturing volumes to realize scale economies. The Final Judgment is permissive on this point and does not obligate the purchaser of the 2WD line, the 4WD line, or the hay and forage equipment assets to enter into transitional supply agreements with the defendants.

Any such supply agreements to the defendants 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 audible cost data and such agreements

shall include terms and conditions reasonably designed to enable the defendants to compete with the 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 be amended only with the prior approval of the United States in its sole discretion.

C. General Divestiture Provisions

Under Section IV.A of the proposed Final Judgment, defendants must accomplish the required divestitures within one hundred and fifty (150) calendar days after the filing of the Complaint, or within five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to a purchaser acceptable to the United States. Section IV.B of the proposed Final Judgment requires that 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. Section IV.H requires that the assets to be divested 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.

Until the required divestitures have been accomplished, under Section VIII, defendants must take certain steps to ensure that all assets to be divested will be maintained as separate, distinct and saleable assets. Until such divestitures, the defendants shall continue to operate the assets as independent, economically viable, ongoing business concerns in the manufacture and sale of tractors and hay and forage equipment until the required divestitures are complete.

Under Section IV.C and IV.D of the proposed Final Judgment, defendants shall make known, by usual and customary means, the availability of the assets and provide any prospective purchasers with a copy of the Final Judgment. The defendants are required to offer to furnish any prospective purchaser, subject to customary confidentiality assurances, all information regarding the assets customarily provided in a due diligence process, except such information subject to attorney-client privilege or attorney work-product privilege. Defendants must also permit prospective purchasers to have reasonable access to personnel and to make inspection of physical facilities and financial, operational, or other documents and information customarily provided as part of a due diligence process.

Sections IV.E provides that defendants shall not interfere with negotiations by any purchaser to employ any of defendants' employees who worked at the divested assets. Sections IV.F and IV.G require that defendants not impede the operation of any business connected with the assets to be divested or prevent any dealer from distributing the divested assets for two years after the divestiture.

D. Trustee Provisions

If defendants fail to divest the assets within the specified period, Section V.A of the proposed Final Judgment provides that the Court shall appoint a trustee, selected by the United States, to accomplish the divestitures. If a trustee is appointed, Section V.C of the proposed Final Judgment requires the defendants to pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, section V.E provides that the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. Under Section V.F, at the end of six months after the trustee's appointment, if the divestitures have not been accomplished, the trustee must make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

E. Notification Provisions

Section VI of the proposed Final Judgment assures the United States an opportunity to review any proposed sale, whether by the defendants or the trustee, before it occurs. Under this provision, the United States is entitled to receive complete information regarding any proposed sale or any prospective purchaser prior to consummation of the sale. If there is more than one purchaser of New Holland's tractor lines, they must be simultaneously identified in order that the United States may jointly review the proposed tractor divestitures. Absent written notice from the United States that it does not object to a proposed sale of any of the divestiture assets by the defendants or the trustee, the proposed divestiture may not be completed. Should defendants object to a divestiture by the trustee on the basis of the trustee's malfeasance, that sale shall not be consummated unless approved by the Court.

Section VII.A of the proposed Final Judgment provides that within twenty (20) calendar days of the filing of the Complaint and every thirty (30) calendar days thereafter until the divestitures have been completed pursuant to Section IV or V of the 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. Section VII.B of the proposed Final Judgment provides that within twenty (20) calendar days of the filing of the Complaint, 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 divestiture assets.

F. Compliance Inspection, Retention of Jurisdiction, and Termination Provisions

Section X requires defendants to make available, upon request, the business records and the personnel of its businesses. This provision allows the United States to inspect defendants' facilities and ensure that they are complying with the requirements of the proposed Final Judgment. Section XI provides for jurisdiction to be maintained by the Court. Section XII of the proposed Final Judgment provides that it will expire on the tenth anniversary of its entry by the Court.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the

proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will give all comments due consideration and respond to each of them. The United States remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and responses will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to; J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States also considered a full trial on the merits against defendants. The United States is satisfied, however, that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the manufacture and sale of 4WD tractors, large 2WD tractors, small square balers, large square balers, and self-propelled windrowers, and will effectively prevent the anticompetitive effects that would result from the proposed acquisition.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions, for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term '''public interest' take[s] meaning from the purposes of the regulatory legislation.'' NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). Since the purposes of the antitrust laws is to preserve ''free and unfettered competition as the rule of trade,'' Northern Pacific Railway Co. v. United States, 456 U.S. 1, 4 (1958), the focus of the ''public interest'' inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir. 1983); United States v. Waste Management, Inc, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[1] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States v. BNS, Inc. 858 F.2d 456, 462 (9th Cir. 1988) (quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)). See also Microsoft, 56 F.3d 1448. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.,* 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate ever anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range or acceptability or is 'within the reaches of public interest.'' [13]

[1] 119 Cong. Rec. 24598 (1973), See United States v. Gillette Co., 406 F. Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added); see BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette Co., 406 F. Supp. at 716. See also American Cyanamid Co., 719 F.2d at 565.

[3] United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982), *affd sub nom.*

VIII. Determinative Documents

There were no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 19, 1999.
Respectfully submitted,

Joan Farragher,

U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, DC 20530, Telephone: (202) 307–6355.

Certificate of Service

I hereby certify under penalty of perjury that on this 19th day of November, 1999, I caused a copy of the Competitive Impact statement to be served by first class mail, postage prepaid, upon the following:

Steven C. Sunshine, Esq,
Shearman & Sterling, 801 Pennsylvania Avenue, NW., Washington, DC 20004–2604; Counsel for Fiat S.p.A., New Holland N.V., New Holland North America, Inc., and Fiat Acquisition Corp.
Roy Engler, Esq.,
Mayer, Brown & Platt, 2000 Pennsylvania Avenue, NW, Washington, DC 20006; Counsel for Case Corporation.

Joan Farragher,

Trial Counsel, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Washington, DC 20530; Telephone: (202) 307–6355; Facsimile: (202) 307–5802.

[FR Doc. 99–31626 Filed 12–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed new collection of information on employers' use and assessment of the Work Opportunity Tax Credit and the Welfare-to-Work Tax Credit. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before February 7, 2000.

ADDRESSES: George Shephard, U.S. Department of Labor, Room N–4466, 200 Constitution Ave., NW, Washington, DC 20210, or phone 202–219–9092, ext. 139 (this is not a toll-free number), or e-mail *gshephard@doleta.gov,* or fax 202–208–5844 (this is not a toll-free fax number).

SUPPLEMENTARY INFORMATION:

I. Background

The Work Opportunity Tax Credit (WOTC) was created in 1996 and the Welfare-to-Work (WtW) Tax Credit in 1997. The WOTC was designed to promote the hiring of individuals from certain target groups who consistently have had a particularly high unemployment rate, and the WtW Tax Credit to promote the hiring of long-term welfare assistance recipients. Both are meant to appeal to a wide range of employers and to impose a minimal burden upon participating employers.

The Employment and Training Administration has the authority and responsibility for managing, providing oversight of, and issuing basic operating guidelines for the tax credit programs. Through the use of a contractor, WESTAT, ETA is examining employers' use and their assessment of the tax credit programs. This research will be in the form of 16 in-depth interviews with as many businesses. A synthesis report will be produced which focuses on quantitative workforce profiles of employers' use of the tax credits; employers' innovative practices and how they use the tax credits and the returns they receive; case histories of individual employees who have been hired under the tax credits; and discussion of the availability of data should a larger scale impact study of the tax credits be considered for the future. Sixteen case study reports will also result.

The study will answer key questions about the relatively-new tax credit programs for which no systematically-collected data currently exist, *e.g.,* what are the main purposes and reasons for businesses to use the tax credits? Answers will be used in efforts to increase employer use of tax credits and to improve program operations.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

As part of a study which will examine employer's use and assessment of the WOTC and WtW Tax Credit, employers who utilize one or both of the tax credits will be interviewed for the purpose of obtaining contextual, qualitative and quantitative information about their experience. Each interview will be guided by a protocol that contains both closed-ended and open-ended questions and a data summary.

Type of Review: New.
Agency: Employment and Training Administration.
Title: Collection of information on employers' use and assessment of the WOTC and the WtW tax credit.
OMB Number: 1205–ONEW.
Affected Public: Businesses who use the WOTC and/or WtW tax credits.
Cite/Reference/Form/etc: Information will be collected by on-site interview through use of an interview protocol.
Total Respondents: 16.
Frequency: One time.
Total Responses: 16.
Average Time per Response: 4 hours.
Estimated Total Burden Hours: 64 hours.
Total Burden Cost (capital/startup): Not applicable.

Maryland v. United States, 460 U.S. 1001 (1983), *quoting Gillette Co.,* 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd,* 605 F. Supp. 619, 622 (WD. Ky. 1985).