

*Case No IV/M.823 -  
John Deere Capital  
Corp/Lombard North  
Central plc*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 07/10/1996

*Also available in the CELEX database  
Document No 396M0823*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.10.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.823 - John Deere Capital Corp./Lombard North Central plc  
Notification of **05.09.1996** pursuant to Article 4 of Council Regulation No 4064/89

1. On 5 September 1996 John Deere Capital Corporation (USA) (JD Capital) and Lombard North Central plc (United Kingdom) (Lombard) notified to the Commission an intended operation whereby they acquire within the meaning of article 3(1)(b) of Council Regulation 4064/89 joint control of John Deere Credit Ltd (United Kingdom) (JD Credit).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I. THE PARTIES**

3. JD Capital is an indirect wholly owned subsidiary of Deere & Co (USA). Deere is involved in the manufacture and distribution of agricultural, industrial and other equipment and in the supply of credit and insurance. JD Capital is the holding company of companies which provide agricultural financing in the USA, Canada and Mexico.

4. Lombard is a wholly owned subsidiary of National Westminster Bank plc (United Kingdom) (National Westminster). Its principal activities are the acceptance of deposits from the public and the provision of banking and financial services, including instalment credit, leasing and loans. The National Westminster Bank group (the NatWest group) supplies banking, financial and related activities.

## II. THE OPERATION

### Introduction

5. JD Credit is at present an inactive subsidiary of Lombard, re-named for the purposes of this operation. Following the operation it will be engaged in the supply of financing for the lease, hire and purchase of agricultural and related machinery, equipment and supplies in the United Kingdom.

### Joint control

6. JD Capital will acquire 49.9 per cent of the shares in JD Credit and will have the right to nominate three of its seven directors. But its strategic, commercial and competitive activities will be subject to the unanimous consent of both JD Capital and Lombard. By the joint venture agreement the unanimous agreement of JD Capital and Lombard (not to be unreasonably withheld or delayed<sup>(1)</sup>) is required for capital expenditure above [ ]<sup>(2)</sup>, entry into a joint venture, contracts exceeding [ ]<sup>(3)</sup> years, involving a liability above [ ]<sup>(2)</sup> or outside the normal course of business of JD Credit, the appointment of the managing director, the adoption of or any amendment to the business plan or budget, borrowings exceeding a debt to equity ratio [ ]<sup>(2)</sup>, any change in the nature of the business, mergers, acquisitions and disposals.

JD Credit will therefore be subject to joint control by JD Capital and Lombard.

### Autonomous long-lasting economic entity

7. JD Credit will perform all the functions normally carried out by other entities operating in the same market. Its business has until now been operated by Farming and Agricultural Finance Ltd (United Kingdom) (FAF), a subsidiary of Lombard. JD Capital and Lombard will commit sufficient resources (including tangible and intangible assets and personnel) to JD Credit, generally on an arm's-length basis and with the option for JD Credit to obtain the resources from alternative sources.
8. JD Credit will not be dependent upon its parents for its business. The notifying parties estimate that by the end of 1996 [ ]<sup>(4)</sup> per cent of the business of JD Credit will involve non-Deere products.
9. The joint venture agreement provides that the joint venture will have indefinite duration, subject to the right of either parent to withdraw by giving one year's notice three years after its commencement.

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<sup>(1)</sup> In the event of ultimate disagreement the joint venture terminates

<sup>(2)</sup> Deleted for publication - a relatively low threshold for the industry.

<sup>(3)</sup> Deleted for publication - less than 5.

<sup>(4)</sup> Deleted for publication - a significant proportion.

10. JD Credit will therefore perform on a lasting basis all the functions of an autonomous economic entity.

Absence of coordination

11. Although the NatWest group will retain activities in the same market as JD Credit (eg FAF will finance non-Deere agricultural equipment), Deere has no other financing operations in the EEA. Deere's other activities in the EEA, the manufacture of agricultural and other machinery, do not overlap with any activity of the NatWest group.
12. There is thus no possibility of coordination between JD Capital and Lombard or between companies in their corporate groups arising from the joint venture.

Conclusion

13. The operation accordingly constitutes a concentration within the meaning of article 3(1)(b) of the Regulation.

### **III. CONCENTRATION OF COMMUNITY DIMENSION**

14. Deere and National Westminster have a combined aggregate worldwide turnover in excess of 5000 million ECU. Each of them has a Community-wide turnover in excess of 250 million ECU. [ ]<sup>(5)</sup>
15. The operation therefore has a Community dimension within the meaning of article 1(1) of the Regulation. It does not qualify under the EEA Agreement for cooperation with the EFTA Surveillance Authority.

### **IV. COMPATIBILITY WITH THE COMMON MARKET**

16. The operation combines complementary activities of Deere and the NatWest group. There is thus no overlap between their activities and the operation results in no horizontal increase in market shares.
17. The relevant product market in which JD Credit will be active can be defined as the provision of financing leasing for agricultural machinery, equipment and supplies and related equipment and machinery. JD Credit will have less than [ ]<sup>(6)</sup> per cent of this market in the United Kingdom. The combined market share of FAF and JD Credit will also be below [ ]<sup>(6)</sup> per cent. On a narrower definition of the relevant product market - financing leasing for agricultural machinery and equipment - JD Credit will have a market share of [ ]<sup>(6)</sup> per cent and FAF and JD Credit will have a combined share below 25 per cent. JD Credit will be in competition with a variety of large and well established competitors, including similar financing joint ventures or collaborations between financial institutions and suppliers of agricultural machinery and equipment, such as ING Bank/Case, Barclays/Fiat New Holland and Rabobank/Massey Ferguson. In addition barriers to entry are low.

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<sup>(5)</sup> Deleted for publication - the parties do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State.

<sup>(6)</sup> Deleted for publication - below 10.

## V. ANCILLARY RESTRAINTS

18. The notifying parties have requested that certain provisions of the agreement, if restrictions, be considered as ancillary to the concentration.
19. The parties agree to use all reasonable efforts to keep confidential concerning the business of JD Credit and the business of each other for a period ending [ ]<sup>(7)</sup> years after the termination of the joint venture ([ ]<sup>(8)</sup> years for certain Deere customer lists).
20. Subject to existing activities the parties agree not to compete with [ ]<sup>(9)</sup> or solicit customers of JD Credit for the duration of the joint venture. This restriction, which reflects the substantial withdrawal of the parties from the market of the joint venture, does not apply to the NatWest group except Lombard and its subsidiaries.
21. Deere grants to JD Credit a non-exclusive license to certain trade and service marks for the duration of the joint venture
22. In accordance with customary practice in the agricultural machinery and equipment market Deere agrees for the duration of the joint venture to provide exclusively to JD Credit subsidies intended to enable it to offer attractive financing terms to prospective purchasers. If JD Credit decides not to provide financing for a Deere product Deere will be able to provide the subsidy to another finance company.
23. The parties will supply equipment and staff to JD Credit on a non-exclusive arm's-length basis. JD Credit will be able to obtain these resources elsewhere.
24. The provisions set out in paragraphs 19 and 23 contain no restrictions. The other provisions contain restrictions which are necessary to guarantee the viability of JD Credit or are otherwise directly related to and necessary for the successful implementation of the concentration and can therefore be treated as ancillary to it.

## VI. CONCLUSION

25. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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26. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission

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<sup>(7)</sup> Deleted for publication - not exceeding 5.  
<sup>(8)</sup> Deleted for publication - not exceeding 10.  
<sup>(9)</sup> Deleted for publication.