

***Case No IV/M.1612 -
WAL-MART / ASDA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/07/1999

*Also available in the CELEX database
Document No 399M1612*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.07.1999

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Madam/Sir,

Subject : Case No. IV/M. 1612 – Wal-Mart/ASDA

Notification of 18 June 1999 pursuant to Article 4 of Council Regulation
No 4064/89

1. On 18 June, 1999 the Commission received the notification of an operation by which the US based general retailer Wal-Mart Stores Inc. («Wal-Mart») will acquire control of the whole of the UK retailer ASDA Group plc («ASDA»). The take-over will be effected by way of a public bid launched on 14 June 1999.
2. After examination of the notification, and taking into account the undertakings submitted by the parties, 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.

I. THE PARTIES

3. Wal-Mart is a US-based international retailer offering a broad range of general merchandise and food, on a self-service basis.
4. ASDA is a UK based general supermarket retailer of daily consumer goods, such as food, drink, tobacco and non-food household consumables.

II. THE OPERATION

5. The acquisition will be effected by means of a recommended public offer. Wal-Mart will thus acquire through its wholly owned UK subsidiary Wal-Mart Stores UK Limited the entire issued and to be issued capital of ASDA Group. The operation therefore constitutes a concentration according to Article 3 (1) b of the ECMR.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of Wal-Mart and ASDA calculated in accordance with Article 5 (3) lit. b) of Regulation No. 4064/89, exceeds 5 000 million EUR (Wal-Mart: [...]; ASDA: [11,324.7]). Both Wal-Mart and ASDA have a Community-wide turnover in excess of 250 million EUR (Wal-Mart: [...]; ASDA: [11,324.7]), but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant product markets

Retail market

7. The parties are operating on the retail market for daily consumer goods, including fresh and dry food as well as non-food items. The Commission in previous cases¹ has found that the relevant market consists of the provision of a basket of fresh and dry foodstuffs, and non-food household consumables sold in a supermarket environment. The market does not include sales at specialised stores, kiosks and petrol stations. Instead these outlets provide a service that is complementary to those of supermarkets. This definition can also be applied to the present case.

Procurement markets

8. The procurement markets involve the sale of daily consumer goods by producers of such goods to customers such as wholesalers, retailers, and other enterprises. Not all producers supply the full range of daily consumer goods. As a rule suppliers specialise in individual products or product groups, such as fresh products, or dry food or non-food products. Also, from the demand side the different products/product groups are not or imperfectly substitutable for other products or product groups. Therefore, each product or product group constitutes an individual product market. According to the information supplied by the parties, Wal-Mart and ASDA's product offer includes food and drink, tobacco, non-food household consumables, health and beauty products, clothing, recorded music and video, toys, RMI (repair, maintenance and improvement products), electrical appliances, stationery and greeting cards. In the present case, the exact definition of procurement markets can be left open since the proposed transaction with any alternative market definition does not involve the creation or strengthening of a dominant position of the parties.

¹ See for example No. IV/M. 784-Kesko/Tuko; No. IV/M. 1221-Rewe/Meinl or No. IV/M.1541-Kingfisher/ASDA

Relevant geographic markets

Retail market

9. The parties, taking into account the Commission's approach in similar cases² are of the opinion that the retail market in which they are active is at most national. The Commission in previous retail cases has pointed out that although the catchment area of a retail outlet, which can be based on the distance a consumer is willing to travel to reach it, is of a local or regional scale, the catchment area does not necessarily determine the geographic market. If several retail chains operate networks of stores on a national scale it has to be examined whether the important parameters of competition are determined on a national scale. In the present case, both parties largely determine pricing, product range, service levels and promotion on a national basis. This approach is also applied by their main competitors. Therefore, the retail market in which Wal-Mart and ASDA are active can be said to have a national dimension.

Procurement markets

10. The parties define the procurement markets as of largely national dimension considering the fact that both Wal-Mart and ASDA generally procure supplies on a national basis. The parties also make reference to previous cases³ of similar background where procurement markets have been defined as being of national dimension.
11. It has to be pointed out, however, that the definitions applied by the Commission in previous cases were based on the close examination of national market characteristics, concerning demand and supply-side aspects in the respective EU member states. The fact that purchasing decisions and negotiations of the parties and their main competitors mostly take place on a national level is an indication for national procurement markets. On the other hand, there are some products which are mostly purchased on a European level from multinational suppliers, for example in the non-food segment, which makes out an important proportion of both Wal-Mart's and ASDA's product assortments.
12. However, in the present case the exact definition of geographical markets for the individual products/product lines can be left open since the proposed operation with any alternative market definition does not raise serious doubts as to its compatibility with the common market.

Competitive Assessment

Retail market

13. The parties do not have any overlapping activities in the EEA. Wal-Mart is only active in Germany, ASDA's retail activities are confined to the UK. Wal-Mart through its

² See for example No. IV/M. 784-Kesko/Tuko; No. IV/M. 890-Blokker/ToysR'Us; No. IV/M.1541-Kingfisher /ASDA

³ See for example No. IV/M.1085-Promodes/Catteau; No. IV/M.1221-Rewe/Meinl

subsidiaries “Wertkauf”, acquired in December 1997 and «Interspar» acquired in December 1998 operates a chain of 96 retail outlets in Germany and has a market share of approximately 1.4% in 1998 in the German food and consumer goods retail market. Wal-Mart is only the tenth largest national retailer, the leading competitors being Metro, Edeka and Rewe. ASDA is only active on the UK market. Its market shares in 1998 amount to approximately 12%. ASDA is the third largest retailer in the UK behind Tesco (around 23%) and Sainsbury’s (approximately 18%). The fourth largest player Safeway has around 11%.

Procurement markets

14. In case that procurement markets are national, there will be no addition of parties’ market shares on the procurement side and consequently no competitive problem will arise.
15. In case procurement markets are regarded to be European-wide the transaction will not involve any competition problems, either. The parties’ average market shares on the procurement side are well below their shares on the retail level (see point 13). In the absence of any other circumstances which could lead to a dominant position of the parties, the concentration will not result in the creation of a dominant position of Wal-Mart/ASDA on the procurement markets.

V. FINAL CONCLUSION

16. Consequently, the Commission concludes that the proposed concentration will not create or strengthen a dominant position, as a result of which effective competition would be significantly impeded in the common market or a substantial part of it.
17. 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 EEA Agreement. This decision is adopted in application of Article 6 (1) b of Council Regulation (EEC) No 4064/89 (as amended by Council Regulation No 1310/97).

For the Commission,