

EN

*Case No IV/M.301 -
TESCO LTD /
CATTEAU SA*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04.02.1993

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PUBLIC VERSION

MERGER PROCEDURE -
Article 6(1)b decision

To the Notifying Party

Dear Sirs,

Subject: Case No. IV/M.301 - Tesco Ltd./Catteau SA
Your notification pursuant to Article 4 of Council Regulation No. 4064/89

1. The notified operation concerns the proposed acquisition by Tesco plc (Tesco) for the majority of the share capital of Catteau SA (Catteau).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. The Parties

3. Tesco is the parent company of major food and grocery retail chain, having 408 stores throughout the UK.
4. Catteau is a regional, food and grocery, retail chain in North East France. The business is family owned and managed. Catteau owns and operates 90 supermarkets, including two hypermarkets, located mainly in the Nord and Pas-de-Calais regions. It has ten stores under franchise. Almost all of its activities arise from retail business. Only 10% is related to wholesale activities.

II. Concentration of Community Dimension

5. Tesco intends to acquire 85% of the share capital of Catteau. This will give Tesco sole control of the Catteau business. The operation therefore constitutes a concentration within the meaning of Article 3 of the Regulation.

6. The aggregate worldwide turnover of Tesco and Catteau exceeded 5 billion ECU in 1991/1992 (10.10 billion for Tesco, 411 million for Catteau). Both have a Community wide turnover of more than 250 million ECU. Neither achieves more than two-thirds of its Community wide turnover in one and the same Member State. Therefore, the proposed operation has a Community dimension in accordance with Article 1(2) of the Merger Regulation.

III. Compatibility

7. The assessment of a concentration in the retail business sector has to take account of the market power that can be exercised towards consumers as well as towards suppliers.

8. Consumers

Tesco and Catteau derive sales from supermarkets and associated activities in the UK and in France respectively. Thus, their customer base is separate, since supermarkets draw customers from a local catchment area. Consequently, there is no geographic overlap between them, and no addition of market shares. Moreover, each is subject to powerful competitors in its respective geographic markets (e.g. Sainsbury, Argyl, Asda and Gateway in the case of Tesco and Auchan, Promodes, Cora, Intermarché and Carrefour in the case of Catteau).

9. Suppliers

Out of their top thirty suppliers, Tesco and Catteau have only four suppliers in common. These are [...]*. All are major multi-national businesses. Having regard to Tesco and Catteau's competitors and the absence and strength of common suppliers, it is clear that the proposed concentration cannot significantly modify the buying power of the parties.

IV. Ancillary Restrictions

10. The parties have submitted that the non-competition agreements contained under Clause 9 of the purchase agreement (Protocole d'Accord) are ancillary to the concentration. This clause provides that:

- firstly, Jacques and Jean Catteau, their spouses and children, will not acquire, individually or collectively, more than 10% of the share capital of any company primarily engaged in retail grocery distribution, and
- secondly, that Jacques, Jean, Patrick, François and Philippe Catteau do not exercise, directly or indirectly, any management function in any company primarily engaged in retail grocery distribution.

11. It is a well accepted general principle that non-competition clauses, binding the vendor to protect the purchaser, represent valid ancillary restrictions to a concentration. However, the duration and geographic scope of such clauses

* Business secret.

should not exceed what the implementation of the concentration reasonably requires.

12. Having regard to the territorial location of Cateau's operations, the geographic scope of the clause should be limited to the French Départements of Nord, Pas-de-Calais, Aisne and Somme as well as those Belgian provinces lying along the North-East French border.
13. Having regard to the fact that, on the one hand Tesco, although one of the largest UK operators, has no significant experience in the retail grocery distribution business outside the UK; and that on the other hand, based on the evidence provided by the parties, there seems to be no technical know-how and limited commercial know-how; a duration of three years for the non-competition agreements seems reasonable.
14. Lastly, as regards the restriction on the acquisition of more than 10% of the share capital of any company primarily engaged in retail grocery distribution, this restriction should not be used to prevent the purchase of shares for investment purposes. Consequently, this restriction should not be binding where shares are purchased for investment purposes only and the person concerned does not exercise, directly or indirectly, any management function in the company concerned or any material influence in that company.
15. Therefore the above restrictions are covered by the present decision to the extent described above.

V. Conclusion

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

For the Commission