

*Case No COMP/M.1832 -
AHOLD / ICA
FÖRBUNDET / CANICA*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/04/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.04.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sirs,

Subject: Case No COMP/M.1832 – AHOLD/ICA FÖRBUNDET/CANICA

Notification of 3 March 2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 3 March 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EEC) No 4064/89 by which the Dutch grocery retail group Koninklijke Ahold N.V. ("Ahold") will acquire joint control over the Swedish group ICA AB ("ICA") together with the undertakings ICA Förbundet AB («IFAB») and Canica. IFAB and Canica are together referred to as «The Partners».
2. After an examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. ICA is the parent company of ICA group of companies including a group of ICA retailers active in the retail of daily consumer goods in Sweden and via Hakon Gruppen in Norway. ICA is also involved in the wholesale of daily consumer goods to ICA retailers and to third party retailers. In Sweden, ICA is to a limited extent active in the sale of daily consumer goods to restaurants and catering businesses. ICA is also active in the sale of daily consumer goods in Statoil service stations in Sweden, Norway and Denmark through its exercise of joint control over Statoil Retail together with Statoil.¹
4. Ahold is the parent company of the Ahold group, mainly active in the wholesale and retail of daily consumer goods and related products and services in Europe and abroad.

¹ See Case M. 1471- Statoil/ICA/JV

II. THE OPERATION

5. At present ICA is under sole control of ICA Förbundet, a Swedish non-profit organisation of more than 2000 small and medium-sized ICA retailers. ICA Förbundet, through its subsidiary ICA Förbundet AB (IFAB) owns 38% of the shares representing a majority of voting rights (55%) in ICA. Canica, a Norwegian limited company², has a minority (26%) stake in ICA. The remaining shares are held by the individual ICA retailers.
6. The proposed operation will be accomplished in several steps, which are conditional upon each other. Ahold will acquire a certain number of shares from the independent ICA retailers by way of a tender offer. Ahold will further acquire a certain number of shares from each of The Partners by execution of the Share Transfer Agreements, signed on 24 February 2000. All remaining shares will be acquired by Ahold via a new issue of shares to be approved at the ICA Annual General Meeting on 12 April 2000. As a result of the transaction, Ahold will own 50%, IFAB 30% and Canica 20% of the voting and equity rights in a newly created holding company, ICA Ahold Holding, which in turn will hold 100% of the shares in ICA. IFAB and Canica on 24 February 2000 have concluded the «Partners Agreement» regulating their joint shareholding in ICA.

III. CONCENTRATION

7. As a result of the notified operation, Ahold will acquire joint control over ICA together with The Partners. Under the Shareholders Agreement between ICA Ahold Holding AB, Ahold and The Partners, dated 24 February 2000, Ahold and The Partners will each nominate [...] members to the Board of Directors, [an equal number of board members, who have to find agreement on decisive business decisions]. ICA will be a full-function joint venture and will continue to operate the current business of the group, which is wholesale and retail trade of daily consumer goods. ICA will not be dependent on its parents for supply, demand or resources. ICA will be a full-function joint venture on a lasting basis since the Shareholders Agreement has a long-term character.³
8. It can thus be concluded that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴ (Ahold: EUR 33.5 billion; ICA: ECU 6,352 million). Each of Ahold and ICA have a Community-wide turnover in excess of EUR 250 million (Ahold: EUR [...] billion; ICA: ECU 4,487 million), 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. It does not constitute a co-operation case under the EEA Agreement.

² Canica is owned by private persons of Norwegian nationality.

³ [...]

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

V. COMPATIBILITY WITH THE COMMON MARKET

A. *Relevant product and geographical markets*

Market for retail of daily consumer goods

10. The parties submit that the market for retail of daily consumer goods includes the sale of a more or less diversified range of products carried out by retail chains through hypermarkets, supermarkets and discounters, but also through specialised shops, service stations, kiosks and open markets.
11. The offer proposed by the specialised shops may constitute a complementary source of supply for the end-consumer. However, the product assortment and/or service offered by these shops is usually different from those offered by whole-range retail chains. The Commission has therefore found that there is a separate market in food retailing which comprises all retailers, in particular supermarkets and hypermarkets, carrying a range of food and non-food products which is typical of the food retail trade⁵ (excluding specialised outlets such as for example butchers and bakers or other forms of distribution like service stations, kiosks and open markets, etc).
12. The market for retail of daily consumer goods is local from the viewpoint of the end-consumer. The Commission has, however, also stated in this connection that an examination limited to such local markets would not reflect the competitive impact of a concentration in the food retail trade, at least not where a large number of local markets affected by the concentration are connected in such a way as to overlap and cover a larger area or even a whole Member State.⁶ Furthermore, in many countries, including the countries where the parties are active, the main players compete on a national scale and the most decisive parameters of competition, such as product assortment, advertising, promotions or prices are determined on a national level. For the purposes of the present case, however, the geographic market definition can be left open since the concentration does not result in any overlaps in the parties' activities, be it at national or at a narrower level.

Markets for wholesale and procurement of daily consumer goods

13. The market for wholesale of daily consumer goods consists of the sale and distribution of daily consumer goods to third parties such as retailers and other daily consumer good clients. The parties are of the view that whole-range wholesalers, specialised wholesalers (with a product offer limited to categories) and producers such as for example beer and soft drinks companies, who supply particular products directly to retailers, compete in the same market. The question whether the three different types of wholesalers operate in the same or in different markets can, however, be left open, since the present operation does not create competitive concerns with any alternative market definition.
14. The procurement market for daily consumer goods includes the sale of daily consumer goods by producers to various customers such as retail chains, restaurants, specialised shops, catering companies, etc. Since suppliers of these goods are typically specialised in

⁵ E.g. Decision 97/277/EC - Kesko/Tuko (OJ L 110, 26.4.1997)

⁶ E.g. Decision 97/277/EC - Kesko/Tuko (OJ L 110, 26.4.1997), see also Decision 99/674/EC - Rewe/Meinl (OJ L 274, 23.10.1999)

the production of one or several related products, the Commission in previous cases⁷ has found that different product groups usually form separate markets. Moreover, the Commission in previous cases⁸ has also held that the food retail distribution channel⁹ may constitute a separate market. However, this matter does not have to be decided, as competition problems will not arise from the present concentration with any alternative market definition.

15. The markets for wholesale and procurement of daily consumer goods, although undergoing changes following the introduction of the Euro, can still be considered as national due to a number of factors such as consumer preferences for national products and different distribution channels. Furthermore, many European manufacturers and wholesalers negotiate with their customers on a national level, basically via their subsidiaries and branches.

B. Assessment

Market for retail of daily consumer goods¹⁰

16. The parties are active in different Member States of the Community. Ahold is active in the retail of daily consumer goods in The Netherlands, Portugal and Spain. Ahold in the Netherlands has a market share between 34-35%¹¹, its main competitors being Laurus (18-24%), Makro (1-10%) and Aldi (1-10%). In Portugal, Ahold is active on the retail market via the Portuguese company Jeronimo Martins (JMR; a joint venture with Jeronimo Martins & Filho) and has a market share of around [15-25]%. The main competitors are Modelo Continente with around [20-30]% market share and Auchan with around [10-20]%. In Spain, Ahold has only minor activities (market shares below 5%).
17. The Partners are active in the retail of daily consumer goods in Sweden and Norway¹². In its home market Sweden, ICA owns some 2100 retail outlets of which the majority is operated by independent retailers under the ICA trademark. ICA is market leader with a market share of [35-45]%¹³, its main competitor Kooperativa Förbundet (KF) has a market share of around [15-25]19%, Nya Dagligvarubolaget has around [15-25]%. In Norway, ICA is active via the recently acquired Norwegian company Hakon¹⁴ and has a market

⁷ See for example Decision 99/674/EC - Rewe/Meinl (OJ L 274, 23.10.1999) or Carrefour/Promodes (M.1684; 25.2.2000)

⁸ idem

⁹ That is, supplies to whole-range food retailers as opposed to other distribution channels like for example specialised shops, restaurants and kiosks, etc.

¹⁰ Market shares, except for Norway, are dating from 1998. The parties submit that the figures for 1999 do not deviate considerably from the 1998 figures.

¹¹ Source: M+M Eurotrade 2000; figures for 1998

¹² The Partners have not got any other activities on the daily consumer goods market than those carried out by the ICA group.

¹³ Market shares given in the notification and by competitors.

¹⁴ In March 1999, ICA AB acquired the Norwegian company Hakon Gruppen AS ("Hakon"), which is active in the wholesale and retail of daily consumer goods to consumers and institutional establishments in Norway and to a minor extent in Latvia.

share of [25-30]%, the market leader being NorgesGruppen with a share of slightly above [25-35]%. The remaining competitors are the customer co-operative NKL/Forbrukersamvirket with around [20-30]% market share and Reitangruppen with approximately [10-20]% (market shares according to AC Nielsen).

18. On the basis that the retail market is considered to be national in scope, the transaction will not produce any overlaps. The concentration will therefore not give rise to any increase in market shares of the parties. Due to this situation the creation of a dominant position of the parties in the retail of daily consumer goods can be excluded.

Markets for wholesale and procurement of daily consumer goods¹⁵

19. The Commission in previous decisions¹⁶ has found that the products handled by wholesalers of daily consumer goods mainly reflect the sales of such products at retail level including various distribution channels.
20. ICA after the present operation will continue to be active on the wholesale market of daily consumer goods through ICA Servicehandel AB in Sweden, where it has around [8-15]% market share and through Hakon in Norway, whose wholesale activities represent around [below 5]% of the total market. The most important competitors are Kooperativa Förbundet KF and Nya Dagligvarubolaget in Sweden (with each 10-20%), Remagross ([20-30]%) and Joh. Johannsen (35-45%) in Norway. Ahold is mainly active in The Netherlands, where its activities represent around [below 10]% of the overall whole-range wholesale market and, to a minor extent, in Spain and Portugal.
21. As far as the procurement of daily consumer goods is concerned, the concentration will not give rise to any overlaps, either. Ahold and ICA only have a total of [10-15] common suppliers, which are exclusively large multinational producers with world-wide activities. However, it has to be observed that, even with multinational suppliers, negotiations to a very large extent take place at national level. This circumstance is due to a number of factors, such as for example differences in consumer preferences, marketing strategies and other national particularities. Therefore, the present operation will not enhance the market position of Ahold or ICA on the retail level and will therefore not have any significant impact on the position of the parties at the supply-level.
22. Both Ahold and ICA are members of the AMS¹⁷ group, which is a framework in which the members cooperate on an ad hoc basis. AMS is a cooperation between various European retailers, created in 1989, aiming at the coordination of certain administrative functions. Other members are for example Casino, Safeway, Edeka, Kesko, Mercadona or Jeronimo Martins. The members of AMS, according to the parties, do not jointly purchase daily consumer goods nor does the AMS co-operation affect negotiations of prices or other terms of supply on a national level¹⁸. AMS is mainly used for co-operation on an ad hoc basis.

¹⁵ See footnote 7

¹⁶ See for example Decision 97/277/EC - Kesko/Tuko (OJ L 110, 26.4.1997); or ICA/Staoil/JV, case No. M. 1471

¹⁷ The AMS cooperation received a comfort letter by the Commission on 23 December 1998.

¹⁸ An exception to this principle is the project "Euroshopper", concerning the joint purchase of Economy Brand Products.

23. In any event, the share of purchases procured by Ahold and ICA under AMS is very low. ICA procures less than 1% of its total purchases (1999) in Sweden under AMS. Ahold procures less than 3% of its total purchases in The Netherlands under AMS. Furthermore, the main competitors of Ahold and ICA are also member of similar umbrella agreements like AMS, such as EuroGroup (most important members are Rewe and Coop Switzerland), United Nordic (NorgesGruppen, Tukospar, Spar Finland, Supergros, etc.) or NAF International (NKL/Forbrukersamvirket, but also KF, Eroski Group, Coop Italia, etc.). Given that both Ahold and ICA are already members of AMS, the present operation will not significantly affect the position of AMS.
24. The present operation will thus not produce any increase in market shares or strengthen the market positions of the parties since Ahold and ICA are active in different geographic markets. Due to this situation the creation of a dominant position of the parties in the wholesale and procurement of daily consumer goods can be excluded.

VI. ANCILLARY RESTRAINTS

25. Ahold and The Partners have agreed in the Shareholders Agreement that, during the first [...] years after completion of the transaction, no transfer of shares will be permitted without the prior written consent of Ahold and The Partners (Clause 12.2). Ahold and The Partners have further agreed that none of them will conduct any competing business activities in the territory of ICA for [a certain period of time] (Clause 5.1). Moreover, Ahold and The Partners will not become financially involved in the business of a competing enterprise (meaning an equity interest of more than [...]% in such an undertaking) active in the territory of ICA.
26. The Stand Still period of [...] years can be regarded as directly related and necessary for the implementation of the transaction. The non-compete clause can be regarded as directly related and necessary for the implementation of the transaction, but only insofar as it is confined to the territories where ICA was active already before the concentration. The obligation of both parties not to acquire a financial interest in a competing business can be regarded as ancillary as long as it does not apply to investments of a purely financial interest.

VII. CONCLUSION

27. 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.

For the Commission,