

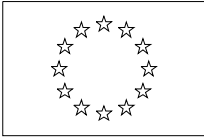
***Case No COMP/M.2161 -
AHOLD / SUPERDIPLO***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/10/2000

*Also available in the CELEX database
Document No 300M2161*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.10.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M.2161-AHOLD/SUPERDIPLO

Notification of 20.09.200 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 September 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N°4064/89¹ by which the undertaking Koninklijke Ahold N.V. ("Ahold") will acquire sole control within the meaning of Article 3(1)(b) of the Council Regulation of the whole of the undertaking Superdiplo, S.A. ("Superdiplo").
2. After examining the notification, the Commission has concluded that the notified concentration falls within the scope of Council Regulation (EEC) N° 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. **Koninklijke Ahold N.V.** is the parent company of the Ahold Group (The Netherlands), operating world-wide mainly in the procurement, wholesale and retail business of daily consumer goods.
4. **Superdiplo, S.A.** is a Spanish company active in the Spanish food retail and related non-food products market.

II. THE OPERATION

5. The operation concerns the acquisition by Ahold of sole control over Superdiplo, as set out in the agreement dated 7 September 2000, by means of an agreed bid filed on 11 September 2000 with the Spanish Securities and Exchange Commission ("CNMV").

¹ OJ L 395, 30.12.1989, p1; corrected version OJ L 257 of 21.9.1990, p.13; as last amended by Regulation (EEC) N°1310/97, OJ L 180, 9.7.1997, p.1, corrigendum in OJ L 140, 13.2.1998, 17.

III. CONCENTRATION

6. The acquisition of sole control of Superdiplo by Ahold by means of an agreed bid constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (€ 33.5 billion for Ahold and € 1,149 million for Superdiplo). Each of them have a Community-wide turnover in excess of EUR 250 million (€[...] million for Ahold and € 1,149 for Superdiplo), 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 within the meaning of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

The relevant product market

8. According to the notification, the activities of the parties overlap in the markets for retailing, procurement and wholesale of daily consumer's goods in Spain.

The retail market for daily consumers good

9. The Commission has traditionally considered that there is a separate market in food retailing which includes all retailers offering a more or less diversified range of food and non-food products satisfying daily consumers' needs for households. This activity is mainly carried out by retail outlets of different characteristics and size (in particular supermarkets and hypermarkets), and is different from the retail activity carried out by other retailers such as specialised outlets, service stations and others³. The types of retailers acting in this market can be differentiated in various segments, mainly supermarkets, hypermarkets and discount chains. These different segments have to be examined in each situation by taking into account different factors, such as the dimension of the outlets, their accessibility to the consumer (parking facilities, parallel services etc.); the range and availability of the different products etc.
10. The notifying party suggests, however, that the relevant product market should include all sources of supply of foodstuff accessible to consumers, i.e. supermarkets, hypermarkets, self-service stores, discount outlets, specialised shops, service station shops, open and closed markets (particularly important in Spain). In their view the special characteristics of the Spanish market structure and in particular of the Andalucía region, with a high number of open markets and specialised outlets, would show a more traditional shopping behaviour of consumers and could justify a wider product market approach.

² 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.

³ E.g. Commission's Decisions in cases Kesko/Tuko (Decision 97/277/EC-OJ L110, 26.4.97); Rewe/Meinl (Decision 99/674/EC-OJ L 274, 23.10.99); COMP/M.1684-Carrefour/Promodes.

11. For the geographic areas considered below, Ahold and Superdiplo are present in the hypermarket and supermarket segments and only Superdiplo is present in the discount outlet channel. Thus the question whether discount outlets should be included in the relevant product market can be left open in this case.
12. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

The procurement market for daily consumer goods

13. In the procurement market for daily consumer goods, retailers act as buyer's vis-à-vis producers/suppliers of products in order to supply those products to the end consumer or to third parties. In previous cases the Commission has found that for each product or group of products the substitutability does not exist or is not sufficient. Therefore, each different product or group of products constitutes a different product market.⁴
14. The procurements activities of Ahold and Superdiplo include the purchase of daily consumer goods for resale internally, to their franchisees (a limited number) as well as to third parties through cash & carry outlets.

The wholesale market for daily consumer goods

15. This market concerns the supply of products to third parties (other retailers, hotels, restaurants and other large customers), including mainly sales by manufacturers, traditional wholesalers as well as cash & carry outlets. The single product approach as indicated for the procurement market above applies as well for this market.

The relevant geographic markets

The retail market of daily consumer goods

16. From the demand side the relevant geographic market for the retail sale of daily consumers goods is delineated by the boundaries of a territory where the outlets can be reached easily by the consumer⁵. This territory can also be formed by a larger area, which is the case when different local areas are connected in such a way that they result in overlapping circles between the relevant sales points in their respective territories and thereby forming a larger area in which homogeneous conditions of competition prevail. The delineation of each local area can only be undertaken on a case by case basis by taking into account specific local circumstances.
17. In order to delineate the homogeneous competitive areas where an overlap exists, the Commission has been using as an initial parameter the catchment area of every retail outlet, designed by a circle with a radius of approximately 10' to 30' driving time. The delimitation of the catchment areas will also depend on other factors such as the household size and their preferences, their income level, the availability of the outlets (parking facilities and other services offered), the density and size of the outlets, the road network, etc. On the other hand, different local areas might show substantial

⁴ E.g.: Decision in case COMP/M.1684-Carrefour /Promodes.

⁵ E.g.: Decision in cases IV/M.1085-Promodes/Catteau, COMP/M.1221-Rewe/Meinl and COMP/M.1684-Carrefour/Promodes.

differences with respect to the different types of population (e.g. rural versus urban) which in turn might show different competition conditions.

18. The Commission has also stated that an analysis limited to the local level would not reflect the competitive impact of a concentration in the food retailing market. Indeed some parameters of competition between chains have to be examined at a regional or a national level⁶. Retail chains decide purchases of goods and negotiate with their suppliers in a centralised way at a national level. They also decide at a national level on issues such as final prices, product promotion and advertising campaigns. Specific variations on promotions and marketing policy at a local level do not change this approach.
19. In this case, Ahold and Superdiplo are both present in Spain throughout the country, however, with a more significant presence in the regions of Andalucía and Madrid where their activities overlap. Therefore the Commission's approach in this case will cover the whole of the Spanish territory as well as the regions of Madrid and Andalucía given the population involved, namely 4.5 and 7.5 million inhabitants respectively, which might constitute a substantial part of the common market. Within the Andalucía region the notifying party has identified 10 small local areas plus the autonomous city of Ceuta, most of them unconnected to each other and with different population ranging from 70.000 to 800.000 inhabitants, in which there is a stronger presence of the parties to the concentration. However these areas are not linked in such a way that they could create a larger area in which a significant overlap of the parties' outlets could take place as to affect a substantial part of the common market.
20. From the above it can be inferred that competition in the daily consumers good market takes place at a larger dimension than purely local markets. However, the question as to whether the geographic market has a local or a regional/national dimension can be left open in this case as effective competition will not be significantly impeded in the EEA or any substantial part of that area.

The procurement and wholesale markets for daily consumer goods

21. The parties submit that these markets have a European dimension if not larger. However the Commission considers that these markets are national due to a number of factors such as type of producers (normally small and medium sized companies), consumer preferences, different and non-substitutable distribution channels and negotiations of price conditions. Therefore a presence of the producer/supplier at least at a national level is required for the majority of suppliers and in particular for food products. The market investigation undertaken by the Commission in this case has largely confirmed this view.
22. Therefore, the geographic market both for procurement and wholesale market in this case remains national. However a wider scope of these markets cannot be excluded (at least as regards central negotiations and purchase conditions) due to the increasing internationalisation of these markets.

Assessment

⁶ E.g. see decisions in cases IV/M.784 - Kesko/Tuko and COMP/M.1684-Carrefour/Promodes.

The retail market for daily consumer goods in Spain

23. Both parties are present in Spain in the segments of hypermarkets and supermarkets while only Superdiplo is active in the segment of discount outlets. At a national level the parties have the following number of outlets: Hypermarkets (>2.500 square m.): 5 Ahold and 17 Superdiplo; supermarkets (including all sizes <2.500 square meters): 235 Ahold and 252 Superdiplo. In terms of total surface within the supermarket and hypermarket segments, Ahold would have a market share of 2.2% and Superdiplo of 3.2%; thus the combined market share will be roughly 5 % ⁷.
24. In terms of total sales the parties will hold small combined market shares, namely roughly 3% within the hypermarket and supermarket segments taken together; also 3% for the supermarket segment taken alone and 1% in the hypermarket segment alone.
25. From the data indicated above it can be shown that no significant presence of the parties can be detected at a national level. Furthermore significant players are well placed in the Spanish market such as Carrefour (15% market share) and Alcampo (6%) who are also significant players in other Member States; as well as El Corte Inglés (6%), Eroski and Mercadona (both with 5%), followed by Grupo Caprabo and Grupo Uningro (2% each).
26. In a retail market encompassing supermarkets, hypermarkets and discount outlets, market shares would not differ except for Carrefour with an increased position (19 %).
27. Although the notifying party considers that the relevant market has a national dimension, they have also submitted data regarding the regions of Andalucía and of Madrid, where the overlapping occurs.
28. The region of Madrid covers a territory of 2.357 square Km. with a population of 4.5 millions. The presence of the parties has to be seen as not significant as their combined market share in sales would be [0-5] %.
29. The region of Andalucía represents a large part of the Spanish territory with a significant population: this territory covers 87.000 square Km. with a total population of nearly 7.5 million ⁸. In Andalucía the parties have the following number of outlets: [5-10] hypermarkets ([...] Ahold and [...] Superdiplo); [265-280] supermarkets ([...] Ahold and [...] Superdiplo). In terms of total surface related to hypermarkets and supermarkets, both parties would hold a similar market share of around [5-10] % each. In terms of sales in the segment covering both supermarkets and hypermarkets, the parties would hold a combined market share of [5-10] % ([...] % each), while in the supermarket segment alone their combined market share would be [10-15] % ([...] % each).
30. Furthermore, main competitors present at a national level are also active in the region: Carrefour ([20-25] % market share); El Corte Inglés ([5-10] %); Alcampo and Mercadona ([0-5] % each); and Eroski ([0-5] %).
31. In the light of the above, and given the lack of any serious concerns raised overall with regard to the competitive impact of the proposed operation, the Commission considers

⁷ Data from Alimarket publication (March 2000) and Anuario de la Distribución.

⁸ AC Nielsen data from 1999: 7.465.682 population.

that it will not lead to the creation or strengthening of a dominant position in the markets concerned, as a result of which effective competition would be significantly impeded in the EEA or a substantial part thereof.

The markets for procurement and wholesale of daily consumer goods in Spain

32. The notifying party submits that there are no affected markets whatever market product delineation is taken. According to the parties' information their combined market shares in the procurement markets would be [1-5]% for any product acquired. Therefore no significant increase in their buying power would be expected. The market investigation has also confirmed this point.
33. As regards the wholesale market Ahold has a very limited presence in Spain, with only 5 outlets while Superdiplo runs 27 outlets. Their combined market share in the narrower segment of cash & carry outlets would be [5-10]%, while in the wider market including all type of wholesale outlets it would only be [0-5]%.
34. In the light of the above, and given the lack of any serious concerns raised overall with regard to the competitive impact of the proposed operation, the Commission considers that it will not lead to the creation or strengthening of a dominant position in the markets concerned, as a result of which effective competition would be significantly impeded in the EEA or a substantial part thereof.

VI. ANCILLARY RESTRAINTS

35. The notifying party has requested one contractual provision to be considered as ancillary to the concentration. The provision relates to a non-solicitation clause by which the vendors undertake not to contract nor attempt to contract senior personnel of Superdiplo or its subsidiaries within a period of [...] years from the signature of the Agreement dated 07.09.2000.
36. This clause aims at ensuring transfer of the full value of the acquired business. Considering the duration ([...] years) and the scope (senior employees) it is considered to be reasonable to this end. In so far as this provision should amount to a restriction of competition, it can be considered directly related and necessary to the implementation of the concentration and therefore is covered by the present decision pursuant to Article 6(1)(b), paragraph two, of the Merger Regulation.

VII. CONCLUSION

37. 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,
David BYRNE,
Member of the Commission