

***Case No COMP/M.2604 -
ICA AHOLD / DANSK
SUPERMARKED***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13-11-2001
SG (2001)D 292130

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties.

Dear Sirs,

Subject: Case No COMP/M.2604 – ICA AHOLD/DANSK SUPERMARKED/JV

Notification of 8 October 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 8 October 2001 the Commission received a notification according to which the undertakings ICA Ahold AB (“ICA Ahold”; Sweden) jointly controlled by ICA Förbundet Invest AB¹ (Sweden), Canica² (Norway) and Royal Ahold (NL)³ and Dansk Supermarked A/S (“DSG”; Denmark) acquire joint control of the newly created undertaking “JV-Company”.
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.

¹ ICA Förbundet is a Swedish non-profit organisation of more than 2000 small and medium-sized ICA retailers. Through its subsidiary ICA Förbundet AB owns 30% of the shares in ICA.

² Canica, a Norwegian limited company, has a 20% stake in ICA. It does not have activities in food retailing other than through the JV with ICA and Ahold.

³ The joint venture between Ahold, ICA Förbundet and Canica was cleared by the Commission on 6 April 2000 (Case Comp/M.1832- Ahold/ICA Förbundet/Canica).

I. THE PARTIES

3. ICA Ahold is active via its subsidiaries ICA Handlarnas AB (Sweden), Hakon Gruppen AS (Norway), ICA Menyföretagen (catering co-operation in Sweden) and ICA Baltic AB in the procurement, wholesale and retail and of daily consumer goods via different distribution channels including supermarkets, hyper-markets and discount stores. It operates approximately 3200 retail outlets in Norway, Sweden, Denmark and the Baltic States. Via its joint venture with Statoil AS⁴ it also operates 1406 services stations for the sale of fuel and daily consumer goods in Norway, Sweden and Denmark (“Statoil Detaljhandel AS”).
4. DSG is a chain of food and general merchandise stores, including discount stores mainly in Denmark but also in the UK and Germany (JV with Spar Handelsaktiengesellschaft). It is jointly controlled by F.Salling A/S and the Moeller Group (owning [...]%), the latter being active in a wide variety of industries including food retailing. In Denmark DSG operates hard discount stores based upon the Netto concept, hypermarkets based on the Bilka concept and Føtex supermarkets. DSG also operates discount stores based upon the Netto concept in the United Kingdom, Germany and Poland.

II. THE OPERATION AND CONCENTRATION

Joint control

5. As a result of the transaction, both ICA Ahold and DSG will acquire joint control over the JV-Company. They will each hold 50% of the shares and voting rights in the newly created company. Strategic decisions including the annual balance sheet and the appointment of the senior management require the consent of both shareholders (51% majority requested). ICA/Ahold and DSG will each nominate three members of the board of directors; all decisions will be taken by an absolute majority of 5 members. The JV-Company will be vested with sufficient financial resources (EUR [...] million) and human resources needed in order to operate on the market as an autonomous economic unit.

Full functionality

6. The JV-Company will not be dependent on its parents for supply, demand or resources although it may use the parents’ know-how and supply facilities. The JV-Company will have full commercial autonomy in negotiating prices with suppliers and wholesalers, including its parents ICA Ahold and DSG. Services rendered to the JV-Company by its shareholders will be charged by the latter at arms’ length basis.
7. The operation therefore constitutes a full-function joint venture according to Article 3 (2) of the Merger Regulation.

III COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁵ (ICA Ahold: EUR 10.3 billion; DSG: EUR 5.1 billion). Each of ICA Ahold

⁴ The Commission on 14 July 1999 (Case Comp/M. 1471) approved the joint venture between ICA AB and Statoil AS.

⁵ 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

and Dansk Supermarked have a Community-wide turnover in excess of EUR 250 million (ICA Ahold: 7.22 billion; DSG 5.0 billion), but they do not achieve more than two-thirds of their 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.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product and geographic markets

Market for retail of daily consumer goods

9. As regards food retail, the parties are of the opinion that the relevant market comprises retail sales across all existing distribution channels not only including supermarkets, hypermarkets and discount shops but also small-specialised shops and fuel service stations.
10. The Commission in its previous decisions⁶ found that there is a separate market in food retailing which comprises all retailers, in particular supermarkets and hyper-markets, carrying a range of food and non-food products which is typical of the food retail trade but which excluded specialised outlets such as for example butchers and bakers or other forms of distribution like fuel service stations, kiosks and open markets, etc. Whilst specialist shops may provide some degree of complementarity to these other daily shopping channels the product range and/or service offered by these shops is usually different from those offered by whole-range retail chains. The Commission's investigation in the present case has not revealed any grounds to deviate from this conclusion.
11. The Commission in its previous decisions also considered whether a distinction should be made between retail sales via super- and hypermarkets and sales through discount stores only. This question, in the present case, can however be left open since the assessment of the present case would not differ with any alternative market definition approach.
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 past decisions 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.⁷ 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. The Commission's investigation in the present case has not revealed any grounds to deviate from this conclusion. Thus, for the purposes of the present case the geographic market definition can be left open since the concentration does not result in any significant overlaps in the parties' activities, be it at national or at a narrower level.

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.

⁶ Case Comp/M. 1832-ICA/Ahold, Decision 97/277/EC- Kesko/Tuko; OJ L 110, 26.4.1997

⁷ 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)

Markets for wholesale and procurement

13. As regards the wholesale market, 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 the production of one or several related products, the Commission in previous cases⁸ has found that the procurement of different product groups usually form separate markets. Moreover, the Commission has also held that the food retail distribution channel 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. With regard to the geographic market for the wholesale and procurement of daily consumer goods, the parties believe that there is a development towards European markets, given the introduction of the Euro and increasing product homogeneity. However, the parties also submit that negotiations with suppliers primarily take place at national level. The product assortment has strong national features satisfying consumer preferences. According to the parties, of the total value of daily consumer goods procured by ICA Ahold in 2000, less than [...] % were supplied by common multinational suppliers to both ICA Ahold and DSG. The corresponding figure for DSG is approximately [...] %. The parties' views have been confirmed by both competitors, suppliers and customers. The conclusion drawn by the Commission is that the relevant geographic market is still predominantly of national scope.

B. Assessment

Market for the retail of daily consumer goods

Sweden and Norway

16. The parties are active in different Member States of the Community. ICA Ahold mainly operates in Sweden and Norway, where DSG is not present at all. ICA Ahold is the most important player in Sweden and some concerns have been raised by third parties. However, the proposed JV-Company is to be a stand-alone business with its own resources and management and do its own procurement of goods and services thus operating independent of its parents. Furthermore, the proposed JV-Company will start up two new concepts in Sweden and possibly in Norway, i.e. [...] hard discount stores (in Sweden (no hard discount stores exist at the moment in Sweden) and Norway) under the brand name "Netto" and initially [...] hypermarket stores under an ICA brand name in Sweden. The JV-Company is not yet active in Sweden thus the transaction does not lead to a creation or a strengthening of a dominant position in Sweden. Furthermore, the proposed JV-Company will be insignificant in relation to the total activities of ICA Ahold in Sweden.

⁸ See for example Decision 99/674/EC - Rewe/Meinl (OJ L 274, 23.10.1999) or Carrefour/Promodes (M.1684; 25.2.2000)

Denmark

17. DSG is mainly active in Denmark having a market share of approximately [20-30]% in food retailing. ICA Ahold's activities in Denmark are minor and limited to its participation in ISO-ICA A/S, a Danish company active on the retail market of daily consumer goods, now containing 12 ISO supermarkets in the greater Copenhagen area. ISO-ICA A/S in 2000 generated a turnover of € 157 million which amounts to about 1% market share on the retail market of daily consumer goods in Denmark. These activities, however, according to the information submitted by the parties are outside the scope of the new joint venture and do not therefore lead to any overlap in the activities of the parties.⁹
18. Therefore, on the basis of national markets, the transaction will not produce any horizontal or vertical overlaps.

Market for the wholesale and procurement of daily consumer goods

19. As stated already above the JV-Company will do all its procurement of daily consumer goods and if any services are rendered by its shareholders it will be at arms' length basis. Hence, if the JV-Company were to pool its procurement with ICA Ahold, i.e. through ICA Servicehandel (since it will have to be at arm's length basis) this would be no different from any independent party and can thus not be regarded as a strengthening or a creation of a dominant position for ICA Ahold in regard to wholesale and procurement of daily consumer goods in Sweden.
20. Even if one were to regard the markets for wholesale and procurement of daily consumer goods at a wider than national level (EEA or Nordic countries including Sweden, Finland, Norway and Denmark) the parties' combined market share in both markets would be far below 10%.
21. **Co-ordination effects** The Commission's investigation analysed the possibility of co-ordination effects. The parties do not co-operate with regard to their procurement activities at present.¹⁰ The JV-Company may be connected to and supported by the existing networks within ICA Ahold but is not obliged to do so. If the parties wanted to pool their purchases they could do so even in the absence of the proposed JV-Company, which only represents a small share of the overall turnover of the remaining business of its parents.

⁹ ICA/Ahold is active in Denmark in the sale of daily consumer goods in service stations mainly through 341 Statoil fuel stations (see above). Its market shares in this segment are around 26%. However, according to the market definition chosen by the Commission (see par. 10 above), sales through fuel stations are excluded from the relevant market. Even on the assumption of a separate market for discount stores the assessment would not differ since ICA Ahold is not present in that segment at all in Denmark.

¹⁰ The only co-operation which exists is co-operation under "AMS", which is a framework within which the members co-operate on an *ad hoc* basis. AMS has functioned as an umbrella agreement used in combination with national agreements. This means that co-operation within AMS does not affect the negotiations of prices or other terms of supply on a national level.

22. Finally, such a co-ordination would only work in an efficient manner if procurement were done on a wider than national level. While this might be a development of the future it is not a common practice today: at present approximately [...] % of total procurement by ICA Ahold is done on a national basis.

V CONCLUSION

23. 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,

Mario Monti
Member of the Commission