

*Case No IV/M.263 -
AHOLD / JERONIMO
MARTINS*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29.09.1992

*Also available in the CELEX database
Document No 392M0263*



PUBLIC VERSION

MERGER REGULATION -
ARTICLE 6(1)b DECISION

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To the notifying parties

Dear Sirs,

Re. : Case No IV/M.263 - Ahold / Jerónimo Martins
Notification of 28.8.1992 pursuant to Article 4 of Council
Regulation No 4064/89

1. The notified operation concerns a joint venture, Jerónimo Martins Retail (JMR), between Koninklijke Ahold N.V. (Ahold) and Estabelecimentos Jerónimo Martins & Filho Administração e Participações S.A. (Jerónimo Martins).

Jerónimo Martins which is active on the Portuguese food retail and wholesale market will transfer its 41 retail stores (Pingo Doce and Supergarb) to JMR in which it will hold 51 % of the shares.

Ahold which is active in the US and in the Netherlands and not yet in Portugal will acquire the remaining 49 % of the capital of JMR.

2. This operation constitutes a concentration within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. CONCENTRATION

3. JMR is a joint venture created on a lasting basis which will perform all the functions of an autonomous economic entity in the retailing business.
The shareholders' agreement provides for joint control of JMR by Ahold and Jerónimo Martins. It will be run by a Board of Directors which will consist of 7 members, 4 being appointed by Jerónimo Martins and 3 by Ahold, and decisions of the Board will be taken unanimously (Art. 5 of the agreement).
4. Jerónimo Martins will keep other distribution activities in the Portuguese market with 5 specialised stores in the luxury confectionery market ("Hussel/Douglas") and 7 cash and carry stores that operate through a JV with Booker PLC (a British based company). However, there will be no coordination of the competitive behaviour between Jerónimo Martins and the joint venture since on the one hand the Hussel/Douglas shops are specialised outlets selling one family of products only (luxury confectionery goods) and on the other hand the cash and carry stores operate on the wholesale market supplying small retailers on a regional basis.
5. Ahold has important food retail operations in other geographic markets (the Netherlands and the USA) but has no operations at all in Portugal.
There is no interaction between these different geographic markets and therefore no risk of coordination of the competitive behaviour between Ahold and JMR in the Portuguese food retail market.
6. There are no indications that any of the parent companies could enter this market independently in the foreseeable future. In addition to that Ahold and Jerónimo Martins agreed not to be in the Portuguese general food retail market by other means than through JMR (see paragraph 15).
7. Ahold and Jerónimo Martins are also active in food manufacturing but these companies are in different product markets. Ahold has manufacturing activities in the Netherlands concerning beverages (Sherry), meat processing, dietary meat products, bread and vacuum-wrapped prepared meals, while Jerónimo Martins is primarily concerned with the production of fats and edible oils and ice cream in Portugal in association with Unilever.
8. The cooperative element which could result from the possibility of the JV to use Ahold's purchasing organisation⁽¹⁾ can be separated from this structural change resulting from the creation of the JV and falls to be assessed separately under Regulation No 17 if the conditions for the applicability of Article 85 are met.
9. For these reasons, the creation of the joint venture will not give rise to the coordination of the competitive behaviour of the parties amongst themselves or between them and the joint venture. The joint venture is therefore a concentration within the meaning of Article 3 of the Merger Regulation.

⁽¹⁾ Ahold is engaged in a cooperative agreement known as Associated Marketing Services (AMS) that has been notified to the Commission on April 5, 1991 (case IV/33.360).

II. COMMUNITY DIMENSION

10. The aggregate worldwide turnover of Ahold and Jerónimo Martins exceeds 5 billion Ecu in 1991 (Ahold 9,078 million Ecu, Jerónimo Martins 479 million Ecu). Both have a Community-wide turnover of more than 250 million Ecu (Ahold 4,190 million Ecu, Jerónimo Martins 479 million Ecu), and they did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. Therefore, the proposed operation meets the thresholds of Article 1(2) of the Merger Regulation.

IV. COMPATIBILITY

11. The assessment of a concentration in the retail business market has to take into account on the one hand the market power that can be exercised towards the consumers and on the other hand the market power that can be exercised towards the suppliers.
12. Until now Ahold has had no presence in Portugal. The joint venture's market share derives from the turnovers represented by the 41 supermarkets transferred by Jerónimo Martins. Since the operation only concerns the retail business market there is therefore no addition of market shares.
13. Concerning the market power that could be exercised towards the suppliers, this operation does not modify substantially by itself the buying power of the supermarkets transferred to the JV.

The purchasing power accruing to JMR and possibly to Ahold as it would stem from its purchasing cooperation through AMS (see § 8) can be assessed separately under Regulation No 17.

14. In the light of the above, it is concluded that the proposed concentration does not lead to the creation or strengthening of a dominant position.

V. ANCILLARY RESTRAINTS

15. Under clause 1.4 and 1.5 of the joint venture agreement, both parents, Ahold and Jerónimo Martins, undertake not to make any further acquisitions of or to acquire participations in food retail companies in Portugal by other means than through JRM.

These clauses constitute a restriction directly related and necessary to the implementation of the concentration.

16. Both parents will retain, under clause 6.3 of the joint venture agreement, the exclusive ownership of their trademarks and will licence them on an indefinite basis to JMR. These licences as they serve only as a substitute for the transfer of property rights must be considered an integral part of the concentration.

VI. FINAL ASSESSMENT

17. Based upon the above findings, the Commission has come to the conclusion that the proposed transaction does not raise serious doubts as to its compatibility with the common market.

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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 the Merger Regulation.

For the Commission,