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*Case No IV/M.320 -
AHOLD / JERONIMO
M A R T I N S /
INOVACAO*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 19.04.1993

*Also available in the CELEX database
Document No 393M0320*

Brussels, 19.04.1993

DIRECTORATE GENERAL
FOR COMPETITION

Merger Task Force

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

PUBLIC VERSION

Registered with advice of delivery

To the notifying party

Dear Sirs,

Re: Case No. IV/M.320 - AHOLD/ Jerónimo Martins/ Inovação
Your notification of 12.3.1993 pursuant to article 4 of Council Regulation n°
4064/89 (Merger Regulation)

1. The notified operation concerns the proposed acquisition by Jerónimo Martins Retail, S.A. (JMR) of the total share capital of Inovação, Sociedade Gestora de Participações Sociais, SGPS (Inovação Holding), a Portuguese holding company which controls two companies active in the Portuguese food retail distribution market, INO Supermercados S.A. and FEIRA NOVA Hipermercados S.A. (FEIRA NOVA).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. The parties

3. JMR is a joint venture between Koninklijke AHOLD N.V. (Ahold) and Estabelecimentos Jerónimo Martins & Filho, Administração e Participações S.A. (J.M. Holding) which is active in the Portuguese food retail market. The creation of JMR was notified to the Commission and cleared by it in September 1992 (see Case n° IV/M. 263 - AHOLD/ Jerónimo Martins).
4. AHOLD is a dutch company with important food retail operations in the Netherlands and the U.S.A.
5. J.M. Holding is a Portuguese holding company with interests in food retailing and wholesaling as well as food production in Portugal.
6. Inovação Holding is a Portuguese holding company which, in addition to its controlling stake in the two Portuguese food retail companies mentioned above, Ino Supermercados (50,83 %) and Feira Nova (60,5 %), also had interests in other business areas such as food wholesaling, domestic appliances retailing, insurance broking and property.

II. The operation

7. The acquisition of Ino Supermercados and Feira Nova by JMR will include several transactions.
8. As a first step, on January 29, 1993 JM Holding acquired the total share capital of Inovação Holding. This operation was notified to the Portuguese merger control authorities which gave its approval on 12.3.1993.
9. JM Holding will then sell all the non-food retail activities of Inovação Holding, acquire the remaining 39.5 % shareholding of Feira Nova held by the minority shareholders and launch a public bid for the 49.17 % share of Ino Supermercados held by the public in order to acquire the totality of the share capital. The launching of a public bid is mandatory under Portuguese company law when in a single transaction a company acquires more than 20 % of the share capital of another company whose shares are held by the public and quoted in the stock exchange. Thus, JM Holding's intention in launching the public bid is not to acquire control of Ino Supermercados, which it already had through its acquisition of Inovação Holding, but to comply with the provisions of article 313 of Portuguese company law.
10. Finally, after implementation of the operations mentioned in paragraphs 8 and 9, JMR will acquire from JM Holding total ownership of Inovação Holding whose scope of activity will then be limited to food retailing and will include a 100 % shareholding of Feira Nova and control of Ino Supermercados (and maybe total ownership depending on the outcome of the public bid). The acquisition of Inovação Holding by JMR constitutes the operation notified under the Merger Control Regulation.

III. Community dimension

11. The aggregate worldwide turnover of Ahold, JM Holding and Inovação Holding exceeds 5 billion Ecu in 1992. The aggregate Community wide turnover of each of

at least two of the undertakings concerned is more than 250 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 has a Community dimension in accordance with article 1(2) of the Merger Regulation.

IV. Compatibility with the common market

12. Food retailing in Europe is characterised by marked disparities of structure and level of development and although there may be convergences concerning forms of distribution and modes of consumption, national peculiarities linked to the history and culture of each nation must be taken into account. It is therefore necessary to analyse the main characteristics of the Portuguese food retail market before analysing the notified concentration in detail.

Structure of the Portuguese food retail market

13. Five different types of food retail shops can be distinguished:

Hypermarkets:

Self-service stores handling food, toiletries, household cleaning products and possibly other goods, and with a selling area equal to or bigger than 2,500 m².

Supermarkets:

Stores belonging to the chains: A.C.Santos, Europa, Expresso, Inô, Mini Preço, Pingo Doce, Saco Cheio, and other self-service stores with a selling area of between 400 and 2,499 m² which handle the product classes mentioned in the definition of grocers below.

Self-services:

Remaining stores handling the same product classes as the grocers, with a selling area between 50 and 399 m² and working on a self-service basis. Stores belonging to the chains mentioned in the definition of supermarkets are excluded.

Grocers:

Shops handling at least eight food product classes and three toiletry or household products. Large grocers are those who fulfill at least one of the two following conditions: to have one checkout and a selling area smaller than 50 m², or disregarding the selling area to have more than 2 employees (counting as 1/2 each part-time employee).

Pure food stores:

Stores handling, at least, five food product classes and no toiletries or household products (an exception is made for razor blades). These stores typically also handle dehydrated soups, instant puddings, fortifying drinks, instant blended coffee or powder soft drinks and have a significant percentage of sales of products for consumption out of the store. Included under this category are pastry shops, dairies, sausage shops and sweet shops.

It must be noted that a considerable number of food retail stores included in the supermarket category have a selling area of less than 400 m² (in certain cases less than

200 m²) but were included in this category as they belong to the major retail chains listed under this heading.

14. In analysing the Portuguese food retail market 5 different geographical areas can be identified. There are two big urban areas (Lisbon and Oporto) and 3 other mainly rural areas, the first one corresponding to the Portuguese Atlantic Coast north of Setúbal, the other 2 regions being the northeastern and southern regions respectively.
15. Taking into account the types of retail stores and the geographic areas within the Portuguese territory as defined in paragraphs 13 and 14 and considering available data covering years 1987 to 1991 one may reach the following conclusions:
 - There is a growing trend towards concentration, as the total number of food retail stores has consistently decreased since 1987.
 - The hypermarket segment is having a sustained growth and became in 1991 the most important type of retail outlet. In 1991 the hypermarket segment accounted for 25 % of total food retailing compared to 5.4 % in 1987. These gains in market share have been made entirely at the expense of traditional forms of retailing (self services, grocers and pure food shops), as the supermarket segment maintained its market share during this period (20.7 % in 1991 against 20.4 % in 1987).
 - Modern distribution outlets have a particularly strong market share in the urban areas of Lisbon and Oporto where they accounted respectively for 76.2 % and 63.4 % of total food retail business to be compared with less than 26 % in any of the 3 other geographic areas defined above.
 - In spite of this remarkable growth of modern outlets since the mid-eighties this trend is likely to continue in the foreseeable future as Portugal remains one of the EEC countries (together with Greece) where modern food retailing outlets (hypermarkets and supermarkets) are least developed with a total market share below 46 % of total food retailing.

Product (Service) markets

16. The concentration affects the retail food trade and within this market the hypermarket and supermarket segments. In spite of existing differences both between hypermarkets and supermarkets and between these two types of retail distribution and more traditional forms of retail trade as regards, inter alia, prices, size and available choice of goods, the question of whether these distribution forms constitute distinct relevant product markets can be left open for the reasons mentioned below.

Geographic markets

17. From a consumer point of view retail markets are generally considered to be local markets. For this purpose, local markets can be defined as those areas within 20 minutes driving distance of each sales outlet concerned. From the supply point of view main distributors such as JMR deploy their activities throughout the territory of Portugal, wherever existing or potential demand would justify the creation of retail outlets. After the present concentration JMR will be present in all geographic areas as

defined in paragraph 14 with a strong presence in the urban areas of Lisbon and Oporto but also in the Western Atlantic Area.

Assessment of the concentration

18. In assessing a concentration in the retail business sector it is necessary to consider the market power that can be exercised both towards consumers and suppliers.
19. JMR prior to the acquisition of Inovação Holding was only present in the supermarket segment in Portugal. By acquiring Inovação Holding JMR will control two retail companies, Ino Supermercados which is only active in the supermarket segment and Feira Nova, which is only active in the hypermarket segment.
20. Taking into account all food retailing in Portugal, JMR will have a []⁽¹⁾ market share. If the hypermarket and the supermarket segments are considered together, JMR will reach a market share of []⁽²⁾. JMR in this case will become the third retail distribution player in the market behind Sonae []⁽³⁾ and Supa []⁽⁴⁾.
21. However, if the supermarket segment is considered alone JMR, which was already the largest player in this market segment with a []⁽⁵⁾ market share, will increase its leadership by acquiring an important competitor with an []⁽⁶⁾ market share, Ino Supermercados, which ranked 3rd in this market segment. The new entity with []⁽⁷⁾ will have a market share which will be the double of that of its nearest competitor Sonae []⁽⁸⁾.
22. Even if we consider the supermarket segment of food retailing as a distinct market the concentration would not lead to dominance at a national level as a result of which effective competition would be significantly impeded in a substantial part of the common market. There are no legal or other barriers to entry in this segment (a retail outlet of less than 2,000 m² does not need prior specific administrative approval by Portuguese authorities) and there are available alternatives such as hypermarkets or traditional retail stores.
23. Pursuing further the analysis in order to consider the local markets affected, only 6 locations outside Lisbon and Oporto (where all the major players in retail food are present) should be taken into account, that is, Alverca, Caldas da Raínha, Aveiro, Vila Nova de Gaia, Figueira da Foz and Famalicão, where JMR and Ino Supermercados were already established. Market share statistics at local level were not available but

⁽¹⁾ Through (8) - Business secrets. The precise market shares figures are deleted and replaced as follows:

⁽¹⁾ Between 5% and 10%.

⁽²⁾ Between 15% and 20%

⁽³⁾ Between 25% and 35%.

⁽⁴⁾ Between 20% and 25%.

⁽⁵⁾ Between 20% and 25%.

⁽⁶⁾ Between 10% and 15%.

⁽⁷⁾ Between 30% and 40%.

⁽⁸⁾ Deleted.

in all locations but one (Aveiro), the main competitors Sonae and Supa are already present. Supa have supermarkets in Alverca and Famalicão and Sonae in Alverca, Caldas da Rainha, Vila Nova de Gaia and Figueira da Foz in addition to a big hypermarket (10,000 m²) in Vila Nova de Gaia. Therefore, only in Aveiro a small town with less than 50,000 inhabitants, will JMR not be challenged by a major competitor. However, that does not mean that competition from traditional types of retail stores does not exist.

24. Concerning the market power that could be exercised towards suppliers it is not likely that this concentration will substantially modify the buying power JMR already had prior to the concentration in order to enable it to dictate terms to their suppliers if we take into account the following:⁽¹⁾
- Major suppliers of JMR have sufficient alternative outlets, such as Sonae, Supa, Carrefour or major wholesale chains like Makro and Grula.
 - Furthermore, the new entity will not significantly alter the structure of demand for the suppliers' products.

V. Conclusion

25. On the basis of the above findings and considerations the Commission has come to the conclusion that the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

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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 Council Regulation No. 4064/89.

For the Commission

TEXTE RECONSTITUÉ ÉLECTRONIQUEMENT / ELECTRONICALLY RE-CREATED TEXT / ELEKTRONISCH NACHGEBILDETER TEXT

⁽¹⁾ The participation of Ahold and JMR 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) can be assessed separately under Regulation 17.