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***Case No COMP/M.4276
– AHOLD / KONMAR***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 4 (4)
Date: 02/08/2006



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02/08/2006

SG-Greffe (2006) D/204413

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 4(4)

To:

The notifying party

and

The Dutch Competition Authority

**Subject: Case No COMP/M.4276 – Ahold/Konmar
Reasoned submission pursuant to article 4(4) of the EC Merger Regulation
for referral of the case to the competent authorities of the Netherlands.**

I. INTRODUCTION

1. On 27 June 2006, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 ("EC Merger Regulation") with respect to an operation consisting of the acquisition of the assets and the personnel of 29 Konmar/Lekker&Laag supermarket stores from the undertaking Laurus N.V. ("Laurus", the Netherlands) by Royal Ahold N.V. ("Ahold", the Netherlands). The parties request the operation to be examined by the competent authorities of the Netherlands.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 28 June 2006.

4. By fax of 13 July 2006, the Nederlandse Mededingingsautoriteit (NMa) informed the Commission that the Netherlands agrees with the proposed referral.

II. THE PARTIES

5. Ahold is an international group of supermarkets and food service operators based in the United States and Europe. Ahold and its subsidiaries are active in Europe and the United States on the wholesale and retail markets for daily consumer goods. In the Netherlands, Ahold is *inter alia* active in this market via its supermarket chain Albert Heijn. The Albert Heijn supermarket chain comprises both Ahold's own stores and stores of franchisees. Ahold's 73.2% shareholding Schuitema is a wholesale trade organisation which delivers via its subsidiaries goods and services to independent food retail stores. These food retail stores operate under Schuitema's C1000 retail formula.
6. Laurus is in the Netherlands *inter alia* active in the operation of wholesale and retail markets for daily consumer goods under the names of Konmar, Lekker&Laag, Super de Boer and Edah. The Konmar/Lekker&Laag supermarket stores (the "Konmar stores") comprise 44 stores, 40 of which are operated by Laurus. The remaining four are franchise stores.

III. THE OPERATION

7. Ahold intends to acquire the assets and the personnel of 29 of the 40 Konmar stores operated by Laurus via two, still to be established, private companies with limited liability under Dutch law ("Newco A" and "Newco S"). The 29 Konmar stores are all located in the Netherlands: Almere, Beilen, Boxtel, Brunssum, Cuijk, Delft, Den Haag, Doetinchem, Drachten, Eindhoven, Groningen, Helmond, Hoogeveen, Hoogvliet Rotterdam, Katwijk, Leeuwarden, Maassluis, Middelburg, Nieuwegein, Nijmegen, Oss, Rotterdam, Spijkenisse, Tiel, Utrecht, Winschoten, Zaltbommel and Zoetermeer.

IV. CONCENTRATION

8. The operation is a concentration within the meaning of Article 3(1)(b) of the EC Merger Control Regulation. After the transaction Ahold will via two subsidiaries, Newco A and Newco S, acquire control over parts of another undertaking, namely the assets and personnel of 29 Konmar supermarket stores of the undertaking Laurus.

V. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (EUR 44.5 billion for Ahold in 2005, EUR [...] million for the Konmar stores in 2005). Both Ahold and the Konmar stores have a Community-wide turnover in excess of EUR 250 million (Ahold EUR [...] billion in 2005, Konmar stores EUR [...] million in 2005). The Konmar stores achieve their total turnover within one and the same Member State, i.e. the Netherlands. However, Ahold does not achieve more than two-thirds of his aggregated Community-wide turnover within one and the same Member State. Therefore, the concentration has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

VI. ASSESSMENT

A. Relevant product markets

10. On the basis of the information submitted by the parties in the Reasoned Submission, the relevant product markets are i) the market for the sale of daily consumer goods via supermarkets; ii) the market for supermarket franchise services and iii) the market for the procurement of daily consumer goods via retailers.
11. Regarding the market for the sale of daily consumer goods via supermarkets, the parties indicate, by referring to previous Commission decisions, that there is a separate product market in the retail of consumer goods mainly carried out by retail outlets such as supermarkets, hypermarkets and discounters.¹ In most previous decisions the Commission ultimately left open whether supermarkets and hypermarkets on the one hand, and discounters on the other hand, belong to the same product market; while in the Tesco/Carrefour decision² the Commission decided, referring to the fact that customers in the Czech Republic are generally considered price sensitive and the fact that the pricing policy of hypermarkets is rather close to that of supermarkets, that the relevant product market includes hypermarkets, supermarkets and discounters. Parties have indicated that the situation in the Czech Republic is very similar to that in the Netherlands.
12. The parties submit, by referring to previous NMa decisions³, that there is a separate market for supermarket franchise services on which franchisers offer services to franchisees.
13. As to the market for the procurement of daily consumer goods, the parties indicate that, in line with previous Commission decisions⁴, separate markets for the procurement of different product categories could also be defined.⁵
14. The activities of the parties overlap on all markets.

B. Relevant geographic markets

i) The market for the sale of daily consumer goods via supermarkets

15. The parties submit, by referring to previous NMa decisions⁶, that the geographic scope of the market for the sale of daily consumer goods via supermarkets is national. According to the parties, a national approach is supported by the existence of chain effects (i.e. nearly every consumer in the Netherlands can reach a supermarket within five minutes driving time, therefore areas in which supermarkets

¹ Case IV/M.784 Kesko/Tuko, Case COMP/M.1221 Rewe/Meinl, Case COMP/M.1684 Carrefour/Promodes, Case COMP/M.3905 Tesco/Carrefour.

² Case COMP/M.3905 Tesco/Carrefour.

³ Case NMa 2198 / Schuitema-Sperwer, Case NMa 2838 / Sperwer-Spar.

⁴ Case IV/M.784 Kesko/Tuko, Case IV/M.1221 Rewe/Meinl, Case COMP/M.3464 Kesko/ICA/JV.

⁵ The parties have identified the following product categories; a) bread, pastry, b) meat, game and poultry, c) meat products, salads, d) meals, e) potatoes, vegetables and fruit, f) groceries, g) cleaning products, h) beauty products, i) cheese and eggs, j) fish, k) dairy products, l) non-food.

⁶ Case NMa 1628 / Laurus-Groenwoudt, Case NMa 1710 / Schuitema-A&P, Case NMa 2198 / Schuitema-Sperwer.

try to attract customers overlap); the fact that nationally operating supermarkets, including the parties, apply a uniform commercial policy for the whole of a formula in the Netherlands; and the dynamics on the supply side creating nation-wide players and formulas.

16. In previous Commission decisions the geographic market for the retail sale of daily consumer goods has been delineated, according to demand side arguments, by the boundaries of a territory where the outlets can be reached easily by consumers (a radius of approximately 10 to 30 minutes driving time).⁷ According to the Commission this territory may also be larger (e.g. regional or national) if different local areas are connected in such a way that they result in overlapping circles.⁸ In recent NMa decisions the NMa indicated that the geographic scope of the market for the sale of daily consumer goods via supermarkets is, from the perspective of the consumer, limited to a greater metropolitan area, the locality or the neighbourhood in which the supermarket is located.⁹
17. Given the previous decisions of the Commission, the geographic market for the sale of daily consumer goods via supermarkets is therefore unlikely to be wider than national. However, the exact definition of the geographic market for the sale of daily consumer goods via supermarkets can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

ii) The market for supermarket franchise services

18. The parties submit that, with reference to previous NMa decisions¹⁰, the market for supermarket franchise services is national in scope. According to the parties, when starting a supermarket or switching from one formula to the other, franchisees can choose from among these supermarket franchise service providers who are active on a national scale and regional providers who are active in their local business area. In addition, parties point to the fact that most franchise service providers in the Netherlands are active on a national level.
19. However, the exact definition of the geographic market for supermarket franchise services can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

iii) The market for the procurement of daily consumer goods via retailers

20. With respect to the market for the procurement of daily consumer goods via retailers, the parties consider it to be European wide in scope by pointing to the continuing internationalisation of producers and suppliers, the increase in international sales activities of the parties and their competitors as well as the decline in both the Dutch consumer's preference for national products and his taste preferences. However, on

⁷ Case IV/M.1085 Promodes/Catteau, Case COMP/M.1221 Rewe/Meinl, Case COMP/M.1684 Carrefour/Promodes, Case COMP/M.3464 Kesko/ICA/JV.

⁸ Case COMP/M.1221 Rewe/Meinl, Case COMP/M.1684 Carrefour/Promodes.

⁹ Case NMa 2818 / Laurus-Lidl, Case NMa 2838 / Sperwer-Spar, Case NMa 5064 CoopCodis-Deen Winkels-Hoogvliet Super – DeWitKom@rt Supermarkten.

¹⁰ Case NMa 2198 / Schuitema-Sperwer, Case NMa 2668 / Sperwer-Laurus, Case NMa 2838 / Sperwer-Spar.

the other hand the parties also point to the fact that the NMa has in previous decisions considered the market for the procurement of (product groups of) daily consumer goods via retailers to be national in scope.¹¹

21. The Commission has in previous decisions indicated that, given the consumers preferences for national products and the fact that suppliers seem to negotiate on a national level, sometimes even on a regional/local level, - despite the fact that buyer initiatives to cooperate on a wider scale with regard to the procurement market are on increase and the market is subject to a strong internationalisation trend - the market for the procurement of (product groups of) daily consumer goods via retailers is national in scope.¹²
22. Taking into account the combined market share of the parties on a European market, which would be below 15%, this market would not be an affected market. On the other hand, if the geographic scope of this market were to be national, the parties' combined market share would exceed 15% and the Dutch market for procurement of daily consumer goods via retailers would be an affected market.
23. However, the exact definition of the geographic market the procurement of daily consumer goods via retailers for can be left open since it would not affect the assessment of whether the proposed concentration meets the criteria for an Article 4(4) referral.

C. Effect on competition

i) The market for the sale of daily consumer goods via supermarkets

24. The proposed transaction could significantly affect competition in the Dutch market (or in the - to be distinguished - regional or local markets) for the sale of daily consumer goods. On a national market, the combined market share of the parties is around [35-45]% (based on turnover), with an increment of around [0.5-1.5]%.¹³ On the local markets, their combined market share exceeds in several localities [50-100]%, with increments varying between [5-10]% and [50-55]%.¹⁴

ii) The market for supermarket franchise services

25. On a national market for supermarket franchise services the combined market share of the parties is around [45-55]% (based on turnover), with a small increment of around [<1]% (only 4 of the 29 Konmar stores are franchise stores).

¹¹ Case NMa 1710 / Schuitema-A&P, Case NMa 2198 / Schuitema-Sperwer.

¹² Case COMP/M.1313 Danish Crown/Vestjyske Slagterier, Case COMP/M.1221 Rewe/Meinl, Case COMP/M.3464 Kesko/ICA/JV.

¹³ On the market for the sale of daily consumer goods to supermarkets and hypermarkets (excluding discounters) the combined market share of the parties is around [40-50]% with an increment of [0.5-1.5]%.
¹⁴ In the following cities/localities the parties' combined market share (based on turnover) exceeds 50%.

Almere ([>50]%), Beilen ([>50]%), Brunssum ([>50]%), Delft ([>50]%), Groningen ([>50]%), Helmond ([>50]%), Maassluis ([>50]%), Nijmegen ([>50]%), Oss ([>50]%), Rotterdam - Poolsterstraat ([≥50]%), Den Haag – Elandstraat ([>50]%), Den Haag – Laakweg ([>50]%), Tiel ([>50]%), Winschoten ([>50]%), Zaltbommel ([>50]%). In Spijkenisse the parties combined market share is [>50]%, however there is no overlap since Ahold is currently not present there.

iii) The market for the procurement of daily consumer goods via retailers

26. On a national procurement market the combined market share of the parties is around [20-30]% with an increment of around [<1]%. If the procurement market were to be subdivided per product category, the combined market share of the parties would vary between [10-20]% (beauty products) up to [45-55]% (meals), with an increment between [<1]% and [<2]%.
27. Whereas the effects of the transaction on the markets for supermarket franchise services and for the procurement of (different product categories of) daily consumer goods via retailers appear to be rather limited, the Commission considers that the proposed transaction significantly may affect competition in the Dutch market (or in the - to be distinguished - regional or local markets) for the sale of daily consumer goods.

VII. REFERRAL

28. On the basis of the information provided by the parties in the Reasoned Submission, the transaction meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market within a Member State which presents all the characteristics of a distinct market. The Commission Notice on case referral in respect of concentrations¹⁵ indicates that, in seeking a referral under Article 4(4), *“the merging parties are required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*.
29. On the basis of the information provided by the parties, the Commission considers that the principal impact on competition, if any, of the concentration is liable to take place on distinct markets in the Netherlands, and that the requested referral would be consistent with point 20 of the Notice.

VIII. CONCLUSION

30. For the above mentioned reasons and with reference to the agreement of the Netherlands with the proposed referral, the Commission has decided to refer the transaction in its entirety to the competent authorities of the Netherlands. This decision is adopted in application of Article 4(4) of the EC Merger Regulation.

For the Commission,
signed
Humbert DRABBE
Director
for Philip LOWE
Director General

¹⁵ Commission Notice on Case Referral in respect of Concentrations, OJ C56, 5 March 2005, p.2.