

Case No COMP/M.6543 - AHOLD/ FLEVO

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION

Date: 07/05/2012

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EUROPEAN COMMISSION

Brussels, 07/05/2012
C(2012) 3016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Subject: Case No COMP/M.6543 - AHOLD/ FLEVO
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

Dear Sir/Madam,

1. On 27.03.2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Koninklijke Ahold N.V. (the Netherlands), the parent company of Ahold Group ("Ahold"), acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Flevo Deelnemingen III B.V. ("Flevo", the Netherlands), the holding company of bol.com BV. ("bol.com", the Netherlands), by way of purchase of shares².

(1) THE PARTIES

2. **Ahold** is the parent company of an international group of quality supermarkets based in Europe and the United States. In the Netherlands, Ahold is active via its supermarket chain Albert Heijn, speciality stores for retail trade in health and beauty care products (Etos), and wine and liquor (Gall & Gall), as well as via its online forum and delivery service albert.nl with regard to all three of these brands.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ C 99, 3.4.2012, p. 10.

3. **Flevo** is the 100% holding company of the online non-food retailer bol.com. Bol.com is active in sales of books, e-books, DVDs, toys, music, games, software, consumer electronics, home appliances and computers for the Dutch and Belgian markets.
4. Ahold is referred to hereinafter as the "notifying party". Ahold and Flevo are together referred to as "the parties" or "the undertakings concerned".

(2) THE OPERATION AND THE CONCENTRATION

5. Pursuant to the terms of a Share Purchase Agreement [...], Ahold will obtain sole control over Flevo (including bol.com).
6. The notified operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

(3) EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³ (Ahold: EUR [...] billion; Flevo: EUR 0.355 billion). Each of them has an EU-wide turnover in excess of EUR 250 million (Ahold: EUR [...] billion; Flevo: EUR 0.355 billion). Ahold does not achieve more than two-thirds of its aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

(4) RELEVANT MARKETS

8. Whilst bol.com is active only in online sales of non-food products such as books, electronics and appliances as well as films, music, games and toys, the vast majority of the sales of Ahold result from food retail products, with only limited sales of books, electronics, games and toys, most of these sales outside the online environment.
9. Overlaps in the activities of the parties arise in the sale of books, toys, games, music and films to final consumers in the Netherlands.

Product market definition

(i) Sale of books to final consumers

10. Books are sold to final consumers through a wide range of different channels including independent book stores, book chains, hypermarkets, kiosks, book clubs, the internet, mail orders, credit sales and telemarketing.
11. The notifying party considers that online and offline sales of books to final consumers belong to the same product market and no distinction should be made between markets according to the sales channel used.
12. The notifying party also proposes that the overall market for the sales of books to final consumers should be further sub-divided according to the following major categories of

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

books: (i) general books (including e-books, general Dutch literature, general foreign literature, children's books, non-fiction informative books, etc.), (ii) scientific books (including academic and professional books) and (iii) educational books⁴. According to the notifying party, Ahold does not sell e-books, foreign books, scientific books or educational books. It only sells general Dutch language books, children's books and leisure books (i.e. cooking and travel books)⁵.

13. As regards the existence of a distinct "distant sale" market, in its previous practice the Commission has indicated that within the market for the sale of books to final consumers a separate market could be constituted by the distant sale segment, which includes book clubs, mail orders and sales via the Internet⁶.
14. However, in a more recent decision, the Commission has identified a single market for all sales of books to final consumers and noted that the Commission's market investigation did not bring forward any element on the basis of which a separate "distant sale" market (including book clubs, mail order and sales via the Internet) might be identified⁷.
15. As regards further segmentations on the basis of the book category, in past decisions⁸ the Commission considered a possible segmenting between (i) general literature (including large-format and pocket-format general literature titles), (ii) children's books, (iii) art books, (iv) guides and manuals,⁹ (v) strip cartoons (comic books), (vi) educational books, (vii) academic and professional books, (viii) reference works (including smaller reference works and larger reference works), (ix) books published in instalments.
16. Therefore, the possible relevant markets to be considered in this case are: the overall sales of books to final customers in the Netherlands, segmented via sales channel (online), and/or segmented by the book category (general literature (large-format and pocket-format), children's books and guides and manuals), although ultimately the exact product market definitions can be left open since the notified operation does not raise competition concerns irrespective of the market definition.

(ii) Sale of toys and games to final consumers

17. The notifying party submits that a product market comprising toys and games¹⁰ with a possible further sub-division between a separate market for toys and a separate market for games including all different retail sales channels should be considered as relevant markets in this case. Alternatively, the notifying party proposes that the question

⁴ The notifying party bases itself on the delineation used by the Dutch Booksellers Association (*Koninklijke Boekverkopersbond, "KBB"*).

⁵ The notifying party groups categories of cooking and travel books under 'leisure books' in conformity with the definition used by the KBB.

⁶ Case COMP/M.2978 - Lagardère/Natexis/VUP, paragraph 295.

⁷ Case COMP/M.4611 - Egmont/Bonnier, paragraphs 13 and 19.

⁸ See, for example, cases COMP/M.2978 - Lagardère/Natexis/VUP; COMP/M.4611 - Egmont/Bonnier.

⁹ In case COMP/M.2978 - Lagardère/Natexis/VUP, paragraph 283, the Commission defined guides and manuals as books the purpose of which is to provide practical guidance and information that will be useful in everyday life on matters such as decoration, DIY, gardening, nature, cooking, wine, travel, language learning, sports, health, etc.

¹⁰ For the purposes of this case, "toys" are deemed to comprise traditional toys and (board) games, while "games" refer to video games (including hardware and software).

whether separate markets comprising distant sale channels should be distinguished can be left open in the present case since the amount of online sales for Ahold on these markets is negligible.

18. In previous decisions, the Commission considered that games formed part of the overall market for the retail of electrical consumer goods. According to this past practice, this overall market could be segmented into sub-markets for retail of brown goods, retail of large domestic appliances, retail of small domestic appliances and retail of computers and communication devices¹¹. The Commission further considered a possible sub-delineation of the market for brown goods between photographic products, audio, vision, DVD and VHS products, film, games and music, and sub-delineation of the market for computers and communication products between PC hardware, PC software, communications and accessories/peripherals¹².
19. In a recent decision in the *Otto/Primondo Assets* case the Commission's market investigation confirmed that the non-food retail segment should be sub-divided according to product categories, amongst which toys and games were considered specifically. Furthermore, the market investigation revealed that certain product categories could be sub-divided even further according to sub-categories, e.g. toys¹³.
20. As regards the question whether there should be a distinction between distance selling channels on the one hand and brick and mortar retail shops on the other hand, the Commission's investigation in *Otto/Primondo Assets* did not provide sufficient evidence to conclude that all retail distribution channels belong to the same product market¹⁴. In a recent market investigation in *Media-Saturn/Redcoon* the respondents considered that retail distribution channels were indeed interchangeable¹⁵. In both cases the question whether all retail sales channels form one product market (for each of the individual product categories) was ultimately left open¹⁶.
21. This approach can also be followed in the case at hand as the exact product market definitions can be left open since the notified operation does not raise competition concerns irrespective of the market definition.

(iii) Sale of music and films to final consumers

22. In the past, after a market investigation, music and film categories have been regarded by the Commission as possible separate relevant product markets within the overall segment of retail for brown goods (see recital 18), although it so far has left open whether these two types of products should be considered together or separately¹⁷. The notifying party considers that the categories of music and film should not be regarded as separate product markets but included in one and the same product market since it

¹¹ Cases COMP/M.4226 - DSGI/Fotovista, paragraph 10; and COMP/M.4392 - DSGI/FR-Invest/F-Group JV, paragraph 13.

¹² Cases COMP/M.4226 - DSGI/Fotovista, paragraphs 10, 23-26; and COMP/M. 4392 - DSGI/FR-Invest/F-Group JV, paragraphs 10, 13, 23-24.

¹³ Case COMP/M.5721 - *Otto/Primondo Assets*, paragraph 19.

¹⁴ Case COMP/M.5721 - *Otto/Primondo Assets*, paragraph 24.

¹⁵ Case COMP/M.6226 - *Media-Saturn/Redcoon*, paragraph 17.

¹⁶ Cases COMP/M.5721 - *Otto/Primondo Assets*, paragraph 30; and COMP/M.6226 - *Media-Saturn/Redcoon*, paragraph 18.

¹⁷ Case COMP/M.4392 - DSGI/FR-Invest/F-Group JV, paragraphs 13, 23 and Table 1.

argues that there are no market players in the market focusing on either music or film only. They have nonetheless provided market share data also by segment of film/music.

23. In the present case the exact product market definitions can be left open since the notified operation does not raise competition concerns irrespective of the market definition.

Geographic market definition

24. The notifying party considers that all the above markets are (at least) national.
25. With respect to the retailing of books, the notifying party submits that there is a national regulatory regime (the fixed book price¹⁸) in place applicable to scientific books and general books (with the exception of foreign literature and e-books). In previous decisions, the Commission has considered the geographic market for the retail sale of books to be national in scope¹⁹.
26. With regard to the retailing of toys, games, music and film, the notifying party submits that no delineation within these sub-segments between sales channels is necessary since bol.com does not have any brick and mortar retail shops and is only active on the home-shopping market. In the past, the Commission has considered that the home-shopping market should be regarded at most as national in scope in light of elements such as language differences and costs and delays associated with placing international orders and the international distribution of individual packages²⁰. With regard to a possible market comprising both home-shopping and brick and mortar shops, in previous Commission decisions the possibility of a narrower scope, i.e. regional or even local, has also been taken note of²¹.
27. For the purposes of the present case, the precise geographic market definitions can be left open since the notified operation does not raise competition concerns irrespective of the market definition.

(5) COMPETITIVE ASSESSMENT

28. Based on the information provided in the notification, the combined market share of the parties would be below 15% in all possible market definitions with the exception of potentially affected markets due to horizontal overlaps with respect to the following activities of the parties: (i) sale of books and (ii) sale of films to final consumers in the Netherlands.

¹⁸ According to the notification, a publisher or importer is obliged to set a fixed price for every Dutch book it intends to sell and to notify this price to the Dutch Media Authority (*Commissariaat voor de Media*), which controls compliance with the Fixed Book Price Act (*Wet op de vaste boekenprijzen*).

¹⁹ Cases COMP/M.4611 – Egmont/Bonnier, paragraph 21; and COMP/M.5838 – Bertelsmann/Planeta/Circulo, paragraph 35.

²⁰ Cases COMP/M.5721 - Otto/Primondo Assets, paragraphs 31-32; COMP/M.070 - Otto/Grattan, paragraph 11; COMP/M.080 La Redoute/Empire, paragraph 12; and COMP/M.1527 Otto Versand/Freemans, paragraph 25.

²¹ Case COMP/M.4686 – Louis Delhaize/Magyar Hipermarket KFT, paragraph 16.

29. As in any of the possible market segments considered for sales of toys and games to final customers the market shares of the parties are well below 10%, with minimal overlap as Ahold has reduced sales of both toys and games, these markets will not be analysed further.

(i) *Sale of books to final consumers*

30. On the market for the sale of books to final consumers in the Netherlands irrespective of sales channel and book category, the parties' combined market share would be [10-20]% (Ahold: [0-5]%; bol.com: [10-20]%) in value in 2011.

31. Within a possible distant sale sub-segment, the parties' estimate of their combined post-merger market share is [40-50]% (Ahold: [0-5]%; bol.com: [40-50]%). However, Ahold's addition will be minimal ([0-5]%) and only in relation to the segment for online retail sales of books. There is no overlap in the activities of the parties on a possible sub-segment for the retail sales of books at brick and mortar shops as bol.com is only active online. Moreover, global online retailers are expected by the Notifying Party to enter the Dutch market. In this respect it expects that [...] will launch a Dutch language website mid-2012.

32. As regards a possible segmentation by book categories, the parties would have a combined market share of [5-10]%, [10-20]% and [10-20]% respectively in the possible sub-segments for general literature, children's books and guides and manuals. If the sub-segment for general literature was further sub-divided into large-format and pocket-format general literature titles the parties' combined market share would be approx. [10-20]% and [0-5]% respectively²². If within the general literature segment the sub-segment for general Dutch language books was to be distinguished, as Ahold only sells this type of general literature books and this is thus the narrowest segment of overlap between the parties, Ahold and bol.com would have a combined market share of [10-20]%. These market shares are all well within the safe harbour provided for in the Horizontal Merger Guidelines if the market were to be defined at this level²³.

33. Furthermore, according to the notifying party, Ahold and bol.com face competition from established book stores, such as Bruna, Selexyz and Libris Blz. (a purchasing consortium of independent booksellers) with estimated market shares of 10-20% each. A number of these bookstores sell books also online. In addition, a number of publishing houses (e.g. Libris and Unieboek Het Spectrum) sell their books directly online and are able to exercise competitive pressure on the merged entity. Furthermore, a number of mass market retailers have recently entered this market or increased their activity (e.g. V&D, Bijenkorf). Also, Hema recently introduced an online shop with more than 800,000 book titles. Moreover, as referred above, the parties expect the global online retailer [...] to enter the Dutch book market in the third or fourth quarter of 2012.

34. Given the very small increment, the limited combined market shares of Ahold and bol.com that the transaction will bring about and the number of credible competitors, it

²² The exact size of the pocket-format segment within general literature is, according to parties, unclear. The parties have used the data provided by GfK Retail and Technology although it concerns sales of lower priced books rather than pocket-format books. However, it should be noted that Ahold [...] sells pocket-format books in promotions[...]. In 2011, Ahold's sales with regard to pocket-format books amounted to approx. EUR [...] million excl. VAT. Pocket-format books thus make up only [0-5] % of its general literature books sales.

²³ Guidelines on the assessment of horizontal mergers under the council regulation on the control of concentrations between undertakings, in OJ 5.2.2004 C 31/5, para. 18.

can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market as regards any of the possible markets in the sale of books.

(ii) Sale of films to final consumers

35. As regards films and music sold to final consumers, the parties combined market shares would be below 15%, with the exception of a possible sub-segment for the retail sale of films, where the parties combined market share would amount to [10-20]% (Ahold: [0-5]%; bol.com: [10-20]%)²⁴. These market shares are well within the safe harbour provided for in the Horizontal Merger Guidelines if the market were to be defined at this level²⁵.
36. Furthermore, according to the notifying party, large competitors are present in this market and will be able to exercise significant competitive restraint on the merged entity. Based on the information provided in the notification, the biggest market players are the retailers of home entertainment products, such as Free Record Shop and Media Markt with estimated market shares of each of these players of [10-20]%. In addition, Blokker has an estimated market share of [10-20]%. Furthermore, there are department stores such as Bijenkorf and V&D that sell DVDs/blu-rays. Moreover, many smaller players exist that offer digital services. Also, global online retailers are expected to enter the market in view of the digitalization of films. [...] is expected to enter the Dutch entertainment market with a broad variety of film titles in the third or fourth quarter of 2012²⁶.
37. Based on all these considerations, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market as regards the sale of films.

(6) CONCLUSION

38. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*

²⁴ For the overall segment of music and film together the parties estimate market shares at [10-20]% (Ahold: [0-5]%; bol.com: [10-20]%). For the music segment the parties would hold a combined market share of [10-20]% (Ahold: [0-5]%; bol.com: [10-20]%).

²⁵ Guidelines on the assessment of horizontal mergers under the council regulation on the control of concentrations between undertakings, in OJ 5.2.2004 C 31/5, para. 18.

²⁶ In addition, the Notifying Party expects that [...] will offer a video on demand service [...]this year.