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***Case No COMP/M.6588
- KONINKLIJKE
AHOLD / VALK
HOLDING***

Only the English text is available and authentic.

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

Article 4(4)
Date: 19.06.2012



EUROPEAN COMMISSION

Brussels, 19/06/2012
C(2012)4300

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the national Competition
Authority**

Dear Sirs,

**Subject: Case No COMP/M.6588 - KONINKLIJKE AHOLD / VALK HOLDING
Commission decision following a reasoned submission pursuant to Article
4(4) of Regulation No 139/2004¹ for referral of the case to the Netherlands**

I. INTRODUCTION

1. On 11 May 2012, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The notifying Parties request the operation to be examined in its entirety by the competent authorities of the Netherlands.
2. According to Article 4(4) of the 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 in a market which presents all the characteristics of a distinct market.

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.

3. A copy of this Reasoned Submission was transmitted to all Member States on 14 May 2012. By letter of 21 May 2012, the Dutch competition authority, Nederlandse Mededingingsautoriteit ("NMa") as the competent authority of the Netherlands informed the Commission that the Netherlands agrees with the proposed referral.

II. THE PARTIES

4. The proposed acquirer Koninklijke Ahold N.V. ("Ahold") is an international retailing group operating in the United States and in 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 active inter alia on the retail markets for daily consumer goods with its supermarkets chain Albert Heijn.
5. Jumbo Groep Holding B.V. ("Jumbo") is active in the retail markets for daily consumer goods in the Netherlands. Jumbo has acquired at the end of 2011 the supermarket chain C1000. The NMa has cleared this transaction on 21 February 2012, subject to the divestment of stores in specific local markets in the Netherlands.

III. THE OPERATION AND CONCENTRATION

6. Ahold intends to acquire a subsidiary of Jumbo, Valk Holding B.V. ("Valk", Ahold and Jumbo hereinafter referred to as the "Parties"), which comprises certain rights² and assets relating to 82 supermarkets which are all located in the Netherlands.
7. Upon completion of the proposed transaction, Ahold will hold all the issued and outstanding shares in the capital of Valk. The transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

8. The undertakings concerned have an aggregate worldwide turnover of over EUR 5000 million (EUR [...] for Ahold in 2011, EUR [...] in 2011 for Jumbo's 82 supermarkets owned by Valk). Both Ahold and Valk both have an EU-wide turnover in excess of EUR 250 million in 2011 (Ahold EUR [...], Valk's 82 supermarkets EUR [...]). Ahold does not achieve more than two thirds of its aggregate EU-wide turnover within one and the same Member State. The concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

V. ASSESSMENT

A. Relevant product markets

9. According to the notifying Parties the relevant product markets to be considered for the purpose of this decision are: (i) the retail market for the sale of daily consumer goods via supermarkets, (ii) the market for the procurement of daily consumer goods for sale via retailers and (iii) the market for supermarket franchise services.
10. The market for retail sale of daily consumer goods via supermarkets has been previously defined as the retail market for daily consumer goods comprising all

² The opportunity to enter into contractual relations with franchisees, lease positions and/or assets.

modern distribution channels such as hypermarkets, supermarkets and discounters, but excluding neighbourhood stores, fuel stations or specialised outlets. The product market definition for the retail sale of daily consumer goods proposed by the notifying Parties is in line with existing Commission precedents³.

11. 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.
12. The NMa in its decisional practice⁵ has distinguished a separate market for supermarket franchise services, on which franchisors offer services to franchisees. On this market, franchisors offer supermarket franchise services comprising a supermarket formula, related intellectual property rights, marketing services, training services etc., a particular range of products and a franchise agreement. Franchisees operate their supermarkets under the franchise formula of the franchisor.

B. Relevant geographic markets

The market for the sale of daily consumer goods via supermarkets

13. The Parties submit by reference to the NMa's decisional practice that the geographic scope of the market for the sale of daily consumer goods via supermarkets is to be assessed both at a national and local level (it may vary between the greater metropolitan area, the locality or the neighbourhood in which the supermarket is located)⁶.
14. [...].
15. In past 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 previous Commission decisions, the geographic market for the sale of daily consumer goods via supermarkets is unlikely to be wider than national.
16. For the purpose of the present case 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.

³ See Commission decisions in Cases COMP/M.6488 Carrefour/Guyenne et Gascogne; COMP/M.5176 CVC/ Schuitema; COMP/M.5112 Rewe Plus/Discount; COMP/M.4590 Rewe/Delvita; COMP/M.4276 Ahold/Konmar; COMP/M.784–Kesko/Tuko.

⁴ See Commission decisions in Cases COMP/M.5112 Rewe Plus/Discount; COMP/M.3464 Kesko/ICA/JV; COMP/M.1684 Carrefour/Promodes; COMP/M.1221 Rewe/Meinl; COMP/M.784 Kesko/Tuko.

⁵ See NMa decisions in Cases 7323/Jumbo-C1000; 6802/Jumbo-Super de Boer; 6145/Sperwer-Sligro-Spar-Meermarkt-Attent; 2838/Sperwer-Spar; 2668/ Sperwer – Laurus; 2198/ Schuitema-Sperwer.

⁶ See Cases in NMa decision 5064/CoopCodis - Deen Winkels - Hoogvliet Super/DeWitKom@rt Supermarkten; 2818/ Laurus – LIDL; 2838/ Sperwer – Spar.

⁷ See Commission decisions in Cases COMP/M.1085 Promodes/Catteau; COMP/M.1221 Rewe/Meinl; COMP/M.1684 Carrefour/Promodes; COMP/M.3464 Kesko/ICA/JV.

The market for the procurement of daily consumer goods

17. The Parties submit that the NMa has in its past decisions distinguished a national procurement market for daily consumer goods for sale via retailers and that a possible distinction could be made into different product groups, which would also be national in scope according to the NMa⁸.
18. The Commission has in its past decision indicated that given consumers preferences for national products and the fact that suppliers seem to negotiate on a national level, sometimes even on a regional/local level, the market for the procurement of (product groups of) daily consumer goods via retailers is national in scope⁹.
19. In any event the exact definition of the geographic market for the procurement of daily consumer goods via retailers 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.

The market for supermarket franchise services

20. The Parties point to the fact that several market players provide franchise services for supermarkets in the Netherlands¹⁰. As in the Netherlands most franchise service providers are active on a national level and as it cannot be excluded that supermarket franchise services can be provided by franchisors who are not yet active in a certain area, the NMa has in its past decisions¹¹ assumed a national market definition for supermarket franchise services.
21. In any event, 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.

VI. REFERRAL

22. On the basis of information provided by the Parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the 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.
23. The Commission Notice on case referral in respect of concentrations¹² indicates that, in seeking a referral under Article 4(4), two legal requirements must be fulfilled: first

⁸ See NMa decisions in Cases 6879/ Schuitema – SdB Activa; 6802/ Jumbo – Super de Boer; 5684/ Jumbo – Konmar; 5586/ Ahold – Konmar Superstores; 2838/ Sperwer – Spar.

⁹ See Commission decisions in Cases COMP/M.1313 Danish Crown/Vestjyske Slagterier; COMP/M.1221 Rewe/Meinl; COMP/M.3464 Kesko/ICA/JV.

¹⁰ According to the Parties the following groups provide supermarket franchise services in the Netherlands: Albert Heijn, Jumbo/C1000, Spar Holding B.V. (Spar, Attent), Sligro Food Group N.V. (Golf/EMTÉ), Coöperatieve Levensmiddelenhandel "Nederlands Sperwerverbond" U.A. (Plus), Boon Beheer B.V. (MCD), Van Tol B.V.(Troefmarkt, Dagwinkel), Coop Nederland U.A. (Coop, CoopCompact, Supercoop).

¹¹ See NMa decisions in Cases 2198/ Schuitema – Sperwer; 2838 / Sperwer – Spar; 2668 / Sperwer – Laurus.

¹² OJ C 56, 05.03.2005, p.2.

that “*the concentration may significantly affect competition*”; second, that any such potential effect on competition may occur in a market “*within a Member State and present all the characteristics of a distinct market*”.

24. First, the proposed transaction will lead to horizontal overlaps in the Netherlands on (i) the retail markets for the sale of daily consumer goods via supermarkets, (ii) the markets for the procurement of daily consumer goods for sale via retailers and (iii) the market for supermarket franchise services. The precise scope of the overlaps would depend on the applicable product and geographic markets¹³. However, the Commission Notice on case referral stipulates¹⁴ that the existence of affected markets alone is generally considered sufficient to meet the first legal requirement of Article 4(4) of the Merger Regulation. It is possible that a narrower market definition may be applied to the proposed transaction, such that it may have “*a potential impact on competition...which may prove to be significant*”.
25. Second, there is no overlap between the Parties outside the Netherlands and there are no affected markets at EEA, EU or EFTA level. The effects of the proposed transaction are therefore limited to distinct markets within a single Member State. The proposed transaction relates exclusively to the retail markets for the sale of daily consumer goods via supermarkets, the markets for the procurement of daily consumer goods for sale via retailers and the market for supermarket franchise services in the Netherlands and this is the only area where affected markets arise.
26. According to the Parties, these markets are either national or local in scope and the proposed transaction gives rise to a number of locally affected markets. In this respect the Commission Notice on case referral indicates¹⁵ that the requesting parties are required to show that the applicable geographic frame of reference “*is national, or narrower than national in scope*”. Moreover, as the Commission and the NMA have previously considered the above-mentioned affected markets to be local geographic markets, this requirement of Article 4(4) is satisfied¹⁶.
27. Furthermore, the Parties contend that the NMA would be best placed for scrutinizing the proposed operation, which would be consistent with the guiding principles set out in the Commission Notice on case referral¹⁷.
28. The Commission therefore considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the Netherlands.

VII. CONCLUSION

¹³ The Commission has defined the markets for the sale of daily consumer goods via supermarkets and the procurement of daily consumer goods via retailers to be no wider than national in scope (COMP/M.4276 Ahold/Konmar; COMP/M.1313 Danish Crown/Vestjyske Slagterier; COMP/M.1221 Rewe/Meinl, Case COMP/M.3464 Kesko/ICA/JV). 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.

¹⁴ Commission Notice on Case Referral, point 17.

¹⁵ Commission Notice on Case Referral, point 18.

¹⁶ See Commission decision in Case M.4276/Ahold – Konmar.

¹⁷ Commission Notice on Case Referral, paragraph 8.

29. For the above reasons, and given that the Netherlands has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Netherlands.
30. This decision is adopted in application of Article 4(4) of the Merger Regulation.

For the Commission

Signed
Alexander ITALIANER
Director General