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Case M.7224 - KONINKLIJKE AHOLD / SPAR CZ

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

Article 4(4)
Date: 6.5.2014



Brussels, 6.5.2014
C(2014) 3099 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE

PUBLIC VERSION

To the notifying party:

To Czech Office for the Protection of Competition

Dear Sirs,

**Subject: Case M.7224 – KONINKLIJKE AHOLD / SPAR CZ
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the Czech Republic.**

Date of filing: 31.03.2014

Legal deadline for response of Member States: 25.04.2014

Legal deadline for the Commission decision under Article 4(4): 12.05.2014

I. INTRODUCTION

1. On 31 March 2014, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation whereby Koninklijke Ahold N.V. ('Ahold', the Netherlands) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over SPAR Česká obchodní společnost s.r.o. and Imobilia Spa s.r.o. (jointly referred to as 'SPAR CZ', Czech Republic) by way of purchase of shares. The Notifying Party requested the operation to be examined in its entirety by the competent authorities of the Czech Republic.

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. A copy of this Reasoned Submission was transmitted to all Member States on 1 April 2014.
3. By e-mail of 17 April 2014, the Czech Office for the Protection of Competition as the competent authority of the Czech Republic informed the Commission that the Czech Republic agrees with the proposed referral.

II. THE PARTIES AND THE OPERATION

4. **Ahold**, referred to as 'the Notifying Party', is the parent company heading an international group of quality supermarkets and other retail trade formulas in Europe (the Netherlands, Belgium, the Czech Republic, Slovakia and via a JV in Portugal) and the USA. In the Czech Republic Ahold is active via its supermarkets and compact hypermarkets
5. **SPAR CZ** are the target companies, part of the group of SPAR Austria. SPAR Austria is also active on the retail markets for daily goods in Europe. SPAR Austria operates various retail trade formulas including the Spar (supermarkets) and InterSpar (hypermarkets) formulas in Austria, Italy, Slovenia, Croatia, Hungary and, through its subsidiary SPAR CZ, in the Czech Republic.
6. The proposed transaction ('the Transaction') involves the acquisition by Ahold of sole control of SPAR CZ by way of purchase of shares (Share Purchase Agreement of 10 March 2014). As a result, Ahold will acquire 50 supermarkets and hypermarkets located in the Czech Republic which currently operate under the InterSpar and the Spar formulas. Therefore, the transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million (Ahold: EUR [...] million, SPAR CZ: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Ahold: EUR [...] million, SPAR CZ: EUR [...] million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension within Article 1(2) of the Merger Regulation.

IV. ASSESSMENT

8. On the basis of the information submitted by the Notifying Party in the Reasoned Submission, the Transaction will give rise to horizontal overlaps in relation to a number of markets, namely (i) the market for the sale of daily consumer goods via modern distribution channels (such as hypermarkets, supermarkets and discounters, excluding neighbourhood shops) and (ii) the procurement markets for daily goods, comprising the sale of daily consumer goods by producers to customers such as a wholesalers, retailers (like supermarkets) or others in the Czech Republic.

A. Relevant product markets

Retail of daily consumer goods

9. In previous decisions² the Commission has considered that there is separate product market in the retail market for the sale of daily consumer goods mainly carried out by retail outlets such as hypermarkets, supermarkets and discount chains, and that these retailers are active in different markets than other retailers such as specialised outlets, service stations and others. However, the Commission left open the question whether non-grocery sales (such as textiles, tools and toys) should be included in the relevant product market. The Notifying Party does not contest this market definition and submits that the market definition can be left open as regards the non-food sales.

Procurement of daily consumer goods by wholesalers and retailers and other firms

10. The Commission has in previous cases considered that the market for the procurement of daily consumer goods comprises the sale of these goods to customers such as wholesalers, retailers and other firms. Given the limited supply-side substitutability of producers the Commission has in previous decisions³ found that the procurement market for daily consumer goods has to be defined with reference to different product groups (such as bread, cakes and pastry; dairy products; non-alcoholic beverages; hot beverages, etc.). However, the Commission left the exact product market definition open. The Notifying Party agrees with this product market definition and provides market data for 19 different product groups (such as meat and sausages, poultry and eggs, bread and pastry, dairy products, fresh fruits and vegetables, beer, wine and liquor, confectionery, detergents etc).

B. Relevant geographic markets

Retail of daily consumer goods

11. In previous decision the Commission has considered that relevant geographic market for retail sale of daily consumer goods in the Czech Republic is local in scope and covers a radius of 20-30 minutes driving around the outlet which can be approximated by the Czech small administrative districts, *okresy*⁴. For the purpose of this decision and based on a preliminary assessment, the relevant geographic markets for the sale of daily consumer goods via modern distribution channels in the Czech Republic is considered to be the local markets of a radius of 20-30 minutes driving, approximated to the *okresy*.

² Case No COMP/M.5112 – Rewe/Plus Discount, para. 15; Case No COMP/M.4590 *Rewe/Delvita*, paras. 9-14.

³ Case No COMP/M.4590 *Rewe/Delvita*, para. 15.

⁴ Case COMP/M.5112 *Rewe/Plus Discount*, para. 20.

Procurement of daily consumer goods by wholesalers and retails and other firms

12. In previous decisions⁵ the Commission has defined the markets for Procurement of daily consumer goods by wholesalers and retails and other firms as national in scope. The Notifying Party does not contest this definition.

C. Assessment

13. 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 and which present all the characteristics of a distinct market.

Legal requirements under Article 4(4) of the Merger Regulation

14. The Notifying Party submits that the two legal requirements of Article 4(4) of the Merger Regulation (namely that the concentration may significantly affect competition in a market within a member state which presents all characteristics of a distinct market) are met in the present case.
15. **The first legal requirement** is that the concentration may significantly affect competition on the relevant market. The Commission considers that the first legal requirement is met based on the Notifying Party's estimates that the Parties' combined market shares on the markets for the sale of daily consumer goods via modern distribution channels will exceed 25% in value in most *okresy* of the Czech Republic, and in several *okresy* it will exceed 40% in surface. The Transaction may therefore significantly affect the market for the retail sale of daily consumer goods via modern distribution channels in the Czech Republic. Moreover, the Czech market for procurement of daily goods may also be significantly affected given that, according to the Notifying Party's estimates, the parties' combined market shares for some products exceed 20% and reach [20-30]% in volume on the market for detergents.
16. **The second legal requirement** is that the significant effect on competition must occur "*in a market within a Member State which presents all the characteristics of a distinct market*". Based on the information about the Parties' activities and on the Commission's previous geographic market definitions of the markets concerned, the Commission considers that the Transaction relates exclusively to the Czech Republic and the markets concerned are at most national in scope.

Additional factors

17. Czech Competition Authority has experience in the sector as it has dealt with the relevant products markets in previous investigations⁶. Moreover, in a previous case⁷ on the sale of daily consumer goods via modern distribution channels, a case was referred to the Czech Competition Authority pursuant to Article 4(4) of the Merger Regulation.

⁵ Case COMP/M.5112 *Rewe/Plus Discount*, paras. 22 and 23.

⁶ S775/2013/KS HRUŠKA, spol. s r.o./part of undertaking Tesco Stores a.s.

⁷ Case No COMP/M.5112 – *Rewe/Plus Discount*.

V. REFERRAL

18. On the basis of the information provided by the Notifying Party 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.
19. Given that the likely focus of the competitive effects of the proposed transaction is confined to the Czech Republic, the Commission considers that Czech Competition Authority is better placed to examine the Czech markets than the Commission.
20. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the impact on competition of the concentration may be significant and that it is liable to take place on distinct markets in the Czech Republic.
21. Moreover, the referral would be in line with the "one-stop-shop" principle, as well as the principle that a jurisdiction should be reattributed to another competition authority in circumstances where the latter is the more appropriate to deal with the merger, having regard to the specific characteristics of the case.

VI. CONCLUSION

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

For the Commission

(signed)

Alexander ITALIANER

Director General