



EUROPEAN COMMISSION

DG Competition

***Case M.7920 - NETTO /
J SAINSBURY /
DANSK
SUPERMARKED /
NEW EDLINGTON /
HEDON / ROUNDHAY
ROAD***

Only the English text is available and authentic.

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

Article 4(4)

Date: 22.01.2016



EUROPEAN COMMISSION

Brussels, 22.1.2016
C(2016) 433 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

To the Competition and Markets Authority:

Dear Sirs,

Subject: Case M.7920 – NETTO / J SAINSBURY / DANSK SUPERMARKED / NEW EDLINGTON / HEDON / ROUNDHAY
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to the United Kingdom and Article 57 of the Agreement on the European Economic Area².

Date of filing: 11.1. 2016

Legal deadline for response of Member States: 1.2.2016

Legal deadline for the Commission decision under Article 4(4): 15.2.2016

I. INTRODUCTION

1. On 11 January 2016, 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 in subject, by which Sainsbury plc and Dansk Supermarked A/S, parent companies to Netto Limited, a non-full function joint venture, acquire joint control from the Co-operative Group Limited, within the meaning of Article 3(1)(b) of the

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 L 1, 3.1.1994, p. 3 ("the EEA Agreement").

Merger Regulation, of three retail stores located in the United Kingdom constituting distinct parts of an undertaking, within the meaning of paragraph 24 of the Commission Consolidated Jurisdictional Notice³. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.

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 and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 11 January 2016.
4. By email of 14 January 2016, the Competition and Markets Authority (the “**CMA**”) as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. **THE PARTIES**

5. Netto Limited (“**Netto**”) is a discount retailer of grocery and non-grocery goods that re-entered the United Kingdom markets in November 2014 where it holds ten stores prior to the Transaction. Netto is independently held from the Netto trade formula stores outside of the United Kingdom.
6. Netto is a 50/50 non-full function joint venture operated on a trial basis between J Sainsbury plc (“**Sainsbury’s**”) and Dansk Supermarked A/S (“**Dansk**”).
7. Sainsbury’s is a United Kingdom retailer of grocery and non-grocery goods. It is also active in the retail supply of petrol and pharmacy products, retail banking and insurance services. Sainsbury’s has over 1,300 stores and 161,000 employees in the United Kingdom. Outside the United Kingdom, Sainsbury’s has limited online sales in Ireland (from its Northern Irish stores).
8. Dansk is a Danish retailer of grocery and non-grocery goods active in Denmark, Germany, Poland, Sweden and the United Kingdom (through its interest in Netto) under the trade formulas fØtex, Bilka, Netto and Salling. Dansk has no activities in the United Kingdom aside from its joint venture interest in Netto.
9. The “**Target Stores**” are three retail stores located in the UK, namely:
 - a store located at Edlington Lane, New Edlington, Doncaster DN12 1BS (“**New Edlington**”);
 - a store located at Hull Road, Hedon By-Pass, Hull HU12 8DJ (“**Hedon**”); and
 - a store located at 639 Roundhay Road, Leeds LS8 4BA (“**Roundhay Road**”).

3 Commission Consolidated Jurisdictional Notice under the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, JO C 95, 16.4.2008, p. 1.

III. THE OPERATION AND CONCENTRATION

10. The “**Transaction**” in question involves the acquisition of joint control by the parent companies of Netto, Sainsbury's and Dansk, of three retail stores located in the United Kingdom belonging to the Co-operative Group Limited. The Transaction was executed by means of a sale and purchase agreement entered into on 8 April 2015.
11. The intended concentration therefore constitutes a merger within the meaning of Article 3(1)(b) of the EU Merger Regulation.
12. It is noted that in June 2015 Netto notified the Transaction to the CMA which cleared it on 24 July 2015. Netto made this notification on the basis of the assumption that Netto was the undertaking concerned on the acquiring side. However, given that Netto is not a full-function joint venture, under the EU Merger Regulation, the undertakings concerned on the acquiring side are each of the parent companies of Netto rather than Netto itself. Moreover and as detailed below, the turnovers of the parent companies are sufficient to meet the EU Merger Regulation thresholds. The Transaction should therefore have been notified to the Commission, not the CMA. The parties rectified this error, after contacts with the Commission, through the submission of a Form RS requesting the referral of the case to the CMA for a re-assessment of the Transaction.

IV. EU DIMENSION

13. This acquisition has an EU dimension within the meaning of Article 1 of the Merger Regulation since the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Sainsbury's: EUR 30,144 million in 2015; Dansk: EUR 7,673 million in 2014; Target stores: EUR [...] in 2014) and each of at least two of them has a Union-wide turnover in excess of EUR 250 million (Sainsbury's: EUR 30,144 million in 2015; Dansk: EUR 7,673 million in 2014). Whereas Sainsbury and the Target Stores achieve their entire turnover in the United Kingdom, Dansk does not achieve more than two-thirds of its aggregate Union-wide turnover in the United Kingdom.

V. ASSESSMENT

14. The Transaction leads to (i) horizontal overlaps between the Parties' activities in the local market or markets for the retail of daily consumer goods; and (ii) vertical links between the Parties' activities in the procurement of daily consumer good, which are in both cases of overlaps limited to the United Kingdom, for the reasons detailed below.

A. Relevant markets

Retail of daily consumer goods

15. In past decisions the Commission has found that, within the retail segment, a separate product market exists for the sale of daily consumer goods mainly carried out by retail outlets such as hypermarkets, supermarkets and discount chains (so-called ‘modern distribution channels’⁵). These retail outlets offer consumers a basket of fresh and dry foodstuffs and non-food household consumables sold in a supermarket environment.

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

5 M.7224 – *Koninklijke Ahold/Spar CZ*, para. 9; M.5112 – *Rewe/Plus Discount*, para. 15; M.4590 – *Rewe/Delvita*, para. 9-14; M.2604 – *ICA Ahold/Dansk Supermarked*, para. 10, 11; M.4686 – *Louis*

16. The Commission considered retail outlets of the modern distribution channels to be active in different markets than other retailers, such as specialised outlets (butchers, bakers, etc) and service stations, which have been excluded from the relevant product market definition in previous decisions⁶. These other retailers fulfil a specialist or convenience function, which makes them belong to a different product market⁷ and the range and variety of products in traditional stores would be narrower than in hypermarkets and supermarkets⁸.
17. The geographic scope of the market for the retail of daily consumer goods has generally been considered by the Commission to be local in scope, as delineated by the boundaries of a territory where the outlets can be reached easily by consumers. To that end, the Commission has taken into account radii of between 10 and 30 minutes driving time⁹.
18. From a consumer's point of view, the geographic markets affected by a concentration in the food-retailing trade are the local markets in which the firms involved run their shops.

Procurement of daily consumer goods

19. The Commission has previously defined a separate market for the procurement of daily consumer goods, comprising the sale of daily consumer goods to customers such as wholesalers, retailers and other firms¹⁰. Furthermore, the Commission has previously considered, but so far left open, whether a further distinction should be made between different sales channels, such as food-retailing, specialised trade, delicatessen, cash and carry stores and other wholesalers, drugstores and export trade¹¹. The Commission also noted that food-retailing trade is by far the most important sales channel for most categories of daily consumer goods¹².
20. In its past decisional practice, the Commission also considered whether the procurement market for daily consumer goods should be further segmented according to specific product groups/categories such as bread, cakes and pastry; dairy products; non-alcoholic beverages; hot beverages, etc. The main reason for considering a further delineation of the procurement market by product category is the limited supply-side substitutability that exists between the product categories from the suppliers' perspective. In particular, producers typically only provide a single product or

Delhaize/Magyar Hipermarket Kft., para. 8; M.3905 – *TESCO/Carrefour*, para. 10; M.5047 – *REWE/Adeg*, para. 24.

6 M.784 – *Kesko/Tuko*, para. 18-20, M.1221 *Rewe/Meinl*, para. 10, M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, para. 11-13.

7 M.5677 – *Schuitema/Super de Boer Assets*, para. 18.

8 M.3464 – *Kesko/Ica/JV*, para.12.

9 M.6506 – *Groupe Auchan/Magyar Hipermarket*, para. 13; M.6822 – *Groupe Auchan/Real/Real Hypermarket Romania*, para. 11; M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, para. 14; M.5176 – *CVC/Schuitema*.

10 Most recently in case M.7224 – *Koninklijke Ahold/Spar CZ*, para.10. See also Commission decision in the cases M.5122 – *Rewe/Plus Discount*, para. 21; M.1221 – *Rewe/Meinl*, para 83; and M.1684 – *Carrefour/Promodes*, para 24.

11 M.1221 – *Rewe/Meinl*, para. 79-81.; M.6588 *Ahold/Koninklijke Valk Holding*, para. 9, the Commission considered a separate market for 'the procurement of daily consumer goods for sale via retailers'.

12 M.1221 – *Rewe/Meinl*, para. 79.

category of products and their flexibility to switch to alternative products is limited¹³. Against this background, the Commission has previously considered a further segmentation of the procurement market for daily consumer goods into 19 product categories¹⁴.

21. In previous decisions, the Commission has consistently defined the market for the procurement of daily consumer goods as national in scope, rather than regional (i.e. encompassing several countries) or EEA-wide¹⁵. The main reasons are the fact that consumer preferences relate to national products and suppliers generally negotiate on a national level¹⁶.

B. Assessment

22. As to the local markets for the retail of daily consumer goods, the Parties submit that considering a radius of 10 minutes' drive, the Transaction would result in a combined market share of [20-30]% in the area surrounding the store Roundhay Road located in Leeds (United Kingdom). According to the Parties, the assessment is not exhaustive in terms of all possible relevant data cuts across each of the three Target stores.
23. The Commission considers that at least one affected market appears to therefore arise but that it cannot therefore be excluded that other affected markets exist.
24. As regards the markets of procurement of daily consumer goods, the Parties submit that they cannot provide detailed market share information on their combined shares. However, the existence of vertically affected markets brought about by the Transaction cannot be excluded. For the purposes of this referral decision it can be left open whether the Transaction would lead to affected markets at the national level in United Kingdom in the procurement of daily consumer goods. The requirements for a referral under Article 4(4) are already fulfilled due to the overlaps in the retail of daily consumer goods.
25. In conclusion, the Transaction may significantly affect competition in the local markets for the retail of daily consumer goods in the United Kingdom. Furthermore, the existence of vertically affected markets brought about by the Transaction cannot be excluded.
26. In view of the foregoing, the principal effects of the proposed operation are restricted to the United Kingdom. Furthermore, the affected markets in question present all the characteristics of a distinct market.

13 M.5112 – *Rewe/Plus Discount*, para. 21; M.4590 – *Rewe/Delvita*, para 15; M.784 – *Kesko/Tuko*, para 33; and M.1221 – *Rewe/Meinl*, para. 75-77.

14 (a) Meat and sausage; (b) Poultry and eggs; (c) Bread and pastry; (d) Dairy products; (e) Fresh fruits and vegetables; (f) Beer; (g) Wine and liquor; (h) Alcohol-free beverages; (i) Hot beverages; (j) Confectionery; (k) Basic food products (l) Preserves; (m) Frozen goods; (n) Baby food; (o) Pet food; (p) Body care articles (e.g. creams, lotions) and cosmetics (make-up and perfumes); (q) Detergents and cleaning agents; (r) Other drugstore products; and (s) Other non-food products usually found in supermarkets (e.g. newspapers, magazines, entertainment).

15 Most recently case M.7224 – *Koninklijke Ahold/Spar CZ*, para.12. See also case M.5112 – *Rewe/Plus Discount*, para. 22-23.

16 See M.6588 – *Koninklijke Ahold/Valk Holding*, para. 18; M.1313 – *Danish Crown/Vestjyske Slagterier*; M.1221 – *Rewe/Meinl*; and M.3464 – *Kesko/ICA/JV*.

Additional factors

27. In accordance with point 19 of the Commission Notice on Case Referral in respect of concentrations, a referral request should also consider whether the competition authority or authorities to which the case would be addressed is the most appropriate authority for dealing with the case. To this end, consideration should be given to how appropriate the national competition authority would be for scrutinising the operation.
28. A referral to the CMA would be justified by the specific circumstances of this case, given the CMA has already once assessed this Transaction and the CMA has significant expertise in assessing supermarket mergers in the United Kingdom.

VI. REFERRAL

29. On the basis of the 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. The Commission notice on case referral in respect of concentrations¹⁷ (point 17) indicates that, in seeking a referral under Article 4(4), “*the requesting 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...*”. The Commission 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 United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

30. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be re-examined by the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)

Johannes LAITENBERGER

Director-General

¹⁷ OJ C 56, 5.3.2005, p. 2.