

*Case No IV/M.848 -
Ahold / CSC*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 02/12/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.12.1996

NOT TO BE PUBLISHED

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M. 848-AHOLD/CSC

Notification of 30.10.1996 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 30.10.1996 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Koninklijke Ahold, N.V. (Ahold), registered in the Netherlands, also acting for M.P de Labella B.V., a wholly owned subsidiary of Ahold, which is also trading under the name Ahold España, and Central de Serveis Ciències, S.L., (CSC), registered in Spain, also acting for Censerdist, S.L.,(CSD), a wholly owned subsidiary of CSC, which is operating under the trading name Caprabo, acquire within the meaning of Article 3(1)b of the Council Regulation joint control of the undertaking Store 2000, S.A.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :
 - for **Ahold**: food retail and related non food products in the Netherlands, Portugal, the Czech Republic, Poland and the USA. Ahold is also active in the food manufacturing business.

- for **CSC**: food retail and related non food products in Catalonia and Balearic Islands.

Store 2000 operates currently a retail chain of eleven supermarkets for the distribution of food and related non food products in Madrid. According to the JV Agreement, Store 2000 will further expand its activities within the territory of Spain except Catalonia and Balearic Islands ("the territory"). The parent companies are currently not present in Madrid and will not be present in Madrid or in any other area within "the territory" competing with the activities assigned to the JV Store 2000.

II. JOINT VENTURE OF A CONCENTRATIVE NATURE

4. Store 2000, according to the JV Agreements and the wordings of the notification, will be jointly controlled by Ahold and CSC. It will perform on a lasting basis all the functions of an autonomous economic entity. To this effect it shall be provided with sufficient resources to carry out independently its activities. Its creation will not give rise to coordination of the competitive behaviour of the parties.

III. COMMUNITY DIMENSION

5. The group Ahold and the group CSC have a combined aggregate worldwide turnover in excess of ECU 5,000 million (Group Ahold, ECU 14.1 billion; and Group CSC, ECU 407 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Group Ahold, ECU 7.6 billion; and Group CSC, ECU 407 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension, but does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

6. The notifying parties state that the relevant product market is the market for the distribution of food and related non food products by means of specialised businesses, small supermarkets, medium size supermarkets and hypermarkets and discount surfaces. Store 2000 has 11 stores of the medium size supermarket type ranging from 445 m² to 1,951 m². However, It is not necessary to further delineate if the relevant product market must be limited to the segment of medium size supermarkets and hypermarkets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic market

7. The relevant geographic market for the distribution of food and related non-food products by means of sales points opened to the public should be considered in the first instance local as it is delimited by a boundary within which the sales points normally can be reached by the consumer. The relevant market may be an area more extensive than a local area where there is overlap between the sales points in different local areas.

It is however not necessary to decide on this question as the present operation does in neither case give rise to the risk of creation or strengthening of a dominant position.

C. Assessment

8. The parent companies are not active in the local geographic market (Madrid) where Store 2000 already operates and neither are they or will they be present in any other local market in "the territory" assigned to the JV. Consequently the concentration does not give rise to an addition of market shares.
9. With respect to the procurement markets the concentration does not create any appreciable buying power in favour of the JV nor it is liable to add any buying power in favour of the parent companies vis-a-vis the suppliers. The market share of the JV in the segment of grand distribution by means of supermarkets and hypermarkets is [...] ⁽¹⁾. The national or regional producers or wholesale suppliers have a large choice for distributing its goods through a lot of outlets in strong competition placed in the different local areas of the "territory".
10. In view of the fact that the concentration does not bring about overlap between the activities of the parent companies in the relevant local geographic markets to the concentration, it must be concluded that the notified operation will have no appreciable impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. ANCILLARY RESTRICTIONS

11. The notifying parties identify as ancillary restriction an exclusive license agreement between CSD Group and Store 2000 pursuant to which the latter may use within "the territory" the industrial and intellectual property rights (such as trademarks and shop signs) licensed by CSD Group. This license agreement shall remain in force for one year from the date no member of the CSD Group is a shareholder of Store 2000, if Ahold Espagne Group so request. Moreover CSD Group shall refrain from using within "territory", the name, trademarks and others intellectual property rights involved for the period of one year after termination of the license agreement.
12. The exclusive license agreement can be considered as an ancillary restraint. It is directly related to the implementation of the concentration and subordinated in importance to the main object of the concentration.
13. Likewise the clauses by which the license agreement may be temporary prolonged after termination in the terms mentioned above when CSD Group is no longer a shareholder of Store 2000 may also be considered as ancillary as it allows Store 2000 the transitional period necessary for it to develop new means to identify and promote its activities in the "territory".

⁽¹⁾ Deleted business secret

VI. CONCLUSION

14. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,