



EUROPEAN COMMISSION

DG Competition

**PUBLIC VERSION**

***Case M.9886 - SALLING  
GROUP / TESCO  
POLSKA***

Only the English text is available and authentic.

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

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Article 9(2)b  
Date: 26/08/2020

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Brussels, 26.8.2020  
C(2020) 5934 final

**COMMISSION DECISION**

**of 26.8.2020**

**relating to Article 9 of Regulation (EC) No 139/2004  
referring to case M.9886 – Salling Group/Tesco Polska**

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# COMMISSION DECISION

of 26.8.2020

**relating to Article 9 of Regulation (EC) No 139/2004  
referring to case M.9886 – Salling Group/Tesco Polska**

(Only the ENGLISH text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the ‘TFEU’)<sup>1</sup>,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings<sup>2</sup> (the ‘Merger Regulation’), and in particular Article 9(3) thereof,

Having regard to the notification made by Salling Group A/S (the ‘Notifying Party’ or ‘Salling Group’) on 7.7.2020, pursuant to Article 4 of the said Regulation,

Having regard to the request of the Urząd Ochrony Konkurencji i Konsumentów (the ‘UOKiK’) of 10.7.2020,

Whereas:

- (1) On 7 July 2020 the European Commission (the ‘Commission’) received notification of a proposed concentration by which Salling Group acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Tesco (Polska) sp. z.o.o. (‘Tesco Polska’) (together ‘the Parties’) by way of purchase of shares.
- (2) The UOKiK received a copy of the notification on 8 July 2020.
- (3) By letter dated 10 July 2020, Poland via UOKiK requested the referral to its competition authority of the proposed concentration with a view to assessing it under national competition law, pursuant to Article 9(2)(b) of the Merger Regulation (‘the Request’).
- (4) The Notifying Party was informed on 13 July 2020 of the Request and received a copy of it on 17 July 2020. In its submission of 23 July 2020, the Notifying Party brought forward arguments against a referral.

## 1. THE PARTIES

- (5) Salling Group is active in retail distribution by means of supermarkets, department stores, discount stores and hypermarkets for daily consumer goods, as well as online

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<sup>1</sup> OJ C 115, 9.8.2008, p. 47.

<sup>2</sup> OJ L 24, 29.1.2004, p. 1. 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.

shops, coffee shops, restaurants and meal box businesses, active in Denmark, Germany and Poland (with Netto Sp. z o.o., a discount retailer of grocery and non-grocery goods).

- (6) Tesco Polska is active in retail distribution of food and daily consumer products by means of a chain of stores comprising of hypermarkets and supermarkets located in Poland.

## **2. THE CONCENTRATION**

- (7) The proposed transaction concerns the acquisition of shares representing 100% of the total voting rights of Tesco Polska by Salling Group, pursuant to a share sale and purchase agreement signed on 17 June 2020. Tesco Polska will therefore be solely controlled by Salling Group.
- (8) It follows that the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. UNION DIMENSION**

- (9) The notified operation has a Union dimension pursuant to Article 1(2) of the Merger Regulation. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Salling Group: EUR [...] in 2019, Tesco Polska: EUR [...] in 2018/2019<sup>3</sup>). Each of them has a Union-wide turnover in excess of EUR 250 million (Salling Group: EUR [...] in 2019, Tesco Polska: EUR [...] in 2018/2019<sup>4</sup>). The two undertakings concerned do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. While Tesco Polska achieves all of its Union-wide turnover in Poland, the Salling Group achieves more than two-thirds of its Union-wide turnover in Denmark.

## **4. THE ARTICLE 9 REQUEST**

- (10) By way of a letter dated 10 July 2020, the UOKiK requested a referral of the case in whole. In the Request, the UOKiK submits that all legal requirements for a referral under Article 9(2)(b) of the Merger Regulation are met.
- (11) First, it argues that the proposed transaction exerts a horizontal impact on at least three local markets for the retail sale of daily consumer goods carried out by modern distribution channels. In relation to these markets, the shares of the Parties would be in the range of 20-30%. These markets might see a significant increase in the market power of the Parties, which might in turn negatively affect competition in these markets.
- (12) Second, the UOKiK brings forward that the Parties did not provide any reliable market data that would allow to accurately assess the state of competition on these markets, or even verify the number and participation of all participants in these markets at this stage. Further, the methodology used by the Parties to calculate market shares might raise significant doubts. Based on its experience in several similar cases, the UOKiK considers that market data obtained from Planet Retail

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<sup>3</sup> The figures reflect the audited turnover of the company Tesco (Polska) sp. z o.o for the financial year 2018/2019.

<sup>4</sup> Idem.

does not provide reliable results for the purposes of merger control investigations and might be affected by a material error. Therefore, it argues, the information provided by the Parties should be verified based on actual data and an in-depth analysis and a market research should be conducted. The proposed transaction might even affect more than the three plausible markets identified by the Parties in the Short Form CO.

- (13) Third, the UOKiK argues that all identified markets horizontally affected by the proposed transaction are by their nature local in scope and do not constitute a substantial part of the internal market. They did not affect intra-Community trade and concerned only local communities as confirmed by Commission precedents.
- (14) Further, the effects of the concentration would be limited to the territory of Poland and they could only affect consumers in the Polish daily consumer goods retail markets.
- (15) The UOKiK concludes that the Polish competition authority is the best-placed competition authority to investigate the proposed transaction.

## **5. ASSESSMENT**

- (16) The UOKiK made a request under Article 9(2)(b) of the Merger Regulation, claiming that the transaction affects competition in at least three local markets and seeking a referral of the transaction in its entirety to Poland.

### **5.1. Legal requirements of Article 9(2)(b) and 9(3) of the Merger Regulation**

- (17) Article 9(2)(b) of the Merger Regulation lays down that:

*Within 15 working days of the date of receipt of the copy of the notification, a Member State, on its own initiative or upon the invitation of the Commission, may inform the Commission, which shall inform the undertakings concerned, that: [...] (b) a concentration affects competition in a market within that Member State, which presents all the characteristics of a distinct market and which does not constitute a substantial part of the common market.*

- (18) Article 9(3) of the Merger Regulation lays down:

*In cases where a Member State informs the Commission pursuant to paragraph 2(b) that a concentration affects competition in a distinct market within its territory that does not form a substantial part of the common market, the Commission shall refer the whole or part of the case relating to the distinct market concerned, if it considers that such a distinct market is affected.*

- (19) Therefore, the following conditions have to be met:

- (a) The market(s) in question need to be distinct and
- (b) should not constitute a substantial part of the internal market, and
- (c) at least one such distinct market has to be affected.

### **5.2. Market definition**

- (20) The proposed concentration concerns the markets for the retail of daily consumer goods through modern distribution channels (hypermarkets, supermarkets and discounters) in Poland as well as the procurement markets for daily consumer goods in Poland.

- (21) Salling Group is predominantly active in the retail sale of daily consumer goods through supermarkets, department stores, discount stores and hypermarkets as well as web shops, coffee shops, restaurants and meal box businesses. It is active in Denmark, Germany and Poland. In Poland, it is active in (a) the procurement of daily consumer goods and (b) the retail sale of daily consumer goods through wholly owned discount retail chain Netto. It is not active in (c) the wholesale of daily consumer goods, nor (d) the distance retail sale, nor (e) the retail sale of motor fuels in Poland.
- (22) *Tesco Polska* is active in (a) the procurement of daily consumer goods, (b) the retail sale of daily consumer goods through stores, supermarkets and hypermarkets and in (e) the retail sale of motor fuels in Poland. It is not active in (c) the wholesale of daily consumer goods. It is currently active in (d) the distance retail selling; however, this activity will be terminated before the completion of the transaction.
- (23) The proposed concentration gives rise to horizontal overlaps within the retail sale of daily consumer goods in Poland and the procurement of daily consumer goods in Poland, cf. (b) and (a) above. The proposed concentration does not give rise to any vertical overlaps. Neither Salling Group nor *Tesco Polska* are active on the market for wholesale of daily consumer goods in Poland or on other vertically related markets.

#### 5.2.1. *Retail sale of daily consumer goods through modern distribution channels*

##### 5.2.1.1. Product market

- (24) In its previous decisions, the Commission has consistently considered the retail of daily consumer goods mainly carried out by retail outlets such as supermarkets, hypermarkets and discount chains (so-called modern distribution channels) as a separate product market.<sup>5</sup> In previous decisions regarding the Austrian and Finnish market, the Commission has found that cash & carry stores<sup>6</sup> form part of a distinct product market for cash & carry sales of daily consumer goods.<sup>7</sup>
- (25) The Notifying Party considers the relevant product market for this Transaction to be retail sale of daily consumer goods mainly carried out by retail outlets. They do not consider further segmentations plausible, as supermarkets, hypermarkets and discount chains are in direct competition.<sup>8</sup>
- (26) The product market definition applied by the Commission in previous cases is also relevant for Poland. The relevant product market for the purposes of this decision is therefore the retail market for daily consumer goods limited to modern distribution channels (hypermarkets, supermarkets and discounters).

##### 5.2.1.2. Geographic market

- (27) The Commission has in previous cases delineated the geographic market for the retail sale of daily consumer goods as local (catchment area with a radius of

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<sup>5</sup> M.7920 *Netto/J Sainsbury/Dansk Supermarked*, para. 15; M.6506 *Group Auchan/Magyar Hipermarket*, para. 10.

<sup>6</sup> A cash-and-carry is a large shop where you can buy goods in larger quantities and at lower prices than in ordinary shops. Cash-and-carries are mainly used by people in business to buy goods for their shops or companies.

<sup>7</sup> M.784 *Kesko/Tuko*, para 24 (Finland) and M.1221 *Rewe/Meinl*, para 15-16 (Austria).

<sup>8</sup> Paragraph 57 of the Short Form CO.

approximately 20 to 30 minutes driving time)<sup>9</sup>. In particular, in case M.4522 *Carrefour/Ahold Polska*, after conducting a market investigation, the Commission found that the markets for the retail sale of daily consumer goods through modern distribution channels in Poland are local in scope, with a catchment area of approximately 20 to 30 minutes driving time.<sup>10</sup>

- (28) In line with previous decisional practice, the Notifying Party considers the catchment areas of the local markets to be 20-30 minutes driving time. Considering local circumstances, the Notifying Party considers the relevant catchment areas to be bigger in rural areas compared to non-rural areas, as the lower population density necessitates longer travel distances. Thus, in non-rural areas, the Parties consider the narrowest local markets to be catchment areas where consumers can reach outlets within approximately 20 minutes driving time. In rural areas, the Parties consider that the narrowest local markets to be catchment areas where consumers can reach outlets within approximately 30 minutes driving time.<sup>11</sup>
- (29) For the purpose of this decision, in line with previous decisions and, in particular, based on the findings in precedent M.4522, the relevant geographic markets for the retail sale of daily consumer goods via modern distribution channels in Poland are therefore considered to be the local markets with a radius of 20-30 minutes driving time.

#### 5.2.2. *Procurement of daily consumer goods*

##### 5.2.2.1. Product market

- (30) The Commission has 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 firms.<sup>12</sup> It has 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 trade.<sup>13</sup> It has also considered whether the procurement market for daily consumer goods should be further segmented according to 23 specific product groups/categories such as bread, cakes and pastry; dairy products; non-alcoholic beverages; hot beverages, etc.<sup>14</sup>
- (31) In the Notifying Party's view, the relevant product market is the procurement of daily consumer goods, comprising the procurement of daily consumer goods by customers such as wholesalers, retailers and other firms. In the Notifying Party's view, the precise market definition can be left open, since the combined market shares of the Parties do not exceed 20% in any plausible market.<sup>15</sup>
- (32) 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-wide. The main reasons are the fact that consumer preferences

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<sup>9</sup> See e.g. M.4590 *Rewe/Devlita*, M.7224 *Koninklijke Ahold/Spar CZ*, M.5112 *Rewe/Plus Discount*, M.3905 *Tesco/Carrefour*, M.8374 *UAB Rimi Lietuva/UAB Palink*, and M.6822 *Groupe Auchan/Real/Real Hypermarket Romania*.

<sup>10</sup> M.4522 *Carrefour/Ahold Polska*, para. 20 to 25.

<sup>11</sup> Paragraph 66 of the Short Form CO.

<sup>12</sup> M.7920 *Netto/J Sainsbury/Dansk Supermarked*, para. 19.

<sup>13</sup> M.7920 *Netto/J Sainsbury/Dansk Supermarked*, para. 19.

<sup>14</sup> M.8374 *UAB Rimi Lietuva/UAB Palink*, para. 17.

<sup>15</sup> Paragraph 62 of the Short Form CO.

relate to national products and suppliers generally negotiate on a national level.<sup>16</sup> The Notifying Party considers that the relevant geographic market for the procurement of daily consumer goods is at least national in scope but that the precise market definition can be left open.<sup>17</sup> For the purposes of this decision, the relevant procurement markets are therefore national in scope.

### 5.3. Assessment under Article 9(2)(b) of the Merger Regulation

(33) The Commission has sought to assess whether the conditions for a referral on the basis of Article 9(2)(b) of the Merger Regulation are met, i.e. (i) whether a market or several markets may be identified within Poland, which present all the characteristics of distinct markets, (ii) whether this or these market(s) do not constitute a substantial part of the internal market, and (iii) whether the transaction affects competition in these distinct markets. Based on the considerations laid out below, it follows that these legal requirements set forth in Articles 9(2)(b) and 9(3) of the Merger Regulation are met and the case should be referred to Poland in its entirety.

#### 5.3.1. Impact on competition

##### 5.3.1.1. No affected markets for the procurement of daily consumer goods in Poland

(34) In relation to the *procurement of daily consumer goods*, the combined market share of the Parties does not exceed 20%, irrespective of the precise market definition.<sup>18</sup>

(35) Therefore, at this stage, based on its preliminary analysis and without prejudice to further investigation by the UOKiK, the Commission considers that the proposed transaction would not give rise to horizontally affected markets or competition concerns with respect to the market(s) for the procurement of daily consumer goods.

##### 5.3.1.2. Affected markets for the retail sale of daily consumer goods carried out through modern distribution channels in Poland

(36) In relation to the *retail sale of daily consumer goods carried out through modern distribution channels in Poland*, there is a horizontal overlap between the activities of Tesco Polska and Salling Group. These markets are likely to be local in scope, consisting of 20 to 30 minute-drive catchments areas. Based on the information provided in the Short Form CO, there are three plausible local markets in which competition would be affected, where the Parties' combined market share will exceed 20%.

#### (A) The Notifying Party's view

(37) The Notifying Party is of the view that there are no affected markets, as there were no grounds for concluding that the proposed transaction would affect competition in any of the identified geographic areas with an overlap. The Parties' combined market share [...] exceeded 20% in three of 224 local areas with a horizontal overlap, using the narrowest plausible geographic market. In addition, HHI deltas for these three local areas are below 150. Therefore, the transaction qualified according to the Notifying Party for the simplified procedure under Articles 5 (c) and 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004<sup>19</sup> ('Simplified Notice').

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<sup>16</sup> M.7920 *Netto/J Sainsbury/Dansk Supermarked*, para. 21.

<sup>17</sup> Paragraph 69 of the Short Form CO.

<sup>18</sup> Paragraph 61 of the Short Form CO.

<sup>19</sup> OJ C 336, 14.12.2013, p. 5.



- (38) Moreover, both Parties face strong competition in Poland from a number of much stronger competitors such as Jeronimo Martins, Eurocash, Schwarz Group (Kaufland and Lidl) and Auchan. As such, it is not possible that the concentration would affect competition even in the narrow local areas.
- (39) The Notifying Party further argues that the Request did not specify how the proposed concentration would affect competition.
- (40) Finally, the Notifying Party notes that the cases previously referred by the Commission to Poland are not analogous to the concentration under review. In particular, in case M.4522 *Carrefour/Ahold Polska*, the Parties' combined market shares on several local markets significantly exceeded 40%.

(B) The Commission's assessment

- (41) The Commission finds that even on the basis of the market shares provided by the Parties there are three plausible local markets, where the Parties' combined market shares would exceed 20% (see Figure 1 below).

Figure 1: Affected markets, based on the data provided in the Short Form CO

Powiat (Tesco's store name)	Rural / Non-rural	Tesco Polska	Salling Group	Combined	Increment	HHI Delta
Skierniewice (Skierniewice Lelewela)	Non-rural	[10-20]%	[0-5]%	[20-30]%	[0-5]%	[...]
Skierniewice (Skierniewice Reymonta)	Non-rural	[10-20]%	[0-5]%	[20-30]%	[0-5]%	[...]
Skierniewice (Skierniewice)	Non-rural	[10-20]%	[0-5]%	[20-30]%	[0-5]%	[...]

- (42) The Commission notes that the threshold for a market to be considered as affected under Article 9(2)(b) is lower than under Article 9(2)(a) of the Merger Regulation. This is clear from the wording. According to Article 9(2)(a) of the Merger Regulation competition must be “*significantly affected*” for a referral, while under Article 9(2)(b) of the Merger Regulation the markets only need to be “*affected*”.
- (43) While the HHI deltas in all three of these plausible local markets where the combined market share will exceed 20% would according to the Parties be below 150, which “*may*” allow for a treatment of this case under the Commission's Simplified Notice,<sup>20</sup> this does not render these plausible markets unaffected within the meaning of Article 9(2)(b) of the Merger Regulation and the definition of “*affected markets*” under Section 6.3 of Annex I of the Implementing Regulation<sup>21</sup>(Form CO).

<sup>20</sup> Article 6 of the Simplified Notice, as opposed to transactions falling under Article 5 of the Simplified Notice, where the Commission “*will in principle apply*” the simplified procedure.

<sup>21</sup> Consolidated version of the Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.04.2004, p. 1-39, as amended by Commission Regulation (EC) No 1033/2008 (OJ L 279,

- (44) Moreover, the UOKiK has expressed doubts about the accuracy of the data provided by the Parties. Further investigation or a market reconstruction might show that there are even more affected markets or that the identified affected markets might be affected to an greater degree than alleged by the Parties.
- (45) The fact that according to the figures provided by the Parties, the proposed transaction appeared to qualify for the simplified procedure does not preclude that the transaction affects competition in one or more local markets in Poland. It is the very purpose of the notification obligation and the transmission of the notification to the national competition authorities for those authorities to become aware of transactions potentially affecting competition within their territory and, where the conditions of Article 9 are fulfilled, seek a post-notification referral of the transaction for investigation under their national competition law.
- 5.3.2. *Distinct markets which do not constitute a substantial part of the internal market*
- 5.3.2.1. Retail sale of daily consumer goods carried out through modern distribution channels
- (A) Previous Commission decisions
- (46) When assessing whether any markets form a substantial part of the internal market, the Commission in the past considered that a part of or a region within a Member State could constitute a substantial part of the internal market on its own, in so far as its overall economic relevance is substantial enough. This may be the case where the volume of production and demand is higher or equal to other Member States<sup>22</sup> or the region's population is higher or equal to the population of other Member States.<sup>23</sup> Other relevant factors include the economic importance of the territory concerned, the volume of cross-border trade or general geographic factors.<sup>24</sup> A market not constituting a substantial part of the common market arises generally only as regards markets with a narrow geographic scope, within a Member State.<sup>25</sup>
- (B) The Notifying Party's view
- (47) In its response to the Request, dated and received by the Commission on 23 July 2020, the Notifying Party argues that in view of the scale of the planned concentration, the local markets should be aggregated and considered together as a national market, which would constitute a substantial part of the internal market. The contemplated transaction would see Salling Group taking control over practically the entire operations of Tesco Polska, and not only (as in the transactions recently examined and mentioned in the Request) the acquisition of one or several individual Tesco Polska stores.
- (48) This was supported by the fact that the Parties' closest competitors all have a national or near-national presence. Furthermore, the Parties had implemented their respective store concepts nationwide, including uniform opening hours, goods

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22.10.2008, p. 3-12) and by Commission Implementing Regulation (EU) No 1269/2013 (OJ L 336, 14.12.2013, p. 1-36).

<sup>22</sup> Cases M.2822 *ENBW/ENI/GVS*, para. 32; M.5496 *Vattenfall/Nuon Energy*, para. 42; M.5467 *RWE/Essent*, para. 292.

<sup>23</sup> Case M.3943 *Saint-Gobain / BPB*, para. 117.

<sup>24</sup> E.g. COMP/M.3669 *Blackstone (TBG CareCo)/NHP*, para. 35; COMP/M.4522 *Carrefour/Ahold Polska*, para. 40 and 41, COMP/ M.3905 *Tesco/Carrefour*, para. 32; COMP/M.5677 *Schuitema/Super de Boer Assets*, para. 38.

<sup>25</sup> Commission Notice on Case Referral in respect of concentrations, OJ C 56 of 5 March 2005 ("Commission Notice on Case Referral"), para. 40.

selections, prices and marketing campaigns across all stores with only minor deviations.

- (49) The Parties further note that in M.4522 *Carrefour/Ahold Polska*, paragraph 10, the UOKiK admitted the possibility that local markets for the retail sale of daily consumer goods through modern distribution channels (hypermarkets, supermarkets, discounters) do not have to be considered as separate markets which do not form a substantial part of the internal market. According to the Parties, the UOKiK considered then that those markets could be aggregated and would therefore constitute a substantial part of the internal market.

(C) The Commission's assessment

(C.i) *Distinct market*

- (50) Having regard to the plausible product markets for the retail sale of daily consumer goods carried out through modern distribution channels and their respective plausible geographic scopes as consistently found in previous cases, the Commission considers that the proposed transaction concerns distinct local markets in Poland and that the three affected markets in the town of Scierniowice each represent a market within a Member State, which presents all the characteristics of a distinct market.

(C.ii) *Non-substantial part of the internal market*

- (51) Further, following M.4522 – *Carrefour/Ahold Polska* and given the specific circumstances of the present case, the Commission finds that the three specific markets in the centre of Poland which are affected

- Skierniewice,
- Skierniewice Reymonta and
- Skierniewice Lelewela,

can each not be regarded as constituting a substantial part of the internal market for the purposes of the application of Article 9(2)(b) of the Merger Regulation.

- (52) **First**, in M.4522 – *Carrefour/Ahold Polska*, which, similarly to the present case, concerned the retail sale of daily consumer goods in Poland, neither the UOKiK nor the Commission considered that the markets could be aggregated. The UOKiK merely submitted arguments in support of this referral request in case the Commission were to decide that some local markets could be aggregated. Nonetheless, the Commission found, in line with its decisional practice, that the markets in question were local and did not constitute a substantial part of the internal market.

- (53) **Second**, the Notifying Party's arguments according to which, in view of the scale of the planned concentration, relating to the acquisition of the Tesco Group's (almost) entire Polish business, the local markets should be aggregated and considered together as a national market (constituting a substantial part of the common market), must be rejected. *One*, the geographic market definition does not depend on the scope of the concentration. *Two*, according to the wording of Article 9(2)(b) of the Merger Regulation, a concentration must affect competition in a distinct market which does not constitute a substantial part of the internal market. Just the fact that the concentration simply concerns a substantial part of the internal market does not exclude that it affects competition only in a part that does not constitute a substantial part of the internal market. It is therefore not possible under Article 9(2)(b) of the

Merger Regulation, as suggested by the Notifying Party, to aggregate affected and non-affected local markets into a market covering the whole of Poland.

- (54) **Third**, in the present case, only the three small local markets of Skierniewice, Skierniewice Reymonta and Skierniewice Lelewela are affected (see above Section 5.3.1). If at all, it would be possible to aggregate these three affected markets. For the purposes of this decision, it can be left open, whether the three affected markets in the town of Skierniewice have to be looked at individually or at an aggregated level.
- (55) *One*, above all, as submitted by the UOKiK in M.4522 – *Carrefour/Ahold Polska*, paragraph 37, by its very nature, the retail sale of daily consumer goods in respective local markets is of no relevance for cross-border trade between the Member States, as it only concerns the inhabitants of respective 20-30 minute drive catchment areas.
- (56) *Two*, analogously to the local markets analysed in M.4522 – *Carrefour/Ahold Polska*, the three specific affected markets: Skierniewice, Skierniewice Reymonta and Skierniewice Lelewela are of a limited geographic scope and economic importance. They are located within the same town of Skierniewice, that is of a limited size and is inhabited by only around 48 000 inhabitants (2019)<sup>26</sup>.
- (57) *Three*, the Commission notes that the three specific affected markets Skierniewice, Skierniewice Reymonta and Skierniewice Lelewela form part of the same small town and the Parties' stores concerned are within approximately 10 minutes driving time of each other, thus overlapping. This is further supporting the finding that they can not be regarded as constituting a substantial part of the internal market for the purposes of the application of Article 9(2)(b) of the Merger Regulation, irrespective of whether they have to be assessed individually or at an aggregated level.
- (58) Based on the considerations above, given the specific circumstances of the present case, the Commission concludes that the three specific affected markets: Skierniewice, Skierniewice Reymonta and Skierniewice Lelewela constitute distinct markets and each or aggregated do not constitute a substantial part of the internal market within the meaning of Article 9(2)(b) of the Merger Regulation.

#### 5.3.2.2. Procurement of daily consumer goods

- (59) As discussed above, the plausible procurement markets are national in scope. They therefore represent markets within a Member State, which present all the characteristics of a distinct market.
- (60) It can, however, be left open for the purposes of this decision whether the plausible procurement markets form a substantial part of the internal market, as they are not affected in light of the Parties' low combined market shares under any plausible market definition (see Section 5.3.1.1 above).

#### 5.4. Referral of the case in its entirety

- (61) Considering that the remaining markets for the retail sale of daily consumer goods carried out through modern distribution channels in Poland are also local in scope and the markets for the procurement of daily consumer goods national in scope, the Commission considers it a matter of good administration to refer the transaction in its

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<sup>26</sup> Information from the General Statistical Office of Poland, published here: <http://demografia.stat.gov.pl/bazademografia/CustomSelectData.aspx?s=lud&y=2019&t=00/10/63/011> [last accessed on 24 August 2020].

entirety, including the market(s) which according to the data provided by the Parties would not be affected, for further investigation to Poland.

- (62) The Commission notes in this regard that the potential effects of the proposed transaction are likely limited to local markets in Poland. Moreover, given that the UoKiK has doubts about the market shares provided by the Parties there may be more affected markets than indicated by the Parties. Therefore, and considering the one-stop-shop principle and in light of the considerable experience of the UOKiK in the sectors concerned, the UOKiK overall appears the better-placed authority to deal with this case.

## **6. CONCLUSION**

- (63) From the above it follows that the legal requirements for a referral under Article 9(2)(b) of the Merger Regulation are met with regard to the three local markets for the retail sale of daily consumer goods carried out through modern distribution channels in Poland.
- (64) The Commission thus decides to refer the case in its entirety, including the market for the procurement of daily consumer goods and the local markets for the retail sale of daily consumer goods carried out through modern distribution channels in Poland, in which according to the data provided by the Parties competition would not be affected.

HAS ADOPTED THIS DECISION:

### *Article 1*

The notified concentration is referred in its entirety to the competition authority of Poland, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

### *Article 2*

This Decision is addressed to Poland.

Done at Brussels, 26.8.2020

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Executive Vice-President*