



EUROPEAN COMMISSION

DG Competition

***Case M.10201 - AHOLD DELHAIZE /
DEEN ASSETS***

Only the English text is available and authentic.

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

Article 4(4)

Date: 26/04/2021



EUROPEAN COMMISSION

Brussels, 26.04.2021
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Ahold Delhaize Nederland B.V.
Provincialeweg 11
1506 MA Zaandam
The Netherlands

Autoriteit Consument & Markt
Muzenstraat 41
2511 WB Den Haag
The Netherlands

Subject: **Case M.10201 – Ahold Delhaize/Deen Assets
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to the
Netherlands and Article 57 of the Agreement on the European Economic
Area².**

Date of filing: 18.03.2021

Legal deadline for response of Member States: 13.04.2021

Legal deadline for the Commission decision under Article 4(4): 27.04.2021

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’).

Dear Sir or Madam,

1. INTRODUCTION

- (1) On 18 March 2021, the Commission received by means of a reasoned submission (the ‘Reasoned Submission’) a referral request pursuant to Article 4(4) of the Merger Regulation with respect to a concentration that would result from a proposed transaction by which Ahold Delhaize Nederland B.V. (‘Ahold Delhaize’, the Netherlands) intends to acquire control over 39 stores currently owned by Deen Supermarket B.V. (‘Deen’ the Netherlands) and part of Deen’s central assets (‘the Deen Assets’). Ahold Delhaize and the Deen Assets are hereinafter referred to as ‘the Parties’.
- (2) The Parties request that the operation be examined in its entirety by the competent authority of the Netherlands.
- (3) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to a proposed concentration may request that it be referred in whole or in part from the Commission to the Member State(s) where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
- (4) A copy of the Reasoned Submission was transmitted to all Member States on 18 March 2021.
- (5) By letter of 30 March 2021, the Autoriteit Consument & Markt (‘ACM’) as the competent authority of the Netherlands informed the Commission that the Netherlands agrees with the proposed referral.

2. THE PARTIES

- (6) Ahold Delhaize is a subsidiary of Koninklijke Ahold Delhaize N.V., which in turn forms part of the Ahold Delhaize Group. The Ahold Delhaize Group operates supermarkets (including hypermarkets), convenience stores, proximity stores, speciality stores, wine and liquor stores and drugstores and is active as an online retailer of food and non-food products. In the EEA, Ahold Delhaize is active in the Netherlands, Belgium, Luxembourg, Czech Republic, Romania, Serbia, Greece, and (via a joint venture) Portugal.

3. THE OPERATION AND CONCENTRATION

- (7) The assets being acquired include 39 stores currently owned by Deen, as well as part of Deen’s central assets, namely its distribution centres in Hoorn and Beverwijk, Deen headquarters, a flower centre, and a butchery (the ‘Deen Assets’).
- (8) The transaction in question involves the acquisition of sole control over the Deen Assets by Ahold Delhaize (the ‘Transaction’). The Transaction takes place in several steps. In a first step, Ahold Delhaize will acquire from Deen Holding Hoorn B.V. all of Deen’s 80 stores in the Netherlands and certain of its central assets, including its headquarters, several distribution centres, a flower centre, a meal preparation facility, and a butchery. In a second step, Dekamarkt Exploitatiemaatschappij II B.V. (‘DekaMarkt’) will acquire from Ahold Delhaize 19 of the Deen stores, the distribution centre, and the meal preparation facility, while Vomar Voordeelmarkt

B.V. ('Vomar') will acquire 22 of the Deen stores from Ahold Delhaize. Each of the three acquisitions of control by the ultimate acquirers as a result of the second step constitute a separate concentration within the meaning of Article 3(1)(b) of the Merger Regulation given that (i) Ahold Delhaize has agreed in advance with the breakup of Deen's assets in a legally binding way with DekaMarkt and Vomar; and (ii) the second step is expected to take place shortly after the first acquisition.³

4. UNION DIMENSION

- (9) The Transaction has a Union dimension within the meaning of Article 1(2) of the Merger Regulation, since the undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Ahold Delhaize: EUR 74 736 million; the Deen Assets: EUR [...]). Each of them has a Union-wide turnover in excess of EUR 250 million (Ahold Delhaize: EUR 29 266 million; the Deen Assets: EUR [...]). While the Deen Assets achieve more than two-thirds of their Union-wide turnover in the Netherlands, Ahold Delhaize does not achieve more than two-thirds of its respective Union-wide turnover in the same Member State.
- (10) The Transaction therefore constitutes a concentration with a Union dimension within the meaning of Articles 1(2) and 3(1)(b) of the Merger Regulation.

5. ASSESSMENT

5.1. Horizontally affected markets

- (11) On the basis of the information submitted in the Reasoned Submission, the Transaction appears to lead to horizontally affected markets in (i) several local markets for the retail sale of daily consumer goods through modern distribution channels in the Netherlands; and (ii) the Dutch national market for the procurement of daily consumer goods for sale via retailers.

5.1.1. *Sale of daily consumer goods through modern distribution channels*

- (12) The Parties' activities overlap with regard to the retail sale of daily consumer goods in the Netherlands. Ahold Delhaize AHD is active in the Netherlands via its wholly-owned subsidiary Albert Heijn, which operates around 980 supermarkets in the Netherlands and an online webshop. The Deen Assets comprise 39 supermarkets in the Netherlands.

5.1.1.1. Product market definition

- (13) In previous decisions, the Commission found that a separate product market exists within the retail segment for the sale of daily consumer goods carried out by retail outlets such as hypermarkets, supermarkets and discount chains ('modern distribution channels').⁴ These retail outlets offer consumers a basket of fresh and

³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ C 95, 16.4.2008, p. 1–48, paragraphs 30-33.

⁴ M.8374 – *UAB Rimi Lietuva/UAB Palink*, paragraph 13; M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 14; M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 15; M.7224 – *Koninklijke Ahold/Spar CZ*, paragraph 9; M.5112 – *Rewe/Plus Discount*, paragraph 15; M.4590 – *Rewe/Delvita*, paragraphs 9-14; M.2604 – *ICA*

dry foodstuffs and non-food household consumables sold in a supermarket environment.⁵ Supermarkets, hypermarkets and discount chains compete with respect to their food and non-food product range, marketing strategy and customer approach, and each offers consumers the possibility to purchase all their daily groceries in one shop.⁶ Moreover, the Commission generally considered that other types of retailers such as specialised outlets (butchers or bakers, for instance), kiosks, cash & carry stores and service stations do not belong to the relevant market, or has left its decision on this point open.⁷ The Parties submit that the ACM also considered a market for the sale of daily consumer goods through supermarkets, without making a further distinction between supermarkets, hypermarkets and discounters.⁸ In addition, the Parties submit that the ACM only included supermarkets with a sales floor area exceeding 500m² under the assumption that consumers do not view smaller stores as a full alternative to larger supermarkets given their more limited product range.

- (14) The Parties submit that the relevant product market is potentially broader, as there are other stores where consumers can satisfy their demand for daily consumer goods apart from the modern distribution channels defined by the Commission (such as convenience stores, night shops, supermarkets smaller than 500m² or cash & carry stores). Furthermore, the Parties submit that Dutch consumers also purchase their daily consumer goods from various online offerings.⁹
- (15) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission has considered that the relevant product market includes the sale of daily consumer goods carried out by modern distribution channels.

5.1.1.2. Geographic market definition

- (16) In previous decisions, the Commission delineated the geographic market for retail sale of daily consumer goods, according to demand side considerations, by the boundaries of a territory where the outlets can be reached easily by consumers. To that end, the Commission has generally taken into account radii of between 20 ('ISO20') and 30 minutes ('ISO30') driving time,¹⁰ but has previously also

Ahold/Dansk Supermarked, paragraphs 10 and 11; M.4686 – Louis Delhaize/Magyar Hipermarket Kft., paragraph 8; M.3905 – TESCO/Carrefour, paragraph 10; and M.5047, REWE/Adeg, paragraph 24.

⁵ M.8374 – UAB Rimi Lietuva/UAB Palink, paragraph 13; M.7933 – Carrefour/Billa Romania and Billa Invest Construct, paragraph 14; M.7920 – Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road, paragraph 15; M.5677 – Schuitema/Super de Boer Assets, paragraph 18; M.784 – Kesko/Tuko, paragraphs 18-20; and M.6847 – Triton/Suomen Lähikauppa, paragraph 11.

⁶ M.5677 – Schuitema/Super de Boer Assets, paragraph 18.

⁷ M.8374 – UAB Rimi Lietuva/UAB Palink, paragraph 14 ; M.7933 – Carrefour/Billa Romania and Billa Invest Construct, paragraph 15; M.7920 – Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road, paragraph 16; M.6847 – Triton/Suomen Lähikauppa, paragraph 10; M.784 – Kesko/Tuko, paragraphs 18-20; M.1221 – Rewe/Meinl, paragraph 10; M.5790 – Lidl/Plus/Plus Bulgaria, paragraphs 11-13; and M.6506 – Groupe Auchan/Magyar Hipermarket, paragraph 12.

⁸ ACM case 18/032654 – Jumbo/EMTÉ, decision of 26 June 2018, paragraph 12; ACM case 7432/23 – Ahold/Jumbo Activa, decision of 26 July 2012, paragraph 11; ACM case 9879 – Schuitema/SdB Activa, decision of 5 March 2001, paragraph 11; ACM case 6802 – Jumbo/Super de Boer, decision of 4 December 2009, paragraph 12; and ACM case 7323, Jumbo/CI000, decision of 21 February 2012, paragraph 11.

⁹ Reasoned Submission, paragraph 44.

¹⁰ M.8468 – Norgesgruppen/Axfood/Eurocash, paragraph 24; M.8374 – Uab Rimi Lietuva/Uab Palink, paragraph 15; M.7702 – Koninklijke Ahold/Delhaize Group, paragraph 22; M.6506 – Groupe

considered a radius of between 10 ('ISO10') and 30 minutes.¹¹ The Parties refer to the decisional practice of the ACM, which retains an ISO10 approach, taking into account the locality in which the point of sale is located, where needed adjusted in function of the specific circumstances on the local market.¹²

- (17) For the purpose of the Commission's preliminary assessment under Article 4(4) of the Merger Regulation, the precise scope of the geographic market can be left open, as the assessment would not be substantially different on the basis of a driving time radius of 10, 20, or 30 minutes.

5.1.1.3. Affected markets

- (18) The Transaction appears to give rise to local affected markets in the Netherlands for the retail sale of daily consumer goods through modern distribution channels, both under the ISO10 approach used by ACM for the Netherlands and under ISO20 and ISO30-based approaches. The markets in question present all the characteristics of distinct markets.
- (19) More specifically, the Parties' activities overlap and their combined market share is estimated to be in excess of 20% in 15, 37 and 39 local markets (and in excess of 40% in 8, 6 and 12 of those) under ISO10, ISO20 and ISO30 respectively.¹³ The Parties' combined market share is estimated to be in excess of 60% in two local catchment areas¹⁴ under the ISO10 approach and one local catchment area under ISO20.

5.1.2. Procurement of daily consumer goods for sale via retailers

- (20) Both Ahold Delhaize and the Deen Assets (through joint buying organisation Superunie) act as buyers vis-à-vis producers/suppliers of various consumer goods.

5.1.2.1. Product market definition

- (21) In previous decisions, the Commission 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.¹⁵

Auchan/Magyar Hipermarket, paragraph 13; M.6822 – *G roupe Auchan/Real/Real Hypermarket Romania*, paragraph 11; M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, paragraph 14; and M.5176 – *CVC/Schuitema*, paragraph 12.

¹¹ M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay*, paragraph 17.

¹² Reasoned Submission, paragraphs 48-49.

¹³ Reasoned Submission, Annex 8.

¹⁴ Tuitjenhorn and Wognum.

¹⁵ M.8374 – *Uab Rimi Lietuva/Uab Palink*, paragraph 16; M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 16; M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 19; M.7702 – *Koninklijke Ahold/Delhaize Group*, paragraph 15; M.7224 – *Koninklijke Ahold/Spar CZ*, paragraph 10; M.5122 – *Rewe/Plus Discount*, paragraph 21; M.1221 – *Rewe/Meinl*, paragraph 83; and M.1684 – *Carrefour/Promodes*, paragraph 24.

- (22) The Commission considered, but 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.¹⁶ The Commission also considered, but left open, whether the procurement market for daily consumer goods should be further segmented into 23 product categories, given the limited supply-side substitutability between different product categories.¹⁷ The ACM also considered a separate market for the procurement of daily consumer goods for sale via retailers and left open whether different product groups may constitute separate product markets.¹⁸ The ACM considered a potential segmentation into 12 product categories.¹⁹
- (23) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission has considered a separate market for the procurement of daily consumer goods via retailers.

5.1.2.2. Geographic market definition

- (24) In previous decisions, the Commission 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.²⁰ The main reasons are the fact that consumer preferences relate to national products and that suppliers generally negotiate at national level. Similarly, the ACM has consistently considered that the market for the procurement of daily consumer goods is national in scope.²¹

¹⁶ M.8374 – *Uab Rimi Lietuva/Uab Palink*, paragraph 16; M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 19; M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 16; M.6588 – *Ahold/Koninklijke Valk Holding*, paragraph 9; and M.1221 – *Rewe/Meinl*, paragraphs 79-81.

¹⁷ M.8374 – *UAB Rimi Lietuva/UAB Palink*, paragraph 17; and M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 17. These product categories include: (1) liquids/drinks; (2) hardware store products; (3) perfumes/hygiene products; (4) dry groceries; (5) pharmaceutical products; (6) perishable goods sold on a self-service basis; (7) delicatessen; (8) fish; (9) fruit and vegetables; (10) fresh bread and cakes; (11) meat; (12) do-it-yourself; (13) home decorating; (14) culture; (15) toys/leisure/relaxation; (16) gardening; (17) motor car accessories; (18) large domestic electrical appliances; (19) small domestic electrical; (20) photography/movie-making; (21) hifi/audio; (22) TV/video; and (23) textiles.

¹⁸ ACM case 18/032654 – *Jumbo/EMTÉ*, decision of 26 June 2018, paragraph 14; ACM case 7323/81 – *Jumbo/CI000*, decision of 21 February 2012, paragraph 12; ACM case 7432/23 – *Ahold/Jumbo Activa*, decision of 26 July 2012, paragraph 12; ACM case 6879/24 – *Schuitema/SdB Activa*, decision of 5 March 2010, paragraph 12; ACM case 6802 – *Jumbo/Super de Boer*, decision of 4 December 2009, paragraph 13; and ACM case 5586 – *Ahold/Konmar Superstores*, decision of 26 October 2006, paragraph 12.

¹⁹ ACM case 5586 – *Ahold/Konmar Superstores*, decision of 26 October 2006, paragraph 84. These product categories include: (1) bread; (2) meat, game, poultry; (3) meat products (e.g., cold meats) and salads; (4) meals; (5) potatoes, fruit and vegetables; (6) dry groceries; (7) cleaning products; (8) pharmaceutical and hygiene products; (9) cheese, eggs; (10) fish; (11) dairy; and (12) non-food.

²⁰ M.8374 – *UAB Rimi Lietuva/UAB Palink*, paragraph 19; M.7933 – *Carrefour/Billa Romania and Billa Invest Construct*, paragraph 19; M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road*, paragraph 21; M.7224 – *Koninklijke Ahold/Spar CZ*, paragraph 12; and M.5112 – *REWE/Plus discount*, paragraphs 22-23.

²¹ ACM case 18/032654 – *Jumbo/EMTÉ*, decision of 26 June 2018, paragraph 14; ACM case 7432/23 – *Ahold/Jumbo Activa*, decision of 26 July 2012, paragraph 17; ACM case 9879 – *Schuitema/SdB Activa*, decision of 5 March 2001, paragraph 15; ACM case 2818 – *Laurus/LIDL*, decision of 3 April 2002, paragraph 16; ACM case 2668 – *Sperwer/Laurus*, decision of 26 September 2001, paragraph 15; ACM case 2838 – *Sperwer/Spar*, decision of 4 February 2002, paragraph 49; and ACM case 5586 – *Ahold/Konmar Superstores*, decision of 26 October 2006, paragraph 29.

- (25) For the purpose of its preliminary assessment under Article 4(4) of the Merger Regulation, the Commission has considered that the market for the procurement of daily consumer goods is national in scope.

5.1.2.3. Affected markets

- (26) The Parties' activities overlap and their combined market share amounts to an estimated [30-40]% on the Dutch market for the procurement of daily consumer goods for sale via retailers.²² The Parties also estimate that their combined market share would be in excess of 20% in nearly all of the product categories envisaged by the ACM.²³ Moreover, the Dutch market for the procurement of daily consumer goods for sale via retailers and its potential sub-segmentations present all the characteristics of a distinct market.

5.2. Assessment of the referral request

5.2.1. Legal requirements

- (27) According to the Commission Notice on case referral ('the Notice on referrals'), in order for a referral to be made by the Commission to one or more Member States pursuant to Article 4(4), the following two legal requirements must be fulfilled:

- a) there must be indications that the concentration may significantly affect competition in a market or markets,²⁴ and
- b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.²⁵

- (28) With regard to the first requirement, as set out above, the Transaction gives rise to affected markets, more specifically several local markets for the retail sale of daily consumer goods through modern distribution channels in the Netherlands and the national Dutch market for the procurement of daily consumer goods for sale via retailers. Therefore, the first legal requirement set forth in Article 4(4) of the Merger Regulation appears to be met.

- (29) With regard to the second requirement, the affected markets are all located within the Netherlands and present all the characteristics of distinct markets. Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation also appears to be met.

5.2.2. Additional factors

- (30) In accordance with point 19 of the Notice on referrals, 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 both to the likely locus of the competitive effects of the transaction and to how appropriate the national competition authority would be for scrutinising the operation. In addition, point 23 of the Notice on referrals states

²² Reasoned Submission, paragraph 66.

²³ Reasoned Submission, Table 5.

²⁴ Further developed in point 17 of the Notice on Referrals.

²⁵ Further developed in point 18 of the Notice on Referrals.

that the Commission should also consider, to the extent possible, specific experience of the relevant competition authorities with regard to the local markets concerned, and whether these authorities may be examining or are about to examine another transaction in the sector concerned.

- (31) In this case, in light of the information submitted in the Reasoned Submission, the Commission considers, first, that the effects of the Transaction are confined to the Netherlands and, in particular, to several local markets mostly located in the Province of North-Holland. Therefore, the ACM is well placed to examine the case.
- (32) Second, the ACM has considerable experience assessing competition in the supermarket sector in its own territory and, as a result, has substantial experience and expertise in examining the markets in question.²⁶ Therefore, the ACM is well equipped to assess the impact of the Transaction on competition in these markets and, if needed, to restore competition as appropriate.
- (33) Third, the Parties submit that the ACM will examine the acquisitions by DekaMarkt and Vomar of Deen's remaining stores and assets.²⁷ Therefore, the ACM would be best placed to ensure an efficient and aligned administrative process of the three transactions that involve Deen's assets and activities.
- (34) Fourth, in a number of previous cases regarding the retail sale of daily consumer goods and related procurement, the Commission has taken the step of referring the matters to national competition authorities, including to the Netherlands.²⁸

5.2.3. Conclusion on referral

- (35) On the basis of the information provided by the Parties in the Reasoned Submission, the Transaction meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in markets within a Member State – the Netherlands – which present all the characteristics of a distinct market.
- (36) Moreover, the requested referral would be consistent with points 19-23 of the Notice of Referrals, in particular because the ACM appears to be the most appropriate authority to examine the Transaction.

²⁶ See, by way of example, ACM case 18/032654 – *Jumbo/EMTÉ*, decision of 26 June 2018; ACM case 7432/23 – *Ahold/Jumbo Activa*, decision of 26 July 2012; ACM case 9879 – *Schuitema/SdB Activa*, decision of 5 March 2001; ACM case 6802 – *Jumbo/Super de Boer*, decision of 4 December 2009; and ACM case 7323, *Jumbo/CI000*, decision of 21 February 2012.

²⁷ Reasoned Submission, paragraph 18.

²⁸ See, by way of example, M.10015 – *Carrefour/Supersol* (to Spain), M.7702 – *Koninklijke Ahold/Delhaize Group* (to Belgium), M.7345 – *Carrefour/53 magasins de Billa en Italie* (to Italy), and M.6588 – *Koninklijke Ahold/Valk Holding* (to the Netherlands).

6. CONCLUSION

- (37) 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. 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)
Olivier GUERSENT
Director-General