



EUROPEAN COMMISSION
DG Competition

Case M.10631 – ITM / MESTDAGH

Only the English text is available and authentic.

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

Article 4(4)
Date: 15/06/2022



EUROPEAN COMMISSION

Brussels, 15.6.2022
C(2022) 4225 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

ITM Alimentaire Belgium S.A.
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Belgium

Belgian Competition Authority
City Atrium, Rue du Progrès 50
1210 Brussels
Belgium

Subject: **Case M.10631 – ITM / MESTDAGH**
Commission decision following a reasoned submission pursuant to Article 4(4) of Regulation No 139/2004¹ for referral of the case to Belgium and Article 57 of the Agreement on the European Economic Area².

Date of filing: 05.05.2022

Legal deadline for response of Member States: 31.05.2022

Legal deadline for the Commission decision under Article 4(4): 15.06.2022

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 5 May 2022, 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 cited above. The parties request the operation to be examined in its entirety by the competent authorities of Belgium.
- (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 presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 5 May 2022.
- (4) By letter of 31 May 2022, the Belgian Competition Authority as the competent authority of Belgium informed the Commission that Belgium agrees with the proposed referral.

2. THE PARTIES

- (5) ITM Alimentaire Belgium S.A. (“ITM”) is active in the Belgian market for the retail sale of daily consumer goods. It is indirectly owned by ITM Entreprises SASU (“ITM Entreprises”), which operates a network of franchised stores in daily consumer goods and Do-it-Yourself (DIY) equipment. ITM Entreprises operates in France, Belgium, Portugal and Poland, through the “Intermarché”, “Netto” or “Bricomarché” banners. In Belgium, ITM operates 78 points of sale of daily consumer goods under the Intermarché banner.
- (6) Mestdagh S.A. and its 100%-owned subsidiary Superlog S.A. (together “Mestdagh” or “the Target”) operate a network of 89 points of sale in the Belgian market for the retail sale of daily consumer goods. These points of sale are operated under the “Market” and “Express” banners of Carrefour Belgium S.A. (“Carrefour”), via a franchise agreement signed between Mestdagh and Carrefour, with the exception of the point of sale located in the town of Philippeville, which is operated under the “Champion” brand.
- (7) ITM will hereinafter be referred to as “the Notifying Party” and ITM and Mestdagh will hereinafter be referred to as “the Parties”.

3. THE OPERATION AND CONCENTRATION

- (8) According to an agreement signed on 24 February 2022, ITM will acquire [sole control] of Mestdagh from Fidagh S.A. (“Fidagh”), [...] (“the Transaction”). [...].
- (9) On top of the points of sales currently controlled by Mestdagh, the Transaction also concerns two points of sale that Mestdagh plans to open in 2022 in Tournai and

Lessines. In total, ITM intends to acquire 91 points of sales, 51 owned by Mestdagh and 40 operated under a franchise agreement.

- (10) The Transaction constitutes a concentration pursuant to Article 3(1)b of the Merger Regulation.

4. EU DIMENSION

- (11) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million, and a combined EEA-wide turnover of more than EUR 250 million. ITM and Mestdagh achieve more than two-thirds of their EU turnover within one Member State, but not in the same (France for ITM and Belgium for Mestdagh). The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (12) On the basis of the information submitted in the Reasoned Submission, the Transaction appears to lead to horizontally affected markets in several local markets for the retail sale of daily consumer goods in Belgium. The Transaction also leads to overlaps in the market for the procurement of daily consumer goods for sale via retailers. These overlaps are contained within the Belgian territory.

5.1. Relevant product markets

5.1.1. Procurement of daily consumer goods for sale via retailers

- (13) 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.³
- (14) 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.⁴ Given the limited supply-side substitutability between different product categories, the Commission also considered, but left open, whether the procurement market for daily consumer goods should be further segmented into 19 product categories: (a) Meat and sausages; (b) Poultry and eggs; (c) Bread and pastry; (d) Dairy products; (e) Fresh fruit and vegetables; (f) Beer; (g) Wine and spirits; (h) Non-alcoholic beverages; (i) Hot beverages; (j) Confectionery; (k) Basic foodstuffs; (l) Canned food; (m) Frozen food; (n) Baby food; (o) Pet food; (p) Personal care items (e.g., creams, lotions) and cosmetics (e.g., makeup and fragrances); (q) Detergents and cleaning agents; (r) Other drugstore products; and

³ 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 16; M.1221 – *Rewe/Meinl*, paragraph 75; M.1684 – *Carrefour/Promodes*, paragraph 14.

⁴ 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.1221 – *Rewe/Meinl*, paragraphs 79-81.

(s) Other non-food products commonly found in supermarkets (e.g., newspapers, magazines, entertainment).⁵

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

- (15) In its decisional practice, the Commission has considered 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”).⁶ These retail outlets offer consumers a basket of fresh and dry foodstuffs and non-food household consumables sold in a supermarket environment.⁷ 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.⁸
- (16) 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, in view of the fact that they fulfil a specialist or convenience function.⁹
- (17) The Commission has generally left open the question of whether a further distinction should be made according to the total surface of the stores. It has nevertheless explored the following possible segmentations:
- (a) Hypermarkets, of a surface superior to 2500 m²;
 - (b) Supermarkets, of a surface comprised between 400 and 2 500 m²;
 - (c) Convenience stores, of a surface inferior to 400 m²;
 - (d) Large maxi-discount stores.¹⁰
- (18) In this case, the entirety of ITM stores, as well as the quasi-totality of Mestdagh stores, including planned openings, are supermarkets. Mestdagh also has a store

⁵ M.9495 – *Fortenova Grupa/Poslovni Sistemi Mercator*, paragraph 78; M.9847 – *Aldi/FPLPH Assets*, paragraph 20; M. 7702 – *Koninklijke Ahold/Delhaize Group*, paragraph 16.

⁶ 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 Ahold/Dansk Supermarked*, paragraphs 10 and 11; M.4686 – *Louis Delhaize/Magyar Hipermarket Kft.*, paragraph 8; M.3905 – *TESCO/Carrefour*, paragraph 10; M.5047, *REWE/Adeg*, paragraph 24.

⁷ 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; M.6847 – *Triton/Suomen Lähikauppa*, paragraph 11.

⁸ M.5677 – *Schuitema/Super de Boer Assets*, paragraph 18.

⁹ 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.

¹⁰ M.9847 – *Aldi/FPLPH Assets*, paragraph 15; M.7345 – *Carrefour/53 magasins de Billa en Italie*, paragraph 12.

located in Nivelles with an area of 2500 m² and another located in Ans with an area of 3000 m².

5.2. Relevant geographic market

5.2.1. Procurement of daily consumer goods for sale via retailers

- (19) 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.¹¹ The main reasons are the fact that consumer preferences relate to national products and that suppliers generally negotiate on a national level.

5.2.2. Retail sale of daily consumer goods through modern distribution channels

- (20) In its decisional practice, the Commission has considered that the geographic market for the retail sale of daily consumer goods is local in nature, the exact geographical scope corresponding to a catchment area around each store, based on travel distance to the store. In previous decisions, the Commission has considered a zone of 10, 20, or 30 minutes of travel time by car to the store: in general, hypermarkets, defined as stores with a surface of more than 2500 square meter, have a larger catchment area (20 to 30 minutes) than smaller stores such as supermarkets (catchment areas of 10 to 20 minutes).¹²

5.3. Assessment of the referral request

5.3.1. Legal requirements

- (21) According to the Commission Notice on case referral, 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,¹³ and
 - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹⁴
- (22) With regard to the first requirement, on the basis of the information submitted in the Reasoned Submission, the Transaction appears to lead to several locally

¹¹ 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; M.5112 – *REWE/Plus discount*, paragraph 23.

¹² M.8468 – *Norgesgruppen/Axfood/Eurocash*, paragraph 24; M.8374 – *Uab Rimi Lietuva/Uab Palink*, paragraph 15; M.7702 – *Koninklijke Ahold/Delhaize Group*, paragraph 17; M.6506 – *Groupe Auchan/Magyar Hipermarket*, paragraph 13; M.6822 – *Groupe Auchan/Real/Real Hypermarket Romania*, paragraph 11; M.5790 – *Lidl/Plus Romania/Plus Bulgaria*, paragraph 14; M.5176 – *CVC/Schuitema*, paragraph 12; M.7920 – *Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay*, paragraph 17.

¹³ Further developed in point 17 of the Commission Notice on Case Referrals.

¹⁴ Further developed in point 18 of the Commission Notice on Case Referrals.

affected markets in Belgium for the retail sale of daily consumer goods through modern distribution channels.¹⁵

- (23) More specifically, the Transaction leads to [...] affected markets in Belgium when considering a geographic market of 10 minutes travel time and [...] affected markets when considering a geographic market of 20 minutes travel time or a geographic market of 30 minutes travel time.
- (24) As regards a catchment area of 10 minutes travel time around each store, the Parties' combined market share is estimated to be in excess of 20% in [...] local markets and in excess of 35% in [...] local markets.
- (25) Given the existence of affected markets and the level of market shares, there are indications that the concentration may significantly affect competition for the retail sale of daily consumer goods through modern distribution channels.
- (26) With regard to the second requirement, the Commission notes that some of these catchment areas ([...] considering a 30 minutes drive and [...] when considering a 20 minutes drive) overlap with the territory of France or the Netherlands and in some cases include an ITM store located in France (there are no ITM stores in the Netherlands). There are no cross-border catchment areas when considering a radius of 10 minutes.
- (27) In that regard the Commission considers that the relevant size of the catchment areas in this case is rather 10 minutes as all concerned stores are supermarkets of less than 2 000 square meter with one exception (one hypermarket whose catchment area is not cross-border). This is consistent with data submitted by the Notifying Party and the previous practice of the Belgian Competition Authority in its assessment of the merger between Ahold and Delhaize in 2016.¹⁶
- (28) There are therefore no affected markets resulting from the Transaction outside of Belgium.
- (29) The effects of the Transaction are therefore limited to distinct markets within a single Member State.
- (30) Therefore, both legal requirements set forth in Article 4(4) of the Merger Regulation appear to be met.

5.3.2. *Additional factors*

- (31) In addition to the verification of the legal requirements, point 19 of the Notice provides that it should also be considered whether referral of the case is appropriate, and in particular “whether the competition authority or authorities to which they are contemplating requesting the referral of the case 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.

¹⁵ There are no affected markets as regards the procurement of daily consumer goods in Belgium.

¹⁶ BCA case MEDE-C/C-16/0002, decision of 15 March 2016 – https://www.abc-bma.be/sites/default/files/content/download/files/2016cc10_bma-pub.pdf.

- (32) In addition, point 23 of the Notice states that “Consideration should also, to the extent possible, be given to whether the NCA(s) to which referral of the case is contemplated may possess specific expertise concerning local markets, or be examining, or about to examine, another transaction in the sector concerned”.
- (33) 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 several local markets located within Belgium. Therefore, the Belgian Competition Authority is well placed to examine the case.
- (34) Second, the Commission notes that the Belgian Competition Authority has significant experience in this type of market assessment, as demonstrated in its assessment of the merger between Ahold and Delhaize in 2016.¹⁷
- (35) Furthermore, a referral of the Transaction to the Belgian Competition Authority satisfies the need to preserve the benefit of a "one-stop-shop" as there are no affected markets outside Belgium.

5.3.3. *Conclusion on referral*

- (36) 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 markets within a Member State which presents all the characteristics of a distinct market.
- (37) Moreover, the requested referral would be consistent with points 19-23 of the Notice of Referrals, in particular because the Belgian Competition Authority appears to be the most appropriate authority to examine the Transaction.

6. CONCLUSION

- (38) For the above reasons, and given that Belgium has expressed its agreement, the Commission has decided to refer the Transaction in its entirety to the Belgian Competition Authority. 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

¹⁷ BCA case MEDE-C/C-16/0002, decision of 15 March 2016 – https://www.abc-bma.be/sites/default/files/content/download/files/2016cc10_bma-pub.pdf.