



EUROPEAN COMMISSION
DG Competition

***Case M.11364 - AHOLD DELHAIZE /
PROFI ROM FOOD***

Only the English text is available and authentic.

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

Article 4(4)
Date : 24/01/2024



EUROPEAN COMMISSION

Brussels, 24.1.2024
C(2024) 550 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.11364 – AHOLD DELHAIZE / PROFI ROM FOOD
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ for referral of the case to
Romania and Article 57 of the Agreement on the European Economic
Area².**

Date of filing: 13.12.2023

Legal deadline for response of Member States: 12.01.2024

Legal deadline for the Commission decision under Article 4(4): 26.01.2024

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 13 December 2023, 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 Romania.
- (2) According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to a transaction with a Union dimension may request that their transaction be referred in whole or in part from the Commission to a Member State where the concentration may significantly affect competition in a market within that Member State, and which present all the characteristics of a distinct market.
- (3) A copy of this reasoned submission was transmitted to all Member States on 13 December 2023.
- (4) By letter of 5 January 2024 the Romanian Competition Council ('RCC') as the competent authority of Romania, informed the Commission that Romania agrees with the proposed referral.

2. THE PARTIES

- (5) **Delhaize "The Lion" Nederland B.V.** ('Delhaize Nederland or 'the Notifying Party') is a Dutch subsidiary of the Ahold Delhaize Group ('Ahold Delhaize') whose parent company is Koninklijke Ahold Delhaize N.V., a company listed on the Euronext Amsterdam and Brussels stock exchanges. Ahold Delhaize is a world-leading retailer of food and non-food products operating modern trade stores, hypermarkets and supermarkets, but also other type of retail stores in Europe and the United States. Ahold Delhaize operates in Romania retail stores, including supermarket stores and convenience stores, under the 'Mega Image' brand.
- (6) **Profi Rom Food S.R.L.** ('Profi' or the 'Target') is active in the retail of food and non-food products in Romania. Profi operates supermarkets and convenience stores in over 800 localities across Romania under the Profi brand.
- (7) Delhaize Nederland and Profi will hereinafter be referred to as the 'Parties'.

3. THE OPERATION AND CONCENTRATION

- (8) Pursuant to a share purchase and sale agreement signed on 29 October 2023 (the 'SPA'), Delhaize Nederland will acquire 100% of the shares in Profi (the 'Proposed Transaction').
- (9) The Proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

4. EU DIMENSION

- (10) The Parties have a combined aggregate turnover of more than EUR 5 000 million (Ahold Delhaize: EUR [...]; and the Target: EUR [...]). Each of the Parties

achieved Union-wide turnover in excess of EUR 250 million (Ahold Delhaize: EUR [...]; and the Target: EUR [...]). Ahold Delhaize does not achieve more than two thirds of its EU-wide turnover within one Member State. Thus, the Proposed Transaction has an EU dimension within Article 1(2) of the Merger Regulation.

5. ASSESSMENT

- (11) On the basis of the information submitted in the reasoned submission, the Proposed Transaction results in horizontally affected markets in the retail³ of daily consumer goods in Romania.
- (12) The Proposed Transaction does not give rise to any overlap between the Parties' activities outside of Romania.

5.1. Relevant markets

5.1.1. Retail sale of daily consumer goods

5.1.1.1. Product market definition

- (13) In previous decisions, the Commission considered that the sale of daily consumer goods carried out by retail outlets such as hypermarkets, supermarkets and discount chains ('modern distribution channels') constitutes a distinct market, different from the sale of consumer goods carried out by other types of retailers such as specialised outlets (butchers or bakers, for instance) and service stations ('traditional distribution channels').⁴ These modern distribution channels offer consumers a basket of fresh and dry foodstuffs and non-food household consumables sold in a supermarket environment.⁵ Supermarkets, hypermarkets and

³ It is not excluded that the Proposed Transaction also gives rise to affected markets on the market for the procurement of daily consumer goods in Romania. However, since the market for the procurement of daily consumer goods has consistently been defined as national in scope (e.g. Commission decision in Case M.10631 – ITM/Mestdagh, (2022), paragraph 15; Commission decision in Case M.8374 – UAB Rimi Lietuva/UAB Palink, (2017), paragraph 19; Commission decision in Case M.7933 – Carrefour/Billa Romania and Billa Invest Construct, (2016) paragraph 19), the existence of affected markets due to the Parties' activities in the procurement of daily consumer goods in Romania would not change the Commission's assessment.

⁴ Commission decision in Case M.10631 – ITM/Mestdagh, (2022), paragraph 15; Commission decision in Case M.8374 – UAB Rimi Lietuva/UAB Palink, (2017), paragraph 13; Commission decision in Case M.7933 – Carrefour/Billa Romania and Billa Invest Construct, (2016), paragraph 14; Commission decision in Case M.7920 – Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road, (2016), paragraph 15; Commission decision in Case M.7224 – Koninklijke Ahold/Spar CZ, (2014), paragraph 9; Commission decision in Case M.5112 – Rewe/Plus Discount, (2008), paragraph 15; and Commission decision in Case M.5047, REWE/Adeg, (2011), paragraph 24; Commission decision in Case M.4590 – Rewe/Delvita, (2007), paragraphs 9-14; Commission decision in Case M.4686 – Louis Delhaize/Magyar Hipermarket Kft., (2007), paragraph 8; Commission decision in Case M.2604 – ICA Ahold/Dansk Supermarked, (2001), paragraphs 10 and 11; and Commission decision in Case M.3905 – TESCO/Carrefour, (2005), paragraph 10.

⁵ Commission decision in Case M.10631 – ITM/Mestdagh, (2022), paragraph 15; Commission decision in Case M.8374 – UAB Rimi Lietuva/UAB Palink, (2017) paragraph 13; Commission decision in Case M.7933 – Carrefour/Billa Romania and Billa Invest Construct, (2016), paragraph 14; Commission decision in Case M.7920 – Netto/J Sainsbury/Dansk Supermarked/New Edlington/Hedon/Roundhay Road, (2016), paragraph 15; Commission decision in Case M.5677 – Schuitema/Super de Boer Assets, (2010), paragraph 18; Commission decision in Case M.6847 – Triton/Suomen Lähikauppa, (2013), paragraph 11; and Commission decision in Case M.784 – Kesko/Tuko, (1997), paragraphs 18-20.

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

- (14) The Commission has generally left open the question of whether a further distinction should be made according to the total surface of the stores.⁷
- (15) The Parties consider that, in line with the RCC's decisional practice, the market should be defined as the market for modern distribution channel, comprising hypermarkets, supermarkets, discount stores, and proximity stores.⁸
- (16) In any event, for the purposes of the Commission's assessment under Article 4(4) of the Merger Regulation, the precise scope of the product market can be left open, as the first condition of Article 4(4) of the Merger Regulation is met under several plausible product market definitions.

5.1.1.2. Geographic market definition

- (17) In previous decisions, 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 minutes⁹ of travel time by car to the store.¹⁰
- (18) In its previous decisional practice, the RCC has considered catchment areas of approximately (i) 10 minutes of travel by car in respect to retail stores with a surface above 400m²; and (ii) 10 minutes walking distance, for stores with a surface below 400m².¹¹
- (19) The Parties claim that the geographic scope of the market for the retail sale of daily consumer goods should take into consideration the practice of RCC and should

⁶ Commission decision in Case M.10631 – *ITM/Mestdag*, (2022), paragraph 15; and Commission decision in Case M.5677 – *Schuitema/Super de Boer Assets*, (2010), paragraph 18.

⁷ Commission decision in Case M.10631 – *ITM/Mestdag*, (2022), paragraph 17; Commission decision in Case M.9847 – *Aldi/FPLPH Assets*, paragraph 15; Commission decision in Case M.7345 – *Carrefour/53 magasins de Billa en Italie*, paragraph 12.

⁸ Form RS, paragraphs 82.

⁹ In general, hypermarkets, defined as stores with a surface of more than 2 500 square meter, have a larger catchment area (20 to 30 minutes) than smaller stores such as supermarkets (catchment areas of 10 to 20 minutes).

¹⁰ Commission decision in Case M.10631 – *ITM/Mestdag*, (2022), paragraph 20; 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.

¹¹ For instance, RCC Decision No. 88/10.12.2019 on the economic concentration related to the acquisition by Profi Rom Food SRL of sole control over the trade funds related to a number of eighteen commercial premises belonging to PRAM MAYA SRL [decizie profi-maya-neconfidentializata.pdf \(consiliulconcurentei.ro\)](#); RCC Decision No. Decision No. 46/14.11.2014 on the economic concentration related to the acquisition of sole control by Mega Image SRL over assets (i.e. supermarket stores) of Angst Retail SRL: [decizia mega cu angst angaj site2.pdf \(consiliulconcurentei.ro\)](#). This approach is also confirmed in a report from 2017 published by the RCC in respect to the market for retail sale of consumer foods: [raport izocroni retail.pdf \(consiliulconcurentei.ro\)](#).

correspond to a catchment area of (i) 10 minutes of travel by car in respect to all retail stores with a surface above 400m²; and (ii) 10 minutes walking distance, for all stores with a surface below 400m².¹²

- (20) In any event, for the purposes 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 first condition of Article 4(4) of the Merger Regulation is met under several plausible geographic market definitions.

5.2. Assessment of the referral request

5.2.1. Legal requirements

- (21) According to the Commission Notice on Case Referral in respect of concentrations (the ‘Notice’),¹³ 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,¹⁴ and
- (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.¹⁵

5.2.1.1. The Proposed Transaction may significantly affect competition in a market or markets

- (22) According to paragraph 17 of the Notice, the existence of an affected market is generally considered sufficient to meet the requirement set forth in Article 4(4) of the Merger Regulation.

- (23) The Proposed Transaction results in several horizontally affected markets in Romania:

- (a) at least 59 affected markets based on the Commission’s precedents. These affected markets concern the market for the retail sale of daily consumer goods through modern distribution channels, with combined market shares based on turnover ranging from [50-60]% to [90-100]% within a radius of 10-20 minutes’ drive-time around each Profi store;¹⁶
- (b) at least 45 affected markets based on the RCC’s precedents. These affected markets concern (i) proximity stores (with a sale surface <400 m²) with combined market shares based on turnover ranging from [50-60]% to [90-100]% within a radius of 10 minutes walking time, and (ii) medium and large stores (supermarkets, hypermarkets, and discounters with a sale surface > 400m²) with combined market share based on turnover ranging from [20-30]% to [90-100]% within a radius of 10 minutes driving time.¹⁷

¹² Form RS, paragraph 92.

¹³ Commission Notice on Case Referral in respect of concentrations, OJ C 56, 5.3.2005, p. 2–23.

¹⁴ Further developed in paragraph 17 of the Notice.

¹⁵ Further developed in paragraph 18 of the Notice.

¹⁶ Form RS, paragraphs 121-123.

¹⁷ Form RS, paragraphs 118-120.

(24) In view of the above, the first legal requirement set forth by Article 4(4) of the Merger Regulation is met.

5.2.1.2. The market(s) in question must be within a Member State and present all the characteristics of a distinct market

(25) According to paragraph 18 of the Notice, the second requirement set forth by Article 4(4) of the Merger Regulation is satisfied if the geographic scope of the markets where competition is affected is national or narrower than national.

(26) As indicated above, the market for the retail sale of daily consumer goods through modern distribution channels contains strong local elements and is defined as narrower than national in scope by the Commission and even the RCC.

(27) Therefore, the second legal requirement set forth by Article 4(4) of the Merger Regulation is met.

5.2.2. *Additional factors*

(28) 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”.

(29) In addition, paragraph 23 of the Notice states that “[c]onsideration 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”.

(30) *First*, the RCC has specific expertise in the assessment of markets in the sector concerned. Indeed, the RCC has recently reviewed several concentrations in the retail sale of daily consumer goods.¹⁸ In addition, the RCC is actively monitoring the retail market for food products and regularly publishes reports assessing the conditions of competition in this sector.¹⁹

(31) *Second*, in light of the information submitted in the reasoned submission by the Parties, the Commission considers that the effects of the Proposed Transaction are confined to Romania either at a national or sub-national level, in the form of catchment areas. Thus, the case may require investigative efforts at local level for which the RCC seems better placed to conduct.

¹⁸ RCC Decision No 27/28.04.2021 (PROFI ROM FOOD SRL / PRONTO MOBILE SRL); RCC Decision No 88/10.12.2019 (Profi Rom Food SRL / PRAM MAYA SRL); RCC Decision 37/21.06.2016 (CARREFOUR / BILLA); RCC Decision No 48/20.10.2015 (MEGA IMAGE SRL / SC GENERAL NIC IMPORT EXPORT SRL); RCC Decision No 46 of 14.11.2014 MEGA IMAGE SRL / ANGST RETAIL SRL).

¹⁹ For instance, in 2017, the RCC published a report on the retail market for food products after a sector investigation. In addition, according to the information provided in the Reasoned Submission, the RCC has also issued other various reports, such as (i) the 2009 report on the investigation launched for the analysis of the food retail sector, (ii) the 2018 report of the investigation regarding the electronic commerce sector, (iii) the 2021 report on the evolution of competition in key sectors.

- (32) *Third*, a referral of the Proposed Transaction to the RCC satisfies the need to preserve the benefit of the ‘one-stop-shop’ as there are no affected markets outside Romania. The case would thus be referred in its entirety to a single competition authority (i.e. the RCC), which is an important factor of administrative efficiency.
- (33) *Fourth*, the Commission regularly refers cases concerning the retail sales of daily consumer goods to national competition authorities²⁰, including to the RCC.²¹

5.2.3. *Conclusion on referral*

- (34) In light of the foregoing and on the basis of the information provided by the Parties in the reasoned submission, the Commission concludes that 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 present all the characteristics of a distinct market.
- (35) Moreover, the requested referral would be consistent with paragraphs 19-23 of the Notice, in particular because the RCC appears to be the most appropriate authority to examine the Proposed Transaction.

6. CONCLUSION

- (36) For the above reasons, and given that Romania has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by Romania. 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

²⁰ See for instance Commission decision in Case M.11165 – Carrefour / Romania Hypermarche; Commission decision in Case M.10908 – Alampo / Dia Assets; Commission decision in Case – M.10631 – ITM / Mestdaghalcampo.

²¹ Commission decision in Case M.11165 – Carrefour / Romania Hypermarche; Commission decision in Case M.7933 – Carrefour / Billa Romania and Billa Invest Construct; Commission decision in Case M.6822 – Groupe Auchan/Real/Real Hypermarket Romania.