



EUROPEAN COMMISSION  
DG Competition

***Case M.10628 - KAD / WADINKO /  
CYCLOON***

Only the English text is available and authentic.

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

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Article 4(4)  
Date: 8/4/2022



EUROPEAN COMMISSION

Brussels, 8.4.2022  
C(2022) 2410 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.10628 – KAD / WADINKO / CYCLOON  
Commission decision following a reasoned submission pursuant to  
Article 4(4) of Regulation No 139/2004<sup>1</sup> for referral of the case to the  
Netherlands and Article 57 of the Agreement on the European Economic  
Area<sup>2</sup>**

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

**Date of filing: 04.03.2022**

**Legal deadline for response of Member States: 15 working days from receipt of the Form RS by the Member States (25.03.2022)**

**Legal deadline for the Commission decision under Article 4(4): 08.04.2022**

Dear Sir or Madam,

## **1. INTRODUCTION**

- (1) On 4 March 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 acquisition of joint control over Cycloon Beheer B.V. by Koninklijke Ahold Delhaize N.V. and Wadinko N.V. The parties request the operation to be fully examined by the competent authority of the Netherlands.
- (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 in a market which presents all the characteristics of a distinct market.
- (3) A copy of this Reasoned Submission was transmitted to all Member States on 7 March 2022.
- (4) By letter of 23 March 2022, the Authority for Consumers and Markets (the ‘ACM’), as the competent authority of the Netherlands, informed the Commission that it agrees with the proposed referral.

## **2. THE PARTIES**

- (5) Koninklijke Ahold Delhaize N.V. (‘KAD’, the Netherlands) is the parent company of an international group of supermarkets based in Europe, the United States and Indonesia. In the Netherlands, KAD is active via (i) its online food and non-food forum (bol.com), which is, among others, active in the sales of drinks and delicacies, books, e-books, DVD's, toys, music, games, software, consumer electronics, clothing and shoes, home appliances and computers; (ii) its supermarket chain Albert Heijn (‘AH’), its speciality stores for retail trade in health and beauty care products (‘Etos’) and its wine and liquor stores (‘Gall & Gall’); and (iii) its online forum and delivery service ah.nl with regard to all three of these brands (AH, Etos and Gall&Gall).
- (6) Wadinko N.V. (‘Wadinko’, the Netherlands) is a private venture capital company that currently holds [...] % of the shares in Cycloon Beheer B.V.
- (7) Cycloon Beheer B.V. (‘Cycloon’ or the ‘Target’, the Netherlands) is active in courier services, postal services and package delivery services. Cycloon offers ‘green’ delivery solutions in the Netherlands (mostly in but also just outside the various cities) by delivering post and packages by bike. Cycloon currently operates in 35 locations throughout the Netherlands and 22 partner locations through which it offers its package delivery services. Cycloon has over 1 200 employees.
- (8) KAD and Wadinko are together referred to as the ‘Notifying Parties’ and together with Cycloon, the ‘Parties’.

### **3. THE OPERATION AND CONCENTRATION**

- (9) The operation involves the acquisition of joint control over the Target by KAD and Wadinko through the establishment of a holding Newco pursuant to a sale and purchase agreement ('SPA') signed by the Notifying Parties on 11 February 2022 ('the Transaction'). According to the SPA, KAD will hold [...] % plus one share of Newco, Wadinko will hold [...] % and the [...] will be held by four natural persons who are the sellers in the Transaction (the 'Sellers').
- (10) In parallel, the Notifying Parties have negotiated a draft shareholders agreement that will confer joint control by KAD and Wadinko over the adoption of the strategic decisions of the Target through Newco, a company incorporated specifically for purposes of achieving the Transaction. The Supervisory Board of Newco will be composed of five members, two appointed by the subsidiary of KAD, two appointed by Wadinko and one appointed by the general meeting of shareholders, upon the nomination of the general meeting of shareholders of the class of shares held by bol.com (i.e., upon nomination by KAD). The adoption of strategic decisions, such as [...] will require the approval of four out of five of the Directors at the Supervisory Board. As such, each of KAD and Wadinko will be able to [...] of the Target and will therefore acquire joint control over the Target.
- (11) The Target operates autonomously on the market, has its own staff and financial resources and operates independently of the parents. For a period of three consecutive years, commencing in 2023, [...] Thus, the Target will still achieve [...]. Consequently, the Target will qualify as a full-function joint venture following the Transaction.

### **4. EU DIMENSION**

- (12) The Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.
- (13) In 2020, the Notifying Parties had a combined aggregate world-wide turnover of more than EUR 5 000 million (KAD: EUR 74 736 million; Wadinko: EUR [...]; Target: EUR [...]). At least two of the undertakings concerned had an EU-wide turnover of more than EUR 250 million (KAD: EUR 29 927 million; Wadinko: EUR [...]), but they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

### **5. ASSESSMENT**

- (14) On the basis of a preliminary assessment of the information provided by the Notifying Parties in the Reasoned Submission, the Transaction would be an appropriate candidate for pre-filing referral from the Commission to the ACM in accordance with Article 4(4) of the Merger Regulation.
- (15) Following a preliminary assessment, the Transaction appears to meet the legal requirements set out in Article 4(4) of the Merger Regulation. The Transaction is a concentration within the meaning of Article 3 of the Merger Regulation, it has an EU dimension and it may significantly affect competition in the Netherlands, which present all characteristics of a distinct market.
- (16) The Transaction results in vertical overlaps in the Netherlands. Upstream, KAD is active in various markets for the online retail sale of various food and non-food products in the Netherlands. Downstream, the Target is active in the markets for

package delivery services and postal mail delivery in the Netherlands. On these vertical overlaps, the Transaction will give rise to affected markets between KAD's activities in online retail sales of non-food items in the Netherlands and the activities of the Target downstream in the markets for package delivery services and postal mail delivery.

## **5.1. Relevant product markets**

- (17) As will be set out below, the Transaction will result in vertical overlaps between the online retail sale of food and non-food products by KAD, and the 'green' delivery of mail and (small) packages services in and around various cities in (local or regional parts of) the Netherlands by bike or green-gas vans (in case of delivery between cities) by the Target. On the other hand, the Transaction will not result in horizontal overlaps.
- (18) The Transaction will give rise to the following vertically affected markets between KAD's non-food products activities in the Netherlands and the activities of the Target downstream in package delivery services and postal mail delivery in the Netherlands.

### *5.1.1. Market for online retail sale of non-food items (upstream)*

- (19) In the non-food retail sector, the Commission has distinguished markets by product categories and by sales channels (brick-and-mortar shops and online retail sales, including shopping by internet, home shopping by catalogue and by other means).<sup>3</sup> More specifically, the Commission considered that the online retail sales of non-food items could be divided according to the following product categories: (i) clothing and footwear; (ii) furniture and home furnishings; (iii) electronic and household appliances; (iv) do-it-yourself (DIY), home improvement and gardening; (v) health and beauty; (vi) toys and games; and (vii) sporting goods and camping.<sup>4</sup> Moreover, the Commission considered the product market for the sale of (vii) books to final consumers and (viii) music and films to final consumers as an additional sub-segmentation of the online retail sales of non-food items.<sup>5</sup>

### *5.1.2. Market for package delivery services (downstream)*

- (20) The Commission has previously considered that package delivery services are highly differentiated products along a number of dimensions, the most important being speed of delivery (ranging from early morning next day express services to two or more days standard delivery), geography (ranging from domestic to international extra EEA services) and quality of delivery (such as reliability, security, late pick up time, comprehensive track and trace ability).<sup>6</sup>
- (21) In its past decisional practice, the Commission considered that there exists a separate product market for (i) small package delivery services that weigh below 31.5 kg and (ii) freight forwarding and transportation, due to the different requirements (in particular door-to door transportation, assured transit time, track&trace) and expectations (reliability, security, global or at least EEA-wide coverage) of

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<sup>3</sup> M.9894 – *Mobilux/Conforama France*, recital 13.

<sup>4</sup> M.5721 – *Otto/Primondo Assets*, recital 17.

<sup>5</sup> M.6543 – *AHOLD/FLEVO*, recital 13; M.2978 - *Lagardère/Natexis/VUP*, recital 295.

<sup>6</sup> M.6570 – *UPS/TNT Express*, recital 57.

customers expecting delivery packages and, as a result, their different handling by carriers.<sup>7</sup>

- (22) In this context, the Commission has previously made further distinctions within the package delivery market between (a) domestic and cross-border package delivery services; (b) express and standard package delivery services; and (c) business and private shippers/receivers (B2B and B2C).<sup>8</sup>

### 5.1.3. *Market for postal mail delivery (downstream)*

- (23) The Commission has held in previous decisions that there are separate markets for domestic and international mail. It found notably that demand for mail services for international destinations cannot be satisfied by services for domestic destinations and that, from the supplier's perspective, international transportation involves different requirements from those of domestic transportation.<sup>9</sup> However, the exact market definition was left open.
- (24) In its precedents, the Commission also defined further sub-segmentations between (i) inbound cross-border mail services and outbound cross-border mail services;<sup>10</sup> (ii) standard and express delivery services;<sup>11</sup> and, (iii) business mail and mail for private consumers.<sup>12</sup> These market segments were also acknowledged by the ACM in its past decisional practice.<sup>13</sup>

## 5.2. **Relevant geographic market**

### 5.2.1. *Market for online retail sale of non-food items (upstream)*

- (25) In its precedents, the Commission has considered the geographic market for the online retail sale of non-food items to be national in scope.<sup>14</sup> The Commission considered that this was due to factors such as language differences, costs and delays associated with placing international orders, price differences between countries and the fact that promotional campaigns are sometimes targeted at specific countries.
- (26) Moreover, in the context of a possible market comprising both online retail sale and brick and mortar shopping, the Commission considered whether the geographic scope of such an overall market would be confined to regional or even local areas.<sup>15</sup>

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<sup>7</sup> M.7630 – FEDEX / TNT Express, recital 77.

<sup>8</sup> M.7630 – FEDEX / TNT Express, recital 237.

<sup>9</sup> M.7052 – Lloyds Development Capital (Holdings) Limited/PostNL NV/TNT NNI Limited, recital 10; M.5152 – POSTEN AB/POST DANMARK A/S, recital 14.

<sup>10</sup> M.7052 – Lloyds Development Capital (Holdings) Limited/PostNL NV/TNT NNI Limited, recital 10; M.1915 – The Post Office/TPG/SPPL, recitals 22 and 34.

<sup>11</sup> M.7052 – Lloyds Development Capital (Holdings) Limited/PostNL NV/TNT NNI Limited, recital 10; M.5152 – POSTEN AB/POST DANMARK A/S, recital 15.

<sup>12</sup> M.7052 – Lloyds Development Capital (Holdings) Limited/PostNL NV/TNT NNI Limited, recital 10; M.5152 – POSTEN AB/POST DANMARK A/S, recital 15.

<sup>13</sup> ACM/19/035460 – PostNL N.V. en SHM Beheer II B.V., 5 September 2019, paragraphs 58-59 (for inbound cross-border mail services and outbound cross-border mail services), paragraph 41 (for standard and express delivery services) and paragraphs 13-14 (for business mail and mail for private consumers).

<sup>14</sup> M.5721 – Otto/Primondo Assets, recitals 31-32.

<sup>15</sup> M.5721 – Otto/Primondo Assets, recital 33.

- (27) The Notifying Parties consider that these findings are consistent for each of the non-food retail sub-markets and each of their segmentation as defined in recital 19 of this Decision.

5.2.2. *Market for package delivery services (downstream)*

- (28) The Commission has previously considered that the market for small package delivery services was national in scope,<sup>16</sup> because contracts for small package deliveries are mostly negotiated at national level for both domestic and international deliveries, and small package companies need a significant national presence in a given country (e.g. infrastructure, client contracts, sales force) in order to meaningfully compete in that country.<sup>17</sup>
- (29) Further, the Commission considered that the market for the international delivery of small packages also has a national dimension.<sup>18</sup>
- (30) The Parties agree with this assessment and indicated that, since the Target provides ‘green’ package delivery services in and around various cities in the Netherlands by using a bike, the markets on which the Target is active are therefore mostly local or regional.<sup>19</sup> The Target’s package delivery services by bike are mainly a local or regional ‘green’ alternative to the established national delivery service providers that use petroleum-fuelled vans and/or cars (PostNL, DHL, etc).<sup>20</sup>

5.2.3. *Market for postal mail delivery (downstream)*

- (31) The Commission has considered that the domestic mail markets, including inbound international delivery, irrespective of segmentation, are national in scope, because the provision of mail services relies upon the network of postal operators as well as regulatory constraints that are both national in scope.<sup>21</sup>
- (32) The Parties agree with this assessment and indicated that the markets on which the Target is active are mostly local or regional for the same reasons as those outlined in recital 30 of this Decision.<sup>22</sup> The business of the Target does not relate to cross-border or express business mail delivery services (services that are provided by operators such as FedEx, UPS, etc). The Target’s delivery services by bike are mainly a local or regional ‘green’ alternative to the established national delivery service providers that use petroleum-fuelled vans and/or cars (PostNL, DHL, etc).<sup>23</sup>

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<sup>16</sup> M. 5152 – *POSTEN AB/POST DANMARK A/S*, recital 64ff.

<sup>17</sup> M.6570 – *UPS/TNT Express*, recital. 242.

<sup>18</sup> M.5152 – *POSTEN AB/POST DANMARK A/S*, recital 67.

<sup>19</sup> Form RS, paragraph 131.

<sup>20</sup> *Idem*.

<sup>21</sup> M.5152 – *POSTEN AB/POST DANMARK A/S*, recital 20. Notably, the Notifying Parties submit that the markets on which the Target is active could be narrower than national (local) in scope, as its bike-delivery business does not relate to cross-border or express business mail delivery services (such as services that are provided by FedEx, UPS, etc). For the purpose of assessing the Parties’ Referral Request, the exact product and geographic market definition can be left open, as the Target is only active within the Netherlands and the effect of the Transaction would only arise in the Netherlands. On that basis, even on the widest plausible geographic market definition, the Transaction would not affect any market outside the Netherlands.

<sup>22</sup> Form RS, paragraph 131.

<sup>23</sup> *Idem*.

### **5.3. Assessment of the referral request**

#### *5.3.1. Legal requirements*

- (33) According to the Commission Notice on case referral<sup>24</sup>, 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,<sup>25</sup> and
  - (b) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.<sup>26</sup>
- (34) Pursuant to point 17 of the Commission Notice on case referral, for there to be indications that the concentration may significantly affect competition in a market or markets, the Parties are in essence required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market in a Member State, which may prove to be significant, thus deserving closer scrutiny. While the Parties are not required to demonstrate that the effect on competition is likely to be an adverse one, they should point to indicators that are generally suggestive of the existence of some competitive effects stemming from the transaction. In this context, the existence of ‘affected markets’ within the meaning of the Form RS is generally considered sufficient to meet the requirements of Article 4(4) of the Merger Regulation.<sup>27</sup>
- (35) Furthermore, pursuant to point 20 of the Commission Notice on case referral, concentrations the effects of which are likely to be confined to, or have their main economic impact in a single Member State, are the most appropriate candidate cases for referral to that Member State.
- (36) On the basis of the information provided by the Parties in the Reasoned Submission, the Commission considers that the Transaction is an appropriate candidate for pre-filing referral from the Commission to the ACM in accordance with Article 4(4) of the Merger Regulation.
- (37) First, the relevant markets present all the characteristics of distinct markets. As outlined above, the Parties are active in relevant geographic markets that have been assessed as national or local in Commission’s precedents. In addition, as previously mentioned, the geographic scope of the Target’s business model, which consists in providing ‘green’ delivery services by bike in and around various cities in the Netherlands, has a local or regional scope.
- (38) Second, on the basis of the information provided by the Parties, the Transaction leads to vertically affected markets in the Netherlands. According to the information submitted by the Parties, although the Target would have markets shares of less than [0-5]% on the broader markets of package delivery services and postal mail delivery in the Netherlands, KAD’s market share in some previously defined sub-segments of

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<sup>24</sup> OJ C56, 05.03.2005, pp; 2-23.

<sup>25</sup> Further developed in point 17 of the Commission Notice on case referral.

<sup>26</sup> Further developed in point 18 of the Commission Notice on case referral.

<sup>27</sup> Footnote 21 of the Commission Notice on case referral.



the upstream markets is in excess of 30%. This is the case for the following markets in the Netherlands:

- (a) Online retail sales of do-it-yourself (DIY), home improvement and gardening (KAD: [30-40]%)
  - (b) Online retail sales of health and beauty products (KAD: [30-40]%)
  - (c) Online retail sales of toys and games (KAD: [40-50]%)
  - (d) Online retail sales of sporting goods and camping (KAD: [40-50]%)
  - (e) Online retail sales of books (KAD: [40-50]%) and
  - (f) Online retail sales of pets related items (KAD: [30-40]%).
- (39) As a consequence, the preliminary assessment suggests that the Transaction may significantly affect competition by creating vertically affected markets between the potential market for online retail sales of non-food products where KAD has market shares in excess of 30% and the downstream markets of postal mails delivery and package delivery services where the Target is active. In particular, the existence of affected markets in the upstream market may give rise to potential input foreclosure issues in the Netherlands or in part of the Netherlands.
- (40) Since the Target is only active in the Netherlands, all the vertically affected markets are geographically confined to the Netherlands. Therefore, the potential competition concerns that may arise from the Transaction are also limited to the Netherlands.

### 5.3.2. *Additional factors*

- (41) In addition to the verification of the legal requirements, point 19 of the Notice on case referral 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’*.
- (42) In addition, point 23 of the Notice on case referral 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’*.
- (43) Given that the focus of the Transaction is confined to the Netherlands, the ACM is best placed to examine the case. In addition, the ACM has recent and specific expertise in examining all of the markets identified above and is familiar with the Parties’ customers.<sup>28</sup>
- (44) Moreover, the requested referral would preserve the principle of ‘one-stop-shop’ to the extent that the case would be referred to a single competition authority, which is an important factor of administrative efficiency.

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<sup>28</sup> See e.g., ACM decision of 21 December 2021, ACM/21/053545 – De Sperwer U.A. / Coop Nederland U.A., paras. 24-36. NMa decision of 7 August 2006, WE International / Setpoint Holding, paras. 8-19; NMa decision of 3 March 2006, Macintosh Retail Group / Scapino, paras. 10-16 and 19-22; NMa decision of 21 August 2002, Euretco / Poelman, paras. 10-22.

**6. REFERRAL**

- (45) Based on 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 a market within a Member State, which presents all the characteristics of a distinct market. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that (i) the principal impact of the concentration will be on the markets for the online retail sales of non-food items, and the markets for package delivery services and postal mail delivery in the Netherlands; (ii) these markets present all characteristics of distinct and national markets; (iii) the concentration gives rise to vertical links between KAD's upstream activities in the online retail sales of non-food items in the Netherlands and the Target's downstream activities in package delivery services and postal mail delivery in the Netherlands; (iv) the concentration gives rise to affected markets in the upstream market of online retail sales of non-food items with market shares in excess of 30% and therefore a potential risk of input foreclosure; and (v) a referral is appropriate on that basis.

**7. CONCLUSION**

- (46) For the above reasons and given that the ACM expressed its agreement with respect to the Transaction, the Commission has decided to refer the Transaction to be examined by the ACM. This decision is adopted in application of Article 4(4) of the Merger Regulation, Article 6(1) of Protocol 24 to the EEA Agreement and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Olivier GUERSENT*  
*Director-General*