

Anticipated acquisition by Asda Stores Limited of a grocery store in Tiptree, Essex from East of England Co-operative Society Limited and Ardencrest Limited

ME/5176/11

The OFT's decision on reference under section 23 given on 26 September 2011. Full text of the decision published on 3 October 2011.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Asda Stores Limited** (Asda) is one of the UK's largest supermarket chains and is a wholly owned subsidiary of the US retailer Wal-Mart Stores Inc. Asda operates around 500 stores in the UK. Although groceries are its core business Asda also sells (among other products and services) clothing (through the 'George' range), general household items, financial products (for example, insurance products and credit cards), travel agency services and in-store pharmacy services.
2. **East of England Co-operative Society Limited** (East of England) is a co-operative society active in the provision of grocery retailing, funeral services, pharmacies, travel agencies, post offices and optician services. It also operates an property investment portfolio. **Ardencrest Limited** (Ardencrest) is a subsidiary of East of England and the landlord for the store at Tiptree, Essex.

TRANSACTION

3. On 9 August 2011 Asda entered into an agreement with East of England and Ardencrest for the lease and assets of the grocery store at Tiptree, Essex (the Transaction).

4. The parties notified the Transaction to the Office of Fair Trading (OFT) on 17 August 2011 and the OFT's administrative deadline by which to reach a decision in this case is 13 October.

JURISDICTION

5. The OFT considers that the grocery store in Tiptree is an enterprise within the meaning of section 129 of the Enterprise Act 2002 (the Act). In addition to the lease, Asda will acquire plant and equipment, goodwill and staff. Therefore, as a result of the Transaction the enterprises Asda and the Tiptree store will cease to be distinct.
6. The turnover test in section 23(1)(b) of the Act is not satisfied in this case.
7. The parties overlap in the supply of grocery retailing, pharmacy and travel agency services. On a national level the parties submitted that Asda accounts for around 17 per cent of grocery retailing and at a national level the share of supply test set out in section 23(3) of the Act is not satisfied in this case.
8. The OFT has investigated whether the share of supply test is satisfied at a sub-national level, namely on a local authority (Colchester), county (Essex) or regional (East Anglia) level. On none of these bases is the share of supply test satisfied (using the share of floor space).
9. Similarly, the share of supply test is not met with respect to pharmacy or travel agency services on any of the geographic bases discussed above.
10. The OFT therefore believes that if arrangements in progress or in contemplation were to be carried into effect a relevant merger situation will not be created.

DECISION

11. On the basis of the information available to it, the Office of Fair Trading has decided that the Transaction does not qualify for investigation under the mergers provisions of the Act because neither the UK turnover test nor the share of supply test in section 23 of the Act is met.