

Anticipated acquisition by Asda Stores Limited of stores in Benwell, Tottenham and Maesteg, and the completed acquisition of one store in Newquay from the Co-operative Group Limited

ME/4747/10

The OFT's decision on reference under section 22(1) and 33(1) given on 11 January 2011. Full text of decision published 21 February 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 a national grocery retailer and a wholly owned subsidiary of Wal-Mart Stores, Inc ('Wal-Mart'). Asda currently operates 349 stores, all but nine of which are large grocery stores.¹ Asda recently agreed to acquire 147 Netto mid-sized stores which it intends to convert to mid-sized Asda stores.²
2. **The Co-operative Group Limited** ('CGL') is the UK's largest co-operative with a diverse range of activities including the operation of banks, funeral services, farming, pharmacies and food retailing. This case involves CGL's food retailing business. Some of the Somerfield stores which CGL acquired in 2009 continue to trade under the Somerfield fascia.³

¹ According to the product market definition set out by the Competition Commission: The supply of groceries in the UK market investigation (30 April 2008).

² See anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited, OFT decision 23 September 2010 (Asda/Netto).

³ The stores at Benwell, Tottenham and Maesteg trade under the Somerfield fascia.

TRANSACTION

3. Asda agreed to acquire four stores from CGL - Benwell, Tottenham, Maesteg and Newquay – pursuant to a single sale and purchase agreement. At the time of the OFT decision, the acquisition of the Newquay store had been completed while the acquisition of the remaining three stores is anticipated. Each of the stores is categorised as a mid-size store with a net sales area of between 280 and 1,400 square metres.⁴
4. The administrative deadline for the OFT to make a decision is 11 January 2011.

JURISDICTION

5. As a result of this transaction the Asda and CGL stores have ceased or will cease to be distinct.
6. The OFT notes that the transaction for the Newquay store has already been completed. However, the parties confirmed that the acquisition of all four stores was subject to a single sale and purchase agreement and therefore the OFT considers that, in this case, it is appropriate to link the Newquay acquisition store with that of the other three stores of Benwell, Tottenham and Maesteg so as to treat all four stores as part of the same relevant merger situation.⁵
7. Both parties are grocery retailers. The OFT considers that the share of supply test in section 23 of the Enterprise Act 2002 ('the Act') is met with regard to each of the Newquay and Maesteg stores. As a result of the merger, the parties will have more than 25 per cent combined share of net sales areas of grocery stores greater than 280 square metres in the respective local authority areas of Restormel (Newquay) and Bridgend (Maesteg). This is consistent with the Competition Commission's (CC) findings in its report on Tesco's acquisition of the Co-op store in Slough,⁶ that concluded that the Borough of Slough qualified as a substantial part of

⁴ According to the product market definition set out by the Competition Commission: The supply of groceries in the UK market investigation (30 April 2008).

⁵ Section 27(5) of the Enterprise Act 2002 as modified by Article 3 of The Enterprise Act 2002 (Anticipated Mergers) Order 2003 SI 2003/1595.

⁶ Tesco plc and the Co-operative Group (CWS) Limited - A report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough, by Tesco plc (28 November 2007) (Tesco/CWS).

the UK for the purposes of section 23 of the Act 'having regard to such considerations as population and economic factors.' In terms of population, the local authorities are of similar size to the Borough of Slough⁷ and in light of the CC's reference to the local nature of grocery retailing,⁸ the OFT believes that, in this case, the local authorities of Restormel and Bridgend represent substantial parts of the UK.

8. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created (in relation to the Newquay store) and that arrangements are in progress or in contemplation for the remaining three stores which, if carried into effect, will result in the creation of a relevant merger situation.⁹

MARKET DEFINITION

Product scope

9. In past cases the CC and the OFT have considered that grocery retailing comprises three broad product markets:¹⁰
 - **one stop stores (OSS):** those with a net sales area of 1,400 square metres or above.¹¹ These stores form their own product market
 - **mid size stores:** those with a net sales area of less than 1,400 square metres but above 280 square metres. These stores are constrained by OSS and so OSS must be included in any market definition with mid size stores as its focus, and

⁷ Borough of Slough – population 120,100; Restormel – population 103,000; Bridgend – population 133,900. See 'Office for National Statistics: Key population and vital statistics 2007 (27 April 2009).

⁸ Tesco/CWS (paragraph 4.6)

⁹ The relevant merger situation (covering all four stores) qualifies on the basis of the share of supply test with respect to either the Newquay or Maesteg stores. See Anticipated acquisition by J Sainsbury plc of two stores from Cooperative Group Limited 9 November 2009, paragraph 10.

¹⁰ See ME/3777/08 anticipated acquisition by Co-operative Group Ltd of Somerfield Ltd, OFT decision 20 October 2008 (CGL/Somerfield) and ME/1456/04 Completed acquisition by Somerfield plc of 114 Safeway Stores from WM Morrison Supermarkets plc, OFT decision 23 March 2005 (Somerfield/Morrisons)

¹¹ In its market investigation into groceries, the CC considered that the floor size threshold for larger grocery stores was larger than 1,000 to 2,000 square metres (paragraph 12) but used the threshold of 1,400 square metres for much of its analysis (paragraph 13). In Tesco/CWS the CC also used 1,400 square metres as the threshold.

- **convenience stores:** those with a net sales area of less than 280 square metres. These stores are constrained by all grocery stores and so the product market focused on convenience stores must also include mid size and OSS.

10. The parties submitted that these distinctions should form the basis for the OFT's analysis in this case and the OFT saw no reason to depart from using these distinctions.

Geographic scope

11. Previous CC and OFT reports into supermarkets have found that there are both national and local aspects to competition. The approach to geographic market definition in this case was equivalent to that used in the recent Asda/Netto investigation. In particular, the candidate local geographic market for mid-size stores is a five-minute drive time isochrone for urban locations and a 10-minute drive time isochrone for rural locations.

12. Although none of the target CGL stores are OSS or convenience stores, the majority of the acquiring Asda stores are OSSs. For the purposes of isochrone re-centring therefore (see below), the candidate local geographic market for an OSS is a 10-minute drive time isochrone in urban areas and a 15-minute drive time isochrone in rural areas.

HORIZONTAL ISSUES

Competition at the national level

13. The OFT does not consider that competition concerns arise as a result of the merger at the national level. Asda's share of the UK grocery market is estimated to be [less than 15] per cent.¹² Therefore, the acquisition of the four target stores will result in a very small increment to Asda's national market share.

¹² 2008. Source: Verdict UK Food & Grocery Retailers 2009. This figure is pre-Asda/Netto merger. Netto's share is estimated to be [less than one] per cent.

14. The parties submitted that neither Asda nor Netto have land suitable for development as a grocery store¹³ in the primary isochrones of Benwell, Tottenham, Maesteg or Newquay.¹⁴ The OFT therefore does not consider that the transaction would result in competition concerns arising through land banking.

Competition at the local level

Stage 1 Filter

15. Given that Asda has agreed to acquire Netto, the OFT has treated Netto's stores as being owned by Asda for the purposes of its competitive assessment.
16. In analysing competition at the local level for all four target stores (Benwell, Tottenham, Maesteg and Newquay), this case has followed the OFT's methodological approach in its Asda/Netto investigation.
17. This uses a desktop fascia counting exercise to remove from the analysis any local area where, despite both Asda and CGL being present, concerns are highly unlikely to arise.
18. To identify areas where both Asda and CGL are present ('overlaps'), the methodological approach uses a conservative 'maximum reach' isochrone (of twice the drive time described in paragraph 11).¹⁵ For stores where an overlap has been identified, the merger is considered to be highly unlikely to give cause for concern ('filtered out') if there are at least three other effective competitors in the isochrone centred on the acquired CGL and in the isochrone centred on the Asda (or Netto, as appropriate). Isochrones are also re-centred on census output areas (COAs), reflecting a cautious

¹³ As per footnote 42 of the OFT's decision in Co-op/Somerfield, this was based on the CC's methodology described in paragraphs 7.98 to 7.113 and footnote 245 of the CC's groceries report.

¹⁴ Asda owns a site in Newquay at Treloggan Road opposite the existing Morrisons store but it is not suitable for grocery retail. The site is the subject of a 'minded to approve' planning consent (subject to a section 106 agreement) for a development consisting of 52k sq ft of non food retail and 15k sq ft of employment (plus 50 affordable residential units on an adjacent site controlled by a developer). Asda acquired the site following the local planning authority's decision to grant food consent (subject to section 106 agreement) in 2003. However, the decision was subsequently called in for determination by the Secretary of State and the decision overturned. []

¹⁵ For mid-size stores the maximum reach isochrone is therefore 10 minutes' drive time for urban locations and 20 minutes' drive time for rural locations.

approach to identifying possible problem areas. The merger is filtered out if less than 10 per cent of the population in all of these COA-isochrones face a reduction in fascia of four to three or worse.

19. There were no overlaps identified in relation to the **Newquay** store using the maximum reach isochrones and therefore the merger does not raise any competition concerns in relation to this store. The maximum reach isochrones identified overlaps for the Maesteg, Tottenham and Benwell stores, however.
20. In **Maesteg**, an overlap was identified in the maximum reach isochrone but not within the primary isochrones of 15 minutes drive time. The fascia count remains unchanged as a result of the merger and none of the population suffer a fascia reduction of choice in the isochrones centred on COAs. The merger does not therefore raise any competition concerns in relation to this store.
21. In **Tottenham**, there are two CGL stores close by pre-merger and so post merger there is no reduction in fascia in the isochrones centred on them or on the Netto store. None of the population suffer a fascia reduction of four to three or worse in the isochrones centred on COAs. The merger does not therefore raise any competition concerns in relation to this store.
22. In **Benwell**, there is no reduction in the fascia in the isochrone centred on the target store. However, 12.6 per cent of the population suffer a fascia reduction of four to three or worse in the isochrones centred on COAs so the Benwell store does not pass the stage one filter.

Stage 2

23. In past grocery retail cases the OFT has combined percentage gross profit margins and expenditure-weighted diversion ratios (based on survey evidence) to estimate 'illustrative price rises' (IPRs), which it has regarded as indicative of unilateral effects. Depending on the case, these IPRs have been estimated on the basis that competition between the merging stores is either symmetric (that is, they constrain each other equally)¹⁶ and/or that

¹⁶ CGL/Somerfield.

competition is asymmetric (that is, the merging stores do not constrain each other equally).¹⁷

24. In Benwell, the parties surveyed customers at the Asda, Netto and CGL stores. The survey questionnaire was constructed to ensure that respondents were aware that the Netto store would soon be converted to the Asda fascia. Results from the survey data were coupled with percentage gross profit margin data for the stores¹⁸ and used to estimate symmetric and asymmetric IPRs.
25. As with previous grocery retail cases, the OFT has applied an IPR threshold of five per cent: a combination of a diversion ratio and gross profit margin that gives rise to an IPR of this level or above provides prima facie evidence of a realistic prospect of a substantial lessening of competition on the basis of unilateral effects arising from the merger. The analysis¹⁹ estimated IPRs (on each of a symmetric and asymmetric basis) of below five per cent for the Benwell store and hence, in the absence of other evidence pointing to a contrary view, it was considered that the merger did not raise competition concerns on the basis of unilateral effects.

Conclusion

26. On the basis of the above, the OFT does not consider that the merger gives rise to competition concerns on the basis of unilateral effects in relation to any of the four stores.

BARRIERS TO ENTRY AND EXPANSION

27. In its Groceries report, the CC found that for large grocery stores the planning system represents a significant barrier to entry, more so than for other grocery retailers.²⁰ Previous OFT decisions, including CGL/Somerfield, have concluded that new entry could not be relied on to resolve SLC concerns identified with respect to mid-size and OSS.

¹⁷ Asda/Netto.

¹⁸ The OFT used margin data for Asda submitted by the parties calculated using the same methodology as in Asda/Netto, and the Somerfield margins from the CGL/Somerfield case.

¹⁹ In calculating the IPRs, the OFT applied the methodology set out in the Asda/Netto decision, that is, assuming an isoelastic demand curve.

²⁰ CC Groceries report, paragraph 7.122.

28. However, it has not been necessary for the OFT to conclude on barriers to entry and expansion in this case as no competition concerns arise.

BUYER POWER

29. Customers are individual consumers and therefore are unlikely to possess any countervailing buyer power.

THIRD PARTY VIEWS

30. Third parties contacted by OFT during the investigation raised no competition concerns regarding the purchase of the stores on either a local or national basis. With regard to Benwell, one competitor noted the close proximity of the target store to the existing Asda store in the local area.

ASSESSMENT

31. The parties overlap in the supply of retail groceries. The four stores considered in this merger are mid-size stores.
32. Competition concerns were dismissed at a national level because of the very small increment arising from the acquisition of the four stores.
33. The OFT used, for the purpose of its stage 1 filtering, the candidate product and geographic markets which it has used in previous cases. That is, a candidate product market containing mid-size and one-stop stores, a candidate geographic market for mid-size of a five-minute drive time isochrone in urban areas and a 10-minute drive time isochrone in rural areas, and a candidate geographic market for OSSs of a 10-minute drive time isochrone in urban areas and a 15-minute drive time isochrone in rural areas.
34. The stage 1 filtering revealed no overlap in Newquay. For two other stores, Tottenham and Maesteg, the stage 1 filtering suggested that competition concerns were highly unlikely. The Benwell store failed the stage 1 filtering as the census output area re-centring identified a reduction in fascia from four to three or worse for 12.6 per cent of the local population.

35. After the parties had undertaken customer surveys in Benwell and calculated the expenditure-weighted diversion ratio between the merging parties, the OFT estimated symmetric and asymmetric IPRs. These were below five per cent.
36. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

37. This merger will therefore **not be referred** to the Competition Commission under section 22(1) or 33(1) of the Act.

ENDNOTES

1. With reference to paragraph 1, the parties clarified that Asda recently agreed to acquire 194 Netto mid-sized stores but has been required to sell 47 stores due to competition concerns in those local areas.