

Completed acquisition by Tesco plc of five stores (Thurso, Bedlington, Little Lever, Ramsbottom and North Hykeham) from Somerfield plc

No. ME/3313/07

The OFT's decision on reference under section 22(1) given on 4 December 2007. Full text of decision published 19 December 2007.

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**Please note that square brackets indicate text or figures which have been deleted or replaced with a range at the request of the parties and third parties for reasons of commercial confidentiality and clarity.**

## **PARTIES**

1. **Tesco plc** (Tesco) is a large grocery retailer with a portfolio of stores across the UK. In addition to its UK grocery retailing business (both food and non-food), it has various other operations in the UK, which include petrol retailing, internet shopping and the provision of financial services. Tesco's turnover was approximately £46.6 billion in the year ending February 24, 2007, of which approximately £35.6 billion was generated in the UK.
2. **Somerfield plc** (Somerfield) is also a large grocery retailer operating grocery stores of various sizes throughout the UK. The five 'mid-range' stores acquired by Tesco are grocery retail outlets, selling a range principally consisting of food products along with a smaller range of non-food items.

## **TRANSACTION**

3. Tesco has acquired five stores from Somerfield, one in each of Thurso, Bedlington, Little Lever, Ramsbottom and North Hykeham (the Acquired Stores). The turnover associated with these stores is estimated to be around £[ ] million.

4. Completion of this transaction occurred on 4 October 2007. The extended administrative deadline is 4 December 2007 and the statutory deadline expires on 3 February 2007.

## **JURISDICTION**

5. As a result of this transaction Tesco and the Acquired Stores have ceased to be distinct. The parties overlap in the supply of grocery retailing and together Tesco and the Acquired Stores will account for over 25 per cent of all grocery retailing in the UK. As a consequence the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **MARKET DEFINITION**

### **Product market**

6. The merger gives rise to an overlap in grocery retailing conducted in mid-range stores, generally considered to be those stores whose retail sales area is between 280 and 1400 sq metres.
7. The OFT and the CC have drawn distinctions in previous cases between different types of grocery shopping trips and the abilities of different sized stores and fascias to cater for different grocery requirements.<sup>1</sup> The types of shopping trips identified include 'one-stop shopping', 'top-up shopping' and 'convenience shopping'. The set of competitor stores relevant to the analysis in previous cases has been identified with respect to both store size and store fascia.

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<sup>1</sup> OFT's decision on the *Completed acquisition by Somerfield plc of 114 Safeway stores from Wm Morrison Supermarkets plc*, 23 March 2005; CC's report on the *Acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc*, September 2005 (hereafter referred to as *Somerfield/Morrisons*); CC's report on *Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc), Wm Morrison Supermarkets Plc, J Sainsbury plc and Tesco plc*, 18 August 2003 (hereafter referred to as the *Safeway Report*).

8. In past cases the OFT and the CC have broadly classified grocery stores into the following store size categories:

Type of store	Net retail area
One-stop	above 1,400 sq m
Mid-range	280 – 1,400 sq m
Convenience	below 280 sq m

9. In both its report on *Tesco/Co-op Slough*<sup>2</sup> and the *Provisional Findings Report*<sup>3</sup> the CC moved away from the shopping mission as the starting point for market definition and referred to store sizes instead. The OFT endorses the CC's findings in these two reports that competitive constraints in relation to the supply of groceries are asymmetric - larger sized stores exert a greater constraint on smaller sized stores than vice versa.<sup>4</sup>
10. The extent to which consumers perceive different grocery retailers to be substitutable will therefore be dependent upon the overall retail offer -- also referred to in previous cases as the price, quality, range and service (or PQRS) proposition - provided by each retailer.<sup>5</sup> The set of fascia considered effective competitors for one-stop and mid-range stores is more limited than for convenience stores. In respect of both one-stop and mid-range stores the CC in *Somerfield/Morrisons* identified the effective competitor set as incorporating Asda, Booths, Budgens, Co-op, Somerfield/Kwik Save<sup>6</sup>, Morrisons/Safeway, Sainsbury's, Tesco and Waitrose.
11. In the *Provisional Findings Report* the CC reiterated that Iceland and the limited assortment discounters (LADs)<sup>7</sup> are not considered effective competitors for mid-range and larger stores, but it included all full-range

<sup>2</sup> The CC's report on the acquisition of the Co-operative Group's Store at Uxbridge Road Slough by Tesco plc, 28 November 2007 (hereafter referred to as *Tesco/Co-op Slough*).

<sup>3</sup> *Market investigation into the supply of groceries in the UK* Provisional findings report, 31 October 2007 (hereinafter the *Provisional Findings Report*) (published during the course of this investigation).

<sup>4</sup> *Provisional Findings Report*, paragraph 4.145; *Tesco/Co-op Slough*, paragraph 5.15.

<sup>5</sup> The CC described the retail offer as including, among others, price, range of products, quality of products, cleanliness and store opening hours (*Provisional Findings Report*, paragraph 3.41; and *Tesco/Co-op Slough*, paragraph 5.4).

<sup>6</sup> When that report was published Kwik Save was still owned by Somerfield.

<sup>7</sup> Aldi, Lidl and Netto.

national or regional grocery retailers and symbol groups as effective competitors, including Marks and Spencer.<sup>8</sup>

12. In addition, in its *Tesco/Co-op Slough* report the CC considered the extent to which specific stores operated by different grocery retailers in the overlap area (in that case, Slough) exerted a competitive constraint on the original Tesco and Co-op stores. In that case the competitor set was determined using case specific information including grocery retailers' monitoring of their competitors and the revenue impact of different competitors on the stores of different retailers when entering the relevant local market.

### **Geographic market**

13. In previous investigations in the grocery retail sector the OFT and the CC have concluded that the scope of the geographic frame of reference is essentially local as most consumers are prepared to travel only a limited distance for their grocery shopping, and that distance may vary according to the type of shopping trip required.
14. In providing its analysis of this case, Tesco adopted the geographic frames of reference used previously by the CC in the *Safeway Report* and *Somerfield/Morrisons* for mid-range stores - five minute (for urban areas) and 10 minute (for rural areas) drive-time isochrones centred around individual stores.
15. More recently, in the *Provisional Findings Report* the CC has proposed a slight change to the boundaries of the geographic market to reflect the broader catchment area of larger stores and in turn the 'competitive pull' felt by their rivals. It therefore expanded the scope of competitors to mid-range stores to include larger groceries stores within a 10 to 15 minute drive time.<sup>9</sup> However, the CC notes that the precise delineation of the geographic market will vary across local markets according to local topographic and other conditions, and indicates that the threshold of 10 to 15 minutes has been adopted for the purposes of collectively analysing a large number of local markets.<sup>10</sup>

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<sup>8</sup> *Provisional Findings Report*, paragraph 13.

<sup>9</sup> *Provisional Findings Report*, paragraph 4.150.

16. This is consistent with the view it took in its report on *Tesco/Co-op Slough*. In this report, the CC defined the geographic market by 'the distance to the furthest store in a collection of stores that effectively constrain the behaviour of the store (or merging stores)'.<sup>11</sup> The CC therefore took a more case-specific view in defining the appropriate geographic frame of reference in that instance, using evidence such as entry analysis; the topographical features of Slough; catchment areas for grocery retailers in Slough; and the identification of key competitors in the internal assessments of both Tesco and Co-op. The approach of the CC in this report is consistent with the approach taken by the OFT in respect of other local overlap cases where the number of potentially problematic overlaps is low, allowing a more granular and area-specific analysis of competitive constraints; in evidentiary terms, this is superior to an analysis based more heavily on, for example, quantitative screens based on generalised industry findings.
17. In identifying immediate competitive constraints both for the purpose of assessing market definition and competitive effects in this case, the OFT has considered whether for each of the local areas identified, there was evidence to suggest that specific local features or circumstances may warrant local evidence-based refinement of the approach taken in *Somerfield/Morrisons* and the *Safeway Report* given the small number of overlaps, and the increasingly sophisticated techniques and evidence used to analyse the grocery market. These local conditions of competition are discussed individually below.

## COUNTERFACTUAL

18. Tesco submitted that for the acquisition of the stores in Thurso and Ramsbottom the relevant counterfactual was that Somerfield would have continued to trade in the short term whilst seeking to sell the stores to LADs.
19. In this case, there was limited evidence to support the alternative counterfactual posited by Tesco. As a result, the OFT considers that the appropriate counterfactual in this case is the prevailing conditions of

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<sup>10</sup> *Provisional Findings Report*, paragraph 4.151.

<sup>11</sup> *Tesco/Co-op Slough*, paragraph 5.42

competition, in other words that Somerfield would have continued to have trade from the relevant stores absent the merger.<sup>12</sup>

## **NATIONAL ISSUES**

20. Tesco's current UK share of supply of groceries is estimated at 27.3 per cent.<sup>13</sup> Based on sales of the Acquired Stores, the increment caused by the merger on a national basis is minimal. The OFT does not believe the merger give rise to material coordinated or unilateral effects issues at the national level.

## **THURSO**

21. Thurso is a town in the far North East of Scotland in the county of Caithness, a sparsely populated area with approximately 25,000 inhabitants. A significant proportion of this population lives in the two main towns of Wick (population of approximately 8,500) and Thurso (population of approximately 9,000).

### **Market definition**

#### Stores in Thurso

22. Tesco has acquired a 1,115 sq metres mid-range store from Somerfield in Thurso. Also located in the town are a 836 sq metres Co-op store and a 836 sq metres Lidl store.
23. As noted above, Lidl has previously not been considered to be an effective competitor to other mid-range grocery retailers. On this basis, the Co-op store would be the only store considered to be an effective competitor to the former Somerfield store in Thurso within the relevant drive time isochrone (the nearest effective competitor stores are located in Wick, which is a 30-40 minute drive away).

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<sup>12</sup> Issues analogous to those considered by the CC in the *Tesco/Co-op Slough* report do not therefore arise.

<sup>13</sup> According to recent TNS data.

24. However, consistent with paragraphs 16 and 17 above, given Thurso's remote location and the limited choice of grocery retailers locally, the OFT considers that, aside from the clear constraint of the Co-op in Thurso, the local Lidl could potentially be viewed as a credible substitute to Somerfield for some consumers, particularly with respect to those products stocked by both retailers.<sup>14</sup> This may also be the case with respect to other specialist grocery retailers present locally. The OFT was unable to obtain evidence to determine the exact degree to which Lidl and these stores constrain the former Somerfield store. However, given the evidence available to the OFT on the direct competitive constraint being removed by the merger (considered below), the OFT did not consider it necessary to conclude on this issue.
25. As stated above, the other main town in this area is Wick, which lies some 21 miles, a 30-40 minute drive, to the South East of Thurso. This drive time is significantly greater than the standard 15 minute upper threshold for drive time isochrones used by the CC in past cases – although closer to the 25 minute maximum drive time the CC applied when assessing issues of 'Regional Concentration'.<sup>15</sup> However, given the small number of grocery retailers in Thurso, combined with relative remoteness of the area and the presence of a main road link (A9/A882) between the two towns, the OFT next considered whether the grocery stores located in Wick exert competitive constraints on the Somerfield in Thurso.

#### Stores in Wick

26. Wick has three grocery stores greater than 280 sq metres in size: Somerfield, Co-op and Tesco. The Somerfield and Co-op stores (836 sq metres and 930 sq metres respectively) are located on the high street in Wick town centre. These stores are relatively similar in size and are identical fascia to the pre merger situation in Thurso. The Somerfield Wick could only conceivably count as a constraint on the Thurso store post-merger once it become a Tesco (it would not, being the same fascia, be treated as a constraint on the Somerfield Thurso pre-merger). Based on the information the OFT has received, sales revenues in these stores were

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<sup>14</sup> In its *Provisional Findings Report*, the CC found that the LADs typically sell a core range of own-label dry grocery good, with limited fresh, frozen and chilled items. Furthermore, the LADs were found to stock relatively fewer products, for a given store size, compared with other grocery retailers (see paragraph 4.81)

<sup>15</sup> *Safeway Report*, paragraph 5.246

unaffected by the closure of the Somerfield store in Thurso in September during the period of refurbishment as a Tesco store. Therefore, in the absence of any evidence to the contrary, the OFT does not believe these stores would constrain the mid-range stores located in Thurso pre- or post-merger.

27. The Tesco store is located on the outskirts of Wick, on the main road near the airport, and is part of a broader retail park including Homebase, Argos and New Look. It is a 4,645 sq metres store and is the only store categorised as a 'one-stop' store in the wider Caithness area. Tesco provided an internal document assessing the opportunity for developing the store in Wick, which stated the core catchment area for such a store would extend deep into the rural hinterland and capture approximately [ ] people. It also stated that such a store would be significantly larger than any other store in the area and therefore was expected to draw trade from some distance.
28. In the *Provisional Findings Report*, the CC found that entry of a 1,400 to 4,000 sq metre store (that is, a large store) affects revenue at an incumbent mid-range store by around 15 per cent where entry occurs within a five-minute drive-time<sup>16</sup> but had no effect beyond 10-15 minute drive time. However in this case, the evidence provided showed that the Somerfield and Co-op stores in Thurso (a further 15-20 minute drive time beyond this limit) experienced [ ] in sales revenue, though by varying amounts, following the opening of the Tesco store in Wick.
29. As part of a wider review of pricing, in the two months prior to the opening of Tesco Wick, [ ]. This could indicate that Somerfield considered that some customers in Thurso (and further away) might view the Tesco store in Wick as an effective substitute - despite it being located approximately 30-40 minute drive time away - for its store in Thurso, although the issue of which factors drove this change and to what degree are not clear.
30. In addition, Tesco Clubcard sales data showed that the catchment area for its Wick store covers the Caithness area including Thurso. The Clubcard data showed that [ ] per cent of Clubcard food sales came from postcodes within Thurso and a further [ ] per cent of food sales came from postcodes further to the West of Thurso. The road network suggests that these customers

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<sup>16</sup> *Provisional Findings Report*, paragraph 4.53

would most likely travel through Thurso in order to get to Tesco Wick. However, this data could overestimate the proportion of marginal customers travelling from Thurso and from the West of Thurso to Tesco Wick because it does not account for the fact that a significant number of these customers might be shopping in Wick because they work there, and are not therefore making their store selection decisions based on small but significant variations in the value proposition of the retail offer of the various stores.

31. Overall, on the basis of its analysis of the factors present in this particular case, it is inappropriate to place undue weight on market definition. However the OFT considers that Tesco Wick is a competitor to the Somerfield store in Thurso, with its size and associated retail offer making up to some degree for its relatively distant location, as evidenced by the demand 'shock' experienced by Thurso stores when it entered. The relative degree of competitive interaction between the merging parties' stores is considered in more depth below. Finally, as noted, given Thurso's remote location and the limited choice of grocery retailers locally, other grocery stores in Thurso, and in particular Lidl, may provide a degree of constraint.

### **Unilateral effects**

32. In assessing the effect of the acquisition of the Somerfield Thurso store, the OFT has considered the relative strength of constraint that each of the competitors identified, and in particular the Tesco Wick, had on the acquired store.
33. As already noted, it is generally recognised that the competitive interaction between smaller stores and larger stores is asymmetric; that is, while the larger store may constrain the smaller store, the reverse is not the case. In this case, given the relative sizes of the Tesco Wick store and the former Somerfield Thurso store, along with the associated drive time between the two, the OFT considers that any competitive constraint imposed will be asymmetric in nature. Therefore, to the extent that there could be a lessening of competition as a result of the merger, this would arise as a result of the loss of competitive constraint imposed by Tesco Wick on Somerfield Thurso. The OFT does not consider, nor was there evidence to support the proposition, that the Somerfield Thurso store constrained the competitive variables of the Tesco Wick store prior to the acquisition.

34. In determining the strength of the competitive constraints on Somerfield Thurso, the OFT has assessed not only the evidence provided on the impact of the opening of the Tesco Wick store but also the effect that the closure of the Somerfield store in September (for refurbishment) had on its identified competitors.
35. The OFT recognises that the impact of a store closure does not simulate a SSNIP test as such. In particular, resulting switching data (i.e. revenue increase at other stores) do not indicate the proportion of the closed store's customers that were marginal, in other words, sufficiently sensitive to variations in price or other aspects of the retail offer that they would switch in response to a given percentage reduction in the value for money of the retail offer of a store continuing to trade. As the store is closed, the price increase is in a sense infinite - closure ensures that all customers are converted to marginal customers because all are obliged to switch to their next best alternative. Estimates of the number of customers or amount of revenue diverting based on such evidence will therefore amount to proxies that will overestimate actual total switching in response to a SSNIP. However, diversion *ratios* based on such evidence need not amount to proxies that overestimate the *proportion* of customers or revenue that will switch from one merging party's store to the other's in response to a SSNIP.
36. Consequently, in this case such data are a valuable empirical indication of the proportion of demand represented by consumers who consider the acquiring party's store to be their second preference, or next-best alternative. If a suitably small proportion of demand appears to switch from the acquired store to the acquiring store in response to the closure of the former, this is a strong indicator that the acquiring store cannot, in reality, have been competing for material volumes of demand represented by a smaller subset of marginal customers. This would suggest, in turn, that the stores are not close competitors and that concerns over unilateral effects are unlikely to arise. Given the relative risks, low diversion ratios computed from such data represent robust evidence that the parties were not close competitors.
37. The data provided by Tesco showed, that following the closure of the Somerfield store in Thurso in September, there was no significant increase in sales revenue at the Tesco Wick store. Although there was a slight increase in its sales it was not a distinct increase, nor, as the OFT is

inclined to accept, can it be solely accountable to the closure of the Somerfield store given that the revenue sales for the Tesco store had steadily increased over the past six months. The relevant proxy diversion ratio is therefore low and does not form the basis for material unilateral effects concerns.

38. This proxy diversion ratio contrasts notably with the initial market 'shock' on Tesco's entry as the first one-stop store in the county. As mentioned above, Tesco Wick is over four times the size of the Somerfield Thurso store and stocks a wide range of grocery and non-grocery items. It would be expected that on the entry of a substantial one-stop store in this area, that some consumers would make an immediate decision to switch from 'local' top-up shopping to one-stop shopping at the Tesco Wick [ ]. However, in assessing the specific asymmetric theory of harm, what is relevant is the potential presence of remaining marginal consumers at the Somerfield Thurso whose second preference is Tesco Wick. This does not include that proportion of demand that has already made the switch to Tesco Wick following its opening and would not switch back in response to relative changes in the attractiveness of the retail offer as between the parties.
39. In addition, the evidence gathered showed that since the closure of the Somerfield store, the sales revenue of the Co-op Thurso store had increased by a [ ] significant amount. This supports the view that for a large number of customers of the Somerfield Thurso store, the Co-op Thurso store represents their next best alternative store.
40. On the basis of the evidence provided to the OFT, there also remain a proportion of customers whom, following Somerfield's closure, appear to have switched to alternative sources of supply other than Co-op Thurso or Tesco Wick. Although the OFT did not receive evidence to confirm the identity of these alternative sources of supply, the OFT considers them likely to include Lidl and other grocery stores in Thurso. This indicates that there are other constraints on the Thurso store that will remain post-merger.
41. Based on the evidence provided, the OFT believes that the competitive constraint on the Somerfield Thurso store provided by Tesco Wick and lost as a result of the merger would be limited, in circumstances where other competitive constraints on the acquired store would remain post-merger.

Therefore, on the weight of the local evidence provided, the OFT considers that the acquisition by Tesco of the Somerfield Thurso store does not give rise to a realistic prospect of a substantial lessening of competition.

## **RAMSBOTTOM**

42. Ramsbottom is a small town on the border of Lancashire and Greater Manchester with a population of approximately 16,000. It is situated approximately five miles north of Bury and four miles south of the area known as Rossendale (its main towns include Rawtenstall and Haslingden). Ramsbottom is situated next to the A56 road running north to south which links the M60 and M65 motorways and the northern end of the M66 motorway.

### **Market definition**

43. Tesco has acquired a 890 sq metre Somerfield store located in centre of Ramsbottom. The store is located directly adjacent to a 1,486 sq metres Co-op store with a shared parking lot. These are the only two significant grocery retailers operating within Ramsbottom. On the basis of the relevant five minute drive time isochrone the merger does not give rise to any overlap.
44. However, the maps of the local area showed that that there are a number of large stores in close proximity to Ramsbottom, including a Tesco store in Haslingden (approximately eight minute drive time) and a Tesco and Asda store in Rawtenstall (approximately nine minute drive time) to the North, as well as a Tesco store in Bury to the South and a Morrison store near Bolton to the South West (both just over 10 minute drive time). The OFT therefore considered whether any concerns arose on the basis that these large Tesco stores provided a competitive constraint upon the Somerfield store in Ramsbottom that would be lost as a result of the merger.
45. Tesco Clubcard data indicated that Tesco Haslingden may compete for customers with the stores in Ramsbottom. Specifically, [ ] per cent of Tesco Haslingden Clubcard sales (grocery and non-grocery) came from customers living in the three postcodes closest to Ramsbottom. Information gathered from third parties, including the effect of new store openings,

supported the view that Tesco Haslingden may provide some constraint on the stores in Ramsbottom.

46. However, the information provided on the strength of the constraint placed by the two stores in Rawtenstall is mixed. Tesco Clubcard data for the Tesco Rawtenstall store indicated that only [ ] per cent of its Clubcard sales (grocery and non-grocery) came from customers living in the three postcodes closest to Ramsbottom. This might not be unexpected given that consumers in Ramsbottom would need to drive past the Tesco Haslingden to reach the Tesco store at Rawtenstall. Third party responses showed that, unlike the opening of Tesco Haslingden, the opening of the two stores in Rawtenstall did not have any adverse impact on sales in the Ramsbottom stores.
47. However, evidence provided by third parties considered that that the Tesco and Asda stores to the North of Ramsbottom<sup>17</sup> are all a relatively equal distance away, offer a one-stop shop format, and could be considered competitors to Somerfield Ramsbottom.
48. Whilst the evidence indicates that the Tesco store in Haslingden is potentially a greater competitive constraint on the stores in Ramsbottom than the two stores in Rawtenstall, given the close proximity between these large stores (a difference of a few minutes drive time from Ramsbottom), the OFT considered that all three stores to the north/north east of Ramsbottom form part of the relevant competitor set for this case.
49. As to the Tesco Bury store to the South (just over 10 minute drive time), third party information suggested that any constraint imposed by this store on the stores in Ramsbottom would be limited due to the congestion on the road link between the two locations. In addition, internal site assessment documents provided by third parties focus on the competitive constraints provided by the stores to the North of Ramsbottom.
50. For purposes of its analysis, on a cautious approach, the OFT considers that aside from the Co-op Ramsbottom, the large stores in Haslingden and Rawtenstall are potentially effective competitive constraints on Somerfield store in Ramsbottom: the relevant competitor set is therefore Co-op

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<sup>17</sup> Tesco Haslingden, Tesco Rawtenstall and Asda Rawtenstall

(Ramsbottom), Tesco (Haslingden), Tesco (Rawtenstall) and Asda (Rawtenstall).

### **Unilateral effects**

51. In assessing the effect of the acquisition of the Somerfield store in Ramsbottom, the OFT has considered the relative competitive constraints of the competitors identified on the acquired store.
52. As discussed above, the competitive relationship between smaller and larger stores is asymmetric. Based on the evidence available, the OFT does not consider that the Somerfield store in Ramsbottom exerts a competitive constraint on Tesco Haslingden, Tesco Rawtenstall or Asda Rawtenstall. Therefore, the extent that there is a lessening of competition arising from the transaction, this will be limited to the loss of competitive constraint imposed by the surrounding Tesco stores on the Somerfield store in Ramsbottom.
53. The evidence provided showed that the Co-op store in Ramsbottom provides the strongest constraint on the acquired store. The Co-op store is slightly larger in size (by 596 sq metres) and is the closest competitor as the stores are situated next to each other and share a car park. Information gathered from the parties and third parties including internal site assessments for this store, all identified the Co-op store as the acquired store's main competitive constraint.
54. In determining the strength of the competitive constraint, as used in its assessment of the acquired store in Thurso, the OFT also considered the impact of this store's closure. Information provided showed that after the closure of the Somerfield store, the Co-op store's sales revenue increased by a significant amount. The OFT considers that this adds support for the contention that for a large number of customers of the acquired store, it represents their next best alternative store.
55. The relative strength of Tesco as a constraint after the Co-op is also lessened to the extent that customers' second choice after the acquired store is the Asda Rawtenstall. The Asda is of similar size to the Tesco stores and is also capable of providing a full destination shop, so it would continue to act as a competitive constraint on the acquired store at Ramsbottom. Switching to the Asda store in Rawtenstall is more likely than

to the two Tesco stores because the acquired store has become a Tesco and the Haslingden store would be the next closest Tesco.

56. On balance, the weight of evidence suggests that Tesco (via its Haslingden and Rawtenstall stores) is not a close competitor to Somerfield Ramsbottom. The OFT does not believe it would be profitable for Tesco to reduce the value of the acquired store's retail offer post-merger because of the risk that such action would lead only to quite low volumes of recouped sales at Haslingden (or Rawtenstall) while providing substantially increased volume to rival fascia - notably the adjacent mid-range Co-op as well as the large Asda at Rawtenstall.
57. In addition, it is plausible that other competing fascia still within a 15 minute drive time - including large Sainsbury's and Morrison stores - would provide some additional constraint on the acquired store and fascia choice for consumers alongside the Tescos, Co-op and Asda in the local area identified.
58. Nevertheless, some third parties raised concerns that post merger Tesco will have a high share of the total floorspace within the local area identified. The CC used retailer's share of groceries floorspace as one method to identify areas of high concentration in the *Provisional Findings Report*.<sup>18</sup>
59. The CC's report indicated that areas of high concentration are those where one grocery retailer holding more than a 40 or 60 per cent share of groceries sales area for stores larger than 1,400 sq metres within a 15 minute drive time. However, it is worth noting that the CC developed these thresholds in the context of a market-wide investigation identifying existing local areas with potentially high levels of concentration and not for the purposes of merger analysis. For merger analysis, shares of floorspace are only meaningful when the increment (for example market share addition, HHI delta) is considered alongside absolute levels.
60. On the basis of the net floorspace<sup>19</sup> figures provided by the parties, using the CC's approach the OFT estimated that Tesco would have a share by

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<sup>18</sup> Paragraph 5.28

<sup>19</sup> The OFT recognises that net floorspace may differ from groceries floorspace used by the CC and may lead to an over or underestimate of actual groceries floorspace, but considers that the estimate is capable of giving a reasonable indication of the level of concentration.

floorspace of [ ] per cent. However, the acquisition only results in an increment of [ ] per cent. The OFT considers that this very small increment in floorspace suggests that the acquisition does not have a significant impact on the level of concentration in this area and does not form the basis for either unilateral or coordinated effects concerns.

61. Based on the evidence provided, the presence of competing stores post merger provide sufficient constraint that the OFT considers that the acquisition of the Somerfield store in Ramsbottom would not be expected to give rise to a substantial lessening of competition.

## **BEDLINGTON AND LITTLE LEVER**

62. With respect to the acquisition of the Somerfield store in Bedlington, there were no effective competitors within a five minute drive time. Within a 10 minute drive time, there are a number of effective competitors including two Asda stores, a Sainsbury's store and a Morrison store. The nearest mid-range or large Tesco store is more than a 10 minutes drive from the acquired store.<sup>20</sup>
63. In Little Lever there were no effective competitors within a five minute drive time of the acquired Somerfield store and the nearest Tesco stores are approximately 11 minute drive away. Furthermore, there are a number of other competitors present locally (including Asda, Sainsbury and Morrison) all of whom are in closer proximity (less than 10 minutes drive time) to the acquired store.
64. Therefore, in both the above areas, the merger does not remove a close competitive constraint, and therefore no competition concerns arise.

## **NORTH HYKEHAM**

65. With regard to the acquisition of the Somerfield store in North Hykeham, there is no Tesco store present within a five minute drive time of the

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<sup>20</sup> Tesco did not provide any data on the drive times for the nearest Tesco; rather it focussed on those competitors falling within a 10 minute drive time. No Tesco mid-range or large Tesco store fell within this isochrone, nor did a Tesco store appear on the outskirts of the 10 minute isochrone map provided.

acquired store. In addition, there are several stores, including two Co-op stores, a Sainsbury's store, a Morrison store and an Asda store, which are situated in closer proximity to the acquired store than the closest Tesco store.

66. One third party raised concerns that on the basis of the specific road layout in North Hykeham there was a small area on the main road between the acquired store and Tesco in Lincoln (two miles away) where the parties would be each other's closest competitors. However, this required asymmetric flexing of the drive times used, taking a five minute drive time to the North and a 6 minute drive time to the South of this area. If a two minute drive time to the South is applied, there is no overlap, and if a six minute drive time to the North is considered, four additional effective competitors would be included.
67. In addition, no evidence was provided to the OFT to suggest that the Tesco store in Lincoln exerted a stronger constraint on the acquired store than these other local competitors. As a result, the OFT considers that the merger does not remove a close competitor given the proximity of Tesco to the acquired store together with a number of effective competitors locally present capable of constraining Tesco post-merger. Therefore, competition concerns do not arise in the acquisition of the Somerfield store in North Hykeham.

## **COORDINATED EFFECTS**

68. The CC's *Provisional Findings Report* noted the OFT's announced inquiry into explicit coordination in relation to certain dairy products and indicated that, while there was no direct evidence of tacit coordination at present, it was concerned that, given the structure of the grocery retailing market such behaviour could occur in the future.<sup>21</sup>
69. On a national level, to the extent that co-ordination exists, it is not affected by the acquisition of the five Somerfield stores due to their very small impact on a national level. At the local level, the OFT could not in this case identify a suitable theory that the merger would affect the potential for coordination on the locally-set competitive variables of the retail offer, nor was this suggested in any evidence received.

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<sup>21</sup> Paragraph 7.59

70. Given the OFT's inquiry and the CC's findings, the OFT has also considered the fact that there have – in other jurisdictions at least [and not involving parties active in the grocery sector] – been examples of coordinated market-sharing in the guise of agreements not to enter a rival's local market via by declining to participate (at all, or aggressively) in tenders that would give rise to local market entry by acquisition. In this case, however, there is no suggestion that the tendering process itself was subject to any collusive bidding or non-bidding.

### **THIRD PARTY VIEWS**

71. Third parties raised concerns about the acquisition of the stores in North Hykeham, Thurso and Ramsbottom. These concerns have been referenced and addressed in the relevant sections of the competitive analysis above.

### **ASSESSMENT**

72. Tesco's acquisition of five stores (Thurso, Bedlington, Little Lever, Ramsbottom and North Hykeham) from Somerfield has given rise to an overlap in grocery retailing. With regards the acquisition of Bedlington, Little Lever and North Hykeham, there is no loss of close competition given the distance between the parties and the number of effective competitors present in these local areas, such that no competition concerns are considered to arise.
73. The acquisition of the store in Thurso results in the loss of a small competitive constraint imposed on the acquired store by the Tesco store in Wick (the only large grocery store in this area of Scotland) on the acquired store. However, based on the evidence provided, the OFT considers that the rivalry between the parties lost by the merger is too minor to conclude that the merger results in a realistic prospect of a substantial lessening of competition.
74. Similarly, with regard to Ramsbottom, the merger likewise does not combine close competitors; although third parties raised concerns about increased concentration in the local area, the effect of the acquisition on concentration is limited. Furthermore, there are effective competitors

present in the local area who will continue to act as a constraint post-merger.

75. 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**

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