
**ANTICIPATED ACQUISITION OF 99P STORES LIMITED BY
POUNDLAND GROUP PLC**

Initial submission to the Competition and Markets Authority for Phase II review

29 MAY 2015



POUNDLAND GROUP PLC
INITIAL SUBMISSION TO COMPETITION & MARKETS AUTHORITY
FOR PHASE II REVIEW

Introduction

1. Poundland Group plc (*Poundland*) welcomes the opportunity to engage with the Group Members and the wider Competition and Markets Authority (*CMA*) team for the Phase II review of its acquisition of 99p Stores (the *Transaction*).
2. In this initial submission Poundland sets out the key points which show very clearly that there is no risk of a substantial lessening of competition (*SLC*).
3. As explained below, the Transaction will give rise to significant benefits to customers and lead to increased competition on the High Street¹. It will lead to a markedly improved offer in stores currently operated by 99p Stores, and also measurably increase competition to Britain's largest retailers such as Asda and Tesco. [✂]
4. At **Annex 1** to this submission, we set out in some more detail Poundland's views on the issues identified with and detailed observations on the CMA's reference decision (the *Decision*).

1. Poundland and 99p Stores compete all along the High Street

5. Poundland and 99p Stores (together, the *Parties*) compete with retailers all along the High Street.²
6. The CMA's predecessors have previously recognised that while there are certain stores which are likely to be suitable only for "one stop" shopping (i.e. a large weekly grocery shop), a wider range of stores compete for "top up" missions. These will typically include those stores used for "one stop" shopping, but also a wider range of stores on the High Street.³ This dynamic is today more prevalent than ever. Commentators have widely noted the change in shopping patterns, such that the "one stop" shopping mission is in decline, and customers more often

¹ Throughout this submission, the phrase "the High Street" is used as a shorthand for the locus of competition between the Parties – that is, it refers to competition among stores that are typically to be found on a local High Street. It is not used in a technical sense such as to exclude stores operated by the Parties or their competitors in other locations.

² See footnote 1 above.

³ *Somerfield plc and Wm Morrison Supermarkets* finds that "there is an asymmetry of competition between stores of different sizes" and "as with competition offered by one-stop shops to mid-range stores, mid-range stores would be expected to exert competitive pressure on convenience stores" (¶ 6.34 *et seq*). These conclusions are also supported by the Competition Commission's, *Supermarkets: a report on the supply of groceries from multiple stores in the UK*, October 2000.

use a range of stores along the High Street for multiple (smaller) shopping missions. This has been universally noted by commentators.⁴

7. As retailers used by customers for “top up” shopping – [✂] – the Parties’ stores are therefore in competition with the wide range of stores which are used by consumers for these missions.
8. Fundamentally, Poundland and 99p Stores sell the same products to the same people as all their competitors all along the High Street. This is addressed in more detail below.
9. As an initial point, however, it is critical to understand the competition the Parties face on the High Street and how the Parties address this competition. Set out below are a range of typical High Streets. Each has a slightly different store mix. Each is characterised by intense competition.



High Street A sees Poundland face 99p Stores, Poundworld, B&M, Home Bargains, Poundstretcher, Asda, Tesco, Aldi and Card Factory.



High Street B sees Poundland face B&M, Home Bargains, Poundstretcher, Asda, Tesco, Aldi and Card Factory.

⁴ See, for example, “UK high streets continue to evolve as consumers change their shopping habits”, *Retail Gazette*, 3 February 2015; IGD Report, “[Five trends changing the discount sector](#)”, 10 May 2012; and “Pound shop revolution hits the big supermarkets”, *The Daily Telegraph*, 5 June 2012.



High Street C sees Poundland face Asda and Tesco.

All of these High Streets are common in the UK.⁵

10. There is no difference in the Poundland offer on any of these High Streets:
- its prices are the same;
 - its range is the same;⁶
 - its stocking policy is the same;
 - [✂];
 - its level of service is the same;
 - its level of staffing (including store management) is the same; and
 - [✂].
11. Fundamentally, Poundland does not have the incentive (nor, it considers, any realistic ability) to flex its offer according to local competitive conditions.
12. This is driven above all by the fact that its business model places a very significant premium on simplicity and consistency.⁷ These are key to remaining competitive in such a low margin business. As a result, Poundland (and, like it, 99p Stores) establishes and executes a national commercial strategy that does not give any meaningful level of discretion to local store managers. Consistency of the in-store offer (e.g. in relation to store planning and systems) also enables efficient stock and working capital management through a tightly defined product range – again necessary for the successful operation of a low margin business.⁸
13. As such, Poundland has not varied its offering in response to local competitive conditions to date,⁹ and there is nothing about the Transaction that will lead it to

⁵ For example, based on a one mile catchment area, [✂].

⁶ Range is subject to constraints of store size, but this is itself unrelated to local competition.

⁷ It is also driven by the breadth of the competitive constraint that it consistently faces, as explained further below.

⁸ This is reflected, for example, in Poundland's IPO prospectus, which notes that its "*business model is set up to be a value retailer, focusing on efficiency and operating at low cost*".

⁹ [✂].

do so (see **Annex 1**, para. 5). Were it to do so, it would have to undertake a significant and very costly change to its business model, including new systems, new reporting mechanisms, a significant increase in staffing levels, and a decision process that would be inimical to its continued operation as a successful, high volume, low margin retailer.

14. That sort of change would have made no sense prior to the Transaction and it will make no sense post-transaction. If Poundland had the incentive and ability to flex its offer, it is difficult to understand why it would not have acted on that incentive by now. Poundland already has a wide store network facing a wide range of catchment area store mixes (and levels of VGM concentration, in particular¹⁰) – in practice, this is no different from the situation that will apply post-transaction.
15. Finally, and for completeness, the Parties' combined share of retail along the High Street is *de minimis*: less than 0.4%.¹¹

2. There is nothing special about competition between Poundland and 99p Stores

16. Poundland agrees with the CMA that it competes with 99p Stores. However, it also competes with a broad range of retailers all along the High Street.
17. The scepticism voiced in the Decision as to this range of competition is not shared by expert commentators. On announcement of the Decision an analyst at Credit Suisse noted: "*While pack sizes and prices may vary between retailers, the overall availability of most of the nationally branded products across a wide variety of retailers is high, so we see little justification looking at the merger through the prism of the pound stores or even the discounters*".¹²
18. This commentary is consistent with the commercial evidence. In particular, that there is nothing special about competition between Poundland and 99p Stores is shown very clearly in the figure below Poundland's margins are identical in areas where it does face a 99p Store and in areas where it does not.¹³ This finding is robust to controlling for a range of other factors that could affect Poundland's margins.

[X]

19. [X] In other words, in local areas where Poundland faces no competition from single price and multi-price value general merchandise retailers, it is not able to

¹⁰ See, for example, the range of VGM fascia even in areas which the CMA found to be potentially problematic at Phase I, as set out in Annex 1 to the CMA's decision.

¹¹ PWC data: see paragraph 82 of Poundland's Merger Notice to the CMA.

¹² See Annex 11 of Poundland's response to the CMA's first day letter dated 11 May 2015 (the **First Day Letter**) (Credit Suisse).

¹³ See Poundland's merger notice to the CMA, dated 9 February 2015 (the **Merger Notice**), figure 12.

earn a higher margin than in those areas where it faces multiple such competitors.
14 15

[✂]

3. What we sell is the same as what retailers are selling along the High Street

20. Poundland was pleased to note the CMA's agreement in its Decision that "*VGMs [i.e. multi-price VGMs] appear to sell a similar range of products to SPP [i.e. single price point] retailers*" and that this was a factor relevant to concluding that multi-price VGMs operate in the same market as Poundland.
21. This is absolutely consistent with Poundland's experience and with the evidence submitted to the CMA. Furthermore, it is unaffected (as the Decision notes) by the fact that multi-price VGMs additionally sell a range of other products at higher price points (in relation to which Poundland and 99p Stores do not compete). This sort of asymmetric constraint – whereby one party imposes a greater constraint on the other party than vice versa – is entirely normal in merger control analysis as is evidenced by the CMA's own decisional practice.¹⁶ More importantly, this type of constraint is a key driver of the intense and real-world competition that characterises the UK retail sector.
22. It is therefore surprising to see a different approach taken in respect of supermarkets and other retailers in the Decision. The Decision sets out, and appears to attach weight to, submissions from third parties that note, for example, that "*the single price point offer of national multiples and LADs is limited to a few product categories and a small proportion of their total number of SKUs*".
23. With respect, this is not relevant. The key question is the extent to which the range offered by supermarkets and discounters like Aldi and Lidl overlaps with and therefore competes with the offering of Poundland and 99p Stores. This question is relevant both to the discount ranges offered by the supermarkets and LADs (and in this context it is worth noting that Asda has approximately 7,000 SKUs at £1 or less – a larger number than any other retailer in the UK), but also their general ranges which – even though they might not be priced at single price point – are nevertheless priced to compete strongly with products offered by each other, and Poundland and 99p Stores. It also includes the own brand offerings of all of the retail competitors (including VGMs and supermarkets) which consumers will assess alongside their brand stable mates. For example, Aldi has added 250

¹⁴ Single price-point retailers are also referred to as "*SPPs*" and value general merchandisers are also referred to as "*VGMs*" throughout this initial submission.

¹⁵ Detailed commentary on the analysis of the PCA in the Decision is set out in **Annex 1** to this paper.

¹⁶ See, *Somerfield plc and Wm Morrison Supermarkets plc*, Competition Commission, September 2005.

lines, taking its total to around 1,350, which include both branded products and private label value offerings.¹⁷

24. The answer to this question is thus that customers benefit from a near complete overlap – supermarkets and (to a large extent) LADs sell the same (principally FMCG) products that are sold by Poundland and 99p Stores.¹⁸ Expert commentators indeed also note:

“[that] the discount channel is extremely dynamic and competitive and that both the general merchandise and fast moving consumer goods elements of the market in the UK have extensive and, if anything, growing choice with the expansion and evolution of grocery limited assortment retailers (LADs) such as Aldi, Lidl and Netto (...) and general merchandise high street value retailers...”

“Additionally, there are major health & beauty (H&B) specialists such as Savers and Superdrug in the discount space and across all these categories the value based supermarkets (Asda [...], Tesco [...] and Wm. Morrison Supermarkets [...]), whose estates eclipse that of Poundland and 99p individually and collectively.”¹⁹

25. Furthermore, the fact that supermarkets and LADs may also serve a “one stop” shopping mission (as noted above) does not diminish their competitive constraint. As the CMA’s predecessors have acknowledged in the past,²⁰ supermarkets also serve a “top up” mission – to say nothing of the fact that where supermarkets offer good value on the “one stop” mission, this will necessarily reduce consumers’ “top up” spend elsewhere.
26. Recent data shows that consumers are changing their shopping habits by using a wider selection of retailers and channels for their purchases; for food and grocery shopping the most popular combination is now supermarkets, convenience stores and discounters.²¹ This is indicative of structural changes in consumer behaviour across the retail sector which will further increase competition – for (parts of) the customer’s basket - between various types of retailers (at least including LADs, supermarkets, category specialists).

¹⁷ IGD Report, “[Five trends changing the discount sector](#)”, 10 May 2012.

¹⁸ See Annex 16 of Poundland’s Merger Notice to the CMA, which contains extensive price comparisons against identical FMCG SKUs offered by, for example, Tesco and Asda.

¹⁹ See Annex 11 of Poundland’s response to the CMA’s First Day Letter.

²⁰ *Somerfield plc and Wm Morrison Supermarkets* finds that “there is an asymmetry of competition between stores of different sizes” and “as with competition offered by one-stop shops to mid-range stores, mid-range stores would be expected to exert competitive pressure on convenience stores” (¶ 6.34 *et seq.*). These conclusions are also supported by the Competition Commission’s, *Supermarkets: a report on the supply of groceries from multiple stores in the UK*, October 2000.

²¹ Customers are now using on average four retailers per week for food shopping. See, IGD, “[Savvy shopping now mainstream](#)”, 18 August 2014.

27. This is also supported by the survey evidence which shows that consumers habitually multi-source. [✂]

4. The supermarkets are taking on the Parties directly

28. The Decision considers that the evidence provided at Phase I was not sufficient to allow the CMA to conclude (on the basis of the Phase I test) that supermarkets are strong competitors to Poundland and 99p Stores.

**Excerpt from Morrisons Interim Management Statement Conference call,
May 2012**²²

“it's a very competitive market and there's a real flight to value, and the discounters have been grown very strongly. And you can see that from ALDI's performance and the last Kantar shows them -- it's very high double-digit sales. They're nearly [20%] plus growth. So they are doing well, and they offer something pretty unique in the market, and there's a growing acceptance from the British consumer to shop in these discounters, so you have to watch them”

(...)

*“it's not just ALDI, its' Poundland, it's B&M. They're all out there and they offer something pretty compelling to the consumer, and we have to be on them like a hawk, and we really watching them very carefully at the moment... We had our -- the majority of our buying team was out in them again yesterday, as they were last week”.*²³

[✂]²⁴

29. Irrespective of the detailed survey evidence provided by the Parties,²⁵ this is supported strongly by simple commercial evidence:

- a. *First*, supermarkets sell the same products that the Parties sell, as noted above. Even if their ranges are wider, this in no way diminishes the constraint across the Parties' range.

²² Since this time Morrisons has further increased its competitive impact on the Parties through its roll-out of the MLocal convenience store format.

²³ Transcript of WM Morrison Supermarkets Plc Q1 Interim Management Statement Conference Call, 3 May 2012.

²⁴ [✂]

²⁵ Detailed commentary on critiques on the Parties' survey data is provided at **Annex 1**, para. 4.

- b. *Second*, supermarkets are pricing their products to attract the same price-sensitive shoppers through the door and to prevent them walking down the High Street to Poundland or 99p Stores. The graphic below shows some of the mechanisms they are using to do this.

Figure: Tesco Willenhall store entrance (March 2015)



Tesco and Asda, in particular, have radically expanded their single price point and discounted ranges in order to prevent attrition to the likes of Poundland and 99p Stores. These value offerings are in exactly the “staple goods” FMCG lines in which the Parties do the vast majority of their business.

- c. *Third*, Asda is the UK’s largest retailer by SKU count on product offers for £1 or less, offering twice as many as the largest Poundland store.²⁶
- d. *Fourth*, the major supermarkets are staffing up with exactly this approach in mind: for example, [X].²⁷ Tesco, notably, employs an executive, Paul Bangs, in the role of “Pound Shop Buying Manager”.

In turn, Poundland has recruited extensively from supermarkets, including its CEO (Sainsbury’s), CFO (Sainsbury’s), Trading Director (Morrisons and Netto), Retail Operations Director (Somerfield and Kwik Save), Supply Chain Director (Somerfield), Chairman

²⁶ See Annex 4 of Poundland’s response to the CMA’s Issues Letter.

²⁷ [X]

(Sainsbury's) and immediate past Chairman (Tesco – now chairman of Morrisons).

- e. *Fifth*, all of Poundland, Tesco, Asda, Lidl, Aldi and other supermarkets are benchmarked online on the mysupermarket.com price comparison website, allowing consumers to make like-for-like comparison on their everyday staples. Poundland is also included in the grocery market analysis conducted by IGD and Kantar..

- f. *Finally*, [✂]

30. Poundland has provided the CMA with nearly 700 items of photographic evidence collected as part of its routine benchmarking and competitive intelligence gathering demonstrating just how closely the supermarkets are targeting the Parties' offering. A selection are attached at **Annex 3** to provide some illustrations.

31. Once again, this is strongly supported by expert commentators:

- a. The industry publication, *The Grocer*, commented in May 2014 on the roll-out of the Tesco "Pound Store" concept in a large number of its stores:

"[Tesco's] latest move, as revealed by The Grocer last week, is to aggressively try and replicate the success of the pound shop model. It rolled out its new pound shop offer to 61 stores on 12 March and plans to have rolled it out to 285 stores by August, spanning every format from Express to Homeplus and covering all four corners of the UK.(...)

The locations of the existing 61 zones are also revealing. The Grocer understands that the stores that have so far been chosen are located within a mile of a single price discounter or variety store such as Home Bargains or B&M Bargains.

A Tesco spokeswoman confirms the zones will be introduced to stores in "price-sensitive areas" where the demand for low prices is at its highest. "Philip Clarke has spoken about how stretched our customers are in terms of disposable income so this makes absolute sense," she adds.

As it did to Asda, of course. Following a trial in 2012, it now has a £1 area in 578 of its stores. With Asda seemingly in its sights as well as the pound stores, Tesco is unsurprisingly keen to talk up the initiative.

"As you can see by the scale of the rollout, the investment in PoS and the vastly improved range, this is a project that Tesco is taking very seriously and should prove successful for us all," said Paul Bangs,

Tesco's pound shop buying manager, in a leaked letter sent to suppliers in March."²⁸

- b. In November 2014, the Guardian wrote that Sainsbury's had been forced to join "*the supermarket price war*".²⁹ The article explained that customers were said to be looking for better deals and shopping at new retailers. The article goes on to state that: "*Those trends are boosting the discounters – especially Aldi, Lidl and Poundland – and convenience stores, rather than the traditional big supermarkets*". It further noted that this has led the supermarkets to respond by cutting prices to attract customers back and target the likes of Poundland even more directly. In early 2015, Tesco and Asda both announced price reduction campaigns worth hundreds of millions of pounds.³⁰
32. Supermarkets' own documents clearly support the position that discount retailers' competitive strength directly affect their sales. As noted above (see "Excerpt from Morrisons Interim Management Statement 2012"), Morrison's CEO publicly noted, in response to questions from analysts, the real-world impact of discounters' strong growth on his supermarket's performance. Asda's documents explain to investors the supermarket's "*strategy to redefine value retailing in a challenging market*",³¹ including a £300 million investment in lowering prices to respond directly to the competitive threat from discount retailers: "[Asda] is lowering the price of 2,500 household favourites in the Biggest Ever Rollback, further widening its price gap to the other big retailers and positioning Asda price even closer to the discounters".³²
33. This is further supported by the fact that Poundland has routinely and extensively benchmarked its prices against those of the supermarkets. In previous cases, such evidence has been taken to be indicative of the rivalry between the relevant firms.³³
34. [✂]³⁴

²⁸ The Grocer, "[Quids in - will Tesco's Brand Outlet trouble the £-stores?](#)", 9 May 2014.

²⁹ The Guardian, "[Sainsbury's cuts sales forecast and reviews dividend](#)", 1 October 2010.

³⁰ Asda press release, "[Asda unveils its fourth quarter and full year strategy update and announces £600m investment in stores](#)", 19 February 2015.

³¹ Asda press release, "[Asda unveils its first quarter financial results and strategy update](#)", 19 May 2015.

³² Asda press release, "[Asda launches it's biggest ever rollback and brings basketloads of lower prices to customers](#)", 6 January 2015.

³³ In *NBTY/Julian Graves* the Competition Commission relied significantly on the Parties benchmarking data in assessing the competitive set.

³⁴ [✂]

35. The Phase I decision suggests that the existence of a price differential between supermarkets and Poundland may be indicative of limited competition between these retailers. With respect, this is wrong. First, it is difficult to understand why Poundland would benchmark the supermarkets on such a regular basis if it did not consider them as close competitors. Second, it is critical to Poundland's success that it maintains a value differential vis-à-vis the supermarkets. [✂] ³⁵
36. Any strategy by Poundland of eroding the value differential vis-à-vis supermarkets across customers' baskets would run contrary to its strategy established over its lifetime, and would be seriously destructive of its value proposition.

5. The survey evidence – on any view – indicates that supermarkets present a strong competitive constraint

37. The CMA explains in its Decision that it considers that the survey undertaken by the Parties may not be reliable and therefore places limited reliance on it. Poundland continues strongly to believe that the survey is representative of its customer base and in particular that it is consistent with an increasing trend of ABC1s using its stores on a frequent basis.³⁶ As indicated at the meeting on 18 May, Poundland will be happy to engage further with the CMA on survey evidence.³⁷
38. In any event, the CMA should note that the telephone validation evidence – while limited in population size – remains strongly supportive of the view that supermarkets should be treated as full members of the Parties' competitive set, indicating significant diversion to supermarkets such as Asda and Tesco. [✂]
39. As the graphic below shows, telephone survey evidence confirms the online survey results in the following key respect: the aggregate diversion ratio from Poundland to the Big Four supermarkets is broadly comparable to the level of diversion to SPPs and VGMs, both of which the Decision considers to constitute part of the frame of reference.

[✂]

6. The CMA should consider the *aggregate* totality of constraints on Poundland, including other retailers

40. The evidence shows that the Parties' customers are visiting multiple stores on the same shopping mission, [✂]. This willingness to split spend across multiple

³⁵ Document submitted in response to First Day Letter.

³⁶ See, for example, Daily Mail, "[Now the 'Lidl class' turn their attentions to pound shops as everything-for-£1 stores boom thanks to posh customers](#)", 13 April 2015.

³⁷ Detailed commentary on this is set out at **Annex 1**.

retailers exists not only in the hypothetical store closure scenario, but underpins the broader shift in retail shopping behaviour (see para. 26 above).

41. This is strongly supportive of the Parties' view that what matters is the *totality* of the constraints imposed by such retailers is sufficient to act as a material competitive constraint on the merged entity. This is also correct as a matter of commercial and economic logic.

42. The results of the Parties' survey shows [✂]

43. The strength of the constraint of category specialists on certain elements of the Parties' product ranges is also borne out by the survey: [✂]

a. [✂]

b. [✂]

c. [✂]

44. It would therefore be wrong to dismiss these constraints because each individually may be small. In the CMA's assessment of the risk of an SLC, these constraints are highly relevant, taken as a whole.

7. The Parties cannot degrade the quality of their value offer without losing customers

45. In past years consumers have become increasingly value-conscious. Indeed, the Decision recognises that the Parties' customers are "*particularly price sensitive*". Moreover, they also do not display any loyalty in their aim of capturing the best value available and they can, and do, switch easily and instantly (which further intensifies competition along the High Street).

46. As a result, customers in the value segment exert significant power over the Parties' ability to change, or in any way diminish, their value offer. In the Parties' experience:

a. customers consistently shop around for some or all of their items by visiting multiple competitors along the High Street every week, comparing the value offer on the same shopping mission and responding immediately to change;³⁸

b. customers know the price of the same goods sold at different retailers, not least because the Parties' highly memorable and transparent value proposition makes for an easy comparison with other retailers;³⁹

c. [✂];⁴⁰

³⁸ See Annex 8 of Poundland's Merger Notice to the CMA ([✂])

³⁹ See Annex 8 of Poundland's Merger Notice to the CMA ([✂])

- d. customers can switch their basket away from Poundland without having to materially change the nature of their shopping out (as Poundland stores are not “destination” stores); and
 - e. supermarkets’ expansion onto the high street through the convenience store model has made it even easier for customers to find “top up” alternatives.
47. Customers’ multi-sourcing behaviour (see para. 27 above) is also, as the CMA’s predecessors have noted, good evidence that customers have a range of choices and can exercise their judgment on where to buy the everyday staples that the Parties and their competitors sell.

8. Barriers to entry are exceptionally low, such that new entry would take place if Poundland attempted to degrade its offer locally

48. The Parties are aware that the CMA has a high threshold at Phase I for considering that the prospect of entry would be sufficient to assuage its concerns. Nonetheless, the Parties were of the view that the evidence is so clear in this market that:
- a. there is an exceptionally strong history of rapid and successful entry;
 - b. competitors have announced extensive expansion plans and have deep pockets to ensure that this takes place;
 - c. consumer spend at discount stores – including VGMs – is universally expected to grow significantly in the coming years;⁴¹
 - d. all the evidence shows that barriers to entry are very low, consistent with the above; and
 - e. the Parties were able to provide, real-time comprehensive evidence on local vacancies suitable for entry in every overlap location.

such that the CMA should have been able to conclude, as it has done in certain markets in the past (including convenience retail) that barriers to entry are so low that, of itself, this should remove SLC concerns.

49. Poundland was disappointed that, despite obtaining detailed local evidence ([§]), and presenting this evidence to the CMA at a meeting prior to notification, this evidence does not appear to have been considered at all by the CMA. It is not

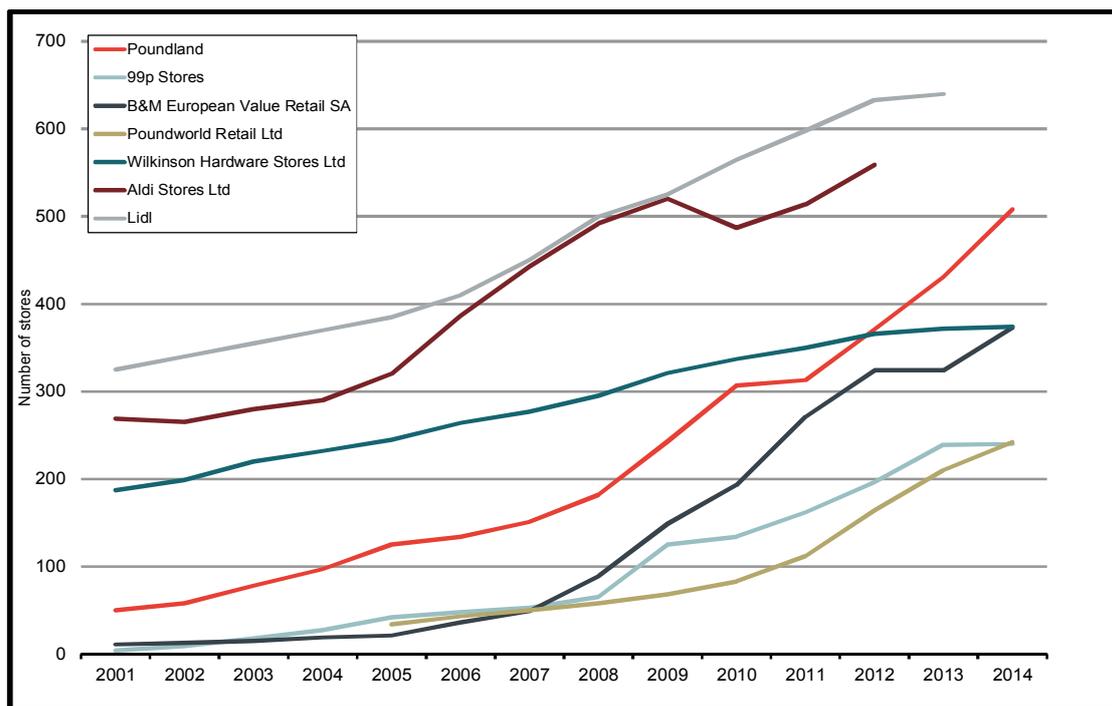
⁴⁰ See Annex 8 of Poundland’s Merger Notice to the CMA ([§])

⁴¹ Moreover, the discount market is universally expected to continue growing significantly in the coming years. PWC estimates that spend at VGM retailers alone will increase by more than £1bn between 2015 and 2017. Entry and expansion is more likely in growing markets because new entrants can gain customers without having to win them from existing market participants, as the CMA’s predecessor body noted in *Zipcar/Streetcar*. See December 2013 PWC report on value general merchandise, Annex 6 of Poundland’s Merger Notice to the CMA.

referred to in the Decision at all. This is addressed in in more detail at **Annex 1**, para. 7.

50. In fact, the evidence shows that the market in which the Parties operate displays all of the characteristics of a market in which new entry would defeat any attempt to degrade value post-merger:

a. *First*, there is an exceptionally strong recent history of entry and expansion in this market. The graphic below shows expansion by major national VGM chains in the past few years:⁴²



b. Second, competitors have announced extensive expansion plans for the next few years – which can only be consistent with a view that barriers to entry are low, and that they are confident of being able to source suitable sites to meet these ambitious targets.

Selected competitors	Announced expansion plans
Aldi	Aldi recently announced plans to expand by over a million square feet of floor space in 2015 which is the equivalent of around 60 stores which is “more than Sainsbury’s, Morrisons and Tesco put together”. ⁴³ This is part of a broader strategy of adding 400 additional stores by 2022. ⁴⁴

⁴² Source: Retail Week Knowledge Bank. Data unavailable for Poundstretcher and Home Bargains.

⁴³ The Guardian, “[Aldi outstrips supermarket rivals with store expansion](#)”, 22 March 2015.

⁴⁴ The Telegraph, “[Aldi to create 35,000 jobs by 2022](#)”, 10 November 2014.

Selected competitors	Announced expansion plans
B&M	<p>B&M Bargains expanded from an estate of 21 stores in 2005 to 271 stores at the end of 2012.⁴⁵ By November 2014, B&M Bargains had opened 400 stores and stated that it intended to have 450 stores by March 2015.⁴⁶ Further, B&M's prospectus stated that it has "<i>a strong pipeline of potential new B&M stores</i>" which are either exchanged or currently going through legal processes.⁴⁷</p> <p>Recently, B&M announced that it is further "<i>ramping up its store opening plans</i>" stating "<i>it plans to open 60 stores this year, up from the 45 previously guided [in its prospectus]</i>".⁴⁸ (emphasis added)</p>
Home Bargains	<p>Home Bargains currently operates over 320 stores throughout the UK. By the end of FY2014, it aims to be turning over £1 billion a year and have grown the number of its stores to 400, with plans to expand to over 700 stores across the UK within the next five years.⁴⁹</p>
Lidl	<p>In 2014, Lidl invested £220 million in expanding its presence in the UK to 620 stores.⁵⁰ Lidl has plans to continue its expansion and open 20 to 40 stores each year going forward in order to more than double its current number of stores in the UK to 1,500.⁵¹</p>
Poundstretcher	<p>As one of the largest discount retailers in the UK, Poundstretcher currently has 407 UK stores and plans to open another 50 stores in 2015. Longer term, Poundstretcher is looking to expand its estate to 600 stores by 2018.⁵²</p>
Poundworld	<p>This chain operates over 240 stores across the UK and is planning</p>

⁴⁵ B&M's prospectus is available at: http://www.bandmretail.com/~media/Files/B/BMStores/reports-and-presentations/financial-reports/BM_Prospectus.pdf.

⁴⁶ The Financial Times, "[Discounter B&M bags stores from shrinking retailers](#)", 18 November 2014.

⁴⁷ B&M's prospectus is available at: http://www.bandmretail.com/~media/Files/B/BMStores/reports-and-presentations/financial-reports/BM_Prospectus.pdf.

⁴⁸ Financial Times, "[B&M plans more stores in southeast England](#)", 28 May 2015.

⁴⁹ Retail Week, "[Home Bargains profits jump as it plots expansion in the south](#)", 14 October 2014 and <http://www.tjmorris.co.uk/>.

⁵⁰ The Guardian, "[Lidl launches £220m UK store expansion programme](#)", 27 June 2014.

⁵¹ This is Money.co.uk, "[LIDL BOSS: We're expanding from Lidl to large - soon we'll have an empire of 1,500 stores](#)", 27 August 2014.

⁵² The Retail Times, "[Poundstretcher reports 6% sales increase for 2014 and plans to expand](#)", 22 July 2014 and The Grocer, "[Poundstretcher plans to focus on retail parks and open Pet Hut store](#)", 7 December 2013.

Selected competitors	Announced expansion plans
	on opening between 40 and 50 new stores each year over the next three years. ⁵³ On 14 May 2015, Poundworld was acquired by private equity house, TPG. It was reported that “ <i>the US buyout group is planning to invest in expanding Poundworld’s store footprint across the UK</i> ”. ⁵⁴
Wilkos	Wilkos operates 372 stores across the country. In 2014, Wilkos announced plans to open 100 new stores by 2019. ⁵⁵

- c. *Third*, the evidence shows that barriers to entry are exceptionally low – for entry and expansion both by smaller scale operators (local independents and growing regional chains) and for national operators. In particular, as a result of:
- i. *High-levels of site availability.* Potential sites for competitor store openings are readily available across the UK.
 - ii. *Flexible leases and rapid set up times.* Landlords are typically willing to offer either leases or shorter-term licenses, facilitating set-up times as short as 10 days.
 - iii. *Extremely low set-up costs.* Limited investment is required in stock and equipment in order to enter and/or expand an offering in competition with the Parties. A typical high street competitor could be set up with investment of [£], or even less if using second hand fixtures (which are readily available) and investment in stock of a further [£].
 - iv. *Established supply channels.* It is very easy to obtain stock for both national chains and independents.
 - v. *Easily accessible workforce.* There is a wide pool of easily accessible workers for potential entrants into the discount sector. Equally, current market participants that wish to expand can turn to this group of potential employees. This is because most stores in this sector are run with local minimum wage staff and/or with staff that do not require a great deal of skills.
 - vi. *Low customer switching costs.* The market is characterised by a highly elastic group of customers, who are responsive to competitors’ relative value propositions and with little or no

⁵³ The Retail Bulletin, “[Poundworld secures £26 million in new funding to drive growth](#)”, 30 June 2014.

⁵⁴ The Financial Times, “[US buyout group TPG snaps up UK discounter Poundworld](#)”, 14 May 2015.

⁵⁵ Retail Week, “[Wilko plans 100 new stores as it posts flat full-year profits](#)”, 20 August 2014.

loyalty to particular brands. This means that new competitors do not face difficulties in attracting new customers in circumstances where they are able to present a compelling value proposition to consumers.

- d. *Finally*, “expansion” is yet easier for supermarkets who are repositioning their offer to target the Parties directly. Poundland has provided nearly 700 photographs taken by staff members as part of its benchmarking and competitive intelligence gathering showing the extent to which supermarkets have positioned their offer to compete directly with the Parties. This generally involves dedicating existing store space to products and offers competing as directly as possible with the Parties (including but certainly not limited to single price point offers); the cost of which is very low.

51. The Decision raises concerns apparently expressed by competitors in relation to available suitable retail space. With respect, these are not credible. This is the case for, at least, three reasons:

- a. *First*, they run directly contrary to plans announced to the market on their expansion plans. Critically, it is not just one competing operator which has announced expansion plans: almost all the national VGM chains plus Aldi and Lidl have announced significant expansion plans summarised in the table above. Each of these clearly considers (such that they can give confident predictions to the market) that they will be able to find suitable sites to expand in this way.

This was reiterated as recently as mid-May, when Poundworld’s founder commented (in the context of its acquisition by TPG) that: *“After 40 years of building this great company, I am very excited to have a partner like TPG to support Poundworld’s next phase of growth. They bring with them an extensive and global body of experience in retailing, which will help us to create the infrastructure and develop new capabilities to reach our very ambitious goals”*. It was further noted that: *“TPG said it will now invest new capital in Poundworld to fund an accelerated roll out of shops [sic] new distribution facilities”*.⁵⁶

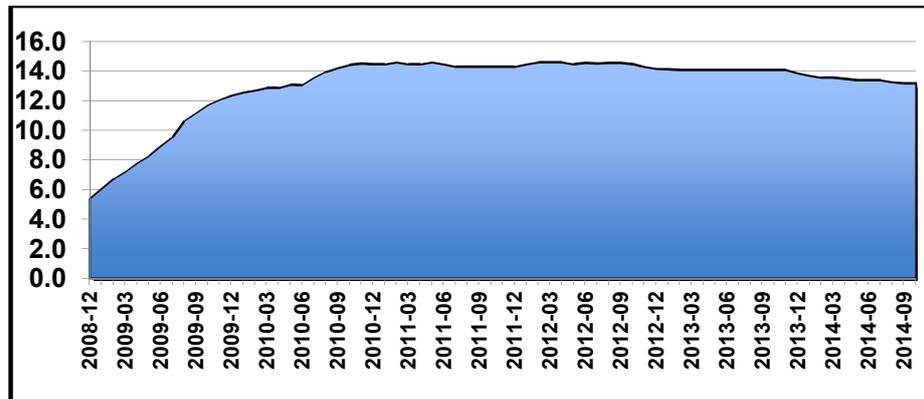
In addition, nationwide store openings demonstrate a widespread availability of retail property. Recent figures from Local Data Company (**LDC**) show that discount retailers *“are opening at the rate of more than five a week”* and *“have opened 1,367 units over the last five years, which represents growth of 48 per cent and takes the total to 4,217”*.⁵⁷ This data undermines any competitors’ concerns, which

⁵⁶ The Telegraph, [“Poundworld shopped to TPG in £150m takeover”](#), 14 May 2014.

⁵⁷ The Daily Mail, [“The march of budget stores continues: Chains including Aldi, Lidl and Poundland are overtaking the 'big four' supermarkets as they open at the rate of more than five a week”](#), 11 May 2015.

are clearly unfounded and should be approached with a high degree of scepticism.

- b. *Second*, this is inconsistent with retail vacancy data. The chart below shows the persistence of high levels of retail vacancies throughout the period between 2010 and 2014, with no material change currently expected.⁵⁸



- c. *Third*, as noted above, Poundland sourced for the CMA’s benefit detailed, real-time evidence on the availability of suitable vacant sites in every territory where it overlaps with a 99p Store. The evidence shows that there are multiple suitable sites in each overlap territory. This is addressed in more detail at **Annex 1**, para. 7.

9. [✂]

52. [✂]

53. [✂]

54. [✂]

55. [✂]

10. The efficiencies and customer benefits offered by the Transaction are very material

56. The Transaction will provide very material benefits to customers, of which the principal source is Poundland’s superior (and preferred) proposition to that of 99p Stores. The replacement of the 99p Stores proposition with the Poundland offer will therefore lead to:

- a. a significant enhancement of the customer proposition, in particular:

⁵⁸ Retail Gazette, “[High Street footfall suffers as vacancy rates remain above 10%](#)”, 13 February 2015, Helen Dickinson, British Retail Consortium Director General, said: “*Rising numbers of vacant shop units are still a cause for concern. We have welcomed the government’s pledge to review business rates on our recommendation (...)*”.

- i. more innovative product ranges than currently offered in 99p Stores, for example a recently introduced range of fitness products;
 - ii. more varied range and increased sales density to be rolled out across the 99p Stores, which customers prefer to a significant extent (as borne out by customer surveys of customers of both 99p Stores and Poundland);
 - iii. a more reliable supply and distribution network, resulting in greater stock availability;
 - iv. higher customer service levels, as a result of more investment in staff training; and
 - v. a superior in-store shopping experience for customers by investing more in start-up and refurbishment capex; and
 - b. dynamically, the enhanced proposition and wider footprint of the merged entity will create stronger competition to the UK's largest retailers such as Asda and Tesco – taking forward a competitive process that has already led to a significant increase in value for consumers.
57. Poundland's value proposition offers a real and credible alternative to other retailers. As the Parties have explained to the CMA, the ability to present a balanced value offer is the only way to retain (inherently disloyal) customers and compete effectively with other retailers. This is further supported by:
- a. Poundland's customer survey that show that customers view Poundland as having a superior offer across a number of different PQRS metrics;
 - b. [REDACTED]
 - c. [REDACTED]
58. The expansion of Poundland's superior retail proposition across existing 99p Stores' sites will enable the merged entity to derive sales from SPPs, VGMs, LADs and "*increase pressure on other retailers*"⁵⁹ to a greater extent than a 99p Store in that local area is presently able to do.
59. The customer benefits from the Transaction are timely. Poundland plans to begin converting 99p Stores' sites to Poundland stores [REDACTED]

⁵⁹ A third party comment from a LAD, Issues Letter, paragraph 286.

ANNEX 1

Detailed response to the UK Competition and Markets Authority's Phase I decision of 9 April 2015

1. Set out below are Poundland Group plc's (***Poundland***) detailed comments on certain aspects of the CMA's Phase I Decision. These relate to:
 - (a) the online customer survey undertaken for the purposes of the Transaction;
 - (b) the commercial evidence put forward by the Parties in relation to the competitive constraint imposed by national multiples and LADs;
 - (c) the performance concentration analysis (***PCA***) undertaken by Frontier Economics;
 - (d) the possibility for post-merger flexing of PQRS;
 - (e) the CMA's treatment of third party input;
 - (f) barriers to entry and expansion; and
 - (g) the CMA's assessment of relevant customer benefits.

2. Online customer survey

Relevant excerpt from the Decision: *"The CMA, therefore, is concerned that the online survey results are based on a sample of respondents that does not accurately represent the Parties' customer base and it does not consider that the inconsistent results between the online consumer survey and the validation telephone interviews are explained by the alleged overrepresentation of lower socio-economic groups in the validation telephone interviews."* (¶ 99)

Assessment: The concerns in relation to the online survey are based on (i) an observation that the response rate for the online survey was low, and that this could be indicative of 'non-response bias'; and (ii) a view that differences between the online and telephone surveys suggests that the former is not necessarily representative of Poundland's customer base (and therefore should be disregarded). The Parties note the following in response.

- The response-rate bias critique is speculative. The Decision does not put forward any evidence to suggest that non-respondents would have behaved in a systematically different manner to the 60,000 people that did respond to the

online survey. Moreover, the Decision does not provide any supporting evidence (e.g. literature) in support of a relationship between low response rates and bias. Furthermore, comments on the response rate wrongly assume that every customer is a unique customer: this is demonstrably wrong, as was noted to the CMA following the Issues Paper. Repeat customers – accounting for a large proportion of footfall in the survey period (and apparently included in the CMA’s denominator for calculation of the response rate) – should not be so counted.

- The Decision suggests that the CMA has a prior belief as to the socio-economic demographic breakdown of Poundland’s customer base (i.e. high C2DE and low ABC1), and is reluctant to place any weight on any of the online surveys that Poundland has undertaken in the past which suggest otherwise (even though these surveys were commissioned by Poundland for the purposes of better understanding their customers’ profiles and shopping behaviour). Not only is such a view at-odds with Poundland’s view of its own customer base (which is that it is now broadly representative of the UK population), but also industry research which shows that increasingly ABC1s are using VGMs – for example, the recent report by the Grocer/HIM!⁶⁰
- Poundland considers that a number of the surveys cited in the Decision as support for the unreliability of online surveys are in fact less robust than the survey undertaken for the purposes of the Transaction. For example, [X].
- The Decision fails to even mention the fact that (i) re-weighting the online results to bring them in line with the telephone demographics makes no difference to the results and (ii) the ratio of male to female respondents in the 99p Stores telephone sample is abnormally low.
- Third party expert evidence and academic research all agree on the advantages of the online method. The YouGov report, submitted to the CMA following the Issues Meeting, notes that online information gathering is more likely to produce objective data (“*a key advantage is the neutrality of the interview mode*”), and achieve much better response rates than, for example, telephone interviewing. Academic research from *Chang and Krosnick* found that respondents to computer surveys had less non-differentiation and were less susceptible to responses order effects (in other words, online surveys are more likely to extract a truer response).⁶¹
- Finally, the Parties’ choice of methodology is entirely in line with standard and accepted retail industry practice (e.g. Nielsen’s *Customer Confidence*

⁶⁰ The Grocer, “[Bargains driving younger AB demographic to variety discounters](#)”, 10 April 2015.

⁶¹ Chang, L. and Krosnick, J. “[Comparing oral interviewing with self-administered computerized questionnaires](#)”, *Public Opinion Quarterly*, Vol. 74, No. 1, Spring 2010, pp. 154–167.

3. Commercial evidence on the constraint from national multiples and LADs

Relevant excerpt from the Decision: “The CMA therefore considers that, whilst the benchmarking of the national multiples suggests they place some constraint on the Parties, the size of the price differential between SPP retailers and national multiples retailers does not suggest particularly close competition between them.” (¶ 174)

Assessment: The Decision appears to dismiss Poundland’s benchmarking evidence because of the existence of price differentials between Poundland and the (“Big Four”) supermarkets being benchmarked. This is mistaken.

- It is not clear why Poundland would benchmark the supermarkets – and invest significant resources into doing so on an ongoing basis – if it did not view them as imposing a material competitive constraint.
- Contrary to the CMA’s criticism, Poundland was benchmarking against and responding to competitive pressure from supermarkets in the years prior to the contemplation of the acquisition of 99p Stores. For example, [REDACTED].⁶²
- A price differential with supermarkets does not in any way dissipate the competitive constraint on Poundland (and 99p Stores). The Parties compete with supermarkets on all aspects of the PQRS metrics. In the past two years, supermarkets have made significant adjustments to their “P” offer such that they now offer a much more direct constraint on the Parties than was probably previously the case (as can be seen in the extensive competitive intelligence evidence that Poundland has provided). [REDACTED]
- Finally, Poundland is not aware of any other Decision where the CMA or its predecessor bodies has rejected such extensive price benchmarking evidence as being evidence of a significant competitive constraint.⁶³

Relevant excerpts from the Decision: “Furthermore, these [benchmarking] documents still suggest that the level of constraint imposed by national multiples and

⁶² [REDACTED]

⁶³ In *NBTY/Julian Graves* the Competition Commission relied extensively on the Parties benchmarking data, including in assessing the competitive set, for example the Competition Commission notes “H&B had been monitoring the prices of NSF [nuts, seeds and dried fruit] at the supermarkets (...) for many years.” (...) “We found that H&B monitored the prices of JG and some of the supermarkets, suggesting that it perceived them to be competitors” (paras. 5.7-5.8, 5.56).

LADs on Poundland is mainly limited to the national multiples’ ‘value offer’, which is still narrow in terms of the range of products it covers (see third party evidence described in paragraph 198 and 199), and less significant than the constraint imposed by VGMs. The products offered at 99p or £1 by national multiples account for 10% or less of the SKUs offered.” (¶ 194)

“The information submitted third parties [sic] indicates that the single price point offer of national multiples and LADs is limited to a few product categories and a small proportion of their total number of SKUs.” (¶ 198)

Assessment: These conclusions highlight a fundamental misunderstanding in the Decision in relation to the extent of the competitive constraint imposed by national multiples on the Parties. The observation that 10% of national multiples’ SKUs are sold for £1 or less does not support the Decision’s conclusions, given that national multiples stock substantially more SKUs than the Parties in absolute terms. For example, a typical Tesco Extra stocks in the region of 40,000 SKUs – 10% of which would represent approximately 30% more SKUs than the average Poundland store (which stocks c.3,000 SKUs). Of itself, this suggests a comparability in the offer of the national multiples.

The correct question in relation to the constraint from national multiples is whether or not they stock the *same or similar products* as the Parties, so that they are substitutes from the perspective of customers. Whether national multiples stock additional products over and above those of the Parties is largely irrelevant. Indeed, the CMA itself notes this in relation to VGMs: “*some VGMs offer more SKUs than SPP retailers and, therefore, even if, for instance, FMCGs account for a lower proportion of sales in some VGMs, that does not necessarily imply that the range of FMCGs they offer is significantly different from the FMCGs offered by SPP retailers*” (¶ 153). This logic applies equally to national multiples.

Finally, Poundland disagrees with the Decision that the “*value offer*” of the national multiples is “*narrow*”. For example, and as noted in the Phase I process, Asda currently sells in excess of 7,000 SKUs for £1 or less – – more than double the average number of SKUs (c. 3,000) that a typical Poundland store stocks.

4. Performance concentration analysis

Relevant excerpt from the Decision: “*The CMA found that there is insufficient variation in the margin, as a result of the Parties’ business model, to allow for the identification of a relationship between performance and concentration across local areas. Accordingly, it is not possible to draw any conclusions on local competition and market definition from the PCA.*” (¶ 116)

Relevant excerpt from the Decision: *“The CMA has set out a number of further concerns with the PCA in Annex I.”* (¶ 116)

Assessment: Poundland notes that the Decision cites a number of concerns with the specification of the PCA model submitted by the Parties’ advisors – yet despite correcting for these concerns the CMA was itself unable to find any relationship between concentration and margins.

The Decision expresses concerns about the possibility of the analysis suffering from endogeneity. This is because local areas with high margins may attract more competitors (and therefore there will be a correlation between high margins and high levels of competition). The Decision does not expand upon the theoretical concerns set out in the Issues Letter, despite the Parties submitting a standalone response to the concerns on this point following the Issues Meeting. In particular, and as noted in the Parties’ response to the Issues Letter:

- the Decision identifies that it is not convinced that barriers to entry are low. If so, it must drop the endogeneity concern (which is its only remaining criticism of the analysis);
- the Decision states that: *“In any case the CMA is not convinced that endogeneity would not be a problem even if barriers to entry were low since the mechanism causing the endogeneity that characteristics that lead to higher margins can easily be entered by other competitors, would be functioning well in this market”* (¶ 5 Annex I). It is not clear what this means – something which was raised in the Parties’ response to the Issues Letter; and
- finally, *“The CMA considers that endogeneity is still likely to be an issue even with barriers to entry in this market, since the Parties have entered a number of areas over a relatively short period and therefore their entry decisions are unlikely to be exogenous to the current characteristics of the market”* (¶ 5 Annex I). This is similarly unclear. The first half of this sentence contradicts the fundamental point that endogeneity results from firms entering in response to profitable opportunities (so that if there were barriers to entry the endogeneity problem would fall away). The second half suggests that barriers to entry are low because the Parties have entered a number of areas in a relatively short period.

5. Post-merger flexing of PQRS

Relevant excerpt from the Decision: *“...the CMA has not ruled out that any loss of competition may give Poundland the incentive to worsen its PQRS offering in some local areas.”* (¶ 263)

Assessment: There is no support for a post-merger flexing of PQRS given that local variations in competitive conditions already exist and do not give rise to an ability or incentive for Poundland to adapt its offering. There is no reason to suggest this would change post-merger.

- Poundland does not currently alter or flex its offer to exploit less competitive areas where it already has a “monopoly” position under the CMA’s Phase I market definition.⁶⁴
- [redacted] meaning that Poundland is clearly unable to achieve disproportionate margins in certain less competitive areas.
- Poundland has consistently operated the same simple £1 price point for 24 years [redacted].⁶⁵
- Based on Poundland’s business model, it is hard to think of any ‘flexing’ that would affect customers, yet not margins. Even a change that had a direct effect only on fixed costs (e.g. a store refurbishment) would be expected to attract more customers or make existing customers spend more, and so affect margins since variable costs would not increase to the same extent.
- Poundland brings a superior proposition to 99p Stores which customers prefer,⁶⁶ such that the only commercially sensible way for Poundland to increase sales at 99p Stores’ sites post-merger is to harmonise the offering by rolling out its existing range, offer and quality of service to those stores.
- Poundland has a history of continuous growth and store openings. There is no evidence to suggest that it would close sites and reduce the range of products available to consumers at a local level.⁶⁷ In fact, the opposite is true, [redacted]⁶⁸

⁶⁴ Similar analysis has been found to be persuasive evidence of no risk of an SLC in the CMA’s predecessors’ decisions (e.g. *Sports Direct International plc and JJB Sports plc*, Competition Commission, 16 March 2010 and *NBTY Europe Limited and Julian Graves Limited*, Competition Commission, 20 August 2009).

⁶⁵ Poundland also notes that the Decision does not consider whether the potential benefits of deviating from such a model post-merger would outweigh the costs of doing so, as the Competition Commission did in *Sports Direct/JJB Sports*, where it concluded that “*We found that the store transfers were unlikely to increase substantially Sports Direct’s incentives to flex any variables of local competition (price or non-price), given the relatively small change in the proportion of areas where Sports Direct faces local competition from JJB*” (para. 8.22).

⁶⁶ Exane BNP Paribas Research, Poundland, 12 February 2015, and Pragma Survey, 19 Dec. 2014.

⁶⁷ We also note the Competition Commission’s observation in *HMV/Ottakar* that even if the merger led to closures in a very small number of overlapping areas this would not lead to an SLC because there would only be a modest impact on the combined range of products available to consumers in that area.

⁶⁸ [redacted]

6. Third party input

Assessment: The Decision places great weight on evidence provided by third parties, without applying the same level of scrutiny as applied to the evidence presented by the merging Parties. Examples include the following.

- The Decision concludes that evidence submitted by a third party assessing the impact of Poundland opening on its revenue in five local areas is “*indicative of a significant effect of the entry of an SPP retailer on Poundworld’s revenue*” (¶ 124). However, when considering evidence submitted by Poundland [⌘], the CMA merely notes that “*the entry of VGMs may have a significant effect on Poundland’s sales*”. Moreover, the CMA is reluctant to place any weight on the [⌘] entry impact analysis undertaken by Poundland, on the basis that the examples were selected by Poundland and therefore “*may be affected by selection bias*” (¶ 186) – yet no such concern is raised in relation to the analysis put forward by Poundworld.
- The Decision places weight on a survey submitted by a third party (“*The CMA notes that the respondents to a consumer exit survey provided by a third party had a nearly identical socio-economic split to the respondents to the telephone validation survey in this case*” – ¶ 97), yet it does not appear to critically evaluate the robustness of this survey with respect to the same criteria that it uses to dismiss the Parties’ online survey. For example, no information is provided on the sample size, the response rate, when the survey was undertaken or underlying sampling methodology.
- As noted below, the Decision appears to place significant weight on highly generalised remarks by third parties relating to a lack of appropriate available vacant sites. This is despite it being entirely at odds with a (i) large body of evidence relating to site availability in every area of overlap between the Parties; (ii) the Parties’ and rivals’ recent expansion and (iii) the future growth plans of VGMs and the discount sector.
- While the Decision is willing to note the concerns of an independent SPP retailer in relation to the Transaction, at the same time it takes the view that it “*does not consider that local SPP retailers are particularly close competitors to the Parties relative to the closeness of competition faced from SPP retailers, and from VGMs*” (¶ 218). The same is true in relation to a third party comment made by a LAD.
- Finally, a number of third party comments are supportive of the customer benefits and efficiencies that the Parties consider the Transaction will give rise to (e.g. ¶ 329). While the CMA uses these comments to suggest that barriers to entry and expansion are high, it fails to place the same weight upon them (or even mention them) in the context of the Parties’ submissions on customer

benefits and efficiencies.

7. Barriers to entry and expansion

Relevant excerpt from the Decision: “Several retailers (including VGMs and local SPP retailers) told the CMA that there is not an abundance of appealing empty retail spaces across the country, with several retailers stating the importance of finding the right site in the right location.” (¶ 324)

Assessment: Any concerns relating to the extent of suitable site availability are unfounded.

- All of the national VGM operators have expanded significantly in recent years – which is wholly inconsistent with site availability being a constraint on expansion.
- Poundland provided the CMA with extensive, **real-time** evidence on the availability of suitable sites in every territory in which it overlaps with a 99p Store at one mile. [§]. Poundland considers that such granular evidence should be considered far more robust than generalised comments from third parties as to the level of site availability.
- This information is not mentioned at any point in the Decision, and there is no evidence that it was properly considered by the CMA at Phase I.
- Finally, macro-level data clearly shows that vacancy rates across the UK are high, consistent with a plethora of available sites that would be suitable for a potential entrant.

Relevant excerpt from the Decision: “Without specific evidence of entry by competitors into specific local areas, the CMA considers that entry will not be timely or likely in order to prevent the realistic prospect of an SLC.” (¶ 338)

Assessment: The CMA’s Merger Assessment Guidelines (the **Guidelines**) require – in order for barriers to entry/expansion to constrain a post-merger entity such that there is no reasonable prospect of an SLC – entry/expansion be (i) timely; (ii) likely and (iii) sufficient.

The Decision appears to suggest that the CMA requires evidence of impending entry by competitors into specific local areas in order to conclude that entry would be

timely. Respectfully, it is incorrect and inappropriate, for the CMA to insist that it must in this case find examples of actual local entry in order to conclude that no SLC arises.⁶⁹

The correct test is whether, in the event of a post-merger deterioration of the Parties' offering (i.e. an SLC), entry or expansion would occur to such an extent that this would be likely to defeat any attempt by a Poundland store to degrade its value offer. The Guidelines clearly set out the relevant consideration, i.e. "*whether entry or expansion is likely to take place if the entrant expects post-entry prices to be at pre-merger levels*", because "*...if prices were to rise post-merger, only an entrant (or an incumbent) who would find it profitable to operate (or add capacity) in the market at pre-merger prices [or quality of value offer] is likely to enter (or expand) and return prices to pre-merger levels.*

Moreover, the Guidelines note that in some instances, the mere threat of entry or expansion is sufficient to constrain to the merged entity.

Based on the characteristics of this market,⁷⁰ and as evidenced by the Parties, the test is clearly met:

- Aggressive, concrete, expansion plans announced by the major VGMs and Poundworld show an **expectation of margins at the current levels** (at best), and given that these plans have been publicly announced (including in prospectuses), this further entry and expansion is indeed highly **likely**.
- Real-world examples show that entry and expansion can – and does – take place in a **timely** manner: two entirely new entrants, Sam 99p and Max 99p, successfully entered the market recently, and continue to expand quickly. Max 99p opened its first store in December 2013 ("*within less than two years*", the threshold set out in the Guidelines and previous merger decisions) and opened another five stores within 18 months.
- There are **no delays** in entry as a result of planning, legal or regulatory barriers (which do not exist) and, as explained above, access to suitable retail property is not, in practice, a barrier to prompt entry/expansion.
- Set-up costs are extremely low (Poundland's typical net store set up costs are £[£]), which means costs can be recouped in a very short time ([£] months

⁶⁹ See, the line of case law including *acquisition by Somerfield plc of 114 Safeway stores from WM Morrison Supermarkets*, 8 April 2005 and ME/3777/08, *Anticipated acquisition by Co-operative Group Limited of Somerfield Limited*, 17 November 2008.

⁷⁰ See the Competition Commission's *Safeway/Asda/Morrison/Sainsbury/Tesco report*, 2003, ¶ 5.340.

for Poundland and [REDACTED] months for a competitor like B&M).⁷¹

- Survey data clearly shows the **sufficiency** of the constraint that our competitors would provide [REDACTED].⁷²

Evidence: *Finally*, the Parties provided the CMA at Phase I with detailed, extensive data and other evidence that show that entry and expansion would be (more than) sufficient within the meaning of ¶ 5.8.12 of the Guidelines. Based on the evidence presented, the Decision should have been able to conclude (in accordance with the Guidelines) that there is an absence of barriers to entry/expansion that precludes the finding of an SLC.

The Parties' addressed *every* relevant evidential point mentioned in the Guidelines, including: (i) a history of past entry and expansion (as evidenced by data on our competitors' rapid growth and expansion); (ii) evidence of planned entry (i.e. publicly announced expansion plans); (iii) direct evidence on (the absence of) barriers to entry ([REDACTED]); (iv) entry at sufficient scale; (v) the short period of time to recover entry costs ([REDACTED]); (vi) the absence of long term contracts in this market (standard property leases, are typically for 10 years and contain break-clauses); (vii) no substantial costs to exiting the market; (viii) no notable effects associated with technological change and innovation or supply-side reactions; and (ix) an expectation of margins at the current levels which have in no way inhibited the plans for entry that have been announced by the major VGMs.

Relevant excerpt from the Decision: *“Many SPP or VGMs are already active in a number of the Parties’ overlap areas where the CMA has found that the Merger may result in an SLC”* (¶ 339)

⁷¹ See Poundland's Note on barriers to entry and expansion, 16 March 2015.

⁷² See the Merger Notice, ¶ 128 *et seq.*

Assessment: This is entirely inconsistent with data that was supplied to the CMA by the Parties. A proper analysis of the 92 areas in which the CMA has identified concerns shows that multiple other VGMs or SPP retailers are not present in virtually all of the local areas in which the CMA has identified as giving rise to concerns. For example, in close to all of the 92 areas in which the CMA has identified competition concerns, two or more competing national VGM operators are not already present within one mile. Further, in more than 80% of the 92 areas, three or more competing national VGMs or Poundworld are not already present.

This means that in the vast majority of local areas where the Decision identifies an SLC, there are at least three national competitors in the same sector who would be capable of quickly entering those areas and competing vigorously if the merged entity attempted any substantial degradation of its consumer offer.

8. Relevant customer benefits (RCB) exception

Relevant excerpts from the Decision: *“In this case, the CMA considers that the Parties have not provided compelling evidence that the RCBs claimed by the Parties will accrue to customers and that they are merger specific (ie that absent the Merger customers would not benefit from the claimed efficiencies)”* (¶ 354)

“Furthermore, the RCBs claimed by the Parties are very unlikely to constitute an RCB for the purposes of the Act.” (¶ 355)

Assessment: The Decision considers that the Parties have not provided *“compelling”* evidence showing that the Parties’ customers will benefit from the Transaction, and that the proposed customer benefits are merger specific, despite a body of evidence being provided during Phase I which clearly demonstrates both customer benefits – through the improvement of the 99p Stores’ proposition – and improvements to rivalry.

Irrespective of the benefits and efficiencies outlined in this submission, the Decision, in any event, does not undertake the appropriate *“weighing up”* of the Parties’ proposed customer benefits against its finding of an SLC – as the Guidelines suggest it should do. Rather, the CMA simply concludes in (e.g. ¶ 365) that there cannot be any customer benefits *because* the Transaction gives rise to an SLC. Yet this is inconsistent with the Decision’s own logic, where in ¶ 349 the CMA itself notes that the relevant test is whether the *“relevant customer benefits...outweigh the SLC concerned”*. Similarly, the CMA assumes that the enhanced scale of the merged

entity is irrelevant, because the Transaction gives rise to an SLC in certain areas. This is misguided. The CMA should balance the finding of an SLC in these local areas with the benefits arising due to the enlarged scale of the merged entity – and only after undertaking that exercise can it conclude that the RCBs are insufficient to outweigh the SLC.

9. Conclusion

The Parties' evidence is robust and strongly supportive of a lack of competitive concerns; it must therefore follow that there is no risk of an SLC:

- (a) the data shows that Poundland competes with a wide range of retailers, including, in particular, single price and multi-price VGMs and supermarkets;
- (b) Poundland is additionally restrained by strong (probably asymmetric) competition from a range of other retailers along the High Street;
- (c) lack of material variation in margins clearly supports the position that there is no ability or incentive for Poundland to adapt its offering locally there is no ability or incentive for Poundland to adapt its offering locally post-merger;
- (d) any local flexing of PQRS would also be entirely inconsistent with Poundland's commercial strategy and behaviour to date; there is no evidence that the merger will change its incentives in any way; and
- (e) finally, in the vast majority of local areas where the Decision identifies an SLC, at least three national competitors in the same sector could quickly enter those areas and compete vigorously if the merged entity attempted any substantial degradation of its consumer offer.

ANNEX 2

Supplemental information requested in the UK Competition and Markets Authority's First Day Letter

Set out below is additional information requested in the CMA's First Day Letter to Poundland, which has not been addressed in the main part of the submission.

1. Background

- 1.1 Poundland was founded in 1990. Poundland is a general merchandise retailer, operating 533 stores across the UK. Poundland listed on the London Stock Exchange in March 2014. Poundland also has small scale operations in Ireland and Spain.
- 1.2 The average Poundland store carries approximately 3,000 core range SKUs including over 1,000 third-party branded products from popular brand names such as Cadbury, Mars, Heinz, Nestle and Colgate. Poundland was a significant innovator in this respect, being the first chain of its kind to develop close links with big brands and make their products a core part of its value proposition.
- 1.3 Poundland has generated strong revenue and underlying EBITDA growth over each of the last three financial years (although its recent business performance has been challenged by headwinds from competition from, in particular, major supermarkets). The general consistency of financial performance is demonstrated by consistent margins across stores and through the strong customer base built up over the years, with the average Poundland store serving over 10,000 customers per week.⁷³

2. Information about the Transaction

- 2.1 In May 2014, Poundland was approached by the owners of 99p Stores (the Lalani family and a small group of other shareholders) to assess its interest in acquiring the 99p Stores business. [REDACTED].⁷⁴
- 2.2 For Poundland, the rationale for the Transaction is to expand its presence (by 246 stores) quickly in a fast-growing and dynamic marketplace. This will allow Poundland to compete across a wider range of locations with its many competitors. Poundland believes that it will allow it compete more effectively with the large retailers it faces on High Streets across the country.
- 2.3 A more detailed overview of the anticipated efficiencies and customer benefits offered by the Transaction are set out above at paragraphs 56 to 59.

⁷³ For an overview of Poundland's Board of Directors, see <http://www.poundland.co.uk/corporate-information/directors/>. Note that a significant number of Poundland's directors have gained significant experience working for the Big Four, other supermarkets and retailers.

⁷⁴ There were no pre-merger links between the Parties.

ANNEX 3

Selected supermarket evidence gathered by Poundland

1. Asda

[images removed to reduce file size]

2. Tesco

3. Morrisons

4. Other supermarkets and convenience stores