

Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol filling stations from Co-operative Group Limited

ME/6466-14

The CMA's decision on reference under 33(1) given on 28 November 2014. Full text of the decision published on 22 December 2014.

Please note that [X] or [] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

SUMMARY

1. **Asda Stores Limited** (Asda) is acquiring five grocery stores and three petrol filling stations with attached kiosks (the Target) from the **Co-operative Group Limited** (Co-op). They are based in Bilborough (Nottinghamshire), Alsager (Cheshire East), Marple (Greater Manchester), Tranent (East Lothian) and Pyle (Bridgend). Asda and Co-op together are hereinafter referred to as 'the Parties' and the anticipated acquisition is referred to as 'the Merger'.
2. The Competition and Markets Authority (CMA) considers that Asda and the Target will cease to be distinct and that the share of supply test is satisfied on the basis of certain grocery retailing in the North West, Great Manchester and the Bridgend local authority area. Accordingly, the CMA believes arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. The CMA assessed the Merger against the prevailing conditions of competition.
3. The Parties overlap in the retail supply of fuel and groceries in five local areas in the UK.
4. The CMA considered whether the Merger would give rise to unilateral horizontal effects in relation to loss of existing competition and loss of potential competition. In relation to loss of existing competition, the CMA found that the Merger will not result in a realistic prospect of a substantial lessening of competition (SLC) in the retail supply of:

- (a) fuel on a national basis, due to the limited number of petrol filling stations being acquired and the Merger resulting in a negligible increase in Asda's national market share
 - (b) fuel on a local basis, due to there being sufficient competitive constraints in each of the local areas of Bilborough, Tranent and Pyle
 - (c) groceries on a national basis, due to the limited number of grocery stores being acquired and the Merger resulting in a negligible increase in Asda's national market share
 - (d) groceries on a local basis, due to there being sufficient competitive constraints in each of the local areas of concern in this case
5. [REDACTED] the CMA considered whether the Merger may give rise to a loss of potential competition. The CMA found that [REDACTED] the Merger will not result in a realistic prospect of a SLC as the proposed store in [REDACTED] would be subject to sufficient competitive constraints from other fascia in the local area.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the Act).

ASSESSMENT

Parties

7. **Asda** is a large national grocery retailer, which is also active in the retail supply of fuel in the UK.¹ Asda operates more than 500 stores in the UK and is a wholly owned subsidiary of the US retailer Wal-Mart Stores Inc.
8. The **Co-op** is a large co-operative society which is active in the provision of a range of services, including grocery retailing and the retail supply of fuel in the UK.²
9. The **Target** comprises of five grocery stores with three petrol filling stations and attached kiosks which are owned and operated by the Co-op. The five sites are located at Bilborough (Nottinghamshire), Alsager (Cheshire East), Marple (Greater Manchester), Tranent (East Lothian) and Pyle (Bridgend). The UK turnover of the Target was approximately [REDACTED] for the financial year ended 2013.

1 Asda also sells other products and services, including clothing through its 'George' range, general household items, financial products, travel agency services, mobile phone services and in-store pharmacy services.

2 Co-op's diverse range of activities also include insurance, funeral services and legal services.

Transaction

10. On 30 May 2014, the Parties entered into a sale and purchase agreement for Asda to acquire the Target. The Merger is valued at [✂]

Jurisdiction

11. As a result of the Merger, Asda and the Target will cease to be distinct. The CMA considers that the Target is sufficient to constitute an 'enterprise' for the purposes of section 23 of the Act.
12. The Parties overlap in the supply of groceries in the UK. Asda submitted that its share of supply³ arising from the Merger will be in excess of 25% in (i) the North West region for one-stop stores and for one-stop stores and mid-sized stores; (ii) Greater Manchester for one-stop stores and for one-stop stores and mid-sized stores; and (iii) Bridgend local authority area for one-stop stores and for one-stop stores and mid-sized stores. The CMA considers that, individually and collectively, these areas account for a substantial part of the UK.
13. As such, the CMA considers that the share of supply test in section 23 of the Act is satisfied. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
14. The initial period for consideration of the Merger under section 34ZA of the Act commenced on 6 October 2014 and therefore the statutory deadline for the decision is 28 November 2014.

Product frame of reference

15. The Parties are both active in the retail supply of fuel and groceries. Each is discussed in turn below.

Retail supply of fuel

16. The CMA notes that the Office of Fair Trading (OFT) has considered the retail supply of fuel in a number of recent cases⁴ where it considered competition for the following separately:

³ Based on net sales floor-space.

⁴ See, for example, ME/5139/11: proposed acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Ltd and their affiliates, OFT decision dated 20 October

- (a) The supply of fuels through motorway sites.
 - (b) The supply of auto LPG.⁵
 - (c) The retail supply of petrol and diesel (off-motorway).
17. The CMA has not received any information to suggest that it should depart from these previous findings.
18. The CMA notes that the three petrol filling stations (PFS) at Bilborough, Tranent and Pyle supply petrol and diesel, but not auto-LPG, and are all located off-motorway. Accordingly, the CMA considers that the relevant product market is the retail supply of petrol and diesel (off-motorway).

Grocery retailing

19. Asda submitted that in previous cases the OFT and Competition Commission (CC) had classified grocery stores according to their size and had determined that competitive constraints faced by such stores are asymmetric as follows:
- (a) One-stop stores (OSS): those with a net sales area of more than 1,400 square metres (sqm). OSS are only constrained by other OSS.
 - (b) Mid-sized stores (MSS): those with a net sales area of less than 1,400 sqm but more than 280 sqm. MSS are constrained by other MSS and OSS.
 - (c) Convenience store:⁶ those with net sales area of less than 280 sqm. Convenience stores are constrained by other convenience stores, MSS and OSS.
20. The CMA has not received any information to suggest that it should depart from the OFT and CC's previous decisional practice by considering a different segmentation by stores to that which is set out above in paragraph 19.
21. Asda noted that the OFT had left open whether kiosks fall within the same grocery retailing frame of reference as OSS, MSS and convenience stores.⁷ Further, Asda submitted that the kiosks at Bilborough, Tranent and Pyle did not form part of the groceries market as their smaller size, limited range of

2011 (Rontec/Total) and ME/5191/11: completed acquisition by Shell UK Limited of 253 petrol stations from Rontec Investments LLP, OFT decision dated 3 February 2012 (Shell/Rontec).

⁵ Since the set of competitors is not the same as for the supply of fuels.

⁶ The Merger does not include the sale of any convenience stores.

⁷ ME/5407/12: Proposed acquisition by J Sainsbury plc of 18 petrol stations from Rontec Investments LLP, OFT decision dated 7 June 2012 (Sainsbury/Rontec).

products and different shopping mission (ie just a point of sale for the payment of fuel) mean they are markedly different to convenience stores and are simply part of the PFS offering.

22. The CMA notes that in Sainsbury/Rontec, the OFT, without concluding on market definition, took into account the competition between kiosks as well as the asymmetric constraint convenience stores, MSS and OSS exerted on kiosks.⁸ In the present case, the CMA has not received any information to suggest that it should depart from this approach.

Geographic frame of reference

Retail supply of fuel

23. The OFT has consistently considered competition to take place mainly at the local level. For the purposes of the assessment of the local competitive effects arising from the Merger, in its most recent cases relating to the retail supply of fuel, the OFT has adopted a local geographic market definition on the basis of a ten minute drive-time isochrone for urban areas and a 20 minute drive-time isochrone for rural areas.⁹ The CMA has not received any information in the present case to suggest that it should depart from this approach.

Grocery retailing

24. Asda referred to previous OFT decisions where it was considered that there are both national¹⁰ and local dimensions of competition in grocery retailing. The CMA notes that previous OFT decisions and the CC's Groceries Report¹¹ identified that the relevant geographic scope is essentially local but that a national dimension of competition exists.
25. Asda submitted that for the local dimension of competition, the OFT has adopted the following geographical scope:
- (a) For OSS: a ten minute drive-time isochrone in urban areas and a 15 minute drive-time isochrone in rural areas.
 - (b) For MSS: a five minute drive-time isochrone in urban areas and a ten minute drive-time isochrone in rural areas. MSS are also constrained by

⁸ Sainsbury/Rontec.

⁹ This applies to non-motorway sites. See cases [Rontec/Total](#), [Shell/Rontec](#) and [Sainsbury/Rontec](#) and ME/5452-12: Completed acquisition by the [Midcounties Co-operative Limited of Tuffin Investments Ltd](#) dated 18 October 2012 (Midcounties/Tuffin).

¹⁰ Key decisions affecting the operation of stores and other aspects of their business (such as supplier relationships and general promotional activity) are taken centrally on a national basis.

¹¹ Competition Commission: The supply of groceries in the UK market investigation (2008).

OSS within a ten minute drive-time isochrone in urban areas or a 15 minute drive-time isochrone in rural areas.

- (c) For convenience stores: a five minute drive-time isochrone and one mile radius in all areas. Convenience stores are also constrained by OSS within a ten minute drive-time isochrone in urban areas or 15 minute drive-time isochrone in rural areas and by MSS within a five minute drive-time isochrone in urban areas or a ten minute drive-time isochrone in rural areas.
26. The CMA notes that, when considering kiosks as a separate category of grocery retail, the OFT has adopted the same geographic scope as for convenience stores.¹²
27. The CMA has not received any information in the present case to suggest that it should depart from the geographic scope set out in previous decisions. For the purposes of the assessment of the local competitive effects arising from the Merger, the CMA has therefore used the geographic scope set out in paragraphs 25 and 26. The CMA notes, however, that these geographic boundaries are merely a starting point for analysis and other evidence, such as customer surveys, may carry significant weight in its assessment.¹³

Conclusion on frame of reference

28. In line with previous decisional practice, the CMA considers that the relevant frame of reference for assessing the Merger is:
- (a) the retail supply of petrol and diesel (off-motorway) at a national level and on the basis of the local geographical scope as set out in paragraph 19 above
- (b) the retail supply of groceries at a national level and on the basis of the local geographic scope as set out in paragraphs 25 and 26 above

Counterfactual

29. The CMA considers the effect of a merger compared to the most competitive counterfactual providing always that it considers that situation to be a realistic prospect. In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the

¹² [J Sainsbury/Rontec](#).

¹³ See [Merger Assessment Guidelines](#) (joint publication of the Competition Commission and OFT, September 2010), paragraph 5.2.2. These have been adopted by the CMA, see Annex D to CMA2 [Mergers: Guidance on the CMA's Jurisdiction and Procedure](#), January 2014.

merger.¹⁴ The CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.¹⁵

30. Asda submitted that the current competitive situation is the appropriate counterfactual against which the Merger should be analysed.
31. As set out below (paragraphs 110 to 127), the CMA considered the proposed opening of an Asda [X] in the near future, which may overlap with the [X]. The CMA has in this decision assessed this in its competitive assessment as a loss of potential competition rather than as a different counterfactual.¹⁶
32. The CMA considers that no other evidence has been presented to suggest that a counterfactual other than the prevailing conditions of competition is appropriate and has therefore assessed the Merger against this counterfactual.

Competitive assessment

33. The CMA considers below whether the Merger has a realistic prospect of resulting in a SLC through horizontal unilateral effects with respect to the retail supply of fuel and groceries at a national or local level.
34. The Target consists of five Co-op grocery stores with three petrol filling stations and attached kiosks:
 - (a) OSS, including PFS and attached kiosk, in Bilborough, Nottinghamshire
 - (b) MSS in Alsager, Cheshire East
 - (c) OSS in Marple, Greater Manchester
 - (d) MSS, including PFS and attached kiosk, in Tranent, East Lothian
 - (e) OSS, including PFS and attached kiosk, in Pyle, Bridgend

¹⁴ See [Merger Assessment Guidelines](#), paragraph 4.3.5.

¹⁵ See [Merger Assessment Guidelines](#), paragraphs 4.3.1 - 4.3.5.

¹⁶ See [Merger Assessment Guidelines](#), paragraph 4.3.19.

35. The CMA notes that these five local areas are urban in accordance with the definitions followed in the OFT case of Co-op Group Limited (CGL)/Somerfield.¹⁷

National retail supply of fuel

36. The CMA notes that the Parties overlap in the supply of petrol and diesel (off-motorway) on a national basis. However, the CMA does not have any competition concerns on the basis of the very limited number of PFS being acquired and the Merger resulting in a negligible increase in Asda's national market share¹⁸ [X]

Local retail supply of fuel

37. Asda submitted that the local overlap methodology applied in previous cases¹⁹ considered by the OFT should be adopted in the competitive analysis of this Merger. Accordingly, Asda have:
- (a) identified whether the target PFS are located in urban or rural areas
 - (b) centred isochrones on the target PFS and Asda PFS to capture constraints from rival PFS using the geographic market definition set out above in paragraph 23
 - (c) considered whether:
 - (i) either party identifies the other party as a main marker²⁰
 - (ii) either party identifies a site of the other party as one of only three or fewer marker sites
 - (iii) either party identifies the other party's brand as one of three or fewer brands on their list of marker sites
 - (d) considered whether either party is the other's closest marker with respect to drive times

¹⁷ That is, urban areas are population areas of at least 10,000 people and all other areas are rural: ME/3777/08: [anticipated acquisition by Co-operative Group Limited of Somerfield Limited](#), OFT decision dated 20 October 2008 (CGL/Somerfield)

¹⁸ Asda submitted that the increase in its national market share (on the basis of either number of forecourts or sales) following the Merger is so negligible so as not to be measurable.

¹⁹ For example, Asda cited [Rontec/Total](#) and [J.Sainsbury/Rontec](#).

²⁰ A 'marker' is a local competitor PFS site whose prices are regularly monitored.

38. The CMA notes that the methodology in (c) and (d) can only be applied in part as:
- (a) [REDACTED]²¹
 - (b) [REDACTED]
39. On the basis of the limited number of target PFS being acquired, the CMA does not consider it necessary in the analysis of this Merger to follow a strict filtering approach as adopted in some of the previous OFT cases. However, the CMA notes that it will take into account many of the factors outlined above in its case by case analysis of each local area. The CMA considers each local area in turn below.

Bilborough

40. The CMA notes that there is an overlap between the Co-op Target PFS and an Asda PFS located at Asda's Hyson Green OSS within the geographic scope set out in paragraph 23. The distance and drive-time between the PFS are approximately 2.6 miles and eight minutes respectively.
41. Evidence submitted by Asda indicated that, post-Merger, there will be ten and nine fascia in the isochrones centred on the Co-op Target PFS and overlap Asda PFS respectively. Further, several of these fascia – which are located geographically closer to the Co-op Target PFS – offer the same or better fuel options²² and opening hours.
42. The Co-op provided information that [REDACTED]
43. The CMA considers that, for the reasons outlined above, the acquisition of the Co-op Target PFS in Bilborough will not give rise to a realistic prospect of a SLC.

Tranent and Pyle

44. The CMA notes that there is no overlap within the geographic scope set out in paragraph 23 between the Co-op Target PFS and any Asda PFS in Tranent or Pyle. Accordingly, there is no reduction in fascia arising from the Merger.
45. The Co-op provided information that [REDACTED]. Several of these fascia offer the same or better fuel options and opening hours.

²¹ Asda submitted that [REDACTED]

²² For example, some of these PFS also offer LPG.

46. In relation to Pyle, the Co-op has confirmed that [✂].
47. The CMA considers that, for the reasons outlined above, the acquisition of the Co-op Target PFS in Tranent or Pyle will not give rise to a realistic prospect of a SLC.

Third party comments

48. Most third parties did not express any concerns about the acquisition of the Co-op Target PFS in Bilborough, Tranent and Pyle.
49. One third party did indicate that the Parties were close competitors in Bilborough and Tranent based on close proximity. However, the CMA notes, as set out above, that there are numerous other fascia PFS closer in proximity (several with the same or better fuel options and opening hours) and that this same third party considers its own PFS acts as a significant competitive constraint on the Asda PFS in these local areas.

Conclusion on the retail supply of fuel

50. In light of the above, the CMA does not have any competition concerns in relation to the retail supply of fuel on either a national or local level.

National grocery retailing

51. The Parties overlap in grocery retail on a national basis. The CMA does not have any competition concerns on the basis that only a very limited number of grocery stores are being acquired and the Merger results in a negligible increase in Asda's national market shares.

Local grocery retailing

52. Asda submitted that the local overlap methodology applied in previous cases considered by the OFT should be adopted in the competitive analysis of this Merger. Accordingly, Asda have:
 - (a) identified whether the target stores are located in urban or rural areas
 - (b) centred isochrones on the target store to capture constraints from other stores of the same type and other relevant store types using the geographic market definition set out above in paragraph 25
 - (c) repeated step (b), but with the isochrones centred on any relevant Asda store identified within step (b)

- (d) recentred the isochrones on all census output areas within the geographic market of the target store in question (ie within its isochrone) in order to measure the proportion of the population who may experience a loss of choice as a result of the Merger
53. On the basis of the limited number of target stores being acquired, the CMA does not consider it necessary in the analysis of this Merger to follow a strict filtering approach as adopted in some of the previous OFT cases. However, the CMA notes that it will take into account many of the factors outlined above in its case by case analysis of each local area.
54. Asda carried out customer surveys at the Co-op Target stores and relevant Asda stores in the Marple, Tranent and Pyle and surrounding areas. The CMA has considered these surveys in carrying out its competition assessment, including through the use of diversion ratios (as shown by these surveys) and estimates of illustrative price rises (IPRs) (see below).
55. The CMA has assessed whether the Merger may lead to potential unilateral horizontal effects in relation to:
- (a) loss of existing competition for each of the five Co-op Target stores in Bilborough, Alsager, Marple, Tranent and Pyle
- (b) loss of potential competition for [REDACTED]
56. The CMA follows previous OFT decisional practice²³ in considering local fascia counts, diversion ratios and asymmetric IPRs (where available) and other factors specific to the local conditions of each area.

Illustrative price rises (IPRs)

57. Diversion ratio estimates and gross margin data can be combined to estimate IPRs anticipated as a consequence of the internalisation of pre-merger competitive constraints. It is important to note that these are not 'predicted' price increases, but simply a relative measure of potential consumer harm arising from the reduction in competitive pressure. There are alternative IPR formulae depending on (a) whether demand is assumed to be linear or isoelastic, and (b) whether the diversion ratios, prices and marginal costs of the parties are assumed to be symmetric.

²³ In particular, ME/4551/10: [anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited](#), OFT decision dated 23 September 2010 (Asda/Netto) and [CGL/Somerfield, Midcounties/Tuffin](#).

58. The OFT has used both symmetric and asymmetric IPRs in previous decisional practice.²⁴ The CMA considers that symmetric IPRs are particularly relevant where there are no significant asymmetries between the merging parties (in terms of diversion ratios, variable margins and prices). The CMA considers that the diversions between the Co-op Target stores and the relevant Asda stores (as shown by the customer surveys conducted by Asda) are significantly asymmetric and, therefore, it is appropriate to place more weight on asymmetric IPR estimates in the assessment of this Merger.
59. Consistent with previous decisional practice, the CMA has estimated IPRs assuming isoelastic demand.²⁵ As the diversion from Asda stores to the Co-op Target stores is low, estimated IPRs for Asda are similarly low and do not cause potential concerns.
60. The CMA noted that the IPRs estimated by Asda did not take into account the competitive constraint that, post-Merger, other non-merging Co-op stores would impose on the Co-op Target stores. In other words, given the Merger involves individual Co-op stores, the Merger would not only lead to a loss of competitive constraints between the Co-op Target stores and any overlapping Asda stores, but also to an increase in competition between the Co-op Target stores and any overlapping Co-op stores remaining after the Merger. In order to take into account this constraint, the CMA has treated the Co-op Target store as initially merged with the other Co-op stores in the area (and in doing so estimating via an IPR the price at the Co-op Target store before the hypothetical merger with the other Co-op stores).²⁶ This estimated pre-merger price has then been used as an input to calculate the price at the Co-op Target store after a merger with Asda.²⁷

²⁴ See cases: ME/3004/07: anticipated merger between Co-operative Group (CWS) Limited and United Co-operatives Limited, OFT decision dated 23 July 2007 (CWS/United), [CGL/Somerfield](#), [Asda/Netto](#) and [Sainsbury/Rontec](#).

²⁵ The CMA notes that in *Somerfield/Morrisons*, the CC noted that if demand is isoelastic, the price elasticity of demand is constant at different price levels, whereas linear demand implies that the price elasticity rises as prices rise. The CC considered the latter to be an unreasonable assumption for groceries (and suggested it was more plausible that demand would become less elastic at higher prices, when demand had already fallen). The CC concluded that the use of an isoelastic demand function was preferable. The Parties submitted that it is strongly arguable that linear demand is more appropriate for grocery retail. However, they did not present any supporting evidence.

²⁶ In the present case, the CMA does not have much information on the other local Co-op stores. In particular, the diversion from the other non-merging Co-op stores to the Co-op Target store is unknown, as surveys have not been conducted at those stores; the costs and margins at the other Co-op stores are also unknown. Therefore, in the de-merging step, the CMA has made the following assumptions: (i) the variable margin and costs for the other Co-op stores are the same as for the Co-op Target store; (ii) the costs for a de-merged Co-op Target store are the same as the currently observed costs; and (iii) there is no diversion from the other Co-op stores to the Co-op Target store (this is a conservative assumption, which minimises the difference between the observed Co-op prices and the hypothetical prices of a de-merged target store).

²⁷ This is not dissimilar to the European Commission's approach in *Telefonica Deutschland/E-Plus* (case M.7018) where the European Commission adjusted its upward pricing pressure estimates by taking into account the reaction of rivals.

61. In previous cases,²⁸ the OFT has considered that IPRs above 5% are more likely to give rise to competition concerns. However, the CMA considers that these measures offer only a guide as to whether a merger may give rise to a realistic prospect of a SLC and cannot be viewed as a definite threshold below which no concerns would arise.²⁹ In determining the level of estimated IPRs that the CMA is willing to accept in this case it has considered sensitivity testing around the estimated diversion ratios and the relative prices that Asda submitted to the CMA.
62. The estimated IPRs for the Co-op Target stores in each of Marple, Tranent and Pyle are set out below in each local area.

Sensitivity testing of diversion ratios

63. The CMA has carried out sensitivity tests to take into account uncertainty in the diversion ratio estimates. In doing so, the CMA considered whether the uncertainty around diversion ratios could lead to higher IPR estimates.
64. In Marple, Tranent and Pyle the CMA has found that the sensitivity tests show that the estimated IPRs are at a level at which a realistic prospect of a SLC is unlikely to arise.

Relative price sensitivity tests

65. The relative price of Co-op to Asda is a key input into the asymmetric IPR formulae. The IPR estimates discussed below assume that the prices at Co-op are $\frac{1}{2}$ than at Asda. This is based on $\frac{1}{2}$.³⁰
66. The CMA considers that the basket used may not be representative of the average sales at the surveyed stores. For this reason, the CMA carried out sensitivity tests to ascertain if the asymmetric IPRs for any area would differ materially for alternative relative prices. The CMA has found that, for a wide spectrum of relative prices,³¹ the IPRs for Marple, Tranent and Pyle remain below 5% and at a level where a realistic prospect of a SLC is unlikely to arise (when taking into account the factors considered below in each local area).

Assessment of local areas

67. The CMA considers each of the local areas in turn below.

²⁸ [Asda/Netto](#).

²⁹ [Midcounties/Tuffin](#) and [Asda/Netto](#).

³⁰ $\frac{1}{2}$

³¹ $\frac{1}{2}$

Bilborough

68. Bilborough is a suburb of Nottingham in Nottinghamshire.
69. The Bilborough Co-op Target store is a OSS with net sales area of 2,044 sqm. The CMA notes that there is an overlap between the Co-op Target store and an Asda OSS located at Hyson Green within the geographic scope set out in paragraph 25. The distance and drive-time between the two stores are approximately 2.6 miles and eight minutes respectively.
70. The CMA notes that, post-Merger, there will be four fascia in the isochrones centred on the Co-op Target store and overlap Asda OSS at Hyson Green. Further, no part of the population faces a reduction in choice to three or fewer fascia when the isochrone is recentred on census output areas.
71. One third party submitted that the closest competitor of the Co-op Target store is the Asda OSS at Hyson Green because of the nature of the road network between the two stores and the relative lack of OSS competition. Therefore, this third party suggested that the Parties are direct competitors and that the Merger will result in a reduction of choice in OSS fascia for the population. The CMA notes, however, that there are a number of other OSS fascia in the isochrones which have similar drive-time and distance from the Co-op Target store³² or the Asda OSS at Hyson Green.³³
72. The CMA considers that, based on the above evidence, there is no realistic prospect of a SLC arising from the acquisition of the Co-op Target store in Bilborough.

Alsager

73. Alsager is a small town in Cheshire East.
74. The Alsager Co-op Target store is a MSS with net sales area of 1,161 sqm. The CMA notes that there is no overlap with any existing Asda stores in the isochrone centred on the Co-op Target store in Alsager.³⁴ Therefore, the Merger does not reduce the number of fascia in the isochrone centred on the Co-op Target store.

³² A non-merging Co-op OSS; Tesco OSS and two Sainsbury's OSS.

³³ Marks and Spencer OSS; two Tesco OSS and three Sainsbury's OSS.

³⁴ The closest Asda stores are located at Newcastle under Lyme and Stoke-on-Trent which are approximately a 12 or 13 minute drive.

75. When the isochrones are recentred on census output areas, less than 3% of the population in the target centred isochrone suffer a reduction in choice to three or fewer fascia.
76. The CMA considers that, based on the above evidence, there is no realistic prospect of a SLC arising from the acquisition of the Co-op Target store in Alsager with respect to loss of existing competition.

Marple

77. Marple is a town in Greater Manchester.
78. The Marple Co-op Target store is a OSS with net sales area of 1,579 sqm. The CMA notes that there is an overlap between the Co-op Target store and an Asda OSS located at Hazel Grove within the geographic scope set out in paragraph 25. The distance and drive-time between the two stores are approximately 3.5 miles and 9.5 minutes respectively.
79. When the isochrone is recentred on all census output areas, approximately 33% of the population in the target centred isochrone and the isochrone recentred on the Asda Hazel Grove OSS suffer a reduction in choice to three or fewer fascia.
80. Asda conducted customer surveys at the Marple Co-op Target store, the overlapping Asda Hazel Grove OSS and an Asda OSS in Stockport. The estimated revenue diversion ratio is around [0 to 10%] from the Co-op Target store to Asda. No diversion was recorded from either Asda store to the Co-op Target store.
81. The results of the surveys show that the Marple Co-op Target store faces significant constraints from a number of stores in the local area, including Sainsbury's, Tesco, Aldi and non-merging Co-op stores.
82. Asda submitted that the Marple Co-op Target store, Asda Hazel Grove OSS and Asda Stockport OSS are constrained by a number of Limited Assortment Discount stores (LAD), including four MSS Aldi and one Lidl.³⁵ In support of this argument, Asda submitted that the surveys confirmed that a significant number of customers (by volume and revenue) would divert to these LADs in the event of closure of any of these stores.

³⁵ There are three MSS Aldi that fall within the isochrone centred on the Co-op Target store in Marple.

83. Asda submitted [REDACTED].³⁶ The CMA notes that the estimated diversion ratios from the Marple Co-op Target store to Sainsbury's and Aldi are significant, [30 to 40%] and [10 to 20%] respectively, although diversion to Lidl was low.
84. The CMA notes that the IPR remain [REDACTED] [0 to 5%] under a range of sensitivities for the diversion ratios and the Parties' relative prices (see paragraphs 63 to 66).
85. The CMA notes that one grocery retailer submitted that the closest competitor of the Marple Co-op Target store is the overlap Asda Hazel Grove OSS because of the relative lack of OSS competition. Therefore, the grocery retailer suggested that the Parties are direct competitors.
86. Some other third parties have raised concerns about Asda's acquisition of the Co-op Target store in Marple. In particular, concerns were raised around:
- (a) Asda's potential future expansion of the Co-op Target store and surrounding properties and the need for any potential development to be part of a comprehensive regeneration scheme for Marple town centre
 - (b) Asda's range of offering and prices will increase the dominance of one supermarket in the town and therefore stifle competition of independent retailers in the local area, including potential entry of another grocery retailer at a nearby site that has received planning approval
87. The CMA considers that, if Asda has more significant future development plans than the Co-op Target store has pre-Merger, this does not indicate that the Merger will give rise to a SLC. The CMA also notes that development plans may be subject to local planning laws.
88. Further, the CMA considers that the customer surveys indicate that there is significant competitive constraint on Asda in the local area and surrounds. This means that Asda will continue to face sufficient competitive constraints after the Merger. The CMA has not received evidence to support that the Merger may have a negative impact on any potential entry by another grocery retailer.
89. Therefore, the CMA considers that based on the significant constraints imposed by a number of other fascia, the low diversion ratios between the Parties' stores and the low IPR, there is no realistic prospect of a SLC arising from the acquisition of the Co-op Target store in Marple.

³⁶ [REDACTED]

Tranent

90. Tranent is a small town in East Lothian, Scotland.
91. The Tranent Co-op Target store is a MSS with net sales area of 1,301 sqm. There is no overlap within the isochrone centred on the Co-op Target store and therefore no reduction of fascia arising from the Merger. The CMA notes, however, there is an Asda OSS in Edinburgh which is located approximately seven miles from the Co-op Target store with a drive-time of just over ten minutes.
92. Asda submitted that when the isochrone is centred on census output areas, approximately 26% of the population in the target centred isochrone suffer a reduction in choice to three or fewer fascia. Therefore, Asda conducted customer surveys at both the Co-op Target store and the Asda Edinburgh OSS.
93. The estimated revenue diversion ratios for Tranent are summarised in Table A below.

Table A - Diversion ratios in Tranent

	Tranent
DR from Asda to Co-op Target store	[0-10%]
DR from Co-op Target store to Asda	[30-40%]
DR from Co-op Target store to other Co-op stores	[10-20%]

94. The diversion ratio from the Co-op Target store to Asda gives a measure of the strength of the competitive constraint on the Co-op Target store which would be lost after the Merger; on the other hand, the diversion ratio from the Co-op Target store to other Co-op stores measures the additional constraint to which, after the Merger, the Co-op Target store will be subject to. The combination of these two effects determines an estimated IPR for the Co-op Target store of [0 to 5%].
95. There are three other non-merging Co-op MSS just outside the isochrone centred on the Co-op Target store, all of which are closer - in terms of miles and drive-time - to the Co-op Target store than the Asda OSS in Edinburgh. The CMA notes that the survey results indicate the other non-merging Co-op stores in the local area will act as a significant constraint, post-Merger, on the Co-op Target store.
96. There are also a Tesco MSS, a Marks and Spencer MSS and two Tesco OSS just outside the isochrone. The CMA notes that the survey results indicate that

Tesco will act as a significant constraint on the Co-op Target store given diversion ratio estimates of [20 to 30%].

97. Asda submitted that [redacted] diversion ratios indicated that LADs imposed a competitive constraint in Tranent. Asda noted that [redacted].³⁷ Asda further submitted that the survey results confirmed that some respondents viewed LADs (in particular Aldi and Lidl) as alternatives to the Tranent Co-op Target store. However, the CMA notes that the diversion ratios to Aldi and Lidl were only [0-10%] and [0-10%] respectively, which does not indicate significant constraints from these LADs in Tranent.
98. Based on the evidence set out above, the CMA considers that the Merger does not give rise to a realistic prospect of a SLC when taking into account the significant competitive constraint from Tesco and the other non-merging Co-op stores and the low IPR for Tranent.

Pyle

99. Pyle is a small town in Bridgend, Wales.
100. The Pyle Co-op Target store is a OSS with net sales area of 2,044 sqm. There is no overlap within the isochrone centred on the Co-op Target store. The CMA notes, however, there is an Asda OSS in Bridgend which is located approximately 6.8 miles from the Co-op Target store with a drive-time of approximately 12 minutes.
101. Asda submitted that when the isochrone is centred on census output areas, approximately 17% of the population in the target centred isochrone suffer a reduction in choice to three or fewer fascia. Therefore, Asda conducted customer surveys at both the Pyle Co-op Target store and the Asda Bridgend OSS.
102. The CMA notes that the estimated revenue diversion ratios for Pyle are summarised in Table B below.

Table B - Diversion ratios in Pyle

	Pyle
DR from Asda to Co-op Target store	[0-10%]
DR from Co-op Target store to Asda	[30-40%]
DR from Co-op Target store to other Co-op stores	[10-20%]

³⁷ [redacted]

103. The diversion ratio from the Co-op Target store to Asda gives a measure of the strength of the competitive constraint on the Co-op Target store which would be lost after the Merger; on the other hand, the diversion ratio from the Co-op Target store to other Co-op stores measures the additional constraint to which, after the merger, the Co-op Target store will be subject to. The combination of these two effects determines an estimated IPR for the Co-op Target store of [0 to 5%].
104. There are a non-merging Co-op MSS and a Sainsbury's OSS, both of which are closer – in terms of miles and drive-time – to the Co-op Target store than the Asda OSS in Bridgend. The CMA notes that the survey results indicate that the non-merging Co-op MSS and Sainsbury's OSS will act as a constraint, post-Merger, on the Co-op Target store given diversion ratio estimates of [10 to 20%] and [0 to 10%].
105. There are also a Morrisons OSS and three Tesco OSS just outside the isochrone. The CMA notes that the survey results indicate that Tesco will act as a constraint on the Co-op Target store given a diversion ratio estimate of [0 to 10%]. There was minimal diversion to Morrisons.
106. The CMA also notes that the survey results demonstrate that local Spar stores impose a constraint on the Co-op Target store given the diversion ratio estimates of [10 to 20%].
107. Asda submitted that the documentary evidence and diversion ratio estimates indicated that LADs imposed a competitive constraint in Pyle. However, the CMA notes that the diversion ratio estimates to Aldi and Lidl were only [0 to 10%] and [0 to 10%] respectively, which does not indicate significant constraint from these LADs in Pyle.
108. The CMA notes that one grocery retailer expressed the view that the closest competitor of the Pyle Co-op Target store was Asda Bridgend OSS because the road network between the two stores is relatively direct. In addition, the third party stated that the OSS choice for residents of Porthcawl would be significantly reduced as these residents are likely to be shopping at the Pyle Co-op Target store, Asda Bridgend OSS or Tesco Bridgend OSS which it submitted are the most accessible OSS stores. While the CMA notes these concerns, the CMA considers that the customer surveys indicate that there is significant competitive constraint on Asda in the local area and surrounds. This means that Asda will continue to face sufficient competitive constraints after the Merger.
109. Based on the evidence set out above, the CMA considers that the Merger does not give rise to a realistic prospect of a SLC when taking into account

the significant competitive constraint imposed jointly by the non-merging Co-op store, the Sainsbury's OSS, Tesco OSS and Spar and the low IPR for Pyle.

Loss of potential competition

110. The CMA notes that unilateral effects may arise from the elimination of potential competition. For example, the loss of potential competition could occur where one of the merging parties is a potential entrant that could have increased competition.³⁸
111. In assessing whether a merger leads to unilateral effects from a loss of actual potential competition, the CMA will consider the following questions:³⁹
- (a) Would the potential entrant be likely to enter in the absence of the merger?
 - (b) Would such entry lead to greater competition?
 - Proposed [✂]
112. Asda informed the CMA that it is considering the possibility of opening a [✂]. Accordingly, the CMA has considered whether Asda's acquisition of the [✂] Co-op Target store may lead to a SLC through the elimination of actual potential competition.
113. Asda anticipates an opening date of the [✂], but submits that this is an aspiration subject to a number of ongoing uncertainties. In particular, Asda submitted that:
- (a) it does not have any legal interest in the land at [✂]
 - (b) [✂]
 - (c) [✂]
 - (d) Asda has not appointed a third party to develop or construct the store [✂]
114. On this basis, Asda submitted that there remains considerable uncertainty as to whether (and if so, when) Asda would proceed with the [✂]

³⁸ In this case the CMA is concerned about the loss of 'actual potential competition', paragraph 5.4.14 of the [Merger Assessment Guidelines](#). This could alternatively be considered as part of the counterfactual to the Merger as it involves an assessment of whether one of the merger firms would have been likely to enter into the other merger firm's market absent the Merger (see paragraphs 29 to 32 above).

³⁹ [Merger Assessment Guidelines](#), paragraph 5.4.15.

115. The CMA notes that:

- (a) Asda has twice received internal approval⁴⁰ [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]⁴¹
- (e) [REDACTED]
- (f) Asda has contracted with a number of third party service providers (eg structural engineers, mechanical and electrical engineers) to act on behalf of Asda [REDACTED]
- (g) internal documents show that Asda intends to open the [REDACTED]⁴²
 - local competitive analysis

116. The CMA notes that the proposed Asda [REDACTED] would be approximately [REDACTED] miles and a [REDACTED] minute drive-time from the Co-op Target store in [REDACTED].⁴³ The information provided by Asda indicates that, assuming that the store is opened, the Merger would then result in a reduction in the number of fascia from four to three in the Co-op Target centred isochrones (and possibly in other recentrings as well).

117. Asda submitted that the proposed Asda [REDACTED] and the Co-op Target store in [REDACTED] are not realistic potential competitors on the basis that:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) it is unlikely that the Co-op Target store would have a significant impact on the proposed [REDACTED]

118. However, Asda internal documents show that it [REDACTED]. The CMA considers that this evidence suggests that their catchment areas will overlap.

119. The CMA notes that a number of competitors will remain in the isochrones centred on the Co-op Target store, including [REDACTED]. The CMA expects that the

⁴⁰ By Asda's EMEA board.

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ [REDACTED]

proposed Asda [redacted] will face competition from both [redacted]. The CMA notes that as Asda entry in [redacted]

120. The CMA considers that there may be some diversion between the Co-op Target store and the proposed [redacted].⁴⁴ In this case, however, the CMA would expect constraint on the Co-op Target store and proposed Asda [redacted] to be strong from [redacted].⁴⁵ This constraint from fascia such as [redacted]^{46,47} may have been reflected in the results of a customer survey as was the case in some of the other local areas. Further, the CMA notes that Asda's internal documents [redacted].

121. The CMA therefore considers that, [redacted] the Merger will not give rise to a realistic prospect of a SLC as any proposed Asda [redacted] would be subject to sufficient competitive constraint from other fascia in the local area.

- [redacted]

122. [redacted]⁴⁸

123. [redacted]

124. [redacted]

125. [redacted]⁴⁹

126. [redacted]

127. [redacted]⁵⁰

Kiosks

128. The CMA notes that the Co-op Target stores in Bilborough, Tranent and Pyle include PFS with attached kiosks. While Asda has submitted that it does not consider that kiosks constitute a grocery retail outlet, it has undertaken an analysis based on a similar approach in relation to grocery stores (see paragraphs 19 and 24 to 26).⁵¹ The CMA notes that, in each of the local

⁴⁴ The CMA notes, however, that no consumer survey was undertaken by Asda.

⁴⁵ The CMA notes the CC's Groceries Report indicated that entry by OSS affects MSS stores' revenue by around 15% whereas entry by another MSS affects revenues by around only 5%. This suggests that competition is generally stronger on MSS from OSS stores than from other MSS stores. Competition Commission: The supply of groceries in the UK market investigation (2008).

⁴⁶ [redacted]

⁴⁷ [redacted]

⁴⁸ [redacted]

⁴⁹ [redacted]

⁵⁰ [redacted]

⁵¹ Asda has not recentred isochrones on census output areas.

areas, the acquisition of the kiosk would not give rise to any competition concerns based on the number of fascia in each local area.

Third party comments

129. The CMA received a number of comments from third parties, including grocery retailers and other interested parties. These comments are discussed and addressed above in the relevant local areas.
130. Given the outcome of its competition assessment, the CMA has not found it necessary to consider barriers to entry and expansion or countervailing buyer power.

Decision

131. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a SLC within a market or markets in the UK.
132. The Merger will therefore **not be referred** under section 33(1) of the Act.

ENDNOTE

The CMA's discussion of loss of potential competition (see paragraphs 110 to 127) has been moved to the end of the published decision in order to anonymise the local area.