



News Release

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CC RENEWS COMPETITION TEST RECOMMENDATION

The Competition Commission (CC) has formally recommended to the Department of Communities and Local Government (CLG)—and the devolved administrations in Scotland, Wales and Northern Ireland—that they take the necessary steps to introduce a competition test in planning decisions on larger grocery stores. This follows the CC confirming in a decision, published today at www.competition-commission.org.uk, that it will bring significant and lasting benefits for consumers.

The CC has been carrying out further analysis on the effectiveness, benefits, costs and proportionality of the competition test following a ruling by the Competition Appeal Tribunal (the Tribunal). The competition test would prevent supermarkets' groceries developments, including extensions to existing stores, by retailers with a strong presence in a local area, to make competing developments from rival retailers easier. The CC published its provisional decision in July and, after considering responses to that document from retailers and other parties, has now made its final decision.

In response to the July consultation, the CC modified the competition test to allow all retailers to make small groceries extensions to stores—one extension per store of up to 300 sq metres of groceries sales area—provided that the store in question has not been extended in the previous five years. The CC believes that this modification will not significantly reduce the effectiveness of the test but will recognize the fact that such small extensions, if prevented by the test, would be less likely to prompt a rival development.

The CC expects that in taking the necessary steps to introduce the competition test, CLG and the devolved administrations will consult further on its details and implementation, including the exception for small groceries extensions.

Peter Freeman, Chairman of the CC and Chairman of the Groceries Inquiry Group, said:

We expect that the competition test will have the effect we intend by helping to bring in competition where it is lacking and to stop individual retailers consolidating strong positions in local areas to the detriment of consumers. We were asked to look at the case again by the Tribunal—and we believe we have shown the test will be effective, beneficial to consumers and proportionate.

Our detailed analysis has shown that the competition test is likely to have a positive effect for consumers by ensuring that they benefit from greater

competition and choice between retailers both in their local areas and across the UK.

We have, however, provided an exception for small extensions to the groceries part of stores, provided those stores have not been extended in the previous five years.

The CC's final report into the UK groceries market, published in April last year, concluded that action was needed to improve competition in a number of local markets and so included a recommendation for the inclusion of a competition test in planning decisions on larger grocery stores.

In March this year, an appeal by Tesco to the Tribunal against the competition test was upheld on two grounds—that the CC had not properly assessed the economic costs of the competition test and that it had failed sufficiently to address the competition test's proportionality and effectiveness. Although the Tribunal did not conclude that the competition test would necessarily be ineffective or unreasonable, it remitted the matter back to the CC for further consideration, particularly on the costs and benefits of the competition test.

The analysis carried out during the remittal process concluded that the benefits from the Test would substantially outweigh any costs arising from it.

For further details on the Groceries report, please see: www.competition-commission.org.uk/press_rel/2008/apr/pdf/14-08.pdf.

Notes for editors

1. The CC is an independent public body, which carries out investigations into mergers, markets and the regulated industries.
2. Enquiries should be directed to Rory Taylor (email rory.taylor@cc.gsi.gov.uk) on 020 7271 0242.
3. Under the competition test the Office of Fair Trading (OFT) would provide advice to local planning authorities (LPAs) on whether a particular retailer would pass the competition test. Applications would pass the competition test if within the area bounded by a 10-minute drive-time of the development site; the grocery retailer that would operate the new store was a new entrant to that area; or the total number of fascias in that area was four or more; or the total number of fascias in that area was three or fewer and the relevant grocery retailer would operate less than 60 per cent of groceries sales area (including the new store).
4. In order for this to happen, the CC had recommended that the CLG, the Scottish Executive, the Welsh Assembly Government and the Northern Ireland Executive should take such steps as are necessary to make the OFT a statutory consultee to LPAs on all applications for planning permission, whether submitted by a grocery retailer or a third party, for development of a grocery store (including new stores and extensions) where that store had, or after the proposed scheme has been implemented will have, a net sales area in excess of 1,000 sq metres.
5. The Tribunal's judgment is available at: www.catribunal.org.uk/files/Judg_1104_Tesco_04032009.pdf.