Completed acquisition by Booker Group plc of Makro Holding Limited

ME/5555/12

The OFT's decision on reference given on 8 November 2012. Full text of decision published 30 November 2012

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Booker Group plc** (**Booker**) is a leading wholesale supplier of food, drinks and grocery products in Great Britain (GB). Booker operates 172 cash and carry (C&C) branches in the UK, in addition to delivered services. Booker also operates Premier, a convenience store symbol group which has over 2,700 member stores. Booker has around 481,000 active trade customers. Its turnover in its 2012 financial year was £3.9 billion.

2. **Makro Holding Limited** (**Makro**) is a UK-based wholesale supplier of food and non-food products. Makro operates 30 C&C branches in the UK and has recently introduced a delivery service. Makro was the UK subsidiary of German-based wholesale and retail operator Metro AG (Metro). Makro has around [more than 1 million] customers. Its turnover in its 2011 financial year was £787.4 million.

TRANSACTION

3. Booker acquired the entire issued ordinary share capital of Makro on 4 July 2012. As part of the consideration, Booker will issue to Metro Cash and Carry International Holding BV new shares representing approximately 9.99 per cent of Booker's current share capital plus £15.8 million in cash.

4. The administrative deadline for the Office of Fair Trading (OFT) to give its decision in this case was 18 September 2012 and the statutory deadline is 25 November 2012.

JURISDICTION

5. The transaction does not qualify for review by the European Commission under the EU Merger Regulation.[1] Although the combined turnover of Booker and Makro in their most recent financial years exceeds €5,000 million, both Booker and Makro generated more than two-thirds of their respective EU turnover in one and the same Member State, namely the UK.

6. As a result of this transaction Booker and Makro have ceased to be distinct. The UK turnover of Makro exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

COUNTERFACTUAL

7. In line with the OFT/Competition Commission (CC) *Merger Assessment Guidelines*, the OFT will consider the effect of the merger compared with the most competitive counterfactual providing always that it considers that situation to be a realistic prospect.[2] In practice, the OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual against which to assess the impact of the merger.

8. In this case the parties submitted that Makro's business has been struggling and remains in steep decline. In 2011 Makro made an operating loss of approximately £[ ] million and its sales have declined since 2009 by a little over [ ] per cent (by contrast, over the same period Booker's sales have increased by around [ ] per cent). Further, the parties submitted that in March 2011 AlixPartners was hired to implement a strategy to improve Makro's profitability.[3] AlixPartners' broad strategy was to [ ].[4] The parties

---

[1] Council Regulation 139/2004, OJ 2004 L24/1.

[2] Competition Commission and OFT, *Merger Assessment Guidelines*, OFT1254, paragraph 4.3.5

[3] [ ].

state that the strategy has not been successful and therefore, looking forward, Makro would be a weaker competitor absent the merger than it was pre-merger.

9. The parties have not submitted that Makro is a failing firm and would exit the market absent the merger. The OFT does not consider that the information submitted is compelling enough for it to depart from its general practice of using pre-merger conditions of competition as the relevant counterfactual. Makro's decline in sales and profitability have been occurring over a number of years and the OFT has not seen any evidence that Makro's strength as a competitive constraint would have been substantially worse absent the merger as it was immediately prior to the merger. Moreover, it is not sufficiently clear that Makro did not have a range of re-structuring options or the ability to alter its business plan in order to improve its fortunes and competitive constraint on the marketplace absent the merger. The OFT did not receive any evidence from third parties that they considered Makro was losing its position as a credible C&C operator.[5]

10. Therefore, the OFT cannot be sufficiently certain that the competitive conditions without the merger would have materially different from the pre-merger situation. As such, the OFT considers the pre-merger situation to represent the counterfactual in this case.

MARKET DEFINITION

INTRODUCTION

11. The parties overlap in the wholesale supply of grocery and non-grocery products in GB.[6]

12. The OFT has considered the UK grocery wholesale market on several previous occasions.[7]

---

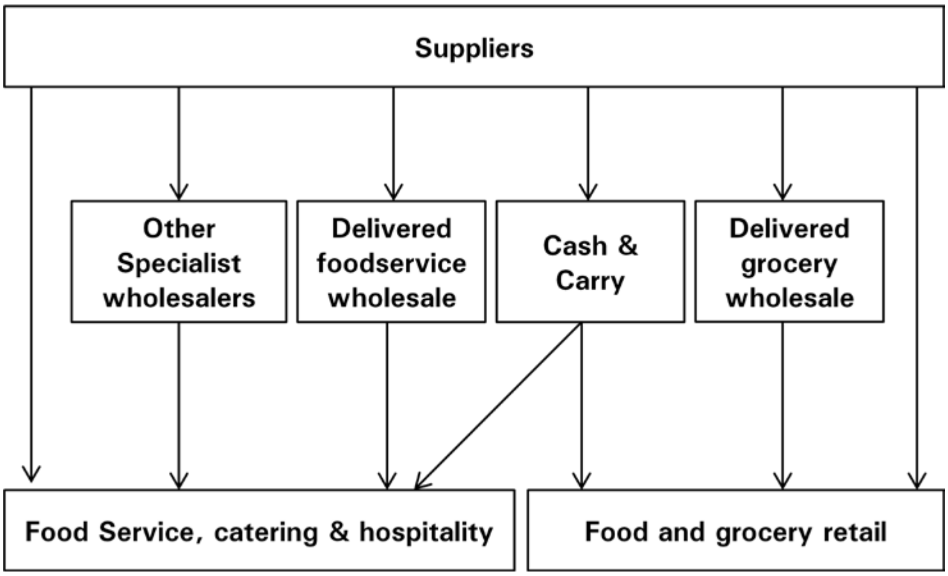
[4] The OFT notes that Booker itself has been increasing its investment in its offering to foodservice customers.

[5] The OFT considered similar arguments in *Completed acquisition by Kerry Foods Limited of the frozen ready meals business of Headland Foods Limited*, ME/4893/11, 12 July 2011.

[6] Booker does not operate in Northern Ireland.

13. The grocery wholesaling market comprises a number of operators at different levels of the value chain, as depicted in figure 1.

Figure 1: The grocery wholesaling market



Source: OFT based on information provided by the parties

14. The parties are both cash and carry operators, although Booker is increasingly investing in its delivered wholesale service.

PRODUCT SCOPE

15. The OFT considers the product scope serves only to provide a framework for which the competitive effects of the merger can be assessed and the following discussion therefore serves to examine the appropriate frame of reference for the competitive assessment. The OFT's approach is to consider if narrow candidate product frames can be widened through substitution on the demand-side in each of the product categories in the first instance, and then, if appropriate, to consider if substitution on the supply-side allows the frame to be widened or aggregated.[8]

---

[7] ME/1574/05, Completed acquisition by Bestway (Holdings) Limited of Batleys Limited, June 2005; ME/1320/04, Completed acquisition by Brake Bros Limited of the wholesale distribution business of Peter's Food Service Limited, November 2004; ME/3160/07, Anticipated acquisition of J&J Haslett Holdings by Musgrave Investments plc, September 2007.
[8] This approach is in line with the *Merger Assessment Guidelines*, paragraphs 5.2.6 to 5.2.19.

16. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market.[9]

Segmentation by product category

17. Both parties offer customers a range of grocery and non-grocery products. The parties submit that customers of C&C outlets typically shop in baskets and therefore demand a diverse range of products. Accordingly, the parties argue that segmentation by the broad types of products being offered for the purpose of defining the product market is not appropriate.

18. Grocery wholesaling concerns the supply of ambient, fresh, chilled and frozen food products; confectionary; crisps and snacks; soft drinks; beers, wines and spirits; tobacco and non-food products to businesses (typically small and medium sized businesses) including caterers, hotels, restaurants, pubs and cafes, independent retailers and other businesses. The parties submit that the majority of products supplied (that is, [ ] per cent of Booker's SKUs[10]) are branded.

19. The OFT's market testing provided limited evidence to support delineating the grocery wholesale market by product type.

20. Whilst different grocery products may not be considered as substitutes, the OFT understands that customers tend to buy baskets of goods and expect suppliers to stock a range of products suitable for their needs. The OFT does not therefore consider it appropriate to segment the market to individual products. Further, the OFT is not aware that there are any key products for which the competitive conditions vary materially. The OFT considered whether tobacco, which is a low margin product for both wholesalers and retailers, should be assessed as a distinct segment within the product market. However, as customers buy products in baskets, and tobacco, particularly for retail customers, is likely to be an important component of the product basket, the OFT does not consider that tobacco should be considered separately from grocery products.

21. Based on information provided by the parties, the OFT understands that the core non-grocery product offer by C&C outlets is likely to comprise products related to the grocery products which are commonly used by

[9] OFT/CC, *Merger Assessment Guidelines*, paragraph 5.2.2.
[10] Stock keeping units.

foodservice companies, for example disposable plates, cups and cutlery, kitchen equipment, and cleaning products. Because these are typically bought alongside grocery products, the OFT considers it appropriate to consider these together.

22. In addition, the parties (and particularly Makro) provide some other non-grocery products, such as electrical products, stationary, office supplies, furniture and work wear clothing. These products are likely to be bought separately from grocery-related products and therefore, from the demand-side, for a product market separate from the grocery-related products.

23. Therefore on balance, the OFT considers it appropriate to consider the effects of the merger on the following basis:

    i. grocery and related non-grocery products (such as food/drink disposables) and

    ii. other non-grocery products (such as electrical appliances).

24. However, the parties have limited overlap in respect of other non-grocery products, with Makro and Costco stocking a broader range of such other non-grocery products.[11] There were no third party concerns in respect to the supply of other non-grocery products. Therefore, this segment was not considered further in the investigation.

Segmentation by distribution channel

25. The parties submit that customers regularly switch their demand between multiple wholesalers using a range of channels including other C&C wholesalers, delivered wholesalers,[12] specialist wholesalers, supermarkets and primary producers. The OFT has considered each of these channels in turn.

Delivered wholesalers

[11] This is evident from visiting the websites of the respective operators: http://store.makro.co.uk/default.aspx and http://www.costco.co.uk/about/depts/.

[12] The OFT notes that delivered grocery wholesaling constitutes two distinct segments in itself: delivered wholesale and delivered foodservice. The OFT understands that, broadly speaking, the former which includes P&H predominately serve retailers and the latter which includes Brakes and 3663 predominately serve caterers.

26. The OFT notes the approach taken in previous cases in relation to delivered and C&C wholesalers. For example, in Bestway/Batleys,[13] the OFT considered C&C and delivered wholesale together but also looked at the narrower C&C only segment. In this case, the OFT considers there is evidence to support a narrower frame of reference which is supported by third party responses. For example, one third party commented that the nature of the delivered operators' offering is quite different to the C&C operators; that delivered operators have minimum order requirements, which are often too large for small businesses and also charge for delivery.

27. Bookers' own figures indicate that over [ ] per cent of their customers and at least [ ] per cent of sales are 'collect-only' customers. The market test indicated that a significant number of customers preferred to collect, particularly for fresh produce. There was limited evidence on the price differential between delivered and C&C wholesalers such that it cannot be certain that a sufficient number of customers would switch in the event of a hypothetical price rise of 5-10 per cent. However, the OFT understands that there is a general perception amongst caterers and retailers that C&C operators are cheaper. For example, JJ's Foodservice lists prices on its website and that delivered prices are typically more than 10 per cent higher than its collection prices. In general, delivered customers may be subject to an additional delivery charge depending on the value of their order.

28. On the basis of this evidence, the OFT considers that while deliveries may be a suitable alternative to collection for some customers, it may not be for all customers. Indeed, there appears to be a significant proportion of customers that will only choose between C&C stores for at least some, if not all, of their expenditure. This is partly reflected in the parties' local survey results where average aggregate diversion (full and partial basket)[14] for all Booker customers to other C&C wholesalers was over [40-50] per cent; the equivalent figure to non C&C was nearly [20-30] per cent; Booker diversion to delivered wholesalers on the basis of a full basket only was estimated to be less than [5-10] per cent. Therefore, based on the evidence available, the OFT has adopted a cautious approach on which to assess the

[13] ME/1574/05, Completed acquisition by Bestway (Holdings) Limited of Batleys Limited, June 2005

[14] The basket refers to the range of products purchased at one time by retailers/caterers. Full basket diversion refers to diversion of a customer's entire basket to a single supplier; partial basket diversion refers to diversion of a customer's basket to a combination of alternative suppliers (that is, only part of the basket is diverted to another single supplier).

merger, that is, on a 'collect-only' basis. However, deliveries by wholesalers will be taken into account in the competitive assessment.[15]

[15] For example, the customer survey which was used in the assessment of local competition concerns allowed respondents to select a delivered service as an alternative to C&C.

Supermarkets and discount retailers

29. The parties' submit that C&C wholesalers face a strong competitive constraint from retailers such as the large supermarkets and discount chains and argue that the move by supermarkets into non-food products means that they increasingly compete on a fuller range of products that serve the needs of a typical wholesaler customer. In support of their arguments, the parties put forward evidence from the Harris International Marketing (HIM) survey that a third of caterers are using supermarkets for more than 10 per cent of their supplies. However, the OFT considers that customers' use of supermarkets is driven by promotions or for emergency purchases and hence may be stronger for caterers than retailers. Due to the narrow and sporadic nature of purchases in a supermarket by wholesalers' customers across the range of their requirements, the OFT does not consider that supermarkets represent a close and viable alternative. Further, whilst both parties [ ], providing further evidential support that C&C and supermarkets should not be considered part of the same market. Therefore supermarkets have not been included in the product scope, but the extent to which supermarkets constrain the parties will be considered in the competitive assessment.

Specialist wholesalers

30. The OFT's market testing indicated that customers are looking to reduce the time spent sourcing products and therefore may not want to spread their purchases over a number of specialist wholesalers. With such a high proportion of the parties' customers being collect-only, it is therefore unlikely that they see specialist wholesalers as a viable alternative to C&C. Moreover, specialist wholesalers by definition will offer customers a narrower range of products than general wholesalers and it is not clear that such wholesalers will constrain the parties in the C&C sector post merger. The results of the parties' local survey show, on average, full-basket diversion to specialist wholesalers account for a very small proportion of total diversion in the event of a hypothetical price rise. However, specialist wholesalers are used by some customers and therefore the extent to which they constrain the parties will be considered in the competitive assessment.

Sourcing direct from manufacturers

31. Booker submits that for some products, customers have the option of sourcing direct from the manufacturer. However, it has not provided

evidence supporting this claim and market testing did not indicate that direct supply is a credible constraint on wholesalers. Accordingly, the OFT has not included direct supply in its product market definition.

32. The OFT has considered that, with regard to the broad body of evidence, it is appropriate to adopt a cautious approach on product scope and assess the merger on the basis of C&C only. The OFT will, however, take into account constraints outside of the market, including other distribution channels, in its competitive assessment where the evidence warrants it.

Segmentation by customer type

33. Both Booker and Makro have a broad customer base that includes a variety of caterers, retailers such as convenience stores and other types of businesses and traders. Booker submits that segmentation by customer type is not appropriate on the basis that the competitive conditions do not materially differ between caterer and retailer customers and there is no material difference in the types of products each customer group purchases. Indeed, pricing of individual products does not differ between customer groups.

34. As set out in the OFT's guidance,[16] it will consider segmenting by customer type where the evidence suggests the competitive dynamics for readily identifiable customer groups varies and that suppliers can actively discriminate between these customer groups.

35. The evidence suggests that the parties can identify particular types of customers and can vary their competitive offering for these types of customer. For example, both parties require customers to specify the nature of their business on the membership application form and both parties maintain electronic records of their customers' purchasing habits. Moreover, the parties' internal business documents [ ].[17] The parties also market themselves differently to different types of customer.[18]

36. The OFT considers that, in this case, there is evidence the parties can discriminate between different types of customer directly in relation to quality and service, and indirectly in relation to price. In particular, they can

---

[16] OFT/CC, *Merger Assessment Guidelines,* paragraphs 5.2.28-5.2.30.

[17] See, for example, [ ].

[18] For example, both parties have dedicated sections for retailers and caterers on their websites and different marketing leaflets for each type of customer.

discriminate between retailers (comprising independent retailers, convenience stores, confectionary, tobacco and news retailers (CTNs)), foodservice/caterers (comprising hotels, restaurants and catering companies[19]) and other traders (such as professional business units (PBUs) and small companies & offices (SCOs)).

37. The OFT considers that these different types of customers are likely to have different product demands and therefore substitution would be limited. Retailers typically buy goods for resale, whereas caterer customers are likely to buy goods as an input in the food production process and this will have implications for a number of elements of product requirements, such as pack sizes and branding.[20]

38. The OFT also considers that it would be feasible for wholesalers to discriminate between retailers and caterers in terms of pack sizes with caterers more likely to obtain products in larger packs than retailers who are purchasing products for on-sale. This would result in different customer types facing different product prices by virtue of the pack size they commonly purchase. Therefore, the OFT considers that it may be possible for price changes on particular products to largely affect only one type of customer.

39. The parties' competitor price monitoring also selects different products depending on [ ]. The OFT notes that both parties have the ability to vary their own brand product range with respect to different customer groups, for example, Booker has specific own-brand ranges for retailers (Euro Shopper, Happy Shopper) and for caterers (Booker basics, Chef's Larder).

40. The OFT understands that the parties also use a variety of [ ] of varying the competitive offer by customer type. For example, Booker makes use of [ ]. The OFT also understands that some service terms are varied between customer groups.[21]

41. The OFT does note that in the wholesale supply of grocery products, customers may acquire several thousand different product types in their basket and hence there may be limited overlap between any two different customers' product baskets even where these customers are both retailers

[19] These customers are sometimes referred to as 'HoReCa' customers.

[20] The OFT notes that the variable gross margins calculated by the parties [ ].

[21] For example, [ ]

or both caterers. A more detailed analysis would need to be undertaken to take account of the heterogeneity in purchasing behaviour of customers.

42. On the basis of the information available to it, the OFT has therefore considered the transaction with respect to three broad customer segments:

    i. retailers

    ii. caterers and

    iii. other traders (and in particular, PBU/SCO customers).

43. Given that there is limited overlap in other non-grocery products, PBU/SCO customers were not considered further in the investigation.

Symbol group sales

44. The OFT also considered the role of symbol groups[22] and notes that membership of these groups has increased in recent years. Of the two parties, only Booker operates a symbol group; Premier. Nevertheless, Booker submits that these sales should be considered together with all other wholesaler sales.

45. The OFT notes that members of symbol groups contract to spend a minimum amount with the wholesaler over a number of years and therefore considers that competition for this 'tied-expenditure' may operate differently from other wholesaler purchases. However, spend outside contracted minimums is contestable and members of symbol groups may have multiple supplier relationships. Booker submits that competition for customers' tied spend is fierce, that symbol groups do not retain customers for long periods and that symbol group members continue to shop around for their supplies, including both tied and non-tied expenditure.

46. The OFT considers that ideally symbol and non-symbol sales should be assessed separately but this would have added a significant level of complexity to the analysis which was not possible during a first phase investigation. Consequently, the OFT has undertaken its assessment on the basis of all sales to retailers.

[22] Symbol groups are franchise agreements whereby independent retailers trade under a common banner, benefiting from promotional and marketing support in return for a minimum spend with the symbol group owner, which are typically wholesalers.

Conclusion on Product Scope

47. The OFT considers the relevant product scope on which to assess the transaction to be:

    i. the C&C wholesale supply of grocery and related non-grocery products to retailers

    ii. the C&C wholesale supply of grocery and related non-grocery products to caterers.

GEOGRAPHIC SCOPE

National dimension

48. Booker submits that the relevant geographic frame is national as many competitive parameters – such as price, quality, range and service – are set nationally. The OFT's market testing indicated that competition in the C&C sector occurs at both a national and local level.

49. Third party evidence and the evidence that the parties make decisions on a number of key competitive parameters at a national level indicates that there may be a national dimension to competition. In particular, even if national decisions are driven to a degree by local conditions, they may also be driven by a national response to the actions of competitors. Accordingly, the OFT believes it is appropriate to consider the transaction at a national level.

Local dimension

50. The parties do not consider it appropriate to assess the transaction locally as competition conditions do not vary materially from area to area. In support of this view, the parties provided margin concentration analysis to show that, on average, Booker earns approximately [ ].

51. However, the OFT notes there is scope for local variations in some key competitive parameters such as branch opening hours, regional-specific products, discounts and customer service levels. This was confirmed by the OFT's market testing where customers considered that competitive conditions vary at a local level. Moreover, the OFT considers that the parties' margin concentration analysis showed that [ ]. This evidence

indicates that some competitive interaction may take place at the local level.

52. In addition, the local survey undertaken by the parties reveals noticeable variations in diversion ratios between the parties and competitors at a local level. This is consistent with information submitted by the parties that shows that the parties' customer bases and mix of sales vary between some local areas.

53. On the demand-side, demand for C&Cs is local in nature with, on average, 80 per cent of sales come from customers located between 15 and 30 minutes' drive time from a store.[23] Third parties confirmed the importance of proximity to a store when selecting a supplier. Most customers said that they were unwilling to travel further than around 20 miles which suggests that 30 minutes is a suitable upper bound for the isochrones analysis.

54. On balance, the OFT considers it appropriate to also consider the transaction at a local level and has used a 15-minute and 30-minute travelling time as a basis for its local assessment. Using these catchment areas is a pragmatic approach for its competition analysis but the OFT notes that catchment areas are not necessarily the same as a geographic market defined using the hypothetical monopolist test.[24]

Conclusion on geographic scope

55. The OFT has considered the transaction on both a national and local level.

Conclusion on market definition

56. The OFT believes the relevant product scope for the assessment of this merger is:

    i. The C&C wholesale supply of grocery and related non-grocery products to retailers

    ii. The C&C wholesale supply of grocery and related non-grocery products to caterers.

---

[23] The parties also submitted that around [ ] per cent of Booker's customers come from within 15 minutes of their preferred Booker branch and [ ] per cent of Makro customers come from within 15 minutes of their preferred Makro branch.

[24] OFT/CC, *Merger Assessment Guidelines*, paragraph 5.2.25.

57. The OFT has considered the transaction at both a national and local level (on both a 15-minute and 30-minute drive time).

HORIZONTAL ISSUES

58. Horizontal mergers give rise to unilateral effects where they increase the ability and incentive of merging parties to increase prices or reduce quality or service post-merger. Where products/services are differentiated, as is the case in relation to the wholesale supply of grocery and related non-grocery products, unilateral effects are more likely where the products/services compete closely with one another.[25]

59. The merger has resulted in the combination of two rival wholesale suppliers of grocery products. The OFT has therefore considered the possibility that the merger gives rise to unilateral effects at a national level and at a local level for both caterer and retailer customers.

NATIONAL COMPETITION

60. The UK grocery wholesale market was estimated to be worth £24 billion in 2011.[26] The following table provides estimates of market values by segment – C&C, delivered grocery and delivered foodservice – and by customer type.

Table 1: UK grocery market values

£ millions	Retailers	Caterers	Others	Total
C&C	7,036	2,885	1,412	11,333
Delivered grocery	6,062	81	n/a	6,143
Delivered foodservice	91	6,331	n/a	6,422
Total	**13,189**	**9,297**	**1,412**	**23,898**

Source: IGD

61. The OFT notes that Booker considers that the IGD data significantly underestimates the size of the market as it excludes a number of sales channels such as on-trade sales. Booker also points out that all Booker and Makro sales, including deliveries, are considered as 'C&C', thereby potentially overstating Booker's position in this segment. However, the OFT

[25] OFT/CC, *Merger Assessment Guidelines,* Section 5.4.

[26] Institute of Grocery Distribution (IGD) 'UK Grocery and Foodservice Wholesaling 2011' October 2011.

considers that the IGD data represents an independent source of information which provides an indication of the relative strengths of different suppliers and therefore considers it appropriate to refer to the IGD estimates; the parties' estimates will be noted for comparison where appropriate.

62. The tables below (tables 2 and 3) identify the main national and regional C&C operators in the UK.

Table 2: National C&C wholesalers

Company name	Total turnover	Depots	Area of operation
Booker	£3,900m	172 C&C hubs 4 delivery hubs	Nationwide
Makro	£793m	30 C&C outlets	Nationwide
Bestway/Batleys	£1,700m	62 C&C branches	Nationwide
Costco	£1,200m	22 stores	Nationwide

Source: OFT analysis based on data from IGD, the parties and publicly available sources.

Table 3: Large regional C&C wholesalers

Company name	Total turnover	Depots	Area of operation
Dhamecha Foods	£500m	6 trading locations	West London
AG Parfett	£301m	6 branches	North West
AF Blakemore	£912m (of which c.£200m relates to C&C business)	9 C&C outlets	Wolverhampton, Birmingham, Walsall, Barnsley, Grimsby, Bangor, Newport, Gateshead and Middlesbrough
East End Foods	£120m	3 trading locations	Birmingham
Hyperama	£114m	3 trading locations	Midlands
United Wholesale	£112m	2 trading locations	Glasgow
Wing Yip	£49m	4 superstores	Birmingham, Manchester, Cricklewood and Croydon
BA Cash & Carry	£36m	2 trading locations	South Wales

Source: OFT analysis based on data from IGD, the parties and publicly available sources.

63. The parties submit that the transaction raises no realistic prospect of a substantial lessening of competition at a national level for two main reasons:

    i. the parties operate in a dynamic, fragmented and highly competitive market

    ii. Makro is not Booker's closest competitor and the parties' customers will continue to have access to multiple credible alternatives.

64. In support of their view the parties submitted that they receive a small proportion of an average customer's spend; the parties estimated this equates to less than [ ] per cent for caterers and less than [ ] per cent for retailers. The parties submit that this shows that C&C operators are constrained by other distribution channels. The OFT notes the parties have provided this calculation on the basis of ONS data rather than the IGD data which the OFT has used in its analysis. The OFT has therefore not sought to replicate this analysis but has considered the broad range of evidence available in this case to assess the extent to which suppliers in other distribution channels will constrain the parties post-merger.

65. Before discussing the evidence specific to the separate customer segments of caterers and retailers, the following paragraphs present an assessment of the evidence relating to all customers.

66. The OFT considered a number of the parties' internal documents in its assessment, including the price monitoring documents[27] used by the parties to assess the strength of the constraint from competitors. The OFT understands that Booker monitors [ ], the OFT is not aware of the importance or weight Booker places on each competitor or how it uses this information in its day-to-day operations as this was not provided.

67. Makro regularly price monitors [ ].[28] Again, it was not clear to the OFT how this information was used in Makro's day-to-day operations.

68. This evidence shows that the parties regularly price monitor [ ]. [ ]. The OFT has not been able to assess directly from this price monitoring information the relative competitive constraint each competitor represents.

---

[27] The price monitoring documents provided to the OFT were for four weeks in October/November 2011.

[28] [ ]

Nevertheless, the merger has removed an important element of both parties' price monitoring activities.[29]

69. In addition to its price monitoring, Booker regularly monitors the activities of its competitors as evidenced by [ ]. The OFT notes that a broad range of competitors are [ ]. In addition [ ].

70. These documents also include references to the activities of [ ]. However, it is unclear to the OFT how Booker uses this detailed market intelligence at either a national or local level. Consequently, it has not been possible to draw firm conclusions from this evidence on the degree of competitive constraint these alternative non C&C competitors place on the parties. It is noteworthy in this context that Booker has its own delivered wholesale business so it is natural that it should monitor [ ] for this element of its business.

71. The parties submitted that the presence of multiple supply options, coupled with almost no barriers to switching, means that customers are willing to switch between suppliers. The OFT notes the parties' arguments that there is a high level of switching by customers between wholesalers, evidenced by the parties' [ ].[30] However, the OFT considers that this analysis provides only limited evidence of the competitive interaction between wholesalers in that it is not possible from the information provided to identify who customers are switching to or the reasons for this switching.

Impact of buying groups

72. Within the C&C sector, the parties submit that there are currently six national C&C wholesalers operating in GB which includes two buying groups, Today's and Landmark.[31] These buying groups purchase on behalf of many of the smaller independent C&C wholesalers, thereby giving them significantly improved negotiating power with suppliers than they would have if negotiating alone. The main regional C&C wholesalers (table 3) are members of these two buying groups.

---

[29] The OFT understands that at least some of the price monitoring relates to [ ]. In its analysis the OFT has focused predominantly on price competition between the parties. To the extent that competition also occurs on promotion, the potential for unilateral effects post-merger may be greater than indicated by an analysis of price competition alone.

[30] The parties provided an analysis of [ ].

[31] The parties submitted that the sales of Today's Group are over £5 billion from 288 C&C outlets and Landmark generates sales of £2 billion from 71 C&C outlets.

73. The OFT considered whether these buying groups represented a similar constraint to that of the other national C&C operators, Bestway and Costco. However, based on its market testing, the OFT could not be certain that these buying groups do, in aggregate, provide a similar constraint to other national wholesalers. For example, one respondent to the OFT's questionnaire considered that buying groups cannot compete directly on price with the large national C&C operators but seek to compete on other factors such as product quality or service. Another respondent, commented that while the buying groups do benefit small C&C operators, the large players can get much better terms outside the buying groups.

74. On the basis of the body of evidence available, the OFT has adopted a cautious approach and considers that the transaction will combine two of only four national C&C operators, thereby removing an important competitive constraint on Booker for 'collect-only' customers and raising prima facie competition concerns on unilateral effects grounds.

75. Further, the OFT has considered the impact of the transaction separately for caterers and retailers in its competition assessment below.

Competition assessment for caterers on a national basis

Shares of supply

76. The parties will have an estimated combined share of wholesale supply of [50-60] per cent to caterers on a national basis, with an increment of [five-10] per cent.[32] The parties' provide an adjusted estimated share of supply for Booker of [30-40] per cent and [five-10] per cent for Makro. The other main suppliers in this segment are Costco and Bestway with a share of supply of [five-10] per cent and [five-10] per cent respectively.

77. The OFT has considered the closeness of competition between the two parties and the degree to which suppliers in other distribution channels currently constrain the parties.

Closeness of competition and constraints from other distribution channels

78. The parties submit that they are not close competitors in that they largely serve different types of customers (with the bulk of Booker's sales being earned in the retailer segment and Makro being relatively strong in the SCO

[32] Source: IGD estimates

segment). Nevertheless, in terms of sales to catering customers, the proportion is similar for both parties at approximately 25-30 per cent of sales totalling £1.4 billion. The OFT notes that Makro's sales to SCO customers have decreased and there has been a corresponding increase in sales to caterers reflecting Makro's strategy to focus more on caterers.[33] The parties' dispute the positive impact of the [ ]. However, Booker's own internal documents [ ]. For example, Booker [ ].[34] In the same report it was noted that at Stockton, customers had commented that [ ].

79. On the basis of the parties' internal documents, the businesses could be considered to be close competitors in wholesale C&C to caterer customers. Further, the OFT considers that the [ ] and the increasing investment by Booker in [ ] suggests that the parties may have become closer competitors in future as Makro sought to [ ].

80. [ ]. However, the OFT's third party enquiries found that Costco offers a more limited range of products than the parties as it tends to specialise in one-off lines. This was supported by [ ][35]. Costco told the OFT that it typically offers around [ ] SKUs as compared to [ ] grocery-related SKUs typically offered by Makro and [ ] grocery-related SKUs typically offered by Booker. The OFT notes that Costco supplies a limited number of the products each party [ ]. Moreover, Costco told the OFT that it has a quick inventory turn-around resulting in some product offerings being added or withdrawn with little notice. The OFT, therefore, considers that Costco may not represent a particularly strong constraint on the parties post-merger for caterer customers.

81. Similarly, the OFT understands that only a limited proportion of Bestway's turnover is attributable to sales to caterers (between five and 10 per cent), although it notes that Batleys has been investing in its foodservice capability in recent years. The level of constraint that Bestway/Batleys currently places on the parties in the supply to this type of customer is therefore unclear albeit it may be increasing due to the continued investment.

82. In addition, [ ]. [ ].

[33] Metro document prepared by Alix Partners Draft 31.05.2011 page 27

[34] [ ]

[35] [ ]

83. In considering the competitive constraint presented by suppliers in other distribution channels, the parties submit that:

- As there is relatively little difference in prices, customers can and do switch between C&C outlets and delivered wholesalers. The parties submit that the largest competitors facing both parties are Brakes, 3663 and DBC which have national coverage.

- Both Booker and Makro have introduced a delivery service.

84. The parties also refer to the results of the local survey that shows that a significant proportion of caterers would consider using non C&C suppliers including delivered wholesalers, supermarket retailers, and specialist food and drink wholesalers.

85. The OFT notes that the parties have provided limited evidence in support of their claim that [ ]. The OFT also notes, as highlighted in footnote 21, that additional charges are made by the parties for delivery. The OFT's own market testing found that customers considered there were additional costs associated with deliveries, for example some goods were short dated thereby increasing the risk of wastage; customers also need to be on site to accept deliveries.

86. The survey results, discussed below, indicate that approximately half of those surveyed use delivered wholesalers but as there is no indication as to what proportion of sales these suppliers account for, the OFT cannot conclude on the degree of constraint delivered wholesalers place on the parties.[36] Therefore, whilst it is apparent that delivered wholesalers provide some constraint, the OFT is not able to conclude on the level of this constraint.

87. The OFT considers the local survey results demonstrate that the primary source of competition for caterers is from rival C&C operators and that delivered wholesalers constrain the parties to an extent – as the table below demonstrates, on average around half of total diversion for caterers was to another C&C outlet whereas on average, full basket diversion to delivered wholesalers and retailers and discounters each accounted for less than 10 per cent of total diversion.

[36] The parties undertook a customer survey for the purpose of local market analysis.

Table 4: Diversion ratios between suppliers to caterers[37]

Caterers	Average aggregate diversion to other merger party	Average aggregate diversion to C&C outlets	Average full basket diversion to delivered wholesalers	Average full basket diversion to retailers and discounters
Booker & Makro average		[50-60]%	[5-10]%	[5-10]%
Booker Average	**[10-20]%**	[50-60]%	[5-10]%	[5-10]%
Makro Average	**[20-30]%**	[40-50]%	[0-5]%	[5-10]%

Source: OFT analysis of parties' local survey results. Figures exclude own-branch diversion.

88. The parties also consider they are constrained (at a national and local) level by independent delivered wholesalers and cash and carry operators, including those belonging to major buying groups. As discussed at paragraphs 72–75, the OFT has received limited evidence from buying groups and therefore cannot conclude that they provide a strong competitive constraint on the parties. The OFT notes the local survey results that indicate that the parties' customers use independent C&Cs but as many are not named it is unclear whether they are members of buying groups or not.

89. The parties also consider they compete with specialist wholesalers such as Matthew Clark in the beer, wine and spirits segment, Hancocks in snacks/confectionary and soft drinks, Kerry in fresh food, Bunzl catering in food packaging and Viking Direct in office supplies. The parties submit that customers are willing and able to shop around and mix-and-match between several suppliers and that some specialist wholesalers offer a full range of certain products. However, the parties provided no indication of the proportion of spend that customers spend with these wholesalers and the OFT's own market testing indicated that specialist wholesalers may only provide a limited constraint. The OFT further notes that neither Booker nor Makro [ ]. [ ].

[37] The parties provided figures for partial basket divestment for some but not all categories. Footnote 14 provides an explanation of full basket and partial basket diversion.

90. As already indicated, the OFT considers that while caterers may shop at supermarket chains such as Asda and Tesco, it has not received sufficient evidence to indicate that they represent a viable alternative to C&C wholesalers. Similarly, whilst the parties [ ], it remains unclear to what extent they act as a competitive constraint on the parties. Finally, buying direct was not mentioned as a viable alternative by caterer customers.

91. As part of its third party enquiries, the OFT received concerns from caterers that the merger may result in increased prices and a more limited choice of products in their local area as the parties would have control of the main wholesale market in their area. These views were replicated in a number of local areas across the country.

92. The OFT notes that there are likely to be different types of caterers whose typical basket may differ significantly and who may find it more or less easy to switch between different supply options for their requirements. It is not possible, on the evidence available, for the OFT to conclude whether those caterers who may readily use non C&C suppliers including delivered wholesalers would be able to protect the group of caterers who are less likely to switch away from C&C suppliers and so prevent the merged party from raising prices or deteriorating service post merger.

93. In summary, the OFT considers the evidence taken in the round indicates there is close competition between the parties and that Makro had been [ ]. The OFT considers the constraint from Bestway and Costco is limited in respect of catering customers. Moreover, a number of caterer customers have raised concerns about the merger.

94. Therefore, the OFT considers that the merger raises a realistic prospect of a substantial lessening of competition at the national level for caterer customers.

Competition assessment for retailers on a national basis

Shares of supply

95. According to IGD estimates, the parties will account for [30-40] per cent of C&C sales to retailers (increment of [0-five] per cent), followed by Bestway with a share of [30-40] per cent and Costco [five-10] per cent. The regional C&C operators Dhameca (London) and Parfetts (North West) account for [five-10] per cent and [0-5] per cent shares respectively. The parties' provide an adjusted estimated share of supply for Booker of [20-30] per cent and [0-five] per cent for Makro.

96. On the basis of the estimated shares of supply, in respect of retailers, Bestway is Booker's closest competitor. Nevertheless, [ ]. Similarly, the OFT notes from market research undertaken by Makro that [ ][38] and that [ ].[39]

Closeness of competition and constraints from other distribution channels

97. The parties submit that they are not close competitors in that they largely serve different types of customers and in terms of total sales, Booker serves a higher proportion of [ ] than Makro. The parties submit that Makro's sales to retailers are [ ], whereas Booker has [ ]. Nevertheless, the OFT notes that Makro has approximately [ ] grocery-related product lines and customers have commented on the broad choice of grocery products available at Makro stores. This gives Makro a strong competitive position against other C&Cs and suggests that Makro, despite its relative small share of supply currently, may represent the third C&C choice to retailers after Booker and Bestway but arguably ahead of Costco, which, as noted at paragraph 80, stocks a more limited range of products.

98. The parties provided details of their impact analysis to demonstrate that [ ]. Instead, the parties argue that they are winning/losing customers from a wide range of alternative suppliers. However, the OFT notes that this analysis is inconsistent with other evidence provided by the parties, [ ],[40] that indicate that the parties are close competitors. In the absence of further details regarding the supporting information used in the parties' analysis, the OFT can only place limited weight on the results of the

[38] [ ]

[39] [ ]

[40] [ ]

analysis. For example, the OFT notes that broad categories were chosen for the parties' comparison which may act to 'dampen' the impact of any promotions and contrasts with the specific product promotions used for the individual store analysis.

99. The parties refer to the Harris International Marketing (HIM) study to show the extent to which independent retailers also source from delivered wholesalers. The OFT considers that customers may use a range of suppliers but consider that customers that use C&C as a primary source of supply will source the majority of their requirements from such suppliers. This was confirmed by the HIM study that indicated, on average, independent retailers source 21 per cent of their requirements from delivered wholesalers. Booker submits that Palmer and Harvey (P&H) is a major delivery wholesaler which is focused on supplying retailers but the OFT is doubtful of the competitive constraint offered by P&H compared to other C&C wholesalers. Makro's internal documents indicate that [ ].[41]

100. The OFT considers the local survey results demonstrate that the primary source of competition for retailers is from rival C&C operators. As the table below demonstrates, on average around 70 per cent of total diversion for retailers was to another C&C outlet whereas on average, full basket diversion to delivered wholesalers and retailers and discounters accounted for less than 10 per cent of total diversion and less than five per cent of total diversion, respectively.

[41] [ ]

Table 5: Diversion ratios between suppliers to retailers

Retailers	Average aggregate diversion to other merger party	Average aggregate diversion to C&C outlets	Average full basket diversion to delivered wholesalers	Average full basket diversion to retailers and discounters
Booker & Makro average		[70-80]%	[5-10]%	[0-5]%
Booker Average	[5-10]%	[70-80]%	[5-10]%	[0-5]%
Makro Average	[30-40]%	[60-70]%	[5-10]%	[0-5]%

Source: OFT analysis of parties' local survey results. Figures exclude own-branch diversion.

101. The OFT notes the growth of some regional wholesalers, particularly Dhamecha and that its estimated share of supply to retailers is higher than that for Makro. However, with reference to its views [ ], the OFT cannot be certain that such regional based wholesalers will provide a sufficient constraint on the parties post merger at a national level. [ ]. The OFT is also conscious of the relative size difference between the merged entity which will have around 200 branches and the smaller independent regional C&C wholesalers which typically have only two or three branches. Dhamecha which is considered to be one of the larger regional-based wholesalers has six branches, all based in or around London. On the basis of the evidence available, the OFT does not consider that regionally-based C&C wholesalers would have sufficient scale to constrain the parties post-merger at a national level.

102. The OFT's market testing did not support the parties' view that retailers switch spending between C&C wholesalers and specialist wholesalers. Therefore the OFT does not consider that specialist wholesalers will provide a strong competitive constraint on the parties post merger in supplying retailers. Buying direct from suppliers was mentioned by only one customer the OFT contacted and they found that that they could not purchase at competitive prices based on the limited quantities they wanted.

103. The parties' argued that the multiple supermarkets provide an important out-of-market constraint and that it may be plausible that the C&C wholesalers have an incentive not to increase prices to a level at which their retailer customers cannot compete with the multiple supermarkets. This point was made by the Competition Commission in its grocery market report.[42] However, as a first phase body, the OFT was not able to undertake the necessary assessment to conclude on this point. The OFT considers that these arguments are more suitably addressed at phase two where the appropriate analysis can be undertaken.[43]

104. On the basis of the evidence available, the OFT is not persuaded that the parties would be sufficiently constrained by other national C&Cs, regional C&Cs or multiple grocery retailers to prevent competition concerns arising as a result of the merger. On the other hand, Bestway is Booker's closest competitor in this market and is substantially larger than Makro. Overall, the OFT cannot rule out that the transaction may result in a substantial lessening of competition in terms of higher prices or a deterioration in non-price factors to retailers at a national level. However, given the its finding on national competition for caterer customers and on local competition (discussed below), the OFT has not found it necessary to conclude on whether there is a realistic prospect of a substantial lessening of competition at a national level in the C&C wholesale supply of grocery and related non-grocery products to retailers in this case.

LOCAL COMPETITION

105. The parties overlap in 29 of the 30 local areas where Makro has a store within a 30-minute drive time.[44] The OFT has considered whether there is a realistic prospect that the transaction will result in a substantial lessening of competition in any of the 29 overlap areas.

---

[42] Competition Commission, *The supply of groceries in the UK,* 30 April 2008, Annex 5.5 paragraph 27.

[43] The parties also told the OFT that multiple supermarkets constrained C&Cs by offering customers an alternate means to acquire grocery products. See paragraph 29.

[44] Booker does not operate any stores in Northern Ireland and therefore there is no overlap in Belfast.

Local area methodology

106. To assess whether the merger raises a realistic prospect of a substantial lessening of competition, the OFT has examined the following pieces of evidence:

- fascia counts (as an initial filter)
- survey results (including diversion ratios)
- upward pricing pressure model results, and
- area-specific information including Booker's weekly reports for retailers and competitors, minutes from Booker's trading meetings and Makro's list of competitors by store.

The initial filter

107. In considering the appropriate competitor set to use in the initial filtering exercise, the OFT had reference to those competitors [ ]. The OFT considers it appropriate to restrict the initial filter to include only those competitors [ ]. Accordingly, the initial filter includes Bestway (including Batleys and Bellevue) and Costco. The filter also includes regional C&C wholesalers, namely, Parfetts, Blakemore and Tyne Tees, Dhamecha, BA Cash & Carry, Hyperama and United Wholesale. [ ].

108. On the evidence available in this case, discussed in the geographic frame of reference (paragraphs 50 to 54) the OFT has used both a 15-minute and 30-minute drive time isochrone in analysing the local competition effects of the merger. The OFT considers that this approach is suitably conservative and reflects the OFT's 'realistic prospect' threshold for identifying competition concerns that may arise.[45]

109. Using a 15-minute isochrone, the parties overlap in 17 areas, resulting in the following reductions in fascia:

i. there are five overlap areas in which there is a fascia reduction of 'two to one'

ii. there are nine overlap areas in which there is a fascia reduction of 'three to two' and

[45] See OFT/CC, *Merger Assessment Guidelines*, paragraphs 2.6-2.7.

iii. there are three areas in which there is a fascia reduction of 'four to three'.

110. The parties overlap using a 30-minute isochrone in the remaining five areas resulting in the following reductions in fascia:

i. there are three overlap areas in which there is a fascia reduction of 'two to one'

ii. there are two overlap areas in which there is a fascia reduction of 'three to two' and

iii. there are no areas in which there is a fascia reduction of 'four to three'.

111. The overlap areas captured are summarised in table 6 below.

Table 6 – Summary of overlap areas captured by filter at 15-minute and 30-minute isochrone

Group	Fascia reduction	Overlap areas captured on 15-minute isochrone	Overlap areas captured on a 30-minute isochrone
A	'2 to 1'	Aberdeen Charlton Leicester Norwich Hull	Ipswich Poole Rayleigh
B	'3 to 2'	Bristol Edinburgh Nottingham Queensferry Exeter Glasgow Reading Southampton Teeside	Preston Stoke
C	'4 to 3'	Manchester Park Royal Leeds	No areas identified

Source: OFT analysis based on data supplied by the Parties

112. In this case, any resulting reduction in a fascia as a consequence of the merger of '4 to 3' or fewer were subjected to closer scrutiny. Twenty-two such areas were identified.

113. Areas which did not fail the initial filter, as described above do not raise competition concerns.

114. In order to present evidence on local area competition to the OFT, the parties commissioned a survey of customers.

Local area survey

115. The parties commissioned GfK to undertake a survey of customers in each of the 22 areas identified by the OFT's initial filter and one additional area (Liverpool).[46] Nearly 4,000 customers were surveyed across the 22 local areas.

116. However, although the parties consulted the OFT on the survey questionnaire (which conformed with the OFT's best practice[47]), the OFT was not consulted on the sampling method used in the survey. The OFT has some concerns on this. For example, the OFT is concerned that in areas where a Makro outlet overlaps with more than one Booker outlet, a survey was not undertaken at all of the Booker stores (instead, only the closest store was surveyed). In addition, the OFT is concerned that in some areas the sample size for retailers or caterers was small.[48]

117. The results of the survey have been used to calculate diversion ratios (one measure of how closely the parties compete) which the OFT has considered in its assessment in each local area.[49] If the merger parties are close substitutes, unilateral effects are more likely because the merged firm will recapture a significant share of the sales lost in response to the price increase, making the price rise less costly.[50] In this case, the OFT used an

---

[46] Prior to the finalisation of its initial filter, Booker had undertaken a pilot survey in five areas, including Liverpool which did not fail the initial filter.

[47] Competition Commission and OFT, *Good practice in the design and presentation of consumer survey evidence in merger inquiries*, OFT1230, March 2011.

[48] Segmented by caterer and retailer customers, 11 outlets had sample sizes of under 50 for each customer type and one area had a combined sample size of under 50.

[49] The central estimates are diversion figures adjusted to remove diversion to another branch of wholesaler of the same brand.

[50] OFT/CC, *Merger Assessment Guidelines*, paragraph 5.4.9.

aggregate of full basket diversions and partial basket diversions for each local area surveyed. To assess the likelihood of unilateral effects arising in local areas the OFT employed the illustrative price rise model.

Illustrative price rise pressure indicators

118. In order to estimate the pricing pressure that the merger may generate, the OFT has combined the diversion ratios for each of the areas surveyed with estimates of the parties' variable cost margins for each branch. The particular model for making that calculation that the OFT has used in this case is the asymmetric illustrative price rise (IPR) model. This gives a measure of the incentive the parties have to raise prices or worsen their competitive offering post-merger.[51]

119. The IPR model was chosen by the OFT since it did not have compelling evidence on the rate of pass through for Booker or Makro. The pass through rate is the extent to which a Booker or Makro branch could be expected to pass through any upwards pricing pressure to customers in the form of higher prices. Where the OFT does have persuasive evidence on pass through, it can consider measuring upward pricing pressure via GUPPI ('generalised upward pricing pressure indicator'). Where it does not, the OFT can apply assumptions about the structure of demand that a firm faces and estimate the upward pricing pressure by using the IPR model. In such instances, the OFT can assume a linear demand or an 'isoelastic' demand. Moreover, for each of these, a symmetric or asymmetric model of the IPR can be employed (depending on whether the merger parties impart roughly the same competitive constraint on each other or whether one imparts a significantly stronger constraint on the other which is not reciprocated to such a strong degree).

120. The parties submit that the pass through rate would be [ ] as Booker is constrained by its public commitment to keeping prices below those of its competitors. However, the OFT considers that the parties have not

[51] The illustrative price rise incorporates the diversion ratio from a store (which provides some indication of the closeness of competition between the merger parties and so whether a store has the ability to raise its prices) and the variable profit margin of a store (which provides some indication of price sensitivity of demand of the store's customers and whether a store therefore has the incentive to raise its prices). Therefore, the illustrative price increase is probative of unilateral effects theory of harm. Importantly, the IPR is not the same thing as merger simulation and therefore it does not try to predict post merger prices.

provided sufficient compelling evidence to support their argument on the level of pass through.

121. The OFT has therefore considered it appropriate to use the IPR model. The survey results indicated that Booker represents a stronger constraint on Makro, in terms of diversion than Makro does on Booker; the average diversion by all Booker customers to Makro was approximately [10-20] per cent whereas the average diversion by all Makro customers to Booker was over [20-30] per cent. This view was supported by other evidence provided by the parties, such as [ ]. As such, the OFT used an asymmetric form of IPR.

122. For a number of local areas the parties submit that survey evidence shows that customers would divert to other suppliers, whether C&C or non-C&C, sometimes as part of a multi-sourcing strategy in the face of a price rise. However, the OFT considers that such evidence is of limited probative value given that diversion ratios from the survey results are taken into account in the IPR calculation already.

123. For the purposes of its assessment, the OFT calculated Booker's variable gross margins using cost of goods sold and [ ] per cent of branch labour costs.[52] Makro submitted its variable gross margins on almost the same lines as Booker, apart from using [ ] per cent of branch labour costs, which the OFT accepted.

High diversion between the parties

124. In addition to the IPR analysis, the OFT was conscious of [ ] by the parties in respect of [ ] and by Makro in general. The OFT understands that [ ] tobacco and alcohol in the typical retailer basket, which are subject to high levels of excise duty. [ ]. In both cases the OFT has concerns that, because of the profit margins used in its IPR calculation, the IPR itself may not properly reflect the true significance of the reduction in competition arising from the merger.

125. Therefore, the OFT has also considered evidence in those local areas where there was substantial diversion between either party in either the retailer or caterer segments.

---

[52] This is in line with the method used for determining variable gross profits in *Completed acquisition by Edmundson Electrical Limited of Electric Center*, ME/5162/11, 11 May 2012.

126. This information together with customer comments, the parties' internal documents and other local factors formed the overall assessment for each local area.

Local area results

127. Of the 22 stores that failed the filter, the OFT is concerned that the merger gives rise to a realistic prospect of a substantial lessening of competition in the following 13 areas.

128. **Bristol**: This area represents a 'three to two' on a 15-minute catchment area. The OFT notes that there are two Booker outlets in the Bristol area, one in the centre of Bristol where a Bestway is located nearby and another at Avonmouth, where there is also a Costco. The Makro store is located slightly closer to the Avonmouth Booker branch than to the Bristol outlet. However, the customer survey found that the diversion to Costco is very low while diversion to Bestway is high. Although there is evidence to suggest that Bestway is a closer competitor to Booker than Costco partly due to Costco's more limited offering, the OFT considers that the proximity of the stores would be captured to a greater extent in the level of diversion. The results therefore raise doubts over whether the most appropriate Booker store was surveyed. Nevertheless, the diversion from Makro to Booker is sufficiently high for the IPR, based on caterers, to be [five-10] per cent. In addition to the presence of Bestway and Costco, the parties submit that in the event of a price rise, the majority of Makro customers would divert their spend across multiple channels (with [ ] per cent of caterers saying that they would go to non-C&C channels). However, the OFT notes that Makro identifies[53] Booker as [ ] in relation to its store in Bristol, followed by Costco and then Batleys (Bestway). Based on the evidence available, the OFT considers that there is a realistic prospect of a substantial lessening of competition in Bristol.

129. **Exeter**: This area represents a 'three to two' on a 15-minute catchment area. The diversion between the parties is sufficiently high for there to be an incentive to raise prices materially to caterers. The IPRs for caterer customers of Booker and Makro respectively were [five-10] and [five-10] per cent. There is also high diversion from Booker to Bestway and from Makro to Costco. However, the OFT notes that the nearest Costco is in

[53] 'Competitors by store' Parties response to OFT's emerging thinking. Annex 10. 7 August 2012 (the same source is used for equivalent data for the other areas discussed below)

Bristol which is significantly further than the 30-minute catchment area and yet no explanation is provided for this result. The parties submitted that Exeter is 'very seasonal' and caterers have a preference for delivered in peak times as the survey evidence indicated that caterers can split their spend across multiple channels. Nevertheless, based on the evidence available, the OFT considers that there is a realistic prospect of a substantial lessening of competition in Exeter.

130. **Hull**: This area represents a 'two to one' on a 15-minute catchment area. The IPRs in this area are [five-10] per cent and [five-10] per cent for caterer customers at Booker and Makro respectively. In addition, Makro's internal documents [ ]. The parties submit that Grimsby wholesale market offers a competitive constraint for caterer customers, as does Deebees in Grimsby. However, no compelling evidence was submitted on the constraint offered by either of these and the OFT notes that Grimsby is located south of the Humber and therefore wholesalers based here may be less attractive to customers based in Hull to the north. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Hull.

131. **Ipswich**: This area represents a 'two to one' on a 30-minute catchment area. The IPRs in this area were [five -10] per cent and [five-10] per cent for retailers (at Booker and Makro respectively) and [five -10] per cent and [five -10] per cent for caterers (again, at Booker and Makro respectively). The OFT notes that Makro [ ]. The parties submit that there is some diversion to Bestway from Booker customers ([ ] per cent of caterers on a full basket basis) and that some customers, caterers in particular, are likely to source across multiple channels. However, the OFT considers that these dynamics would be captured in the survey evidence. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Ipswich.

132. **Leicester**: This area represents a 'two to one' on a 15-minute catchment area. The IPRs in this area are [five-10] per cent and [five-10] per cent for caterer customers at Booker and Makro respectively. The parties provided evidence of new entry by Costco in Leicester (due to open in Spring 2013) but note that it is to the north of the city and question whether Costco could, due to its range (paragraph 80), replicate the competitive constraint represented by Makro which would be lost as a result of the merger. The OFT evaluates entry on the basis of whether it is timely, likely, and

sufficient to prevent a substantial lessening of competition arising from the merger.[54] In this instance the OFT cannot be confident that entry by Costco in Leicester would be sufficient to prevent a substantial lessening of competition arising. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Leicester.

133. **Norwich**: This area represents a 'two to one' on a 15-minute catchment area. The IPRs in this area are [10-20] per cent and [20-30] per cent for caterer customers at Booker and Makro respectively. The parties submitted that Norwich is a seasonal small market town where customers prefer to use delivered wholesalers. However, the OFT notes that Makro identifies Booker as its primary competitor in Norwich and this is reflected by the high diversion to Booker of over [ ] per cent for caterer customers. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Norwich.

134. **Poole/Bournemouth**: This area represents a 'two to one' on a 30-minute catchment area. The IPRs in this area are [five-10] per cent and [five-10] per cent for caterer customers at Booker and Makro respectively, and [five-10] per cent for Makro retailer customers. The parties submitted that the survey results indicate there is high diversion to non C&C, particularly the retail multiples for caterers. The Parties also identify Coastline product and foodservice as a notable local independent. However, the OFT notes that only limited information was provided on Coastline and that concerns were raised by a caterer from Bournemouth who was worried that prices would increase as a result of the merger. Further, the OFT notes that diversion from Makro to Booker is high for retail customers at over [ ] per cent. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Poole/Bournemouth.

135. **Queensferry/Chester**: This area represents a 'three to two' on a 15-minute catchment area. The IPRs in this area are [five-10] per cent and [five-10] per cent for caterer customers at Booker and Makro respectively, and [five-10] per cent for Makro's retailer customers. There is substantial diversion to Bestway and Costco. The parties submitted that respondents also mentioned Blakemore and AG Parfetts as alternative C&C wholesalers but no diversion figures were provided for these wholesalers. However, the OFT notes that Makro's internal documents identify Booker as its primary

[54] OFT/CC *Merger Assessment Guidelines*, paragraph 5.8.3.

competitor with regard to the Queensferry store. The OFT also received concerns from a caterer based in Chester that the merger would lead to higher prices and a reduced choice of products. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Queensferry/Chester.

136. **Rayleigh/Southend**: This area represents a 'two to one' on a 30-minute catchment area. The IPR in this area is [five-10] per cent for caterer customers at Makro. The OFT notes that there is another Booker branch in Chelmsford that lies within the 30-minute catchment area but was not surveyed. Although there is some diversion to Costco, the OFT notes that Makro's internal documents identify Booker as its primary competitor in Rayleigh. Based on the evidence available, the OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Rayleigh/Southend.

137. **Reading**: This area represents a 'three to two' on a 15-minute catchment area. In this area, the OFT is concerned that the diversion from Makro retailer customers to Booker is high, at [ ] per cent. This indicates that for these customers, Booker is a particularly close competitor to Makro and the OFT is concerned that prices may rise as a result. The OFT notes that Makro identifies Booker as its primary competitor in Reading, followed by Costco. The OFT considered the degree of competitive constraint represented by a local independent C&C, Thames, but did not consider there was sufficient evidence to conclude that it could constrain the parties post-merger. The OFT therefore considers based on the evidence available that there is a realistic prospect of a substantial lessening of competition in Reading.

138. **Southampton/Portsmouth:** This area represents a 'three to two' on a 15-minute catchment area. As with Reading, the OFT is concerned about the high diversion ratio from Makro retailer customers to Booker (at around [ ] per cent). This indicates that for these customers, Booker is a particular close competitor to Makro and the OFT is concerned that prices may rise as a result. The parties provided evidence of new entry by Costco in Southampton but the OFT notes that its location will be on the far side of Southampton Water which will result in a longer travelling time for customers. As a result of its location, it is therefore expected that Costco will represent a relatively weak competitor to the merger parties and, in any case, the OFT questions on a cautious basis, whether Costco could, due to

its range, replicate the competitive constraint that will be lost as a result of the merger. Therefore, in this instance, the OFT cannot be confident that entry by Costco in Southampton would be sufficient to prevent a substantial lessening of competition arising. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Southampton/Portsmouth.

139. **Stoke**: This area represents a 'three to two' on a 30-minute catchment area. The diversion from Makro to Booker amongst retailer customers is [ ] per cent. The OFT is concerned that this may give the merged entity the ability to raise prices post merger. Although there is also substantial diversion from Makro to Bestway, the OFT notes that Makro's internal documents [ ]. On a cautious basis the OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Stoke.

140. **Edinburgh/Longstone**: This area represents a 'three to two' on a 15-minute catchment area. The diversion ratio from Makro retailer customers to Booker is around [ ] per cent. The OFT is concerned that this may give the merged entity the ability to raise prices post merger. The OFT notes the high diversion from Booker to Bestway/Batleys and the relatively low diversion from Makro to Bestway/Batleys despite these stores being located very close to one another. The OFT also notes the relatively small sample for the Booker store which included only [ ]. Given the limited evidence provided to explain the survey results, the OFT considers that there is a realistic prospect of a substantial lessening of competition in Edinburgh/Longstone.

141. The OFT has therefore concluded that there is a realistic prospect of a substantial lessening of competition in the local overlaps listed above.

142. The OFT also considered the local area **Charlton/Greenwich** which raised prima facie competition concerns. This area represents a 'two to one' on a 15-minute catchment area. The IPR for Makro's caterer customers is [five-10] per cent. Consequently, the OFT is concerned that prices in this area will rise as a result of the merger. The OFT notes that there are a number of Booker stores within the 30-minute isochrone but only the store at Greenwich was surveyed and therefore the OFT cannot rule out the possibility of other concerning IPR estimates. The parties provided evidence of new entry by Dhamecha in Catford, Lewisham, due to open in Autumn 2012. The OFT notes that Dhamecha is one of the larger regional

independent wholesalers but had no information on the size or product range of the store. The OFT was therefore unable to conclude that entry by Dhamecha would be sufficient to prevent a substantial lessening of competition. However, given the finding in the 13 areas above, it has not been necessary to conclude on whether there is a realistic prospect of a substantial lessening of competition in Charlton/Greenwich.

143. The OFT also considered whether competition concerns are raised in the further nine areas listed below:

   i. Manchester/Ardwick

   ii. Leeds

   iii. Nottingham

   iv. Teeside/Stockton

   v. Aberdeen

   vi. Glasgow/Paisley

   vii. Park Royal/Acton

   viii. Preston/Blackburn

144. The OFT reviewed the evidence available on these areas but considers there are a number of factors which generate uncertainty in coming to a view.

145. First, some local areas had a limited survey sample for the Booker stores. For example, the OFT notes that only six retailers were surveyed at the Paisley store, 10 retailers at the Blackburn store and less than 20 retailers at the stores in Ardwick and Stockton. Further, the average sample size for Booker to Makro and Makro to Booker was below 100, a level which is usually considered appropriate for survey reliability. All eight areas listed above had a sample size of 80 or fewer for retailers. As the survey only achieved a proportion of responses from its initial target sample, the point estimates of diversion may not therefore accurately reflect true diversion between the parties. The parties supplied confidence intervals around the point estimates of diversion which demonstrate this uncertainty.

146. Secondly, it is unclear whether all the appropriate branches were surveyed. In some areas, there was more than one Booker branch within a 30-minute isochrone of the Makro branch. In these areas, Booker only surveyed customers of the most proximate Booker branch, for example, for Preston/Blackburn, there are two further Booker branches in Blackpool; and for Manchester/Ardwick there are a seven Booker branches (including one at Haydock and Farnworth) within a 30-minute isochrone of the Makro store but only the Ardwick branch was surveyed. As it is possible that customer switching preferences vary between the branches, the OFT does not consider it is appropriate to assume the survey results from one Booker branch is reflective of the pattern of diversion in the area as a whole. Subsequently, it is unclear the extent to which the local survey captures the full diversion between the parties in some local areas. The OFT also notes that the isochrone analysis was only undertaken in relation to the Makro stores and not redone in relation to the Booker stores such that the full competitive dynamic between the parties may not have been captured at a local level.

147. Finally, the OFT notes that the parties' provided limited qualitative information such as store size and range availability on competitors in the local areas that would support an assessment on whether there would be a sufficient competitive constraint on the parties post merger. Without this local contextual information, the OFT has had to largely rely on the survey results and evidence in the parties' internal documents to come to its view.

148. As a result of these factors, the OFT considers the merger raises competition concerns over unilateral effects in these further eight areas. However, given the OFT's findings in the thirteen local overlaps listed above, as well as the OFT's finding on the loss of competition for caterer customers at the national level, it has not been necessary for the OFT to conclude whether there is a realistic prospect of a substantial lessening of competition in these further eight areas.

Conclusion in respect of local areas

149. Based on its analysis of the available evidence, the OFT considers that the merger raises a realistic prospect of a substantial lessening of competition in 13 local areas and cannot rule out competition concerns in a further nine local areas. In these areas the OFT is concerned that prices will rise or non-price factors of competition will worsen.

BARRIERS TO ENTRY AND EXPANSION

150. When assessing possible supply-side responses, including entry, expansion and repositioning, the OFT will consider whether the response would be (i) timely, (ii) likely, and (iii) sufficient.[55] In terms of timeliness, the guidance suggests that the OFT will look for entry to occur within two years.

151. The parties submit that barriers to entry are not high and state that if the merged entity were to attempt to increase prices, worsen its product offering or reduce service levels, it would face expansion by an existing player from an adjacent sector or from existing operators expanding their product range. The parties identify a number of potential businesses that could potentially expand including Restaurant Wholesale, JJ Foodservice and Asda.com. The parties also contend that even for a 'greenfield' entrant, barriers to entry are not high in terms of obtaining a suitable site and estimate that it would cost £1 million to fit out a full service store of 40-50,000 square feet. A further £900,000 would then be required for working capital to obtain stock. The parties submit that a new entrant does not need to be of a large size in order to compete in that they can access the buying terms of a buying group and benefit from its economies of scale.

152. While third parties provided similar estimates of entry to those of the parties, they considered entry to be more difficult in terms of gaining planning permission and winning business from established competitors in order to cover the initial investment costs.

153. The OFT notes that the parties have identified potential entrants but is aware that many operate on-line businesses and therefore would not offer the same direct competitive constraint on the merged entity as the parties currently do on each other. In terms of a 'greenfield' entrant, the OFT considers that based on its understanding of the price and service requirements of customers, it does not appear plausible that a new entrant would be able to achieve the scale required to compete with the parties on a national basis. The OFT also considers that it would take significant time for a new entrant to establish comparable supply agreements to those which Makro currently holds. The OFT received no evidence to indicate that any regional wholesaler was considering expansion to offer national coverage.

---

[55] OFT/CC, *Merger Assessment Guidelines*, paragraph 5.8.3.

154. While entry at a local level may be plausible, it remains unclear the extent to which smaller independent C&C wholesalers present a significant competitive constraint on the merging parties. Further, the OFT's investigation did not reveal any specific entry or expansion plans in relation to particular local markets, other than those identified by the parties and discussed under the local area results.

155. The OFT considers that the transaction may have the effect of increasing barriers to expansion for existing C&C operators on the basis that Booker will have the largest network of branches post-merger (which will be over three times as large as the network of its closet C&C competitor Bestway), and its turnover will be significantly larger than other C&C operators. Indeed, the OFT estimates that Booker's turnover post-merger would be larger than the turnover of the C&C operations of the next 10 largest competitors combined.

156. In conclusion, the OFT does not consider entry or expansion in the C&C wholesale sector on a national basis likely. In relation to local markets, the OFT does not consider entry or expansion sufficient to alleviate its competition concerns and does not have specific evidence of likely entry or expansion into particular local markets.

BUYER POWER

157. The OFT has considered whether customers have sufficient countervailing buyer power to limit the ability of the merged entity to raise prices or deteriorate its range or service.

158. In general, the OFT considers the customer base of C&C outlets and delivered wholesalers to be highly fragmented. The OFT notes that Booker has over 400,000 customers but that its top 10 customers account for just [ ] per cent of its total sales. Similarly, Makro has over 1.1 million customers but its top 10 customers account for just [ ] per cent of its total sales. While larger customers may have some buyer power by switching part of their business to, for example, delivered wholesalers, the OFT does not consider that there would be sufficient switching to prevent the parties' raising prices or deteriorating service post-merger.

159. Accordingly, the OFT does not consider it likely that customers have sufficient buyer power to mitigate any increase in market power as a consequence of the transaction.

Efficiencies

160. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC.[56] The Act also enables efficiencies to be taken into account in the form of relevant customer benefits.[57]

161. The parties submit that the merger will generate efficiencies of £[ ], of which £[ ] will be due to [ ].

162. It is not uncommon for merger firms to make efficiency claims. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in a substantial lessening of competition, the OFT must be satisfied, on the basis of compelling evidence, that the efficiencies are timely, likely and sufficient and that they are merger specific. The OFT has only had sufficiently compelling evidence to meet this test in a small number of cases.[58] In this case, the OFT does not consider that the parties provided sufficient evidence to support their claims on the level of efficiencies resulting from increased economies of scale that could be achieved by the merger. Accordingly, no account of efficiencies has been made in its substantive assessment.

Conclusion on countervailing factors

163. The OFT does not consider there is sufficient available evidence in this case that any countervailing factor would mitigate the competition concerns identified.

THIRD PARTY VIEWS

164. The OFT received comments from a wide range of third parties including large and small customers and competitors. The OFT has included specific reference to third party views in the above detailed assessment but, for the sake of completeness, notes the following.

---

[56] OFT/CC, *Merger Assessment Guidelines*.

[57] OFT, *Mergers: exceptions to the duty to refer and undertakings in lieu of reference guidance,* OFT1122, December 2010.

[58] For example, *Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited*, ME/4551/10, 23 September 2010.

165. The OFT received a mixed response from customers. One national customer raised concerns that the merger will result in a material reduction in its choice of C&C wholesalers. Similarly, some local customers were concerned that the merger may result in increased prices and a more limited choice of products as the parties would have control of the main wholesale market in their area. These views were replicated in a number of areas across the country. However, other customers commented that any improved efficiencies resulting from the merger, if passed on to customers would allow them to compete more effectively with the large multiple retailers. But due to the lack of evidence provided by the parties on efficiencies, the OFT is unable to substantiate this view.

166. A number of competitors consider the parties to be close competitors and concerns were raised that the merger will result in a significant concentration in the sector at both a national and local level.

ASSESSMENT

167. The parties overlap in the wholesale cash and carry supply (but excluding wholesale delivery) of grocery and non-grocery products in Great Britain.

168. The OFT considered there was sufficient evidence to segment by type of customer. That is, between retailers and caterers. This reflects the parties' [ ]. As these customers are likely to have different product demands, substitution would be limited. The merger was assessed at both a national and local level (using both a 15-minute and 30-minute drive times).

169. At a national level, the parties have an estimated combined share of supply of [50-60] per cent (increment of [five-10] per cent) to caterers and [30-40] per cent (increment of [0-five] per cent) to retailers. The parties submit that these figures overestimate their position in the C&C sector. Nevertheless, the OFT considers the parties are close competitors [ ]. Whilst Bestway may be Booker's closest competitor in the wholesale supply to retailers, it is significantly weaker in the wholesale supply to caterers. The OFT also notes that a Makro outlet typically offers [ ] grocery SKUs and despite its relatively small share may represent a stronger competitor than Costco which focuses on a more limited SKU range.

170. On the basis of the evidence available to it, the OFT considers that there is close competition between the parties in the supply to caterers at the national level. The constraint from Bestway and Costco appears limited in respect of these customers. Moreover, a number of caterer customers have raised concerns about the merger. Therefore, the OFT has found that the merger raises a realistic prospect of a substantial lessening of competition for caterer customers at the national level.

171. In terms of the C&C supply of grocery and non-grocery products to retailer customers at the national level, on the basis of the evidence available, the OFT is not persuaded that the parties would be sufficiently constrained by other national C&Cs, regional C&Cs or multiple grocery retailers to prevent competition concerns arising as a result of the merger. However, Bestway is Booker's closest competitor in this market and Makro is a relatively weaker competitor. Overall, the OFT cannot rule out that the transaction may result in a substantial lessening of competition. Nevertheless, given the its finding on national competition for caterer customers and on local competition, the OFT has not found it necessary to conclude on whether there is a realistic prospect of a substantial lessening of competition at a national level in the C&C wholesale supply of grocery and related non-grocery products to retailers in this case.

172. For the purposes of assessing local markets in this case, the OFT used a filter based on 15- and 30-minute catchment areas. In addition to the national C&C wholesalers, a number of independent wholesalers were included in the fascia count. The OFT triangulated a range of different evidence on the competitive effect of the transaction in different local areas, including the local branch survey. Based on a review of that evidence, the OFT concluded that there is a realistic prospect of a substantial lessening of competition in 13 local overlap areas. A further nine areas raised at least the possibility of competition concerns arising but the OFT did not find it necessary to conclude on these.

173. The OFT did not consider there was sufficient available evidence that any countervailing factor would mitigate the competition concerns identified in this case. Consequently, the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

UNDERTAKINGS IN LIEU

174. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate.

175. As explained in the OFT's guidance,[59] in order to accept undertakings in lieu of reference, the OFT must be confident that all the potential competition concerns that have been identified in its investigation would be resolved by means of the undertakings in lieu without the need for further investigation. The need for confidence reflects the fact that, once undertakings in lieu have been accepted, this is final in terms of the OFT's ability to refer, as section 74(1) of the Act precludes a reference after that point.

176. Undertakings in lieu of reference are therefore appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear cut and where they are capable of ready implementation.[60]

177. Booker offered an undertaking in lieu of reference (UIL) to divest, at the OFT’s option and on reasonable terms, up to [ ] stores from 13 specified areas. As the UIL offered was limited to [ ] stores and, in any case, did not at all address the OFT’s concern on the realistic prospect of a loss of competition in the C&C wholesale supply to caterers at the national level, it was not sufficient to address the competition concerns identified by the OFT.

DECISION

178. This merger will therefore **be referred** to the Competition Commission under section 22(1) of the Act.

---

[59] OFT Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122), chapter 5.
[60] Ibid, paragraph 5.7.