
Anticipated acquisition by Asda Stores Limited of two stores from Co-operative Group Limited

ME/4357/09

The OFT's decision on reference under section 33(1) given on 23 December 2009. Full text of decision published 6 January 2010.

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. **Asda Stores Limited (Asda)** is a national grocery retailer, operating primarily one-stop grocery stores.
2. **The Co-operative Group Limited (CGL)** is the UK's largest co-operative with a diverse range of activities including the operation of banks, funeral services, farming, pharmacies and food retailing. This case involves CGL's food retailing business.

TRANSACTION

3. Asda proposes to acquire the following two stores from CGL:
 - the Somerfield store at 80 Townhead Street, Cumnock, East Ayrshire, KA18 1LG and
 - the Somerfield store at 99 The High Street, Kings Heath, Birmingham, B14 7BW (together, the **Target Stores**).
4. Asda notified the transaction to the OFT by way of Merger Notice which was deemed complete on 2 December 2009. The statutory deadline is 4 January 2010.

JURISDICTION

5. As a result of this transaction Asda and the Target Stores will cease to be distinct. The UK turnover of the Target Stores is less than £[70] million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not satisfied.
6. Asda has submitted, in line with the approach of the Competition Commission in Tesco/Slough Co-op,¹ that its post-acquisition share of net sales area for all one-stop stores in Kings Heath, Birmingham is [more than 25] per cent, and that its post-acquisition share of net sales area for all grocery in Birmingham is [more than 25] per cent. Accordingly, the share of supply test is met in relation to, at least, all grocery stores in Birmingham which the OFT regards as a substantial part of the UK for the purposes of section 23(2) of the Act. As a result, a relevant merger situation is created.
7. In light of the above, given that the Parties' share of supply in Birmingham exceeds 25 per cent, the OFT considers that it has jurisdiction to consider the relevant merger situation, covering both the Cumnock and Kings Heath acquisitions.
8. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

9. The merger gives rise to an overlap in the supply of grocery retailing in the UK, more particularly in relation to a mid-sized grocery store in Cumnock and a one-stop grocery store in Kings Heath.

Product scope

10. This industry has been examined extensively in recent years by both the OFT and the CC.²

¹ Tesco / Co-op store acquisition in Slough, Final report, published 28.11.07.

² For recent OFT examples, see Anticipated Acquisition by J Sainsbury plc of two stores from CGL, 9 November 2009, Completed Acquisition By Wm Morrison Supermarkets plc of 30 stores from CGL, 10 July 2009, CGL/Somerfield and Completed acquisition by Tesco Stores Limited of Brian Ford's Discount Store Limited, 22 December 2008 (Tesco/Brian Ford). For CC examples, see The supply of groceries in the UK market investigation (April 2008) (groceries report); Tesco plc and the Co-operative Group (CWS) Limited: a report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough by Tesco plc (November 2007) (Tesco/CWS); Somerfield plc and Wm Morrison Supermarkets plc: A report on the acquisition by Somerfield plc of 115 stores from Wm Morrison Supermarkets plc (September 2005) (Somerfield/Morrison); and Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc), Wm Morrison Supermarkets plc, J Sainsbury plc, and Tesco plc: a report on the mergers in contemplation (September 2003) (Safeway report).

11. In line with the OFT's and CC's previous decisional practice, Asda accepts that the product markets which are relevant to the assessment of the transaction are:
- one-stop stores (that is, those with a net sales area of 1,400 or more), and
 - mid-size stores (that is, those stores with a net sales area of less than 1,400 square metres but above 280 square metres). In addition, the mid-size stores are constrained by one-stop stores and so one-stop stores must be included in any market definition with mid-size stores as its focus.

Geographic scope

12. Previous CC and OFT decisional practice in supermarkets has found that there are both national and local aspects to competition.
13. In CGL/Somerfield there were many local areas for the OFT to consider. To 'filter out' local areas of overlap between CGL and Somerfield where no concerns could arise on any plausible market definition, the OFT used the following store catchment areas in its Stage 1 analysis:
- For one-stop stores: a 10-minute drive time in urban areas and a 15-minute' drive time in rural areas.
 - For mid-size stores: a five-minute drive time in urban areas and 10 minutes' drive time in rural areas but noting that these stores are also constrained by one-stop stores within a 10-minute drive time (or a 15-minute drive time in rural areas).
14. Asda has followed this approach in its submission to the OFT.

HORIZONTAL ISSUES

National competition

15. When considering the merger effect at the national level it is appropriate to consider the merged entity's share of supply across all store sizes; since national competition does not take place according to the size of an operator's retail stores. On this measure, after the merger the transaction will result in a negligible increment to Asda's national market share.
16. In light of this the OFT does not consider that competition concerns arise at a national level as a result of this merger.

Local competition

Stage 1 analysis

17. In its submission to the OFT, Asda largely followed the methodology set out in Annex 1 of CGL/Somerfield: this involved finding any overlap in the 'maximum reach isochrone' (the maximum area of geographic overlap, essentially), and then filtering in the 'primary isochrone' (centred on the Target Store) and in various isochrones re-centred on competing stores and areas of population (census output areas).

Cumnock

18. The merger does not give rise to a reduction in fascia in any relevant isochrone in the Cumnock area.

Kings Heath

19. On the basis of the analysis in Kings Heath, there is an overlap between the maximum reach isochrone of the Kings Heath store and an Asda branch. Accordingly, the OFT analysed the fascia reduction filter and isochrone re-centring techniques and concluded that the nearest one-stop Asda store (in Small Heath) lies outside of the primary isochrone. In addition, there were no overlaps when the primary isochrone was re-centred on other one-stop stores within the primary isochrone. Further, when the primary isochrone was re-centred on census output data, less than one per cent of the population would suffer a reduction in choice to three or fewer fascias.
20. In light of the above, the OFT's conclusion is that adverse unilateral effects will not arise in relation to the Cumnock or Kings Heath stores.

THIRD PARTY VIEWS

21. The OFT has received no third party comments in relation to the competitive assessment of this transaction.

ASSESSMENT

22. The transaction concerns the acquisition of two stores by Asda from CGL.
23. One of the Target Stores (Kings Heath) failed the initial filter and the OFT conducted further analysis on the Stage 1 isochrone- and fascia-count-based filtering analysis, the results of which did not give rise to concern at the local level.

24. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

25. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.