

Anticipated acquisition by Tesco Stores Limited of a store in Paisley from Somerfield plc

ME/3611/08

The OFT's decision on reference under section 33(1) given on 30 April 2008.
Full text of decision published on 14 May 2008.

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

PARTIES

1. **Tesco plc** (Tesco) is a large grocery retailer with a portfolio of stores across the UK. In addition to its UK grocery retailing business (both food and non-food), it has various other operations in the UK, which include petrol retailing, internet shopping and the provision of financial services. Tesco's turnover was £46.6 billion for the year ending 24 February 2007, of which approximately £35.6 billion was generated in the UK.
2. **Somerfield plc** (Somerfield) is also a large grocery retailer operating grocery stores of various sizes throughout the UK.

TRANSACTION

3. Tesco proposes to acquire a grocery store in Paisley (Acquired Store) currently operated by Somerfield. The Acquired Store is currently trading and has a floor space of 18,748 square feet (1,742 square metres), and a UK turnover of [less than £70 million].
4. Tesco notified the transaction to the OFT by a Merger Notice. The period for considering the Merger Notice commenced on 3 April 2008, and the (unextended) statutory deadline expires on 30 April 2008.

JURISDICTION

5. As a result of this transaction Tesco and the Acquired Store have ceased to be distinct. The parties overlap in the supply of grocery retailing and together Tesco and the Acquired Store will account for over 25 per cent of all grocery retailing in the UK. As a consequence the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. The merger gives rise to an overlap in grocery retailing in one-stop grocery stores.

Product market

7. In past cases both the OFT and the CC have drawn distinctions between different types of grocery shopping trips, and between the abilities of different sized stores to cater for such requirements. Stores have been broadly classified into the following store size categories:

Type of store	Net retail area
One-stop	Above 1,400 square metres
Mid-range	280 – 1,400 square metres
Convenience	Below 280 square metres

8. In both its report on Tesco/Co-op Slough¹ and the Provisional Findings Report² the CC moved away from the shopping mission as the starting point for market definition and referred to store sizes instead. The OFT endorses the CC's findings in these two reports that competitive constraints in relation to the supply of groceries are asymmetric – larger

¹ CC 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* (28 November 2007) (*Tesco/Slough*).

² CC report, *The Supply of Groceries in the UK market investigation: Provisional findings report* (31 October 2007) (*Provisional Findings Report*)

sized stores exert a greater constraint on smaller sized stores than vice versa.³

9. Another element of the product market will be the extent to which consumers perceive different grocery retailers in terms of the price, quality, range and service (or PQRS) proposition provided by each retailer. The set of fascia considered effective competitors for one-stop and mid-range stores is more limited than for convenience stores. Past cases have attempted to identify an effective competitor set,⁴ although in recent cases attention has also been paid to the extent of competition between further specific stores operated by different grocery retailers in the overlap area.⁵

Geographic market

10. In previous investigations in the grocery retail sector the OFT and the CC have concluded that the scope of the geographic frame of reference is essentially local as most consumers are prepared to travel only a limited distance for their grocery shopping, and that distance may vary according to the type of shopping trip required.
11. In providing its analysis of this case, Tesco adopted the geographic frames of reference used previously by the CC in the Safeway Report⁶ - five minute (for urban areas) and 10 minute (for rural areas) drive-time isochrones centred around individual stores (the Safeway Rules). More recently, in the Provisional Findings Report the CC has proposed a slight change to the boundaries of the geographic market to reflect the broader catchment area of larger stores and in turn the 'competitive pull' felt by their rivals. It therefore expanded the scope of competitors to midrange stores to include larger groceries stores within a 10 to 15 minute drive time.⁷ However, the CC notes that the precise delineation of the geographic market will vary across local markets according to local topographic and other conditions, and indicates that the threshold of 10 to 15 minutes has been adopted for the purposes of collectively analysing a

³ Provisional *Findings Report*, paragraph 4.145; *Tesco/Slough*, paragraph 5.15.

⁴ See for example, the CC's report *Acquisition by Somerfield plc of 115 store from Wm Morrison Supermarkets plc*, September 2005 (*Somerfield/Morrisons*) and the *Provisional Findings Report*.

⁵ See for example, *Tesco/Slough* and the OFT's *Completed acquisition by Tesco plc of five stores (Thurso, Bedlington, Little Lever, Ramsbottom and North Hykeham) from Somerfield plc* (4 December 2007) (*Tesco/Thurso*).

⁶ CC report, *Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc), Wm Morrison Supermarkets Plc, J Sainsbury plc and Tesco plc*, 18 August 2003.

large number of local markets.⁸ Hence, in Tesco/Thurso the OFT considered the particular features of the local market in considering Tesco's acquisition of the five Somerfield stores in that case. A similar approach is followed in this case.

COMPETITIVE ASSESSMENT

12. Tesco have proposed to acquire a 1,765 square metre 'one-stop' store in Paisley. With a population of 75,000 Paisley is considered an urban area. Paisley is approximately 11km west of Glasgow while the store is located 1km east of Paisley town centre. Tesco's nearest store is around a five minute drive away to the northeast and has a floor space of approximately 2,300 square metres.

National issues

13. Tesco's current UK share of supply of groceries is estimated at 27.5 per cent. The market share of the Acquired Store is estimated to be a fraction of one per cent. The OFT does not believe that the merger will give rise to material coordinated or unilateral effects at the national level.

Local issues in Paisley

14. The parties provided analysis for the Acquired Store on the basis of the OFT's recent application of the Safeway Rules in relation to large stores, where the OFT seeks to identify areas where there is a reduction in fascia within a 10 minute isochrone of the acquisition store (the primary isochrone), and effective competitor stores within that primary isochrone. On the basis of this isochrone analysis, the merger does not give rise to any reduction of fascia in all but one isochrone, where there will be a reduction of fascia from five to four. This is not consistent with competition concerns on a local level, and was supported by an output area analysis for the Paisley area provided by the parties. Finally, the OFT did not receive any evidence to suggest that there were any specific local features or circumstance which warranted a departure from the application of the Safeway Rules in this case.

⁷ *Provisional Findings Report* at paragraph 13.

⁸ *Provisional Findings Report* at paragraph 4.150.

15. Based on the evidence provided to the OFT we do not consider that the acquisition is likely to result in a substantial lessening of competition in the provision of one-stop shopping in Paisley.

THIRD PARTY VIEWS

16. Third parties generally had no concerns regarding the merger. One third party raised a number of general concerns regarding the grocery sector, none of which are materially affected by the merger.
17. Another third party suggested that their plans to open a store in the local area could be affected by the acquisition. However, the new entrant is not one which the OFT would consider to be an effective competitor to the merging parties in relation to one-stop stores. Hence the potential entry (or otherwise) of the third party would not impact the competitive assessment in this case.

ASSESSMENT

18. Tesco overlaps with the Acquired Store in grocery retailing. Due to the very small market share increment, the merger does not cause any concerns at a national level. At a local level, the Acquired Store passed each of the established fascia/isochrone tests that have recently been used to test local competition in the grocery sector, and the OFT received no evidence to suggest that there were any local conditions of competition in the Paisley area that would support widening the scope of its analysis in this case.
19. 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

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