

Completed acquisition by Tesco plc of a store in Cam,  
Gloucestershire from the Oxford Swindon & Gloucester Co-operative  
Society Limited

The OFT's decision on reference under section 33(1) given on 16  
December 2005. Full text of decision published on 12 January 2006.

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

#### **PARTIES**

1. **Tesco plc (Tesco)** is a large national grocery retailer operating both one-stop grocery stores and smaller grocery stores throughout the UK. The **Oxford Swindon & Gloucester Co-operative Society Limited (Co-op)** is engaged in the retailing of food, motor, funeral, travel and childcare outlets, together with property management and information services.

#### **TRANSACTION**

2. Tesco completed the acquisition of one store in Cam, Gloucestershire (the Acquired Store) from Co-op on 17 October 2005. The administrative deadline for this case is 6 January 2006 and the statutory deadline expires on 16 February 2006.

#### **JURISDICTION**

3. 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 post-merger will account for over 25 per cent of one-stop grocery stores in the UK.<sup>1</sup> 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.

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<sup>1</sup> See Figure 2.1 of the Safeway Report (referenced below).

## RELEVANT MARKET

### Product market

4. The parties overlap in grocery retailing through one-stop stores. In its report on the proposed acquisition of Safeway<sup>2</sup> (the Safeway Report), the Competition Commission (CC) concluded that one-stop shopping in grocery stores of 1,400 square metres and above constituted the relevant frame of reference for the purposes of their enquiries. Typically in a local area, only large stores cater for one-stop shopping and are thus not generally constrained by smaller grocery stores, as such stores do not stock a sufficiently wide product range to fulfil customers' needs for a weekly grocery shop.
5. The CC defined effective competitors for one-stop stores for the purposes of the first stage of its local choice and competitive analysis as being Asda, Booths, Budgens, Co-op (collectively referring to all the retail Co-operative societies), Sainsbury's, Safeway, Somerfield (including Kwik-Save), Morrison, Tesco and Waitrose. For stores to qualify as being effective competitors, they need to be at least 75 per cent of the size (by floor area) of the target store (or have a net floor space of greater than 1,400 square metres).
6. The Acquired Store falls within the definition of a one-stop grocery store as used in the Safeway Report. The product frame of reference for this case is therefore one-stop grocery shopping as defined by the CC.

### Geographic market

7. The Safeway Report concluded that the geographic frame of reference was essentially local because of the limited distance that most customers were willing to travel for their regular shopping trip. However, the CC did recognise that there were national aspects to competition as many important decisions (such as pricing and advertising) while implemented locally were taken at a national level and that these should therefore also be considered. In light of this, we have analysed competition both on a national and local basis.
8. The actual customer 'catchment area' of a store was considered by the CC to differ depending upon the size of the store and the purpose of the stop. Evidence collated during the CC investigation led to the conclusion that the appropriate

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<sup>2</sup> 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, August 2003, Cm5950, paragraph 5.11.

geographic scope for one-stop stores is a ten minute isochrone<sup>3</sup> in urban areas and a fifteen minute isochrone in rural areas.<sup>4</sup>

9. In the Safeway Report the CC applied a regional concentration rule in areas where there were only one or two fascia<sup>5</sup> within the appropriate isochrone.<sup>6</sup> In these cases, the isochrone was widened in successive five minute steps until a store of another effective competitor was included within the widened isochrone. If a 25 minute isochrone was reached without encountering another effective competitor, the CC stopped there, concluding that there were no other effective competitors in the local area. This methodology has been applied to the present case in paragraph 11 below.

## **HORIZONTAL ISSUES**

### **National Competition**

10. The merger results in a negligible increment to Tesco's national share of supply. Some third parties did raise concerns regarding Tesco's increasing market share at the national level. However, these appear to be general concerns with respect to Tesco's current market share (which has been achieved both through organic growth and acquisitions) and do not appear to be specific to this particular merger. As a result, no competition concerns are considered to arise at the national level as a result of this merger.

### **Local Competition**

11. Tesco provided local overlap analysis on the basis of the methodology set out in the Safeway Report. In this instance, the store is considered to be located in an urban area<sup>7</sup> and therefore a ten minute isochrone would apply. Tesco's analysis showed that there are no effective competitors to the Acquired Store within the ten minute isochrone. Given this, Tesco then applied the regional concentration rule and expanded the isochrone by five minute intervals until an effective competitor was identified. This analysis showed that the 20 minute<sup>8</sup> isochrone includes two effective competing fascia (Sainsburys and Waitrose, both located in Stroud) along with another Tesco store in Quedgeley. The parties therefore submitted that the acquisition did not raise competition concerns, as under the

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<sup>3</sup> An isochrone is a line joining points of equal travel time (usually drive-time) from a given point.

<sup>4</sup> See Safeway Report, Chapter Five.

<sup>5</sup> A fascia was defined in the Safeway Report as a multiple grocery retailer- thus, 'Asda' is a fascia, see page 16, footnote 2.

<sup>6</sup> See paragraph 5.246.

<sup>7</sup> In the Safeway Report, the ODPM recommended treating a population of 10,000 or more as urban. The population of Cam is approximately 13,331.

<sup>8</sup> No effective competitors were identified within the 15 minute isochrone.

regional concentration rule, a reduction in fascia from four to three was viewed by the CC as unproblematic.<sup>9</sup>

12. However, the OFT received conflicting isochrone analysis from a third party. The third party submitted that the Tesco in Quedgeley was the only other fascia within the 20 minute isochrone, with Sainsburys and Waitrose instead being considered to fall outside this isochrone but within the 25 minute isochrone. On this basis, it was argued that the acquisition would result in a reduction in fascia from two to one (within the 20 minute isochrone) and thus gives rise to competition concerns under the CC's approach.
13. It would appear that the use of different road speed assumptions has led to these discrepancies arising. In response, Tesco calculated drivetimes using the same road speed assumptions as set out in Appendix 5.2 of the Safeway Report. The results of this analysis supported Tesco's earlier conclusion that both the Sainsbury's and Waitrose fell within the same 20 minute isochrone.
14. Furthermore, Tesco also provided additional drivetime analysis using seven different drivetime generators, which demonstrated that in every instance the Sainsbury's store in Stroud was closer to the Acquired Store than the Tesco in Quedgeley and, with one exception, that both stores fell within the same isochrone.<sup>10</sup> The OFT replicated this analysis for the Waitrose store in Stroud which, whilst slightly more variable, generally supported the view that it was an equivalent driving distance from the Acquired Store as that of Tesco, Quedgeley.
15. During its investigation the OFT also sought the views of the other competitors within the immediate local area. Both Sainsbury's and Waitrose indicated that they considered their stores in Stroud competed with the Acquired Store. They also provided their own isochrone analysis which supported the view that no local competition concerns arose.
16. [ ].
17. Given these factors, the OFT does not consider that the merger gives rise to competition concerns at the local level as, post merger, the Acquired Store will continue to face a sufficient number of effective competitors.

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<sup>9</sup> See Safeway Report paragraph 5.297.

<sup>10</sup> The seven drivetime generators used were: RAC, AA, Mapquest, Multimap, Google, Viamichelin, and Green Flag. Only Mapquest indicated that the two were in different isochrones – with Sainsbury's a 17 minute drive and the Tesco, Quedgeley a 21 minute drive.

## **Barriers to entry and expansion**

18. The Safeway Report identified high barriers to entry in one-stop grocery retailing. Economies of scale, in particular the ability of large incumbent supermarkets to command favourable buying terms, as well as planning restrictions, have restricted entry such that there has been no entry by a new fascia in the last ten years. Barriers to expansion by existing players are also considered to be high (but not as high as new entry) given the need to identify suitable sites and also to meet stringent planning regulations. The OFT has not received any evidence which would warrant departing from this conclusion.

## **Buyer power**

19. As customers are usually individuals, there is no countervailing buyer power.

## **VERTICAL ISSUES**

20. The merger will result in a very minor increment to Tesco's share of national grocery purchases from suppliers. As a result, the merger is not considered to materially strengthen Tesco's buyer power and no vertical concerns arise.

## **THIRD PARTY VIEWS**

21. As noted earlier, some third parties did express general concerns about the increasing levels of concentration in the supermarket sector but these were not specific to this particular acquisition. The remaining third party concerns and views raised during the OFT's investigation are considered in greater detail above.

## **ASSESSMENT**

22. The merger does not give rise to competition concerns at the national level. At the local level there are a number of effective competitors present within the local area to provide a sufficiently strong competitive constraint post-merger. Furthermore, as the increment to Tesco's national grocery purchases is very small, the merger is not considered to materially strengthen Tesco's buyer power and no vertical concerns arise.
23. Consequently, the OFT does not believe 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.

## **DECISION**

24. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.