

# Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners (GB) Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6588/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 June 2016. Full text of the decision published on 5 July 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### SUMMARY

1. Co-operative Foodstores Limited (**CFL**) has agreed to acquire 15 Budgens grocery stores (the **Target**) from Booker Retail Partners (GB) Limited (**Booker**) (the **Merger**). CFL and Booker are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The CMA has assessed the impact of the Merger at a national and local level, in line with previous CMA, Office of Fair Trading (**OFT**) and Competition Commission (**CC**) decisions, taking into account the asymmetric nature of the competitive constraints exercised by grocery stores of different sizes.
4. The Parties overlap in the retail supply of groceries in 14 local areas in the UK. Three local areas (Byfleet, Sandy and Bradford-on-Avon) failed the sensitivity checks applied to the primary filtering analysis and were therefore assessed in more detail as potentially raising competition concerns.

5. The CMA has found that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) in the retail supply of groceries:
  - (a) on a national basis, due to the limited number of grocery stores acquired and the Merger resulting in a negligible increase in national market share; and
  - (b) on a local basis, due to there being sufficient competitive constraints remaining post-Merger in each of the local areas considered in this case.
6. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

8. CFL is a wholly owned subsidiary of Co-operative Group Limited (**CGL**), incorporated in 2014. CGL is a mutual business owned by over eight million members and active in a range of activities including grocery retailing, insurance, funeral care and legal services. The turnover of CGL in 2014 was £9,433 million in the UK.
9. Booker is a wholesale supplier of groceries to the retail sector in the UK and a symbol group operator owning retail brands. It operates 3,082 convenience stores under the Premier brand, 1,458 convenience stores under the Londis brand, and approximately 149 convenience and mid-sized stores under the Budgens brand. The large majority of these stores are independently owned,<sup>1</sup> but receive services from Booker including: wholesaling, marketing and store development. A small number of the Budgens stores, 26, are owned and operated by Booker.<sup>i</sup>
10. The Target comprises 15 Budgens grocery stores that are owned and operated by Booker and are located in Bedgrove, Chalfont St Peter, Crouch End, East Barnet, Grange Park, Sandy, Bradford-on-Avon, Byfleet, Northcourt, Fulham, Parsons Green, Ripley, Walton on the Hill, Tysoe St and Fakenham. Together these stores achieved sales of around £[~~8~~] in 2015.

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<sup>1</sup> The independently owned stores are franchised and operated under either a 'dealer-owned and dealer operated' (DoDo) or 'company-owned and dealer operated' (CoDo) model.

## Transaction

11. On 1 February 2016, the Parties entered into a sale and purchase agreement for CFL to acquire the Target from Booker. The transaction is conditional on CMA clearance.

## Jurisdiction

12. As a result of the Merger, the enterprises of CFL and the Target will cease to be distinct.
13. The Parties are both active in the retail supply of groceries in a number of local areas, including Central Bedfordshire, the Chiltern, South Northamptonshire, and Reigate and Bansted. Section 23(4) of the Act specifies that the share of supply test is measured on the basis of supply in the UK or a substantial part of the UK. In particular, the local nature of the markets in which the Parties operate has also been considered a relevant economic factor.
14. The CMA considers that Central Bedfordshire County, an administrative area with a population of 254,381, constitutes a substantial part of the UK.<sup>2</sup> As a result of the Merger, the Parties' combined share of supply of groceries, based on the combined net sales area of mid-sized stores in this county would be [30-40]% (with an increment of [5-10]%). The Parties also submitted that the share of supply test is met in relation to the other local authorities and counties listed in paragraph 13 above.
15. The CMA therefore believes that the share of supply test in section 23(3) of the Act is met, and that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 April 2016 and the statutory 40 working day deadline for a decision is therefore 9 June 2016.

## Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the

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<sup>2</sup> The CMA has considered the cases of Anticipated acquisition by Lincolnshire Co-Operative Limited of a Budgens store in Holbeach, Lincolnshire, from Musgrave Retail Partners GB Limited (ME/6476/14); Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol stations from Co-operative Group Limited (ME/6466/14); Anticipated acquisition by Co-Operative Group Limited of David Sands Limited (ME/5317/12).

CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>3</sup>

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

### **Frame of reference**

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. 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 merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>4</sup>
20. The Parties overlap in the retail supply of groceries in the UK.

### **Product scope**

21. The CMA, the OFT and the CC have conducted a number of investigations into transactions involving grocery stores,<sup>5</sup> and, in line with the CC's grocery report<sup>6</sup> (**Groceries Report**), the CMA's and its predecessors' approach<sup>7</sup> has been to define grocery stores according to the size of their net sales area as:

(a) one-stop stores (**OSS**) (1,400 square metres (**sqm**) and larger);

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<sup>3</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>4</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>5</sup> For example, Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol stations from Co-operative Group Limited (ME/6466/14); Anticipated acquisition by Co-Operative Group Limited of David Sands Limited (ME/5317/12); Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited (ME/4551/10); Anticipated acquisition by Co-operative Group Limited of Somerfield Limited (ME/3777/08); The CC's Report, 'The supply of groceries in the UK' dated 30 April 2008 (Groceries Report).

<sup>6</sup> The CC's Report, 'The supply of groceries in the UK' dated 30 April 2008 (Groceries Report).

<sup>7</sup> For instance, ME/6529-15 *Netto/Co-op*, CMA, 25 February 2016, paragraph 25.

- (b) mid-size stores (**MSS**) (280-1,400 sqm); or
- (c) convenience stores (below 280 sqm).
22. Stores have been considered to be constrained by other stores in the same or larger size categories, but not by those in smaller size categories.<sup>8</sup>
23. In addition, the OFT has previously considered that smaller convenience stores (including ‘kiosks’ attached to petrol stations) may not be in the same frame of reference as larger convenience stores due to factors such as their small size and more limited product range.<sup>9</sup>
24. The Parties’ internal documents indicate<sup>ii</sup> that the retail proposition of smaller convenience stores can be significantly differentiated from larger convenience stores in terms of product range and the shopping missions that they principally cater to. A CFL internal strategy document describes different formats of CFL convenience stores.<sup>10</sup> [REDACTED].
25. Booker’s internal document<sup>11</sup> reports that the top product categories purchased in Budgens stores are: [REDACTED]. This therefore suggests that the size of a store is determinative of the shopping mission it caters to.
26. Finally, another internal document<sup>12</sup> reports that, of other convenience store fascia visited, Budgens shoppers most frequently visit [REDACTED], whereas only a very small percentage of Budgens shoppers also visit [REDACTED] stores.<sup>13</sup> This is also consistent with Budgens and these symbol group stores having a different proposition.
27. The Parties also provided evidence on the products stocked by a number of smaller convenience stores located in Byfleet, Sandy and Bradford-on-Avon. This evidence showed that these smaller convenience stores stocked a relatively limited range of fresh items.
28. Overall, the CMA considers that the above evidence indicates that, all else being equal, a customer of a larger convenience store may consider smaller convenience stores to be a relatively poorer alternative than larger convenience stores. The extent of the competitive constraint which a smaller convenience store is likely to place on a larger store will generally depend on

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<sup>8</sup> For instance, ME/3777/08 CGL/ Somerfield, OFT, 20 October 2008, paragraph 20.

<sup>9</sup> See ME/5407/12 Sainsbury’s/Rontec, OFT, 7 June 2012, paragraph 22; and ME/5317/12 CGL/David Sands, OFT, 16 April 2012, paragraph 20.

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> Shoppers were asked “which of these convenience stores and small supermarkets do you use?” and given the choice of: [REDACTED].

features such as the range of products it offers, its location, and opening times etc. However, as illustrated by the evidence above, smaller convenience stores will tend to stock less than larger convenience stores and this is likely to reduce the competitive constraint placed by the former on the latter.

29. For the purposes of assessing the local effects of the proposed transaction, the CMA employs a filtering methodology in order to identify areas of potential concern for detailed analysis.<sup>14</sup> The CMA found that the inclusion of smaller convenience stores<sup>15</sup> in the filtering process resulted in the exclusion of a higher proportion of areas from the detailed local assessment. The CMA considers it appropriate in this case, on a cautious basis, to exclude smaller convenience stores from the product scope given that they may not represent good alternatives to larger convenience stores for consumers (as indicated by the above evidence) and that their inclusion in the competitor set for filtering purposes may therefore underestimate the scale of the potential competition concern raised by the Merger. The constraint exerted by these smaller convenience stores on the Parties' stores is instead taken into account in the detailed local analysis of the areas that are not filtered out.
30. The grocery fascia included as effective competitors in previous OFT decisions are listed in Annex 1<sup>16</sup> to this decision. Grocery retailers outside of this group have generally been considered as outside of the frame of reference with regard to OSS and MSS. However, the OFT has previously considered that, in the context of a particular area, other grocery retailers may form part of the effective competitor set in relation to convenience store retailing.<sup>17</sup> The Parties have provided evidence of other grocery retailers present in some of the local areas and these have been taken into account in the competitive assessment, but are not included here in the frame of reference.

### *Conclusion on product scope*

31. For the reasons set out above, on a cautious basis, the CMA considers that it is appropriate to adopt the product frame of reference as defined in paragraph 21 with the exception of convenience stores with a net sales area of less than 100 sqm and excluding grocery retailers which are outside the effective

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<sup>14</sup> See paragraph 49.

<sup>15</sup> The CMA recognises that there is no clear threshold between smaller and larger grocery stores. However, the CMA believes that, in this case, using 100 sqm as the threshold provides a useful point for segmenting between different sizes of stores.

<sup>16</sup> Consistent with ME/3777/08 *CGL/Somerfield*, OFT, 20 October 2008, paragraph 13; the CC's Groceries Report (2008), paragraph 14. See note on treatment of Booker brands in paragraphs 45-46.

<sup>17</sup> See ME/3777/08 *CGL/Somerfield*, OFT, 20 October 2008, Annex A.

competitor set, both of which are taken into account in the detailed local analysis of the areas that were not filtered out at the first stage of the competitive assessment.

### **Geographic scope**

32. Previous decisions made by the CMA and its predecessors<sup>18</sup> have identified that the relevant geographic scope for grocery retailing is essentially local, although a national dimension of competition may also exist, to the extent that some competitive parameters are set centrally on a national basis by grocery chains.
33. The Parties submitted that the approach to defining the geographic scope previously adopted by the CMA and its predecessors is appropriate in this case. More specifically, in relation to the three product markets identified in paragraph 21 above, the geographic scope has been defined as follows (**CGL/Somerfield approach**):<sup>19</sup>
- (a) a 10/15 minute drive time for OSS (in urban/rural areas);
  - (b) a 5/10 minute drive time for MSS (in urban/rural areas), which are also constrained by OSS within a 10/15 minute drive time (in urban/rural areas); and
  - (c) a 5 minute drive time for convenience stores,<sup>20</sup> which are also constrained by OSS within a 10/15 minute drive time (in urban/rural areas) and by MSS within a 5/10 minute drive time (in urban/rural areas).
34. The CMA notes that alternative approaches have also been used to define the geographic scope of convenience stores. With particular reference to convenience stores, in *CGL/David Sands*<sup>21</sup> (**CGL/David Sands approach**) the OFT used a one mile radius and a 5 minute drive isochrone to define the geographic scope for convenience stores. In that case, the OFT only considered the asymmetric constraint imposed on convenience stores from MSS and OSS within a 5 minute drive time isochrone and one mile radius.
35. In *Midcounties/Tuffin*<sup>22</sup> the CMA considered that, in addition to the approach taken with respect to convenience stores in *CGL/David Sands*, that MSS may

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<sup>18</sup> See footnote 5.

<sup>19</sup> For instance, see the CC's Groceries Report (2008); ME/3777/08 *CGL/Somerfield*, OFT, 20 October 2008; ME/6466-14 *Asda Stores/Co-op*, CMA, 28 November 2014.

<sup>20</sup> A one mile radius was also used as a sensitivity check.

<sup>21</sup> ME/5317/12 *CGL/David Sands*, OFT, 16 April 2012, paragraphs 38-39.

<sup>22</sup> ME/5452/12 *Midcounties/Tuffin*, OFT, 18 October 2012, paragraph 59.

also only be constrained by OSS within a 5 minute drive time in urban areas and a 10 minute drive time in rural areas.

36. The CMA considers that undertaking the analysis of local overlaps based on each of the *CGL/Somerfield* and *CGL/David Sands*<sup>23</sup> approaches (paragraphs 33 and 34) is suitably cautious. In doing so, the CMA has not sought to identify one of these approaches as being inherently superior or preferable to the other, but has considered the outcomes of the alternative analyses in the context of the specific facts of each overlap area in question.

### *Conclusion on geographic scope*

37. For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Merger against a geographic frame of reference consistent with that set out in paragraph 33 but also applied a sensitivity check and considered the impact of the Merger against the following geographic frame of reference:<sup>24</sup>

- (a) for OSS as: a 10 minute drive time in urban areas and 15 minute drive time in rural areas;
- (b) for MSS as: a 5 minute drive time in urban areas and 10 minute drive time in rural areas. These stores may also be constrained by OSS within a 5 minute drive time in urban areas or a 10 minute drive time in rural areas; and
- (c) for convenience stores as: a 5 minute drive time and/or a one mile radius in all areas. These stores may be constrained by all grocery stores<sup>25</sup> located within a 5 minute drive time and/or a one mile radius.

38. The CMA has taken into account the constraint from rivals situated outside the convenience store catchment areas in the detailed analysis that it has carried out for stores that were not filtered out.

### ***CFL and regional Co-operatives***

39. CGL and regional Co-operative societies collectively own and operate the Federal Retail and Trading Services Limited (**FRTS**) buying group.<sup>26</sup> CGL currently owns [X] % of the shares in FRTS with the other shares held by [X] other independent Co-operative society members. Prior to FRTS, Co-

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<sup>23</sup> Including the approach adopted for MSS in Midcounties/Tuffin.

<sup>24</sup> Consistent with the *CGL/David Sands* approach.

<sup>25</sup> Those corresponding to the effective fascia in Annex 1.

<sup>26</sup> FRTS was incorporated in August 2014.



operative Retail Trading Group (CRTG) was a consumer cooperative sector-wide buying group.

40. Consistent with previous decisional practice,<sup>27</sup> the CMA considers that the degree of competition between CFL and members of the FRTS buying group may be less than that between CFL and fully independent fascia.
41. The CMA notes that in *CGL/Somerfield* the OFT treated CGL and regional Co-operatives as a single fascia. In *Midcounties/Tuffin*,<sup>28</sup> the OFT was able, on the basis of information received in that case, to take into account in its area-by-area analysis Midcounties and CGL as 'partially effective' competitors.
42. The Parties submitted that the FRTS relationship between CGL and the regional Co-operatives is [redacted] different from the previous arrangements with CRTG, which make it more 'arm's length' than it was previously and that, therefore, CGL and regional Co-operatives should be considered as full competitors to each other. In particular, the Parties state that the new arrangements include: [redacted].
43. The CMA considers that CFL has presented insufficient evidence to conclude that CFL stores and regional Co-operative stores should be considered as 'fully effective' competitors, ie that they are fully independent rivals to each other. Further, it is not clear what level of rivalry exists between Co-operatives under the new FRTS arrangements. In addition to the joint ownership of FRTS by Co-operatives the CMA notes that:
  - (a) Co-operatives purchase [redacted]% of products through FRTS; and
  - (b) Co-operatives have the option to [redacted].
44. Therefore, the CMA considers that there is insufficient evidence to assess the extent of rivalry between Co-operatives or to support the conclusion that CGL (and CFL) and regional Co-operatives should be treated as exerting a significant competitive constraint upon each other for the purpose of its assessment. The CMA has therefore, on a cautious basis, treated CFL and regional Co-operatives as a single fascia.

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<sup>27</sup> For example, ME/3777/08 *CGL/Somerfield*, OFT, 20 October 2008, paragraph 107; and ME/5452/12 *Midcounties/Tuffin*, OFT, 18 October 2012, paragraphs 107-114. The CMA notes that these findings were previously made with respect to the CRTG buying group which the CMA understands has now been superseded by the FRTS buying group.

<sup>28</sup> ME/5452/12 *Midcounties/Tuffin*, OFT, 18 October 2012, paragraphs 107-114.

### ***Booker symbol group stores***

45. Booker owns the Londis, Premier and Budgens brands (see paragraph 9). The Parties have submitted evidence indicating<sup>iii</sup> to the CMA that Booker may exert a degree of control/influence over the prices and products stocked by all retailers operating under these symbol group brands. The CMA has therefore, on a cautious basis, considered it appropriate to treat stores operating under the Booker brands as not being universally independent fascia.
46. The CMA has therefore used two methodologies to count competing fascia pre- and post-Merger:
  - (a) treating each symbol group (and any Booker-owned stores) as separate fascia for the purpose of identifying local areas where a reduction of competing fascia will occur; and
  - (b) treating all Booker symbol groups and Booker-owned stores as a single fascia to identify the minimum number of truly independent competing fascia that will remain in areas identified as experiencing a reduction of fascia.

## **Competitive assessment**

### ***Horizontal unilateral effects***

47. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>29</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors.

### ***National retail supply of groceries***

48. Given the limited number of grocery stores being acquired, the Merger would result in a negligible increase in national market shares (no greater than [0-5]% on any plausible basis).<sup>30</sup> Consequently, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to the retail supply of groceries at a national level.

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<sup>29</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>30</sup> Merger Notice.

### *Local retail supply of groceries*

49. For the purposes of assessing the local effects of the proposed transaction, the CMA employs a filtering methodology (essentially a fascia counting exercise) whereby areas raising prima facie competition concerns are identified. Where the merger would lead to a reduction in competing fascia to three or fewer, and consequently raise prima facie competition concerns,<sup>31</sup> a more detailed assessment is carried out on an area by area basis.
50. The Parties have undertaken a filtering analysis to identify the overlaps and any reduction in the number of effective competitor fascia in each of the local areas (see paragraph 10).

#### *Filtering analysis*

51. The Parties submitted the results of a filtering analysis which involved the following steps:

***Step one: Identify relevant overlaps***

Stores are defined as overlapping where they have overlapping catchment areas (as defined by drive time in paragraph 33);

***Step two: Primary isochrone filter***

An overlap store passes this filter if the Merger does not result in a reduction of competing fascia from 4 to 3 or fewer;<sup>iv</sup> and

***Step three: Census output filter***

A MSS/OSS passes this filter if less than 10% of the population within its catchment area face a significant loss of choice due to the Merger (ie a reduction in fascia from 4 to 3 or fewer).<sup>32</sup>

52. The Parties submitted that, according to the results of filtering analysis described above, the Merger will not result in a reduction in the number of fascia from 4 to 3 or fewer in any of the local areas. The CMA agrees that in this case no prima facie concerns arise on the basis of the *CGL/Somerfield* approach alone.

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<sup>31</sup> [Merger Assessment Guidelines](#), paragraph 5.3.5.

<sup>32</sup> Historically the census output test has not been applied to convenience stores. For example, ME/3777/08 *CGL/ Somerfield*.

53. However, as explained in paragraphs 31 and 37 above, the CMA applied a number of sensitivity checks to the filtering analysis submitted by the Parties,<sup>33</sup> including:
- (a) convenience stores with a net sales area of less than 100 sqm were excluded from the effective competitor set;
  - (b) the catchment of a convenience store was defined both as a 5 minute drive time and a one mile radius; and
  - (c) OSS and MSS located outside the convenience store catchment were not included in the geographic scope of convenience stores.<sup>34</sup>
54. Three local areas, namely Byfleet, Sandy and Bradford-on-Avon, failed the filtering exercise when applying one or more of these sensitivity checks. The CMA therefore reviewed each of these local areas in more detail and assessed:
- (a) whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects through the loss of actual competition in the retail supply of groceries in the Byfleet and Sandy local areas; and
  - (b) whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects through the loss of competition between the Southern Co-operative and the Target Budgens store in Bradford-on-Avon.
55. In each of these local areas the CMA took into account evidence on factors including net sales area of stores, relative location (in terms of walk/drive time), product range of stores, availability of car parking, opening hours and local topographic features.

### **Byfleet**

56. The Parties classified Byfleet<sup>35</sup> as a rural area with population of 7,724. Both Parties' stores in Byfleet are classified as convenience stores.<sup>36</sup>

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<sup>33</sup> The CMA notes that the Parties have assumed 'off peak' driving conditions whereas the CC's *Groceries Report* and *CGL/Somerfield* assumed 'normal' driving conditions. The CMA has therefore applied a sensitivity check to the Parties' primary isochrone filter which did not indicate that any further local areas would fail the filtering analysis if more realistic driving conditions were assumed.

<sup>34</sup> The sensitivity checks consistent with the frame of reference for MSS (see paragraph 37(b)) did not give rise to any further local areas of concern.

<sup>35</sup> For convenience, the CMA uses this term to describe the area in and around Byfleet, for instance the area within a mile radius of the Parties' stores.

<sup>36</sup> As defined in paragraph 21.

57. The Parties submitted that, as there is one Co-operative store in the primary isochrone of the Budgens store, there is a fascia reduction in the primary isochrone of this store. However, according to the Parties, there would still be eight independent competitors in Byfleet after the Merger.
58. In accordance with the frame of reference defined in paragraphs 21 and 37 above, the CMA applied both a one mile radius and a 5 minute drive time isochrone to identify the remaining fascia in Byfleet post-Merger and excluded convenience stores with a net sales area of less than 100 sqm from the remaining fascia count. It similarly excluded any fascia which were not included in the effective competitor set listed in Annex 1.
59. As a result, the Merger represents a reduction in effective competitor fascia in Byfleet from 4 to 3 within a one mile radius and from 6 to 5 within a 5 minute drive time from the Target Budgens store.
60. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
  - (a) the closeness of competition between the Parties;
  - (b) competitive constraints from remaining competitors; and
  - (c) competitive constraints from outside the frame of reference.
61. The Parties' convenience stores are located very close to each other (less than 0.1 mile or one minute drive time apart). It therefore appears likely that, for a significant<sup>37</sup> proportion of customers of each store, the other Party's store is the closest alternative.
62. The remaining competitors (from within the effective competitor set) to the Parties' stores in Byfleet (within a one mile radius relative to the Target Budgens store) are M&S (OSS) and Tesco (OSS and convenience store). Further than a mile but within a 5 minute drive time relative to the Target Budgens store are Londis (convenience store), Waitrose (MSS) and Tesco Express (convenience store).
63. The CMA considers that the Parties will be constrained to some extent by rivals outside the effective competitor set. In particular, the CMA notes the presence of Home Bargains, an additional competitor outside the effective competitor set located relatively close<sup>38</sup> to the Parties' stores. Although

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<sup>37</sup> The CMA notes that in previous merger inquiries between grocery retailers, where a survey of consumers has been carried out, a diversion ratio of 14.3% from one merger party store to the other has been used to identify those local areas and stores that may raise competition issues.

<sup>38</sup> Within 0.3 miles walk or within 1 minute drive time from the Target Budgens store.

groceries are not the focus of the Home Bargains retail proposition, it has a similar net sales area dedicated to groceries as a convenience store. The Parties submitted that the Home Bargains store constitutes a convenience store, according to criteria established by the Institute of Grocery Distribution (IGD).<sup>39</sup> The CMA considers, on the basis of this evidence, that the grocery offering at this Home Bargains store does compete with the Parties' stores. Taking this additional competitor into account, there would be a reduction in competing fascia from 5 to 4 within a mile radius and from 7 to 6 within a 5 minute drive time from the Target Budgens store.

64. The CMA also notes that additional competitor fascia are located within a 10-15 minute drive time from the Parties' stores (ie Sainsbury's (OSS), Asda (OSS), Morrisons (OSS)). The CMA considers that these stores could be alternatives for the Parties' customers travelling by car and may therefore impose a competitive constraint on the merged entity post-Merger.
65. The CMA has received an individual consumer complaint about the impact of the Merger in Byfleet, stating that currently there are only two supermarkets in Byfleet village – Budgens and Co-operative – and that the Merger would reduce food retail competition and choice in Byfleet village. Two third parties have also submitted that competition issues may arise in this local area. However, the bulk of the evidence available indicates that there will remain several competitors imposing a sufficient constraint on the merged entity in Byfleet.

#### *Conclusion on horizontal unilateral effects in Byfleet*

66. As set out above, the CMA believes that sufficient competing fascia will remain in Byfleet post-Merger. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects through the loss of actual competition in the retail supply of groceries in Byfleet.

#### **Sandy**

67. The Parties classified Sandy as an urban area with population of 12,603 in which both CFL and a Target Budgens stores operate. The Target Budgens store is classified as MSS, whereas CFL operates two convenience Co-operative stores, namely Petrol Sandy and Kestrel Way.

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<sup>39</sup> The Parties submitted that, according to criteria established by IGD, for a store to be defined as a convenience store it must stock at least seven of the 18 core categories (eg alcohol, bakery, chilled food, confectionery, hot food-to-go, milk, fruit and vegetables, etc.). The Parties submitted that Home Bargains in Byfleet stores 14 out of 18 such categories.

68. The Parties submitted that there is no case where the number of competitors would be reduced to three or fewer as a result of the Merger, based on the *CGL/Somerfield* approach.
69. In accordance with the frame of reference defined in paragraphs 21 and 37 above, the CMA applied both a one mile radius and a 5 minute drive time isochrone to identify the remaining fascia in Sandy post-Merger and excluded convenience stores with a net sales area of less than 100 sqm from the remaining fascia count.
70. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
- (a) the closeness of competition between the Parties;
  - (b) competitive constraints from remaining competitors; and
  - (c) competitive constraints from outside the frame of reference.
71. The CMA carried out the local assessment with respect to each of the CFL stores in Sandy separately.

*Petrol Sandy*

72. The Merger represents a reduction in effective competitor fascia in Sandy from 4 to 3 within a one mile radius and from 6 to 5 within a 5 minute drive time from the CFL Petrol Sandy store.
73. The CMA considers that the Target Budgens store is geographically the closest rival (located within a 0.5 mile walk or within a 1.79 minute drive time).
74. The remaining competitors to the Parties' stores in Sandy (within a one mile radius relative to the CFL Petrol Sandy store) are a Costcutter (convenience store) and Tesco (OSS). Further than a mile, but within a 5 minute drive time relative to the CFL Petrol Sandy store are Londis (convenience store), and Sainsbury's (OSS).
75. The CMA notes that CFL Petrol Sandy store is located in a petrol station situated on the A1 and therefore is likely to principally cater to motorists. Consistent with this, the Parties submitted that CFL Petrol Sandy has a wide 80% catchment area,<sup>40</sup> extending [redacted].

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<sup>40</sup> The Parties submitted evidence on the customer catchment area of each CFL store in Byfleet and Sandy, based on the spend and home address of CFL members. The CMA notes that [redacted] of each CFL stores' revenue is derived from CFL members. Consequently, the CMA considers that while this evidence may be somewhat

76. The CMA also notes that additional competitor fascia are located within a 10 minute drive time from the CFL Petrol Sandy store (ie Asda (OSS)). The CMA therefore considers that customers of the CFL Petrol Sandy store will have a sufficient number of alternatives, imposing a competitive constraint on the merged entity post-Merger.
77. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to CFL Petrol Sandy.

#### *CFL Kestrel Way*

78. The Merger represents a reduction in effective competitor fascia in Sandy from 3 to 2 within a one mile radius and a 5 minute drive time from CFL Kestrel Way store.
79. The Target Budgens store is located over a one mile walk and a 4.22 minute drive time away from CFL Kestrel Way.
80. The Parties submitted that the catchment area for CFL Kestrel Way store is very narrow, with its focus not on [X], but on the area [Y]. This suggests that customers of CFL Kestrel Way may not see the Target Budgens as a close alternative. Overall, the CMA considers that the Target Budgens store imposes a pre-Merger competitive constraint on CFL Kestrel Way, however it may not be a close alternative for customers travelling on foot.
81. The remaining competitor to the Parties' stores in Sandy (within a one mile radius relative to the CFL Kestrel Way store) is a Costcutter (convenience store), which is the closest competitor geographically to CFL Kestrel Way and lies between CFL Kestrel Way and the target Budgens store.
82. According to the Parties, the Costcutter store in Sandy constitutes a convenience store, based on the criteria established by the IGD.<sup>41</sup> The CMA has received evidence which indicates that the Costcutter store in Sandy offers a sufficient range of grocery products for it to provide a competitive constraint.
83. The CMA notes that Tesco (OSS) is located just over a 5 minute drive time away from CFL Kestrel Way, which is not much longer than the drive time between CFL Kestrel Way and the Target Budgens store (see paragraph 79).

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indicative of a CFL stores' customer catchment area it has not been treated as determinative and has been considered alongside all other evidence.

<sup>41</sup> See footnote 39. The Parties submitted that the Costcutter store in Sandy carries 15 out of the 18 categories that must be stocked in order to be classified as a convenience store by IGD.



84. The CMA notes that the OSS Tesco store is located close to the Sandy train station. It is likely, therefore, that commuters arriving to Sandy by train may use the large Tesco for a range of shopping missions including those which compete with the Parties' stores. In previous cases, the CMA and its predecessors have found that larger stores do constrain smaller stores within a certain geographic area. In the case of Tesco Sandy, the larger size of the store is consistent with these findings. The CMA considers that the wider product range and facilities, such as parking, may cause it to place a strong constraint on other grocery outlets in Sandy. The Parties also submitted evidence that the Target Budgens' sales [✂] following the opening of this Tesco store. The CMA therefore considers that Tesco will impose a competitive constraint on the merged entity post-Merger.
85. Taking this competitor into account, the Merger represents a reduction in effective competitor fascia from 4 to 3 within a 5 minute drive time from CFL Kestrel Way.
86. The CMA notes that additional competitor fascia are located within a 10 minute drive time from CFL Kestrel Way store (ie Sainsbury's (OSS), Asda (OSS)). The CMA considers that these stores could be alternatives for the Parties' customers travelling by car and may therefore impose a competitive constraint on the merged entity post-Merger.
87. One third party submitted that competition issues may arise in Sandy due to the Merger. However, taking account of the fact that the Target Budgens store is over a mile walk away and that CFL Kestrel Way will continue to face constraints from a nearby Costcutter convenience store as well as the OSS Tesco within around a 5 minute drive, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to CFL Kestrel Way.

*Conclusion on horizontal unilateral effects in Sandy*

88. As set out above, the CMA believes that sufficient competing fascia will remain in Sandy post-Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects through the loss of actual competition in the retail supply of groceries in Sandy.

## **Bradford-on-Avon**

89. The Parties classified Bradford-on-Avon as a rural area with population of 9,402 in which Southern Co-operative<sup>42</sup> and the Target Budgens convenience stores<sup>43</sup> operate. Booker also operates a convenience Premier store in this local area.<sup>v</sup>
90. The Parties submitted that there is no case where the number of competitors would be reduced to three or fewer as a result of the Merger and that there would still be six independent competitors in Bradford-on-Avon after the Merger based on the *CGL/Somerfield* approach.
91. In accordance with the frame of reference defined in paragraphs 21 and 37 above, the CMA applied both a one mile radius and a 5 minute drive time isochrone to identify the remaining fascia in Bradford-on-Avon post-Merger and excluded convenience stores with a net sales area of less than 100 sqm from the remaining fascia count. The CMA has treated Southern Co-operative and CFL as a single fascia (see paragraph 44) and applied two methodologies to count competing fascia pre- and post-Merger for the Booker fascia (see paragraph 46).
92. As a result, the Merger represents a reduction in effective competitor fascia in Bradford-on-Avon from 4 to 3<sup>44</sup> within a one mile radius and a 5 minute drive time from the Target Budgens store.
93. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
- (a) the closeness of competition between the Southern Co-operative and Target Budgens;
  - (b) competitive constraints from remaining competitors; and
  - (c) competitive constraints from outside the frame of reference.
94. The Southern Co-operative and the Target Budgens stores are located within close proximity to each other.<sup>45</sup> The Target Budgens store is the closest competitor to the Southern Co-operative store, although not vice-versa (ie the closest competitor to the Target Budgens store is Premier).

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<sup>42</sup> A member of FRTS buying group (see paragraph 39).

<sup>43</sup> As defined in paragraph 21.

<sup>44</sup> When treating Booker brands (and in case of Bradford-on-Avon – Premier and Budgens) as a single fascia, there is no reduction in effective competitor fascia post-Merger.

<sup>45</sup> Within 0.5 miles walk or within a 2.52 minute drive time.

95. The CMA notes, however, that there is a steep hill between the Southern Co-operative store and the Target Budgens store, which is located in the town centre. There is also no car park available at the Target Budgens store. The Target Budgens store may therefore not be a good alternative for those on foot or requiring dedicated parking.
96. The remaining competitors to the Southern Co-operative and the Target Budgens stores in Bradford-on-Avon (within a one mile radius and a 5 minute drive time relative to the Target Budgens store) are Premier (convenience store) and Sainsbury's (MSS).
97. With regard to retailers that are outside the frame of reference, the CMA notes that there is a Costcutter convenience store (with a net sales area of less than 100 sqm) within a mile from the Target Budgens store. Given its close proximity to the Southern Co-operative and the Target Budgens store, the CMA considers that Costcutter store will impose a competitive constraint on the Southern Co-operative and CFL post-Merger (in particular, serving customers carrying out top up shopping). Taking this additional competitor into account, there would be a reduction in competing fascia from 5 to 4 within a mile radius and a 5 minute drive time from the Target Budgens store.
98. The Parties submitted that there is a New Express<sup>46</sup> and an ANP Stores Ltd store in Bradford-on-Avon which are located within a mile of the Southern Co-operative and the Target Budgens stores. According to the Parties, both the New Express and ANP Stores Ltd stores constitute convenience stores, according to criteria established by IGD.<sup>47</sup> Given their close proximity to the Southern Co-operative and the Target Budgens store the CMA considers that New Express and ANP Stores Ltd stores will collectively impose a degree of competitive constraint on the Southern Co-operative and CFL post-Merger.
99. Taking these additional competitors into account, there would be a reduction in competing fascia from 7 to 6 within a mile radius and a 5 minute drive time from the Target Budgens store in Bradford-on-Avon.
100. The CMA notes that additional competitor fascia are located within a 10-15 minute drive time from the Parties' stores (ie Tesco (OSS), Asda (OSS), M&S (MSS)). The CMA considers that these stores could be alternatives for the

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<sup>46</sup> New Express and ANP Stores Ltd are not part of the effective competitor set as listed in Annex 1, however submitted by the Parties as competitive constraints on the Southern Co-operative and the Target Budgens stores in Bradford-on-Avon. The Parties submitted that New Express and ANP Stores Ltd have net sales areas of just under 100 sqm and just over 100 sqm respectively.

<sup>47</sup> See footnote 39. The Parties submitted that New Express store in Bradford-on-Avon carries 16 out of the 18 categories that must be stocked by a convenience store, whereas ANP Stores Ltd carries 14 out of the 18 such categories.

Parties' customers travelling by car and may therefore impose a competitive constraint on the Southern Co-operative and CFL post-Merger.

101. Two third parties have submitted that competition issues may arise in Bradford-on-Avon. However, the bulk of the evidence available indicates that there is sufficient remaining competition to mitigate concerns arising from a lessening of competition between the Southern Co-operative and the Target Budgens store.

#### *Conclusion on horizontal unilateral effects in Bradford-on-Avon*

102. As set out above, the CMA believes that sufficient competing fascia will remain in Bradford-on-Avon post-Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects through the loss of competition in the retail supply of groceries between the Southern Co-operative and Budgens store in Bradford-on-Avon.

#### **Barriers to entry and expansion**

103. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>48</sup>
104. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

#### **Third party views**

105. The CMA contacted competitors of the Parties. The majority of competitors did not raise concerns about the Merger. A few competitors raised concerns regarding Byfleet, Sandy and Bradford-on-Avon local areas.
106. Third party comments have been taken into account where appropriate in the competitive assessment above.

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<sup>48</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

## **Decision**

107. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

108. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Sheldon Mills**

**Senior Director, Mergers**

**Competition and Markets Authority**

**6 June 2016**

## Annex 1: Effective competitor set

### Stores

- Asda
- Booths
- Budgens
- CK Supermarkets
- Co-operative societies (not CGL)
- Dunnes
- Harry Tuffins
- Longs
- Marks & Spencer
- Morrison
- Proudfoot
- Roys
- Sainsbury's
- Tesco
- Waitrose
- Whole Foods

### Symbol Groups

- Nisa-Todays
- P&H Retail
- Select & Save
- Centra
- Best-One
- Spar
- VG/Vivo
- Premier
- Londis
- Costcutter
- Key Store/Key Shop

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<sup>i</sup> The Parties clarified that Booker does not 'operate' any stores. Booker owns the Premier, Londis and Budgens brands. 3,082 convenience stores operate under the Premier brand, 1,458 convenience stores operate under the Londis brand, and approximately 149 convenience and mid-sized stores operate under the Budgens brand. All but 26 Budgens stores are independently operated, but receive services from Booker including: wholesaling, marketing and store development. 26 Budgens stores are owned and operated by Booker.

<sup>ii</sup> This is the CMA's view.

<sup>iii</sup> Please see end note (ii).

<sup>iv</sup> The parties clarified that they also submitted filtering analysis based on re-centring on competitor stores.

<sup>v</sup> Please see end note (i).