

# Anticipated acquisition by J Sainsbury Plc of Home Retail Group Plc

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

**ME/6603/16**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 22 July 2016. Full text of the decision published on 16 August 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. J Sainsbury Plc (**Sainsbury's**) has agreed to acquire Home Retail Group Plc (**HRG**) (the **Merger**). Sainsbury's and HRG 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 turnover 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. Sainsbury's and HRG, who owns Argos, are involved in the retail supply of a range of products across multiple sales channels. There is no overlap in the retail supply of groceries, which accounts for the majority of Sainsbury's sales. The Parties do overlap, to a degree, in the retail supply of a range of non-food products in stores and online across the UK, namely: toys; homewares; white good electrical items;<sup>1</sup> brown good electrical items;<sup>2</sup> grey good electrical

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<sup>1</sup> Eg Refrigerators.

<sup>2</sup> Eg Telephones.

items;<sup>3</sup> small domestic electrical appliances;<sup>4</sup> nursery and baby; seasonal;<sup>5</sup> DIY and Garden; clothing; stationery; electronic games and entertainment; furniture; credit cards; personal loans; non-life insurance. The CMA has therefore assessed the impact of the Merger in the retail supply of each of these non-food products in-store and across all sales channels (ie including online) across the UK.

4. The evidence available to the CMA from: (i) shares of supply; (ii) the Parties' submissions and internal documents; and (iii) third parties indicated that the Parties do not compete closely across these non-food products and that in respect of each non-food product segment assessed there will remain sufficient competition from competitors supplying those products across the UK.
5. The CMA believes that the lack of significant competition between the Parties and these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of the following products: toys; homewares; white good electrical items; brown good electrical items; grey good electrical items; small domestic electrical appliances; nursery and baby; seasonal; DIY and Garden; clothing; stationery; electronic games and entertainment; furniture; credit cards; personal loans; non-life insurance, as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

7. Sainsbury's is a UK retailer listed on the London Stock Exchange with over 1,300 supermarkets and convenience stores. Sainsbury's is predominantly a grocery retailer, with groceries accounting for the large majority ([X]%) of its revenue. Sainsbury's also sells non-food items.<sup>6</sup> Sainsbury's non-food supply primarily comprises general merchandise, and clothing though Sainsbury's also sells pharmacy products and retail banking and insurance. Larger

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<sup>3</sup> Eg Audio-visual equipment, with possible further segmentation in respect of certain items eg tablets.

<sup>4</sup> Eg Kettles, toasters.

<sup>5</sup> These consist of temporary seasonal-specific ranges such as Christmas goods (eg Christmas trees) and cards/gifts for events such as Easter, Mother's Day, Father's Day etc.

<sup>6</sup> Non-food can be described as generally comprising general merchandise product lines such as homewares, toys, furniture etc. and clothing. The Parties specific overlaps in non-food products and its definition for the purposes of the CMA's assessment are discussed below.

Sainsbury's stores also offer concessions to third parties, such as providers of other goods and services and parcel delivery and collection companies.

8. Sainsbury's UK turnover in the financial year ending 14 March 2015 was around £23 billion, of which approximately £[§] billion was attributable to non-food products.<sup>7</sup>
9. HRG is listed on the London Stock Exchange. It is the parent company of Argos, a multi-channel non-food retailer with 845 stores<sup>8ii</sup> in the UK and Ireland. Argos accounts for nearly all (97%) of HRG's revenues.<sup>9iii</sup> HRG also owns the Habitat brand which has three stores in the UK.<sup>10iv</sup> HRG's financial services business provides Argos customers with store cards, credit cards, personal loans, non-life insurance and product care policies.
10. HRG's UK turnover in the financial year ending 28 February 2015 was around £4 billion.<sup>11v</sup>

## Transaction

11. As a result of the transaction Sainsbury's will acquire the entire issued and to be issued share capital of HRG. The transaction will be effected by way of a court sanctioned scheme of arrangement.

## Jurisdiction

12. As a result of the Merger, the enterprises of Sainsbury's and HRG will cease to be distinct.
13. The UK turnover of HRG exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
14. The CMA 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.

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<sup>7</sup> [§]

<sup>8</sup> Argos also has 101 retail concessions in Homebase stores. However, following the completed disposal of the Homebase business to Bunnings (UK&I) Holdings Ltd, a subsidiary of Wesfarmers Limited on 27 February, Argos' concessions in Homebase stores are due to close over the next 18 months.

<sup>9</sup> After the Homebase disposal.

<sup>10</sup> After the Homebase disposal.

<sup>11</sup> Excluding Homebase revenues.

15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 31 May 2016 and the statutory 40 working day deadline for a decision is therefore 25 July 2016.

## **Counterfactual**

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). The CMA considers the effect of the merger compared with the most competitive counterfactual providing always that it considers that situation to be a realistic prospect. Therefore, for anticipated mergers, the 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>12</sup>
17. In this case, there is no evidence supporting a different counterfactual and the Parties and third parties have not put forward any evidence in this respect. Therefore, the CMA believes the prevailing conditions of competition, where HRG would have continued to trade independently of Sainsbury's, to be the relevant counterfactual. The Parties' current competitive positioning will therefore be used as an indicator of their competitive position absent the Merger. In this context, the CMA notes that any evidence regarding the competitive dynamics under the prevailing conditions of competition, including the relative competitive strength of market participants as a result of changing customer preferences, new trading approaches etc, as argued by the Parties can be assessed in the competitive assessment. However, the CMA did not find it necessary to do so as no concerns arise under the prevailing conditions of competition.

## **Frame of reference**

18. 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

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<sup>12</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).

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>13</sup>

19. The Parties overlap in the retail supply of a range of non-food products across the UK. In particular, the Parties both supply products in the following non-food segments: electricals; homeware; toys; nursery and baby; DIY and garden; clothing; stationery; electronic games and entertainment; furniture; seasonal;<sup>14</sup> credit cards; personal loans; and non-life insurance.
20. The Parties' activities in the supply of these non-food segments differs between different sales channels. As noted above, HRG, predominantly via Argos,<sup>15</sup> has a multi-channel focused business model, such that it offers its non-food products via physical 'bricks and mortar' stores (**in-store**) and online (for collection in-store via 'click and collect' or home delivery). Nearly half (49%)<sup>vi</sup> of Argos' purchases are ordered online.<sup>16</sup> Sainsbury's supplies the majority of its non-food items in-store, with only limited aspects of its non-food offering available to purchase online. By way of example, Sainsbury's can offer up to [X] general merchandise SKUs online at most, whereas Argos offers nearly [10-15] times that (57,000 SKUs)<sup>vii</sup> online.<sup>17</sup> As such, nearly all of Sainsbury's non-food sales are made through its physical stores with less than [X]% online (over half of which relates to clothing sales).
21. In this context, in determining the appropriate frames of reference for its competitive assessment, the CMA has considered the extent to which:
  - (a) The Parties non-food overlaps can be segmented further by product type;
  - (b) It is appropriate to differentiate between different sales channels, in particular in-store and online channels; and

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<sup>13</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>14</sup> These consist of temporary seasonal-specific ranges such as Christmas goods (eg Christmas trees) and cards/gifts for events such as Easter, Mother's Day, Father's Day etc.

<sup>15</sup> Given, as noted above, that Argos accounts for the large majority of HRG's revenues, the analysis and evidence which follows relates to Argos and references to Argos are taken to refer to HRG as a whole.

<sup>16</sup> Of these over a third (35%) are picked up in-store via 'click and collect'.

<sup>17</sup> Sainsbury's launched an online retail presence for general merchandise (non-food not including clothing) in 2009, which was closed in 2014 as it was not viable. Sainsbury's does not, therefore, currently have a dedicated online platform to support its non-clothing, non-food proposition. Sainsbury's does, however, offer a sub-set of non-food products for delivery as part of the online grocery ordering service. As with grocery products, this offer is limited to the range present in the store from which the order is picked and is limited to products that can fit in an online delivery "tote". In the largest stores that have an online grocery operation ([X] stores), Sainsbury's offers up to [X] non-food SKUs for delivery (c. 60% of the total range). However, half of the stores that have an online grocery operation ([X] stores) offer fewer than [X] general merchandise SKUs. By contrast, Argos sells approximately 57,000 SKUs online.

(c) The geographic frame of reference is local or national.

22. In reaching its views, the CMA has considered evidence from: (i) the Parties; and (ii) the views of third parties.

### **Product scope**

#### *Product type*

23. As noted above, the Parties overlap in a range of non-food segments.

24. UK and European Commission (**Commission**) decisional practice in the non-food retail sector has:

(a) Assessed non-food retailing across separate segments and in some cases narrower sub-segments, in particular:

(i) Toys, homewares, electricals and stationary have been considered as separate frames of reference generally;<sup>18</sup>

(ii) Consideration has also been given to the potential for sub-segmentation in toys and electricals,<sup>19</sup> with, for example in relation to the latter, distinctions between white good electrical items (**white goods**), brown good electrical items (**brown goods**), grey good electrical items (**grey goods**) and small electrical domestic appliances (**SDAs**).

(b) Considered variations in the conditions of competition and supply side factors as indicative of the appropriate frame of reference. For example, in *Tesco/Dobbies* it was noted that whilst product categories were not demand side substitutes, it is relatively easy for existing retailers to begin retailing additional products provided that sufficient sales floor capacity exists or it is possible to reduce the space given to less profitable lines.<sup>20</sup>

25. The CMA considered the appropriate product segmentation on the facts of this case based on evidence provided by the Parties and third parties.

26. The Parties submitted that narrower segmentation by product type across these segments is not appropriate. In particular, the Parties submitted that:

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<sup>18</sup> Anticipated acquisition by GUS plc of part of the Index business of Littlewoods Limited, OFT, 19 June 2015 (**GUS/Index**), Anticipated acquisition by Tesco Holdings plc of Dobbies Garden Centres plc, OFT, 3 August 2007 (**Tesco/Dobbies**).

<sup>19</sup> Case No COMP/M.7259, Carphone Warehouse/Dixons, Commission, 25 June 2014.

<sup>20</sup> *Tesco/Dobbies*.

- (a) The conditions of competition did not vary significantly across narrower segments, with similar retailers active in each segment; and
  - (b) Supply side substitution was a strong factor in determining the appropriate frame of reference, as it is relatively easy for retailers to expand their non-food offering across a segment as appropriate.
- 27. The CMA considered evidence from third parties on: (i) appropriate segmentation across the various non-food segments where the Parties overlap; (ii) the extent to which the conditions of competition, including the Parties' relative positions, across a segment differed with respect to any sub-segment; and (iii) evidence on supply side substitution.
- 28. On the basis of this evidence, the CMA has assessed the impact of the Merger on the retail supply of each the following product frames of reference: toys; homewares; white goods; brown goods; grey goods; SDAs; nursery and baby; seasonal; DIY and Garden; clothing; stationery; electronic games and entertainment; furniture; credit cards; personal loans; non-life insurance (together, **non-food products**).
- 29. In particular, in relation to electricals the CMA believes that it is appropriate to assess the effect of the Merger across narrower sub-segments as:
  - (a) The Parties appeared to have a higher combined share of supply in electricals than other segments in the context of their non-food product offering; and
  - (b) It was not clear that the conditions of competition are the same across all sub-segments, with, some generalists (for example, Dixons Carphone) supplying across all the segments but also a number of specialists (for example, Apple, B&M) supplying a specific range of goods.<sup>21</sup>
- 30. However, evidence on: (i) the Parties' positions relative to one another; (ii) the conditions of competition across these other non-food product segments; (iii) supply side substitution; and (iv) evidence from third parties regarding the impact of the Merger indicated that no concerns would arise on the basis of narrower or wider segmentation across these non-food products.

### *Sales channel*

- 31. The Parties submitted that the relevant frame of reference includes all possible sales channels (ie in-store, online via 'click and collect' and online for

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<sup>21</sup> Apple supplies only tablets and phones within grey goods. B&M supplies brown goods, grey goods and small domestic appliances but not white goods.

home delivery). In particular, the Parties submitted that the frame of reference should include both in-store and online elements as:

- (a) The Competition Commission included both in-store and online sales channels in the frame of reference when online penetration levels were high;<sup>22</sup>
  - (b) Non-food retailing is experiencing high and growing levels of internet penetration, as highlighted by Argos' experience across the multiple channels through which it operates;
  - (c) The Parties would monitor both online and multi-channel retailers.
32. The CMA believes that the frame of reference may differ depending on the relevant conditions of competition and supply in a given retail sector. In the past, the CC has tended to consider in-store and online channels together where there was evidence of high online penetration. However, the Commission has also distinguished between in-store and online channels due to differences in immediacy, availability, and ability to inspect goods.<sup>23</sup>
33. On the facts of this case, evidence from third parties does not provide a consistent picture on the extent to which in-store or online channels should be considered in the same frame of reference. In particular:
- (a) All retailers responding to the CMA's market investigation submitted that customers can and do switch between sales channels;
  - (b) Some retailers provided evidence of increasing growth in online channels;
  - (c) However, some suppliers submitted that online sales may be better suited to larger, bulkier items, whilst in-store sales are more appropriate for impulse and smaller purchases, or those goods that customers want to touch and see before purchasing.
34. The CMA notes that there is limited evidence available to conclude on the frame of reference in this case. In particular, based on the facts, an analysis of the impact of the Merger on the basis of the Parties overlap in-store and online separately may not fully capture the competitive interaction between the Parties. As noted above at paragraph 20, Argos makes a significant

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<sup>22</sup> Anticipated acquisition of Ottakar's plc by HMV Group plc through Waterstone's Booksellers Ltd, Competition Commission, 12 May 2006 and Completed acquisition by Game Group PLC of Games Station Limited, Competition Commission, CC, 16 January 2008.

<sup>23</sup> For example, Case No COMP/M.5721, Otto/Primondo Assets, Commission, 22 December 2009, Case No COMP/M.4226, DSGI / FOTOVISTA, Commission, 29 June 2006.



proportion of its sales overall online, whereas Sainsbury's online presence generally is very limited. However, assessing the Merger by reference to in-store supply only, where that would exclude sales effected through online channels (a proportion of which will be collected in-store via 'click and collect') may understate the Parties' overall share of supply of non-food products. On the other hand, inclusion of online channels, increases the number of competing suppliers such as eg Amazon, who also have a strong 'click and collect' offering.<sup>24</sup>

35. Therefore, the CMA has taken a cautious approach and assessed the impact of the Merger on the retail supply of non-food products in-store and across all sales channels (ie including online).
36. Therefore, it was not necessary for the CMA to reach a conclusion on segmentation by sales channel, since, as also set out below, no competition concerns arise on any plausible basis (ie considering in-store only or broadening to include online elements).

#### *Conclusion on product scope*

37. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of non-food products in-store and across all sales channels (ie including online).

#### ***Geographic scope***

38. As noted above, the Parties sell products in-store and online across the UK.
39. The Parties submitted that in the context of their business models (particularly significant differences in sales channels) and the way in which the Parties determine their retail offering, competition between the Parties in relation to non-food products, to the extent that it exists, is more appropriately characterised as national rather than local.
40. In this context, the Parties also noted previous decisional practice in relation to non-food retail, particularly *GUS/Index*, which assessed the merger of Argos and Index on a national basis, which noted the predominantly national nature of competition between these 'catalogue' style retailers operating both out of 'bricks and mortar' stores and online and their competitors.

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<sup>24</sup> Equally, assessing the Merger in the retail supply of non-food products online, may also not capture the full competitive interaction between the Parties given the very limited overlap between the Parties on this basis. Given the limited overlap on this basis, the CMA has therefore not considered segmentation further for the purposes of this assessment.

41. The CMA notes that the Commentary on Retail Mergers<sup>25</sup> generally recognises that the starting point is that consumers shop in local retail outlets, within a given travel distance from their home or work. Therefore, our starting assumption is that there will be material local competition on one or more aspects of price, quality, range and service (**PQRS**).
42. However, the Commentary on Retail Mergers also notes that evidence from the merging and third parties may also indicate that PQRS is in fact set on a national basis (and not in a way which responds locally to local competition). In these circumstances, it may be more appropriate to focus the assessment of the Merger on its effect on the merging parties' incentives to either: (i) to worsen this national offering; or (ii) change from a national to a local offering (and if that is the case, worsen its local offering), as a result of the aggregated effect of the Merger on local competitive conditions.<sup>26</sup>
43. The CMA therefore considered the evidence on the extent to which the Parties determine all or some of the retail offer by reference to national conditions of competition.<sup>27</sup>
44. However, the CMA has not found it necessary to conclude on this point as the evidence available to it, as set out more fully below, particularly on the range and number of alternative non-food retailers with significant networks of stores and/or online offerings, indicate that no competition concerns would arise on a local or national basis.

### ***Conclusion on frame of reference***

45. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of non-food products locally and nationally across the UK.

## **Competitive assessment**

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

46. 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>28</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA

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<sup>25</sup> [Commentary on Retail Mergers](#), OFT1305/CC2 com 2 [Version 1a], March 2011.

<sup>26</sup> [Commentary on Retail Mergers](#), paragraph 3.10.

<sup>27</sup> [Commentary on Retail Mergers](#), paragraph 3.10.

<sup>28</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the retail supply of non-food products in-store and across all sales channels (ie including online) across the UK.

47. In particular, the CMA has considered a range of evidence in relation to each non-food product overlap including:
- (a) Shares of supply;
  - (b) The Parties submissions and internal documents on:
    - (i) Differences in HRG and Sainsbury's non-food offering;
    - (ii) Analysis of impact of opening Argos concession stores in Sainsbury's stores in 2015 (**concession trial**) on Sainsbury's non-food sales;
    - (iii) Competitive constraint remaining;
  - (c) Views of third parties;
48. The CMA's analysis and conclusions on the basis of this evidence is set out as follows below:
- (a) Shares of supply;
  - (b) Analysis and evidence relevant to all non-food products;
  - (c) Analysis and evidence specific to the following non-food products: homewares, nursery and baby, DIY and garden, clothing, stationery, electronic games and entertainment, furniture, seasonal, credit cards, personal loans, non-life insurance, white goods, brown goods;
  - (d) Analysis and evidence specific to grey goods;
  - (e) Analysis and evidence specific to SDAs;
  - (f) Analysis and evidence specific to toys;

#### *Shares of supply*

49. The Parties provided estimates of shares of supply across the non-food product overlaps on an in-store and an all channel basis in the UK based on their revenue information and third party market reports. The CMA also sought information from third parties in the course of its market investigation to supplement and confirm these estimates as necessary.

50. Evidence on the Parties shares of supply across the non-food<sup>29</sup> overlaps, where available, is summarised in Table 1 below.<sup>30</sup> Further discussion of these with respect to specific non-food product segments is considered below.

**Table 1: Parties estimated non-food shares of supply in-store in the UK in the last financial year**

		Market size, £	Argos sales, £	Sainsbury's sales, £	Argos share, %	Sainsbury's share, %	Combined share, %
Electricals	Grey goods*	[X]	[X]	[X]	[10-20]%	[0-10]%	[10-20]%
	Brown goods*						
	White goods*						
	SDAs*						
Homewares		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Toys		[X]	[X]	[X]	[10-20]%	[0-10]%	[10-20]%
Nursery and baby		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
DIY and Garden		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Clothing		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Stationery		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Electronic games and entertainment*		Data unavailable					
Furniture		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%

Source: the Parties, based on their sales data and third party estimates of total market size.

**Notes:**

\*The Parties were not able to provide estimates on an in-store basis only.

**Table 2: Parties estimated non-food shares of supply across all sales in the UK channels in the last financial year**

		Market size, £	Argos sales, £	Sainsbury's sales, £	Argos share, %	Sainsbury's share, %	Combined share, %
Electricals	Grey goods	[X]	[X]	[X]	[10-20]%	[0-10]%	[10-20]%
	Brown goods	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
	White goods	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
	SDAs	[X]	[X]	[X]	[20-30]%	[0-10]%	[20-30]%
Homewares		[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Toys		[X]	[X]	[X]	[10-20]%	[0-10]%	[20-30]%
Nursery and baby		[X]	[X]	[X]	[10-20]%	[0-10]%	[10-20]%

<sup>29</sup> These shares do not include a breakdown with respect to seasonal goods, and financial product segments (namely, credit cards, personal loans and non-life insurance). With respect to seasonal goods the Parties were unable to provide specific revenue data due to differences in categorisation across these ranges. However, evidence from third parties, including independent market reports, indicates that the Parties share of supply and increment with respect to seasonal products is not significant, with numerous other retailers noted as suppliers of these ranges. With regard to the financial products noted, estimates available to the CMA indicate that the Parties would have shares of supply significantly below 10% even on a conservative basis compared to eg only including retailers and supermarkets or largest insurer's revenues.

<sup>30</sup> Shares of supply of competing suppliers are not included in the tables below but the Parties respective positioning and alternative suppliers is discussed further where relevant in the competitive assessment below.

DIY and Garden	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Clothing	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Stationery	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Electronic games and entertainment	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%
Furniture	[X]	[X]	[X]	[0-10]%	[0-10]%	[0-10]%

Source: the Parties, based on their sales data and third party estimates of total market size.

51. The CMA notes that the shares of supply are low and the increment to these shares are also low. The CMA has further assessed, on a cautious basis, the extent of competition between the parties by reference to other evidence including position of alternative retailers of the relevant non-food products.

### *All non-food products*

#### *Closeness of competition*

52. As set out below, the evidence available to the CMA on closeness of competition across the retail supply of non-food products in-store, indicates that the Parties are not competing closely.

- *Impact of concession trial*

53. The concession trial involved introducing Argos concession outlets into ten Sainsbury's stores in 2015 to test the impact of such a strategy ahead of potential further openings across the country.
54. The Parties submitted that research undertaken to understand the impact of the concession trial indicates that the Parties do not compete closely as the concession trial did not generally adversely affect Sainsbury's sales as would be anticipated if the Parties competed closely. [X] concession stores saw non-food sales increase compared to their control store. The Parties explained that this conclusion was observable when allowing for some reduction in the Sainsbury's stores original non-food offering to allow the space for the Argos concession.
55. The CMA notes that it is difficult to draw strong conclusions from the concession trial in terms of impact of sales, as the effect of reducing non-food offering at the Sainsbury's stores to allow the Argos concession store to operate may skew the conclusions. In addition, when comparing sales against the control store, an observation in increase in sales is not entirely systematic.
56. Nonetheless, the concession trial analysis, including the survey evidence submitted does not generally indicate any particularly close competitive interaction between the Parties in the retail supply of non-food items.

- *Differences in non-food offering*

57. The Parties have provided internal documents and evidence that suggest the Parties are not particularly close competitors due to fundamental differences in their non-food offering. In particular:

(a) The Parties do not sell closely competing portfolios of non-food products in terms of product range/mix, average selling price and price range as:

- (i) Sainsbury's stores stock a significantly narrower range of non-food items compared to Argos stores. Even the largest Sainsbury's stores stock less than 15% of the SKUs stocked by Argos in toys and electricals (a limited number stock more than this in relation to homewares).
- (ii) Analysis conducted for the Parties suggests that of a combined non-food revenue of approximately £[redacted] billion<sup>31</sup> in non-food products, only £[redacted] billion related to matching or comparable product lines.<sup>32</sup>
- (iii) The average price of a non-food product good<sup>33</sup> purchased in Sainsbury's is significantly lower than in Argos (£[redacted] compared to £[redacted]), reflecting 'impulse' nature of the Sainsbury's non-food offering.

(b) The Parties offer customers different product offering and purchasing experience. Sainsbury's offering is grocery and store led with limited online presence<sup>34</sup> whereas Argos has only limited products on display, is non-food focused and achieves most of its sales online.

58. Internal documents provided to the CMA by the Parties are supportive of these observations and suggest that Sainsbury's store led grocery and clothing business is complementary to Argos' high street and online non-food business, with minimal overlaps in the retail supply of non-food products.

- *Views of third parties*

59. While the majority of third parties noted that the Parties competed in the retail supply of non-food products across multiple product categories and may also

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<sup>31</sup> Argos £4.1 billion, Sainsbury's £[redacted] billion.

<sup>32</sup> [redacted].

<sup>33</sup> Excluding clothing.

<sup>34</sup> As with grocery products, this offer is limited to the range present in the store from which the order is picked and is limited to products that can fit in an online delivery "tote". In the largest stores that have an online grocery operation ([redacted] stores), Sainsbury's offers up to [redacted] non-food SKUs for delivery (c. 60% of the total range). However, half of the stores that have an online grocery operation ([redacted] stores) offer fewer than [redacted] general merchandise SKUs. By contrast, Argos sells approximately 57,000 SKUs online.

compete locally, they did not indicate that the Parties competed particularly closely locally or otherwise.

### *Competitive constraints*

60. The CMA believes that the evidence provided by the Parties and third parties indicates that there will be a range of competitors active post-Merger in the retail supply of non-food products. In particular:
- (a) The Parties submitted that they will continue to face competition from a wide range of effective competitors active locally and nationally across the UK in-store and online, including:
    - (i) Grocery retailers such as Tesco, Asda and Morrisons who are all direct alternatives to Sainsbury's.
    - (ii) Online pure play retailers such as Amazon, AO.com (formerly Appliances Online) and Shopdirect, who all compete more closely with Argos than Sainsbury's does and have developed equivalent types of fulfilment (ie click & collect and home delivery) to Argos.
    - (iii) Non-food multi-channel generalists such as John Lewis Partnership, Debenhams and Marks & Spencer who are competitors to both Parties and who have also developed a click & collect and home delivery service.
    - (iv) Multi-channel specialists such as Dixons, Dunelm, Toys R Us and many others who offer a substantially larger product range in specific product categories than Sainsbury's and in some cases also Argos.
    - (v) Discounters such as Wilko, B&M, Poundland, Aldi and Lidl who have large store portfolios and are expanding their presence across a number of categories including homewares, electricals and toys.
  - (b) An exit survey of Argos concession customers in Sainsbury's stores demonstrates that, despite being posed questions in a Sainsbury's store, very few customers considered Sainsbury's to be a credible alternative to Argos for the goods they had just purchased from Argos. The most popular competitive alternative that customers would switch to (if the Argos store had not been available) was Amazon.
  - (c) Third parties generally confirmed these submissions by identifying a range of competitors who compete with the Parties across most or all of their product lines. As noted by the Parties, these include other grocers,

as well as non-food focused retailers both in-store, with significant networks of stores across the UK, and online.<sup>35</sup>

*Homewares, Nursery and Baby, DIY and Garden, Clothing, Stationery, Electronic Games and Entertainment, Furniture, Seasonal, Credit Cards, Personal Loans, Non-life insurance, White Goods, Brown Goods*

61. As can be seen from the share of supply information noted above, the Parties have low shares of supply (significantly below [10-20]%) with small increments (significantly below [0-10]%) across all these segments. Even where share of supply data was not available on an in-store basis only, evidence available to the CMA regarding third parties active in the retail of these products (as noted above generally) indicates that the position would not vary significantly on an in-store basis only.
62. Third parties raised no concerns regarding the Merger in respect of these segments.
63. In the context of this evidence, particularly the low shares of supply and increment and the general absence of closeness of competition and remaining constraint (as identified above), the CMA believes that the Merger does not give rise to a realistic prospect of a SLC in the retail supply of homewares, nursery and baby, DIY and garden, clothing, stationery, electronic games and entertainment, furniture, seasonal, credit cards, personal loans, non-life insurance, white goods, brown goods in-store and across all sales channels (including online) across the UK.

#### *Grey goods*

64. The evidence available to the CMA from: (i) shares of supply; (ii) the Parties' submissions and internal documents; and (iii) third parties indicates that the Parties are not competing particularly closely in the retail supply of grey goods and that post-Merger there will be sufficient constraint remaining. In particular:
  - (a) As can be seen from Table 2, shares of supply across all channels are relatively low ([10-20]%) with a small increment ([0-10]%), suggesting relatively limited competitive constraint. The CMA believes that the relative positioning indicated by these shares would not differ

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<sup>35</sup> This is observable from a general consideration of the scale of the offering of even a small subset of the Parties competitors across the UK. For example, significant competitors that are considered to compete against the Parties across their product range include Tesco, Asda, Wilko, John Lewis and Dixons Carphone. John Lewis has 46 stores, Asda over 525 stores, Wilko has more than 380 stores, Tesco has 3,460 stores in the UK, of which 673 are larger than 20,000 sq. feet and Dixons Carphone has over 1000 stores in the UK and Ireland, in the UK 233 of these are so called '3 in 1' stores containing all of Dixons Carphone offering ie Currys, PC World and Carphone Warehouse (data from third party websites in June 2016).



significantly on an in-store basis given that the proportion of Argos' electrical sales made in-store is in line with the wider market.

- (b) HRG's internal documents support the Parties' views that they are not close competitors and there is sufficient remaining constraint:
- (i) A HRG document [REDACTED]<sup>36</sup> indicates that Argos considers its competitors to include Amazon, Dixons Carphone (Currys), John Lewis, Apple and independents. Sainsbury's is not included in this assessment.
  - (ii) A customer survey reported in the same document lists the retailers a customer would consider when choosing computers and tablets. The top five retailers mentioned are Dixons Carphone (Currys), Amazon, Argos, John Lewis and Tesco. No customer mentioned Sainsbury's unprompted.<sup>37</sup>
  - (iii) In relation to other grey goods, such as phones and printers, HRG's internal documents list Dixons Carphone (Currys), Amazon, John Lewis and independent retailers as competitors.<sup>38</sup>
- (c) Third parties indicated that there may be limited overlap between the Parties in this area and that sufficient constraint would remain post-Merger, with third parties naming a number of other retailers with significant presence across the UK, particularly John Lewis and Dixons Carphone as particularly significant constraints post-Merger.

65. Therefore, for the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of a SLC in the retail supply of grey goods in-store and across all sales channels (including online) across the UK.

#### SDAs

66. The evidence available to the CMA from: (i) shares of supply; (ii) the Parties' submissions and internal documents; and (iii) third parties indicates that the Parties are not competing particularly closely in the retail supply of SDAs and that post-Merger there will be sufficient constraint remaining. In particular:
- (a) The CMA believes that the estimated SDA share of supply across all sales channels noted at Table 2 ([20-30]% with a [0-10]% increment provided by Sainsbury's) may be an overestimate when considering in-store sales only. This is because evidence available to the CMA from the

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<sup>36</sup> [REDACTED]  
<sup>37</sup> [REDACTED]  
<sup>38</sup> [REDACTED]

Parties and third parties indicates that Argos' electricals business is more skewed towards online sales when compared to other significant competitors in small domestic appliances.<sup>39</sup> In either case, these relatively low shares of supply indicate limited competitive interaction between the Parties.

- (b) Evidence from internal documents further confirms that Sainsbury's may not pose a significant constraint and highlights a number of more closely competing competitors;
- (i) A past survey of Argos customers<sup>40</sup> suggests that those customers who would choose to shop somewhere other than Argos would purchase their electricals<sup>41</sup> from either Dixons Carphone (Currys), John Lewis, Amazon, Asda or Maplin. Sainsbury's was not named as an alternative retailer.
  - (ii) Electrical strategy documents provided by HRG suggests that it believes Argos competes against Dixons Carphone (Currys), John Lewis, Tesco, Boots, and Amazon in the supply of small domestic appliances. The competitor range varies depending on whether HRG is considering kitchen appliances, such as toasters, or personal appliances, such as electric toothbrushes.<sup>42</sup> Sainsbury's is not referred to as a competitor in HRG's electrical strategy document.
  - (iii) Internal documents provided by Sainsbury's suggest that customers are less aware of Sainsbury's electrical offering generally<sup>43</sup> and consider it is less attractive than that of other competitors such as Dixons Carphone (Currys), Tesco and Argos.<sup>44</sup>
  - (iv) More generally, Sainsbury's monitors a number of retailers against Tesco, Asda, John Lewis, Argos, Amazon, Dixons Carphone (Currys and Dixons).<sup>45</sup>
- (c) Third parties noted that there were a significant range of competitors with significant presence across the UK to the Parties in relation to small domestic appliances. Third parties consistently named by third parties

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<sup>39</sup> Argos' electricals sales in-store sales make up [REDACTED]% of its total electronic sales. Meanwhile, significant competitors in small domestic appliances such as Tesco, Dixons Carphone and John Lewis sell a weighted average of 68% of small domestic appliances in-store.

<sup>40</sup> Verdict, *Argos*, dated 21 October 2015, page 54.

<sup>41</sup> This is not segmented down to the level of SDAs.

<sup>42</sup> [REDACTED]

<sup>43</sup> Not segmented down to the level of SDAs.

<sup>44</sup> [REDACTED]

<sup>45</sup> [REDACTED]

included Dixons Carphone, John Lewis, Tesco, Asda, and Amazon as competitors to the Parties.

67. Therefore, for the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of a SLC in the retail supply of SDAs in-store and across all sales channels (including online) across the UK.

### Toys

68. The evidence available to the CMA from: (i) shares of supply; (ii) the Parties' submissions and internal documents; and (iii) third parties indicates that the Parties are not competing particularly closely in the retail supply of toys and that post-Merger there will be sufficient constraint remaining. In particular:
- (a) As can be seen from, Tables 1 and 2, estimated shares of supply for toys sold in-store are relatively low with a small increment, suggesting relatively limited competitive constraint.
  - (b) Evidence provided by the Parties on pricing and product mix indicates that the Parties have differentiated offerings as, for example, the average price point of a Sainsbury's toy is half that of an Argos toy.
  - (c) Evidence from internal documents indicates that Sainsbury's may not pose a significant constraint and highlights a number of more closely competing competitors;
    - (i) A HRG document on Argos' toys strategy<sup>46</sup> identifies a number of significant competitors including Smyths, Toys R Us, the Entertainer, Tesco and Amazon. In addition, while the document discusses particular grocers 'to beat', Sainsbury's is not mentioned. Other Argos internal documents are generally consistent with this view.
    - (ii) Internal documents provided by Sainsbury's suggest that their customers rank Toys R Us, Amazon and Argos as the top toy retailers, with Sainsbury's ranking much lower,<sup>47</sup> indicating that customers see Sainsbury's as a limited constraint on Argos in relation to toys.
  - (d) While some third parties noted that the Parties may be close competitors in the supply of toys, third parties also identified a range of equally or

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<sup>46</sup> [REDACTED]

<sup>47</sup> [REDACTED]

more significant competitors to the Parties, including: Tesco, Asda, Smyths, Toys R Us, and the Entertainer.

69. Therefore, for the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of a SLC in the retail supply of toys in-store and across all sales channels (including online) across the UK.

### ***Conclusion on horizontal unilateral effects***

70. As set out above, the CMA believes that the Parties are not competing particularly strongly in the retail supply of non-food products in-store and that there will be sufficient constraint remaining from a number of other significant retailers with offerings both in-store and online and across the UK. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the retail supply of non-food products in-store or across all sales channels (including online) across the UK.

### **Third party views**

71. The CMA contacted competitors (other retailers) and suppliers of the Parties. A number of competitors and some suppliers raised concerns. Concerns from competitors were generally focused on the Merger's ability to increase competition, which support the CMA's conclusions in not finding a realistic prospect of a SLC above. Suppliers noted the possibility of the Parties enhanced buyer power leading to diminished terms for suppliers. The CMA considers that to the extent this is the case, this may increase the Parties ability to offer reduced prices to customers. No other third parties raised concerns about the Merger.
72. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Conclusion on substantial lessening of competition**

73. Based on the evidence set out above, the CMA 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 as a result of horizontal unilateral effects in relation to the retail supply of non-food products in-store or across all sales channels (including online) across the UK.

## Decision

74. Consequently, the CMA 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.
75. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Sheldon Mills**  
**Senior Director**  
**Competition and Markets Authority**  
**22 July 2016**

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<sup>i</sup> The CMA notes that the Parties only overlap in the supply of microwaves in the white good electrical item segment.

<sup>ii</sup> The Parties note that this is as at 13 April 2016.

<sup>iii</sup> The Parties note that this is based on HRG Annual Report and Financial Statements for FY 2016 (Mar 2015 – Feb 2016).

<sup>iv</sup> The Parties note that this is as at April 2016.

<sup>v</sup> The Parties note that HRG's UK turnover in the financial year ending 27 February 2016 was also around £4 billion.

<sup>vi</sup> The Parties note that this is based on HRG Annual Report and Financial Statements for the FY 2016 (Mar 2015 – Feb 2016).

<sup>vii</sup> The Parties note that this is based on HRG Annual Report and Financial Statements for the FY 2016 (Mar 2015 – Feb 2016).