

# Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited

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

**ME/6625/16**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 19 October 2016. Full text of the decision published on 10 November 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.

### CONTENTS

	<i>Page</i>
SUMMARY .....	2
ASSESSMENT .....	3
Parties.....	3
Transaction .....	4
Jurisdiction .....	4
Counterfactual.....	5
Frame of reference .....	7
Competitive assessment.....	11
Third party views .....	24
Conclusion on substantial lessening of competition.....	25
Exceptions to the duty to refer .....	25
Decision .....	27

## SUMMARY

1. On 5 July and 27 September 2016, Co-operative Foodstores Limited (**CFL**) (a wholly owned subsidiary of Co-operative Group Limited (**CGL**)) acquired eight convenience store businesses (the **Target Stores**) from ML Convenience Limited (**ML**) and MLCG Limited (**MLCG**) (the **Merger**). CFL, ML and MLCG are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that CFL and the Target Stores have ceased to be distinct and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. CFL and the Target Stores overlap in the retail supply of groceries through convenience stores in eight local areas in the UK. The CMA has assessed the impact of the Merger on a local level. The CMA has adopted a frame of reference in line with previous CMA, Office of Fair Trading (**OFT**) and Competition Commission (**CC**) decisions, including most recently in *CFL/Booker*.<sup>1</sup>
4. To conduct its assessment, the CMA undertook an initial filtering exercise, based on the parameters set out in the frame of reference. The purpose of the filter was to identify local areas which did not raise prima facie competition concerns and could be ruled out from further assessment. Four local areas (Wilmslow, Ilkley, Keighley and Widnes) 'failed' the filters, and these areas were therefore subject to further assessment.
5. The CMA has found that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) in the local areas of Wilmslow, Ilkley and Keighley, on the basis that sufficient competitive constraints from alternative grocery store fascia will remain post-Merger.
6. In the local area of Widnes, the CMA found that, as a result of CFL's acquisition of the Target Store, there are now four CGL stores within an approximately one mile radius. Three of these stores are each of a comparable size, offer a comparable product range and, particularly with respect to CGL Ditton, are likely to draw a proportion of customers from a similar geographic area. As a result, the CMA believes that the Target Store in Widnes and the overlapping CGL stores (in particular, CGL Ditton) are likely

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<sup>1</sup> Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners (GB) Limited (ME/6588/16), CMA, 6 June 2016.

to be close competitors and to be considered good alternatives by many customers.

7. The CMA found that the constraint from remaining grocery store fascia would not be sufficient to offset the loss of competition between the Target Store and overlapping CGL stores. Only one other convenience store (the Go Local store, formerly a Nisa fascia) would continue to impose a constraint on CGL post-Merger. The remaining convenience stores located within a 1 mile radius or 5 minute drive time of the Target Store and overlapping CGL stores would not be good alternatives for many customers, primarily due to their lesser product offering. The larger grocery stores located near Widnes town centre would also not be good alternatives, given the relatively greater distance that many customers would need to travel in order to reach those stores.
8. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the local area of Widnes. The CMA believes that undertakings in lieu could, in principle, be offered by CGL to resolve the concerns identified, such that it would not be appropriate for the CMA to consider the application of the de minimis exception.
9. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). CGL has until 26 October 2016 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

## **ASSESSMENT**

### **Parties**

10. CFL is a wholly owned subsidiary of CGL and is active in grocery retailing in the UK. 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 2016 was around £9,301 million in the UK.
11. ML was the owner of approximately 140 convenience store properties, including the Target Stores. MLCG operated the businesses from those properties, trading as 'My Local'. MLCG went into administration on 29 June 2016 and ML went into administration on 7 July 2016. As MLCG did not

complete a full year's trading, MLCG has estimated the annualised turnover for the Target Stores in 2016 at around £[✂] in the UK.<sup>2</sup>

## Transaction

12. CFL completed the purchase of six of the Target Stores<sup>3</sup> on 5 July 2016 and the remaining two Target Stores<sup>4</sup> on 27 September 2016.
13. For the purposes of a merger reference, where a company acquires control of an enterprise during a series of transactions or successive events within a single two-year period, section 27(5) of the Act allow them to be treated as having occurred simultaneously on the date of the last transaction.<sup>5</sup> The CMA considers it appropriate to treat the transactions that took place on 5 July 2016 and 27 September 2016 as having occurred simultaneously on 27 September 2016, the date on which CFL completed the purchase of the last of the Target Stores.

## Jurisdiction

14. As a result of the Merger, the enterprises of CFL and the Target Stores have ceased to be distinct.
15. CFL and the Target Stores overlap in the retail supply of groceries through convenience stores in eight local areas in the UK. CGL submitted that the combined share of supply of groceries of CFL and the Target Stores (based on the combined net sales area of convenience stores) exceeds 25% in a number of local authorities, counties and administrative regions in the UK. This includes but is not limited to: (i) the administrative region of the North West (population 7,173,835); (ii) the administrative region of Yorkshire and the Humber (population 5,390,576); and (iii) the local authority of Halton (population 126,528).<sup>6</sup> The CMA considers that each of these areas represents a substantial part of the UK.<sup>7</sup>

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<sup>2</sup> MLCG derived this estimated turnover from data for the period 25 January 2016 to 10 April 2016, which it considered to be the period which was most representative of the trading of these stores.

<sup>3</sup> Stores located in Croydon, Nottingham Railway Station, Blackpool, Steeton, Widnes and Stockport.

<sup>4</sup> Stores located in Wilmslow and Ilkley.

<sup>5</sup> *Mergers: Guidance on the CMA's Jurisdiction and Procedures* (CMA2), January 2014, paragraph 4.33.

<sup>6</sup> Population statistics sourced by the CMA from the Office for National Statistics, mid-2015 estimate ([Population Estimates for UK, England and Wales, Scotland and Northern Ireland](#)).

<sup>7</sup> The CMA has considered in particular the following decisions: Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol filling stations from Co-operative Group Limited (ME/6466/14), CMA, decision dated 28 November 2014, paragraph 12; Anticipated acquisition by Co-operative Group Limited of David Sands Limited (ME/5317/12), OFT, decision dated 16 April 2012, paragraphs 8 to 11.

16. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
17. As set out in paragraph 13, the CMA considers it appropriate to treat 27 September 2016 as the date on which the Merger completed. The CMA was informed of completion on the same day. The four-month deadline for a decision under section 24 of the Act is therefore 27 January 2017.
18. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 August 2016 and the statutory 40 working day deadline for a decision is therefore 19 October 2016. The Merger was considered at a Case Review Meeting.<sup>8</sup>

## Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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>9</sup>
21. As set out below, this Merger raised the question of whether the CMA's usual approach of adopting the pre-merger conditions as the counterfactual was appropriate. In particular, the CMA considered whether MLCG's continued ownership of the Target Stores was a realistic prospect and whether, instead, a situation in which an alternative purchaser acquired the Target Stores would be an appropriate counterfactual.
22. As set out in the Competitive Assessment below, four of the eight local areas in which CFL and the Target Stores overlap failed the CMA's initial filtering analysis.

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<sup>8</sup> See *Mergers: Guidance on the CMA's jurisdiction and procedure*, from paragraph 7.34.

<sup>9</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*, Annex D).

23. In three of the four local areas that failed the initial filtering analysis, the CMA found that the Merger did not give rise to a substantial lessening of competition, on the basis that sufficient alternative grocery fascia would remain in the local areas post-Merger to constrain CGL. As such, the adoption of a counterfactual based on the pre-merger conditions or on an alternative purchaser acquiring the relevant stores did not alter this analysis.
24. With respect to the local area of Widnes, the CMA's assessment of the appropriate counterfactual is set out below.

### ***Counterfactual for the local area of Widnes***

25. CGL submitted that the CMA should assess the Merger against a counterfactual in which MLCG has entered into administration and, absent the Merger, the Target Stores would have closed and ceased to operate (ie the exiting firm scenario).
26. For the CMA to accept the exiting firm argument with respect to the Target Store in Widnes, it must (on the basis of compelling evidence) believe that it was inevitable that MLCG would exit the market and be confident that there was no substantially less anti-competitive purchaser for the Target Store in Widnes or its assets.<sup>10</sup>
27. MLCG submitted that, at the time CGL bid for the Target Store in Widnes, MLCG also received an alternative bid for the store from another grocery retailer. This retailer has confirmed to the CMA that this was a firm bid, and that it was prepared to proceed to purchase the Target Store if chosen as the successful bidder. The CMA considers that this retailer does not present competition concerns in relation to the Widnes area.
28. Subsequent to this and CGL's bids having been made, MLCG was placed into administration on 29 June 2016 and on 4 July 2016 the store was closed by the administrators. Completion of the acquisition of the store took place on 5 July 2016.
29. CGL submitted that it considered it extremely unlikely, had the administrators approached the alternative bidder at the time MLCG went into administration and proposed that the bidder acquire the store by 5 July 2016, that the bidder would have remained interested in purchasing the store.
30. The CMA notes that CGL was not itself deterred from purchasing the Target Store as at 5 July 2016, notwithstanding the circumstances outlined in

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<sup>10</sup> [Merger Assessment Guidelines](#), paragraph 4.3.10.

paragraph 28 above. The grocery retailer that submitted the alternative bid for the Target Store has also confirmed to the CMA that its incentive to purchase the store was unlikely to have been affected by the administrator's decision to close the store prior to completion. In particular, the grocery retailer stated that it would typically expect a purchased store to require some works and that this would typically require the store to be closed. It was therefore not a prerequisite for the grocery retailer that a store be a trading store at the time of completion.

31. On the basis of the above evidence, the CMA cannot be confident that there would have been no substantially less anti-competitive purchaser for the Target Store. The CMA therefore believes that the exiting firm scenario is not the appropriate counterfactual against which to conduct its competitive assessment of the Merger in Widnes and that there is a realistic prospect that, absent the Merger, the Target Store would have been acquired by an alternative grocery retailer.
32. The CMA has therefore assessed the effect of the Merger against a counterfactual in which the Target Store in Widnes is operated by a grocery retailer that raises no competition concerns.

### **Frame of reference**

33. 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>11</sup>
34. In this case, the frame of reference is taken as a starting point only, and has been used predominantly to determine the parameters of the filtering analysis, described further in paragraph 55 below.
35. CFL and the Target Stores overlap in the retail supply of groceries through convenience stores in eight local areas in the UK.

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<sup>11</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

## **Product scope**

36. The UK competition authorities have conducted a number of investigations into transactions involving the retail supply of groceries in recent years,<sup>12</sup> most recently in *CFL/Booker*.
37. In *CFL/Booker*, the CMA adopted the following approach to the product scope:<sup>13</sup>
- (a) In line with the CC's grocery report<sup>14</sup> and the CMA's previous decisional practice,<sup>15</sup> the CMA defined grocery stores according to the size of their net sales area as:
- (i) one-stop stores (OSS) (1,400 square metres (sq metres) and larger);
  - (ii) mid-size stores (MSS) (280-1,400 sq metres); or
  - (iii) conveniences stores (below 280 sq metres);
- (b) On a cautious basis, the CMA excluded from the frame of reference:
- (i) grocery retailers outside the effective competitor set (being those grocery store fascia listed at Annex 1);<sup>16</sup> and
  - (ii) convenience stores with net sales area of less than 100 sq metres.<sup>17</sup>
38. CGL submitted that all stores that cater for similar shopping missions should be considered as effective competitors, irrespective of size or whether or not they fall within the effective competitor set. CGL submitted that this view was

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<sup>12</sup> For example: Anticipated acquisition by MRH (GB) Limited of 78 service stations from Esso Petroleum Company Limited (ME/6563/15), CMA, decision dated 26 November 2015; *Asda/Co-op* (ME/6466/14); *CGL/David Sands* (ME/5317/12); Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited (ME/4551/10), OFT, decision dated 23 September 2010; Anticipated acquisition by Co-operative Group Limited of Somerfield Limited (ME/3777/08), OFT, decision dated 20 October 2008; The CC's Report, 'The supply of groceries in the UK' dated 30 April 2008 (Groceries Report).

<sup>13</sup> *CFL/Booker* (ME/6588/16), paragraph 31.

<sup>14</sup> Groceries Report.

<sup>15</sup> For example, *Asda/Co-op* (ME/6466/14), paragraph 20; *CGL/David Sands* (ME/5317/12), paragraph 21; *CGL/Somerfield* (ME/3777/08), paragraph 10.

<sup>16</sup> This approach was also consistent with the OFT and CMA's approach in a number of cases which considered grocery retailing through convenience stores, including: Anticipated acquisition by One Stop Stores Limited of 33 stores from Alfred Jones (Warrington) Limited, trading as Spar (ME/6131/13), OFT, decision dated 18 September 2013, paragraph 27; *CGL/David Sands* (ME/5317/12), paragraph 44.

<sup>17</sup> The CMA recognised in *CFL/Booker* that there was no clear threshold between smaller and larger convenience stores. However, the CMA believed that, in that case, using a threshold of 100 sq metres provided a useful starting point for segmenting between different sizes of convenience store: *CFL/Booker* (ME/6588/16), footnote 16. The CMA's reasons for adopting this limb of the filter, and the evidence relied upon, are set out in *CFL/Booker* (ME/6588/16), paragraphs 24 to 29.



consistent with a CGL internal document,<sup>18</sup> which discussed CGL's intention to [redacted].

39. Third party responses to the CMA's merger investigation did not indicate that adopting a similarly cautious approach to *CFL/Booker* would be inappropriate. The CMA therefore considers it appropriate, on a cautious basis, to adopt the frame of reference set out in paragraph 37.
40. As noted in paragraph 34, the frame of reference has been used in this case primarily for the purpose of determining the parameters of the filtering analysis. The CMA notes that, in the present case, each of the local areas which 'failed' the filters would have failed regardless of whether or not convenience stores with a net sales area of less than 100 sq metres were excluded from the frame of reference. While it would not therefore affect the CMA's filtering analysis, the CMA has nevertheless considered whether it remains appropriate in this case to exclude from the frame of reference convenience stores which are significantly smaller than the Parties' own convenience stores. In any event, for those local areas that did fail the filtering analysis, the CMA takes into account the constraint from grocery stores outside the frame of reference in its competitive assessment.

#### *Conclusion on product scope*

41. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger in the product frames of reference outlined in paragraph 37.

#### **Geographic scope**

42. The CMA has previously identified that the relevant geographic scope for grocery retailing is essentially local but that a national dimension of competition also exists.<sup>19</sup>
43. In *CFL/Booker*, for the local dimension of competition, the CMA adopted the following approach to the geographic scope:<sup>20</sup>
  - (a) In accordance with previous decisional practice,<sup>21</sup> the CMA defined the geographic frame of reference as:

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<sup>18</sup> [redacted].

<sup>19</sup> For example, *Asda/Co-op* (ME/6466/14), paragraph 24; *CGL/David Sands* (ME/5317/12), paragraph 23; *CGL/Somerfield* (ME/3777/08), paragraph 20.

<sup>20</sup> *CFL/Booker* (ME/6588/16), paragraph 31.

<sup>21</sup> For example, *Asda/Co-op* (ME/6466/14), paragraph 28; *CGL/Somerfield* (ME/3777/08), paragraph 25.

- (i) a 10/15 minute drive time for OSS (in urban/rural areas);
  - (ii) 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);
  - (iii) a 5 minute drive time for convenience stores, 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).
- (b) on a cautious basis, and in line with the OFT's approach in previous cases such as *CGL/David Sands*<sup>22</sup> and *Midcounties/Tuffin*,<sup>23</sup> the CMA also applied a sensitivity check and considered the impact of the Merger within the following geographic frame of reference:
- (i) a 10/15 minute drive time for OSS (in urban/rural areas);
  - (ii) a 5/10 minute drive time for MSS (in urban/rural areas), which are also constrained by OSS within a 5/10 minute drive time (in urban/rural areas);
  - (iii) a 5 minute drive time and/or a one mile radius for convenience stores (in all areas), which are constrained by all grocery stores<sup>24</sup> within a 5 minute drive time and/or a one mile radius.
44. With respect to limb (b) above, CGL submitted that the OFT's approach in *CGL/David Sands* and *Midcounties/Tuffin* was the result of facts and evidence specific to those cases, none of which CGL considered to be present in this case. Further, CGL submitted that, while the CMA had taken a cautious approach in *CFL/Booker* by applying the additional filters in (b) above, the CMA had concluded in its competitive assessment that OSS and MSS outside a 5 minute drive time did provide a competitive constraint on convenience stores in the local areas that failed the filters.
45. In the present case, third party responses to the CMA's merger investigation did not indicate that adopting a similarly cautious approach to *CFL/Booker* would be inappropriate. Therefore, on a cautious basis, the CMA has adopted the frame of reference set out in paragraph 43 above for its assessment of the local dimension of competition.

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<sup>22</sup> *CGL/David Sands* (ME/5317/12), paragraphs 38 to 39.

<sup>23</sup> Completed acquisition by Midcounties Co-operative Limited of Tuffin Investments Limited (ME/5452/12), OFT, 18 October 2012, paragraph 59.

<sup>24</sup> Including OSS and MSS.

46. In any event, for those local areas that fail the filtering analysis, the CMA takes into account the constraint from grocery stores located outside the frame of reference in its competitive assessment.

#### *Conclusion on geographic scope*

47. For the reasons set out above, on a cautious basis, the CMA has considered the impact of the Merger on the basis of the local geographic frames of reference outlined in paragraph 43 above.

#### **Conclusion on the frames of reference**

48. For the reasons set out above, the CMA has considered the impact of the Merger in the retail supply of groceries, within the product frames of reference outlined in paragraph 37 and the local geographic frames of reference outlined in paragraph 43.

## **Competitive assessment**

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

49. 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>25</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed 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 unilateral horizontal effects in the retail supply of groceries in each of the local areas in which a Target Store is located.

### ***National versus local assessment of competition***

50. The UK competition authorities' starting point has been to recognise that consumers shop in local retail outlets, within a given travel time from their home or work. Against this background, the CMA's starting assumption (and that of its predecessor, the OFT) has been that there will be material local competition on one or more aspects of price, quality, range and service.<sup>26</sup>
51. CGL submitted that [REDACTED]:

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<sup>25</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>26</sup> [Commentary on Retail Mergers](#), OFT1305/CC2 com 2 [Version 1a], March 2011, paragraph 3.7.

(a) [REDACTED];

(b) [REDACTED];

(c) [REDACTED].

52. [REDACTED].

53. The CMA does not consider that it has sufficient evidence in this case to depart from its standard approach that competition between grocery retailers takes place locally. In particular, the CMA considers that, notwithstanding CGL's submissions, CGL would be able to flex its competitive offering at a local level to some degree. For example, it could alter the product range on offer, stocking fewer or higher margin product lines, at the expense of customer choice. In this regard, the CMA notes that, [REDACTED]. The CMA notes that [certain elements of CGL's service offering] will therefore differ from area to area.

54. The CMA therefore believes that, taking the relevant factors in the round, it is appropriate in this case to assess the effects of the Merger at a local level.

#### *Local retail supply of groceries*

55. For the purpose of assessing the local effects of the proposed transaction,<sup>27</sup> the CMA employs a filtering methodology (essentially a fascia counting exercise) whereby areas raising no prima facie competition concerns are ruled out from further analysis and closer scrutiny is applied to those where prima facie concerns are identified. Where, having applied the filtering methodology set out below, the Merger would lead to a reduction in competing fascia to three or fewer in a particular area, this is considered to raise prima facie competition concerns and a more detailed assessment is carried out.

#### *Framework for local assessment: filtering analysis*

56. In line with the approach taken by the CMA in *CFL/Booker*,<sup>28</sup> CGL applied a filtering methodology as follows.

57. **Stage 1 filtering.** CGL:

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<sup>27</sup> As the Merger would result in a negligible increase in CFL's share of supply of convenience stores on a national level ([0-5]% on the basis of net sales area), the CMA considers 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. The effect of the Merger at the national level is therefore not considered further in this decision.

<sup>28</sup> ME/6588/16, *CFL/Booker*, paragraph 51 to 53.

- (a) confirmed that each Target Store's catchment area overlapped with the catchment area of at least one CGL or independent Co-operative (the catchment area being defined by the drive times set out in the geographic frame of reference);<sup>29</sup>
  - (b) identified all CGL (and other independent Co-operative) and competitor convenience stores located within a 5 minute drive time of a Target Store; MSS located within a 5/10 minute drive time (urban/rural) and OSS located within a 10/15 minute drive (urban/rural) of a Target Store;
  - (c) tested whether the Merger would result in a reduction in the number of fascia identified in paragraph (b) from four to three or fewer;
  - (d) re-centred the analysis on each competitor (from within the effective competitor set) located within a 5 minute drive time of a Target Store.
58. **CFL/Booker sensitivity filters.** CGL then conducted the same fascia counting exercise, this time applying the following additional sensitivity filters applied in *CFL/Booker*:
- (a) For convenience stores, defining the catchment as a 5 minute drive time and a one mile radius and excluding all grocery stores outside this catchment area (irrespective of their size);
  - (b) Excluding convenience stores with a net sales area of less than 100 sq metres.
59. CGL submitted that, applying the above filters, the Merger results in a reduction of effective competitor set fascia from four to three or fewer:<sup>30</sup>
- (a) Within a one mile radius of the Target Store in Widnes; and
  - (b) Within a five-minute drive time of the Target Store in Keighley.
60. Further, CGL submitted that when the filtering analysis is re-centred on each CGL store which overlaps with a Target Store, the Merger also results in a reduction of effective competitor set fascia from four to three or fewer:<sup>31</sup>

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<sup>29</sup> I.e. a 5 minute drive time for convenience stores, a 5/10 minute drive time for MSS (in urban/rural areas) and a 10/15 minute drive time for OSS (in urban/rural areas).

<sup>30</sup> As noted in paragraph 40, the listed local areas fail the filters, regardless of whether or not convenience stores with net sales area of less than 100 sq metres are excluded for the purposes of the filtering analysis.

<sup>31</sup> As noted in paragraph 40, the listed local areas fail the filters, regardless of whether or not convenience stores with a net sales area of less than 100 sq metres are excluded for the purposes of the filtering analysis.

- (a) Within a one mile radius of CGL Petrol Lindow (a convenience store) in Wilmslow;
  - (b) Within a five-minute drive time of CGL Addingham (a convenience store) in Ilkley.
61. The CMA having confirmed the local areas of Wilmslow, Ilkley, Keighley and Widnes ‘failed’ the filtering analysis, these areas were subject to further assessment.
62. Having reviewed CGL’s filtering analysis, the CMA confirmed that the remaining local areas ‘passed’ the filtering analysis. These local areas were therefore not subject to further assessment.

### *Wilmslow and Ilkley*

63. In the local area of Wilmslow (urban area with a population of 24,497), the filtering analysis results in a reduction of fascia from 2 to 1 within a 1 mile radius of CGL Petrol Lindow.<sup>32</sup> Located just outside a 1 mile radius (less than 1.1 miles) are two convenience stores (M&S and Tesco) and two OSS (Sainsbury’s and Waitrose).
64. In the local area of Ilkley (urban area with a population of 14,809), the filtering analysis results in a reduction of fascia from 2 to 1 within a five-minute drive of CGL Addingham.<sup>33</sup> CGL Addingham is located almost five minutes’ drive (over 2 miles) away from the Target Store with which it overlaps, in a distinct residential settlement. Located 1 to 2 minutes’ drive beyond the Target Store are three additional grocery store fascia: one MSS (M&S) and two OSS (Booths and Tesco).
65. The CMA considers that the basis on which the local areas of Wilmslow and Ilkley fail the filtering analysis is very marginal. In each of these local areas, the CMA considers that sufficient alternative grocery store fascia will remain post-Merger to constrain CGL. For this reason, the CMA believes that no competition concerns arise with respect to the local areas of Wilmslow and Ilkley.

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<sup>32</sup> The fascia count is unaffected regardless of whether convenience stores with net sales area of less than 100 sq metres are excluded from the filtering analysis. Population size as submitted by CGL.

<sup>33</sup> The fascia count is unaffected regardless of whether convenience stores with net sales area of less than 100 sq metres are excluded from the filtering analysis. Population size as submitted by CGL.

## *Keighley*

66. In the local area of Keighley (rural area with a population of 4,375), the filtering analysis results in a reduction of fascia from 2 to 1 within a 5 minute drive of both the Target Store and CGL Petrol Crosshills (a convenience store).<sup>34</sup> There is no overlap between the Target Store and any CGL store within a 1 mile radius. Located within a 5 minute drive of the Target Store are four convenience stores of less than 100 sq metres (Costcutter, Spar and two independent fascia) and a mid-sized Aldi store (net sales area of [900-1000] sq metres).
67. In conducting its assessment of the local area of Keighley, the CMA has taken into account in particular the following factors:
- (a) Keighley is a rural area and the Target Store (in the village of Steeton) is in a distinct settlement from the overlapping CGL stores (located in the neighbouring settlements of Crosshills and Silsden), each more than 1 mile away. The CMA therefore considers that customers on foot would not consider the Target Store and CGL stores to be good alternatives.
  - (b) For customers traveling by car, the six larger grocery store fascia located within 10 to 15 minutes' drive of the Target Store are likely to provide an alternative to some extent, particularly for those carrying out their convenience shopping in the course of commuting to or from work.
  - (c) The Aldi store is a substantial size and has relatively long opening hours (90 hours per week). As such, some customers may consider it to be an alternative to the Target Store and overlapping CGL stores, notwithstanding that it does not form part of the effective competitor set for the purpose of the filtering exercise.
68. On the basis of the above factors, on balance, the CMA believes that the Target Store and the overlapping CGL stores are unlikely to be close competitors for many customers. For those customers who would consider the Target Store and overlapping CGL stores to be alternatives, the CMA believes that the constraint imposed by the remaining grocery fascia will be sufficient to offset any loss of competition arising from the Merger.
69. As a result, the CMA believes that no competition concerns arise with respect to the local area of Keighley.

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<sup>34</sup> If convenience stores with net sales area of 100 sq metres are not excluded as part of the filtering analysis, the Merger results in a reduction of fascia from 4 to 3 within a 5 minute drive of each of the Target Store and CGL Petrol Crosshills. Population size as submitted by CGL.

## *Widnes*

70. In the local area of Widnes (urban area with a population of 125,746),<sup>35</sup> the filtering analysis results in a reduction of effective competitor set fascia from 2 to 1 within both 1 mile and 5 minutes' drive of the Target Store.<sup>36</sup> The filters are also 'failed' when the analysis is re-centred on each of the three overlapping CGL stores: CGL Ditton, CGL Hough Green and CGL Farnworth.<sup>37</sup>
71. For the purposes of its competitive assessment, the CMA has considered:
- (a) the closeness of competition between the Target Store and overlapping CGL stores; and
  - (b) the competitive constraints from remaining competitors.
72. The CMA has assessed these two issues by reference to:
- (a) The location and characteristics of the grocery stores in the local area;
  - (b) The location of customer and population centres relative to the grocery stores in the local area (including by reference to the member catchment area maps submitted by CGL); and
  - (c) Its analysis of the impact of the opening and closing of the Target Store on the revenues of the CGL stores in the local area (**'Event Analysis'**).

### *Location and characteristics of grocery stores*

73. CGL submitted that the Target Store in Widnes and the overlapping CGL stores are not particularly close competitors, on the basis that they are not physically close to one another (in each case more than 20 minutes' walk apart).
74. CGL submitted that there remain a number of other convenience stores located within 1 mile or 5 minutes' drive of the Target Store, with each of the overlapping CGL stores and the Target Store having a 'local competitor' that

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<sup>35</sup> Population size as submitted by CGL.

<sup>36</sup> The results of the fascia counting exercise include the grocery store previously operated by Nisa (an effective competitor set fascia), which CGL submitted is now operated by Go Local, a regional symbol group with 900 Retail Club Members supplied by Parfett's Cash & Carry. If convenience stores of less than 100 sq metres are not excluded for the purposes of the filtering exercise, the Merger results in a reduction of effective competitor set fascia from 4 to 3.

<sup>37</sup> The filtering analysis results in a reduction of competitive set fascia: (i) from 2 to 1 within 1 mile of CGL Ditton (3 to 2 if convenience stores of less than 100 sq metres are not excluded); (ii) from 2 to 1 within 5 minutes' drive of CGL Hough Green (3 to 2 if convenience stores of less than 100 sq metres are not excluded); (iii) from 3 to 2 within 1 mile of CGL Farnworth (6 to 5 if convenience stores of less than 100 sq metres are not excluded for the purposes of the filtering analysis).



is physically closer to it than either the Target Store or another CGL store. These comprise three Best One fascia, a Go Local grocery store (previously a Nisa fascia) and two independent retailers (M&S Late Shop<sup>38</sup> and Booze N Food). Located just outside a 5 minute drive of the Target Store is a further independent retailer, Appleton Village Shop.

75. CGL submitted that while each of these convenience stores has a net sales area of less than 100 sq metres, each satisfies at least 13 of the 18 core categories established by the Institute of Grocery Distribution (IGD), and therefore qualifies as a convenience store on the IGD's criteria. CGL submitted further that the [£] basket size at each of the overlapping CGL stores (with CGL Farnworth having a median customer spend of £[£] and CGL Hough Green and CGL Ditton £[£]) indicates that most customers use these stores to make [£]. CGL submitted that, for these customers, the smaller convenience stores would be good alternatives.
76. CGL submitted that there also remains a range of larger grocery stores (including four OSS operated by Asda, Tesco, Morrisons and Aldi and two MSS operated by M&S and Iceland) located 6 to 8 minutes' drive away from the Target Store. CGL submitted that these stores are located near to Widnes town centre and are therefore well placed for consumers driving to or from work, a day out or an appointment.
77. The drive times and straight line distances (as submitted by CGL) between the Target Store and each of the grocery stores identified in paragraph 74 and 76 are set out in Table 1 below. For those fascia which CGL submitted were more than 1 mile from the Target Store, but for which CGL did not provide a precise straight line distance, the CMA has indicated in the final column of the table its own calculation of the store's straight line distance from the Target Store based on store postcodes.<sup>39</sup>

**Table 1: Drive times and straight line distances between Target Store at Widnes and alternative grocery stores**

Fascia	Postcode	Drive time from Target Store (minutes)	Straight line distance from Target Store (miles)	Straight line distance from Target Store - CMA assessment (miles)
Go Local	WA8 5AJ	2.26	0.71	
CGL Ditton	WA8 7HL	2.33	0.76	

<sup>38</sup> This is not a Marks & Spencer fascia but an independent retailer.

<sup>39</sup> The CMA notes that, notwithstanding that CGL submitted that these stores are more than 1 mile from the Target Store, the CMA's calculations indicate that Booze N Food, M&S Late Shop and the Appleton Village Shop are less than 1 mile away from the Target Store.

Best One	WA8 4TE	2.66	0.99	
Booze N Food	WA8 7HY	2.96	>1 mile	0.75
Best One	WA8 8DY	3.32	1.10	
CGL Hough Green	WA8 7XP	3.73	1.13	
Best One	WA8 7XJ	3.84	>1 mile	1.10
M&S Late Shop	WA8 9LG	4.19	>1 mile	0.81
CGL Farnworth	WA8 9LQ	4.65	0.94	
Appleton Village Shop	WA8 6PU	5.20	>1 mile	0.95
Iceland	WA8 6JW	5.65	>1 mile	1.28
Asda	WA8 6NL	6.07	1.30	
M&S	WA8 7TN	6.79	>1 mile	1.44
Tesco	WA8 6BG	7.18	1.53	
Morrisons	WA8 6UA	7.30	1.37	
Aldi	WA8 6UF	8.37	>1 mile	1.53

Source: CGL and (final column only) CMA calculations based on postcodes (using [www.freemaptools.com](http://www.freemaptools.com))

78. The CMA notes that, following the Merger, there are four CGL stores within an approximately one mile radius of the Target Store in Widnes.<sup>40</sup> This concentration of CGL stores in the local area was raised as a concern by one national retailer contacted during the CMA's merger investigation. This retailer considered that the Merger may result in a loss of competition for convenience retailing, on the basis that there are already three other CGL stores in the local area.
79. The CMA notes that, relative to the Target Store, CGL Ditton and CGL Hough Green are the closest rivals (whether travelling by foot or by car) of a comparable size (the Target Store has a net sales area of [200-300] sq metres, CGL Ditton [200-300] sq metres and CGL Hough Green [200-300] sq metres).<sup>41</sup> CGL Ditton in particular is located less than 1 mile (0.76 miles as the crow flies) from the Target Store.
80. The CMA considers that the photographic and video evidence submitted by CGL illustrates that each of these stores stocks a large number of product categories and a broad range of products within each category, such that customers would be able to carry out a wide range of shopping missions within each of these stores.
81. Based on the location of these stores relative to one another and their comparable sizes and product ranges, the CMA considers that customers would be likely to consider the Target Store and the CGL stores (in particular CGL Ditton) to be good alternatives.

<sup>40</sup> CGL Farnworth is located 1.13 miles (as the crow flies) from the Target Store.

<sup>41</sup> Net sales area figures as submitted by CGL.

82. The CMA considers that, by comparison, the smaller convenience stores are less likely to be good alternatives for the Target Store and CGL stores. The CMA has taken into account in particular the following factors:
- (a) The photographic and video evidence submitted by CGL, which the CMA considers demonstrates that the smaller convenience stores listed in paragraph 74 do not offer a comparable range of products or meal solutions to those offered by the CGL stores and the Target Store. In particular, the CMA considers that this evidence demonstrates that the stores stock significantly smaller ranges of fresh fruit and vegetables, raw meat or fish and chilled ready meals.
  - (b) Statements in one CGL internal strategy document,<sup>42</sup> which the CMA believes support the proposition that the retail offering of smaller convenience stores can be significantly differentiated from larger convenience stores in terms of product range and the shopping missions they principally cater to. This document described different formats of CGL convenience stores, [redacted]. For example, CGL's [redacted] store format (typically for stores under [100-200] sq metres) was described as applying to stores that [redacted]. By comparison, CGL's [redacted] format (typically for stores between [100-200] and [400-500] sq metres) was described as applying to stores where [redacted].
  - (c) The fact that median customer spend is not necessarily indicative of the particular products which customers are purchasing, or the value they place on having a broad range of products to choose from. Regardless of basket size therefore, the CMA considers that the smaller convenience stores are less likely to be good alternatives for customers relative to CGL's stores because they offer a narrower range of products.<sup>43</sup>
  - (d) The view expressed by the owner of one of the smaller convenience stores identified in paragraph 74 that it did not observe any impact on its sales as a result of the closing and subsequent reopening of the Target Store. The same retailer stated that it served a very limited catchment area. The CMA considers that this indicates that the smaller grocery store does not compete closely with the Target Store.
83. Notwithstanding the above, the CMA notes that the Go Local store may be marginally larger than the other convenience stores listed in paragraph 74.<sup>44</sup> It

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<sup>42</sup> [redacted], Annex 8.8.2 to Merger Notice.

<sup>43</sup> Further, the basket spend data submitted by CGL shows that [redacted]% of customer spend at CGL Ditton relates to baskets worth [redacted] (and [redacted]% to baskets worth [redacted]). The CMA also considers that smaller convenience stores may not be suitable alternatives for customers undertaking these larger shopping trips.

<sup>44</sup> CGL submitted that this store had a net sales area of 74 sq metres. However, the *Halton Local Plan – Local Centres Review (May 2015)* ([Halton Council Local Centres Review](#)) lists the Nisa store (now operated by Go

also appears from the video evidence and store floor plan diagrams submitted by CGL to offer a broader range of products and meal solutions than the other smaller convenience stores, with the length of one side of the store devoted to fruit and vegetables, raw meat and fish, chilled ready meals and 'food to go'. It also has a Post Office. The CMA therefore considers that this store is likely to be an alternative for some customers of the Target Store (particularly those located in the area between the Target Store and the Go Local store).<sup>45</sup>

84. The CMA notes that the OSS and MSS identified in paragraph 76 (including those fascia which are outside the effective competitor set) are likely to have a more extensive product range. However, these stores are located considerably further from the Target Store in terms of walking distance than CGL Ditton (much further than the straight line distances would suggest, given the pedestrian routes available). While these OSS and MSS would be accessible to those travelling by car, the drive time between the Target Store and these stores is more than twice the drive time between the Target Store and CGL Ditton according to CGL's estimates.<sup>46</sup>
85. Further, this comparator does not take into account the fact that (as set out in the next section), the Target Store and CGL Ditton are likely to draw a substantial proportion of customers from the area located physically in and around them. For many of these customers, the difference in drive time between travelling from their home location to either the Target Store or CGL Ditton as compared to travelling to the OSS or MSS located near Widnes town centre would be considerably greater.
86. Finally, the CMA received views from a number of competitors of the Parties on the extent to which customers would consider the OSS, the smaller convenience stores (listed in paragraph 74) or the overlapping CGL stores in Widnes to be good alternatives to the Target Store. The views received were mixed. The third parties generally cited store size, product range and/or distance between stores as factors affecting their assessment. However, views differed regarding the application of these factors to the stores under review. Nevertheless, the CMA notes that three national retailers considered

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Local) as being 105 sq metres (page 29). The report does not specify whether this includes area other than net sales area. By comparison, the report lists the Best One store located to the south of the Target Store as 98 sq metres (page 5) and the Londis store (now the Best One store located to the west of the Target Store and north of CGL Hough Green) as 'around' 90 sq metres (page 14).

<sup>45</sup> The CMA considers that this store is unlikely to be an alternative for customers of CGL Ditton and CGL Hough Green, given the distance between these stores and the Go Local store.

<sup>46</sup> CGL submitted that it used MapInfo RouteFinder to generate the drive times cited in its submissions, using a simple 7-day average. CGL noted that this tool had been used consistently by the CMA in the past. CGL submitted that when the setting 'AM Peak' was used instead of a 7-day average, the times were on average approximately 30 seconds longer. As a sensitivity check, the CMA has also taken into account drive times calculated using an alternative source (Google). These tend to indicate longer drive times between stores than the drive times submitted by CGL.

that the OSS would be poorer alternatives for customers of the Target Store compared to other grocery store rivals, predominantly on the basis of their distance from the Target Store. Three national retailers also considered that the smaller convenience stores would only be alternatives to a limited extent (or not at all), either on the basis of their lesser product range or distance from the Target Store.

#### *Location of customer and population centres*

87. CGL submitted that each of the three CGL stores is located within a separate 'local area', which CGL described as areas that provide a focus for 'local convenience, service retail and complementary community facilities'.
88. Further, CGL submitted maps indicating the areas in which 50% (defined as the 'primary catchment area') and 80% of CGL members shopping at a particular store live. CGL submitted that these maps show that, [REDACTED].
89. By reference to census data,<sup>47</sup> the CMA notes that the area in and around which the Target Store, CGL Hough Green and CGL Ditton are located is an area of relatively high population density. As a result, the CMA considers this to be an area from which the stores are likely to draw a large proportion of their customers.
90. The CMA considers that this is supported by the CGL member catchment area maps. The CMA considers that there are certain limitations to using these maps as evidence of the areas from which those stores draw customers.<sup>48</sup> Nevertheless, the CMA considers that the maps indicate that the catchment areas of these CGL stores and the Target Store overlap, and/or that they draw customers from adjacent local areas. In particular, the catchment area for CGL Ditton and CGL Hough Green includes the area immediately between these stores and the Target Store.<sup>49</sup>
91. Taking into account the above factors, the CMA therefore considers that the location of customers and population centres relative to the Target Store and overlapping CGL stores (in particular CGL Ditton and CGL Hough Green)

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<sup>47</sup> UK census 2011 data, obtained from [www.ukcensusdata.com](http://www.ukcensusdata.com). The CMA notes that the population density in the area immediately adjacent to the Target Store may have increased since the results of the 2011 census, following the construction of a large housing estate in Upton Rocks.

<sup>48</sup> In particular, the catchment area maps only reflect the location of customers that are CGL members. For the CGL stores in Widnes, CGL submitted that the spend of these members only accounts for a [REDACTED] proportion ([REDACTED]%) of total store revenues.

<sup>49</sup> The CMA notes, meanwhile, that the fact that the catchment area maps suggest that the catchment area of these stores also extends significantly to the east (away from the Target Store) is misleading, as the area highlighted appears to be predominantly farmland.

support the proposition that many customers would consider these stores to be good alternative options.

### *Event Analysis*

92. CGL submitted weekly sales data for each of the overlapping CGL stores in Widnes for the period 2011 to 2016. CGL also submitted weekly sales data for the Target Store in Widnes for its first three weeks of trading as a CGL store. MLCG's administrators provided weekly sales data for the Target Store in the period October 2015 to early July 2016, when it ceased trading as My Local.
93. The CMA analysed changes in weekly store revenue associated with changes in the structure of the local market. The CMA acknowledges that there are limitations to using weekly revenue data to infer whether and to what extent customers may switch between stores in a local area in response to certain events.<sup>50</sup> As the CMA was unable to control for factors that may have affected weekly store revenue, the CMA was able to place only limited weight on this analysis. However, the CMA notes that the patterns identified are consistent with other evidence before it, as set out in paragraph 96 below.
94. The CMA observed the following from the weekly revenue data:<sup>51</sup>
- (a) **Temporary closure of CGL Ditton (11-18 August 2011):** This coincided with a [£] increase in weekly revenues at CGL Hough Green,<sup>52</sup> followed by an [£] decrease in weekly revenues at CGL Hough Green when CGL Ditton reopened,<sup>53</sup> consistent with a diversion of approximately [%] from CGL Ditton to CGL Hough Green.<sup>54</sup>
  - (b) **Opening of Target Store as Morrisons M Local (12 November 2012):** This coincided with a fall in weekly revenues at CGL Ditton<sup>55</sup> and CGL Hough Green.<sup>56</sup> Weekly revenues at CGL Ditton only returned to their previous level six months later.
  - (c) **Closure of Target Store following cessation of trading as My Local (4 July 2016) and temporary closure of CGL Hough Green for**

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<sup>50</sup> In particular, other factors, outside the identified events, may also be responsible for changes in weekly store revenues, such that it is difficult to attribute changes solely to the event in question. The CMA has not been able, in the time available, to undertake an econometric study to try to control for all such possible factors.

<sup>51</sup> These observations are based on a comparison of weekly revenues and not averages of these revenues over a longer (eg monthly) period.

<sup>52</sup> Of £[£], representing a [%] week-on-week change.

<sup>53</sup> Of £[£], representing an [%] week-on-week change.

<sup>54</sup> While this event does not relate to the Target Store, the CMA considers that it is relevant insofar as it is consistent with customers switching between convenience stores locally.

<sup>55</sup> Of £[£], representing a [%] week-on-week change.

<sup>56</sup> Of £[£], representing an [%] week-on-week change.

**refurbishment (5-15 July 2016):** This coincided with a [X] rise in weekly revenues at CGL Ditton.<sup>57</sup>

**(d) Reopening of Target Store as CGL store (18 August 2016):** This coincided with a fall in revenues across all three CGL stores, with a [X] decline at CGL Ditton,<sup>58</sup> consistent with a diversion of approximately [X]% from the Target Store to CGL Ditton.

95. With respect to the above observations, CGL submitted that it was difficult to isolate the effect of any one event where two events occurred concurrently. More generally, CGL submitted that the link between impact on revenue and effective local competition could not be assumed, as local revenue impacts will occur even where all dimensions of competition are set nationally. With respect to the changes observed in (a) above, CGL submitted that the spike in revenue at CGL Hough Green was only around [X] of the reduced sales at CGL Ditton, suggesting that many customers used other grocery stores or didn't make purchases at all. With respect to the changes in (b), it submitted that there was no clear evidence of an impact at CGL Hough Green or CGL Farnworth, while week-on-week variation at CGL Ditton meant it was not clear how much of the revenue decline could be attributed to My Local opening.
96. The CMA considers that these revenue fluctuations are consistent with a proposition that customers are likely to consider grocery stores to be close alternatives if they are of a comparable size and are located relatively close by. In particular, the CMA considers that the changes in weekly revenues identified in paragraph 94 (b) to (d) are consistent with customers switching to or away from the overlapping CGL stores, and in particular CGL Ditton, in response to the opening and closing of the Target Store.<sup>59</sup> The CMA notes that, consistent with other evidence before the CMA (in particular, the evidence on store locations and characteristics in paragraphs 79 to 81 and on population and customer locations in paragraphs 89 to 91), this indicates that many customers consider CGL Ditton and the Target Store to be particularly close alternatives.
97. While the CMA acknowledges that other events may also have had an impact on the observed revenue fluctuations, the CMA notes that CGL has not put

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<sup>57</sup> Comparing revenues in the week before these events occurred to revenues in the week commencing 17 July, when the Target Store remained closed but CGL Hough Green was reopened, the increase in revenues at CGL Ditton was £[X], representing a [X]% week-on-week change.

<sup>58</sup> Of £[X], representing a [X]% change in weekly revenues between these two weeks, when comparing revenues in the week before the reopening to the week after the reopening.

<sup>59</sup> The CMA notes further that this impact was relatively consistent: the fall in revenues at CGL Ditton was approximately [X]% when the Target Store first opened as a Morrisons M Local, and [X]% when the Target Store later reopened as a CGL store.

forward evidence of any other events or factors that may have been responsible for the revenue changes discussed in this section.<sup>60</sup>

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

98. Taking into account all of the evidence, the CMA believes, on balance, that there is a degree of competition between the Target Store and the overlapping CGL stores, with the Target Store and CGL Ditton being particularly close competitors. The CMA believes that the Target Store and the CGL stores exerted a competitive constraint on one another, which will be absent post-Merger. Further, the CMA believes that neither the smaller convenience stores nor the larger MSS and OSS located near Widnes town centre exert a sufficient competitive constraint on the Target Store or CGL stores. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the retail supply of groceries in the local area of Widnes.

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

99. 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>61</sup>
100. CGL has not put forward any evidence regarding new entry or expansion in any of the local areas under review. Further, the CMA has not received any evidence from third parties in this regard. The CMA therefore has no grounds for believing that entry or expansion would be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

#### **Third party views**

101. The CMA contacted competitors of the Parties. One competitor raised concerns regarding the effect of competition in Widnes (as described in paragraph 78 above). The same competitor noted that the Merger may impact competition in the local areas of Wilmslow and in Nottingham, in each case

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<sup>60</sup> With respect to the concurrent closure of the Target Store and the temporary closure of CGL Hough Green, the CMA has sought to isolate the effect of these two events by comparing revenues in the week before these events occurred, and the week two weeks later, when the Target Store remained closed but CGL Hough Green had reopened, as described in footnote 57.

<sup>61</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.



due to the increase in the number of CGL stores present in those local areas. No other third parties raised concerns about the Merger.

102. Third party comments have been taken into account where appropriate in the competitive assessment above.

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

103. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the retail supply of groceries in the local area of Widnes.

## **Exceptions to the duty to refer**

104. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 22(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the **de minimis exception**). The CMA has considered below whether it is appropriate to apply the de minimis exception to the present case.

### ***Markets of insufficient importance***

105. In considering whether to apply the de minimis exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, taking into account also the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.<sup>62</sup>

### ***'In principle' availability of undertakings in lieu***

106. The CMA's general policy, regardless of the size of the affected market, is not to apply the de minimis exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.<sup>63</sup>
107. Cases that the CMA considers are in principle suitable for resolution by undertakings in lieu are typically those where the part of the transaction that

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<sup>62</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), December 2010, chapter 2. The *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).

<sup>63</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 2.2 and 2.18 to 27.

raises concerns can be divested to an independent third party purchaser.<sup>64</sup> However, the CMA will not consider that undertakings in lieu are in principle available where the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.<sup>65</sup>

108. In the present case, the CMA's concerns regarding the Merger relate to horizontal unilateral effects in relation to the retail supply of groceries in the local area of Widnes. The CMA considers that these concerns could be resolved through the divestment of the Target Store in Widnes.
109. CGL submitted that (i) the divestment of one store may not be an attractive proposition for a purchaser and/or (ii) in any event, such a remedy would be wholly disproportionate.
110. With respect to (i) above, CGL has not put forward any reason as to why the divestment of a single store would be an unattractive proposition. Indeed, one grocery retailer confirmed to the CMA that it only acquired a single store pursuant to the bidding process in which CGL acquired the Target Stores. Further, the CMA has not received any information to suggest that the Target Store in Widnes in particular is an unattractive proposition. Evidence obtained during the CMA's investigation suggested that the store was well located, with good access.
111. With respect to (ii) above, the CMA will not consider undertakings in lieu to be in principle available where the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.<sup>66</sup> As the CMA's concerns relate to an SLC in the local area of Widnes, and that concern arises as a result of CFL's acquisition of the Target Store in Widnes, the CMA does not consider the divestment of this store to be a disproportionate remedy.
112. Further, CFL's acquisition of the remaining Target Stores (with respect to which the CMA has not identified concerns) would be unaffected, thereby allowing the Transaction, albeit in a modified form, to proceed.
113. Accordingly, the CMA considers that an 'in principle' clear-cut undertaking in lieu is available in this case, such that it would not be appropriate for the CMA to apply the de minimis exception.

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<sup>64</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.24.

<sup>65</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.26.

<sup>66</sup> [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraph 2.26.

## Decision

114. Consequently, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
115. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised<sup>67</sup> whilst the CMA is considering whether to accept undertakings<sup>68</sup> instead of making such a reference. CGL has until 26 October 2016<sup>69</sup> to offer an undertaking to the CMA.<sup>70</sup> The CMA will refer the Merger for a phase 2 investigation<sup>71</sup> if CGL does not offer an undertaking by this date; if CGL indicates before this date that it does not wish to offer an undertaking; or if the CMA decides<sup>72</sup> by 2 November 2016 that there are no reasonable grounds for believing that it might accept the undertaking offered by CGL, or a modified version of it.
116. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 27 January 2017. For the avoidance of doubt, the CMA hereby gives CGL notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by CGL and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from CGL stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

**Sheldon Mills**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**19 October 2016**

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<sup>67</sup> Section 22(3)(b) of the Act.

<sup>68</sup> Section 73 of the Act.

<sup>69</sup> Section 73A(1) of the Act.

<sup>70</sup> Section 73(2) of the Act.

<sup>71</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>72</sup> Section 73A(2) of the Act.

## **ANNEX 1: Effective competitor set fascia**

### 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