

Anticipated acquisition by Tesco plc of Booker Group plc

Decision on relevant merger situation, substantial lessening of competition and reference

ME/6677/17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 July 2017. Full text of the decision published on 21 July 2017.

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.

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SUMMARY

1. Tesco plc (**Tesco**) has agreed to acquire Booker Group plc (**Booker**) (the **Merger**). Tesco and Booker are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the 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. Tesco is the UK's largest grocery retailer. It is active in the retail supply of groceries through its network of approximately 3,500 owned and operated Tesco and One Stop-branded stores. Tesco also has a symbol group offering, via its 150 franchised One Stop stores.
4. Booker is the UK's largest grocery wholesaler. It is active primarily in the wholesale supply of groceries through its delivered and cash-and-carry wholesale services to independent retailers and through its supply of symbol group services under four symbol group fascia: Premier, Londis, Budgens and Family Shopper.¹ The retailers which Booker supplies under these four fascia are referred to as 'Booker symbol group retailers'. Booker is also active in the retail supply of groceries across a small number of stores [X] which it owns and/or operates.
5. The Parties are therefore active at the same level of the supply chain (**horizontal overlaps**), namely in retail supply of groceries and the wholesale supply of symbol group services. They also have vertically related activities as they are active at different levels of the same supply chain (**vertical overlaps**). Tesco may compete with the symbol group retailers and independent retailers which

¹ The Parties submitted that there was also another, smaller category of Booker symbol group stores, labelled in the data provided by the Parties as 'BRP non-fascia' symbol stores. The Parties submitted that these were stores where there was a supply agreement between Booker and the independent retailer, but the store did not operate under one of the four Booker brands. The Parties submitted that non-fascia retailers had [X]. In its assessment, the CMA has therefore treated these stores in the same way as Booker's other symbol group fascia.

Booker supplies, and Booker may compete with wholesalers from which Tesco procures services.

6. On 27 June 2017, the Parties requested that the CMA make a fast track reference of the Merger for an in-depth phase 2 investigation. For the CMA to make a fast track reference, it must have evidence that objectively justifies a belief that the test for reference is met. In addition, as set out in the CMA's guidance, fast track cases are likely to be cases where the competition concerns identified would impact on the whole or substantially all of the transaction, and not just one part (that could be resolved through structural undertakings in lieu (UILs)).
7. The CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**), as a result of horizontal and vertical effects, in the retail supply of groceries in the following local areas:
 - (a) In two local areas where the Parties' owned stores overlap (at ~~1~~). In these local areas, the CMA believes that the merged entity could have the ability and incentive to worsen the retail offering of its stores;
 - (b) In 64 local areas where Tesco's stores (owned Tesco and One Stop stores) overlap with Booker symbol group retailers' stores. In these local areas, the CMA believes that the merged entity could have the ability and incentive to worsen Tesco's retail offering, such that end-customers may switch to shop at Booker's symbol group retailers stores instead; and
 - (c) In 369 local areas where Booker symbol group retailers' stores overlap with Tesco stores (including owned Tesco and One Stop stores, and franchised One Stop stores). In these local areas, the CMA believes that the merged entity could have the ability and incentive to worsen Booker's wholesale symbol group offering, such that end-customers may switch to shop at Tesco instead.
8. The CMA notes that the identified SLCs impact on the whole or substantially all of the merger. In light of the above, and having regard to its administrative resources and the efficient conduct of the case, the CMA believes that it is appropriate to proceed with a fast track reference of the Merger to phase 2.
9. The CMA also assessed whether the Merger may give rise to competition concerns under a number of other vertical theories of harm, including some which were raised by third parties as potential concerns. In particular, it assessed whether, as a result of the Merger, the merged entity could:

- (a) have the ability and incentive to worsen Booker's cash-and-carry wholesale offering to independent retailers, leading to an SLC in the retail supply of groceries;
 - (b) have the ability and incentive to switch Tesco's purchases away from its delivered wholesale suppliers (customer foreclosure), leading to an SLC in the supply of delivered wholesale services; or
 - (c) benefit from increased buyer power in certain groceries segments, allowing the Parties to (i) impose excessive risks and unexpected costs on suppliers thereby leading to an SLC in the supply of certain grocery products or, alternatively, (ii) negotiate lower prices (or other purchasing terms) from suppliers which may lead those suppliers to increase prices to the Parties' retail or wholesale competitors ('the waterbed effect').
10. However, for the purposes of this phase 1 assessment, where the Parties have requested a fast-track reference to phase 2 and where the CMA has concluded that the test for reference is met with respect to other theories of harm, the CMA has not reached a conclusion on whether the Merger gives rise to a realistic prospect of an SLC under these additional theories of harm.
11. Third parties will have an opportunity to fully submit their views during the in-depth phase 2 investigation, which is, for the avoidance of doubt, not restricted to investigating the issues that have been found to give rise to a realistic prospect of an SLC at phase 1.
12. As part of their request for a fast track reference, the Parties waived their procedural rights at phase 1, which included their right to submit UILs. As a result, the CMA has not considered UILs under section 73 of the Enterprise Act 2002 (the **Act**).
13. The CMA therefore referred the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

14. Tesco is a UK publicly listed company with operations in the UK, Europe and Asia. In the UK, its groceries operations include grocery retailing (online and through its portfolio of over 3,500 owned grocery stores, operated under the

Tesco and One Stop brands) and the wholesale supply of symbol group services (through [~~§~~] franchised One Stop stores). Tesco also owns Tesco Bank, Tesco Mobile (a mobile virtual network operator) and dunnhumby (a customer science company providing services to retailers and brands). The turnover of Tesco in 2016 was approximately £55,917 million worldwide and approximately £[~~§~~] in the UK.

15. Booker is a UK publicly listed company with operations in the UK and India. In the UK, its operations involve both cash-and-carry and delivered wholesaling, to the catering and retail sector. In addition, Booker provides symbol group services to over 5,500 retailers under four symbol group fascia: Premier, Londis, Budgens and Family Shopper. The turnover of Booker in 2016 was approximately £4,965 million worldwide, [the majority] of which was generated in the UK.

Transaction

16. The Merger involves the acquisition by Tesco of the whole issued share capital of Booker. The Merger is subject to the Takeover Code.
17. The Merger is not subject to review by any other competition authorities.

Jurisdiction

18. As a result of the Merger, the enterprises of Tesco and Booker will cease to be distinct.
19. The UK turnover of Booker exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
20. 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.
21. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 31 May 2017 and the statutory 40 working day deadline for a decision was therefore 25 July 2017.

Procedure

22. On 27 June 2017, the Parties requested that the CMA make a fast track reference of the Merger for an in-depth phase 2 investigation.

23. The Parties accepted that the conditions set out in paragraphs 6.61 to 6.65 of the CMA's guidance on jurisdiction and procedure (**CMA2**) were satisfied. The Parties therefore accepted that the CMA would find that the test for reference under section 33 of the Act is met (ie that there is a realistic prospect of an SLC), specifically in relation to the worsening of Booker's wholesale symbol group offering to symbol group retailers.
24. As part of the request, the Parties waived their normal procedural rights during the phase 1 investigation, which included their right to receive an issues letter and attend an issues meeting, and to submit potential UILs to address any concerns identified.²
25. For the CMA to make a fast track reference, it must have evidence that objectively justifies a belief that the test for reference is met.³ Fast track cases are likely to be cases where the competition concerns identified would impact on the whole or substantially all of the transaction, and not just one part (that could be resolved through structural UILs).⁴
26. The CMA has considered the Parties' request and concluded that the available evidence raises a realistic prospect of an SLC in one or more markets. The CMA notes that the identified SLCs impact on the whole or substantially all of the Merger and not just one part.⁵ The CMA has also had regard to its administrative resources and the efficient conduct of the case.⁶ In light of these considerations, the CMA has decided that it is appropriate to proceed with a fast track reference of the Merger to an in-depth phase 2 investigation.

Background

27. This case concerns the supply of groceries and related non-groceries products (**groceries**) at the retail and wholesale levels. A description of how these activities interact is shown in Figure 1 below:

² [CMA2](#), paragraphs 6.61, 6.62 and 6.64.

³ [CMA2](#), paragraph 6.62.

⁴ [CMA2](#), paragraph 6.63.

⁵ [CMA2](#), paragraph 6.63.

⁶ [CMA2](#), paragraph 6.65.

Figure 1: Schematic of groceries routes to market, including the role of retail vs wholesale operations.



Source: CMA, adapted from Parties' submissions.

28. Wholesalers sell products, often in large quantities, to business customers. Grocery wholesalers supply groceries to retailers, caterers and other traders who usually then: (i) sell these products directly to the end-customer (grocery retailing); (ii) use the products to manufacture or produce goods which are sold on to the end-customer (such as caterers using groceries to produce finished meals); or (iii) consume the products within their business (such as caterers or small business use of products such as cleaning materials). In addition to the core activity of selling products in large quantities, grocery wholesaling also includes warehousing, transportation, product consolidation and inventory management.
29. Due to the diverse customer base, different grocery wholesale models exist to provide for a range of customer preferences, most notably differentiating between collecting in person (cash-and-carry wholesale) and delivering to the premises (delivered wholesale).
30. Retailers sell products directly to end customers, most commonly for consumption in the home. Grocery retailing includes a wide range of operations from large-format supermarkets (eg Tesco Extra) to convenience stores such as

small independent corner shops or local supermarkets (eg Tesco Express), as well as specialist stores such as butchers or greengrocers. The largest grocery retailers in the UK continue to be the major national supermarkets (Tesco, Asda, Sainsbury's, and Morrisons). However, in recent years there has been particular growth in online sales (both from online offerings of traditional bricks and mortar retailers, and new online-only offerings, such as Amazon Fresh), as well as amongst discount retailers (most notably Lidl and Aldi).

31. Of particular relevance in this investigation are symbol groups. Symbol groups are collections of stores (the **symbol group retailer**) which are affiliated contractually with a wholesale symbol group provider (the **symbol group wholesaler**). The symbol group wholesaler provides the fascia/symbol of the store, and may also provide symbol group retailers with a range of other supporting services, including providing the shop branding, access to own-brand products, negotiating promotions with suppliers and IT and logistical support (grocery delivery). However, each store retains a degree of independence from the symbol group wholesaler, the extent of which may differ depending on the contracts and business model in place (with a franchise arrangement generally reserving more control for the wholesaler). In this decision, retailers that operate under a Booker symbol group fascia are referred to as **Booker symbol group retailers**.
32. Alternatively, independent retailers may choose to run their stores without affiliation to a symbol group and purchase their requirements from one or a number of wholesalers, outside of a symbol group relationship. In this decision, where an independent retailer purchases wholesale groceries from Booker but is not a member of a Booker symbol group (or any other symbol group), they are referred to as **independent retailers**.
33. Tesco is the UK's largest grocery retailer. It is active in the retail supply of groceries through its network of approximately 3,500 owned and operated Tesco and One Stop-branded stores. Tesco largely procures its groceries directly from suppliers, rather than through groceries wholesalers, although it has a commercial relationship with one wholesaler, Palmer and Harvey (**P&H**). Tesco is also a symbol group wholesaler, via its [X] franchised One Stop stores.
34. Booker is the UK's largest grocery wholesaler. It is active primarily in the wholesale supply of groceries through its delivered and cash-and-carry

wholesale services to independent retailers⁷ and through its wholesale supply of symbol group services under four symbol group fascia: Premier, Londis, Budgens and Family Shopper. Booker supplies approximately 5,500 such stores. Booker is also active in the retail supply of groceries across a small number of stores (【✂】) which it owns and/or operates.

35. Therefore, the Parties are active at the same level of the supply chain (**horizontal overlaps**), namely in grocery retailing and the wholesale supply of symbol group services. They also have vertically related activities (**vertical overlaps**) as they are active at different levels of the same supply chain: Tesco may compete with the symbol group retailers and independent retailers which Booker supplies, and Booker may compete with wholesalers from which Tesco procures services. (**vertical overlaps**).
36. In this decision, the CMA assesses the implications of the Parties horizontal and vertical overlaps under a number of theories of harm. The scope of the Parties activities, including the degree of overlap, is explored more fully in the competitive assessment of each of these theories of harm.

Counterfactual

37. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). 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.⁸

⁷ In addition to supplying independent retailers, Booker also supplies large retail accounts (with customers such as Odeon, Cineworld and M&S). The CMA believes that the conditions of competition for the supply of wholesale services to large retail accounts is different to that relevant to independent retailers. These large retailers may seek to negotiate a multi-store contract, and will have different supply options to independent retailers. The CMA contacted a number of large retailers who had accounts with Booker and none raised concerns regarding the Merger. Accordingly, services to large retail national accounts are not considered further in this Decision. Booker also supplies caterers and small businesses. As these services do not give rise to any theories of harm on a horizontal or vertical basis, with Tesco, these services are not considered further in this decision.

⁸ [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).

38. In this case, subject to the one store described in the next paragraph, there is no evidence supporting an alternative counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.
39. Booker submitted that [REDACTED]. The CMA reviewed the evidence submitted by Booker [REDACTED] and, on this basis, has adopted a counterfactual where this store would exit.⁹ Against this counterfactual, no competition concerns arise and this store is not considered further in this decision.

Frame of reference

40. 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.

Retail supply of groceries

Product scope

41. The UK competition authorities have conducted a number of investigations into transactions involving the retail supply of groceries in recent years. In these cases, the frame of reference has been used primarily to determine the framework for assessment (typically described as a filtering methodology) which is used to identify relevant overlaps and to exclude from further analysis local areas where competition concerns are unlikely to arise.
42. The CMA has previously defined grocery stores according to the size of their net sales area and stated that the competitive constraint faced by such stores is asymmetric (so that a large store constrains a smaller one but not vice versa):¹⁰

⁹ See further, the CMA's analysis in relation to TOH1.

¹⁰ The CC's Report, *'The supply of groceries in the UK'* dated 30 April 2008; and for example, *Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol filling stations from Co-operative Group Limited*

- (a) one-stop stores (OSS) (1,400 square metres (sqm) and larger) are constrained only by other OSS;
 - (b) mid-size stores (MSS) (280–1,400 sqm) are constrained by other MSS and by OSS; and
 - (c) large convenience stores (280 – 100 sqm) are constrained by other large convenience stores, MSS and OSS.¹¹
43. The Parties generally agreed with the approach to the frame of reference adopted by the CMA in previous cases.
44. For some of Booker's symbol group fascia, [X] of stores appear to be convenience stores with a net sales area under 100 sqm.¹²
45. Applying a similar logic to that set out in paragraph 35, it may be appropriate to consider small convenience stores as constrained by other small convenience stores and all other larger groceries stores. However, data limitations have meant that it is has not been possible to identify accurately all stores with net sales area less than 100sqm. For the purposes of this phase 1 assessment, the CMA has therefore not drawn a distinction between convenience stores of different sizes.

(ME/6466/14), paragraph 20; *Anticipated acquisition by Cooperative Group Limited of David Sands CGL/David Sands (ME/5317/12)*, paragraph 21; *Completed Acquisition by Co-operative Group Limited of Somerfield Limited (ME/3777/08)*, paragraph 10; *Anticipated acquisition by Martin McColl Ltd of 298 groceries sotres from Co-Operative Group Ltd (ME/6632/16)*, paragraphs 22 to 27.

¹¹ The exclusion of convenience stores under 100sqm was first introduced in *Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners (GB) Limited (ME/6588/16)* and then applied in *Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited (ME/6625/16)*. The OFT also previously considered that smaller convenience stores (including kiosks attached to petrol stations) may not be in the same frame of reference as larger convenience stores due to factors such as their small size and more limited range (see *Anticipated acquisition by Co-operative Group Limited of David Sands Limited (ME/5317/12)* paragraph 20). 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 sqm provided a useful starting point for segmenting between different sizes of convenience store: *Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners (GB) Limited (ME/6588/16)*, footnote 16.

¹² On the data available to the CMA, approximately [X]% of Londis symbol group stores and [X]% of Premier symbol group stores are under 100sqm. However, the CMA notes that Booker was unable to provide store size data for c. [X]% of stores operating under one of its symbol group fascia. The CMA notes therefore that this may not be fully representative.

Geographic scope

46. For the local retail assessment, the CMA has previously adopted the following approach to the geographic scope:¹³
- (a) a 10/15 minute drive time in urban/rural areas for OSS;
 - (b) a 5/10 minute drive time in urban/rural areas for MSS, which are also constrained by OSS within a 10/15 minute drive time (in urban/rural areas); and
 - (c) a 5 minute drive time or 1 mile radius for convenience stores, which are only constrained by other groceries stores (including other convenience stores, MSS and OSS) within that area.
47. The Parties submitted that the UK competition authorities had previously adopted as an alternative approach that MSS with a 5/10 minute drive time, and OSS with a 10/15 minute drive time (in urban/rural areas), also impose a constraint on convenience stores. The CMA notes however that this was not the primary approach to the geographic scope for convenience stores in its more recent retail groceries cases. This is because the evidence available to the CMA in those cases, both from the Parties and third parties, indicated that the area over which a convenience stores competes is very small, generally not greater than 1 mile (and, in some cases, as small as 0.25 or 0.5 miles).¹⁴ Further, the CMA noted that, given the CMA's typical approach whereby larger groceries stores compete and act as a constraint over a larger area than small groceries stores, a logical extension is that, all else being equal, smaller convenience stores are likely to compete and act as a constraint over shorter distances than larger convenience stores.¹⁵
48. The CMA has not received any evidence in this case to depart from the position adopted in its most recent decisions. Further, as noted above, for some of Booker's symbol group fascia, the majority of stores are under review are smaller

¹³Eg, [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd \(ME/6632/16\)](#) paragraph 32, [Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited \(ME/6625/16\)](#) paragraph 43, [Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners \(GB\) Limited \(ME/6588/16\)](#) paragraph 37.

¹⁴ [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd \(ME/6632/16\)](#), paragraph 7.

¹⁵ [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd \(ME/6632/16\)](#), paragraph 31(b).

convenience stores. For the purposes of its assessment, the CMA has therefore adopted the geographic frame of reference set out in paragraph 46.

Wholesale supply of groceries

49. The Parties submitted that there is a broad market for the wholesale supply of groceries to retailers, caterers and other small businesses, which comprises all channels, customer types and business.
50. In *Booker/Makro*,¹⁶ the CC identified five wholesale supply channels for retailers, in addition to direct supply: cash-and-carry wholesale; delivered wholesale; specialist wholesale; symbol groups; and buying groups.¹⁷ Individual wholesalers may offer one or more of these supply channels, and individual retailers may multi-source between some of these channels (and, for some channels, between different wholesalers within a single channel).
51. The evidence before the CMA does not suggest departing from the position taken in *Booker/Makro* in this case. The following paragraphs set out the basis for this conclusion in more detail.¹⁸

Product scope

Wholesale symbol group services

52. The Parties submitted that they overlap in the wholesale supply of symbol group services. The CMA has previously adopted as the product frame of reference the wholesale supply of symbol group services.¹⁹ The Parties submitted that symbol group services should be included as part of the wider market for wholesale services, but that if it did constitute a separate market, there should be no further segmentation.
53. Symbol group services can be considered distinct from other types of wholesale offering (ie cash-and-carry wholesale; delivered wholesale; specialist wholesale; and buying groups), by the range of supporting services offered to the retailer,

¹⁶ [Booker Group PLC/Makro Holding Limited](#), paragraph 2.4.

¹⁷ Buying groups are an affiliation of several grocery wholesalers established to obtain more favourable terms from suppliers than each wholesaler could achieve individually.

¹⁸ As the CMA's starting point it to consider the narrowest possible frame of reference in which the Parties' activities overlap, and given the Parties' activities do not overlap in relation to specialist wholesale or buying groups, these segments are not considered in the paragraphs which follow.

¹⁹ [Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited \(ME/6541/15\)](#), [Booker Group PLC/Makro Holding Limited](#).

including shop branding, access to own-brand products, negotiating promotions with suppliers and IT and logistical support (including grocery delivery).

54. The evidence before the CMA does not suggest departing from its previously adopted position. Therefore, the CMA adopts the wholesale supply of symbol group services as the frame of reference.

Cash-and-carry vs delivered

55. Where a wholesaler operates a cash-and-carry store, the customer visits the wholesaler's store, whereas delivered wholesalers deliver directly to the customer's premises.
56. In *Booker/Makro*,²⁰ the CC adopted separate frames of reference for cash-and-carry wholesale and delivered wholesale.
57. The Parties submitted that cash-and-carry was just one part of the wider wholesale market, and should not comprise a separate frame of reference.
58. The CMA received evidence that retailers rely on cash-and-carry and delivered wholesale to differing degrees. Some large groceries retailers use delivered wholesale services for their goods (for example Tesco uses P&H for tobacco). For independent retailers, the CMA received evidence that they more heavily rely on cash-and-carry:
- (a) A report from research company him! indicated that independent stores tended to shop in cash-and-carries significantly more than via other wholesale channels. Its survey showed that 68% of independents had recently shopped in a cash-and-carry vs 32% using the next most common approach (ordered online for delivery);²¹
 - (b) Specifically with respect to Booker's customers, approximately [X] of Booker's sales to independent retailer customers are cash-and-carry sales;²² and
 - (c) The responses received by the CMA to its market test from Booker's independent retailer customers generally confirmed the above, with

²⁰ *Booker Group PLC/Makro Holding Limited*, paragraph 7.23.

²¹ *Cash & Carry – Foodservice report*, him! 2015, routes to market section.

²² Booker's response to Q19 of RF12 (tranche 1).

independent retailers generally indicating that they relied on Booker cash-and-carry sales for all or most of their purchases.

59. Grocery wholesalers have varying business models and strengths. Some grocery wholesalers offer a mix of cash-and-carry and delivered wholesale. Other grocery wholesalers offer only one and the CMA believes that the costs of establishing or expanding either a cash-and-carry or delivery depot network in order to offer both services may be substantial.
60. Given this, the CMA has assessed the Merger on the basis of separate frames of reference for cash-and-carry and delivered wholesale.

Geographic scope

Wholesale symbol group services

61. In *Booker/Musgrave*, the CMA assessed the wholesale supply of symbol group services at both a regional and a national level.²³
62. The Parties submitted that the geographic frame of reference for the wholesale supply of symbol group services is national, as symbol group wholesalers typically determine the core elements of their wholesale symbol group offering centrally and apply this proposition uniformly across their symbol group retailers (regardless of where they are located).
63. In the present case, the CMA has received a range of evidence that competitive conditions vary on a regional basis, namely:
 - (a) Data submitted by the Parties indicated that the share of supply (by number of stores) of different symbol groups varied significantly across different regions in the UK.²⁴ Some symbol group wholesalers who responded to the CMA's market test also indicated that the competitive strength of their wholesale symbol group offering varied between different regions in the UK;
 - (b) Symbol group wholesalers responding to the CMA's market test submitted that many aspects of their wholesale symbol group offering are set nationally, but some noted a degree of variation at a regional level. [REDACTED]. The factors

²³ *Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited (ME/6541/15)*, paragraph 38.

²⁴ For example, the Parties' combined share of symbol stores across postcode areas ranges from 0% to more than 60%.

highlighted by symbol group wholesalers included variation in price, range, promotions and delivery terms;

- (c) With respect to delivery terms, the CMA notes that symbol group retailers are generally served from symbol group wholesalers' delivery depots²⁵ and that the quality of a symbol group wholesaler's delivery service was identified as a key choice factor by a significant proportion of symbol group retailers in the CMA's market test. Some of these respondents noted further that the quality of this service could vary with distance from a delivery depot. The CMA believes that this is consistent with the fact that symbol group wholesalers typically have multiple delivery depots, which suggests that there may be a benefit to being located closer to customers.
- (d) Symbol group retailers who responded to the CMA's market test also identified brand awareness/familiarity as an important factor in determining their choice of symbol group, which may differ between regions depending on the relative presence of a symbol group in that region. This was supported by a One Stop internal document,²⁶ which demonstrated that [REDACTED].

64. Based on the above evidence, the CMA believes it appropriate to focus its assessment on competition in the supply of wholesale symbol group services at a regional level. When assessing mergers involving many local geographic markets, such as in grocery retailing cases, the CMA may examine the geographic catchment area within which the great majority of a store's custom is located,²⁷ which the CMA has typically taken to be the area over which 80% of customers are located. In line with this decisional practice, for the purposes of its competitive assessment the CMA has used 80% catchment areas to determine the geographic area over which a symbol group wholesaler could provide an effective alternative to symbol group retailers. In this case, the catchments were centred on delivery depots given that Booker symbol group retailers rely heavily on delivered services for their goods.²⁸

²⁵ And, in the case of some symbol groups, also cash-and-carry stores.

²⁶ [REDACTED]

²⁷ [Merger Assessment Guidelines](#), paragraph 5.2.25.

²⁸ The Parties submitted that Londis, Budgens and Family Shopper symbol group retailers receive [REDACTED] of their purchases through delivered services. Premier symbol group retailers also receive [REDACTED] of their purchases through the delivered channel (c. [REDACTED]% through delivered as against [REDACTED]% through cash-and-carry, according to the Parties submissions).

Cash-and-carry wholesale

65. The Parties submitted that if a separate frame of reference for cash-and-carry wholesale was to be adopted, the geographic frame of reference should be extended beyond the 30-minute drive-time around cash-and-carry stores adopted by the CC in *Booker/Makro*.²⁹
66. In this case, the use of a 30-minute drive time catchment area was broadly supported by responses received from cash-and-carry wholesale competitors during the CMA's market testing, who estimated that 80% of their customers travelled between 30 and 40 minutes to reach their cash-and-carry stores. On a cautious basis, the CMA has used the lower bound and, consistent with the decisional practice adopted in *Booker/Makro*, therefore used a 30-minute drive-time.

Delivered wholesale

67. In *Booker/Makro*, the CC found that the distances that delivered wholesalers will operate from their depots were in practice flexible and that the number and type of delivered wholesalers varied by region and local area.
68. The Parties submitted that a four-hour drive-time best reflected the geographic catchment area for the delivered channel.
69. The CMA's market test found that the geographic frame of reference for delivered wholesale is likely to be regional, on the basis that delivered wholesalers generally operate within a particular distance from their delivery depots and the costs of delivery increase with distance. However, as the CMA has left open whether the Merger may give to a realistic prospect of an SLC in delivered wholesale, it has not been necessary to conclude on the geographic scope of the frame of reference for the purposes of this decision.

Procurement of groceries

70. The Parties purchase groceries from suppliers for their retail and wholesale activities. The CMA has set out below the key considerations relevant to its assessment of the frame of reference for the procurement of groceries, for the

²⁹ [Booker Group PLC/Makro Holding Limited](#), paragraph 12.

purposes of the buyer power theory of harm. However, as explained in further detail below, the CMA has not found it necessary to conclude.

Product scope

71. The Parties submitted that the relevant product market for the procurement of groceries should be segmented by narrower product categories because suppliers producing one category of products may not be able to switch readily to manufacture other products.³⁰ The Parties also submitted that there are separate procurement markets for different sales channels (for example retail or catering) because producers may not be able to switch readily to manufacture products used in another channel. However, the Parties submitted that channel segmentation may not be appropriate for some procurement categories because product requirements between sales channels do not differ meaningfully and therefore the frame of reference for those categories should include multiple or all sales channels.³¹
72. The Parties' submissions reflected the approach taken in the merger between *Rewe/Meinl* (two grocery retailers) reviewed by the European Commission in 1999, which looked in detail at the product market for procurement of groceries (and, in particular, competition concerns arising due to increased buyer power in those procurement markets).³² In that case, the European Commission segmented the procurement of groceries into different product categories, as set out in Annex 1.
73. The CMA therefore considered the extent to which it was necessary to distinguish between sales channels and different grocery product segments in this case.
74. The CMA recognises that both Tesco and Booker serve the downstream retail market, and Booker also serves the downstream catering market. From the point of view of producers, different sales channels may not be readily interchangeable because of investment in different product specifications or different sales strategies. The ability of producers to serve both channels may vary by procurement category, which suggests that an assessment by category is appropriate.

³⁰ Merger Notice, paragraph 16.1(a).

³¹ The Parties use the example of soft drinks, beer, wine and spirits.

³² [Case No IV/M.1221- Rewe/Meinl](#) - European Commission.

75. The CMA therefore used the grocery segments set out in the *Rewe/Meinl* case as a starting point for its assessment of the Parties' buyer power.
76. However, as the CMA has left open whether the Merger may give rise to a realistic prospect of an SLC as a result of buyer power in the procurement of groceries, it has not been necessary to conclude on the product frame of reference for the purposes of this decision.

Geographic scope

77. The Parties submitted that the appropriate geographic scope is at least national. The Parties submitted that end-customer preferences are national, retailers predominantly purchase nationally and suppliers usually negotiate at the national level.
78. The CMA acknowledges that there is evidence that, from a demand side perspective, grocery procurement segments may be national in scope as customer preferences can, at their widest, be national. However, supply-side factors may also imply that certain procurement markets should be considered regionally. As the CMA has left open whether the Merger may give to a realistic prospect of an SLC in relation to procurement of groceries, it has not been necessary to conclude on the geographic scope for the purposes of this decision.

Conclusion on frame of reference

79. The CMA has therefore adopted the following frames of reference in this decision:
 - (a) The retail supply of groceries (differentiating between OSS, MSS and convenience store) on a local basis, within each of the geographic frames of reference identified in paragraph 46 above;
 - (b) The wholesale supply of symbol group services on a regional basis;
 - (c) The supply of cash-and-carry wholesale on a regional basis;
 - (d) The supply of delivered wholesale on a regional basis (although the precise geographic scope of the frame of reference has been left open); and
 - (e) The procurement of groceries, segmented by different product categories, on a national basis (although the precise product and geographic scope of the frame of reference has been left open).

Competitive assessment

Theories of harm

80. The CMA has assessed the implications of the Parties' horizontal and vertical overlaps under a number of theories of harm (ie ways in which the Merger could give rise to competition concerns in a particular market or markets). These can be grouped as follows:
- (a) First, whether the Merger may give rise to a loss of competition in the *retail supply of groceries* at a local level, as a result of:
 - (i) A worsening of either Tesco's or Booker's *retail offering* in areas where the Parties' owned and operated grocery stores overlap (**TOH1**);
 - (ii) A worsening of Tesco's *retail offering* in local areas where its owned stores overlap with Booker symbol group retailers' stores (**TOH2**);
 - (iii) A worsening of Booker's *wholesale symbol group offering* in local areas where Booker's symbol group retailers' stores overlap with Tesco's stores (**TOH3**);
 - (iv) A worsening of Booker's *cash-and-carry wholesale offering* in local areas where Booker's independent retailer customers' stores overlap with Tesco's stores (**TOH4**);
 - (b) Second, whether the Merger may give rise to a loss of competition in the *wholesale supply of symbol group services* at a regional level as a result of a worsening of either Tesco's or Booker's wholesale symbol group offering (**TOH5**);
 - (c) Third, whether the Merger may give rise to a loss of competition in the *supply of delivered wholesale* as a result Tesco foreclosing its delivered wholesale supplier, P&H (**TOH6**);
 - (d) Fourth, whether the Merger may give rise to a loss of competition as a result of *increased buyer power* in the procurement of groceries in any relevant product categories (**TOH7**).

81. The CMA has focused its assessment at phase 1 on the current overlaps³³ between the Parties on the basis of the existing stores of Tesco and of Booker's symbol group retailers and independent retailer customers. Additional concerns could arise due to a loss of future potential competition with respect to the Parties' pipeline stores in the short and medium terms, if, for example, any future store openings resulted in additional overlaps between the Parties which would give rise to a realistic prospect of an SLC. For the purposes of this phase 1 assessment, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether the Merger gives rise to additional competition concerns with respect to future potential competition.

Framework for assessment and the effective competitor set

82. The CMA has adopted different frameworks for assessing the theories of harm outlined above, depending variously on the nature of the overlap between the Parties, the Parties' degree of control over the businesses giving rise to the overlap, and the effect that the Parties' margins and relative price ratios may have on the Parties' incentives to pursue any strategy which may give rise to competition concerns. In particular, for those theories of harm relating to a loss of competition in the retail supply of groceries, given the number of local areas relevant to the CMA's assessment, the CMA has established a framework for identifying local areas in which the CMA believes, based on the presence of a minimum set of criteria, the merged entity could have the ability and incentive to worsen their retail or wholesale offer, and hence the CMA believes there is a realistic prospect of an SLC.
83. As discussed further under each of the theories of harm below, each framework involves a consideration of the number of viable alternatives or 'effective competitors' for end-customers and/or retailers at the retail and/or wholesale level.³⁴ As the same 'effective competitor set' is sometimes relevant to more than

³³ The CMA's assessment is based on a store dataset submitted by the Parties in February, which contains the location of the Parties' stores and competitors' stores to the best of the Parties' knowledge. The Parties later submitted an updated store dataset, however, the CMA was unable in the time available to undertake sufficient quality assurance on this new dataset to use it in its assessment.

³⁴ For the purposes of identifying the geographic catchment areas, the CMA has used the drive times submitted by the Parties in its assessment, which were calculated using MapInfo software and calculating the average drive-time across a 7-day period, without applying any weightings to drive-times at different times of day. The CMA notes, however, that using an unweighted 7-day average disproportionately attaches weight to times of day when few convenience shopping trips are made and drive times are shorter. Indeed, using an alternative source for drive time estimates (Footnote: Google) resulted in a significantly larger number of local areas failing the filter. The CMA has not been able to take this into account in its assessment at phase 1.

one theory of harm, the CMA first sets out the firms which the CMA treats as effective competitors within the retail supply of groceries, the wholesale supply of symbol group services and the supply of delivered wholesale, for the purposes of its assessment.

Effective competitor set – retail supply of groceries

84. In previous retail groceries cases,³⁵ the CMA adopted the effective competitor set, as first adopted in the Groceries Market Investigation (2008)³⁶ and updated in Co-op/David Sands (ie the retailers listed in Annex 2, excluding McColl's).
85. The Parties submitted that this effective competitor set should additionally include:
- (a) *McColls* which whilst previously predominantly active in confectionery, tobacco and news (CTN), has since developed a strong presence in the convenience sector, with convenience stores now comprising over 70% of its estate;
 - (b) *Iceland*, *Aldi* and *Lidl*, on the basis that all three have grown (the last two, significantly), and considerably changed their customer proposition by broadening their range. The Parties submitted an entry analysis which showed [REDACTED]; and
 - (c) independent retailers.
86. The CMA believes it appropriate to expand the effective competitor set to include McColl's, on the basis that its recent expansion into convenience retailing (including its acquisition of 298 convenience stores from the Co-operative Group)³⁷ means that it is now a significant and credible competitor in convenience grocery retail. The CMA does not, however, believe it appropriate to widen the effective competitor set to include Iceland, Aldi, Lidl or independent retailers because:
- (a) *Iceland*, *Aldi* and *Lidl*. Convenience stores tend to cater to a different shopping mission to frozen food retailers (such as Iceland) and discount

³⁵ Eg, *Anticipated acquisition by Martin McColl limited of 298 grocery stores from Co-operative Group Limited (ME/6632/16)*, *Completed acquisition by Co-operative Foodstores Limited of eight My Local Grocery stores from ML Convenience Limited and MLCG Limited (ME/6625/16)*.

³⁶ The CC's Report, 'The supply of groceries in the UK' dated 30 April 2008.

³⁷ *Anticipated acquisition by Martin McColl limited of 298 grocery stores from Co-operative Group Limited (ME/6632/16)*.

retailers (such as Aldi and Lidl). For example, tobacco is an important component of convenience retail sales and is a product which discount retailers do not sell. This would suggest the these are not effective competitors for convenience stores. As regards the Parties' entry analysis (noted in paragraph 86 above), the CMA has not in the time available fully interrogated the analysis to test its robustness. Further, the CMA notes that it only addresses the competitive constraint [X]. For this reason, the CMA believes that the evidence cannot be used as evidence of [X] being effective competitors to Booker's symbol group stores.

(b) *Independent retailers.* The CMA notes that there is a very significant degree of differentiation between individual independent retailers (eg in terms of size, quality of product offering, range) and that it would not be feasible to assess each retailer individually. Accordingly, it would not be appropriate for the CMA to treat all independent retailers as effective retail competitors.³⁸

87. The CMA has therefore adopted as the effective competitor set those retail fascia set out in Annex 2, which includes the effective competitor set used in previous retail groceries cases, with the addition of McColls.

Effective competitor set – wholesale supply of symbol group services

88. The Parties submitted that there was strong competition for the wholesale supply of symbol group services among a wide range of players. In particular, the Parties submitted that there are at least ten symbol group wholesalers with national or substantial regional coverage, including five players with significant presence (ie Nisa, Best-One, Costcutter, Spar and Lifestyle Express).

89. In considering who to include as effective competitors in the wholesale supply of symbol group services, the CMA has taken into account shares of supply, the wholesaler's symbol group offering (as indicated by the Parties' internal documents) and responses from third parties. On this basis, the CMA has

³⁸ For the purposes of its assessment, the CMA has treated independent retailers supplied by Booker as competing with Tesco's convenience stores, and therefore that customers of those retailers may switch to Tesco following a price rise. Accordingly, the CMA assess under theory of harm 4 (TOH4) below the extent to which the Merger may give the Parties the ability and incentive to reduce retail competition by worsening these independent retailers' wholesale offer. The CMA also acknowledges that in the context of such a theory of harm, it may be more appropriate to consider the constraint of other independent retailers as customers who shopped at an independent retailer may be more likely to divert to an independent retailer when faced with a worse retail offering. However, given that the CMA has left open whether an SLC may arise on the basis of TOH4, the CMA has not ultimately found it necessary to conclude on this point for the purposes of this decision.

included Costcutter, Nisa, Spar and Best-One in the effective competitor set, because:

- (a) These symbol group wholesalers have a material national share of supply (based on the number of symbol group stores), whereas all other symbol group wholesalers had a very small national share (less than 5%);
 - (b) A One Stop internal document³⁹ indicated that [REDACTED];
 - (c) All of these symbol groups were mentioned by multiple symbol group retailers as next-best alternatives in the CMA's market test.
90. The CMA has excluded Lifestyle Express from the competitor set, on the basis that it may not be an effective alternative for many Booker symbol group retailers based on industry reports and market testing.⁴⁰
91. As noted in the frame of reference (paragraphs 61 to 64), the CMA believes that the appropriate frame of reference for the supply of symbol group services is regional, and has used 80% catchment areas centred on the delivery depots of symbol group wholesalers. As the CMA has not identified a clear basis on which to delineate regions to take into account variations in competitive strength arising from factors other than transport from depots, it has used postcode areas as a proxy, being the most readily available geographic area over which to calculate symbol group concentration. The CMA therefore also checked whether any further symbol groups had a material share of supply in any postcode area in the UK. No further symbol groups were included on this basis.⁴¹
92. There is some evidence to suggest that the effective competitor set may vary by Booker fascia, and that there may be other means of measuring symbol group competitive strength on a regional basis (such as by density of symbol group shops in a local area). However, for the purposes of its current assessment, the CMA has not found it necessary to reflect the potential for competitor variation in the effective competitor set used.

³⁹ [REDACTED]

⁴⁰ For example, one industry report states that this fascia's stores are 'rapidly falling in number', very small and often 'at the borderline of profitability' Mintel, Convenience Stores UK, April 2017, page 60. Further, Lifestyle Express was identified as a next-best alternative by only one Booker symbol group retailer during the CMA's market test.

⁴¹ This includes Today's, which was identified by the Parties as having a substantial regional presence, but which did not have a share of supply of greater than 5% in any postcode area.

Effective competitor set – cash-and-carry wholesalers

93. Consistent with the approach taken in *Booker/Makro*, the CMA has adopted as the effective competitor set for cash-and-carry wholesale those wholesalers listed in Annex 3 (updated only to reflect recent consolidation in the market since that case).⁴² The Parties submitted that those members of Today's and Landmark that offer cash-and-carry wholesale services should also be included as effective competitors in the provision of cash-and-carry wholesale.⁴³ Today's and Landmark are buying groups who harness the collective buying power of their members, which are typically independent wholesale operators, to obtain preferable buying terms with suppliers. In *Booker/Makro*, the CC had seen evidence that Booker monitored prices of larger buying group members. However, the CMA has not received sufficient evidence to depart from the position adopted in *Booker/Makro* (which includes only those cash-and-carry wholesalers listed in Annex 3).

Loss of retail competition

TOH1: Worsening of Tesco's or Booker's retail offering in areas where the Parties' owned and operated grocery stores overlap

94. This theory of harm involves an assessment of the Parties' horizontal overlaps in the retail supply of groceries. 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 without needing to coordinate with its rivals. Horizontal unilateral effects are more likely when the merger parties are close competitors.⁴⁴ The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to unilateral horizontal effects in the retail supply of groceries with respect to the Parties' owned and operated grocery stores.
95. The Merger includes [X] Budgens stores which Booker owns and/or operates.⁴⁵ [X] of these stores overlap with Tesco grocery stores on the geographic frames of reference set out in paragraph 46 above. As explained in the counterfactual

⁴² In particular, the acquisition of Makro by Booker and the acquisition of BA cash-and-carry by Blakemore.

⁴³ In the *Booker/Makro* decision the CC concluded that local and regional cash-and-carry who are part of a buying group may be effective alternatives of retailers, however, that the CC considered them on a case-by-case basis in the local analysis. It also decided to include some local and regional cash-and-carry who are part of a buying group in the effective competitor set for cash-and-carry wholesalers.

⁴⁴ *Merger Assessment Guidelines*, paragraph 5.4.6.

⁴⁵ [X].

above (see paragraph 39), with respect to one of these stores [REDACTED] the Merger does not give rise to any competition concerns as the appropriate counterfactual is that the store would have exited. The CMA has therefore assessed whether the Merger gives rise to competition concerns in the local areas surrounding each of the remaining [REDACTED] Budgens stores:

- (a) [REDACTED];
- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].

Framework for assessment and results

96. In each of these local areas, the CMA applied a framework for assessing whether competition concerns may arise as a result of the overlap between Booker's and Tesco's owned/operated groceries stores. The purpose of the framework is to establish a minimum set of criteria which, if present, means that the CMA cannot exclude a realistic prospect of an SLC. Therefore, in local areas that 'fail' to meet the criteria, absent compelling evidence to the contrary, the CMA concludes that there is a realistic prospect of an SLC.
97. In designing the framework for assessment, the CMA has taken into account that in convenience shopping, both brand and distance are important factors of end-customer choice. As set out in the CMA Retail Mergers Commentary,⁴⁶ in previous cases, the CMA has used a fascia count to measure concentration in local areas where brand is important and customers may perceive that stores of the same brand have similar retail offers.⁴⁷ Where the location and distance from the store is also important to customers in their choice of store, a given fascia with a large concentration of stores in a given area may be expected to attract higher diversion (all other things being equal) than would be expected from a fascia count measure. Therefore, to take account of distance as an important driver of competition, store count is used as a further measure of concentration.

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⁴⁶ [CMA Retail Mergers Commentary \(CMA62\), 10 April 2017](#). This is a commentary based on the CMA's analysis of past merger cases in the retail sector, including the methodological tools used to assess those mergers.

⁴⁷ [Retail Mergers Commentary](#), paragraph 3.23.

⁴⁸ [Retail Mergers Commentary](#), paragraph 3.24.

98. While noting that brand is important, the CMA has also recognised that Booker would recapture at the wholesale level any sales that divert from one Booker symbol group retailer to another (both pre- and post-Merger). Therefore, when assessing the impact of the Merger, the CMA has treated all Booker symbol groups as belonging to a single fascia for the purposes of our retail fascia count.
99. In light of the above, the CMA has applied the following minimum criteria to each local area:
- (a) *Fascia count*: to take account of brand as an important factor in end-customer choice of convenience shop, and in line with decisional practice in grocery retail cases, a local area failed the fascia count criteria where the Merger results in a reduction of retail fascia from 4 to 3 or worse; or
 - (b) *Share of shops*: to take account of distance as an important factor in end-customer choice of convenience shop, a local area will fail the share of shops criteria where either: (i) Booker has a share of shops (excluding Tesco) of 33% or greater; or (ii) Tesco has a share of shops (excluding Booker) of 33% or greater.⁴⁹ The 33% threshold mirrors a 4 to 3 fascia count threshold.
100. Any local area failing either of the criteria will fail the assessment.
101. Applying these criteria, the stores at [REDACTED] fail the assessment.
102. The Parties submitted that in each of these local areas there would remain, post-Merger, sufficient competing fascia such that there would not be a realistic prospect of an SLC, on the basis that in addition to the effective competitor set fascia, there also remain an Aldi and a Lidl (in the case of [REDACTED]) and a number of independent retailers (in the case of [REDACTED]). However, the CMA has not received sufficient evidence to rule out the prima facie concerns identified.

Conclusion

103. Based on the evidence available, the CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC in the retail supply of groceries in each of the local areas of the [REDACTED] stores located at [REDACTED] and [REDACTED]. The CMA does

⁴⁹ For example, consider a hypothetical local overlap area with one Tesco store, two Booker symbol group stores and one other effective retail competitor set store. Excluding Tesco, there are three stores, of which Booker accounts for two, yielding a Booker share of shops (excluding Tesco) of 66%. Tesco is excluded from this calculation, because the purpose of the share of shops filter is to capture the potential destination stores for customers that leave Tesco following a deterioration of Tesco's retail offering.

not believe there is a realistic prospect of an SLC in the local area of the [X] stores.

TOH2: Worsening of Tesco retail offering in areas where Tesco's owned stores overlap with Booker's symbol group stores

104. This theory of harm involves an assessment of whether there may be a loss of retail competition as a result of 'vertical effects', which arises because Tesco has retail stores and Booker has a wholesale symbol group offering.⁵⁰
105. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁵¹ The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.
106. Therefore, under this theory of harm, the CMA has assessed whether, as a result of the Merger, the merged entity would find it profitable to worsen the retail offering in Tesco's owned convenience stores (both Tesco branded and owned One Stop stores) on the basis that end-customers of Tesco's stores could switch to shop at Booker symbol retailers' stores, and Booker would earn a margin on the wholesale sales it makes to these symbol group retailers. The effect would be a reduction in competition between Tesco owned stores and Booker symbol group stores at the retail level. Under this theory of harm, we consider the effect of worsening the retail offering of Tesco's owned stores. For the avoidance of doubt, it does not consider the effect of a worsening of the retail offering of Tesco's franchised One Stop stores, which is discussed separately, at paragraph 175 below.
107. The framework for assessing this theory of harm has been adjusted to take into account the vertical nature of the relationship between this parties, as described further below.

⁵⁰ Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.

⁵¹ [Merger Assessment Guidelines](#), paragraph 5.6.1.

Ability and incentive

108. Under this theory of harm, the Parties must have both the ability and the incentive to worsen the offering of Tesco convenience stores. Ability relates to whether the merged entity is able to influence the Tesco's stores offering. Incentive relates to the extent to which the merged entity may consider it profitable to do so on the basis that any profits lost from end-customers no longer shopping at a given Tesco store would be captured via more customers shopping at Booker symbol retailers' stores and therefore the merged entity getting more wholesale profits.
109. In this instance, ability is not in question as Tesco controls its owned Tesco and One Stop convenience stores.
110. For there to be an incentive for Tesco to worsen its offering, there must be the prospect of sufficient diversion of end customers from Tesco's stores to Booker symbol group retailers' stores to make the strategy profitable. This will depend on the local conditions of retail competition.
111. The Parties submitted that, because Booker's wholesale margins are ~~smaller~~ smaller than Tesco's, Tesco would not have the incentive to worsen its offering. However, even taking into account Booker's smaller wholesale margin, the CMA believes that the Parties may still have the incentive to pursue this strategy in certain local areas, as a result of the particular retail conditions of competition. The CMA has therefore developed a framework for assessment which identifies local areas in which the retail conditions of competition are such that the CMA believes the merged entity could have the incentive to pursue a strategy of worsening the retail offering of Tesco stores, and hence the CMA believes there to be a realistic prospect of an SLC.
112. As will be seen from the discussion that follows, this involves a consideration of the number of retail alternatives based on a fascia count and share of shops, albeit with adjusted thresholds to take into account price and margin differences arising from the vertical nature of the Parties' relationship (ie Tesco is a vertically integrated retailer and Booker is wholesaler).

Framework for assessment and results

113. The Parties submitted that it was necessary to adjust the CMA's framework for assessment to allow for the differences in post-merger pricing incentives in a

retail-to-wholesale merger because Booker and Tesco operate at different levels of the supply chain.

114. The Parties submitted an analysis of the merged entity's incentives to increase prices based on a gross upward pricing pressure index (**GUPPI**). GUPPI is an index measure constructed using diversion ratios, prices and margins in order to 'score' the post-merger incentives of merging parties to increase prices.
115. The Parties submitted analysis largely based on a standard GUPPIⁱ, with an adjustment to take account of the vertical relationship between Booker and its symbol group retailers, namely that not all purchases that divert from Tesco stores to Booker symbol stores will be recaptured by Booker at the wholesale level because retailers could purchase from a different wholesaler. The Parties' analysis suggests that to achieve a GUPPI of 5% (which the Parties submitted was the relevant threshold),^{52 ii} the critical diversion ratio from Tesco to Booker would have to exceed 100%, except in the case of [§], where the diversion ratio would be [80-90]%.⁵³ These results suggest that all or virtually all customers switching away from Tesco would need to divert to Bookers' symbol group retailers for it to be profitable to worsen Tesco's retail offering. Therefore, the Parties submitted that there was no realistic prospect of a loss of retail competition as a result of such a strategy.
116. The CMA agrees that using a GUPPI framework can be a useful starting point for helping to consider the Parties' incentives. With respect to the inputs into this framework, the CMA believes that:
- (a) The responses received by the CMA during its market testing indicated that many symbol group retailers purchase large proportions of their goods from Booker, which are higher than the proportions assumed by the Parties in their analysis.⁵⁴ As the CMA does not have individual data for all Booker symbol group retailer stores, on a cautious basis, the CMA believes it appropriate to assume for the purposes of its assessment that symbol group retailers purchase 100% of their wholesale groceries supplies from Booker.
 - (b) The CMA found that the results of the GUPPI analysis were sensitive to the relative retail price levels (as between Tesco retail prices and Booker symbol group retailers' prices) and the margins (Tesco retail margin and Booker

⁵² The CMA did not conclude on the appropriate threshold for the GUPPI in this market.

⁵³ The 5% GUPPI is suggested by the Parties.

⁵⁴ The Parties submitted a sample based on [§].

wholesale margin) adopted. The CMA therefore adopted a cautious approach to its assessment thresholds, given that uncertainties remain about the comparability of the relative retail price levels, and how the margins submitted by the Parties are calculated.

117. Given [REDACTED], the CMA has determined different criteria according to the symbol group fascia giving rise to the overlap. The CMA has developed a two-part assessment to take account of brand and distance as important factors in end-customer choice, namely a fascia count and a share of shops.
118. Accordingly, a local area will 'fail' the assessment where:
 - (a) Overlap between Tesco and Budgens:
 - (i) *Fascia count*: the Merger results in a reduction of fascia of 3 to 2 or worse; or
 - (ii) *Share of shops*: Budgens has a share of shops (excluding Tesco) of 50% or greater;
 - (b) Overlap between Tesco and any other Booker symbol group fascia:
 - (i) *Fascia count*: the Merger results in a reduction of fascia of 2 to 1;⁵⁵ or
 - (ii) *Share of shops*: Booker fascia (ie Premier, Londis and/or Family Shopper) have a share of shops (excluding Tesco) of 100%.
119. Any local areas which 'fail' either of these criteria fails the assessment.
120. Applying the criteria above, 64 local areas fail the assessment. In those local areas that fail the assessment, the CMA believes that there is a realistic prospect that the merged entity would have both the ability and incentive to worsen the Tesco retail offering with the effect of substantially lessening competition. The CMA has not received sufficient information to rule out the prima facie concerns identified in these local areas.

⁵⁵ [REDACTED]

Conclusion

121. The CMA therefore believes that there is a realistic prospect of an SLC in each of the 64 local areas identified by the assessment framework. The location of these local areas is shown on the map at Annex 4.

TOH3: Worsening of Booker wholesale symbol group offering in local areas where Booker's symbol group retailers overlap with Tesco stores

122. Booker earns a margin on the wholesale sales it makes to its symbol group retailers and, prior to the Merger, Booker will want to maximise revenues to its symbol group retailers' stores to maximise its own revenues. These symbol group retailers may compete with Tesco at the retail level. The CMA has assessed whether, following the Merger, the merged entity may find it more profitable to worsen Booker's wholesale symbol group offering so that its symbol group retailers' customers shop at Tesco stores instead (that is, whether the merged entity may pursue a foreclosure strategy against its own symbol group retailers). For the purposes of this theory of harm, the CMA has considered possible switching to all types of Tesco stores, including Tesco owned stores, One Stop owned stores and One Stop franchised stores.⁵⁶

123. As a vertical theory of harm, the CMA has again assessed the merged entity's ability to pursue such a strategy, the incentive for it to do so, and the overall effect of the strategy on competition.

124. First, the CMA assessed the merged entity's ability to implement such a strategy. Unlike under TOH2 discussed above, ability cannot be assumed, as Booker does not own its symbol group retail stores. The CMA believes that the ability of the merged entity to effect such a strategy depends on:

- (a) *The merged entity's influence over its symbol group retailers' stores:* the more important Booker's wholesale symbol group offering as an 'input' for the retail offering of its symbol group retailers, the more likely it is that a worsening of the wholesale symbol group offering will worsen the symbol group retailer's retail offering;

⁵⁶ For the purposes of its assessment, and in the absence of data from Tesco regarding the margin which it earns on sales to its One Stop franchised stores, the CMA has assumed that the margin which Tesco earns is the same across both One Stop owned and One Stop franchised stores.

- (b) *The merged entity's ability to respond to local competitive conditions at the retail level:* if Booker can flex its wholesale symbol group offering at a local level, it could worsen its offering to symbol group retailers in local areas where there would be sufficient customers diverting to Tesco to make the strategy profitable; and
- (c) *The countermeasures available to Booker symbol group retailers:* if Booker's symbol group retailers can take measures to avoid a worsening of their retail proposition, this would undermine Booker's ability to engage in such a strategy.
125. Second, the CMA assessed the incentive for the merged entity to engage in such a strategy. The profitability of the strategy is driven by the gain in revenues at the retail level (from end-customers diverting from Booker symbol group retailers' stores to Tesco stores⁵⁷) compared to the loss in revenues at the wholesale level (due to correspondingly lower wholesale volumes purchased from Booker due to the customer diversion away from Booker symbol group stores).
126. The CMA believes that, in those areas where the merged entity could have the ability and incentive to pursue a strategy of worsening its wholesale symbol group offering, the effect may be a deterioration of the retail offering of Booker symbol group stores with the effect of reducing competition between Tesco stores and Booker symbol group stores which gives rise to a realistic prospect of an SLC.

Ability to worsen Booker's symbol group retailers' retail offering

The merged entity's influence over Booker's symbol group retailers' retail offering

127. Booker does not own its symbol group stores, but can influence the retail offering of those stores: a) directly through contractual provisions; and b) indirectly via its wholesale symbol group offering.
128. The Parties submitted that Booker's contractual arrangements with symbol group retailers meant that Booker has limited influence over its symbol group retailers' retail offering. The Parties noted, for example, that Booker [X].

⁵⁷ Including Tesco's One Stop stores.

129. However, evidence available from the CMA's investigation leads it to believe that there are several ways in which Booker could worsen its wholesale symbol group offering in order to deteriorate a symbol group retailers' retail offering.
130. First, the CMA notes that the provision of wholesale groceries are the main input in grocery retailing. The CMA believes that the conditions of supply for the wholesale supply of groceries will be very important to a grocery retailer's retail offer. The CMA also believes that associated symbol group services are very important to symbol group retailers' retail offerings. In *Booker/Musgrave*,⁵⁸ the CMA found that a large majority of customers indicated that it would be difficult to run their businesses without the support of a symbol group as, for example, they may not be able to replicate the promotions, branding, IT or buyer power offered by their symbol group, which would ultimately lead to them being less competitive as against other retailers. The evidence received by the CMA in the present case broadly supported this finding. The CMA therefore believes that, for those independent retailers that have chosen to operate under a symbol group, the services which those symbol groups offer are important to their retail offering.
131. Second, the CMA notes that Booker's contractual arrangements with symbol group retailers contain requirements [REDACTED]. The CMA believes that enforcement of these requirements could give Booker considerable scope to influence the retail offering.
132. Finally, the CMA notes that Booker also has access to 'softer' means of potential influence, such as [REDACTED].
133. The CMA has therefore conducted its assessment on the basis that the merged entity would be able to influence important aspects of Booker's symbol group retailers' retail offering.

The merged entity's ability to respond to local competitive conditions at the retail level

134. The CMA has assessed whether the merged entity could vary some aspects of its offering to symbol group retailers by local area, to respond to local competitive conditions. If so, Booker could flex its offering to symbol group retailers depending on whether (i) those retailers are able to counteract the merged entity's attempts to worsen their retail offering (owing to limited wholesale symbol

⁵⁸ [Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited \(ME/6541/15\)](#), paragraph 27(a).

group alternatives) and (ii) there would be sufficient customers diverting to Tesco at the retail level to make the strategy profitable (see discussion below).

135. The Parties submitted that [REDACTED]⁵⁹ [REDACTED]. The Parties submitted that in aggregate they would not have sufficient incentive to worsen Booker's wholesale symbol group offering for specific retailers to take advantage of particular local competitive conditions.
136. The CMA's investigation found that Booker does flex certain aspects of its wholesale symbol group offering at a local level and may be able to extend this and flex other parameters:
- (a) The Parties submitted that [REDACTED];⁶⁰
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED];⁶¹ and
 - (e) [REDACTED].
137. In light of the above, [REDACTED]. Furthermore, even in the absence of systematic local strategies being employed by Booker at present to adjust elements of its wholesale symbol group offering (in terms of price, quality, range and service) to reflect local retail conditions, the CMA believes in light of the above that Booker has the ability to do so if the incentive arose in an individual local area. On this basis, the CMA believes it appropriate to conduct its assessment of the merged entity's ability and incentive to flex its offering at a local level.

The countermeasures available to Booker symbol group retailers

138. For the merged entity's foreclosure strategy to be effective, measures taken by symbol group retailers must not be able to undermine an attempt by Booker to worsen their retail offering. The CMA has assessed three possible countermeasures:
- (a) Extent of pass-through;

⁵⁹ [REDACTED].

⁶⁰ Merger Notice, paragraph 9.26.

⁶¹ Booker's Response to RF11, Annex B02.2.

(b) Switching wholesale volumes away from Booker; or

(c) Switching symbol group fascia.

- *Extent of pass-through*

139. The extent to which symbol group retailers pass on to end-customers any deterioration in Booker's wholesale symbol group offer will affect the degree to which such a deterioration strategy will affect end customers. For example, symbol group retailers could absorb any wholesale price increases and reduce their own margins, rather than increasing the retail prices. The result is that only some of the wholesale deterioration would be 'passed through' to customers.
140. The Parties submitted that any worsening of its wholesale offer by Booker would only be passed through to a limited extent, if at all, by Booker's symbol group retailers. The Parties submitted that the highly competitive nature of the retail groceries sector meant that Booker's symbol group customers were likely to do everything in their power to resist passing-on any deterioration of wholesale terms to their end-customers.
141. Further, the Parties submitted that the limited influence which Booker had over its symbol group retailers' offer to end-customers meant that there could be limited pass-through of any deterioration from the wholesale level to the retail level. The Parties submitted that Booker's symbol group retailers set their own retail proposition (including their own retail pricing) and that in many cases [REDACTED]. Further, for certain categories of products, [REDACTED]. The Parties therefore submitted that (even on a cautious basis) a pass-through of 50% could be assumed.⁶²
142. Economic models predict that a wide range of pass-through effects is possible, and that the rate of pass-through of wholesale prices to retail prices is typically high, often above 80%.⁶³ In this case, the CMA believes that any wholesale deterioration would likely be passed through to a greater degree than suggested by the Parties for the following reasons.

⁶² The Parties assume a linear demand curve, ie that in response to a price change, customers change the quantity they consume by a fixed amount. This assumption yields a linear pass-through of 50% or lower. On a cautious base, the upper bound (ie 50%) is used.

⁶³ See RBB Economics, [Cost pass-through: theory, measurement, and potential policy implications](#), prepared for the OFT (February 2014). For the avoidance of doubt, the CMA does not mean to suggest that the pass-through rate calculated in this report with respect to the market under study in this report should be applied to the present case.

143. First, the CMA understands that [REDACTED].⁶⁴ The CMA's market testing also indicated that symbol group retailers' adherence to these RRPs (for products that are not price-marked or under promotion) was generally high (over 50% of products), and that only a small proportion of symbol group retailers undercut the RRP. The CMA believes that this level of adherence to RRP could indicate that Booker may have some influence over retail prices beyond contractual terms or deterioration of the wholesale offer. To the extent that the merged entity has an influence over both the wholesale and retail prices, it may be able to influence the pass-through rate. Indeed, Booker could actually incentivise pass-through, by adjusting the share of the margin received by its symbol group retailers.
144. Second, [REDACTED], and the CMA cannot exclude that, with changed incentives, Booker would not alter its strategy with respect to these offerings to the detriment of symbol group retailers and end-customers.
145. Third, the population of interest with respect to the extent of pass-through, are the symbol group retailers that would not switch symbol group wholesaler in response to a deterioration in their wholesale offering (since retailers that switch would not be faced with the deterioration by Booker). In the CMA's market test, the vast majority of symbol group retailers that indicated they would not switch in response to a price increase said that they would pass-through a wholesale price increase of 1% to 5%.
146. Finally, it may not be an option for symbol group retailers to partially pass on certain non-price deteriorations because, for example, they are linked to fascia membership (such as reductions in delivery frequency on the bulk of its delivered wholesale products, which may affect a retailer's stocking levels or quality of fresh ranges, or reductions in the availability or quality of local promotions). For these deteriorations, the pass-through rate would therefore be 100%.
147. Based on the above, the CMA believes that it may be the case that any wholesale deterioration would be passed through to a significant degree and that the assumption of a low pass-through rate (such as the pass-through rate of 50% suggested by the Parties) is not appropriate.

⁶⁴ The Parties submitted that [REDACTED].

- *Switching wholesale volumes away from Booker*

148. The Parties submitted that if the merged entity were to worsen its wholesale offering to its symbol group retailers, those retailers would increase the volume of wholesale groceries they purchase from alternative wholesalers outside their current symbol group wholesaler (ie Booker). This would mean that the merged entity could not induce a worsening of Booker symbol group retailers' retail offerings by worsening their wholesale offer.
149. The Parties submitted that there is strong wholesale competition and many symbol group retailers multi-source. However, the CMA believes that the scope for volume-switching may be limited, or may be an ineffective means for symbol retailers to prevent a deterioration of their retail offering, because:
- (a) The contracts signed between Booker and its symbol group retailers [REDACTED]⁶⁵ [REDACTED]⁶⁶
 - (b) The CMA's market test indicated that many Booker symbol group retailers depend on Booker for a large proportion of their purchases, and only a very small proportion of respondents indicated that they would switch volumes away from Booker in the face of a hypothetical deterioration – which may indicate that switching is not an option for them, for example because good alternatives are not available to them or because they are close to their minimum requirements, or for any other reason.⁶⁷
 - (c) The symbol group contracts [REDACTED].⁶⁸ [REDACTED].
 - (d) To the extent that Booker worsens an aspect of its wholesale offering that is difficult to separate from the fascia,⁶⁹ it may not be possible for the symbol group retailer to prevent a deterioration of their retail offering by switching volumes of wholesale groceries away from Booker.
150. On the basis of the above, the CMA believes that it would not be appropriate to treat switching of volumes as an effective countermeasure for all symbol group retailers.

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

⁶⁸ [REDACTED].

⁶⁹ As discussed in paragraph 147 above, examples may include changes to frequency of their main deliveries or reductions in the quality or availability of local promotions.

- *Switching symbol group fascia*

151. The Parties submitted that, if the merged entity were to worsen its wholesale offering to its symbol group retailers, those retailers would leave Booker's symbol groups, either to an alternative symbol group or to trade independently. As in the case of switching volumes, the Parties argue that the threat of symbol group retailers switching to become a member of another symbol group means that the merged entity would not have the ability to induce a worsening of their retail offerings.
152. As noted in paragraph 130, in *Booker/Musgrave*,⁷⁰ the CMA found that a large majority of customers indicated that it would be difficult to run their businesses without the support of a symbol group. The evidence received by the CMA in the present case broadly supported this finding. Therefore, the CMA does not believe it appropriate to treat the option of trading independently as a viable alternative to symbol group retailers. The CMA has therefore assessed in this section the scope for symbol group retailers to switch symbol group fascia. In assessing symbol group retailer's ability to switch symbol group fascia generally, the CMA considered evidence on: (i) switching costs; and (ii) switching rates.
153. The CMA notes that, for symbol group retailers that are [REDACTED]⁷¹ [REDACTED], there may be a cost to switching [REDACTED]. However, responses to the CMA's market test frequently indicated that these costs were not considered a significant barrier to switching.
154. In the CMA's market test, the majority of symbol group retailers indicated that, if faced with a 5% price increase, they would switch fascia. However, evidence received from the Parties and other third parties also indicated that responses may overstate the extent to which symbol group retailers actually switch. Evidence from the Parties and other third parties in fact indicated that the actual rate of retailers switching symbol groups is generally low.⁷² Further, many Booker symbol group retailers who responded to the CMA's market test had not evaluated their wholesale offer in many years. This evidence of a possible low propensity to consider switching or switch fascia by symbol group retailers may suggest that fascia-switching is not an effective countermeasure in all cases where there are sufficient symbol group wholesale alternatives. This may mean

⁷⁰ [Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited \(ME/6541/15\)](#), paragraph 27(a).

⁷¹ [REDACTED].

⁷² Most symbol group wholesalers who responded to the CMA's market test indicated churn rates of less than 5% (and some only 1-2%). While there were some years in which a symbol group wholesalers' churn rate was higher, this was driven by particular events (eg a change of ownership of a symbol group fascia).

that the CMA should not rely on switching fascia to be effective in all areas for the purposes of excluding a realistic prospect of an SLC.

155. Nevertheless, in areas where there are insufficient symbol group wholesale alternatives, given the lack of other generally available countermeasures, the CMA believes that the merged entity could have an ability to worsen its symbol group wholesale offering. The CMA has therefore developed the following framework for identifying the availability of symbol group alternatives at the wholesale level and thereby systematically identifying areas where the merged entity could have the ability to worsen its wholesale symbol group offering due limited competition in the wholesale supply of symbol group services.
156. The CMA notes that if symbol group retailers have a particularly low propensity to switch symbol group fascia, there may be additional areas in which the Parties could have the ability and incentive to worsen their symbol group offering that have not been identified by the CMA's framework as set out below. However, given that the CMA was unable to investigate this point further on the information available to it at phase 1, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether a realistic prospect of an SLC arises in other local areas.

Framework for assessment of ability – wholesale symbol group alternatives

157. The CMA has applied criteria to identify local areas in which Booker's symbol group retailers have an insufficient number of close alternative symbol group options such that, even if retailers were willing to switch, there would be a realistic prospect that the merged entity would have the ability to worsen its symbol group wholesale offering. Those local areas that 'fail' the assessment are therefore areas where there may not be a sufficient number of close symbol group alternatives, and where it is necessary for the CMA to assess the merged entity's incentive to engage in such a strategy.
158. A local area will fail the assessment where there are three or fewer symbol group wholesalers in the local area (including Booker). The rationale for this threshold is that, as set out in the European Commission's guidance, vertical concerns are unlikely to arise where the merged entity has a market share of less than 30%.⁷³ Assuming equally effective competitors, in an area where Booker is one of four symbol group wholesalers in the local area, Booker will have a share of less than

⁷³ [Commission Notice- Guidelines on Vertical Restraints](#), paragraph 135.

30% (and the local area passes the assessment ie no concerns arise). In any areas where Booker is one of three symbol group wholesalers, Booker will have a share of more than 30%, and the CMA cannot exclude competition concerns.

159. In identifying the area over which a symbol group wholesaler competes (and in which it is therefore a viable alternative in the local area), the CMA has adopted as the geographic area, the 80% catchment area submitted by wholesale symbol group providers centred on depots (where such information was provided to the CMA in response to the market test).⁷⁴

Incentive to worsen Booker's wholesale symbol group offering

160. To assess whether the merged entity would have an incentive to worsen its offering to symbol group members, the CMA considered the factors affecting the profitability of such deterioration, and the extent to which these factors change as a result of the Merger.⁷⁵
161. For there to be an incentive for Booker to worsen its offering to its symbol group retailers, there must be the prospect of sufficient diversion of end customers from the affected symbol group retailers to Tesco to make such a strategy profitable. As under the theories of harm discussed above, this will depend on the local conditions of retail competition. The CMA has therefore developed a framework for assessment which identifies local areas in which the retail conditions of competition are such that the CMA believes the merged entity could have the incentive to pursue a strategy of worsening the retail offering of Booker's symbol group stores, and in which therefore the CMA believes there is a realistic prospect of an SLC.
162. As will be seen from the discussion that follows, this involves a consideration of the number of retail alternatives based on a fascia count and share of shops. The relevant threshold for determining that there is sufficient retail competition to exclude an incentive to worsen the wholesale symbol offering is derived from considering the implications of price and margin differences as a result of the vertical nature of the Parties' relationship.

⁷⁴ Where depot-specific catchment data was provided to the CMA by a particular symbol group, this has been used. Where the symbol group provided an average catchment area for its depots, this has been applied to all depots of that symbol group. For one symbol group, due to data issues, the CMA has used a proxy for the 80% catchment area which may be more conservative than the true 80% catchment area.

⁷⁵ [Merger Assessment Guidelines](#), paragraph 5.6.11.

Framework for assessment of incentive – retail conditions of competition

163. To identify local areas in which the merged entity faces sufficient retail competition such that, although the merged entity may have the ability to worsen the wholesale offering, the merged entity would not have the incentive to do so, the CMA has applied certain criteria to the assessment at the retail level. Those local areas that 'fail' the assessment are therefore areas where the CMA is unable to rule out that there is a realistic prospect of an SLC.
164. The CMA's standard framework for local assessment in retail groceries mergers is that competition concerns may arise in local areas where the merger results in a reduction of retail fascia of 4 to 3 or worse. The Parties submitted that it was necessary to adjust this assessment framework in the present case to allow for the differences in post-merger pricing incentives in a retail-to-wholesale merger.
165. The Parties submitted an analysis of the merged entity's incentives to increase prices based on a modified GUPPI framework, in which the Parties aimed to take into account possible countermeasures exercised by retailers (ie wholesale switching and wholesale-to-retail pass-through rates).
166. Based on this modified GUPPI, the Parties submitted that, to achieve a 5% GUPPI,⁷⁶ iii the diversion ratio from Booker symbol group retailers to Tesco would have to exceed 100% in any local area, except for in the case of [~~3~~], where the Parties submitted that the diversion ratio would have to exceed [50-60]%. The Parties submitted that this implied that the merged entity would generally not find it profitable to worsen Booker's wholesale offering. As such, the Parties submitted that the appropriate threshold for the retail level assessment would be to identify local areas where the Merger results in a reduction of retail fascia of 2 to 1 or, at most, 3 to 2.
167. The CMA agrees that using a GUPPI framework can be a useful starting point for helping to consider the Parties' incentives. However, the CMA does not believe it would be appropriately cautious to rely on the modified GUPPI framework submitted by the Parties for its phase 1 assessment for the following reasons.

⁷⁶ As noted in footnote 54 above, the threshold of 5% is as suggested by the parties. The CMA did not conclude on the appropriate threshold for the GUPPI in this market.

168. First, the GUPPI submitted by the Parties for this theory of harm is a modification of an already novel approach, which has not previously been applied by the CMA in merger assessments.⁷⁷
169. Second, with respect to the inputs into this framework, the CMA believes that using national averages for the countermeasures available to retailers is unlikely to be sufficiently cautious since the evidence before the CMA suggests that at least some of the variables may vary significantly by local area.
170. As for the previous theory of harm, the CMA found that, using a more standard GUPPI framework, the results were sensitive to the relative retail price levels and the margins adopted, and for both inputs the CMA has concerns around the reliability of the Parties' submitted values. The CMA therefore adopted a cautious approach to its assessment thresholds.
171. In this case, the CMA has adopted a framework for identifying local areas which may raise competition concerns, based on a framework similar to that used on the previous two theories of harms above, with adjusted thresholds to take account of Tesco's (retail) and Booker's (wholesale) margins. A local area will 'fail' the assessment where either of the following criteria is met:
- (a) *Fascia count filter*: the CMA's calculations, based on the Parties' margin data, is that a 'fail' threshold of 5 to 4 is appropriate in this case; or
 - (b) *Share of shops filter*: within the catchment area of the focal store, Tesco has at least 25% (by number of shops) of all effective retail competitor grocery stores, excluding Booker stores. The 25% threshold mirrors the fascia count threshold.
172. In identifying the geographic catchment area of the focal store, and therefore the local area, the CMA has adopted the geographic frames of reference for convenience stores and MSS (depending on the size of the focal store in question) set out in paragraph 46.

Results of assessment

173. Applying the ability (wholesale alternatives) and incentive (retail alternatives) assessment frameworks described above, 369 local areas fail the filter. In those local areas that fail the assessment, the CMA believes that there is a realistic

⁷⁷ The vertical GUPPI methodology was first discussed in [Salop and Moresi \(2012\)](#).

prospect that the merged entity would have both the ability and incentive to worsen the Booker wholesale symbol group offering with the effect of substantially lessening competition. The CMA has not received sufficient information to rule out the prima facie concerns identified in these local areas.

Conclusion

174. The CMA therefore believes that there is a realistic prospect of an SLC in each of the 369 local areas identified by the assessment framework. The location of these local areas is shown on the map at Annex 4.
175. In the above assessment, the CMA has focused on the ability and incentive of Booker to worsen its wholesale symbol group offering. The CMA believes that a similar theory of harm arises with respect to Tesco's wholesale symbol group offering, and that an analogous assessment to that set out above would be appropriate. However, for the purposes of its phase 1 assessment, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether the Merger could give rise to additional concerns under this theory of harm.

TOH4: Worsening of Booker's cash-and-carry wholesale offering in local areas where Booker's independent retail customers' stores overlap with Tesco's stores

176. Booker provides cash-and-carry wholesaling to independent retail customers (who are not part of Booker's symbol groups). For those independent retailers that purchase substantial volumes from Booker, a concern arises that following the Merger, the merged entity may find it more profitable to worsen Booker's wholesale cash-and-carry offering so that the customers of these independent retailers shop at Tesco stores instead (that is, whether the merged entity may pursue a foreclosure strategy against its independent retailer customers).⁷⁸
177. The Parties have not provided the CMA with data on the volumes of purchases from Booker by independent retailers. On a cautious basis, the CMA has therefore treated any independent retailers that are located within a 30-minute drive time of a Booker cash-and-carry store (the geographic catchment area for

⁷⁸ This theory of harm could also arise with respect to retailers that are affiliated with a non-Booker symbol group, but which purchase substantial volumes from Booker's cash-and-carry depots. The Parties have not provided the CMA with the volumes of purchases from Booker by non-affiliated retailers. However, the CMA believes that retailers affiliated to other symbol groups may purchase substantial volumes from their own symbol group wholesaler (and therefore rely on purchases from Booker to a lesser degree), so that competition concerns are less likely to arise with respect to such retailers.

cash-and-carry stores, as set out in paragraph 66) as being a customer of Booker.

178. The CMA has assessed whether the merged entity would have both the ability and the incentive to worsen Booker's wholesale cash-and-carry offering to independent retailers. The CMA believes that, in an area where the merged entity could have the ability and incentive to pursue such a strategy, there may be a deterioration of the retail offering from Booker supplied independent retailers, with the effect of reducing competition between Tesco stores and Booker supplied independent retailers and so giving rise to a realistic prospect of an SLC.

Ability to worsen Booker's independent retailer customers' retail offering

179. As under the previous theory of harm, the CMA has assessed:
- (a) the merged entity's influence over the retail offering of its independent retail customers;
 - (b) the merged entity's ability to respond to local competitive conditions; and
 - (c) the countermeasures available to Booker's independent retail customers to avoid a worsening of their retail proposition.

The merged entity's influence over Booker's symbol group retailers' retail offering

180. Booker does not supply symbol group services to independent retailers. It therefore does not have the level of direct contractual influence over independent retailers that it has over symbol group retailers. With respect to indirect control, the CMA again notes, however, that wholesale groceries are the main input for grocery retailing. As such, the significance of Booker's wholesale supply to independent retailers' retail offering is dependent on the extent to which those retailers have options other than Booker for their purchases. The CMA believes that where independent retailers rely on Booker to a significant degree for their wholesale purchases, there could be a number of ways in which the merged entity could deteriorate the retail offering of independent retailers through its wholesale offering, such as by worsening its wholesale prices or its range.

The merged entity's ability to respond to local competitive conditions at the retail level

181. The CMA believes that Booker could flex its offering at a local level, including on an individual retailer basis, to target any deterioration in areas where these independent retailers compete with Tesco. The CMA believes that the evidence highlighted under TOH3 above (that [REDACTED]) apply equally under this theory of harm, indicating that there is scope for Booker to vary pricing on a local (or even retailer-by-retailer) basis. In addition, the CMA understands that [REDACTED], and this service could also be varied across different local areas or with respect to different retailers. The CMA notes that Booker's internal documents show that [REDACTED].⁷⁹

The countermeasures available to independent retailers

182. For the reasons set out under TOH3, the CMA believes that independent retailers would be likely to pass through to a significant degree any worsening of Booker's offer, and therefore it would be inappropriate to treat absorbing any deterioration as an effective countermeasure.
183. Unlike in the context of a symbol group offering, there is no wider symbol group relationship tying independent retailers to Booker with respect to purchases. Independent retailers also do not receive the vast majority of wider services offered by Booker as part of its wholesale symbol group offering.⁸⁰ The CMA therefore believes that independent retailers could counteract an attempt by Booker to deteriorate their retail offering by switching volumes they purchase from Booker to another wholesaler if these retailers have sufficient alternative wholesale options available to whom they could switch. As discussed in paragraph 58, the CMA has seen evidence that independent retailers have a strong preference for cash-and-carry wholesale services and has taken this into account in its framework for assessment.

Framework for assessment of ability - cash-and-carry wholesale alternatives

184. To identify local areas in which independent retailers have a sufficient number of close alternative cash-and-carry wholesale options such that there is no realistic prospect that the merged entity would have the ability to worsen its independent

⁷⁹ [REDACTED].

⁸⁰ Albeit that the Parties submitted that [REDACTED].

retail customers' retail offering, the CMA has applied assessment criteria at the wholesale level. Those local areas that 'fail' the assessment are therefore areas where there may not be a sufficient number of close cash-and-carry wholesale alternatives, and where it is necessary for the CMA to assess the merged entity's incentive to engage in such a strategy.

185. A local area will fail the assessment where there are three or fewer cash-and-carry wholesalers in the local area (including Booker). For the same reasoning as discussed in paragraph 158 the CMA cannot exclude competition concerns in any local areas where Booker is one of three or fewer cash-and-carry grocery wholesalers.
186. For the reasons set out in paragraph 66, the CMA has adopted as the geographic catchment area a 30-minute drive time from each cash-and-carry depot.

Incentive to worsen independent retailers' offering

187. For there to be an incentive for Booker to worsen its offering to its independent retailer customers, there must be the prospect of sufficient diversion of retail customers from the affected independent retailers to Tesco to make such a strategy profitable.⁸¹ The CMA has developed a framework for assessment which identifies local areas in which the retail conditions of competition are such that CMA believes the merged entity could have the incentive to pursue such a strategy.

Framework for assessment of incentive - retail conditions of competition

188. To identify local areas in which the merged entity faces sufficient retail competition such that, although the merged entity may have the ability to worsen the wholesale offering, the merged entity would not have the incentive to do so, the CMA has applied certain criteria to the assessment at the retail level. Those local areas that 'fail' the assessment are therefore areas where the CMA is unable to rule out that there is a realistic prospect of an SLC.
189. A local area will 'fail' the assessment where either of the following thresholds is met:

⁸¹ We only consider areas in which there is a Tesco store in the catchment.

- (a) *Fascia count filter*: the CMA's calculations, based on the Parties' margin data, is that a 'fail' threshold of 4 retail fascia (including the Parties) is appropriate in this case; or
- (b) *Share of shops filter*: for the catchment area of the focal store, Tesco has at least 25% (by number of shops) of all effective retail competitor grocery stores, excluding Booker stores. The 25% threshold mirrors the fascia count threshold.

190. In identifying the geographic catchment area of the focal store, and therefore the local area, the CMA has adopted the geographic frames of reference for convenience stores and MSS (depending on the size of the focal store in question) set out in paragraph 46.

Results of assessment

191. Applying the criteria set out above, a large number of local areas fail the assessment. However, as noted above, the Parties have not been able to confirm which independent retailers are supplied by Booker and the proportion of their wholesale purchases that Booker accounts for. The CMA believes that competition concerns are unlikely to arise in local areas that fail the assessment criteria where independent retailers do not source a substantial proportion of their wholesale supply from Booker. As the CMA is unable to investigate these points further on the information available to it at Phase 1, the CMA has left open the question of whether a realistic prospect of an SLC arises in the local areas that fail the criteria under this theory of harm.

Conclusion

192. For the purposes of this phase 1 assessment, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether the Merger gives rise to a realistic prospect of an SLC as a result of the foreclosure of independent retailers in any local areas in the UK.

Loss of wholesale symbol group competition

TOH5: Horizontal unilateral effects in the supply of symbol group services

193. The Parties overlap in the supply of wholesale symbol group services, Booker through its Premier, Londis, Budgens and Family Shopper offerings, and Tesco through its One Stop offering. The CMA assessed whether it is or may be the

case that the Merger may be expected to result in the realistic prospect of an SLC in relation to unilateral horizontal effects in the supply of symbol group services.

194. The Parties submitted that there is strong competition for the supply of symbol group services and that the Parties will continue to face strong competitive constraints from both national and regional players.
195. The CMA has considered evidence available on the Parties' share of supply in the provision of symbol group services, the closeness of competition between the Parties and the constraint from alternative symbol group providers.

Shares of supply

196. The Parties submitted that the merged entity's national share of symbol group services is c.[30-40]% based on number of stores. The Parties submitted that the increment arising from the Merger is very small with One Stop franchise stores having a share of supply of less than [0-5]% on a national basis.
197. As noted in paragraph 91 above, while the CMA believes that the appropriate frame of reference for the supply of symbol group services is regional, the CMA has used postcode areas as a proxy in its assessment, being the most readily available geographic area over which to calculate symbol group concentration. On the basis of this postcode-level analysis, the CMA did not identify any areas in which the Parties post-merger would have a combined share of supply of over 40% and the Merger would result in an increment of 5% or more.
198. The CMA has considered whether the shares of supply may understate the constraint exerted by One Stop, given that [REDACTED]. However, the CMA believes that although there is evidence that One Stop has expanded,⁸² and [REDACTED],⁸³ One Stop does not have a significantly stronger position than indicated by the shares of supply as:
 - (a) One Stop's expansion, though rapid, has nonetheless been modest in terms of the total number of stores opened;

⁸² The number of franchised stores has grown from [REDACTED] stores in 2014, to [REDACTED] in 2015 and [REDACTED] in 2016 (up to [REDACTED] as at the date of the Merger Notice): Appendix 13.12a to Tesco's response to RF11, [REDACTED].

⁸³ An internal document states that [REDACTED]: Appendix 11.A to the Merger Notice, [REDACTED]. Another internal document [REDACTED]: Appendix 13.12a to Tesco's response to RF11, [REDACTED].

(b) [REDACTED]; and

(c) the Parties have submitted and provided evidence via internal documents that [REDACTED].

199. On balance, the CMA believes that, [REDACTED], the shares of supply and, in particular, the increment, arising from the Merger are such as to not raise prima facie concerns.

Closeness of competition and competitive alternatives

200. The CMA has assessed whether the shares of supply may understate the closeness of competition between the Parties.

201. The Parties submitted that Booker and One Stop are not close competitors given their different business models. Tesco operates its One Stop wholesale symbol group offering under a [REDACTED] franchise model while Booker operates its Premier, Londis, Budgens and Family Shopper wholesale symbol group offerings through [REDACTED] contractual agreements.

202. The CMA has considered the Parties' internal documents, switching data and responses received from third parties. This evidence is explored in turn below.

Internal documents and industry reports

203. One Stop internal documents⁸⁴ indicate that [REDACTED]. Further, while industry reports note that symbol group wholesalers face competition from the rise of One Stop (suggesting that the difference in business models may not be a key point of differentiation), these reports do not tend to identify Booker as particularly close competitors to One Stop and describe One Stop as competing with a range of symbol group providers.

Switching data

204. The Parties provided data for each of Booker's fascia on retailers who have left the Booker symbol group, their reasons for leaving and, where applicable and available, the symbol group to which they left. The data show that since 2014,

⁸⁴ [REDACTED] (Appendix 13.12a to Tesco's response to RF12); [REDACTED] (Appendix 79.62 to Tesco's response to RF12); [REDACTED] (Appendix 08.3 to Tesco's response to RF12). [REDACTED].

[REDACTED]% of Premier retailers and [REDACTED]% of Londis retailers that were identified as having left to join a competing symbol group switched to One Stop. At least [REDACTED] of switching from Budgens to One Stop was recorded in this data.⁸⁵

205. In the case of Family Shopper, there were [REDACTED] instances of switching recorded since 2014, and [REDACTED] in 2016 or 2017. Although [REDACTED] of switching were to One Stop, the CMA notes the very small number of instances involved make it difficult to draw conclusions from this data.

Third party responses

206. Responses to the CMA's market test are consistent with the evidence above. The CMA has interpreted responses cautiously, given One Stop's relatively recent entry. Nevertheless, the CMA notes that only a very small proportion of symbol group retailer respondents identified One Stop as a next-best alternative to their existing Booker fascia, suggesting that Booker symbol group retailers may not consider One Stop a particularly close alternative. Meanwhile, Spar, Nisa and Costcutter were consistently mentioned by Booker symbol group respondents. Spar was the most highly ranked next-best alternative for Budgens and Londis fascia (for Budgens retailers, this was jointly tied with Nisa), while Nisa was the most highly ranked next-best alternative for Premier retailers.
207. A number of competitors in the wholesale supply of symbol group services indicated in response to the CMA's market test that they did not consider One Stop to be a close competitor, due to One Stop's franchise operating model. All respondents considered themselves to be close competitors to Premier and Londis (and some that at least certain of their fascia competed closely with Budgens and Family Shopper).

Conclusion

208. Overall, the evidence above indicates that One Stop currently imposes a very limited constraint on Booker's symbol group offering and that there will remain a number of other significant competitors that will continue to constrain the Parties post-Merger. The CMA therefore believes that the Merger will not give rise to a realistic prospect of an SLC in the supply of symbol group services at the national or regional level.

⁸⁵ [REDACTED].

Loss of delivered wholesale competition

TOH6: Customer foreclosure in the supply of delivered wholesale services

209. Tesco currently buys some goods from delivered wholesalers. The CMA assessed whether, post-merger, the merged entity could have the ability and incentive to shift Tesco's wholesale purchases away from those wholesalers and self-supply, resulting in those wholesalers becoming weaker competitors (partial customer foreclosure) or exiting the market (total customer foreclosure), leading to an SLC in the supply of delivered wholesale services.
210. Tesco largely sources groceries directly from suppliers. It only has a commercial relationship with one wholesaler, P&H.⁸⁶
211. While additional information is likely to be relevant to such an assessment, the CMA notes that the following evidence could be considered supportive of concerns arising as a result of customer foreclosure. In particular:
- (a) *Ability*: The CMA's assessment suggests that Tesco's business represents a large proportion of P&H's total revenues ([REDACTED]).⁸⁷ If Tesco were to shift this business away from P&H, then P&H's economies of scale could be substantially diminished, impacting its ability to compete;
 - (b) *Incentive*: Tesco's internal documents⁸⁸ [REDACTED]. Any associated difficulties and costs related to Tesco having to build in-house capability for the purposes of replicating P&H's offering, could, post-Merger, either be lower or not relevant given that Booker offers a similar range of services to P&H currently. As such, as a result of cost savings, the Parties may have an incentive to reduce or cease purchasing from P&H post-Merger;
 - (c) *Effect*: P&H could be characterised as an important delivered wholesaler, based on shares of supply, third party responses to the CMA's market test and Tesco internal documents. As such, reduction in P&H's ability to

⁸⁶ P&H provides wholesale distribution services to all areas of the grocery retail market place, including unaffiliated independent retailers, symbol stores (it is a distribution partner to Costcutter) and large multiple retailers. For Tesco, P&H primarily supplies and distributes tobacco products. It also delivers ambient non-tobacco products directly to all Tesco Petrol Forecourt sites and all frozen products to Tesco Express stores. The relationship between Tesco and P&H was formalised in distribution agreement signed in March 2017. In addition, P&H [REDACTED].

⁸⁷ Based on P&H's published accounts and Tesco's submissions regarding the value of Tesco's business with P&H.

⁸⁸ [REDACTED]: Appendix 24 to Tesco's response to RFI 3.

compete could substantially lessen competition in the supply of delivered wholesale services.

(d) A number of third parties responding to the CMA's market testing raised concerns regarding the potential loss of competition in the supply of delivered wholesale services as a result of P&H's foreclosure. Third parties in particular noted the significance of Tesco's purchases to P&H's business model and the importance of P&H as a competitor in the supply of delivered wholesale services. [X].

212. For the purposes of this phase 1 assessment, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether the Merger gives rise to a realistic prospect of an SLC as a result of customer foreclosure in any market or markets.

TOH7: Buyer power

213. The Parties purchase groceries for the purposes of their retail and wholesale activities. Where the Parties purchase products in the same segments, post-Merger, the Parties may enjoy greater buyer power (or monopsony power) than the Parties could previously exert individually in purchasing products in these segments. In many instances, an increase in buyer power is not likely to give rise to unilateral effects; and some of the benefits to the firm from its greater buyer power may be passed on to the merged firm's customers.⁸⁹

214. However, competition concerns could arise if an increase in buyer power allows the Parties to impose excessive risks and unexpected costs on suppliers, which reduces suppliers' incentive or ability to invest and innovate leading to an SLC in the upstream supply of certain grocery products.

215. Alternatively, as a result of a post-Merger increase in buyer power, the Parties may be able to negotiate lower prices (or other purchasing terms) from suppliers and, under specific conditions, those suppliers may increase their prices to the Parties' retail or wholesale competitors in order to recoup the loss from the lower prices achieved by the merged entity ('the waterbed effect'). This may give rise to competition concerns if, as a result, the merged entity's competitors exit the market or otherwise cut back their operations leading to a substantial lessening

⁸⁹ [Merger Assessment Guidelines](#), paragraph 5.4.19.

of competition in the retail supply of groceries or the wholesale supply of groceries. This would therefore potentially reduce the competitive pressure on the merged entity sufficiently to offset any pro-competitive effects of its buyer power.⁹⁰

216. Given the lack of third party concerns on the basis of reduced innovation at the supplier level, the CMA focused its assessment on the possibility of waterbed effects, in relation to which a number of third parties raised concerns.
217. For the waterbed effect to occur, several necessary conditions need to arise, including that suppliers have the ability to raise prices to other customers in response (for example, because customers have few other alternative suppliers they can switch to) and that there is a detrimental effect on other customers. While additional information is likely to be relevant to such an assessment, the CMA notes that the following evidence could be considered supportive of concerns arising as a result of waterbed effects. In particular:
- (a) The Parties combined procurement spending indicated that the Parties could have significant procurement shares post-Merger of at least 30% with a 5% increment or higher, across a number of grocery segments. As a result, the Parties could have an appreciably enhanced ability to extract better prices from suppliers across a number of grocery segments. However, the CMA notes that this analysis has limitations because data was not available for some plausible sub-categories, which could have higher or lower shares and increments than the broader segments.⁹¹
 - (b) The Parties estimated that, post-Merger, the Parties could benefit from significant procurement synergies as a result of harmonising purchasing terms. Estimates ranged between public and internal estimates, [REDACTED]. The scale of these procurement synergies may indicate that the merged entity's increased buyer power could be significant.
 - (c) The product mix that end-customers typically purchase in convenience stores and Tesco stores indicates that some of the segments where the Parties may appreciably increase their buyer power, appear to be important to the overall

⁹⁰ See [Anticipated acquisition by Graphic Packaging International Limited of Benson Box Holdings Limited \(ME/6430/14\)](#), footnote 29.

⁹¹ Grocery segments refer to product categories within the grocery segment where the Parties' overlap. As discussed in relation to the frame of reference, considering the Parties' procurement position across grocery products in general would not be sufficiently indicative of the Parties' procurement positions and therefore buyer power as suppliers will supply specific product and not all groceries generally.

purpose of the customer's shopping trip (eg tobacco), and so may play an important role in the customer's choice of store.

(d) Some suppliers stated that they would seek to maintain their profitability in the event that the Parties sought to negotiate lower purchasing prices post-Merger and therefore may increase their prices to other customers to compensate.

218. However, for the purposes of this phase 1 assessment, and in light of the Parties' request for a fast-track reference to phase 2, the CMA has not reached a conclusion on whether the Merger gives rise to a realistic prospect of an SLC as a result of waterbed effects or some other effects arising from the exercise of buyer power.

Barriers to entry and expansion

219. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC. 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.⁹²

220. The Parties submitted that wholesalers such as Booker were subject to a strong competitive constraint from the strong prospects for entry and expansion in the wholesale supply of groceries. The Parties submitted that there had been expansion by a number of players in recent years, including expansion across different wholesaling channels. The Parties also submitted that, in the retail supply of groceries, the expansion of discount retailers such as Aldi and Lidl should be taken into account in an enlarged effective competitor set.

221. The CMA has not received any specific evidence of entry and expansion by particular grocery wholesalers that would be sufficient to counteract the CMA's competition concerns identified in this decision. Further, for the reasons set out in paragraph 86, the CMA has not considered it appropriate to expand the effective retailer competitor set to reflect the Parties' submissions regarding the expansion of Aldi and Lidl.

⁹² [Merger Assessment Guidelines](#), paragraph 5.8.3.

222. For the reasons set out above, the CMA therefore believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Third party views

223. The CMA contacted customers, competitors and suppliers of the Parties. The CMA also received a number of own-initiative representations from other suppliers, competitors, industry bodies and associations, customers and members of the public. A significant proportion of these third parties raised concerns regarding the effect of the Merger, including in respect of some of the theories of harm articulated in this decision. No other third parties raised concerns about the Merger.
224. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

225. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
226. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act.

The Parties requested and consented to the use of the fast track process and waived their right to offer UILs. The CMA has therefore referred the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

Rachel Merelie
Executive Director, Markets and Mergers
Competition and Markets Authority
12 July 2017

ANNEX 1: Groceries procurement categories, as adopted by the European Commission in Rewe/Meinl⁹³

- meat and sausages;
- poultry and eggs;
- bread and pastries (fresh and packaged bakers' wares, excluding frozen ones);
- dairy products (milk, butter, yoghurt, puddings, fresh milk-based desserts, all types of cheese);
- fresh fruit and vegetables;
- beer;
- wines and spirits;
- soft drinks (including mineral water);
- hot beverages (coffee and tea);
- confectionery;
- basic foodstuffs (including flour, sugar, noodles, rice and spices);
- preserved foods (non-perishable foodstuffs in tins or other packaging, with the exception of frozen foods);
- frozen foods (including ice cream);
- baby foods;
- pet foods;
- body-care products (creams, lotions, etc., the purpose of which is primarily preventive) and cosmetics (make-up and perfumes);
- detergents, polishes, cleaning products

⁹³ [Case No IV/M.1221- Rewe/Meinl](#) - European Commission.

- other drugstore products (apart from the above, medicinal products available over the counter, health foods, personal hygiene products, and so on)
- other non-food products normally found in supermarkets (for example, clothing, newspapers and magazines, entertainment).

ANNEX 2: Effective retail competitor set

1. Retailers

- Asda
- Booths
- Budgens
- CK Supermarkets
- Co-operative societies (including Co-operative Group)
- Dunnes
- Harry Tuffins
- Longs
- Marks & Spencer
- McColls
- Morrison
- Proudfoot
- Roys
- Sainsbury's
- Tesco
- Waitrose
- Whole Foods

2. Symbol Groups

- Nisa-Todays^{iv}
- P&H Retail

- Select & Save
- Centra
- Best-One
- Spar
- VG/Vivo
- Premier
- Londis
- Costcutter
- Key Store/Key Shop

ANNEX 3: Effective cash-and-carry wholesale competitor set

1. National operators
 - Bestway
 - Costco
 - Booker⁹⁴
2. Regional operators⁹⁵
 - A F Blakemore and Sons Ltd (Blakemore)⁹⁶
 - Dhamecha
 - Hyperama Cash & Carry (Hyperarama)
 - Parfetts
 - United

⁹⁴ Booker acquired Makro in 2013.

⁹⁵ Regional operators may be members buying groups, which are excluded from the effective competitor set, but are considered effective regional competitors. This is in line with the decisional practice in *Booker/Makro*.

⁹⁶ Blakemore acquired BA cash-and-carry in 2014.

ANNEX 4: Map showing local areas giving rise to an SLC under TOH2 and TOH3

[✂]

ⁱ The Parties clarified that their submission was that the relevant threshold was a GUPPI of 10%. They also provided results based on a threshold of 5% as a sensitivity check to show the critical diversion ratios on a conservative basis.

ⁱⁱ With regards to footnote 53, the Parties clarified that their submission was that the relevant threshold was a GUPPI of 10%, not 5%.

ⁱⁱⁱ With regards to footnote 76, the Parties clarified that their submission was that the relevant threshold was a GUPPI of 10%, not 5%.

^{iv} The Parties submitted that Nisa and Today's are now separate entities and should therefore be listed separately.