

4 December 2017

## **Proposed Tesco Booker Merger**

Following publication of your Provisional Findings Report, dated 14 November 2017, we comment as follows:

### **1. Competition**

#### **1.1 Large Budgens sites unsuited to the Booker model, but ideal as Tesco sites**

The CMA has not looked in detail at stores currently trading under a Booker symbol facia, such as some Budgens, which are high turnover sites and/or are large square footage sites. These stores need to be examined separately, because they are at particularly risk of being converted to trading under the Tesco facia, with the result of SLC.

[✂]

#### **1.2 What can be learned from Tesco's acquisition of One Stop**

The CMA should review what happened to the larger One Stop sites in the 5 years following the acquisition of this business by Tesco, so that they can extrapolate in a meaningful way, the likely outcome of Tesco having opportunities to change current independent and symbol stores to Tesco facia stores.

[✂]

#### **1.4 The Retail margin v Wholesale Margin difference**

The CMA found that "Tesco generally earns a much higher retail margin on its retail sales than Booker earns on its wholesale sales, and it is plausible that foregoing a smaller(wholesale) margin in favour of a higher (retail) margin could be profitable to the entity overall. However the CMA concluded that this scenario was unlikely due to strong competition in the wholesale services.

The CMA has displayed naivety regarding the reality of how PLC's operate. Their purpose is to relentlessly maximise profits from every site, every department, every division and every stream of business. They have a duty to shareholder to maximise profits. In particular in some of the Budgens sites, due to restrictive leases and contracts in force, there would be little or no cost to Tesco Booker to convert these sites and the result would be unnecessary SLC and a loss of choice for the communities, living in these locations.

#### **1.5 Retail Contracts and ability to move to an alternative wholesaler**

Booker state that Budgens retailers operating from sites where it owns the headlease, '*would be able to switch volumes to other wholesalers and Booker would be unable to prevent such switching of volumes, without suffering reputational damage*'. [✂]

The CMA has not given adequate weighting to how easy it would be for Tesco Booker to increase prices or offer a worsening offer to retailers, [✂]

#### **1.6 Freehold purchase**

The CMA has not considered the risk of Tesco buying the freeholds of sites where Booker currently hold the head lease and the resultant implications of SLC in these towns.

[✂]

#### **1.8 Stores where Booker hold the Headlease**

Tesco Booker has also submitted that in relation to a potential refusal to agree a sub-lease, "*where the sublease is not due to expire for at least 5 years that any such assessment of hypothetical scenarios that may occur beyond that time frame would be too remote and speculative*". [✂]

Tesco Booker has said that it has no plans to switch these headlease stores to Tesco fascia, they go on to say; *'this does not form any part of the deal rationale, which focuses on unlocking new growth and improving the overall offer to customers. This is reflected by the fact that none of the synergies that the Parties are seeking to achieve through the merger are associated with the conversion of Booker-supplied stores to Tesco-fascia'*. If this is the case let them put in measure to ensure that stay 'honest' in this pledge [✂]

[✂]

### **1.9 Journey Times**

The CMA has set out various models on the impact of competition and the availability of competing retailers in a variety of localities. Frequently, they refer to the diversity of competitor shops within a five minute drive. Our research using various satellite navigation systems, show that a five minute drive in the localities we researched, at noon, turn into journey times of 15 to 20 minutes after school closing times right through to the end of the evening rush hour traffic.

[✂]

The CMA model used to access journey time must be an out of date model or it appears to be discriminating against consumers who can only shop late afternoons and evenings.

[✂]

### **1.11 Booker acquisition of Musgrave GB**

The CMA approved the acquisition by Booker, of the Musgrave GB business (in particular, the Budgens and Londis facias) based on the knowledge that the purchase would not create a SLC, as Booker at that time, did not operate directly any retail sites and the risks of operating them where minimal, as they never operated in the past and gave assurances that they would not operate in the future these stores directly. The risk of these Budgens and Londis site in the future being operated and run by Tesco Booker has greatly increased as Tesco primary business model is to operate retail sites directly. This carries the risk of SLC that was not considered at the time when Booker bought the Musgrave GB business but should be considered now.

[✂]

In conclusion, while Tesco have submitted they have 'no plans' to change any site to the Tesco fascia and they would not stop any retailer switching volumes to other wholesales, in the event of a worsening of service to its retailers, because both these scenarios would cause the risk of 'reputational damage'. However, they have not said they will not do these things and there is nothing preventing them, from doing these things in the future, if they have a change of mind, trading conditions change or competition to them changes.

The CMA is tasked with ensuring that the proposed acquisition of Booker by Tesco does not damage competition. At the very least there is a risk of competition being damaged in the towns that currently have a large sq. footage or high turnover Budgens store and **or** where Booker hold the headlease. There are remedies that the CMA could impose on the deal, at little cost or inconvenience to any party, that would ensure that completion remains robust and prevent SLC in these towns.