

Completed acquisition by Henderson Retail Limited of part of the Martin McColl Limited portfolio

Decision on relevant merger situation and substantial lessening of competition

ME/6725/17

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 16 February 2018. Full text of the decision published on 23 February 2018.

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

SUMMARY

1. Between 20-24 November 2017, Henderson Retail Limited, part of the Henderson Group (**Henderson**) acquired a portfolio of five stores from Martin McColl Limited (the **Target Stores**) (the **Merger**). Henderson and the Target Stores 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' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. Henderson is active in grocery wholesaling as it provides groceries and symbol group¹ services to independent convenience retailers in Northern Ireland under its SPAR, EUROSPAR and ViVO brands. Henderson is also active in grocery retailing, through around 80 stores trading under the Spar

¹ Symbol groups are collections of stores which are affiliated contractually with a wholesale symbol group provider. 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.

brand which it owns and operates itself. The Target Stores are active in grocery retailing, specifically convenience grocery retailing, in five local areas in Northern Ireland: Ballymena, Bangor, Newtownabbey (Abbots Cross and Throne Centre) and Tandragee.

4. The Parties are therefore active at the same level of the supply chain (**horizontal overlaps**) and may compete head to head in the retail supply of groceries and specifically convenience retailing.
5. The Parties also have vertically-related activities, as Henderson is active 'upstream' of grocery retailing in the wholesale supply of groceries to independent stores. The Target Stores may compete with the stores being supplied by Henderson in certain local areas (such areas are referred to as 'vertical overlaps' for the purposes of this decision).
6. As discussed in previous decisional practice, shoppers shop locally and therefore retail grocery offerings will reflect the extent of local competition. The CMA therefore assessed the impact of the Merger on the retail supply of groceries in each of the relevant local areas where a Target Store's local customer base may overlap with a Henderson-owned or supplied store's local customer base.
7. In the local areas where there was a horizontal overlap, the CMA considered the potential for horizontal unilateral effects. The CMA assessed whether the loss of competition between the Parties' owned grocery stores may create an incentive to raise prices or reduce quality.
8. The CMA found that the Parties' owned stores overlap in four of the local areas in which the Target Stores are located: Ballymena, Bangor, Newtownabbey (Abbots Cross) and Newtownabbey (Throne Centre).² The CMA found that there were enough convenience and non-convenience offerings to exercise a sufficient competitive constraint on the merged entity. The CMA therefore believes that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in any of these local areas.
9. In the local areas where there was a vertical overlap, the CMA considered the potential vertical effects. The CMA assessed whether Henderson could either:
 - (a) worsen its retail offering at the Target Stores in the expectation that customers would switch to Henderson-supplied stores and thus

² There is no horizontal overlap in respect of the Target Store in Tandragee, since Henderson does not own any stores within the catchment area of that Target Store.

Henderson would be able to offset any resulting loss of retail sales through increased wholesale sales to its supplied stores; or

- (b) worsen its wholesale service in local areas where its supplied stores overlap with the Target Stores, in the expectation that customers from the supplied stores would switch to its Target Stores, and thus Henderson would be able to offset any resulting loss of wholesale sales through increased retail sales at the Target Stores.
- 10. The CMA believes that the Merger will not result in a realistic prospect of an SLC under this theory of harm because:
 - (a) the evidence available to the CMA suggests that there are sufficient competition constraints at the retail level (as outlined above) to minimise Henderson's incentive, since any end-customers affected could simply switch to another retail outlet; and/or
 - (b) the evidence available to the CMA suggests that there are sufficient wholesale supply alternatives such that Henderson-supplied stores, if targeted, could switch to an alternative wholesale option.
- 11. On this basis, the CMA considers that the Parties will not have the incentive to engage in a strategy of worsening wholesale or retail offering and the CMA therefore found that the Merger will not result in a realistic prospect of an SLC as a result of vertical effects in any of these local areas.
- 12. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

- 13. Henderson is part of the Henderson Group, which operates as a grocery wholesaler and retailer in Northern Ireland. Henderson Group operates via a holding company called John Henderson (Holdings) Limited, which is the sole owner of the following four companies (among others): Henderson Wholesale Limited, Henderson, Henderson Group Property and Henderson Foodservice. John Henderson (Holdings) Limited's turnover in 2016 was £699.3m.
- 14. Henderson is active in grocery wholesaling as it provides groceries and symbol group services to independent retailers in Northern Ireland under its SPAR, EUROSPAR and VIVO brands. Henderson is also active in grocery retailing through around 80 stores which it owns and operates itself.

15. Martin McColl Limited is a retailer running over 1,650 stores in the UK, of which the majority are convenience stores. The turnover of the Target Stores in 2016 was £6.7m.

Transaction

16. Henderson purchased the Target Stores over the course of five days from 20-24 November 2017, with each of the five stores being acquired on a separate day. All but one³ of the Target Stores are convenience stores, ie they have a net sales area of less than 280 square metres.

Procedure

17. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁴

Relevant merger situation

Enterprises ceasing to be distinct

18. Henderson and each of the Target Stores are enterprises, and, as a result of the Merger, these enterprises have ceased to be distinct.

Share of supply

19. Henderson submitted that the CMA did not have jurisdiction to review the transaction on the basis that: (i) the Parties do not have a share of supply in any goods or services of 25% or more (with an increment); (ii) if they do, the areas or areas within which the share of supply is higher than 25% do not constitute a substantial part of the UK for the purposes of section 23(3)/(4) of the Act.
20. As summarised in the tables below, the Parties' share of supply of convenience grocery retailing within one mile of each of the Target Stores exceeds 25% (by fascia count and revenue), with an increment in supply being brought about by the Merger within each area.

³ That Target Store is a medium size store (290 square metres) located in Tandragee. Henderson does not own any stores within the competitive radius of this Target Store and it is therefore included in the CMA's vertical assessment of the Merger, but not the horizontal assessment.

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

Target Store	Henderson-owned convenience stores within one mile	Population within postcode⁵	Joint share of supply (convenience store fascia count)⁶	Increment
McCull's Ballymena BT43 6SA	SPAR Doury Road BT43 6JA	Ballymena, BT43 (21,797)	67%	33%
McCull's Bangor BT20 5AF	SPAR Ballyholme Road BT20 5JJ SPAR Belfast Road BT20 3PP	Bangor, BT20 (25,521)	50%	25%
McCull's Abbots Cross BT37 9QT	SPAR The Diamond BT37 9BJ	Newtownabbey (Abbots Cross), BT37 (26,364)	50%	25%
McCull's Throne Centre BT36 7NH	SPAR The Diamond BT37 9BJ ⁷	Newtownabbey (Throne Centre), BT36 (45,090)	100%	50%

⁵ Based on 2011 census data.

⁶ Based on a convenience fascia (brand/operator) count within a one-mile radius of the Target Store. Consistent with decisional practice, this excludes Henderson supplied stores as competing fascia. The presence of Henderson supplied stores operating under a Spar fascia does not increase the Parties' share of supply by fascia.

⁷ The CMA notes that Henderson submitted that the size of this store is 280 sqm. While the CMA notes that this is on the boundary of mid-size and convenience, the CMA has classified this as convenience on a cautious basis.

Target Store	Henderson-owned convenience store within one mile	Population within postcode ⁸	Joint share of supply (revenue) ⁹	Increment
McCull's Ballymena BT43 6SA	SPAR Doury Road BT43 6JA	Ballymena, BT43 (21,797)	57%	23%
McCull's Bangor BT20 5AF	SPAR Ballyholme Road BT20 5JJ SPAR Belfast Road BT20 3PP	Bangor, BT20 (25,521)	63%	20%
McCull's Abbots Cross BT37 9QT	SPAR The Diamond BT37 9BJ	Newtownabbey (Abbots Cross), BT37 (26,364)	45%	16%
McCull's Throne Centre BT36 7NH	SPAR The Diamond BT37 9BJ ¹⁰	Newtownabbey (Throne Centre), BT36 (45,090)	100%	33%

21. The CMA considered whether the parts of the UK affected by the Merger are collectively of such a size, character and importance as to make them worth consideration for the purposes of the Act.¹¹
22. For the reasons explained below, the CMA believes that, consistent with well-established decisional practice, the local areas affected by the Merger represent a 'substantial part of the United Kingdom' for the purposes of

⁸ Based on 2011 census data.

⁹ Based on Parties' estimates. This excludes Henderson supplied stores both from the Parties' combined revenues and, consistent with decisional practice, from the competing convenience fascia contributing to total estimated convenience revenues within one mile of the Target Store.

¹⁰ The CMA notes that Henderson submitted that the size of this store is 280 sqm. While the CMA notes that this is on the boundary of mid-size and convenience, the CMA has classified this as a convenience store on a cautious basis.

¹¹ *R v MMC, ex parte South Yorkshire Transport Ltd* [1993] 1 WLR 23 at 32B.

section 23(3) of the Act, having regard to such considerations as population and economic factors.¹²

23. First, the population of the areas in question is significant. The most recent census data for the postcode areas around the relevant stores available to the CMA indicates that the population around the catchment areas amounts to approximately 100,000, which represents around 8%ⁱ of the population of Northern Ireland.¹³
24. The CMA notes that the postcode area does not precisely correspond to the one-mile catchment area of each Target Store (and may therefore capture a larger population than the catchment area on which the CMA's economic analysis was based). In this regard, Henderson submitted that CACI analysis indicated that the population within one mile of each Target Store in aggregate may be smaller, at around 63,400 (which the CMA notes would amount to around 5%ⁱⁱ of the population of Northern Ireland).
25. As stated by the House of Lords in *R v MMC, ex parte South Yorkshire Transport Ltd*, whether or not an area is a substantial part of the UK is not a question of population alone. There is therefore no particular population threshold above which the CMA will consider a merger to be worth consideration (with population size instead being considered in conjunction with other economic factors).
26. Second, in terms of economic factors, the markets in which the Parties compete are local in nature, which the Competition Commission previously identified as a relevant consideration in applying the test set out by the House of Lords in *R v MMC, ex parte South Yorkshire Transport Ltd*.¹⁴ The CMA notes that the Parties' activities overlap within four local areas (which, consistent with the well-established approach of the UK competition authorities, may be considered together for the purposes for the purposes of the Act).
27. The CMA therefore believes that a merger that could affect four local areas, in which the combined population would amount to between 5-10%ⁱⁱⁱ of the total population of Northern Ireland, can reasonably be considered to affect a substantial part of the UK, particularly within the context of a merger affecting local markets.

¹² [A report on the acquisition of the Co-operative Group \(CWS\) Limited's store at Uxbridge Road, Slough, by Tesco plc](#), 28 November 2007 (Competition Commission) at paragraph 4.6.

¹³ Based on 2011 Census data.

¹⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2) at 4.61 and footnote 82. See also [A report on the acquisition of the Co-operative Group \(CWS\) Limited's store at Uxbridge Road, Slough, by Tesco plc](#), 28 November 2007 (Competition Commission) at paragraph 4.6.

28. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
29. The Merger completed between 20-24 November 2017 and the CMA was first informed about it on 5 December 2017. The four-month deadline for a decision under section 24 of the Act is 26 April 2018, following an extension under section 25(2) of the Act.
30. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

Initial Period

31. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 January 2018 and the statutory 40 working day deadline for a decision is therefore 9 March 2018.

Counterfactual

32. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹⁵
33. In this case, there is no evidence supporting a different counterfactual, and neither has Henderson submitted, nor third parties put forward, arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

34. 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

¹⁵ [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).

effects of the merger, as it is recognised that there can be constraints on merging 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.¹⁶

35. Henderson and the Target Stores overlap horizontally in the retail supply of groceries, through their owned convenience stores, in four local areas in Northern Ireland (Ballymena, Bangor, Newtownabbey (Abbots Cross and Throne Centre). There is also a vertical overlap through Henderson's activities at the wholesale level, supplying convenience stores in Northern Ireland.

Retail supply of groceries

Product scope

36. The UK competition authorities have conducted a number of investigations into transactions involving the retail supply of groceries in recent years,¹⁷ most recently in *Tesco/Booker*.¹⁸ In most of these cases, the frame of reference has been used primarily to determine the framework for assessment (a "filtering" methodology) which is used to identify relevant overlaps and to exclude from further analysis local areas where competition concerns do not arise. In this case, no filtering exercise was required since the small number of local areas made it possible for the CMA to analyse each one directly. However, the principles of the CMA's normal analysis are set out below to the extent relevant.
37. In previous decisions, the CMA has defined grocery stores according to the size of their net sales area as follows:
 - (a) one-stop stores (1,400 square metres (**sqm**) or larger);¹⁹

¹⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹⁷ For example, [Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited Booker/Musgrave](#), ME/6541/15, 02 September 2015; [Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners \(GB\) Limited](#), ME/6529/15, 06 June 2016; [Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited](#), ME/6625/16, 19 October 2016; and [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd](#), ME/6632/16, 20 December 2016.

¹⁸ See [Anticipated acquisition by Tesco plc of Booker Group plc](#), ME/6677/17, 12 July 2017 (Phase 1 decision); and [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), 20 December 2017 (Phase 2 decision).

¹⁹ Although some previous cases (eg [Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners \(GB\) Limited](#), paragraph 23; [Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited](#), paragraph 37(b)(ii); [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd](#), paragraph 23(b)(ii)) have distinguished between convenience stores of different sizes, the CMA did not do so

(b) mid-size stores (280 – 1,400 sqm); or

(c) convenience stores (below 280 sqm).

The CMA has found that the competitive constraint faced by such stores is asymmetric, in that a large store will constrain a smaller store, but not vice versa.²⁰

38. The CMA has therefore assessed the impact of the Merger on the retail supply of groceries from convenience, mid-size and one-stop stores.

Geographic scope

39. In recent precedents,²¹ the CMA found that convenience stores were constrained by other grocery stores within a five-minute drive time or one-mile radius, using the one-mile radius in its most recent investigation.²²
40. Henderson submitted its own analysis on these bases, consistent with the CMA's standard approach.
41. The CMA has assessed the Merger using one mile catchment areas. However, the CMA has not needed to conclude on the appropriate catchment area as the use of a five-minute drive time made no difference to the competition assessment.

Wholesale supply of groceries

42. The Parties did not make any submissions on the wholesale market.
43. In *Tesco/Booker*,²³ the CMA, where appropriate, treated symbol group, cash and carry and delivered grocery wholesale services separately. It undertook that analysis on the basis of the following differentiation, treating:

in either [Anticipated acquisition by Tesco plc of Booker Group plc](#), paragraph 45; or [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), paragraph 6.13(c), and that precedent has been followed here.

²⁰ The CC's Report, [The supply of groceries in the UK](#) dated 30 April 2008, paragraph 4.81; and for example, [Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol filling stations from Co-operative Group Limited](#), ME/6466-14, 28 November 2014, paragraphs 19-20.

²¹ [Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited Booker/Musgrave](#), paragraph 40; [Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners \(GB\) Limited](#), paragraph 33(c); [Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited](#), paragraph 43(b)(iii); [Anticipated acquisition by Martin McColl Ltd of 298 groceries stores from Co-operative Group Ltd](#), paragraph 29(1)(iii); and [Anticipated acquisition by Tesco plc of Booker Group plc](#), paragraph 46(c).

²² [Anticipated acquisition by Tesco plc of Booker Group plc](#), paragraph 46(c) and 47. The CMA noted in this case that the area over which a convenience stores competes is very small and generally not greater than one mile.

²³ [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), paragraph 11.

- (a) wholesalers offering delivered services to symbol group and independent retailers as competing within an area in which they derive 80% of their customers, but also taking account of a larger area in which they derive 100% of their customers; and
 - (b) wholesalers offering cash and carry services as competing within an area in which they derive 80% of their customers, but also taking account of a larger area in which they derive 100% of their customers.
44. The evidence before the CMA did not suggest any reason to alter its previously adopted position. The CMA applied the same analysis in this case where relevant.

Conclusion on frame of reference

45. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the retail supply of groceries from convenience, mid-size and one-stop stores on a local basis, within one mile or five minutes' drive of the acquired store; and
 - (b) the wholesale supply of symbol group services based on the 80% catchment area of wholesale providers.

Competitive assessment

Framework for assessing retail competition

Effective competitors

46. In previous decisions, the CMA considered that size, location and fascia are the main observable factors that affect competition in grocery retailing. The CMA has therefore developed an effective competitor set for the purpose of assessing convenience grocery overlaps. This takes into account that not all supermarket and convenience store fascia compete against each other equally strongly.²⁴ In previous cases, this approach has been used as a preliminary 'filtering' step to exclude areas that do not raise concerns. The conditions of competition in the areas failing the filter were then considered in

²⁴ [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), paragraph 7.15.

greater detail. At that stage, there was further scope to consider the constraint from fascia that had not been classified as effective competitors.

47. In *Tesco/Booker*²⁵ the effective competitor set for the purpose of assessing convenience grocery overlap included retailers such as the main national multiple convenience brands (Tesco, Sainsbury's, Coop etc) as well as symbol convenience brands such as Costcutter, Nisa, Centra etc. Discounters (such as Lidl and Aldi) and Marks and Spencer were acknowledged as potentially providing some level of competitive constraint but were given a more limited weighting as their offering differed in some material respects with a traditional convenience offering (particularly in terms of tobacco).²⁶ Independent convenience offerings were given a limited weighting given the scope for variation in their offering.
48. Given the small number of areas in which the Parties overlap, the CMA has not found it necessary to conduct a preliminary filtering exercise by reference to any particular effective competitor set or specific pre-determined weightings. Consistent with decisional practice, as the Parties overlap only in convenience retailing, the CMA has considered that other convenience or larger stores have the potential to provide a competitive constraint to varying degrees. While it has taken into account previous decisional practice on the possible extent of the constraint from specific fascia, the CMA has also assessed the extent of competition that the Parties will continue to face on an individual area-by-area basis.

Treatment of Henderson-supplied stores

49. In line with precedent, the CMA has not considered Henderson-supplied stores as competitors to the Parties. This is because submissions from Henderson indicated that they have a similar brand and offering to its owned stores, sourcing a substantial volume of their stock from Henderson.²⁷ This also suggests that from the perspective of a customer such stores may not be sufficiently differentiated.
50. Henderson did not make any submissions specifically on these points, but provided data in line with the CMA's standard analysis.

²⁵ [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), paragraphs 7.50-51.

²⁶ Specifically, the latter two groups were excluded principally on the grounds that these they do not sell tobacco, while Aldi and Lidl additionally do not focus on convenience shopping. See [A report on the anticipated acquisition by Tesco PLC of Booker Group plc](#), paragraphs 7.32 and 7.36.

²⁷ Henderson told the CMA that [redacted].

Horizontal unilateral effects

51. 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 to degrade quality on its own and without needing to coordinate with its rivals.²⁸ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in the retail supply of groceries in each of the four local areas in which the Parties overlap horizontally: Ballymena, Bangor, Newtownabbey (Abbots Cross and Throne Centre).
52. The UK competition authorities' starting point has been to recognise that consumers shop in local retail outlets, within a given travel time from their home or work. Against this background the starting assumption of the CMA (and previously the OFT) has been that there will be material local competition on one or more aspects of price, quality, range and service. The CMA found no evidence in this investigation that it should consider the effects of the Merger on anything other than a local level.

Ballymena

53. Within a one-mile radius²⁹ of the Target Store, there is one Henderson-owned store. Post-Merger, four alternative fascia remain (Tesco, Coop, Nisa and Marks & Spencer). Three of these (Coop, Nisa and Marks and Spencer) are mid-size stores, while one (Tesco) is a convenience store. While the CMA notes that Marks & Spencer may not fully replicate a convenience store offering (eg in terms of tobacco), together the three larger retail offerings and the comparable convenience offering pose a significant constraint on the Parties' stores.
54. Third parties did not raise any specific issues in respect of Ballymena.
55. Therefore, the CMA believes that the merged entity will face sufficient constraints from other competitors post-Merger.

²⁸ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²⁹ The analysis is no different on a five-minute drive-time.

Bangor

56. Within a one-mile radius³⁰ of the Target Store there are three Henderson-owned stores (all but one of which are convenience stores). Post-Merger, four alternative fascia will remain (Mace, Coop, Lidl and Asda). One of these (Lidl) is mid-size and one (Asda) is a one-stop store. While the CMA notes that Lidl may not fully replicate a convenience store offering (eg in terms of tobacco), the CMA believes that together these two larger retail offerings and the alternative two convenience offerings pose a significant constraint on the Parties' stores.
57. Third parties did not raise any specific issues in respect of Bangor.
58. Therefore, the CMA believes that the merged entity will face sufficient constraints from other competitors post-Merger.

Newtownabbey (Abbots Cross)

59. There is one Henderson-owned convenience store within a one-mile radius³¹ of the Target Store, and one mid-sized, as well as a Henderson-supplied convenience store. Post-Merger, four effective alternative competitor fascia will remain. These will comprise two convenience stores (a Centra and a Tesco), two mid-size stores (a Lidl and a Marks and Spencer) and one one-stop shop (a second Tesco, which does not change the fascia count). While the CMA notes that Lidl and Marks and Spencer may not fully replicate a convenience store offering (eg in terms of tobacco), the CMA believes that together these larger retail offerings and the alternative two convenience offerings pose a significant constraint on the Parties' stores.
60. Third parties did not raise any specific issues in respect of Newtownabbey (Abbots Cross).
61. Therefore, the CMA believes that the merged entity will face sufficient constraints from other competitors post-Merger.

Newtownabbey (Throne Centre)

62. There is one Henderson-owned convenience store within a one-mile radius³² of the Target Store. There are additionally three alternative fascia: Tesco, Lidl and Marks and Spencer. All three of these alternatives are larger stores (Lidl

³⁰ Within a five-minute drive there is no difference to the fascia count, although another Mace store and a Centra (both Musgrave symbol stores) fall into the catchment area.

³¹ The analysis is no different on a five-minute drive-time.

³² The analysis is no different on a five-minute drive-time.

and Marks and Spencer are mid-size while the Tesco store is a one-stop store). While the CMA notes that Lidl and Marks and Spencer may not fully replicate a convenience store offering (eg in terms of tobacco), the CMA believes that together these larger retail offerings pose a significant constraint on the Parties' stores. Third parties did not raise any specific issues in respect of Newtownabbey (Throne Centre).

63. Therefore, the CMA believes that the merged entity will face sufficient constraints from other competitors post-Merger.

Conclusion on horizontal unilateral effects

64. For the reasons set out above, the CMA believes that in all areas in which the Parties overlap, the Parties will continue to face sufficient competition from other grocery retailers across a variety of sizes and formats. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to retail supply of groceries from convenience stores.

Vertical effects

65. 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.
66. As noted above, the Parties have vertically related activities since Henderson is active 'upstream' of grocery retailing in the wholesale supply of groceries to independent stores. This means that there is a vertical overlap between Henderson's supplied stores and the Target Stores in five local areas (Ballymena, Bangor, Newtownabbey (Abbots Cross and Throne Centre) and Tandragee). In four of these local areas there is already a horizontal overlap between Henderson-supplied and Henderson-owned stores.
67. 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 an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.³³

³³ In relation to this theory of harm, 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

68. In the present case, the CMA has considered whether, following the Merger, the merged entity might:
- (a) worsen its retail offering at the Target Stores in the expectation that customers would switch to Henderson-supplied stores, so that Henderson would be able to offset any resulting loss of retail sales through increased wholesale sales to its supplied stores; or
 - (b) worsen its wholesale service in local areas where its supplied stores overlap with the Target Stores, in the expectation that customers from the supplied stores would switch to its Target Stores, so that it would be able to offset any resulting loss of wholesale sales through increased retail sales at the Target Stores.
69. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) its incentive to do so, and (c) the overall effect of the strategy on competition.³⁴
70. Although a range of factors and considerations go into assessing ability and incentive, broadly there is no realistic prospect that such a strategy will be successful if:
- (a) there is sufficient competition at the retail level where the Target Stores and the Henderson-supplied stores overlap; and/or
 - (b) there is sufficient competition at the wholesale level where Henderson competes for the opportunity to supply independent grocery retailers; and/or
 - (c) the Merger makes little difference to Henderson's incentives because in the areas where the Target Store are located Henderson's supplied stores already overlapped with Henderson-owned stores.
71. The table below sets out an overview of retail and wholesale competition in relation to the area where each of the Target Stores compete with Henderson-supplied stores.

³⁴ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Local area	Target Store	Henderson-supplied overlapped with Henderson-owned store pre-Merger?	No. of alternative retail fascia	No. of alternative wholesale fascia ³⁵
Ballymena	McColl's Ballymena, BT43 6SA	Yes	4	3
Bangor	McColl's Bangor, BT20 5AF	Yes	4	4
Newtownabbey, Abbots Cross	McColl's Abbots Cross, BT37 9QT	Yes	4	4
Newtownabbey, Throne Centre	McColl's Throne Centre, BT36 7NH	Yes	3	4
Tandragee	McColl's Tandragee, BT62 2AF	No	1 ³⁶	3

72. The CMA believes that the Merger will not result in a realistic prospect of an SLC under these theories of harm because:

- (a) the evidence available to the CMA suggests that there are sufficient competition constraints at the retail level (as outlined above) to minimise Henderson's incentive, since any end-customers affected could simply switch to another retail outlet; and/or
- (b) the evidence available to the CMA suggests that there are sufficient wholesale supply alternatives such that Henderson-supplied stores, if targeted, could switch to an alternative wholesale option; and/or
- (c) the Merger brings about little change to the existing market structure as there are already one or more Henderson-owned stores in each of the four areas where the Target Stores overlap with Henderson-supplied stores.

Conclusion on vertical effects

73. For the reasons set out above, the CMA believes that in all areas there is (i) sufficient retail competition; and/or (ii) sufficient wholesale competition; and/or (iii) no material change in competitive conditions as a result of the Merger,

³⁵ The CMA has found in previous cases that stores using symbol services tend to switch only to other symbol group providers, reporting that they would struggle to run their businesses without the support of a symbol group. These fascia counts are therefore based on available information on drive times from Henderson, Musgrave, Today's (Savage & Whitten); Nisa and Booker/Makro delivery depots.

³⁶ SuperValu (a Musgrave symbol).

such that Henderson would not have sufficient incentive to engage in any foreclosure strategy.³⁷

74. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to local areas in which Henderson's retailer customers overlap with Henderson-owned and operated grocery stores.

Barriers to entry and expansion

75. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³⁸
76. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Decision

77. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
78. The Merger will therefore **not be referred** under section 22(1) of the Act.

Colin Raftery
Director
Competition and Markets Authority
16 February 2018

ⁱ Paragraph 23: This sentence should read, "5.5% of the population of Northern Ireland".

ⁱⁱ Paragraph 24: This sentence should read, "3.5% of the population of Northern Ireland".

ⁱⁱⁱ Paragraph 27: This sentence should read: "between 3-5% of the total population of Northern Ireland".

³⁷ While possible, retail-to-wholesale effects are less likely since the variable margin is higher on retail than wholesale. The CMA therefore concluded that there was not a realistic prospect of an SLC through retail-to-wholesale effects, for similar reasons to those set out in paragraph 73 on wholesale-to-retail.

³⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.