

J Sainsbury PLC / Asda Group Limited

Summary of representations received by the CMA in the preliminary invitation to comment

Background

1. On 18 May 2018, the Competition and Markets Authority (**CMA**) launched a preliminary ‘invitation to comment’ (**ITC**), inviting all interested parties to submit any initial views on the impact that the proposed merger between J Sainsbury Plc (**Sainsbury’s**) and Asda Group Limited (**Asda** and, together with Sainsbury’s, the **Parties**) (the **Proposed Merger**) could have on competition in the UK.
2. The CMA received submissions from a wide variety of parties, including other supermarket groups, wholesalers, suppliers, trade associations, not-for-profit organisations with an interest in the groceries sector, local government representatives and members of the public. The CMA has considered all views and evidence submitted in response to the preliminary ITC and will take these into account, to the extent relevant, as its investigation develops.
3. The key themes arising out of the submissions received in response to the preliminary ITC are summarised below.¹ This summary reflects the views submitted to the CMA by third parties and therefore should not be considered as a comprehensive description of the issues that the CMA is likely to consider during the course of its investigation into the Proposed Merger (or to reflect the CMA’s current views on any of the matters described).

Key themes

The competitive landscape in relation to the supply of groceries

4. Many submissions put forward their views on the current landscape of the groceries market in the UK. Some described what they saw as recent trends

¹ In the interests of confidentiality, no views have been attributed to any individual respondent to the ITC. In addition, the CMA will not be publishing individual submissions received through the preliminary ITC.

in consumer practices, such as a move away from a 'big shop' to shopping 'little and often', and suggested how these might affect the way in which grocery retailers compete.

5. Many submissions discussed the dynamics of competition between different suppliers of groceries, with some distinguishing between established national players (and within this, a 'big four' of Morrisons, Tesco, Sainsbury's and Asda), discounters, convenience stores and online operators. Some respondents submitted that these different suppliers compete in different ways, depending on their customer focus, geographic reach and product and service offering. Other respondents said that customers may use different types of store for different shopping 'missions' or purposes, and therefore that some stores could be considered as complementary rather than alternative options for customers.
6. Some respondents suggested that Sainsbury's and Asda are particularly close competitors, while others considered that they are more distant competitors, in particular because they appeal to different demographic groups. One respondent perceived Asda as a pricing 'maverick' (ie a company that plays a particularly disruptive competitive role in the market).
7. A number of submissions raised concerns about the impact of the Proposed Merger at the national level, on the belief that it would lead to increased concentration in the market and fewer national players, with two companies – Tesco and the combined Sainsbury's/Asda – holding high market shares. Some respondents suggested that this could give rise to higher prices, reduced choice, or a loss of innovation within the supply of groceries.
8. Other respondents raised concerns about the impact of the Proposed Merger on competition at the local level (and, in some cases, within specific local areas in which the Parties' stores overlap). Several submissions raised concerns in relation to the supply of online groceries, where some respondents suggested that there may be limited alternative options for customers, particularly in certain areas of the country.
9. Some submissions raised concerns that the Proposed Merger would give rise to a greater risk of tacit coordination (ie an implicit understanding between competing firms when they recognise that they are mutually interdependent and can reach a more profitable outcome if they coordinate to limit their rivalry) within the supply of groceries. Some of these submissions suggested that certain market conditions that could be conducive to coordination – in particular the ability of suppliers to monitor their rivals' pricing – had increased in recent years, for example through online price comparisons and the increased use of price matching software.

Supply of fuel and non-food items

10. Some submissions noted that while the focus of the Parties' businesses is the supply of groceries, both Parties also supply fuel through petrol station forecourts and non-food items (both in-store and online). Some respondents indicated that potential competition issues in relation to these activities should also be investigated by the CMA.

Effect on suppliers

11. Some submissions raised concerns about the impact of the Proposed Merger on suppliers and the potential knock-on effects that this could have for consumers. Some respondents raised concerns that the Proposed Merger would provide the combined company with increased buyer power, which they said would allow it to negotiate lower prices with suppliers and/or to pass on excessive risks and unexpected or disproportionate costs to suppliers.
12. Respondents put forward what they saw could be the consequences of these actions, including:
 - (a) Reduced margins for suppliers, leading to suppliers being squeezed, leaving them less able to innovate, having to reduce the quality of their products, lowering the standards applied in their supply chain or exiting the market completely (whether due to financial failure or finding more attractive conditions in other national markets);
 - (b) Suppliers having to charge higher prices to smaller retailers to recoup lost profits due to lower prices charged to the Parties, or prioritising supply to the combined company over smaller retailers, leaving those retailers less able to compete; and
 - (c) Reduced choice for customers in terms of the range of products available to them in-store, or reduced quality of those products.
13. Some submissions considered that some or all of these consequences might particularly impact on certain supplier groups, such as smaller suppliers. Other respondents suggested that branded suppliers could be particularly affected, on the basis that the Parties would have an incentive to favour own-label products.

Non-competition related concerns

14. A number of submissions raised concerns that are not related to the impact that the Proposed Merger could have on competition in the UK. In particular, some submissions raised concerns about the effect that the Proposed Merger

could have on employment or the effect that any store closures could have on the communities they serve (including making it more difficult for vulnerable members of society to do their shopping). Others raised concerns regarding the effect of the Proposed Merger on practices within the supply chain, including in relation to food provenance, labour conditions and environmental considerations.

15. When investigating a merger, the CMA's mandate, by law, relates to assessing the potential impact of that merger on competition. This assessment is critical in ensuring that consumers are able to benefit from the lower prices, better service, or greater choice that effective competition is able to bring about. Assessing the other potential effects of a merger, such as the impact that a merger could have on employment, falls outside the CMA's statutory powers.

Further opportunities for engagement

16. As noted above, all views and evidence submitted in response to the preliminary ITC will be taken into account by the CMA, to the extent relevant, as its investigation develops.
17. The preliminary ITC marked only the first part of the CMA's information-gathering process. A further 'invitation to comment' will be opened once the CMA's formal investigation is launched. The CMA is also likely to proactively contact companies and organisations that are active in the markets affected by the Proposed Merger, or have valuable insights or evidence that could assist the CMA's investigation, such as suppliers, competitors, industry bodies and consumer organisations. Further opportunities to engage with the CMA's investigation are likely to be provided by a consumer survey (to engage directly with the customers) and by a series of hearings and roundtable meetings with interested third parties.