

ANTICIPATED MERGER BETWEEN J SAINSBURY PLC AND ASDA GROUP LTD

Issues statement

16 October 2018

Executive summary

1. The Competition and Markets Authority (CMA) are conducting an in-depth investigation into the proposed merger between J Sainsbury Plc (Sainsbury's) and Asda Group Ltd (Asda), part of Walmart Inc (the Merger). The Merger involves the combination of the second and third largest grocery retailers in the UK, with both Sainsbury's and Asda (the Parties) having significant activities that extend beyond groceries to also include fuel and various products such as toys and clothing (referred to as general merchandise).
2. As part of our investigation, we will consider how the Merger may affect competition in each of the different product markets in which the Parties operate, both at a national level and in each local area where the Parties are present. We will also consider whether the fact that the Parties have activities across all of these markets may affect our assessment. For example, we will consider how the Merger may affect the choices available to customers who buy a combination of goods from the Parties in a single shopping trip, such as fuel and groceries.
3. At present, we expect our assessment to focus on the following 'theories of harm':
 - (a) Whether the removal of one Party as a competitor to the other Party could allow the Parties nationally, or in some local areas, to increase prices, lower the quality of products or services, reduce the range of products or services available and/or reduce innovation following the Merger, in relation to:
 - (i) the supply of groceries in physical stores;
 - (ii) the supply of groceries online;

- (iii) the supply of fuel; or
 - (iv) the supply of different categories of general merchandise, with a focus on toys, certain categories of electricals and childrenswear (which includes school uniforms).
 - (b) Whether the Merger may lead to so-called 'coordinated effects' in the supply of groceries in-store or online. That is, whether the Merger may create conditions where it is more likely that grocery retailers will coordinate or align their behaviour – for example through coordinated price changes – or whether the Merger may make any such coordination more stable or effective where it already exists, without the need for an explicit agreement between those retailers.
 - (c) Whether the Merger may increase the Parties' buyer power towards grocery suppliers, to the extent that the Merger may distort competition in the groceries market and result in adverse effects on grocery customers.
4. We set out below the key areas we will explore to assess each of these theories of harm. We particularly welcome views and evidence on each of these areas.
 5. For the supply of groceries in-store, we will explore the way in which store size, distance between stores, and the presence of different brands (including the retailers Aldi and Lidl) impact on the competition between grocery stores. We will also look at the way physical stores compete with online grocery shopping. We are interested in how closely the Parties compete with each other and with their competitors and how competition impacts those aspects of their offering that are applied nationally (such as price, product quality or brand position) and those that are varied locally (such as range of products available in different stores or quality of service in-store).
 6. For the supply of groceries online, we will explore how closely the Parties compete with each other and with their competitors for customers looking to purchase groceries online for delivery to their address. We will consider the competition the Parties face both from other grocery retailers who offer online delivered groceries, and from grocery retailers operating from physical stores. We will also assess whether retailers who do not currently offer a delivered service in certain areas could expand into those areas in order to compete with the Parties.
 7. To assess the potential for coordinated effects in the markets for the supply of groceries, both in-store and online, we will investigate whether the features of the groceries market allow grocery retailers to align some aspects of their

behaviour, and to sustain that alignment in a profitable way, and how the Merger may impact this. We will explore the degree of transparency in the groceries market. We will also explore the degree of concentration in the market (that is, whether a small number of retailers account for a significant proportion of the market) and what impact this has on competitive conditions. Both of these factors may make it easier for grocery retailers to align their behaviour, without the need to reach any express agreement. We will investigate the extent to which grocery retailers take into account potential responses of their competitors when making strategic decisions about prices and other aspects of their offering, such as quality standards or service levels. We will also assess the extent to which grocery retailers could benefit from aligning their behaviour including to what extent competition from other grocery retailers (including from new entrants or following expansion of existing retailers) may undermine this.

8. For the supply of general merchandise, we will explore the extent to which the Parties are close competitors in the retail supply of general merchandise as a whole, or in any category of general merchandise, focusing particularly on toys, personal care electricals, small kitchen appliances and childrenswear. We are interested in how closely the Parties compete with each other on any of these general merchandise items. We will explore the extent to which general merchandise retailers who operate online compete with retailers operating in physical stores. We will also seek to understand the degree to which the Parties compete for general merchandise customers with general merchandise retailers who also sell groceries, and those that do not, bearing in mind that some customers may purchase general merchandise from the Parties alongside their grocery shopping.
9. For the supply of fuel, we will explore how closely the Parties compete with each other, and with other fuel suppliers, including those that also supply groceries and those that do not. We will investigate how the Parties ability to offer both fuel and groceries in a single shopping trip may affect our assessment of the competitive effects of the Merger in either of these markets.
10. Finally, in relation to the potential for the Merger to give rise to anti-competitive buyer power, we will explore whether any increased buyer power relative to their suppliers which the Parties gain as a result of the Merger may affect either the ability of suppliers to innovate, or the prices charged by suppliers to other grocery retailers.

The reference

11. On 19 September 2018, the Competition and Markets Authority (CMA) began an in-depth investigation by a group of CMA panel members of the anticipated merger between J Sainsbury Plc (Sainsbury's) and Asda Group Ltd (Asda), part of Walmart Inc (the Merger).¹ Throughout this document we refer to Sainsbury's and Asda collectively as the Parties.
12. The CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
13. In this issues statement, we set out the main issues we are likely to consider in reaching our decisions, having had regard to the Parties' submissions and the evidence gathered to date including evidence set out in the CMA's decision to refer the Merger for further investigation.² This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
14. We are publishing this issues statement to help any parties submitting evidence to focus on the issues we expect will be relevant to our inquiry and to invite interested parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The transaction

15. On 30 April 2018, Sainsbury's and Walmart Inc. (Walmart) announced the proposed combination of the Parties. Pursuant to the Merger, Sainsbury's will acquire the entire issued share capital of Asda from Walmart and, in turn, Sainsbury's will issue Walmart with Sainsbury's voting ordinary shares and non-voting shares, such that Walmart group will hold 42% of the undiluted issued share capital of the merged company, but such that it and its concert

¹ The CMA referred the Merger for a phase 2 investigation in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the Act).

² [Phase 1 Decision](#).

parties hold no more than 29.9% of the total number of voting shares in the merged company (with the remainder of the 42% stake comprising of non-voting shares). Upon completion of the Merger, two Walmart representatives will join the Board of the merged company as non-executive directors.

The Parties

16. Sainsbury's is the UK's second largest grocery retailer. It operates a network of grocery stores, petrol filling stations (PFS) and an online grocery business. In addition to selling various categories of general merchandise (such as toys, electricals and clothing) in its grocery stores and online, Sainsbury's operates Argos (a multi-format general merchandise retailer) and Habitat (a retailer of furniture and homewares). Sainsbury's also offers retail banking, consumer credit, insurance and other customer financial services.
17. Asda is the UK's third largest grocery retailer. It also operates a network of grocery stores, PFS and an online grocery business, as well as selling various categories of general merchandise in its grocery stores and online. Asda offers consumer credit, insurance and other customer financial services.

Market definition

18. The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. We will define the market within which the Merger may give rise to an SLC (the relevant market). The relevant market contains the most significant alternatives available to the customers of the Parties and includes the most relevant constraints on the behaviour of the Parties.³ In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. Market definition is a useful analytical tool to focus much of our analysis but it is important to note that it will not determine the outcome of our analysis of the competitive effects of the merger. Defining the market is likely to involve an element of judgement.⁴
19. The Parties' activities overlap in the following areas:
 - (a) retail supply of groceries in physical stores;

³ CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), paragraph 5.2.1.

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

- (b) retail supply of groceries purchased online and delivered to the customer (online delivered groceries);⁵
 - (c) retail supply of various categories of non-consumable, non-food items, referred to in this issues statement as 'general merchandise';⁶ and
 - (d) retail supply of fuel.
20. In the following sections, we set out our expected approach to defining the market for each of these overlapping activities, in turn. While they are each addressed separately for the purposes of market definition, we are nevertheless aware that customers may purchase a number of these products in combination, and may take this into account when making their purchasing decisions: for example, a customer may choose to buy groceries at a supermarket where they can also fill up their car with petrol. The Parties, too, may consider their activities across a number of product areas when setting their commercial strategy in any one product area: for example, they may set low prices for one category of products, so as to draw in customers who may then purchase another category of products. We will take these interdependencies into account in our investigation, and will consider how the Parties' activities across all markets in which they operate, may impact upon how the Merger may affect competition in any one market.
21. In light of the Parties' request for a fast-track reference of the case to an in-depth, phase 2 investigation, the CMA's phase 1 decision only considered the market definition for the retail supply of groceries in physical stores. Our expected approach to determining the appropriate market definition for this and the other areas of overlap outlined above for the purposes of the phase 2 decision, is set out below.

Retail supply of groceries in physical stores

22. The Parties overlap in the retail supply of groceries in physical stores. Sainsbury's and Asda are the second and third largest grocery suppliers in the UK. Sainsbury's operates approximately 1,400 grocery stores of varying sizes, approximately 800 of which are convenience stores. Asda operates approximately 600 grocery stores, the vast majority of which are mid-sized

⁵ The Parties also both offer a 'click and collect' service, whereby groceries are purchased online and delivered to a store for collection by the customer. Given the fact that location of the physical store is important for this service, we expect to assess this overlap within our assessment of the retail supply of groceries in physical stores.

⁶ For the avoidance of doubt, this includes banking services and financial products: see paragraph 43 for a list of the general merchandise categories in which the Parties overlap.

and larger supermarkets (it operates a small number of convenience stores located on petrol forecourts).

23. We expect to find that customers typically travel only short distances to buy groceries, and therefore that the geographic markets for the supply of groceries to those customers are local, defined with reference to a certain distance around individual stores. Nevertheless, consistent with previous retail mergers, our starting point is that there are both national and local aspects of competition. There are likely to be some aspects of competition that are varied locally (or that could be varied locally) and other aspects that are set nationally and applied uniformly across the Parties' stores. We will consider this further as part of our competitive assessment (as further discussed at paragraphs 62 to 76 below).
24. Consistent with previous decisions of the CMA, the phase 1 investigation in this case 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 larger store constrains a smaller one but not vice versa), such that:⁷
- (a) one-stop stores (1,400 sq metres and larger) are constrained only by other one-stop stores;
 - (b) mid-size stores (280–1,400 sq metres) are constrained by other mid-size stores and by one-stop stores; and
 - (c) large convenience stores (100–280 sq metres) are constrained by other large convenience stores, mid-size stores and one-stop stores.
25. The phase 1 decision assessed the effects of the Merger at a national level and at a local level.⁸ For the local assessment, the phase 1 decision adopted the following approach to the geographic market:⁹
- (a) a 10-15 minute drive-time in urban/rural areas for one-stop stores; and
 - (b) a 5-10 minute drive-time in urban/rural areas for mid-size stores, which are also constrained by one-stop stores within a 10-15 minute drive-time (in urban/rural areas).¹⁰
26. As set out in the phase 1 decision,¹¹ the Parties submitted that the CMA should reconsider the strict delineation of stores by store size. In particular,

⁷ Phase 1 Decision, paragraphs 44-50.

⁸ Phase 1 Decision, paragraphs 64-86.

⁹ Phase 1 Decision, paragraphs 72-86.

¹⁰ The phase 1 decision did not consider the geographic scope of the market for convenience stores.

¹¹ Phase 1 Decision, paragraph 47.

the Parties submitted that there is no 'step change' in constraint at 1,400 sq metres, and that stores below 1,400 sq metres can and do provide a significant constraint on stores above 1,400 sq metres. The Parties also submitted that the available evidence supports wider geographic catchment areas (ie longer drive times) than those used by the UK competition authorities in previous cases.

27. At a local level we will examine to what extent stores of different size categories constrain each other within their local catchment area. Larger stores may have a wider range of products and a greater offer of amenities such as cafés, concessions, general merchandise, and specialist food counters, and mid-sized or smaller stores may therefore not provide a good alternative for customers who shop at larger stores to access this range of products/services. We will examine the extent to which constraints between stores are asymmetric (that is, whether the constraint from larger stores on smaller stores is stronger than the constraint from smaller stores on larger stores), and the magnitude of any such asymmetry.
28. At this stage, we consider that the store size categorisation used in previous cases of one-stop stores, mid-sized stores and convenience stores is likely to be a useful starting point for considering these issues. However, we will assess whether this categorisation remains appropriate as we review the evidence presented to us in the investigation.
29. We will examine the distance over which stores constrain each other, ie their geographic catchment area. We recognise that this may depend on a variety of factors, including the size and brands of the stores involved.
30. We will examine the strength of constraint exerted by stores of different brands. In particular, we will examine to what extent the Parties' brands (encompassing their overall offering, including price level, quality perception, service levels, and other dimensions along which they differentiate themselves) are considered close alternatives to each other, and the extent to which the offerings of competing retailers are similarly treated as close alternatives. We will examine the extent to which different brands influence how the Parties set their prices or other aspects of their service.
31. We will also examine to what extent a retailer's physical grocery store offering is constrained by the online delivered groceries channel.
32. We welcome views from interested parties on all of the above points, namely the appropriateness of the currently used store size categorisation, the

appropriate catchment area, the strength of constraint exerted by stores of different brands and the constraint from online delivered groceries.

33. We expect to examine these issues through a range of evidence, including a survey of the Parties' grocery store customers which is already underway, economic data submitted by the Parties on the effect of store closures/opening on nearby stores,¹² the Parties' internal documents, submissions from other grocery retailers and any other evidence or submissions received in the course of the phase 2 investigation.

Online delivered groceries

34. The Parties overlap in the supply of online delivered groceries. Sainsbury's and Asda are the second and third largest suppliers of online delivered groceries in the UK (after Tesco). Other grocery suppliers who offer a delivered groceries service tend to have a more limited geographic coverage or a smaller range of products offered for delivery.
35. For the purposes of defining the appropriate market for assessing online groceries, we will consider the extent to which other channels of grocery retailing, namely physical grocery stores, constrain the Parties' online delivered grocery offering.
36. We will also consider whether customers placing online orders for groceries to be delivered would consider buying groceries in a physical store to be a good substitute, and welcome submissions from any interested party on this point. Our initial view is that there are some reasons why a customer may have a specific preference for choosing to purchase groceries online for delivery and, therefore, why shopping in a physical store may not be a good substitute. For example, some customers may be purchasing bulky items, need grocery shopping to fit around their routine, simply value the convenience of having goods delivered, or place particular value on the vouchers or discounts that are available only to online customers.
37. We will explore whether customers who currently choose online deliveries for particular shopping needs would switch to a physical grocery store for those same needs if online grocery retailers started offering a worse price, reduced range or quality of products, or a worse ordering or delivery service. To examine this, we expect to use evidence from a survey of the Parties' online customers which is already underway, as well as evidence from the Parties'

¹²We will also assess evidence that the effects suggested through this analysis are likely to be general as opposed to idiosyncratic.

internal documents, evidence submitted by other grocery retailers, and data on switching by customers.

38. Some retailers may only sell a single category, or very few categories, of delivered groceries online. Our starting point is that these retailers are likely to place only a very limited constraint on the Parties' online delivered grocery businesses, given that many customers purchase a basket of different groceries at once (and may want to avoid multiple delivery charges or the extra effort of engaging with multiple websites).
39. Regarding the geographic market for online delivered groceries, customers choose between the suppliers that deliver to their desired delivery address. Therefore, our initial view is that a useful starting point for identifying the most significant competitive alternatives available to the customers of the Parties is to consider those online grocery retailers that currently deliver to customers in a given geographic area.
40. Delivery coverage varies across different online grocery suppliers. Tesco, Asda and Sainsbury's each deliver to over 90% of postcodes in the UK. Waitrose, Morrisons, Ocado and Iceland¹³ cover far fewer postcodes, and other suppliers at present do not supply fresh groceries outside of a narrow geographic area (Amazon).
41. Delivered grocery retailers may also be constrained by retailers that do not currently deliver in a particular geographic areas, but who would have the incentive and ability to start serving that geographic area quickly if price levels were to rise (or the quality, range or service levels offered by competitors were to fall) by a small but significant amount.¹⁴
42. We therefore expect to assess the geographic extent over which competition in online delivered groceries takes place by collecting evidence from competitors both on where they currently deliver, and their plans and strategies for expansion in new areas.

General merchandise

43. General merchandise refers to the Parties' offering of non-consumable, non-food items. The Parties overlap in the following general merchandise categories: (a) toys, (b) electricals, (c) homewares, (d) nursery and baby, (e) entertainment, (f) clothing, (g) stationery, (h) DIY and garden, (i) furniture, and (j) various financial services, including credit cards, personal loans, and non-

¹³ Iceland also has a more limited fresh food range.

¹⁴ CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), paragraph 5.2.11.

life insurance. As a starting point for our investigation, we expect to focus on those general merchandise categories (or sub-segments of those categories) in which the available information indicates the Parties have a relatively high share of supply and/or the Merger would lead to a material increment in the share of supply at the national level. These are toys, electricals (in particular, personal care electricals and small kitchen appliances), and clothing (in particular, childrenswear). Given the currently available evidence indicates that there will remain a sufficient degree of competition in relation to the other categories of general merchandise, we do not expect to explore any other categories of general merchandise in depth.

44. The Parties stated that there is no need to define a precise product market for general merchandise products, because there is a high degree of supply side substitutability, at the retail level, between different categories of general merchandise, as retailers can quickly reallocate shelf space between general merchandise products and stock new types of general merchandise goods.
45. As a starting point, we intend to take a closer look at market definition for the categories which are currently of interest, namely toys, electricals and clothing. For those categories where the available information indicates that the Parties combined market share in the category overall is not particularly high, but their combined market share is relatively high in a narrower sub-category, we also intend to consider the competitive constraints within that narrower sub-category, ie personal care electricals and small kitchen appliances as sub-categories within electricals, and childrenswear as a sub-category within clothing.
46. In relation to the geographic market, consistent with previous retail mergers, our starting point is that there are both national and local aspects of competition. The size of relevant local geographic markets may vary depending on the category of general merchandise.
47. We would welcome views and evidence from interested parties on:
 - (a) The extent to which (i) online retailers of general merchandise and (ii) general merchandise retailers which do not sell groceries provide a competitive constraint to the Parties in the supply of all, or certain categories or subcategories, of general merchandise.
 - (b) The extent to which retailers of general merchandise can readily switch between selling different categories or sub-categories of general merchandise (for instance, whether a clothing retailer offering menswear

or womenswear could readily secure the necessary supply and start offering all types of childrenswear).

- (c) The relevant geographic market for general merchandise or categories of general merchandise, such as information on store catchment areas or on shoppers' willingness to travel to purchase general merchandise or categories of general merchandise.

Fuel

- 48. The Parties overlap in the retail supply of fuel in the UK. Following the Merger, the merged company would be the largest retailer of fuel in the UK by volume of fuel sold.
- 49. In terms of considering the appropriate market definition for our assessment, the Parties overlap in the supply of both petrol and diesel (which previous Office of Fair Trading (OFT) and CMA decisions have considered together as a single product market). The Parties also overlap in the retail supply of auto-LPG (which the OFT and CMA in previous decisions have defined as a separate product market from the supply of other road fuels).
- 50. Our starting point is that competition takes place mainly at the local level, as customers will consider options available to them in a local area when they need to buy fuel. This is consistent with the position adopted in previous cases in which:
 - (a) For petrol and diesel, past OFT and CMA decisions have adopted a 10-minute drive-time catchment in urban areas and a 20-minute drive-time in rural area.¹⁵ The Parties submitted that there is evidence to suggest that the catchment areas for the Parties' PFS are significantly wider at 25-minute drive-time.
 - (b) For auto-LPG, the OFT and CMA have used 10-, 20-, 30- and 40-minute drive-time catchment areas.¹⁶
- 51. We plan to use the above product and geographical scope catchment areas as the starting point for our analysis. For the reasons set out in paragraph 114, we are not minded to conduct any further investigation into

¹⁵ Anticipated acquisition by MRH (GB) Limited of 78 service stations from Esso Petroleum Company Limited paragraph 28; Completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, paragraph 35; Anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell U.K. Limited and GOGB Limited, paragraph 25.

¹⁶ Anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell U.K. Limited and GOGB Limited, paragraph 29; Completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, paragraph 41; Anticipated acquisition by Shell UK Limited of 253 petrol stations from Consortium Rontec Investments LLP, paragraphs 114-115.

the Parties' overlaps in auto-LPG. With respect to petrol and diesel, we will review evidence available to us to assess whether the definition above is appropriate, including evidence from a survey of the Parties' fuel customers which is already underway, the Parties' internal documents and evidence from the Parties' competitors.

52. In addition, we will also consider whether there are national aspects of competition in the supply of retail fuel, for instance, in relation to pricing strategies, initiatives, or target levels of profitability or margin which are applied nationally across the Parties' fuel businesses.

Assessment of the competitive effects of the merger

Counterfactual

53. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would be likely to prevail absent the Merger). In making our assessment, we will consider possible alternative scenarios for the competitive conditions that might arise in the absence of the Merger and decide upon the appropriate counterfactual based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.¹⁷
54. In the phase 1 decision the CMA found that the pre-Merger situation was the appropriate counterfactual.¹⁸ We will examine whether this is still the appropriate counterfactual, taking account of any further information that comes to light.

Theories of harm

55. We have considered the ways in which an SLC may result from the Merger. These provide the initial framework for our analysis, and are referred to as 'theories of harm'. We set out below the issues that we are currently minded to investigate. However, we may revise these as our inquiry progresses. Identifying an issue to investigate in this issues statement does not preclude an SLC being found on another basis following further work by us, or the receipt of additional evidence.

¹⁷ CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), paragraph 4.3.2.

¹⁸ [Phase 1 Decision](#), paragraphs 38-39.

56. We have identified four ‘horizontal unilateral effects’ theories of harm and one ‘coordinated effects’ theory of harm.
57. The concern under a horizontal unilateral effects theory of harm is that the removal of one party as a competitor to the other could allow the merging parties to increase prices, lower quality (in terms of either the products or the service in-store or online), reduce the range of their services and/or reduce innovation following the Merger. After the Merger, it is less costly for the merged company to raise prices (or lower quality) at either, or both, Parties’ stores or online, because it will recoup the profit on recaptured sales from those customers who switch from one Party’s offer to the other Party’s offer. Further, the higher price level (or reduced quality) of the merging parties weakens the competitive constraint on non-merging rivals and so leads to an overall market price increase.
58. We are principally considering horizontal unilateral effects in three areas:
- (a) the retail supply of groceries in physical stores;
 - (b) the retail supply of delivered online groceries; and
 - (c) the retail supply of fuel.
59. We are also considering horizontal unilateral effects in three categories of general merchandise: toys, electricals and clothing (in particular, childrenswear).
60. We have also identified a ‘coordinated effects’ theory of harm in relation to the first two of these areas, ie the retail supply of groceries in physical stores and the retail supply of delivered online groceries. Coordinated effects may arise when companies operating in the same market recognise, without entering into any explicit agreement with each other, that they share a mutual interest in coordinating their behaviour so as to limit their rivalry and increase their profits over the long term. Our focus is not on any express agreements between grocery retailers, but rather on whether the proposed merger could make it easier for some grocery retailers to coordinate or align their behaviour without such agreement. This may be the case if, for example, grocery retailers are able to anticipate their competitors’ reactions, and, adjust their own decisions in light of this thereby reducing competition. This may be, for example, by increasing prices above the competitive level in anticipation of other firms making similar price increases in response.¹⁹ The concerns under

¹⁹ Coordination may take different forms: in many instances, it will involve firms keeping prices higher than they would otherwise have been in a more competitive market, but in principle coordination can affect any aspect of

a coordinated effects theory of harm are that the Merger may make any pre-existing coordination between the Parties and other grocery retailers more stable or effective or, in the absence of pre-existing coordination, may make such coordination more likely.

61. In addition to the theories of harm set out above, we will also consider whether the merged company would have increased buyer power to the extent that the Merger might distort competition in the groceries market and result in adverse effects for grocery customers.

Retail supply of groceries in physical stores

62. We will examine whether the Merger results or may be expected to result in an SLC as a result of horizontal unilateral effects in the retail supply of groceries in physical stores.
63. The concern under this theory of harm is that the removal of one Party as a competitor to the other Party could provide the incentive for the merged company to worsen aspects of the Parties' grocery offering in-store, such as increasing price, or reducing quality, range or service levels, either now or in the future. The impact on customers may take many different forms: for example, it may be a reduction in the choice of goods on offer, the freshness or availability of produce, or the number of till staff available, leading to longer queue times. This increase in price or worsening of non-price aspects could occur nationally, across the Parties' entire store estates, or at individual stores where the Parties are close competitors.
64. Further, if the Parties' were to increase prices, other grocery retailers may also adjust their prices upwards, such that prices across the board are increased.

Nationally varied parameters

65. Several aspects of the Parties' retail offerings are determined centrally and applied uniformly across their entire store estates (or across large portions of it). For example, the shelf price charged by the Parties for any given product is the same in almost every store in the country (except that Sainsbury's convenience stores, which are branded 'Sainsbury's Local', use a different set of prices to that used in larger format Sainsbury's stores). The Parties' overall brand position and investments in their brand positioning, innovations that affect the overall business and other important aspects of the Parties' retail

competition: CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), paragraphs 5.5.1 and 5.5.2.

offering such as product quality and negotiations with suppliers on promotions, are set centrally and are not differentiated by local area.

66. We will assess the extent to which the Merger may give rise to an incentive to worsen these national, uniformly-set parameters of competition. We welcome views and evidence from interested parties on this.
67. In order to assess this, we will consider evidence from a range of sources, including, economic evidence on the effect of different store openings and closures on nearby stores, evidence of customer switching between different retailers or shopping channels, evidence on rates of diversion between different brands in response to general price changes, and evidence from other grocery retailers. We will also consider evidence from internal documents on competitive conditions in the groceries market and evidence of the influence of different competitors on the Parties' strategic decisions. Finally, we will consider the implications of the local analysis discussed in paragraphs 69 to 76 below for closeness of competition at the national level, including in particular how data on customers' preferences, gathered through a survey of the Parties' customers which is already underway at a sample of their grocery stores, can be used to understand national incentives with regard to price, quality, range and service.
68. We will consider how closeness of competition between the Parties may fluctuate and evolve over time, given some aspects of the evidence base will reflect a 'snapshot' of competitive conditions at a fixed moment in time. We will also consider how having the scale of a national (or significant regional) base of operations may affect a grocery retailer's ability to compete in local markets. We would also welcome views and evidence from interested parties on this.

Locally varied parameters

69. The Parties and their rivals differentiate some aspects of their retail offering from store to store. For example, in some stores, staffing levels may be higher, opening hours may be longer, the products stocked may be of better value to customers, investments in the store environment may be more significant, and/or there may be a greater availability of fresh produce or a lower incidence of 'out-of-stock' products. Additionally, retailers may send more vouchers (or higher-value vouchers) to customers in certain local areas, or the availability of discounts and special offers may vary locally.
70. We will gather information on how, and to what extent, aspects of the retail offering in individual local stores – such as those mentioned above – vary

across retailers' store estates or across local areas. We would welcome any views and evidence from interested parties on this.

71. We will assess the extent to which the Merger may provide an incentive for the Parties to cut back on costs in a way that results in, for example, worsened service levels, value-for-money, product availability or convenience, or a reduction in the number of vouchers or discounts offered.
72. We will need to develop an approach to assess whether the Parties are likely to be close competitors, and whether the Parties' rivals are likely to represent strong constraints, in each local area where the Parties are both present.
73. In order to assess this, we expect to examine the closeness of competition between the Parties and the strength of rivals, and in particular how this varies across different local areas. We will consider how the strength of constraint depends on factors such as the number of rival stores in the local area, which brands are present, whether the rivals sell other overlapping products, such as fuel, in addition to groceries, the relative sizes of different competitors' stores, the location of those stores and the overall strength of other constraints such as online grocery retailers, and specialist grocery stores. We welcome views and evidence from interested parties on each of these points.
74. As part of this assessment, we expect to examine the strength of retailers such as Aldi and Lidl, and the extent to which customers are likely to treat them as close alternatives to the Parties for different types of grocery shopping trips or 'missions'. We also welcome views and evidence from interested parties on this.
75. To assess these factors, we expect to use a range of evidence, similar to those set out in paragraph 67.
76. We expect to use our findings to construct a framework for indicating the closeness of competition between the Parties and the strength of constraint from rivals in each given local area, which will allow us to rank areas and 'score' them in terms of the likelihood that the Parties may have an incentive to worsen their competitive offering post-Merger. In order to do this, we will consider the use of a 'weighted share of shops' methodology, used in some previous retail merger cases,²⁰ alongside other methodologies (such as a fascia counting exercise, as adopted in the phase 1 decision). We will assess the extent to which each method best reflects the realities of competition in

²⁰ For example, [Anticipated acquisition by Tesco PLC of Booker Group plc \(2017\)](#) and [Anticipated merger between Ladbrokes plc and certain businesses of Gala Coral Group Limited \(2016\)](#).

the markets and the way in which customers choose where to do their grocery shopping.

77. We will also examine whether either Party has plans to open grocery stores in the future in local areas where the other Party is present, and if so, whether the Merger may result in a loss of future potential competition between the Parties.

Online delivered groceries

78. We will examine whether the Merger results or may be expected to result, in an SLC from unilateral horizontal effects in relation to the supply of online delivered groceries.
79. The concern under this theory of harm is that the removal of one Party as a competitor to the other Party could provide the incentive for the merged company to worsen aspects of the Parties' online delivered groceries offering, such as increasing price, or reducing quality, range or service levels, either now or in the future. This could occur nationally, to all of the Parties' delivered customers, or to subsets of those customers.

Nationally varied parameters

80. For some competitive parameters, online grocery retailers have a single uniform offer to all customers served across their entire online delivered groceries business. For example, we understand that retailers generally make a central decision on a single price level for delivery passes²¹ and base product prices,²² and make investments in their online platform or website that benefit all online grocery customers equally, regardless of where they are located.
81. We will assess the extent to which the Merger may give rise to an incentive to worsen these nationally set parameters of competition. We welcome views and evidence on this.
82. To investigate this theory of harm we expect to examine:

²¹ Most online grocery retailers charge for delivery, with the charge dependent on the time of day, and day of the week. Delivery charges are typically set centrally, but may not be uniform across geographic areas. Customers can purchase delivery passes, which for an annual, six-monthly or quarterly fee, allow customers to receive free delivery across that period. The price of delivery passes typically does not vary according to geographic location.

²² Online product base prices typically match in-store prices.

- (a) how closely the Parties compete with each other, for instance whether they are seen as close alternatives to each other, whether they have similar offerings, and whether they deliver to the same areas of the UK;
- (b) the extent of competitive constraint from other online grocery suppliers;
- (c) the extent of competitive constraint from grocery retailers operating from physical stores;
- (d) whether competitors that do not currently deliver to an area would be likely to start delivering to the area quickly if the Parties cut back on some aspects of their offer in a small but significant way;²³ and
- (e) the extent to which online customers use discounts (through targeted vouchers), and the size of these discounts.

83. We welcome views and evidence from interested parties on each of the points set out above.

84. We expect to gather evidence on the closeness of competition between the Parties, other online competitors, and other grocery retailers operating from physical stores through a survey of the Parties' online customers which is already underway, as well as from grocery retailers' switching data and the Parties' internal documents.

Locally varied parameters

85. Online grocery retailers differentiate their retail offering to customers across the different geographic areas they serve. With the exception of Ocado (which does not have physical grocery stores), online grocery retailers predominantly use their store network to 'pick' and deliver groceries to local customers. A small proportion of online delivered groceries are picked and delivered from dedicated online fulfilment centres (OFCs). Accordingly, decisions made about how to operate and invest in stores or OFCs will affect delivery slot availability and delivery efficiency for customers served from that location. We will assess whether there are other decisions that the Parties take, based on competition, that differentiate their offer across geographic areas.

86. We will assess the competitive effects of the merger in each geographic area. In light of variation in the geographic coverage of different delivered retailers, our starting point is that some customers in different geographic areas may

²³ We often refer to this as 'supply-side substitution'.

have a more limited set of alternative options, either because a retailer does not deliver to their postcode, or because it offers a narrow range of groceries.

87. Grocery retailers offer vouchers to online customers, which allows retailers to tailor prices for customers or customer groups, including customers located in areas with fewer or more alternatives. We will assess whether the Parties could raise prices for customers in certain areas or with certain characteristics that mean they are more likely to consider the Parties to be close alternatives to each other. They could do this by cutting back on the vouchered discounts they offer to those customers, but we will also assess whether there are other ways that the Parties could tailor prices for customers or customer groups.
88. To assess the competitive effects of the Merger, in particular geographic areas for certain groups of customers, we expect to gather evidence on the same factors set out in paragraph 82. However, our assessment will focus on the set of competitors present in any given area or for any group, rather than the overall constraint from online competitors, and overlap between the Parties, at the national level.
89. We will also examine whether either Party has plans to introduce online grocery delivery in the future in local areas where the other Party is present, and if so, whether the Merger may result in a loss of future potential competition between the Parties.

Coordinated effects in the retail supply or delivered supply of groceries in the UK

90. We will examine whether the Merger results or may be expected to result in an SLC as a result of coordinated effects in the retail supply of groceries in physical stores and/or the retail supply of delivered online groceries.
91. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate, or align their behaviour, to limit their rivalry. As discussed in paragraph 60, our focus is not on any explicit agreement to coordinate between grocery retailers but rather on whether the Merger could make it easier for grocery retailers to coordinate or align their behaviour in relation to one or more parameters of competition without such express agreement. We note that the UK competition authorities have raised concerns over the potential for tacit coordination to arise in the UK groceries sector in past competition investigations and we consider it appropriate to

assess the effects of the Merger on the potential for coordination afresh in this investigation.²⁴

92. We will assess whether there is evidence that coordination already exists, whether the characteristics of these markets are conducive to such behaviour and what the effects of the Merger can be expected to be on the likelihood and/or effectiveness of coordination.
93. We will consider ways in which grocery retailers may be able to coordinate their behaviour. We will consider alternative hypothetical coordinating groups of retailers, which could include narrower groups of retailers (eg the merged company and Tesco, or the merged company, Tesco and Morrisons, which are sometimes referred to collectively as the 'Big 4') or possibly a wider group of retailers. We will also consider the possible ways in which firms may be able to coordinate on price or on other aspects of their offer. This might include retailers being able to anticipate their competitors' reactions and adjusting their own decisions in light of this, for example increasing prices above the competitive level, in anticipation of other firms making similar price increases in response.
94. As part of our analysis, we will consider to what extent, if at all, the features of the groceries market are conducive to coordination and how this might change post-Merger. This will include considering the ability of large grocery retailers to arrive at an understanding of their competitors' behaviour, which forms the basis of coordination, and to monitor the outcome of this coordination on an ongoing basis. We will then seek to understand the incentives of firms in the hypothetical coordinating group to maintain a coordinated outcome, including consideration of the costs and benefits of deviation. We will also consider whether companies from outside the hypothetical coordinating group would have the ability and incentive to undermine coordination.
95. In assessing the pre-Merger situation, we expect to consider evidence on:
 - (a) market transparency, including public statements made by retailers on their pricing or commercial decisions;

²⁴ For example, in 2003, the Competition Commission (CC) considered that the acquisition of Safeway by any of Asda, Sainsbury's or Tesco might be expected over time to lead to coordinated behaviour ([Safeway plc and Asda Group Limited \(owned by Wal-Mart Stores Inc\); Wm Morrison Supermarkets PLC; J Sainsbury plc; and Tesco plc: A report on the mergers in contemplation](#)). In its 2009 Groceries Market Investigation, while the CC did not find that grocery retailers were engaged in tacit coordination at the time of the investigation, it did raise concern that, given the structure of the grocery retailing market, such behaviour could occur in the future ([Groceries Market Investigation](#)).

- (b) concentration in the market, that is, whether a small number of retailers account for a significant proportion of the market;
 - (c) the effect, if any, of retailers having shareholders in common;
 - (d) how retailers understand the market and their interdependence;
 - (e) how the potential responses of competitors are taken into account when retailers make decisions about prices (or other aspects of their offer) and whether this indicates pre-existing coordination;
 - (f) competitive constraints from outside any hypothetical coordinating groups, including from new entrants or expansion of existing retailers;
 - (g) past price movements; and
 - (h) historic margins.
96. We welcome views and evidence from interested parties on each of the points set out above and on any other aspects of coordination or alignment of commercial conduct which respondents consider relevant to our assessment.
97. We will consider whether the Merger increases the likelihood or effectiveness of coordination, in particular by reducing the number of firms in the market, by more closely aligning the interests of the merged company and other firms, or eliminating a grocery retailer with different incentives to coordinate than its rivals.
98. We expect to assess the above based on a range of evidence, including the Parties' internal documents and internal documents from other grocery retailers, market share information, historic pricing data and submissions from other grocery retailers.

General merchandise

99. We will examine whether the Merger results or may be expected to result in an SLC as a result of horizontal unilateral effects in the retail supply of general merchandise. The concern under this theory of harm is that the removal of one Party as a competitor to the other Party could provide the incentive for the merged company to worsen aspects of the Parties' general merchandise offering, such as increasing price, or reducing quality, range or service levels, now or in the future.
100. As noted in paragraph 43 above, our starting point is to take a closer look at certain categories and/or sub-categories of general merchandise where the

available information indicates that the Parties have a relatively high share of supply and/or the Merger would lead to a material increment in the share of supply at the national level, namely toys, personal care electricals, small kitchen appliances, and childrenswear.

101. In our assessment of this theory of harm, we will assess the closeness of competition between the Parties for one or more categories of general merchandise, and the extent of competition that would remain post-Merger from other retailers, including other grocery retailers (such as Tesco), generalist retailers (such as John Lewis Partnership), online-only retailers (such as Amazon), bargain stores (such as B&M Bargains), and retailers that specialise in particular categories of general merchandise (such as Smyths Toys).
102. Consistent with previous retail mergers, our starting point is that there are both national and local aspects of competition. As with groceries, there are likely to be some aspects of competition that are varied locally (or that could be varied locally) and other aspects that are set nationally and applied uniformly across the Parties' stores. We will consider to what extent the Parties could vary certain parameters of competition locally (such as range and service) in response to local competition, the costs of doing so relative to the costs of operating a uniform national policy, and the potential benefits to the Parties of doing so.
103. Within each of the general merchandise categories and/or sub-categories listed in paragraph 100, we will assess whether the Parties and other grocery retailers compete more closely with one another than they do with other general merchandise retailers that do not sell groceries. This may be the case if, for example, customers consider that supermarkets offer the convenience of a 'one-stop-shop' selling groceries and general merchandise. If we find this to be the case, and to the extent that this is driven by customers who are buying general merchandise on shopping trips where their main purpose is to buy groceries, this should be captured by our competitive assessment of the groceries theory of harm (see paragraphs 62 to 76), taking into account whether and the extent to which competing grocery stores also offer general merchandise.
104. For toys, personal care electricals, small kitchen appliances, and childrenswear, we expect to consider the following types of evidence:
 - (a) National market shares of different retailers within each of these categories and sub-categories.

- (b) The Parties' internal documents, to explore: which competitors in these categories (including online competitors) are monitored by the Parties; the closeness of competition between Sainsbury's and Asda and between Argos and Asda in general merchandise; how the Parties set range and service levels for their general merchandise offering; whether the competitive constraint may be asymmetric (eg Argos being a stronger constraint for Asda's general merchandise rather than the reverse); the extent to which the Parties' sales are online; and evidence on the extent to which customers purchase these items as part of a wider groceries shopping trip.
 - (c) Competitors' views on the closeness of competition between the Parties, and on the extent to which retailers can expand into new general merchandise categories which they do not already supply.
- 105. We may also consider whether to take account of the locations of the Parties' stores that provide general merchandise, and the locations of grocery and non-grocery competitors' stores that provide general merchandise, in local areas across the UK.
- 106. We would welcome views and evidence from interested parties on:
 - (a) The extent to which the Parties are close competitors in the retail supply of general merchandise as a whole, or in any category of general merchandise, but in particular toys, personal care electricals, small kitchen appliances, and childrenswear.
 - (b) The extent to which (i) online retailers of general merchandise and (ii) general merchandise retailers which do not sell groceries, provide a competitive constraint to the Parties in the supply of general merchandise.
- 107. We are not currently minded to conduct an in-depth investigation of the Parties' overlaps in any of the other general merchandise categories listed in paragraph 43.

Fuel

- 108. We will examine whether the Merger results or may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of fuel. The concern under this theory of harm is that the removal of one Party as a competitor to the other Party could provide the incentive for the merged company to worsen aspects of the Parties' fuel offering, such as increasing price, or reducing quality, range or service levels, now or in the future.

109. For petrol and diesel, we will assess the closeness of competition between the Parties, and the extent of competition that would remain post-Merger from other providers. As part of this assessment, we will consider whether supermarket PFS tend to have lower prices than non-supermarket PFS, and their competitive role in the retail supply of fuel in the UK. In doing so, we expect to apply a systematic approach to identify, of the many local areas in which the Parties overlap, which local areas are likely to raise competition concerns. As part of this systematic approach, we will:
- (a) analyse the number, brand, locations, and (historical) price levels of the Parties' PFS and competing PFS in every overlap area, including drive-time distances between these PFS;
 - (b) consider evidence from a survey of the Parties' fuel customers, which is already underway, about closeness of competition and diversion between the Parties and remaining competitive constraint from other competitors; and
 - (c) use historical fuel prices and the Parties' current pricing methodologies to understand the relative importance of different competitors and closeness of competition.²⁵
110. We will also consider how the Parties' ability to offer customers a combined bundle of fuel and groceries in a single shopping trip may affect our assessment. This may include whether a preference amongst customers to purchase groceries and fuel in a single shopping trip is strong enough that competitors that supply only groceries or only fuel may not provide a sufficient constraint on retailers (like the Parties) that supply both.
111. We welcome views and evidence from interested parties on the closeness of competition between the Parties in the supply of fuel, and on any ways in which the Parties' ability to offer fuel and groceries in a single shopping trip may affect our assessment of the competitive effects of the Merger in either of these markets.
112. We will consider whether such a systematic approach will allow us to distinguish between local areas and PFS where the Parties are likely to have an incentive to raise prices, if any, from those where they are unlikely to have such an incentive.

²⁵ Fuel prices are transparent. Many fuel retailers receive data on daily prices for nearly every PFS in the UK, and take these prices into account in their own daily pricing decisions. In addition, many fuel retailers use pricing formulae, rules, or algorithms to set prices for each PFS. These rules often consider the fuel prices from other nearby competing PFS.

113. We will also examine whether either Party has plans to open PFS in the future in local areas where the other Party is present, and if so, whether the Merger may result in a loss of future potential competition between the Parties.
114. For auto-LPG, the Parties do not overlap using 10- and 20-minute drive-time catchment areas. Using a 30-minute drive-time catchment, there is only one overlap and a further overlap using a 40-minute drive-time. Our initial assessment indicates that there remain sufficient suppliers of auto-LPG in these areas. Therefore, we are not minded to conduct any further investigation into the Parties' overlaps in auto-LPG.

Buyer power

115. We will investigate whether a potential increase in the buyer power of the merged company could distort competition in the supply of groceries. A reduction in the profitability of suppliers on its own does not give rise to an SLC. For the purposes of our competition assessment, we will only be concerned by an increase in the buyer power of the merged company to the extent that it may distort competition in the groceries market and result in adverse effects on end-customers.²⁶
116. We will consider two theories of harm in this respect.
117. The first theory of harm is that the exercise of increased buyer power by the merged company might result in reduced incentives to invest and innovate on the part of suppliers, for example, developing new products or investing in new processes.
118. This effect is more likely to materialise in circumstances where investment by suppliers involves significant upfront costs, and suppliers and retailers find it difficult to contract for future terms of supply in advance of making the investment, and suppliers cannot spread this risk across multiple large customers. If retailers have significant market power in future negotiations vis à vis the supplier(s) in question, they may be able to force the price down towards the marginal cost of supplying the products. Anticipating this outcome, suppliers may refrain from making the investments in the first place. The analysis we have gathered to date indicates that these circumstances are more prevalent for the development of new products (rather than in other types of investment such as investment in additional capacity or processes)

²⁶ This is the approach prescribed in paragraph 5.4.19 of the CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), and followed in the CC's [Groceries Market Investigation](#) (2008), paragraph 9.3 and the CMA [Tesco/Booker merger inquiry](#) (2017), paragraph 8.10.

and to the supply of branded products (rather than the supply of private or own-label products).

119. We welcome views and evidence in relation to this theory of harm, in particular from suppliers with a substantial focus on the domestic UK market.
120. To investigate this theory of harm, we will consider incentives to innovate for suppliers, and the extent to which these are contingent on the terms obtained from the merged company.
121. The second theory of harm is that the exercise of increased buyer power by the merged company might raise the purchasing costs of rival retailers, which, under certain circumstances, may result in price increases to certain customers. This theory of harm is often referred to as the 'waterbed effect' in competition inquiries. It was considered by the CMA in the Tesco/Booker merger inquiry,²⁷ and by the CC in the groceries market inquiry.²⁸
122. The key steps of this theory of harm can be summarised as follows. In the first instance, the lower wholesale prices obtained by the merged company allows it to reduce retail prices, and thereby attract customers from other, smaller retailers. As smaller retailers lose market share, their bargaining positions and their purchasing costs deteriorate. These smaller retailers then face two competing incentives: on the one hand, they would like to pass on some of the increase in their purchasing costs; on the other hand, they need to maintain lower prices to resist increased competition from the large retailer. If the former effect dominates the latter, then smaller retailers respond by increasing their prices, which harms their customers.
123. This theory of harm is therefore more likely to hold if variations in market shares between retailers translate into significant variations in the variable costs of procuring goods, and if smaller retailers have an incentive to pass on a significant share of the resulting increase in their procurement costs.
124. To investigate this theory of harm, we expect to consider quantitative evidence on the relationship between size and procurement costs for retailers, and to engage with suppliers and grocery retailers to understand the balance of incentives they face.

²⁷ [Anticipated acquisition by Tesco PLC of Booker Group plc \(2017\)](#).

²⁸ [Groceries Market Investigation \(2008\)](#).

Countervailing factors

125. For all of the theories of harm described above we will assess whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. In particular, we intend to consider the constraint arising from possible entry and expansion of other competitors, and the net impact of any efficiency benefits. As the Parties' customers are principally individuals, we do not intend to examine whether these customers would have countervailing buyer power.

Entry and expansion

126. We will consider whether entry or expansion by competitors could prevent any SLC that might otherwise arise. To do this, we may assess evidence relating to:

- (a) whether entry or expansion by rivals is likely to occur in a timely manner, which may include an assessment of the costs and time necessary to enter and/or expand;
- (b) whether entry or expansion by rivals is likely, including any plans and the certainty of those plans; and
- (c) whether entry or expansion is likely to be sufficient to prevent an SLC from arising.

127. We are likely to consider the following factors in particular:

- (a) Many grocery retailers have plans to open new grocery stores. To the extent these are likely to open in a timely fashion, they may constrain the Parties from raising prices or otherwise worsening the range or quality of the products or services they provide. We will seek to reflect the likely future constraint from those stores in our assessments. This is especially relevant to brands whose store estates have expanded in recent years, particularly Aldi and Lidl. We will assess the likely extent of that expansion continuing in future years.
- (b) A number of online-only retailers have emerged or expanded in recent years, such as Ocado and Amazon. We will assess the likely constraint of these online-only retailers on the Parties and how this might evolve in the near future.

Efficiencies

128. The Parties have publicly announced that the Merger is expected to generate £500 million of synergies net of any price investments and will allow them to reduce prices on many of the products customers buy regularly.
129. The Parties consider that at least some of the synergies which they expect to generate would act as rivalry-enhancing efficiencies (in particular, any variable cost savings in purchasing), as discussed in the CMA guidance.²⁹
130. The CMA guidance explicitly notes that it is not uncommon for merger firms to make efficiency claims. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC, the CMA must expect that they meet the following criteria:
 - (a) efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
 - (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.
131. When considering cost synergies, the CMA will also focus particularly on the nature of the savings, any anticipated impact on the competitive outcome, and the likelihood of these savings being passed onto customers.³⁰
132. The Parties have proposed including any estimate of synergies which represent rivalry-enhancing efficiencies (in particular, where such synergies have been quantified) as part of the CMA's assessment of the local effect of the Merger in the supply of groceries.
133. The Parties have provided the underlying analysis which supports their estimation of synergies. We will review this analysis to help determine the likelihood and timeliness of any such synergies, the extent to which savings are passed on to customers, and the specificity of the savings to the Merger.
134. Our assessment is likely to focus on the approach proposed by the Parties and the analysis they submitted to support this, but will also consider any other relevant evidence, including evidence of the level of synergies claimed and produced in similar transactions in the past and evidence of efficiencies

²⁹ CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), section 5.7.

³⁰ CMA's [Merger Assessment Guidelines](#) (CC2/OFT 1254, as adopted by the CMA), paragraph 5.7.9.

claimed in relation to other commercial arrangements, as well as evidence from buying groups, the Parties' internal documents and public statements.

135. We will also consider non-purchasing synergies.

Possible remedies and relevant customer benefits

136. Should we provisionally conclude that the Merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.

137. In any consideration of possible remedies, we will take into account whether any relevant customer benefits (RCBs) might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

138. Any party wishing to respond to this statement of issues should do so in writing, **by no later than 30 October 2018**. Please email SainsburysAsda@cma.gov.uk or write to:

Project Manager
Sainsbury's/Asda merger inquiry
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

139. While we intend to meet with third parties, we unfortunately cannot undertake to meet with everyone that wishes to do so. We will consider meeting with those parties who explicitly request this but only if we consider we will be able to obtain additional information and evidence to that included in their written submission.