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8 June 2020

By email: RemediesMonitoringTeam@cma.gov.uk
CC: Lizzie Akita (Lizzie.Akita@cma.gov.uk)

Dear Lizzie,

Procedure for Dealing with Requests to Carry Out the Test in Schedule 4 to the Groceries Market Investigation (Controlled Land) Order 2010 (the “Consultation”)

1. We refer to the Consultation published by the CMA on 13 March 2020, asking for input on the changes the Competition and Markets Authority (“**CMA**”) proposes to make to the procedure for carrying out the test in Schedule 4 (the “**Test**”) of the Groceries Market Investigation (Controlled Land) Order 2010 (the “**CLO**”).
2. Sainsbury’s sets out its response to the questions posed in section 4 of the Consultation below (the “**Response**”).

Question 4.1: Views of interested parties on the appropriateness of the revised guidance generally

3. Save for the comments/views set out below, we appreciate and are broadly supportive of the steps the CMA has taken to simplify the procedure for running the Test under the CLO.
4. However, in order to enable Sainsbury’s to meaningfully undertake and replicate the analysis the CMA would conduct using the revised procedure (i.e. to self-assess), it would be helpful to:
 - a. Obtain further details regarding the HERE dataset and Geolytix database the CMA proposes to use. In particular, as regards:
 - i. The HERE API version that will be used e.g. Routing version 7;
 - ii. The specific HERE endpoint e.g. /7.2/calculateroute.{format};

- iii. The particular HERE parameter settings used in the route calculation e.g. fastest route / shortest route; traffic enabled / disabled; car?;
 - iv. The frequency with which the CMA expects to review / adopt newer versions of the HERE api; and
 - v. How the CMA will monitor updates, changes or developments made by HERE to their underlying road network, associated travel speeds and calculated journey times; and
 - b. See some worked examples of sample Tests from the CMA so we can better understand how the CMA proposes to apply the Test considering the revised procedure, in practice.
5. [Redacted]¹
- a. [Redacted];
 - b. [Redacted]
 - c. [Redacted]
 - d. [Redacted]
6. [Redacted]
7. Separately, we understand that the changes proposed in the Consultation (e.g. use of software etc.) will not apply to the tests the CMA will conduct from a merger perspective in grocery retailing markets. If that is the case, it would be helpful if there was more apparent synergy between the tests the CMA will conduct from a CLO and merger perspective. While we appreciate that these tests will be conducted by different teams within the CMA and for different procedures, use of the same or similar software/datasets for both procedures would potentially allow us to streamline our internal analyses, saving time and resource.
8. Finally, it would be helpful to understand the CMA's timelines to implement the proposed changes mentioned in the Consultation. We assume the CMA would provide appropriate notice prior to implementation, such that we have the opportunity to change our systems and processes to ensure we can run the Test in accordance with the revised procedure.

Question 4.1(a)(i): The use of the single main entrance of a site or building as described

9. In our view, the use of the single main entrance of a site or building is unlikely to materially change the outcome of the Test.
10. However, to enable us to more accurately replicate the Test internally, it would be helpful for the CMA to provide additional information as to how the "single main entrance" will be defined/identified. For instance, will this be determined with reference to:

¹[Redacted]

- a. The end of a highway authority's maintained road (e.g. a public highway closest to the store);
 - b. The entrance/exit of a car park;
 - c. The entrance/exit of a retail park;
 - d. A highway transition point (i.e. a junction) onto retailer-owned/leased land.
11. It would also be useful to understand how the CMA will approach instances where the "main" entrance is a pedestrianised area (e.g. a mall, town centre, piazza, or shopping centre); pedestrian and car traffic use separate "main" entrances; or there is more than one "main" entrance to a retail park.

Question 4.1(a)(ii): The use of a single average time of day for the travel time calculation

12. Our concern with this approach is that it may produce a result that is not accurate for any identifiable time of day, and is thus not reflective of reality.
13. In our view, the use of a specific, identifiable time of day to calculate travel time (as is the current approach), produces a result that is more closely linked with, and thus reflective of, traffic conditions observed in reality.

Question 4(1)(b): The proposed changes to the consultation procedures on provisional test decisions

14. We agree with the CMA's proposals here. We think this entrenches an element of fairness and certainty for both parties to the Test.

Question 4(1)(c): The proposed new register of test decisions and restrictions removed and remaining in place

15. We have no concerns with the CMA's approach here, provided the register is maintained and updated regularly. While the CMA confirms that it will not publish the names of applicants as part of this register, it would be helpful if the CMA could confirm what other details it proposes to publish as part of the register (e.g. date and description of site to which the Test relates).
16. We thank you for the opportunity to provide our comments on the Consultation. We would be happy to discuss this, if that would be helpful.
17. Kindly acknowledge receipt.

Regards,

Sainsbury's

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