

**THE GROCERIES MARKET INVESTIGATION (CONTROLLED LAND) ORDER
2010**

**Notice of intention to make an Order under section 165 of, and Schedule 10 to,
the Enterprise Act 2002 and public consultation on the proposed Order**

1. On 9 May 2006, the Office of Fair Trading (OFT), in exercise of its powers under [section 131](#) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC), for investigation and report, the supply of groceries by retailers in the United Kingdom.
2. The CC investigated the matters referred to it in accordance with [section 131](#) of the Act and concluded, in accordance with [section 134\(1\)](#), that there were features of the market, either alone or in combination, which prevent, restrict or distort competition within the relevant market, and in accordance with [section 134\(2\)](#) that an adverse effect on competition existed.
3. The CC found that two of the features that adversely affected competition in the market (whether alone or in combination) were the high levels of concentration in local markets for the supply of groceries by mid-sized and larger grocery stores, and the control of land in highly-concentrated local markets by incumbent retailers.
4. The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and considered, in accordance with [section 134\(4\)](#), whether action should be taken by it, or whether it should recommend the taking of action by others, for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or the detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition.
5. The CC consulted on a range of possible actions in a [Remedies Notice](#) published on 31 October 2007. In the report the CC considered that the following remedies would form part of a package of remedies that would be effective and proportionate in remedying the features of the market identified in paragraph 3 above as having an adverse effect on competition:
 - (a) large grocery retailers will be required to release existing restrictive covenants in highly-concentrated local markets as identified by the CC;
 - (b) large grocery retailers with a strong local market position in a highly-concentrated local market will be required to release any existing restrictive covenants, beyond those identified by the CC, in those local markets which may restrict grocery retailing or which have equivalent effect, which the owner of the burdened land has notified to the OFT and which the OFT has said exists in a highly-concentrated local market;
 - (c) subject to limited exceptions, large grocery retailers will be prohibited from imposing new restrictive covenants that may restrict grocery retailing or which have equivalent effect;
 - (d) large grocery retailers will be required not to enforce or seek the enforcement of any of the existing exclusivity arrangements identified by the OFT beyond a period of five years from the date of the report;

- (e) large grocery retailers will be required not to enforce or seek the enforcement of any existing exclusivity arrangements beyond those identified in this report after the longer of (i) five years from the date of the report, or (ii) five years from the date the grocery store was opened, where that arrangement relates to land in a highly-concentrated local market where it has a strong local market position and which may restrict grocery retailing or have equivalent effect;
- (f) large grocery retailers will be required not to enforce or seek the enforcement of new exclusivity arrangements once a period of five years from the opening of the grocery store to which the arrangement relates has elapsed.
6. The CC indicated in the [report](#) that it intended to implement the remedy set out in paragraph 5(a) above by an order rather than an undertaking.
 7. The CC published a [Notice of intention to make an Order \(controlled land\)](#) on 28 April 2009. In light of responses received to that consultation the CC revised the Order and published a [Second notice of intention to make an Order \(controlled land\)](#) on 16 November 2009. In light of responses received to that consultation the CC revised the Order and on 30 April 2010 published an Order. On 25 June 2010 the CC withdrew that Order on becoming aware of an inadvertent omission.
 8. The CC intended that Article 9 of the Order published on 30 April 2010 should provide an exemption from Articles 4, 5, 7 and 8 in respect of Operational Land Restrictions (as defined). The CC intended that the exemption as set out in Article 9 of the draft Order circulated for consultation in November 2009 should be carried over but this was inadvertently omitted.
 9. In addition, following consideration of representations made during consultation on the November 2009 draft of the Order, the CC determined that the exemption should be extended (a) to include the circumstance where the Operational Land Restriction applied to an interest in land of a person who is the lessee of the Large Grocery Retailer and (b) so that it applied regardless of whether a planning condition or obligation to like effect to the Operational Land Restriction was already in place. The reasons for expanding the exemption in these regards are set out in the [Response to Consultation](#) document.
 10. The version of the Order now being published for consultation both restores the exemptions in the version circulated in November 2009 and expands the scope of the exemption in the manner indicated above. There is a corresponding change to the Explanatory Note, setting out the full ambit of the exemption in Article 9. Save for a change to the definition of Car Park, there is otherwise no change from the versions of the Order and Explanatory Note published on 30 April 2010.
 11. The revised Order is annexed in Appendix 1 to this Notice. A revised Explanatory Note is annexed in Appendix 2. A summary of responses received and the reasons for the amendments is attached as Appendix 3 to this Notice.
 12. This Notice and the draft Order have been published on the CC website: www.competition-commission.org.uk/inquiries/ref2006/grocery/index.htm. The CC now gives notice of the proposed Order and invites written representations on them. Representations should reach the CC by 5pm, Friday 9 July 2010 and should be addressed to:

T J Oyler Esq
Remedies Manager
Groceries Inquiry
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

Or email: tim.oyler@cc.gsi.gov.uk.

13. The CC will have regard to any representations made in response to this Notice and may make modifications to the draft Order as a result. The CC may publish non-confidential versions of the representations on the CC [website](#). In the absence of any written representations, or in the event that the CC decides on consideration of representations made not to amend the draft Order, the CC proposes to make the draft Order in its present form pursuant to [section 161](#) of the Act. If the CC considers that any representation necessitates changes to the draft Order, it will give notice of the proposed modifications.

Peter Freeman
Group Chairman
Competition Commission
30 June 2010