

## GROCERIES MARKET INVESTIGATION

### Summary of the remedies hearing with Somerfield held on 18 January 2008

#### Planning

1. Somerfield told us that the Competition Commission's (CC) proposed competition test should be part of a holistic planning test. It should not interfere with the primary reason for planning, which was to look after the town centre and its business community. If there were to be a competition test, it should be practical, easily understood and applied at the beginning, rather than at the end of the planning process. For the sake of consistency, there also needed to be a right of appeal when new information came to light or something was not disclosed.
2. Over the last 20 years, the planning process had become led by consultancies identifying gaps, omissions or opportunities in markets. There was too much emphasis on demand in a particular catchment without considering the effects on neighbouring catchments. There had been a failure to appreciate the bigger picture.
3. Measuring competition through a fascia count alone was too simplistic. Somerfield had many small stores and so would be inadvertently penalized in any such simple fascia-count analysis. Somerfield proposed that fascia count should be combined with either market share or percentage of net sales area (the retail sales area behind the checkouts). A fascia count alone would tend to favour the larger supermarkets.
4. The demand for groceries in the UK was relatively static. A grocery retailer on the edge of town did not generate new demand, but took demand away from somewhere else. A need test was necessary because it allowed planners to take into consideration the health of the town centre. Care had to be taken to ensure increasing fascia count by allowing that an edge-of-town development did not result in a derelict town centre. The major multiple retailers were not just grocers and sold everything from clothes to electrical goods, so the propensity for them to destroy the make-up of a town centre was high.

#### Controlled land

5. Somerfield considered that five years was a reasonable period of time for retailers to hold on to undeveloped sites or to 'landbank' sites. Five years was a more than adequate period of time to develop a site. Exclusivity agreements should be subject to the CC's proposed competition test. Further, provided that the planning system had a competition test associated with it, the removal of restrictive covenants on sites would not be a major issue. The competition test could also be applied to subleases, although Somerfield expressed concern at the requirement that sites should be sublet only to other grocers. The competition test should be administered by an expert department within the Office of Fair Trading (OFT).
6. Somerfield expressed concern regarding what test might be applied in the case of store divestitures. While store divestitures seemed to be a simple remedy, it was in fact the most complex of all. There was the possibility that a store could be divested to another retailer that charged even higher prices than the original retailer.

## The Supermarkets Code of Practice

7. Somerfield did not consider that the Supermarkets Code of Practice (SCOP) should be extended to include smaller retailers. Imposing more bureaucracy and control on a retailer such as Somerfield would only add to costs. Costs would be incurred in handling the exchange of information with the regulator. Compared with the large retailers, such costs would be higher for Somerfield because it dealt with a similar number of suppliers to the large retailers.
8. Somerfield's negotiations with suppliers were hard, but fair. It did not abuse the general principles of fair trading. While there had been some middlemen in the primary industries that had a reputation for being unscrupulous, most intermediaries and major supermarkets had been supplied by the same grower base for many years. More often than not, it was businesses outside this grower base that complained. Such complaints were often anecdotal and Somerfield therefore had no power to reply.
9. Somerfield supported any move to make the supply chain more transparent, including the use of written supply orders, provided that it did not create an onerous administrative burden on both suppliers and retailers. For the purpose of planning plantings and harvestings, most suppliers and growers wanted to know well in advance what a retailer's needs would be. Suppliers often did not hold a retailer to such advanced orders or programmes and wholesale prices were sometimes renegotiated later when the products went to market. Suppliers understood that such advanced orders or programmes were a simply a 'best guess'.
10. Contract clauses requiring suppliers to subsidize the promotion of unsold stock were unnecessary due to the sophistication of computerized ordering systems. When a product did not sell, the supply was stopped before overstocking became a problem. Somerfield expressed concern about being required to continue to accept the supply of non-selling products, particularly if a supplier was content to redirect supply elsewhere. It did not approve of requiring a supplier to pay for lost or stolen goods ('shrinkage'). Somerfield considered that a supplier had the right to visit a depot and inspect a product that had been rejected; a product should only be rejected if it did not meet the required specification.
11. With respect to defining the word 'reasonable' as used in the SCOP, Somerfield considered that most people knew what 'reasonable' and 'reasonable behaviour' was. If there was a 'climate of fear' preventing suppliers from coming forward and alleging contraventions of the SCOP, it had to be investigated. Somerfield was not aware of any climate of fear in the industry.
12. The OFT was the right body to monitor compliance with the SCOP. It should have a dedicated team of grocery industry experts who understood what was reasonable and unreasonable behaviour in the industry. The team should be independent and not funded by the industry.
13. Somerfield had its own internal complaints handling process. Complaints were usually only made when a supplier was delisted. When a supermarket delisted a supplier, the farmer had real problems because they had nowhere else to supply their produce. A farmer often worked through an intermediary and so might not necessarily have done anything wrong. Somerfield took the view that it was for the buyer to prove that they had acted honourably, not the supplier.
14. Somerfield supported the idea that each grocery retailer bound by the SCOP should have one person accountable for compliance. Such a compliance programme should

be run and administered by someone separate from the buying functions, perhaps in the retailer's legal team, or the Company Secretary's office.