

**REFERENCE RELATING TO THE TESCO PLC ACQUISITION OF  
CO-OPERATIVE GROUP'S STORE IN UXBRIDGE ROAD, SLOUGH**

**Notice of possible remedies under Rule 11 of the  
Competition Commission Rules of Procedure**

**Introduction**

1. On 19 April 2007 the Office of Fair Trading (OFT) in the exercise of its duty under section 22(1) of the Enterprise Act (the Act) referred to the Competition Commission (CC) for investigation and report the acquisition by Tesco plc of the Co-operative Group (CWS) Limited's store in Uxbridge Road, Slough.
2. In its provisional findings on the reference notified to Tesco plc (the main party) on 21 September 2007, the CC inquiry group (the Group) concluded provisionally that the acquisition would result in the creation of a relevant merger situation; and that absent the merger the CGL store, operated by a major grocery retailer, would have been the primary competitive constraint on Tesco Brunel Way. When the situation absent the merger is compared with the outcome brought about by the merger, in which the CGL store has been removed as a competitor to Tesco Brunel Way, we consider that the merger is likely to have resulted in an SLC in the market for grocery retailing in Slough. In the period leading up to this merger reference, we do not consider that entry or expansion by grocery retailers in Slough has addressed the SLC arising from Tesco's acquisition of the CGL store. Looking forward, we do not expect that entry or expansion will take place in the foreseeable future so as to remove the SLC arising from Tesco's acquisition of the CGL store.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies (see note).

**Criteria**

4. In choosing appropriate remedial action, the Group will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects which have resulted or may be expected to result from the SLC. When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction.

**Possible remedies on which views are sought**

***Divestiture***

5. The Group invites views on whether the divestiture of the Uxbridge Road site for the purposes of building a new grocery store on the site that would be capable of creating a similar competitive constraint to that likely to have been exercised under the situation absent the merger, as set out in the provisional findings, would be an

appropriate remedy for the SLC which has resulted, or may be expected to result, from the merger. The Group would particularly wish to hear views on the following issues:

- planning issues associated with applications for a substantial grocery retail unit on the site;
  - the effect of the existing construction on the site on the ability of possible purchasers to construct a substantial grocery retail unit on the site, and on the attractiveness to them of doing so;
  - suitable purchasers for the site; and
  - suitable plans for its redevelopment.
6. The Group also invites views on whether one or more units of the development presently being constructed by Spen Hill Developments Ltd, a subsidiary of Tesco plc, on the Uxbridge Road site<sup>1</sup> could be used to house a grocery store capable of creating a similar competitive constraint to that likely to have been exercised in the situation absent the merger, as set out in the provisional findings. The Group would particularly wish to hear views on:
- whether the entire development would need to be used to house the store or whether one or more units would be sufficient;
  - whether the conditions that restrict deliveries to the development<sup>2</sup> would constrain significantly a grocery retailer in its ability to operate a competing store from that development and whether those conditions could be removed or modified (possibly by reconfiguring access to the site);
  - whether leasing a unit or units in the development from Tesco would affect a grocery retailer's ability or incentive to operate a competing store and whether this would affect the attractiveness of such a lease to a grocery retailer; and
  - suitable purchasers of the entire development or tenants for one or more units on the site.<sup>3</sup>
7. The CC will specify a period within which divestiture to a suitable purchaser must occur (the initial divestiture period) and will consider using a divestiture trustee to effect the divestiture at no minimum price should it not have been effected by the end of that period.
8. The Group is not, at this stage, proposing behavioural remedies for discussion as it considers that behavioural remedies are unlikely to be effective in addressing the SLC and its resulting adverse effects. Notwithstanding this, the Group remains willing to consider any practical alternative remedies to divestiture that the main party or other persons would like to propose which they consider would address the expected SLC effectively.
9. The Group also considers it unlikely that it will recommend that remedial action should be taken by others.

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<sup>1</sup>Construction was stopped in accordance with an interim order made by the CC on 7 August 2007.

<sup>2</sup>08.00–18.00 Mon–Fri; 08.00–13.00 Sat; no deliveries Sunday and Bank Holidays,

<sup>3</sup>In this case the Group would need to understand what safeguards would be necessary to prevent Tesco as landlord affecting the purchaser's ability to compete.

### **Relevant customer benefits**

10. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the acquisition. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
11. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits.

### **Next steps**

12. The main parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **5 October 2007** (see note).
13. A copy of this notice will be posted on the CC's website. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish the Group to consider, by **5 October 2007**.

*(signed)* PETER FREEMAN  
Group Chairman  
21 September 2007

*Note:* This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main parties on 21 September 2007. The main parties have until 5 October 2007 to respond to the provisional findings published on 21 September 2007. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.