

T J Oyler
Inquiry Secretary (Groceries Market Inquiry)
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

7 June 2006

Dear Sir

Market investigation: the supply of groceries by retailers in the United Kingdom

Thank you for your letter of 16 May 2006, inviting me to submit evidence to the above enquiry.

I warmly welcome the establishment of the inquiry and would be grateful if the following points could be taken into account as the investigation proceeds.

1. Local market dominance

In conducting its investigation, I would urge the Competition Commission to look into whether features of particular local markets distort competition. The supply of groceries is not simply one market covering the whole of the United Kingdom, there are also clear and distinct local markets within which distortions of competition can also take place.

This problem is particularly acute in my constituency – Inverness, Nairn, Badenoch and Strathspey – where one supermarket, Tesco, has an especially large share of the groceries market. According to recent market research by CACI, Tesco accounts for 51% of the market in the Inverness postcode area. On those figures, Inverness is the City most dominated by one retailer in the whole of the United Kingdom.

Within Inverness, Tesco has three large stores. In addition, they are currently seeking to build a new 4,447 square metre store in the Holm area of the City.

It is important for the Commission, in the conduct of this enquiry, to understand both the causes and the consequences of such local dominance. I hope representatives of the Commission will, therefore, consider visiting Inverness during the course of the enquiry to take evidence.

The consequences of the dominant position of supermarkets for smaller retailers are also evident in Inverness. In particular, the Old Town Centre of Inverness has gone through a period of gradual decline with established shops closing or moving to new premises, and a growth in the number of charity shops. While these changes are the

result of a number of factors, competition from the growth of large out of town grocery outlets is clearly one factor.

Smaller town centre based retailers make reference to several additional factors that serve to skew the playing field yet further from level competition with the major supermarkets. These are parking charges and business rates.

Out of town supermarkets in general derive a competitive advantage from substantial areas of free parking, whereas too often town centre car parking is charged. The solution to these matters rests, of course, largely in the hands of local authorities but it does, I believe, contribute to the dominant position enjoyed by supermarkets in the grocery market.

2. Pricing issues

There is some evidence in the Inverness area of supermarkets using their market advantage to support differential pricing in non-grocery products. The local press in Inverness has reported on several occasions on the fact that petrol at Tesco in Elgin is approximately 2p per litre cheaper than at their major store at the Inverness Retail and Business Park on the A96. This difference is despite the fact that petrol for both Inverness and Elgin is shipped through Inverness harbour. In Elgin there is competition from a major Asda store.

It has also been suggested that supermarkets could use their buying power to prevent certain products being distributed through smaller retailers. A constituent has drawn my attention to the example of Twinklers flashing toothbrushes (product code 64354 – 302014), which are popular with children. This product used to be available through the local shop, priced at £1. Recently, my constituent found the product was unavailable at the local shop and was told that it had been discontinued by the supplier. The product is now available through Tesco, priced at £1.97.

3. Landbanking and planning

In its reference to the Competition Commission, the OFT makes reference to the issue of land-banking – ie where one retailer acquires a significant number of desirable sites for retail development. While the supermarkets will argue that this land is necessary for legitimate business planning purposes, large scale land-banking can have the effect of preventing competitors gaining access to the market.

It is particularly frustrating that the supermarkets have so far been unwilling to take an open and transparent approach to declaring the size and location of their undeveloped land-holdings (or those held for them by third parties). I would urge the Competition Commission to insist that supermarkets divulge complete information about their landbanks so that clear judgements can be made.

4. The planning system

It is a weakness in the planning system as it currently operates that in making a decision to approve a planning application no regard can be given to the competition implications of the application.

This means that, for example, in the case of Tesco's application for a fourth store in Inverness, to which I have previously referred, the planning authority is only able to make its decision on the basis of whether the site is appropriate for a retail development of that size and scale, it cannot take into account any competition implications which may be consequent on the identity of the application.

There are clear problems with giving such power to a local authority, not least that local rivalries could be drawn into a decision. However, it may be that an appropriate power to take competition issues into account in the planning system could be taken at a national level. Indeed, in its 2000 report the Competition Commission made the following recommendation:

“We recommend that in certain clearly defined circumstances, the DGFT's approval should be required for particular parties to be allowed to acquire or develop large new stores. These are that if Asda, Morrison, Safeway, Sainsbury or Tesco wish to acquire an existing store, or build a new store, having over 1,000 sq metres (about 11,000 sq feet) of grocery retail sales area within a 15-minute drive time of one of its existing stores, or significantly to extend the grocery retailing area of an existing store, it should be required to apply to the DGFT for consent. We think that a small, dedicated unit should be established to deal with such cases within the OFT. We recognize that this proposal would represent an additional burden and some business risk for the parties and would entail a staffing and resource cost for the OFT. Despite these considerations, however, we believe the benefit to consumers would clearly outweigh these costs.”

I hope that in the course of its current inquiry, the Commission will return to this idea and reinforce the need for a mechanism within the planning system for competition issues to be taken into account.

5. Supermarket code of practice

Farmers groups, including the National Farmers Union of Scotland, have repeatedly highlighted the shortcomings of the existing Supermarket Code of Practice. Because it deals only with the relationship between the supermarket and suppliers the code offers little protection to farmers, who generally supply their produce indirectly to supermarkets through a third party such as a processor.

Producers and suppliers are in fact prevented from lodging complaints under the code because they have no right to anonymity if they do so and fear that they will lose business if they make a complaint. The NFU Scotland have collected numerous examples of practices that would be in breach of the code but which have not been reported.

The dependence of many suppliers upon a single retailer, and the fundamental imbalance in market power between producers and retailers in the grocery sector, means that without the option of anonymity suppliers will rarely challenge the buyer, even if gross malpractice were taking place. The Code of Practice should allow the option of anonymity.

As well as establishing a more robust and effective Code of Practice, I would support the proposal to establish a Food Trade Inspector within the OFT. The Food Trade Inspector would be charged with overseeing the implementation of the reformed Code of Conduct, arbitrating alleged breaches of the Code and pro-actively seeking out unfair trading practices.

I trust that these points will be of use to the Commission in its investigation, and would be happy to discuss them further if necessary.

DANNY ALEXANDER

Member of Parliament for Inverness, Nairn, Badenoch and Strathspey