

## APPENDIX 2.1

(referred to in paragraphs 2.326, 2.329, 3.24 and throughout Chapter 14)

### Issues raised in Issues Letter of 31 January 2000

- (a) Whether the market in which the parties operate is predominantly that for the 'weekly one-stop shop'.
- (b) Whether, and if so in what respects, the market for the supply of the reference goods in which the parties operate at retail level is national, regional or local, or a combination of any of these; and whether it should be defined in terms of location (eg in-town or out-of-town, 'driveable to' or not). Whether Northern Ireland constitutes a separate market.
- (c) Whether, and if so in what respects, the market for the supply of the reference goods in which the parties operate at supplier to retailer level is national, regional or local, or a combination of these.
- (d) Whether the parties have been making overall levels of profit in their grocery businesses no higher than would have been possible in a competitive market.
- (e) Whether the parties are making no better returns than their counterparts on the European mainland and whether their prices are broadly comparable with those counterparts.
- (f) Whether prices in the stores operated by the parties have been falling in real terms over the past few years.
- (g) Whether any recent developments in the market for the reference goods, including the growth of home shopping and the entry of Wal-Mart into the UK, have changed the nature or degree of competition in that market.
- (h) (i) Whether consumers are satisfied with the value of the overall offer made by the parties in their supermarkets, or whether they would prefer, or be prepared, to sacrifice elements of range, quality and service for lower prices;
- (i) (ii) whether low-income groups, including those with limited or no access to cars, or rural consumers, are at a disadvantage in purchasing the reference goods and if so, whether this is attributable to any of the practices cited in Annex 1 [not reproduced]; and
- (j) (iii) whether the siting of stores by the parties has had adverse environmental effects. Whether any of the matters in (i) to (iii) above operates, or may be expected to operate, against the public interest.
- (k) Whether practice 1(a) in Annex 1—ie adopting pricing structures and regimes that, by focusing competition on a relatively small number of frequently purchased product lines, restrict active price competition on the majority of product lines—leads to higher prices than would prevail in a more competitive environment. Whether the distortion of competition that results from the practice is exacerbated by promotional activity by the parties. Whether significant price changes tend to occur only when these are initiated by another retailer, rather than taking place in response to cost changes, and if so, whether in some cases this exacerbates the distortion of competition resulting from the practice. Whether, as a result, the practice operates, or may be expected to operate, against the public interest.
- (l) Whether practice 1(b) in Annex 1, ie the selling, on a persistent basis, of certain frequently purchased products either below cost (ie at a negative gross margin) or at retail prices that do not cover all direct costs, damages some suppliers, or other retailers, of such products, and thereby distorts competition and consumer choice. Whether, as a result, such selling operates, or may be expected to operate, against the public interest.
- (m) Whether practice 1(c) in Annex 1, ie the setting of retail prices across different stores in different geographical areas in the light of local competitive conditions, such variation not being related to costs, leads to some consumers paying higher prices than they would in a competitive market. Whether, as a result, the practice operates, or may be expected to operate, against the public interest.

- (n) Whether practice 1(d) in Annex 1, ie setting the prices of some own-brand products in relation to their branded equivalents rather than to their underlying costs, enables the parties to keep some prices higher than would otherwise be the case, and distorts the relationship between prices and costs, thereby distorting consumer choice. Whether, as a result, the practice operates, or may be expected to operate, against the public interest.
- (o) Whether practice 1(e) in Annex 1, ie making changes to retail prices for some products that do not sufficiently rapidly reflect changes in their corresponding wholesale prices, is evidence that the parties can set prices above the competitive level. Whether such action (or inaction) operates, or may be expected to operate, against the public interest.
- (p) Whether the provision by the parties of unprofitable facilities or amenities in their stores (i) means that customers overall pay higher prices than would prevail in the absence of such facilities or amenities; (ii) results in other retailers (for example, of fish, meat or bread) being unfairly disadvantaged; or (iii) is used to enhance or maintain market share rather than keep overall price levels as low as they would otherwise be. Whether, as a result, such provision operates, or may be expected to operate, against the public interest.
- (q) Whether the exercise by the parties of buyer power over some suppliers has prevented them from earning a reasonable return and has adversely affected either the supplier base or other retailers, thereby reducing consumer choice. Whether, as a result, this operates, or may be expected to operate, against the public interest.
- (r) Whether the parties, by managing access to shelf space for a product category, either alone or together with one or more suppliers of such a product category, discriminate against any other suppliers of the same product category, or disregard consumer preferences. Whether some suppliers are thereby either put at a disadvantage in terms of such access, or denied access, as a result of which consumer choice is reduced. Whether these arrangements operate, or may be expected to operate, against the public interest.
- (s) Whether the planning regime in the United Kingdom in any way adversely affects the market for the reference goods. Whether this operates, or may be expected to operate, against the public interest.
- (t) Whether the prices the parties pay for land and buildings for grocery retail use are unduly high and if so whether that is attributable to one or other monopoly situation. Whether those prices (i) unduly inflate their costs; (ii) sustain, or are sustained by, high grocery prices; or (iii) strengthen their position in the market at the expense of either potential new entrants or existing competitors seeking to expand their operations. Whether these matters operate, or may be expected to operate, against the public interest.
- (u) Whether any of the parties engages, in relation to sites for grocery retail use, in practices which deny potential supermarket sites to other retailers, for example by the use of restrictive covenants. Whether such practices are actions to exploit or maintain, or are otherwise attributable to, one or other monopoly situation, and operate, or may be expected to operate, against the public interest.
- (v) Whether any of the parties achieves significant economies of scale in their grocery businesses, locally, regionally or nationally. Whether such economies enable any of the parties to exploit or maintain one or other monopoly situation and whether this has resulted in the market becoming too concentrated. Whether any of these matters operates, or may be expected to operate, against the public interest.
- (w) Whether any of the parties is maintaining an excessively high cost base and whether this constitutes action taken to exploit or maintain, or is otherwise attributable to, one or other monopoly situation, resulting in consumers paying more for groceries than would otherwise be the case. Whether this operates, or may be expected to operate, against the public interest.