

Terms of reference and conduct of the inquiry

Terms of reference

1. Whereas in exercise of its duty under section 22(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to a completed merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—

(a) a relevant merger situation has been created in that:

(i) enterprises carried on by or under the control of Tesco plc have ceased to be distinct from enterprises carried on by or under the control of the Co-operative Group (CWS) Limited at Uxbridge Road, Slough; and

(ii) as a result the condition specified in section 23(3) of the Act prevails or prevails to a greater extent with respect to the supply in the United Kingdom or a substantial part of the United Kingdom of groceries via one-stop shopping (as that term is defined in the report by the CC on the proposed acquisition of Safeway plc, Cm 5950, September 2003); and

(b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, including the supply of groceries.

2. Now, therefore, the OFT, in exercise of its duty under section 22 of the Act, hereby refers to the CC, for investigation and report within a period ending on 3 October 2007, the following questions in accordance with section 35 of the Act—

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

3. In relation to the question whether a relevant merger situation has been created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if it finds that the other is satisfied.

(signed) **Simon Pritchard**
Director of Mergers
Office of Fair Trading
19 April 2007

Conduct of the inquiry

1. The acquisition was referred to the CC by the OFT on 19 April 2007. At the time of referral, the CC was also in the course of carrying out an investigation into the market for the supply of groceries in the UK (the Groceries inquiry).
2. The terms of reference and details of the members of the CC carrying out the inquiry were published on the CC website on the date of referral. The same members carrying out the Groceries inquiry were appointed to consider the acquisition.
3. The CC wrote to a number of parties to invite evidence in early May 2004.
4. The administrative timetable for the inquiry was published on 11 May 2007. The timetable was revised on 18 July 2007 and 9 November 2007.
5. The inquiry group and CC staff visited the site of the former CGL store on Uxbridge Road in Slough, and the Tesco store at Brunel Way in Slough, in May 2007.
6. We received written submissions from Tesco and third parties, and non-confidential versions were placed on the CC website.
7. We held hearings with Tesco, Sainsbury's, and Slough Borough Council, and spoke to Waitrose, Whole Foods and Chalvey Supermarket. Summaries of key arguments and hearings were placed on the CC website.
8. A working paper on Market Definition, pertaining both to the Groceries inquiry and the acquisition, was published on 30 May 2007.
9. The issues statement was published on 31 May 2007.
10. On 14 June 2007, the CC accepted interim undertakings from Tesco and issued Directions pursuant to those undertakings in relation to the continuing construction work at the site of the former CGL store. The Directions also required Tesco to appoint a Monitoring Trustee.
11. On 17 July 2007, the Members of the Group decided to extend the reference period by eight weeks to 28 November 2007. When deciding to extend the reference period, the Group had regard to the desirability of ensuring consistency of approach, where appropriate, with the Groceries inquiry.
12. On 7 August 2007, the CC made an Order and issued Directions under the Order obliging Tesco to cease construction on the site of the CGL store, and to maintain the appointment of the Monitoring Trustee. The CC varied the Order on 26 October 2007, to extend its duration to the end of the reference period.
13. A non-sensitive version of our provisional findings report was placed on the CC website on 21 September 2007, along with a notice of possible remedies. We received comments on the provisional findings report and responses to the notice of possible remedies, and held remedies hearings with Tesco and third parties in October 2007.
14. The final report was published on 28 November 2007.
15. We would like to thank all those who have assisted in the inquiry.