

Anticipated merger between J Sainsbury PLC and Asda Group Ltd

Provisional findings report

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Glossary

Summary

1. The Competition and Markets Authority (CMA) has provisionally found that the anticipated merger (the Merger) between J Sainsbury plc (Sainsbury's) and Asda Group Limited (Asda) (together, the Parties) may, on the balance of probabilities, be expected to result in a substantial lessening of competition (SLC) in markets in the UK in the following respects:
 - (a) The supply of groceries in supermarkets on a national basis, ie in every local area in which one or both of the Parties are present.
 - (b) The supply of groceries in supermarkets on a local basis in 629 of the local areas where both Parties are present, covering 45% of Sainsbury's supermarkets and 57% of Asda's supermarkets.
 - (c) The supply of groceries in Asda convenience stores on a national basis, ie in every local area in which an Asda convenience store is present.
 - (d) The supply of groceries in convenience stores on a local basis in 65 of the local areas where both Parties are present, covering 7% of Sainsbury's convenience stores and 18% of Asda's convenience stores.
 - (e) The supply of groceries ordered online and delivered to the customer's location (online delivered groceries) on a national basis, ie in every local area in which one or both of the Parties are present.
 - (f) The supply of online delivered groceries on a local basis in 290 of the local areas where both Parties provide online delivered groceries services, covering 7% of the delivery areas served by Sainsbury's and 95% of the delivery areas served by Asda.
 - (g) Coordinated effects (between the Parties and Tesco) in the supply of online delivered groceries in areas of the UK where Ocado is entirely absent, which represents around 20% of UK postcode units.
 - (h) The supply of fuel on a local basis in 132 of the local areas where both Parties operate petrol filling stations (PFSs), covering 20% of the Sainsbury's PFSs and 20% of Asda's PFSs.
2. We now invite submissions from any interested parties on these provisional findings **by Wednesday 13 March 2019**.
3. Alongside these provisional findings, we have published a notice of possible remedies, which sets out the CMA's initial views on the measures that might be required to remedy the SLCs that we have provisionally found. We also

invite submissions from interested parties on these initial views **by Wednesday 6 March 2019**.

4. We will take all submissions received by these dates into account in reaching our final decision, which will be issued by 30 April 2019.

The merger parties

5. On 30 April 2018, Sainsbury's and Walmart announced the proposed combination of the Parties. Sainsbury's will acquire Asda from Walmart and, in turn, Walmart will receive shares in Sainsbury's, such that Walmart will hold 42% of the shares (and 29.9% of the voting shares) in the merged entity. Walmart will also appoint two non-executive directors to the Board.
6. Sainsbury's operates a network of 1,428 grocery stores (including 647 supermarkets and 781 convenience stores), 314 PFSs and an online grocery business. Sainsbury's also operates Argos and Habitat.
7. Asda operates a network of 676 grocery stores (including 582 supermarkets and 61 convenience stores which are all attached to PFSs), 33 Asda Living stores (focused on non-grocery products including clothing), 320 PFSs and an online grocery business.
8. Sainsbury's and Asda are the second and third largest grocery retailers in the UK and two of the four largest retailers of online delivered groceries in the UK. The combination of these two grocery retailers will not only affect the groceries sector. Alongside core groceries in their larger stores, the Parties also sell items such as clothing, electricals and toys which we refer to as 'general merchandise' (GM) and supply fuel through PFSs, which are often located adjacent to the larger grocery stores. The Merger would create the largest retailer of fuel by volume in the UK.

The CMA's investigation

9. The CMA's investigation has necessarily been extensive and wide-ranging. We have conducted three large surveys of customers covering in-store groceries, online delivered groceries and fuel, through which we have received the detailed views of over 60,000 shoppers and motorists. In addition to conducting hearings with the Parties, we have conducted a roundtable in Edinburgh and have held hearings with a broad range of supermarket suppliers, the Parties' competitors, trade and consumer bodies, and other interested parties, and we spent two days visiting the Parties' head offices and supermarkets. We have reviewed hundreds of thousands of the Parties'

internal documents and have received thousands of pages of submissions from the Parties and other interested parties.

10. In this investigation, the CMA must first decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of the Enterprise Act 2002 (the Act). We have provisionally found that the Merger creates a relevant merger situation because Sainsbury's and Asda (and Walmart and Sainsbury's) would cease to be distinct from each other, and because the turnover of Asda (and Sainsbury's) exceeds the £70 million threshold set out in the Act. This means that the CMA has jurisdiction to investigate the Merger.
11. The second question we must decide on is whether the creation of that relevant merger situation may be expected to result in an SLC within any market or markets in the UK for goods or services. This requires the CMA to assess what effect the Merger will have on competition, which is the process of rivalry over time between businesses seeking to win customers' business by offering them a better deal. An SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice). The CMA is required to make this judgement on the balance of probabilities – ie to decide whether an SLC is more likely than not. In this case, we have provisionally found a very large number of SLCs spanning a large part of the Parties' operations. However, we stress that these are not our final findings, and the number and nature of SLCs may well change before we come to our final decision.
12. The final question we must decide on is what action we might take for the purposes of remedying any SLCs we have identified. This is the subject of the notice of possible remedies we have published alongside these provisional findings, in which we discuss whether to prohibit the Merger in its entirety, or whether a large-scale divestiture package could effectively remedy the SLCs we have provisionally found.

The context of the merger

13. UK groceries retailing is an important industry which was estimated to be worth around £190 billion in 2018. It is an industry that touches every household in the country. Food (excluding tobacco and alcohol) represents around 10.5% of typical household expenditure, increasing to 14.3% for those on lower incomes. It has been estimated that groceries account for just over half of all retail sales in the UK.

14. Taking in-store and online sales together, Tesco is the largest grocery retailer in the UK, accounting for approximately 27% of grocery sales. Sainsbury's is the next largest, accounting for approximately 15%, followed by Asda (14%), Morrisons (10%), Aldi (7%), Co-op (6%), Lidl and Waitrose (each 5%), M&S (4%), Iceland (2%) and Ocado (1%).
15. One of the developments in the groceries sector in recent years has been the growth of the so-called 'discounters' (Aldi and Lidl), which have challenged the so-called 'Big 4' grocery retailers (Tesco, Sainsbury's, Asda, Morrisons) and other traditional grocery retailers. Since 2010, Aldi and Lidl have collectively opened over 500 new stores in the UK (taking them to a total of around 1,500). The discounters tend to be cheaper than other supermarkets, they stock around one-fifteenth of the different product lines of a large 'Big 4' supermarket, and they offer fewer branded goods.
16. Another trend is that people are increasingly shopping 'little and often'. The big weekly shop is now less common than it used to be. However, this is a gradual and long-established trend, and large supermarkets remain important. Just under 90% of customers still conduct a single main weekly shop. Both Tesco and Sainsbury's now operate substantial numbers of convenience stores. Asda only operates a relatively small number of convenience stores, all of which are attached to its PFSs.
17. There has also been continued growth in online delivered groceries in the UK with revenues of around £11.4 billion in 2018. This is around 6% of UK groceries sales. It is forecast to be the fastest growing grocery channel, expected to increase in value to £17.3 billion by 2023. While many in-store grocery retailers also supply online delivered groceries, Aldi and Lidl do not, and other retailers such as Ocado operate only online.

Our approach

18. We have assessed the likely effects of the Merger in the following five areas:
 - (a) In-store groceries;
 - (b) Online delivered groceries;
 - (c) General Merchandise;
 - (d) Fuel; and
 - (e) Buyer power, ie whether the increased power of the merged entity over suppliers would distort competition and result in adverse effects for customers of grocery retailers.

19. For groceries, GM and fuel markets, we have assessed the horizontal unilateral effects of the Merger. This means that we have assessed whether the merged entity could profitably increase prices, and/or worsen other aspects such as the quality, the range and the service it delivers to customers relative to the situation that would have existed absent the Merger (collectively, we refer to these price and non-price factors as 'PQRS'). The consumer harm would arise as a result of the merged entity acting unilaterally, ie independently of others in the market.
20. For groceries, we have also assessed the possible coordinated effects of the Merger. Coordinated effects may arise when firms recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate or align their behaviour. The consumer harm would arise due to the merged entity and others coordinating their behaviour, but without any explicit or unlawful arrangements or direct communications between them.

In-store groceries

21. The Parties are large, nation-wide players which set and apply important elements of their competitive offer consistently across all their stores. This includes the pricing of goods, their overall brand positioning, the quality of own-brand goods, innovations that affect product quality, and negotiations with suppliers on promotions.
22. However, competition for the supply of in-store groceries takes place primarily at the local level, as customers shop locally, choosing from the available options in their local area. Quality, range and/or service is, or would be, flexed locally in response to competition – for example, through varying in-store customer service, staffing levels, check-out facilities (which affect queue lengths), maintenance and investment, the availability of promotions, stock availability or stock quality, or changing the product range in stores.
23. For in-store groceries, we have examined:
 - (a) Whether the Merger would give rise to an incentive to degrade PQRS across all of their supermarket (or convenience) stores, resulting in an SLC in each local area where either or both of the Parties' stores are present. By way of shorthand, we refer to this as our 'national assessment'.
 - (b) Whether the Merger would give rise to an incentive to degrade PQRS in individual local areas where the Parties' supermarket (or convenience) stores overlap. By way of shorthand, we refer to this as our 'local assessment'.

- (c) Whether the Merger would give rise to coordinated effects.

National assessment

Supermarkets

24. Where the Merger lessens competition in local areas representing a significant proportion of the Parties' overall supermarkets, the Merger may result in price rises (and/or a worsening of other aspects) across all stores and not just those where there is a local SLC. The effect could be a worse deal for customers in each local area where one or more of the Parties is present (that is, including areas where they do not overlap). Any such deterioration across the Parties' stores as a whole would reflect the aggregate effect of the reduction in the competitive constraints that the Parties face across the local areas where they operate.
25. We undertook the national assessment of the Parties' supermarkets by considering the following qualitative and quantitative evidence, to form a decision in the round:
- (a) Evidence on national shares of supply and the scale of the local overlaps between the Parties;
 - (b) Evidence from the Parties' internal documents on the competitors they monitor, and the importance of different competitors in their strategy setting;
 - (c) Customer switching patterns, on an aggregated national basis;
 - (d) Views from other grocery retailers on the offers of different retailers, and the competition between them;
 - (e) Responses from the CMA store exit survey, which interviewed over 20,000 customers outside the Parties' stores across the UK. Customers were asked, for example, which elements of a grocery retailer's offering were most important, which items or services they had just purchased, and how they might respond to price rises;
 - (f) Evidence on the Parties' and rivals' in-store offers, in terms of amenities, services, range, product offering, and how these differ;
 - (g) Other evidence, including customer demographics and data on consumer shopping behaviour; and

- (h) For each Party, the gross upward pricing pressure index (GUPPI) on a national weighted-average basis. This is a commonly-used measure calculated by combining diversion ratios and profit margin information, which is intended to provide an indication of the incentive the Parties may have to worsen their PQRS as a result of the Merger.
26. We provisionally found that the Parties are significant national players in in-store groceries and are close competitors to each other. They would have a national share of supply post-Merger of 29% and their supermarkets would overlap in locations representing around [70-80]% of all Sainsbury's supermarkets and around [80-90]% of Asda's supermarkets.
 27. We provisionally consider that the 'Big 4' grocery retailers (of which the Parties are two) compete directly with each other and that this competition is important for customers. The 'Big 4' retailers differ from other grocery retailers, in terms of features such as the overall pricing level, the extent of in-store services and amenities, the size and consistency of their product ranges, the availability of branded goods, and the offer of additional products and services on-site such as fuel and GM.
 28. The evidence from the Parties' internal documents shows that while each Party monitors a wide range of competitors (including Aldi and Lidl, which are a clear competitive focus), both Parties recognise the 'Big 4' retailers as a distinct group, against whom they regularly measure their own competitive performance.
 29. Switching data shows that for both Parties, Tesco is an important competitive constraint, with Morrisons and the other Party the next most important constraints. It also supports a finding that retailers such as Aldi, Lidl and Waitrose are a constraint on the Parties, but not to the extent of the other Party, Tesco, or Morrisons.
 30. Submissions we have received from other interested parties support a degree of distinction between the 'Big 4' retailers and other grocery retailers, albeit also recognising certain differences within this group. These submissions highlighted important points of difference between the 'Big 4' retailers and Aldi and Lidl, which some submitted reduced the extent to which they competed closely.
 31. We provisionally found that the discounters provide a competitive constraint on the Parties, but that this constraint is generally less significant than that provided by the other 'Big 4' retailers.
 32. The closeness of competition between the Parties and the absence of sufficient post-Merger constraints is consistent with our national weighted

average GUPPI calculations which at [0–5]% (for Sainsbury’s) and [0–5]% (for Asda) indicate a level of upward pricing pressure that we consider in these markets would be substantial (having taken into account the rivalry-enhancing efficiencies which might arise from the Merger).

33. As a result, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive and ability to degrade PQRS on a national basis across the Parties’ supermarkets, resulting in an SLC in each local area where one or more of the Parties’ supermarkets is present.

Convenience stores

34. We also undertook a national assessment of the Parties’ convenience stores. The Parties compete with a wider range of competitors in respect of their convenience stores than in respect of their supermarkets.
35. For Sainsbury’s, we provisionally found that the Merger would not give rise to an incentive for it to raise prices across all of its convenience stores, which charge different prices to Sainsbury’s supermarkets. This is because the local areas where we have provisionally found competition concerns regarding Sainsbury’s convenience stores represent a small part of Sainsbury’s overall convenience store estate (54 out of around 800 stores).
36. For Asda, the situation is different because its convenience stores charge the same prices as its supermarkets. Our provisional finding that the Merger would result in an SLC in each local area where Asda’s supermarkets are present through a degradation of PQRS which could include a national price rise, would also mean that the Merger would result in an SLC in each local area where Asda’s convenience stores are present.

Local assessment

Supermarkets

37. We assessed the effect of the Merger on the Parties’ supermarkets in individual local areas.
38. As the Parties operate over 1,000 supermarkets across the UK (including soon to be opened stores), we systematically assessed the potential effect of the Merger in every local area where one or both Parties’ supermarkets is present, and then applied a decision rule to determine (based on that assessment) in which (if any) local areas the Merger gives rise to an SLC. This involved using evidence of competitive conditions and interactions at a

local level, which we derived from our survey of customers and other sources, to measure systematically the degree of competition the Parties face in each local area. We call this the weighted share of shops (WSS) model. The WSS then allowed us to produce a measure (the GUPPI) of the potential effect of the Merger on the Parties' incentives to worsen their offer at their supermarkets in each of those local areas.

39. The main steps we have followed to produce the WSS model are as follows:

- (a) We analysed different types of evidence to decide which weighting to attach to different types of competing stores depending on their store characteristics (brand, size, distance from the Parties' store).
- (b) We then considered the appropriate allocation for 'out-of-market constraints' – ie stores located further away, online delivered groceries, and non-supermarket retailers – which are not already accounted for in the primary weightings.
- (c) We then used the weights determined in the first step and the out-of-market allocation to generate our best estimate of the proportion of customers who would choose the other Party in each local market if one of the Parties started offering a worse deal to customers (we call this diversion between the Parties).
- (d) Estimates of diversion between the Parties, together with information about the profitability of those customers (through our assessment of the Parties' profit margins), gives us an indication of the value of business which the Parties would recapture if they were to worsen PQRS in a particular store following the Merger.
- (e) We are then able to produce a GUPPI index for every store which indicates the potential effect of the Merger on the Parties' incentives to worsen their offer in a particular store.
- (f) Finally, we considered carefully at what level of this GUPPI index we believe, on the balance of probabilities, the Merger would give rise to an incentive on the part of the Parties to degrade PQRS in a particular store sufficiently to represent an SLC in a particular local market.

40. We believe that the GUPPI described above provides a reliable measure of the expected effect of the Merger, and is therefore a strong basis for our decision for the following reasons:

- (a) It relies on evidence that we consider to be robust, and which has been subject to careful scrutiny. This includes the CMA in-store survey, which

involved face-to-face interviews with over 20,000 customers, and which was the subject of careful planning and high-quality fieldwork. It also includes entry/exit analysis and analysis of profit margins.

- (b) It allows us to effectively combine these pieces of information in an aggregate measure, which incorporates and reflects the key factors of relevance to our competitive assessment, including on brand, store size and distance, which our investigation confirmed are key factors affecting competitive strength.
 - (c) We carefully assessed the assumptions underlying each of the components of the GUPPI.
 - (d) It allows us to directly factor into our decision rule an allowance for rivalry-enhancing efficiencies, which would go some way towards offsetting the incentive to worsen PQRS.
41. For these reasons, we believe that the GUPPI incorporates the best available evidence and is sufficiently robust to form the basis of our decision rule in the local assessment.
 42. We have provisionally decided to set the threshold for the GUPPI decision rule for our local assessment of the Parties' supermarket overlaps at 2.5% for all local areas. This takes account of our view of the efficiencies that are likely to be generated by the Merger, and an allowance for any uncertainty in our analysis together with the requirement in the legal test that any lessening of competition must be 'substantial'. In each area failing this decision rule, we provisionally found that the Merger is more likely than not to give rise to an SLC in the circumstances of this case.
 43. On this basis, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade those aspects of the offer that can be locally flexed at certain supermarkets, resulting in an SLC, in 629 local areas.

Convenience stores

44. We assessed the effect of the Merger in individual local areas for the Parties' 842 convenience stores, using a similar analytical approach to our assessment of the Parties' supermarket overlaps, which was further informed by the analysis undertaken by the CMA in the recent Tesco/Booker merger investigation which included an assessment of convenience stores. We constructed a WSS model that allowed us to calculate weights for each local overlap, and used these, together with information on local margins, to produce GUPPIs for each overlapping convenience store.

45. Similarly to our assessment of the Parties' supermarket overlaps, we then used these GUPPIs as the basis of a decision rule, again adopting a threshold of 2.5%. This threshold takes account of the efficiencies which we consider likely to be generated by the Merger, and an allowance for any uncertainty in our analysis together with the requirement in the legal test that any lessening of competition must be 'substantial'. In each area failing this decision rule, we provisionally found that the Merger is likely to give rise to an SLC in the circumstances of this case.
46. On this basis, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade those aspects of the offer that can be locally flexed at certain convenience stores, resulting in an SLC, in 65 local areas.

Coordinated effects

47. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable long-term outcome if they avoid strong rivalry in the short term and instead coordinate, or align, their behaviour so as to raise their profitability (but without entering into any unlawful express agreement or direct communication).
48. All three of the following conditions must be satisfied for coordination to be possible:
 - (a) Retailers need to be able to reach and monitor the coordination between them.
 - (b) Coordination needs to be internally sustainable among the coordinating group, ie retailers find it in their individual interests to adhere to the coordinated outcome.
 - (c) Coordination needs to be externally sustainable, ie the coordination is not undermined by competition from other retailers who are outside the coordinating group.
49. While we found some evidence that could be consistent with pre-existing coordination (significant levels of competitor monitoring and stable market shares), we have not seen evidence of significant or persistent pricing alignment between the 'Big 4' (which we believed to be the most likely coordinating group) for in-store groceries. Overall, we considered the evidence to be more consistent with competition and we therefore provisionally found that there is no pre-existing coordination in the markets for in-store groceries.

50. There are many features of these markets that make reaching a common understanding feasible, including the relatively stable, transparent environment and the similarity in business models amongst the 'Big 4'. We consider the main barrier to reaching and monitoring a common understanding to be the complexity of pricing across such a wide range of different products. We do not consider the problem posed by this complexity would be impossible to overcome and note that grocery retailers already deal with a high degree of complexity when setting prices and that further advances in technology will likely increase their ability to do so in the future. However, at present we consider this complexity remains a significant barrier. On balance, we provisionally found that it is not likely that grocery retailers are able to reach and monitor terms of coordination over the pricing of in-store groceries at present.
51. We provisionally found that the Merger was likely to increase the ability to reach and monitor a common understanding to some extent. However, we did not consider that the Merger would make it more likely than not that a group of coordinating firms would be able to reach and monitor terms of coordination in relation to in-store groceries. We therefore did not need to assess the other conditions for coordination. As a result, we provisionally found that the Merger would not result in an SLC on the basis of coordinated effects in any of the markets for in-store groceries.

Online delivered groceries

52. Drawing on evidence from our online survey, in which we conducted over 30,000 online delivered groceries interviews, and other evidence, we provisionally found that online delivered groceries represents a separate product market rather than being part of a product market that also included in-store groceries. However, while we have excluded in-store competitors from the relevant product markets, we nonetheless took account of the constraints from in-store competitors who are outside the markets in our assessment of the competitive effects. For example, we used diversion ratios based on survey questions where respondents could state that they would switch to in-store.
53. The eight retailers selling online delivered groceries are AmazonFresh, Asda, Iceland, Morrisons, Ocado, Sainsbury's, Tesco and Waitrose. Neither Aldi nor Lidl sell online delivered groceries (though Aldi does sell alcohol online). There are two main models used for online delivered groceries:
- (a) Store-pick: the retailer's employees walk around the supermarket to 'pick' the orders, and then a driver delivers the groceries to customers.

(b) Customer fulfilment centres (CFCs): groceries are picked in a specialised centre which only supports online sales. These centres typically service a larger geographic area than individual local stores. This is the method used by online-only grocery retailers such as Ocado, but other retailers also use this approach.

54. We use the term 'Supply Point' to refer to both stores which are used for store-pick and CFCs.
55. Both Parties set some aspects of their online offer at the national level and apply them uniformly, including product prices, delivery pass prices and the quality of their website and apps. Asda also currently sets its delivery prices at the national level.
56. At the local level, the Parties can or do flex some aspects of their online offer, such as delivery prices for Sainsbury's. Furthermore, post-Merger, the Parties could change their approach and flex Asda's delivery prices at the local level.
57. As for in-store groceries, we have conducted national, local and coordinated effects assessments for online delivered groceries.

National assessment

58. As discussed above, we have provisionally found SLCs for in-store groceries. Product prices are the same across both in-store and online delivered groceries, and we do not consider that this is likely to change post-Merger; there is therefore likely to be an equivalent increase in the prices of online delivered groceries sold by the Parties. This means that the Merger would result in an SLC in each local area where one or more of the Parties is present in online delivered groceries.
59. We also assessed the discrete effects of the Merger on competition in online delivered groceries, whereby the Merger would result in a reduction in the number of competitors in online delivered groceries from eight to seven.
60. Only three online delivered groceries retailers (Tesco, Sainsbury's, Asda) have a near-national presence and many online delivered groceries customers would have a restricted choice following the Merger: sometimes limited to only the Parties and Tesco. The Parties overlap in all but one Asda Supply Point.
61. Only four online delivered groceries retailers (Tesco, Sainsbury's, Ocado, Asda) have national shares materially above 5%. While Ocado is a relatively strong player overall, with a national share of supply similar to Asda, its presence is limited to certain parts of the UK. Morrisons has a national share

of supply of [5–10]%. This smaller presence, relative to in-store groceries, may partly be explained by the fact that Morrisons entered online delivered groceries far later than Sainsbury's, Asda or Tesco, but may also reflect that it is a weaker competitor in certain areas due to consumer preferences, and is absent from some geographic areas. Iceland and AmazonFresh both have low national shares of supply. The discounters, Aldi and Lidl, whose growth has been a recent trend in in-store groceries, are absent from online delivered groceries.

62. Online delivered groceries are constrained to some extent by in-store groceries offerings and we take this into account in our assessment. However, the Parties are both also important national players in in-store groceries.
63. Consistent with this, the national GUPPI figures show that the Parties would have an incentive to worsen PQRS (including an incentive to innovate less) after the Merger, particularly for Asda customers.
64. In light of this, we have provisionally found that the combination of two of the four largest online delivered groceries retailers (each with a share of supply [10–20]%) would give rise to an incentive to degrade PQRS across the Parties' online delivered groceries offer, resulting in an SLC in each local area where one or more of the Parties is present. The Parties face varying degrees of competitive pressures from a range of other groceries retailers, including in-store, but these constraints would not be sufficient to offset the substantial loss of competition between the Parties in online delivered groceries post-Merger.
65. We have provisionally found that entry or expansion by other competitors would not be sufficient to offset the potential SLC.

Local assessment

66. As the Parties operate 531 Supply Points across the UK, we have systematically assessed the potential effect of the Merger in every local area and then applied a decision rule to determine in which (if any) local areas the Merger gives rise to an SLC. As for in-store groceries, we adopted a GUPPI-based decision rule, with the same SLC threshold of 2.5%.
67. We calculated a GUPPI for each Supply Point in which the Parties overlap by combining national online and in-store margins with diversion ratios from our online survey.
68. On this basis, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade

those parameters of their offer that can be locally flexed at certain Supply Points, resulting in an SLC, in 290 local areas.

Coordinated effects

69. We assessed whether the Merger might be expected to give rise to an SLC in online delivered groceries through coordinated effects, using the same framework as for in-store coordination discussed above, ie assessing the ability to reach and monitor the coordination; internal sustainability; and external sustainability.
70. We conducted our assessment of the potential for coordinated effects with a specific form of coordination in mind. Based on the characteristics of the markets, we provisionally considered that were tacit coordination (ie alignment without any explicit agreement among the coordinating group) to occur pre-Merger, it would most likely have the following characteristics:
- (a) The coordinating group would comprise Asda, Sainsbury's and Tesco, which are three of the four largest retailers of online delivered groceries at the national level, with a combined national share of supply of [70–80]%, and which have the broadest geographic coverage. It is less likely that other retailers would be sufficiently aligned with these three to be part of the coordinating group.
 - (b) The focus of coordination (ie the aspects of competition on which they would avoid short-run rivalry and instead seek to align) would be delivery pricing, including related elements, such as slot length and minimum basket size. This is an aspect of competition that is specific to online delivered groceries, and over which there is a high level of transparency. The coordination would emerge over time and with repeated interactions between the members of the coordinating group. For instance, one member of the coordinating group would increase its delivery prices and see how the other members responded before considering what to do next.
 - (c) Given the differing geographic coverage of retailers of online delivered groceries and the ability to flex delivery pricing by local area, the coordination would be most likely to occur in geographic areas where the constraints external to the coordinating group are weakest. This would comprise areas where Ocado is not active.
71. We did not find sufficient evidence to support a provisional finding of pre-existing coordination in online delivered groceries. Of the three conditions for

coordinated effects, we provisionally found that only the first condition (the ability to reach and monitor a common understanding) is not met pre-Merger.

72. We did find evidence of online delivered groceries retailers recognising their mutual interdependence. It is not clear that this is evidence of attempts to coordinate, but we nonetheless consider it is relevant to our assessment of the likelihood of coordination arising after the Merger.
73. We provisionally found that the Merger would increase the ability of the coordinating group to satisfy the first condition sufficiently for it to be met. The Merger would increase the symmetry between the two members of the coordinating group (Tesco and the merged entity), and there would only be one relationship to coordinate between the two retailers (instead of three relationships pre-Merger).
74. We provisionally found that the markets' characteristics are consistent with coordination being internally and externally sustainable at present because the benefits of deviating from the coordination (eg by lowering delivery prices) would be short-lived, and the coordinating group would face limited constraints in areas of the country where Ocado is not present. We also provisionally found that internal sustainability would be slightly increased, and that external sustainability would not be reduced by the Merger.
75. Given that the three conditions for coordination were likely to be met and satisfied to a greater extent overall as a result of the Merger, and considering all the evidence in the round, we provisionally found that the Merger would make coordination in online delivered groceries, in areas where Ocado does not operate, more likely than not. We therefore provisionally found that the Merger would be expected to result in an SLC in the local markets for online delivered groceries where Ocado does not operate.

Fuel

76. The Parties both supply road fuel (petrol and diesel) at the retail level in the UK. We have conducted national and local assessments for fuel.
77. Although retail fuel markets are local, and the Parties set fuel prices locally, we assessed whether the Merger could create an incentive to worsen the Parties' offerings across all their PFSs, including aspects of their offerings that are set uniformly across their entire fuel business, such as their overall approach to setting prices.

National assessment

78. The Parties' PFSs overlap in locations representing around [70-80%] of all Sainsbury's PFSs and around [80-90%] of Asda's PFSs.
79. In our national assessment, we considered that: (i) the Parties' combined national share of supply (18% by volume, and 7.5% by number of sites) is lower than the level that may be typically expected to give rise to concern where the products offered (fuel) are largely the same between competitors; (ii) based on their pre-Merger pricing strategies, the Parties may be expected to find it profitable to adopt more localised pricing approaches post-Merger; and (iii) the average national GUPPI for the Parties' fuel businesses is low. We therefore provisionally found that the Merger may not be expected to lead to an SLC at a national level.

Local assessment

80. As the Parties operate 634 PFSs, we systematically assessed the potential effect of the Merger in every local area and then applied a decision rule to determine (based on that assessment) in which (if any) local areas the Merger gives rise to an SLC. The evidence available to us in our assessment of fuel differed to that in groceries, so our decision rule combined three analytical approaches:
- (a) A WSS analysis based on evidence on customers' diversion from the CMA fuel survey (which interviewed nearly 8,000 customers at the Parties' PFSs), reflecting how customers would switch from the Parties' PFS to local competing PFSs; we refer to this as the survey-based WSS.
 - (b) A WSS analysis based on a price concentration analysis (PCA), which reflects how prices at supermarket PFSs are affected by the presence of other local competitors; we refer to this as the PCA-based WSS.
 - (c) An analysis based on pricing rules that reflect how the Parties currently set their prices. We computed a Pricing Indicator as the difference between the prices that are generated by the pricing rules when the other merging party's PFSs are taken into account and when they are ignored, and we used this as an indicator of the likely effect of the Merger in each local market.
81. We used the results of the survey-based and PCA-based WSS approaches, in combination with information on the Parties' margins, to calculate a GUPPI for each local area where their PFSs are present. In our analysis, we took into account the interrelationship between the Parties' PFSs and their grocery stores. This is because the Parties' incentives to worsen any aspect of their

competitive offering for fuel (likely by raising prices) will be affected not only by the loss of revenue from fuel sales, but also by the extent to which loss of fuel customers would also lead to a loss of revenue from non-fuel sales (groceries and GM) to those customers.

82. For both the GUPPI and the Pricing Indicator, we defined appropriate thresholds which in our provisional view would represent a substantial lessening of competition. We considered that a high GUPPI was indicative of a problematic area even if the Pricing Indicator was low (and vice versa). As with our local assessments of in-store and online delivered groceries, we established a threshold having regard to the need for the lessening of competition to be substantial and any uncertainty in our analysis. In the case of fuel, we did not consider that the Parties would realise efficiencies to offset the incentive to raise prices. As a result, our GUPPI decision rule for fuel is lower than we adopt for in-store or online delivered groceries. We therefore provisionally adopted a decision rule according to which an SLC is found for any PFS where **either** the GUPPI is above a 1.5% threshold **or** the Pricing Indicator is above a 0.75ppl threshold.
83. On this basis, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to increase prices at certain PFSs, resulting in an SLC, in 132 local areas.

General Merchandise

84. We have focused our investigation on those GM segments (or sub-segments) in which the Parties have a relatively large market presence. These are clothing (in particular, childrenswear and generic schoolwear, which is a sub-segment of childrenswear), electricals (in particular, personal care electricals (PCEs) and small kitchen appliances (SKAs)), and toys.

Clothing

85. Sainsbury's offers clothing, footwear and accessories under its Tu brand and Asda offers clothing, footwear and accessories under its George brand. Both Parties sell childrenswear, including schoolwear. The Parties offer only generic schoolwear (ie clothes that are suitable for school, and marketed as such, but which do not include school logo embroidery or other features that are specific to a particular school).
86. The Parties have relatively low national shares of supply in clothing with a combined share of supply of [5–10]% by value. Considering the narrower sub-segments of womenswear, menswear and childrenswear, the Parties have higher shares of supply in childrenswear of [10–20]% by value. This would

mean that post-Merger, the Parties would have the largest share of supply by value in childrenswear in the UK. Within the segment of childrenswear, the Parties appear to compete closely in generic schoolwear. Post-Merger the Parties would have a combined share of supply in generic schoolwear of [20–30]% by value, making the merged entity the largest generic schoolwear retailer in the UK.

87. However, the Parties face major competitors in each segment and sub-segment of clothing. Even in the sub-segment of generic schoolwear, there are a large number of competitors with competitive prices and with a wide geographic coverage, such as Tesco, M&S, Next, Matalan, Debenhams, Morrisons and Aldi. Additionally, the Parties' shares may be overstated as our data does not include retailers such as Primark that supply childrenswear items that can be worn as part of a school uniform, but which are not specifically marketed as schoolwear. In this regard, Primark is a strong competitor in childrenswear generally, and particularly at the lower price end (where the Parties operate), and is monitored closely by the Parties in their internal documents.
88. On this basis, we provisionally found that the Merger would not be expected to result in any SLC with respect to clothing or any sub-segment of clothing.

Electricals

89. Sainsbury's (including Argos) and Asda sell a variety of electrical products, including small domestic appliances (eg vacuum cleaners, fans), 'grey' goods (eg computers, tablets and phones), and 'brown' goods (eg televisions and other audio-visual appliances).
90. The Parties would have a combined share of supply of less than [10–20]% in electricals. In the narrower sub-segments of electricals, the Parties' combined shares accounted for [10–20]% of sales of PCE and [20–30]% of sales of SKA. The Parties face competition from a range of grocery and non-grocery retailers, such as Boots, Dixons Carphone, Tesco and Amazon.
91. We provisionally found that the Merger would not be expected to result in an SLC with respect to electricals, or the narrower segments of PCE or SKA. These findings do not depend on the extent to which online sales constrain in-store sales.

Toys

92. Sainsbury's (including Argos) and Asda have a combined share of supply in toys of [20–30]%. The Parties face competition from a range of grocery and non-grocery retailers, such as Tesco, Smyths, the Entertainer, and Amazon.
93. We provisionally found that the Merger would not be expected to result in an SLC with respect to the retail supply of toys. These findings do not depend on the extent to which online sales constrain in-store sales of toys.

Buyer power

94. We have considered whether a potential increase in the negotiating power or 'buyer power' of the Parties could distort competition in the supply of groceries, with adverse effects for customers. It is not within the CMA's powers to consider adverse effects on suppliers which do not have competition implications.
95. We have considered two possible ways in which competition could be distorted:
 - (a) the exercise of increased buyer power by the merged entity might result in reduced incentives or ability to invest and innovate on the part of suppliers who may have less funds to do so; and
 - (b) the exercise of increased buyer power by the merged entity might cause suppliers to raise prices to and hence the purchasing costs of rival retailers, which, under certain circumstances, may result in price increases to customers of those rival retailers. This is often referred to as the 'waterbed effect' in competition inquiries.
96. For the first concern, we have provisionally found that only a small minority of new product development projects involve significant upfront costs and significant reliance on the terms obtained from the Parties. The few projects that appear to meet these criteria were developed by large multinational companies, typically with a view to initiating a new product line or broadening distribution in the medium- to long-term, such that their profitability might be less dependent on the terms obtained from the Parties than might be implied from short-term financial forecasts. We also found evidence that in certain circumstances retailers can and do provide some forms of commitments to support the product development activity of suppliers, though such support usually falls short of financial aid. For these reasons, our provisional finding is that there is insufficient evidence to conclude that the Merger is likely to significantly reduce incentives to invest and innovate on the part of suppliers.

97. For the second concern, we provisionally found that:
- (a) the majority of the suppliers which engaged with us do not expect to change their prices to rival retailers following the Merger;
 - (b) for most retailers a small loss of market share is unlikely to lead to a significant increase in procurement costs; and
 - (c) a price reduction by the merged entity produces conflicting incentives for rival retailers, which might lead some rival retailers to reduce, rather than increase prices.
98. Overall, it seems unlikely that many retailers will raise their prices in response to the Merger; and even if it were to occur for some individual retailers, the overall net effect on UK households is unlikely to be negative. On that basis, our provisional finding is that the Merger is unlikely to lead to customer harm through a waterbed effect.

Efficiencies

99. The Parties have said that cost-saving efficiencies are the main rationale for the Merger and that these efficiencies would mean that UK customers would benefit from lower prices as a result of Merger. We have assessed the efficiencies that would be generated by the Merger and which might improve competition in the relevant markets, with a view to including any such benefits in our assessment of the Merger.
100. We provisionally found that the Merger is likely to give rise to potential efficiencies, some of which would lead to an incentive to reduce prices, but for the specific purpose of our competition assessment we have not accepted the evidence advanced by the Parties regarding the scale of those efficiencies. However, based on a range of other evidence available in this case, such as assessments of increased buying scale and comparisons with other transactions in the industry, we have provisionally found that the Merger can be expected to produce some measure of sustainable rivalry-enhancing efficiencies, across groceries and GM markets, but that there are unlikely to be any relevant efficiencies in fuel markets.
101. The scale of efficiencies we have found is equivalent to around a 1% downwards pricing pressure in groceries and GM markets, which we have taken into account in our national assessments of in-store and online groceries, and which we have included in the GUPPI thresholds used in our local assessments of in-store and online groceries.

Provisional findings

1. The reference

- 1.1 On 19 September 2018, in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act) the Competition and Markets Authority (CMA) referred the anticipated merger between J Sainsbury plc (Sainsbury's) and Asda Group Ltd (Asda), part of Walmart Inc. (Walmart) (the Merger) for further investigation and report by a group of independent panel members (the Inquiry Group).¹ The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. Having decided to extend the statutory timetable by eight weeks, the Inquiry Group is required to publish its final report by 30 April 2019.²
- 1.2 In this investigation, the Inquiry Group must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.
- 1.3 This requires that the CMA assesses what effect the Merger will have on competition, which is the process of rivalry over time between businesses seeking to win customers' business by offering them a better deal. An SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice).³
- 1.4 This document, together with its appendices, constitutes the Inquiry Group's provisional findings, published and notified to Sainsbury's and Asda in line with the CMA's rules of procedure.⁴ Further information relevant to this inquiry, including non-confidential versions of the submissions received from Sainsbury's, Asda and third parties, as well as summaries of evidence received in oral hearings, can be found on the CMA's website.⁵

¹ The Act, [section 33\(1\)](#).

² [Notice of extension](#), 11 February 2019.

³ [Quick guide to UK merger assessment \(CMA18\)](#), paragraph 3.1.

⁴ [Rules of procedure for merger, market and special reference groups \(CMA17\)](#), paragraphs 11.1–11.7.

⁵ [Sainsbury's/Asda merger inquiry webpage](#).

- 1.5 Throughout this document we refer to Sainsbury's and Asda collectively as 'the Parties'.

2. The Parties, the Merger and its rationale

The Parties

Sainsbury's

- 2.1 Sainsbury's is the UK's second largest grocery retailer. It was founded in 1869. Sainsbury's generated £28.5 billion of group sales in the 52 weeks to 10 March 2018. It operates a network of 1,428 grocery stores (including 647 supermarkets and 781 convenience stores). Sainsbury's also operates 314 petrol filling stations (PFSs) and an online grocery business. In addition to selling various categories of general merchandise (GM) in its grocery stores and online, Sainsbury's operates Argos (a multi-format GM retailer) and Habitat (a retailer of furniture and homewares). Argos currently operates across 595 standalone stores and 274 concessions within Sainsbury's stores. Sainsbury's also offers retail banking, consumer credit, insurance and other customer financial services. In February 2018 Sainsbury's completed its acquisition of the Nectar loyalty card business. Sainsbury's had been part of the Nectar loyalty scheme since it launched in 2002.
- 2.2 Sainsbury's is a publicly listed company whose shares are traded on the London Stock Exchange. Its largest shareholder is the Qatar Investment Authority LLC which held 21.87% of the voting rights as at 18 January 2019. As at 18 January 2019, the only other investor who had notified Sainsbury's of an interest in 3% or more of the company's shares was Blackrock (5.01% of voting capital as at 17 May 2017). No individual shareholder exercises control over Sainsbury's.

Asda

- 2.3 Asda is the UK's third largest grocery retailer. It was founded in 1965. Asda generated £22.9 billion of sales in the year ending 31 December 2018. Asda operates a network of 643 grocery stores (including 582 grocery stores and 61 convenience stores which are all attached to PFSs), 33 Asda Living stores, 320 PFSs and an online grocery business, as well as selling various categories of GM in its grocery stores and online. Asda offers consumer credit, insurance and other customer financial services. Asda also has a subsidiary, International Procurement and Logistics which sources products for Asda directly.

- 2.4 Asda is wholly-owned by Walmart, which is a publicly-listed company with its shares traded on the New York Stock Exchange. As at 1 February 2019, the only shareholders with 3% or more of the voting rights of Walmart are Walton Enterprises LLC and Walton Family Holdings Trust. No individual shareholder exercises control over Walmart.
- 2.5 Walmart is a multinational retail corporation that operates chains of hypermarkets, discount department stores and grocery stores under 65 banners in 28 countries and e-commerce websites. In the UK, Walmart does not have any activities other than those carried out by Asda.

The Merger

- 2.6 On 30 April 2018, Sainsbury's and Walmart announced the proposed combination of the Parties. Pursuant to the Merger, Sainsbury's will acquire the entire issued share capital of Asda from Walmart and, in turn, Sainsbury's will issue Walmart with Sainsbury's voting ordinary shares and non-voting shares, such that Walmart group will hold 42% of the undiluted issued share capital of the merged entity, but such that it and its concert parties hold no more than 29.9% of the total number of voting shares in the merged entity (with the remainder of the 42% stake comprising of non-voting shares). Upon completion of the Merger, two Walmart representatives will join the Board of the merged entity as non-executive directors. The details of the Merger are publicly available on the Sainsbury's website.⁶
- 2.7 The Merger is not subject to review by any other competition authority.

The rationale for the Merger

- 2.8 The Parties stated that the rationale for the Merger is to create a dynamic new player in the UK retail market. The Parties noted that they need to improve their customer proposition as a result of the changes in the UK market over the last decade, driven primarily by the mainstream success of Aldi Stores Limited (Aldi) and Lidl UK GmbH (Lidl).⁷
- 2.9 In their public announcement, the Parties stated that the Merger would 'generate net EBITDA synergies, post investment in price, across the enlarged group of at least £500 million'. They also stated that they 'expect to lower prices by c.10 per cent on many of the products customers buy

⁶ [Proposed combination of J Sainsbury plc and Asda Group Limited](#) (30 April 2018).

⁷ [Proposed combination of J Sainsbury plc and Asda Group Limited](#) (30 April 2018), page 1. [The Parties' Initial Submission](#), paragraphs 5, 8 and 10. [The Parties' response to the Issues statement](#), paragraph 46.

regularly' and that there were 'no planned Sainsbury's or Asda store closures as a result of the [Merger]'. Furthermore, the Parties plan to 'maintain both the Sainsbury's and Asda brands' post-Merger.⁸

- 2.10 According to the Parties, the UK grocery sector is characterised by consumer expectations of increased quality and convenience at lower prices, competition from rivals with more efficient cost structures, as well as the increasing threat of further disruption from operators such as Amazon.⁹ In the Parties' view, making sufficient investment in their propositions to fully address these challenges requires them to narrow the cost advantage of competitors such as Aldi, Lidl and Tesco PLC (Tesco) and this cost reduction requires a significant change to their underlying operating models.¹⁰
- 2.11 The Parties submitted that the Merger will unlock large cost savings and that a large proportion of these savings will be passed on to consumers in the form of price reductions. The Parties stated that the cost savings also mean that they can invest in greater quality, range, service and convenience to deliver a more compelling customer proposition overall.¹¹
- 2.12 At the same time, the Parties noted that the Merger will result in a dynamic market-wide increase in rivalry. According to the Parties, given the highly competitive nature of the UK grocery market, the merger-specific cost reductions will make the Parties more competitive and, in turn, generate pro-competitive responses from their rivals. The Parties stated that consumers will thus benefit not only directly from the improved offering of the Parties, but from the dynamic and market-wide increase in rivalry that will result.¹²

3. Jurisdiction and the counterfactual

Jurisdiction

- 3.1 In accordance with section 36(1) of the Act and pursuant to our terms of reference (see Appendix A), we are required to decide first whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.¹³

⁸ Proposed combination of J Sainsbury plc and Asda Group Limited (30 April 2018), page 1.

⁹ The Parties' Initial Submission, paragraph 4. The Parties' response to the Issues statement, paragraph 46.

¹⁰ The Parties' response to the Issues statement, paragraph 47.

¹¹ The Parties' Initial Submission, paragraph 3. The Parties' response to the Issues statement, paragraphs 44 and 48–49.

¹² The Parties' Initial Submission, paragraph 5. The Parties' response to the Issues statement, paragraph 44.

¹³ The Act, section 36(1).

3.2 A relevant merger situation is created if:

- (a) two or more enterprises cease to be distinct; and
- (b) the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the turnover test) or 'the share of supply test' is satisfied.¹⁴

Enterprises ceasing to be distinct

3.3 The Act defines an 'enterprise' as 'the activities, or part of the activities, of a business'.¹⁵ A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.¹⁶ Sainsbury's and Asda (and Walmart, via Asda) are each active in the provision of groceries in the UK. We are therefore satisfied that each of Sainsbury's, Walmart and Asda (including their subsidiaries) are enterprises for the purposes of the Act.

3.4 The Act provides that two enterprises 'cease to be distinct' if they are brought under common ownership or common control.¹⁷ As a result of the Merger, the enterprise presently carried on by Sainsbury's and the enterprise presently carried on by Asda would be brought under common ownership or common control because, as mentioned above:

- (a) Sainsbury's shareholders will acquire 100% of the share capital of Asda.
- (b) Walmart will hold 42% of the undiluted issued share capital of the combined Sainsbury's/Asda and no more than 29.9% of the total number of voting shares, together with two seats on the combined entity's board.

3.5 Accordingly, we are satisfied that Sainsbury's and Asda would cease to be distinct enterprises for the purposes of the Act.

3.6 Further, as recognised by the Parties, Walmart's 29.9% voting stake in Sainsbury's, combined with its board representation, would constitute material influence for the purposes of the Act, such that Sainsbury's and Walmart would cease to be distinct for the purposes of the Act.

¹⁴ The Act, [section 23](#).

¹⁵ The Act, [section 129\(1\)](#).

¹⁶ The Act, [section 129\(1\)](#).

¹⁷ The Act, [section 26](#).

- 3.7 We are therefore satisfied that the first limb of the relevant merger situation test, that two or more enterprises would cease to be distinct enterprises as a result of the Merger, is met.

Turnover test

- 3.8 The turnover test is satisfied if the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.¹⁸
- 3.9 In the accounting year ending 31 December 2017, the financial year preceding the reference of the Merger to phase 2, the annual value of the UK turnover of the Asda business was approximately £22 billion. We are therefore satisfied that the value of the annual UK turnover of Asda exceeds £70 million and that the turnover test is met.¹⁹

Provisional conclusion on relevant merger situation

- 3.10 In light of the above, we have provisionally found that the Merger, if carried into effect, will result in the creation of a relevant merger situation. As a result, we must consider whether the creation of that relevant merger situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

The counterfactual

- 3.11 The assessment as to whether the creation of the relevant merger situation may be expected to result in an SLC involves a comparison of the prospects for competition with the proposed merger against the competitive situation that would exist in the absence of it.²⁰ This situation, referred to as the ‘counterfactual’, is the benchmark against which we assess the competitive effects of the Merger. We select the counterfactual that is most likely to have existed absent the Merger, based on the facts available to us and the extent of foreseeable events.²¹ We may examine several possible scenarios to inform our judgement on the likely future situation in the absence of the Merger, one of which may be the continuation of the prevailing conditions of competition.

¹⁸ The Act, [section 23\(1\)\(b\)](#).

¹⁹ As the turnover test in [section 23\(1\)\(b\)](#) of the Act is satisfied in this case, it is not necessary to consider the application of the share of supply test in [section 23\(2\)-\(4\)](#) of the Act.

²⁰ [Merger Assessment Guidelines \(CC2 Revised\)](#), paragraph 4.3.6.

²¹ [CC2 Revised](#), paragraph 4.3.2.

- 3.12 The most notable examples of situations where the CMA may use a counterfactual different from the prevailing conditions of competition are:
- (a) the exiting firm scenario;
 - (b) the loss of potential entrant scenario; and
 - (c) where there are competing bids and parallel transactions.²²

Parties' submissions

- 3.13 The Parties submitted that, in their view, the Merger should be assessed against a counterfactual of the prevailing conditions of competition.
- 3.14 The Parties noted that, in particular, both Sainsbury's and Asda would continue to lose customers to Aldi and Lidl, in addition to facing strong competition from Tesco, Wm Morrison Supermarkets plc (Morrison's), Waitrose & Partners (Waitrose), Co-operative Group Limited (Co-op) and Ocado.com (Ocado) (among others). The Parties also considered that competitive pressures from other growing retailers such as B&M Retail Limited (B&M) and Home Bargains,²³ fixed price retailers, and foodservice and food delivery specialists (such as Just Eat, Deliveroo and UberEats) were also likely to increase.
- 3.15 In addition, Walmart submitted that [REDACTED].

Our assessment

- 3.16 We did not find evidence to the effect that, absent the Merger, either Sainsbury's or Asda would exit the markets for retail supply of groceries in-store or online, for supply of GM or for retail supply of fuel (and neither Party has suggested that it might do so).
- 3.17 Given that we are examining an anticipated merger and neither company has yet acquired shares in the other, Sainsbury's and Asda are currently independent competitors. We considered Walmart's submission that the Merger [REDACTED]. We were told that [REDACTED]. In the absence of evidence of alternative plans or of evidence that either Party would exit the market, we consider that

²² CC2 Revised, paragraph 4.3.7.

²³ TJ Morris Ltd trades as Home Bargains.

Sainsbury's and Asda absent the Merger would likely remain independent competitors, [✂].

Provisional conclusion on the counterfactual

3.18 Based on the available evidence, we provisionally conclude that the counterfactual in this case should be the prevailing conditions of competition.

4. Industry overview

4.1 This investigation concerns the anticipated merger between Sainsbury's and Asda (the Merger), the second and third largest grocery retailers in the UK and two of the four largest suppliers of online delivered groceries in the UK. The combination of the Parties will not only affect the groceries sector. Alongside core groceries, in their larger stores the Parties also sell items such as clothing, electricals and toys which we refer to as 'general merchandise' (GM). Petrol filling stations (PFSs), which are operated and owned by the Parties, are often located adjacent to these larger grocery stores: the Merger would create the largest supplier of fuel by volume in the UK.²⁴

4.2 Whilst these areas of activity may be defined as separate markets in economic terms, we have considered them holistically and taken into account any interactions between the Parties' different activities (for example, the fact that supermarkets often use low prices for fuel as a way to attract customers to their grocery stores) in our investigation.

4.3 This chapter provides an overview of the industries in which the Parties are active, focusing on the products and services relevant to the Merger.

Groceries: Industry overview and key players

Importance of groceries industry

4.4 UK groceries retailing is a critically important industry which was estimated to be worth around £190 billion in 2018. The industry is expected to grow by around 3% (in nominal terms) per year to 2023.²⁵

4.5 Grocery retailing touches every consumer. Average household spend on food was approximately £26 per person per week in 2016/17 (excluding tobacco and alcohol) accounting for 10.5% of typical household expenditure,

²⁴ According to the national fuel retail shares of supply by brand in 2018 based on Catalist Database April 2018.

²⁵ See Figure 4.1 below.

increasing to 14.3% for those on lower incomes (households with incomes in the lowest 20%).²⁶ We understand this is likely to be higher in certain regions: the weekly family food shop in Northern Ireland is estimated to be £63 per week, £6 more than the UK average and nearly £14 more than the North East and Yorkshire.²⁷ It has been estimated that the grocery sector accounts for just over half of all retail sales in the UK.²⁸

- 4.6 Different types of store (for example, large supermarkets versus convenience stores) or routes to consumers (such as online versus in-store) are referred to as 'channels' within the industry. Within these channels, the majority of grocery sales are generated by large stores such as hypermarkets and supermarkets (around £106 billion),²⁹ with 'convenience stores'³⁰ generating around £40 billion of sales, the discounters³¹ (who are presented separately from the supermarkets channel in many industry reports) around £23 billion and online groceries around £11 billion (see Figure 4.1 below).

²⁶ Defra (26 April 2018), [Family Food 2016/17: Expenditure](#).

²⁷ [Consumer Council response to the Issues statement](#), paragraph 2.2.

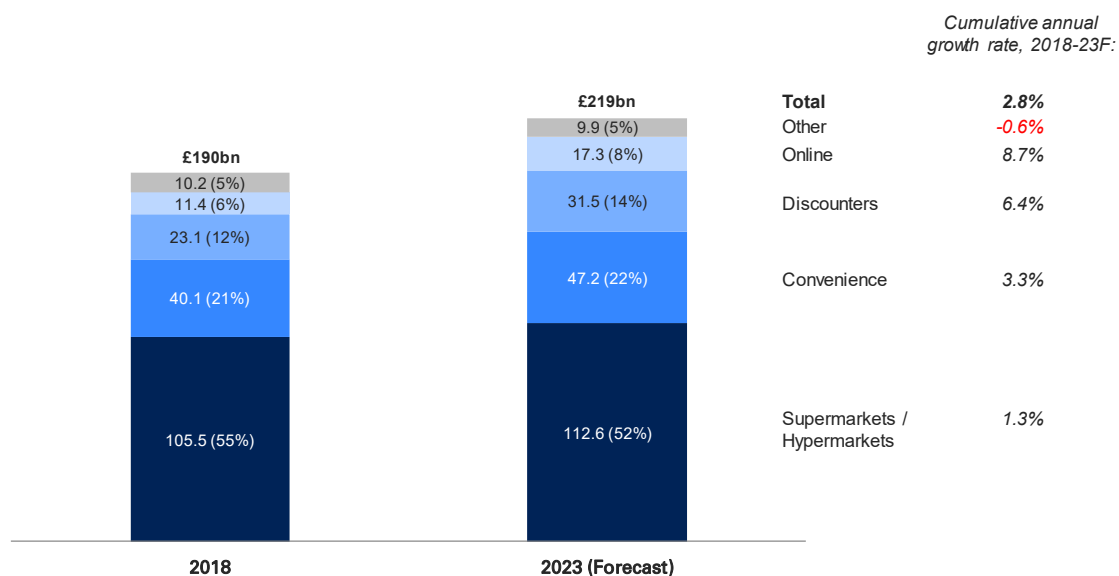
²⁸ IGD (16 June 2015), [UK grocery retailing](#).

²⁹ Hypermarkets are defined as large format stores that sell a full range of grocery items and a substantial non-food range. Sales areas are typically 60,000 square feet (around 5,500 square metres). Supermarkets are defined as food-focused stores with sales areas of between 3,000 square feet (around 280 square metres) and 60,000 square feet (IGD (16 June 2015), [UK grocery retailing](#)).

³⁰ Convenience stores are defined as including store formats typically under 3,000 square feet (around 280 square metres) that sell at least seven core convenience categories. Subsectors include: Symbol groups, forecourts, convenience multiples, co-operatives and non-affiliated independents (IGD (16 June 2015), [UK grocery retailing](#)).

³¹ Discounters includes all sales of Aldi and Lidl as well as grocery-only sales of bargains stores (Poundland, Poundworld, B&M Bargains, Home Bargains, Wilkinson and Poundstretcher) (IGD (16 June 2015), [UK grocery retailing](#)).

Figure 4.1: UK grocery sales, by 'channel', 2018 and 2023 Forecast (£billion, %)



Source: IGD (5 June 2018), *UK food and grocery market to grow 14.8% by £28.2 billion by 2023*.

Note: 'Other retailers' includes specialist food and drink retailers, CTNs (confectionery, tobacco and news), food sales from mainly non-food retailers and street markets. 'Discounters' includes all sales of Aldi and Lidl, and grocery-only sales of principal variety discounters, including Wilko.

Key trends

4.7 Several important trends in UK groceries retailing as submitted to us by the Parties and as noted by us during this investigation are described below.

Growth of discounters

4.8 One of the major developments in the groceries sector in recent years has been the growth of the discounters (ie Aldi and Lidl). Since 2010, Aldi and Lidl have opened over 500 new stores (to a total of around 1,500),³² and have more than doubled their combined estimated groceries share in Great Britain (GB) to around 12% of sales.³³ This growth is set to continue as Aldi has announced that it plans to open 130 new stores over the next two years³⁴ and Lidl has announced that it intends to open 60 new stores a year over the next two years.³⁵

4.9 Aldi and Lidl have also invested in product quality and range in recent years with Aldi's 'Specially Selected' premium range now attracting sales of over

³² See [Lidl: About us](#) and The Guardian (1 October 2018), *Aldi vows to take on Jack's as UK sales top £10 billion for first time*.

³³ See Figure 4.3 below from around 6% in 2010 (Kantar (1 February 2011), *Grocery Market Share UK – A market of two halves*).

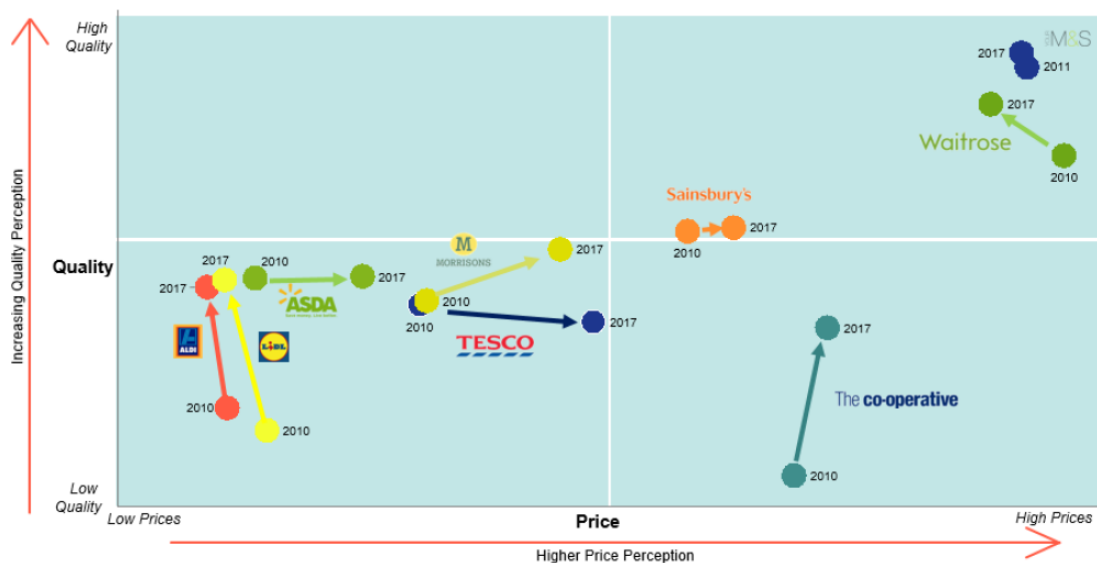
³⁴ See Aldi (2 October 2018), *One million new customers drive record sales for Aldi*.

³⁵ See Retail Gazette (10 July 2017), *Lidl to open 60 UK stores a year in £1.45 billion push*.

£1 billion annually and over 30% of its range having been reformulated to further improve product quality.³⁶ We have received some evidence that, in the past decade or so, the perceptions of Aldi and Lidl have changed, particularly with regard to consumers' views on the quality of their products, which is perceived to have improved and to be seen as now broadly comparable to some of the traditional grocery retailers.³⁷

4.10 Figure 4.2 below shows how shoppers' quality and price perceptions of different grocery retailers have changed from 2010 to 2017.³⁸

Figure 4.2: OC&C Shopper Quality and Price Perception Ratings (2010-17)



Source: The Parties ([The Parties' response to the Issues statement](#), Figure 6).

Change in shopping habits

4.11 A key trend in UK groceries retailing referred to by the Parties in their submissions is that customers are increasingly shopping 'little and often'.³⁹ The Parties submitted that statistics show that customers now shop an average of 3.9 times a week⁴⁰ and use an average of 4.6 fascia (ie different

³⁶ See Aldi (2 October 2018), [One million new customers drive record sales for Aldi](#).

³⁷ The term 'traditional retailers' or 'traditional groceries retailers' has been used in the industry to refer collectively to the Parties, Tesco, Morrisons, Waitrose, Co-op and M&S. We use it as a shorthand in these provisional findings, but no inference should be made regarding the relevance of the use of this term to the CMA's competitive assessment of the Merger.

³⁸ We note that we have used Figure 4.2 for illustrative purposes, but as explained in paragraph 8.65 we have not relied on this analysis in our competitive assessment.

³⁹ See IGD (9 February 2016), [Three key shopper insights to shape trading with Asda in 2016](#).

⁴⁰ Based on Nielsen Homescan data for 'Average Shops' for the period ending January 2018 for the UK total grocers.

brands)⁴¹ for all shops and 1.5 fascia for main shops (over a 12-week period).⁴² The Parties also submitted data on the number of main shop and top-up shopping missions (or trips) in 2010, 2014 and 2018.⁴³ This showed that across the total sector the percentage of main shop missions had declined from 40% to 37% and within the ‘supermarket’ section of the sector (not including the discounters), the percentage of main shop missions had declined from 49% to 42%.⁴⁴

- 4.12 The trend towards increased frequency of shopping is not particularly recent. The Competition Commission (CC) had noted already in the Groceries market investigation in 2008 that customers were visiting supermarkets more often than previously.⁴⁵ Whilst this is clearly a gradual trend, evidence also shows that larger stores remain important for consumers. Industry reports have found that 89% of customers still do a weekly shop where they get all or most of their grocery shopping in one go, although 45% of customers combine this with other top-up shops.
- 4.13 In 2017, IGD stated that 98% of shoppers claim to use a supermarket or a hypermarket for some of their grocery shopping every month, with the most frequently cited reasons being the convenience of having everything under one roof and the wider available choice.⁴⁶

Focus on convenience

- 4.14 In line with the gradual trend towards more frequent shopping trips, convenience store sales have been growing in recent years, representing an estimated 21% of food and grocery sales in the UK, and are expected to continue to grow.⁴⁷ Sainsbury’s is planning to open approximately [X]. Asda currently only operates convenience stores attached to its PFSs.

⁴¹ The fascia on a store front is any surface on the outside of the store that displays the company name, company logo and company colour scheme. By fascia we refer to the different brands (eg Sainsbury’s, Asda, Morrisons, Tesco, Aldi, Lidl, etc) that are present in the sector.

⁴² The data is over the 12-week period ending 7 October 2018 (Kantar).

⁴³ Shopping missions is a term used in the industry when differentiating between types of shopping trip. By main-shopping mission we refer to those big shops through which consumers purchase the bulk of their shopping needs usually on a weekly basis. By top-up shopping missions we refer to those smaller shops that are used to restock supplies that run out faster, or that were forgotten when doing the bulk of their main shopping.

⁴⁴ Based on Kantar data.

⁴⁵ Groceries market investigation (2008), *Final report*, paragraph 3.50.

⁴⁶ See IGD (2017), *UK Food and Grocery Value 2017*.

⁴⁷ See Figure 4.1.

Growth of online

- 4.15 Online sales were worth around £11.4 billion in 2018 according to IGD, which represented around 6% of the UK grocery sector. It is forecast to be the fastest growing grocery channel, expecting to increase in value to £17.3 billion by 2023, equivalent to a compound annual growth rate of 9%.⁴⁸
- 4.16 Industry commentary suggests that online groceries have yet to reach a stable footing financially however, with one established industry report of May 2017 stating that ‘online profitability remains an enigma for the major grocers despite significant sales growth of 64.6% between 2012 and 2017 ... it is vital that the channel becomes a profit making division to the business’.

Prior investigations

- 4.17 The groceries industry has previously been the subject of various in-depth investigations including most recently the CMA’s phase 2 review of the Tesco/Booker merger in 2017.⁴⁹ The industry was assessed by the CC in its Groceries market investigation in 2008 and the ‘one-stop-shop’⁵⁰ segment was a focus of its Supermarkets investigation in 2000.⁵¹ The CC also reviewed the potential mergers of Safeway with Tesco, Sainsbury’s, Asda or Morrisons in 2003 and the acquisition of around 100 Somerfield stores by Morrisons in 2005.⁵²
- 4.18 Whilst the sector and the key players have previously been the subject of several previous inquiries or investigations, apart from the Tesco/Booker merger inquiry (which focused primarily on the wholesale/retail relationship in grocery retailing given the vertical nature of that merger), these investigations are now all over ten years old. Whilst findings from past cases may be informative, this Merger is being assessed against current conditions of competition and therefore the markets’ characteristics must be considered afresh.

⁴⁸ See Figure 4.1.

⁴⁹ See [Tesco/Booker merger inquiry](#) (2017).

⁵⁰ In the [Supermarkets investigation report](#) (2000), paragraph 4.3, one-stop shopping was defined as a form of shopping in which consumers purchase all or a substantial part of a household’s weekly grocery requirements in one place and during one shopping trip, rather than purchase such items from a number of different outlets or during different shopping trips.

⁵¹ See [Groceries market investigation](#) (2008) and [Supermarkets investigation](#) (2000).

⁵² See [Safeway merger inquiry](#) (2003) and [Somerfield/Morrisons merger inquiry](#) (2005).

Retail supply of groceries

Definition of groceries

4.19 In general terms in this report ‘groceries’ can be understood to include food,⁵³ pet food, drinks (alcoholic and non-alcoholic), toiletries, cleaning products and household goods. Other non-consumable, non-food items such as clothing, kitchenware, electricals, DIY, furniture, CDs, DVDs and financial services which are also provided by some grocery retailers are included in the GM category. Fuel, including petrol, diesel and LPG, is considered separately.

Sizes and formats of grocery stores

4.20 Grocery retailing in the UK encompasses a broad spectrum of formats, store sizes, price points, ranges of products, and service levels. According to IGD, in 2018 there were nearly 6,000 supermarkets, over 42,000 convenience stores and around 4,600 discount stores in the UK.⁵⁴

4.21 Grocery stores range from small convenience stores selling a limited range of goods through to supermarkets and hypermarkets which provide a wide range of groceries, GM and other services and are sometimes referred to as ‘one-stop-shops’ as a result. The consistent factor is that these stores stock a range of grocery items. Other specialist stores such as butchers, bakers and delicatessens which participate in the groceries industry focus only on a particular category of products.

4.22 There is a category of grocery store which has been referred to as ‘limited assortment discounters’ in previous investigations⁵⁵ due to their more limited range and approach of offering products at a discount level (compared to traditional supermarkets). Aldi and Lidl are currently the principal operators of this category of store. Whilst this categorisation remains broadly correct, the growth of Aldi and Lidl is one of the key developments in the industry in recent years and we have therefore considered the competitive constraint they pose within the relevant markets afresh in the competitive assessment section. We do, however, continue to refer to Aldi and Lidl as discounters in view of their differentiated offering and the common use of the term in the industry. We consider that Aldi and Lidl can be distinguished from other types of discounter

⁵³ Not including food sold in restaurants and cafes for consumption on the premises.

⁵⁴ According to IGD: Supermarkets are defined as stores over 3,000 square feet (around 280 square metres); Convenience are defined as stores under 3,000 square feet (around 280 square metres) and discounters include Aldi, Lidl, B&M, Home Bargains, Poundland, Poundstretcher, Poundworld and Wilkinsons (IGD (2018), [UK grocery store numbers](#)).

⁵⁵ See [Poundland/99p Stores merger inquiry](#) (2015); [Asda/Co-op merger inquiry](#) (2014); [One-Stop/Alfred Warrington merger inquiry](#); [Asda/Netto merger inquiry](#); [Groceries market investigation](#); [Somersetfield/Morrisons merger inquiry](#).

(which we refer to as ‘Bargain stores’ below and which are sometimes referred to as ‘variety discounters’ in industry reports) due to their focus on a broader range of grocery products.

- 4.23 The different types of grocery retailing provide a range of services to cater to the needs of customers. For example, convenience stores aim to be in locations which minimise the time and distance which customers have to travel to and from stores. In contrast, large, ‘one-stop shops’ are often positioned in less convenient locations (such as out of town shopping centres) but offer a larger range of grocery products and GM and usually also offer a variety of other amenities such as large car parks, cafes and PFSs. Medium stores vary but broadly fall in between convenience stores and larger supermarkets both in terms of range and location.

Grocery retailers

- 4.24 Tesco, Sainsbury’s, Asda, and Morrisons are the largest traditional grocery retailers and are present throughout the UK.⁵⁶ They are often referred to as the ‘Big 4’.⁵⁷ There are several other grocery retailers present in large parts of the UK, namely Waitrose, the Co-op, Marks and Spencer (M&S) and Iceland. As previously mentioned the discounters (Aldi and Lidl) now also have a significant presence throughout GB (and Lidl is also present in Northern Ireland). There are also some grocery retailers that are only present in some regions in the UK, such as Dunnes in Northern Ireland and Booths mainly present in northern England. Finally, there are a very large number of smaller grocery retailers, including those operating as part of a Symbol group⁵⁸ and those operating as unaffiliated independent retailers. We consider that competition conditions vary in every local area and this will be taken into account in our competitive assessment.
- 4.25 We set out an overview of each of these below starting with the Parties. A full discussion on how grocery retailers set their prices and other competitive parameters is included in Chapter 7.
- 4.26 Many grocery retailers operate national chains of supermarkets which are complex multi-product businesses with very high levels of turnover of

⁵⁶ Except that Morrisons is not present in Northern Ireland.

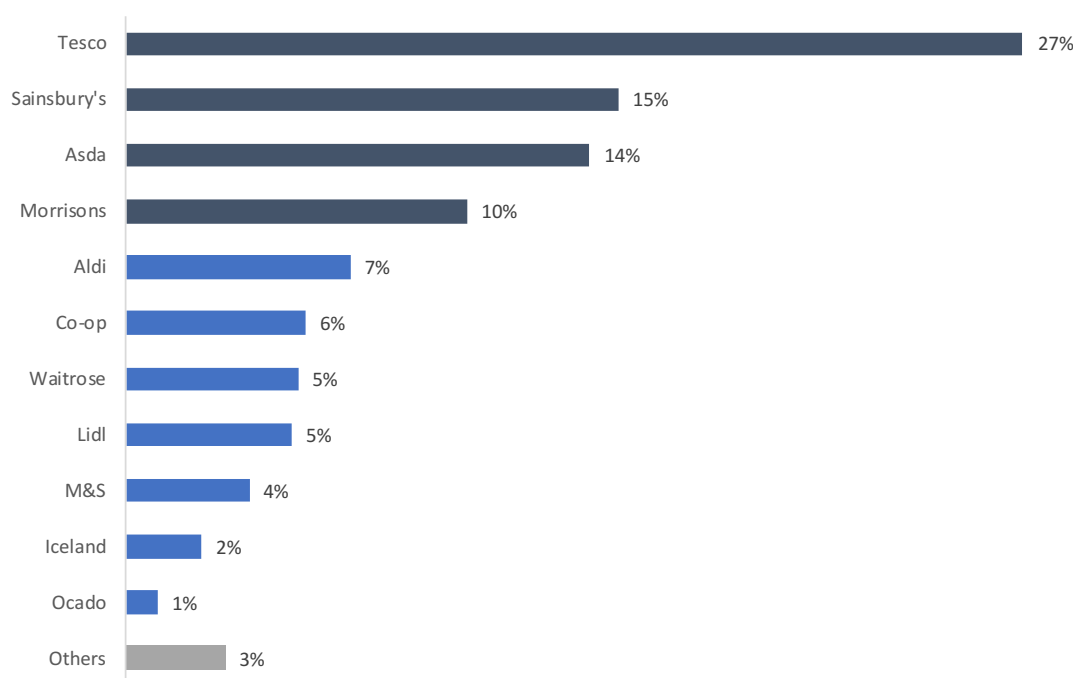
⁵⁷ The term ‘Big 4’ is widely used in the industry to refer collectively to Tesco, Sainsbury’s, Asda and Morrisons. We use it as a shorthand in this document, but no inference should be made regarding the relevance of the use of this term to the CMA’s competitive assessment of the Merger.

⁵⁸ Symbol groups are collections of stores which are affiliated with a wholesale symbol group provider (the symbol group wholesaler), usually operating under a common brand or ‘fascia’. The retailer is independent from the wholesaler, but generally commits to minimum purchase requirements (and other conditions which vary by wholesaler and symbol group brand), in return for use of the symbol brand and other benefits such as improved promotions.

products. The scale of these businesses means that supporting logistics and infrastructure including distribution centres, vehicle fleets, IT systems and central operations teams are required in order to provide the services. Furthermore, considerable operational integration is necessary, with added complexity where the particular retailer also offers online delivered groceries.

4.27 In terms of sales, the largest grocery retailers in the UK are the major national supermarkets (Tesco, Asda, Sainsbury's, and Morrisons), with a combined share of nearly 70% of grocery sales including in-store and online sales. As Figure 4.3 below shows, Tesco is the largest grocery retailer, accounting for approximately 27% of grocery sales. Sainsbury's is the next largest, accounting for approximately 15%, followed by Asda (14%), Morrisons (10%), Aldi (7%), the Co-op (6%), Lidl and Waitrose (each 5%), M&S (4%), Iceland (2%) and Ocado⁵⁹ (1%).⁶⁰

Figure 4.3: UK grocery share of supply (online and in-store)



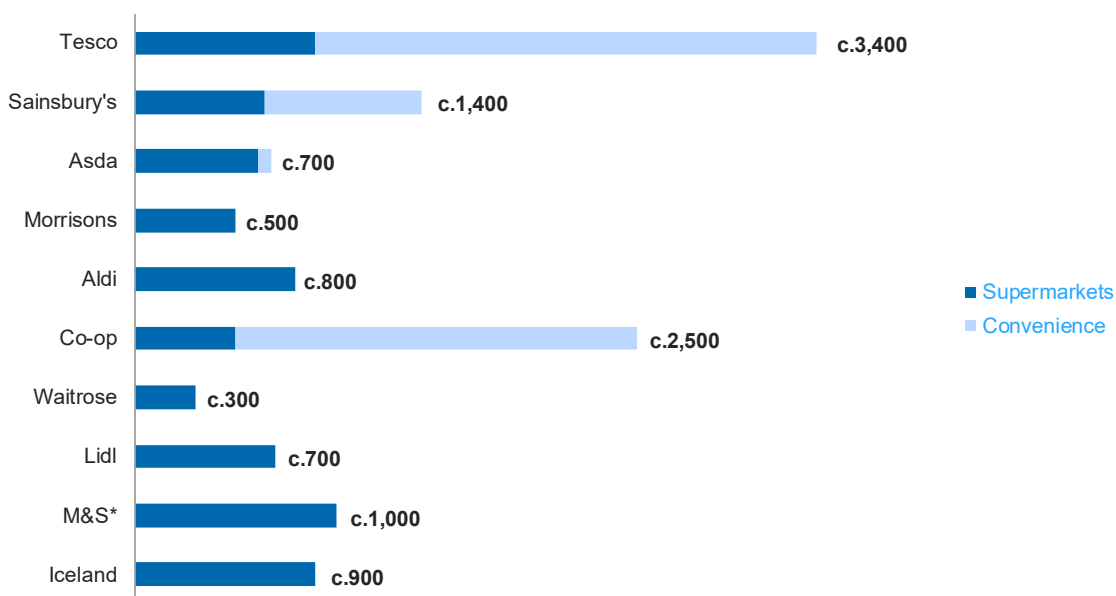
Source: Kantar, IGD, Nielsen.

4.28 Figure 4.4 shows the number of stores of large grocery suppliers, splitting by supermarkets and convenience stores.

⁵⁹ Note that Ocado only supplies online delivered groceries, with share based on Kantar (27 January 2018), [Grocery market share snapshot](#).

⁶⁰ These figures include sales in GB (Total Grocers including M&S, 52 weeks to 12 August 2018) and Northern Ireland ([Morrisons response to the Issues statement](#), Table 1, based on Kantar data). This has required using the relative sizes of these sectors, which we have based on IGD (5 June 2018), [UK food and grocery market to grow 14.8% by £28.2 billion by 2023](#) and Nielsen (1 September 2017), [Northern Ireland grocery market worth £3.7 billion annually](#). We note that this approach excludes sales of grocery products from non-grocers such as Boots.

Figure 4.4: Number of stores for largest grocery suppliers



* M&S stores including food halls in its larger stores and the Simply Food standalone stores.
 Source: Data from parties, CMA analysis as described below.

Sainsbury's

4.29 Sainsbury's is the UK's second largest grocery retailer. Sainsbury's operates a network of 1,428 grocery stores (including 647 supermarkets which range from around 280 square metres to around 9,000 square metres, and 781 convenience stores), 314 PFSs and an online grocery business. In addition to selling various categories of GM in its grocery stores and online, Sainsbury's operates Argos (a multi-format GM retailer) and Habitat (a retailer of furniture and homewares). A fuller description of Sainsbury's is provided in Chapter 2.

Asda

4.30 Asda is the UK's third largest grocery retailer. Asda operates a network of 643 grocery stores (including 582 stores ranging from around 450 to over 9,000 square metres and 61 convenience stores which are all attached to PFSs), 33 Asda Living stores (focused on GM products including clothing), 320 PFSs and an online grocery business, as well as selling various categories of GM in its grocery stores and online. A fuller description of Asda is provided in Chapter 2.

Tesco

- 4.31 Tesco is the largest UK grocery retailer, operating over 3,400 stores across the UK, of which approximately 2,500 are convenience stores and over 900 are larger stores/hypermarkets, the latter ranging from around 280 to over 9,000 square metres. It also operates around 500 PFSs and has the UK's largest online grocery business. In 2018, Tesco expanded its position upstream through the acquisition of food wholesaler Booker. Tesco reported over £38 billion of sales (excluding VAT and fuel) in the UK and Republic of Ireland in the financial year 2017/18.⁶¹
- 4.32 Tesco has also recently launched Jack's, which is a cut-price brand and new format designed to offer quality British products at low prices, with some similarities to the offerings of Aldi and Lidl. Jack's will stock around 2,600 products, as compared to around 35,000 in a large Tesco. It has been reported that Tesco will open 10-15 Jacks stores in 2019 although many are expected to be on existing Tesco sites.⁶²

Morrisons

- 4.33 Morrisons is the fourth largest UK grocery retailer, operating almost 500 stores across GB that range in size from around 370 to 6,000 square metres and over 300 PFSs. Morrisons does not operate in Northern Ireland. Morrisons sold its M-Local convenience store network in 2015. Morrisons reported over £13 billion of sales (excluding fuel) in the UK in the financial year 2017/18.⁶³
- 4.34 In the last few years, Morrisons has expanded its wholesale activities: in 2017, it agreed a deal with convenience operator McColl's Retail Group to supply branded products and own label products under the Safeway brand to 1,300 convenience stores in the UK. Morrisons also provides online grocery shopping including via partnerships with Ocado and Amazon.

Co-op

- 4.35 Co-op is the sixth largest grocery retailer in the UK, with 2,000 convenience stores and a further 500 mid-range stores with a maximum store size of 2,000 square metres. Co-op forms part of the Co-op Group Limited, a mutual

⁶¹ [Tesco Annual Report and Financial Statements \(2018\)](#).

⁶² See BBC (19 September 2018), [Tesco's new discount chain Jack's takes on Aldi and Lidl](#).

⁶³ [Morrisons Annual Report and Financial Statements 2017/18](#).

business active across grocery, retail, insurance, funeral care and legal services.

Waitrose

- 4.36 Waitrose is the seventh largest grocery retailer in the UK, operating over 300 stores ranging from around 230 to over 6,750 square metres, as well as some convenience stores. Waitrose does not operate in Northern Ireland. Waitrose forms part of the John Lewis Partnership. Waitrose has traditionally focused on the quality of its products, range and consumer experience. Waitrose also sells groceries online via its own website and supplies products to Ocado.

M&S

- 4.37 M&S operates just over 1,000 stores in the UK (including food halls in its larger stores and the Simply Food standalone stores) offering food, clothing and home products.

Iceland/The Food Warehouse

- 4.38 Iceland/The Food Warehouse is the tenth largest grocery retailer in the UK operating over 900 stores in the UK, and traditionally specialised in frozen food, but also sells chilled and grocery products, and GM. Iceland also offers groceries online.

Discounters

- 4.39 As noted above, Aldi and Lidl are referred to as discounters in this report and in many of the industry reports. Aldi is the fifth largest grocery retailer in the UK by sales, operating over 825 supermarkets with an average net sales area at just over 1,000 square metres in the UK. Lidl is the eighth largest grocery retailer in the UK, operating over 700 stores with an average store size of 1,100 square metres.
- 4.40 Aldi and Lidl have adopted a different business model to the traditional groceries retailers, focusing on:
- (a) Smaller stores with no additional services (eg no fuel, no cafes, no sushi bars etc) which leads to higher sales volumes per square metre;
 - (b) A more limited range of products (usually around 1,800–2,000 compared with around 25,000 for a typical large supermarket, and excluding certain

products such as tobacco) with fewer well-known brands, and using a 'when it's gone, it's gone' principle for some of their ranges;

- (c) A standardised, lower cost proposition (eg placing pallets of product directly on the shopfloor rather than moving items onto shelves) with a lean store labour model and lower central costs. Their focus on certain key stock keeping units (SKUs), including fresh produce, leads to a higher volume per SKU than the traditional retailers which also leads to lower costs; and
- (d) Lower prices than the traditional large supermarkets. For instance, Aldi aims to maintain a price discount of at least 15% on a typical basket of everyday items compared to Big Four competitors.⁶⁴

Bargain stores

4.41 Other retailers which are also sometimes referred to in the context of the groceries sector are the so-called 'Bargain stores' which supply particular categories of groceries, such as household, health and beauty, and petcare. These companies are sometimes referred to as 'variety discounters' in industry reports. This includes B&M Bargains, Home Bargains, Poundland, Poundworld, and Wilko. These retailers have been growing in recent years although they remain a small proportion of the overall groceries sector.

Online delivered groceries

4.42 As noted above, online sales in the groceries sector have been growing strongly in recent years. Whilst it still accounts for a small proportion of overall groceries sold in the UK (as a percentage of total sales), it is the largest in the EU. However, the ability to make purchases online has not yet had the same impact on grocery retailing as it has in certain GM sub-categories such as toys, electrical goods and clothing where online penetration has reached higher levels.

4.43 A number of UK grocery retailers offer an online service, where a customer can order groceries through the internet to have them be delivered directly to their home within a specified timeslot. The range of groceries offered is generally the same as products sold in-store, as is the price of the individual products.

4.44 There is typically an additional fee for each delivered service, although this may be reduced or removed entirely in some circumstances (eg if the basket

⁶⁴ The Guardian (1 October 2018), [Aldi vows to take on Jack's as UK sales top £10 billion for first time](#). [X].

being purchased is above a certain value, or if the customer has bought a 'delivery pass' whereby they paid an upfront fee in return for reduced or zero delivery charges).

- 4.45 The online sale of groceries has grown by around 13% per year since 2010 to represent around 6% of all grocery sales,⁶⁵ with all suppliers continuing to expand their sales. IGD data indicates that in 2017, 90% of online groceries were supplied by four retailers: Tesco ([40-50%]), Asda ([10-20%]), Sainsbury's ([10-20%]) and Ocado ([10-20%]).⁶⁶
- 4.46 Most of the 'traditional grocery retailers' sell a broad range of groceries online including Tesco, Sainsbury's, Asda, Morrisons, Waitrose and Iceland. They primarily use the 'store-pick' model (see paragraph 4.50 below). Aside from the sale of alcohol by Aldi, the discounters do not sell online delivered groceries in the UK.
- 4.47 Ocado is the largest online-only grocery retailer (ie it does not have any physical stores that customers can visit) in the UK. It entered the sector in 2000 and now has four customer fulfilment centres (CFCs) from which it supplies most of central and southern England. Ocado's retail revenues for the 2018 financial year were £1.48 billion.
- 4.48 Amazon sells groceries online in the UK through:
- (a) Amazon Pantry which was launched in November 2015 and which offers ambient grocery products (ie not chilled or frozen) for delivery throughout the UK for a flat delivery fee;
 - (b) Amazon Prime Now which offers a range of grocery products for free same day delivery (over a certain basket size) in certain locations across the UK; and
 - (c) AmazonFresh which was launched in June 2016 and is primarily available in and around London. Amazon told us its AmazonFresh service offered around 20,000 SKUs, including a broad range of fresh food, frozen food and other grocery items.
- 4.49 Wholefoods Foods Market, which has a common parent company with Amazon, has seven physical stores in the UK.
- 4.50 There are two main models used to deliver online groceries:

⁶⁵ See Figure 4.1 above.

⁶⁶ We note that other data provided by the Parties indicates a combined share varying between 70% and 90%: Kantar = 91%; IGD = 90%; Competitor performance tracker = [80–90%]; Mintel = 70%.

- (a) **Store-pick:** the retailer's employees walk around the supermarket to 'pick' the orders, and then a driver delivers the groceries to customers.
- (b) **Customer fulfilment centres (CFCs):** groceries are picked in a specialised centre which only supports online sales. These centres typically service a larger geographic area than individual local stores. This is the method used by online-only grocery retailers such as Ocado, but other retailers also use CFCs in combination with store-pick.

General merchandise (GM)

- 4.51 GM can include a range of non-food categories and products, including: toys; homewares; white good electrical items; brown good electrical items; grey good electrical items; small domestic electrical appliances; nursery and baby; seasonal; DIY and garden; clothing; stationery; electronic games and entertainment; furniture; and financial services.⁶⁷
- 4.52 Sainsbury's offers GM through Argos and through its grocery stores. Asda sells GM primarily through its grocery stores but also through a small number of 'Asda Living' stores. By offering GM alongside their grocery proposition, supermarkets are able to fulfil a larger number of customer needs. This also allows for cross-selling between GM and grocery. The Parties' transaction data indicate that for Asda [20–30%] of all baskets contain both GM and grocery, and for Sainsbury's [10–20%].⁶⁸ Non-grocery accounts for [5–10%] of store sales (excluding fuel) for Sainsbury's and [10–20%] for Asda. Both Asda and Sainsbury's also supply GM online.
- 4.53 GM is particularly important in larger supermarkets which have more space and so can accommodate a wider range of products.⁶⁹ Other grocery retailers such as Tesco, Morrisons and Waitrose also supply a range of GM in their larger stores and online. Aldi and Lidl offer different types of GM at different times of the year on a 'when it's gone, it's gone' principle but do not have the same permanent range as the traditional grocery retailers.
- 4.54 The list of competitors, and associated shares of supply, for the different categories and products of GM varies significantly and will be considered in more detail in Chapter 13 below.

⁶⁷ J Sainsbury PLC/Asda Group Ltd merger inquiry (2018), [Phase 1 decision document](#), paragraph 3.

⁶⁸ [The Parties' response to the Issues statement](#), paragraph 164.

⁶⁹ For example, GM makes up around [0–5%] of sales for the smaller 'Sainsbury's Local' stores, and around [10–20%] for other Sainsbury's stores.

Fuel

- 4.55 Some grocery retailers (including all of the 'Big 4') sell fuel (ie petrol, diesel, and liquid petroleum gas) from PFSs, which are generally located next or close to the supermarket. The other providers of fuel are the oil majors (eg Shell, BP, etc) and independents (eg the Motor Fuel Group, Rontec, Euro Garages).
- 4.56 PFS sites are often franchised, resulting in a distinction between the owner and the operator. This results in three main categories of PFS:
- (a) Company owned, company operated – these are owned and operated by oil majors.
 - (b) Company owned, dealer operated – these are owned by an oil major which supplies the fuel but operated by an independent dealer. Usually, the oil company takes fuel pricing decisions while the dealer manages the daily operations.
 - (c) Dealer owned, dealer operated – these are owned and operated by non-oil companies (although many still license an oil company brand). This includes all supermarkets' PFSs.
- 4.57 According to the Parties' estimates, the largest number of PFSs by brand are those of the major oil companies, including BP (c.1,250 sites), Esso (c.1,150 sites), Shell (c.1,050 sites) and Texaco (c.750 sites). However, around three-quarters of these are owned and controlled by other third parties.
- 4.58 According to the information provided by the Parties, Tesco has around 500 PFSs, while the other 'Big 4' supermarkets (including the Parties) have around 300 sites each. However, on average each of these supermarket sites supplies substantially higher volumes of fuel than the sites of the oil majors or other independent PFSs. Therefore, despite owning an estimated 18% of sites, the 'Big 4' supermarkets supply around 44% of fuel in the UK.
- 4.59 Fuel prices are generally set at a local level (ie they may differ for each PFS). Supermarkets sell their fuel as part of their overall proposition to attract customers, and so are often local price-leaders as a result.⁷⁰ From the retailer's perspective, the PFS customers that also shop in the grocery store have a positive impact on grocery volumes which is part of the reason why supermarkets choose to operate PFSs adjacent to their stores. Fuel sales account for [20–30%] of total store sales ([10–20%] across all stores including

⁷⁰ For example, the AA estimated that supermarket prices were 3.7ppl lower than the UK average for unleaded petrol in December 2018 (AA: [Fuel price reports](#)).

those with no PFS) for Sainsbury's and [10–20%] ([5–10%] across all stores including those with no PFS) for Asda.

- 4.60 In addition to fuel sales, PFSs will often have other associated services available (such as car washes, kiosk sales, etc).
- 4.61 The Parties submitted that local fuel markets tend to be intensely competitive, which is reflected in low industry margins, and the vast majority of price variations observed over time are driven by changes in commodity costs.⁷¹

5. Market definition

- 5.1 The purpose of market definition is to provide a framework for our analysis of the competitive effects of the merger. The relevant market (or markets) is the market within which the merger may give rise to an SLC and contains the most significant competitive alternatives available to the customers of the merged companies. Defining relevant markets is therefore useful in identifying, in a systematic way, the immediate competitive constraints facing the merger entity. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgment and does not prevent us taking into account constraints outside the relevant market (or markets) in our competitive assessment.⁷²
- 5.2 We consider market definition to be an important starting point for our analysis of the competitive effects of the merger. We therefore start by assessing the relevant product and geographic markets. We examine demand-side and supply-side substitutability and also, where appropriate, whether markets can be segmented.
- 5.3 Given the theories of harm that have been considered in this inquiry, we have investigated market definition in relation to four areas of the Parties' operations:
- (a) the retail supply of groceries in-store;
 - (b) the retail supply of online delivered groceries;
 - (c) the retail supply of GM; and
 - (d) the retail supply of fuel.

⁷¹ [The Parties' response to the Issues statement](#), paragraph 41.

⁷² [CC2 Revised](#), paragraphs 5.2.1 and 5.2.2.

5.4 Our assessment of market definition in respect of those areas is set out in the relevant chapters.

6. Assessment of competitive effects: overview

6.1 We now turn to our assessment of the competitive effects of the Merger. In this section we:

- (a) outline the theories of harm we have considered;
- (b) outline the information and evidence we have gathered;
- (c) outline our general approach to assessing the theories of harm; and
- (d) describe our approach to assessing any interrelationships between individual theories of harm and the overall impact on competition of the Merger.

Outline of the theories of harm considered

6.2 Theories of harm describe the possible ways in which an SLC could arise as a result of the merger and provide the framework for our analysis of the competitive effects of the Merger. We have assessed the following theories of harm related to specific markets, which we have grouped into five areas.

- (a) In-store groceries:
 - (i) Horizontal unilateral effects.
 - (ii) Coordinated effects.
- (b) Online delivered groceries:
 - (i) Horizontal unilateral effects.
 - (ii) Coordinated effects.
- (c) General merchandise (GM) – horizontal unilateral effects.
- (d) Fuel – horizontal unilateral effects.
- (e) Buyer power theories of harm, including both effect on innovation and effect on rivals' purchasing costs ('waterbed effect').

6.3 Of the above theories of harm, those listed in paragraph 6.2(a) to 6.2(d) examine how the horizontal overlap between the Parties' activities (ie the fact that they are both active in the same sector, at the same level of the supply

chain) may result in a substantial lessening of competition in the markets in which they operate following the Merger.

- 6.4 The theories of harm listed in paragraph 6.2(e) examine how the Merger may affect the Parties' relationship with their suppliers, and the knock-on effects for competition.
- 6.5 We describe these theories of harm in more detail in the later sections of this report. In this section, we explain in general terms how each of these theories of harm operates, and our approach to assessing them. Further details can be found in the CMA's 'Merger Assessment Guidelines' (the Guidelines).⁷³
- 6.6 In each of the unilateral and coordinated effects theories of harm, we consider whether the Merger could lead to the Parties (and in the case of the coordinated effects theories of harm, also certain other grocery retailers) increasing prices, or worsening non-price aspects of their offering such as quality, range or service (collectively, we refer to these price and non-price factors as 'PQRS') relative to the counterfactual. By 'worsening' we also capture a situation where absent the Merger, as a result of competition, the Parties would have improved some aspect of PQRS, but post-Merger, given a lessening of competition, do not improve it and therefore overall the Merger results in a degradation compared to what would have happened. In each case, we have considered whether this deterioration would apply to elements of PQRS that are set centrally and applied uniformly across the Parties' stores/PFSs, such that all of the Parties' stores/PFSs would be affected (national assessment) or to elements of PQRS that are varied across local areas, such that only certain of the Parties' stores/PFSs would be affected (local assessment).⁷⁴

Overview of information and evidence gathered

- 6.7 In our phase 2 inquiry we have gathered and used a broad range of evidence. We have:
- (a) commissioned three surveys, which interviewed over 20,000 of the Parties' customers at 100 of their stores across the country, over 30,000 of the Parties' customers of online delivered groceries and almost 8,000 of the Parties' fuel customers at of their 32 PFSs;

⁷³ [CC2 Revised](#).

⁷⁴ When considering this, we have examined whether: (a) the Parties currently set some aspects of their retail offer with regard to local competitive conditions; and (b) if the Parties do not currently set their retail offer with regard to local competitive conditions, whether they would have an incentive to do so post-Merger ([Retail mergers commentary \(CMA62\)](#), paragraph 1.5).

- (b) received submissions, internal documents, analysis and commercial data from the Parties;
- (c) received submissions, internal documents, analysis and commercial data from a range of industry players. This included responses to written questionnaires, and in telephone interviews and hearings, with grocery suppliers, grocery retailers, GM retailers, fuel retailers, trade bodies and consumer groups, and independent investment analysts and market research companies. We received responses to our questionnaires from 74 suppliers, 12 grocery retailers, 31 GM retailers; 10 fuel retailers and held 11 hearings in-person or by telephone; and
- (d) received responses, both to our Issues statement⁷⁵ and throughout the investigation, from members of the public.

Approach to assessing theories of harm

Horizontal unilateral effects theories of harm

- 6.8 Horizontal unilateral effects can arise when one firm merges with a competitor that previously provided a competitive constraint, the loss of which allows the merged entity profitably to increase prices, lower quality, reduce the range of their services and/or reduce innovation (relative to the situation that would have existed absent the merger). After the merger, it is less costly for the merged entity to raise prices (or lower quality, range or service) because it will recoup the profit on recaptured sales from those customers who switch to the offer of the other merging company.
- 6.9 Under such theories, the harm arises as a result of the merged entity acting unilaterally, ie independently of others in the market. In response, competitors of the merged entity may also, unilaterally, increase their prices or otherwise worsen their offering (known as 'second order effects'), which may lead to further consumer harm.
- 6.10 We assess these horizontal theories of harm by considering how important a competitor of one of the merging parties is to the other, or was likely to become in the foreseeable future, relative to other competitive constraints in the market; and whether the removal of that constraint is likely to lead to a substantial lessening of competition and thus worse outcomes for consumers.

⁷⁵ [Issues statement](#) (16 October 2018).

Coordinated effects theories of harm

- 6.11 Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate or align their behaviour, to limit their rivalry.
- 6.12 Under such theories, the harm arises as a result of the merged entity and others in the market jointly aligning their behaviour.
- 6.13 Coordination can be explicit or tacit. Explicit coordination is achieved through communication and agreement between the parties involved. Tacit coordination is achieved through implicit understanding between the parties involved, but without any formal arrangements or direct communications.
- 6.14 Coordinated effects arise when a merger makes coordination more likely or more effective. This behaviour does not require any direct contact between firms and can arise purely from firms' perception of the interdependence between them. As set out in our Issues statement,⁷⁶ our focus is not on any explicit or illegal agreement to coordinate between grocery retailers but rather on whether the Merger could make it easier for grocery retailers to coordinate or align their behaviour in a way which limits the rivalry between them without entering into any express agreement or direct communication.
- 6.15 We set out further details on the CMA's approach to assessing coordinated effects, as set out in the Guidelines,⁷⁷ in Chapter 9.

Buyer power theory of harm

- 6.16 Where the merging parties purchase the same products, the merged firm may enjoy greater buyer power than the merging parties could previously exert individually.
- 6.17 For the purposes of our competitive assessment, we would be concerned by an increase in the buyer power of the merged entity only to the extent that it may distort competition in the relation to the supply of groceries and result in adverse effects on end consumers.⁷⁸ In and of itself, a reduction in the profitability of suppliers does not give rise to an SLC.

⁷⁶ [Issues statement](#) (16 October 2018).

⁷⁷ [CC2 Revised](#).

⁷⁸ This is the approach prescribed in [CC2 Revised](#) (paragraph 5.4.19), and followed in the Groceries market investigation (2008), [Final report](#), paragraph 9.3 and the Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 8.10.

- 6.18 We have considered two theories of harm regarding buyer power:
- (a) the exercise of increased buyer power by the merged entity might result in reduced incentives to invest and innovate on the part of suppliers; and
 - (b) the exercise of increased buyer power by the merged entity might raise the purchasing costs of rival groceries retailers, which, under certain circumstances, may result in price increases to certain end-customers of those retailers.

Interrelationships between theories of harm

- 6.19 For the purposes of our assessment, we have examined the effect of the Merger under a number of distinct theories of harm, related to distinct activities or product areas where the Parties overlap.
- 6.20 Nevertheless, as acknowledged in the Issues statement,⁷⁹ we are aware that there are important interrelationships between these different areas of overlap. Customers may purchase a number of the Parties' products in combination, and may take this into account when making their purchasing decisions: for example, a customer may choose to buy groceries at a supermarket where they can also fill up their car with fuel. The Parties, too, may consider their activities across a number of product areas when setting their commercial strategy in any one product area: for example, they may set low prices for one category of products, so as to draw in customers who may then purchase another category of products, or they may use the customer experience in one channel as a way of influencing customers' perception of the company's overall brand proposition.
- 6.21 We have taken these interdependencies into account in our investigation and considered how the Parties' activities across all markets in which they operate may impact upon how the Merger may affect competition in any one market. We have done this for example by considering: what our fuel and store exit surveys tell us about the extent to which customers buy fuel and groceries in a single shop, and how that affects customers' purchasing decisions; and how in turn the fact that increased (or lost) sales in one part of their business may affect sales in another part of their business, and how this may affect the Parties' commercial incentives overall.

⁷⁹ [Issues statement](#) (16 October 2018).

7. In-store groceries: overview

Introduction

- 7.1 As set out in Chapter 4, each of the Parties is a large-scale, national operator of supermarkets, offering groceries through an extensive network of physical stores, across the country. Sainsbury's (and to a much lesser extent, Asda) also operate convenience stores. The sale of groceries through these physical stores forms the core of both Parties' businesses, contributing the majority of their revenues and profits. As a result, the supply of in-store groceries has been a key focus of our inquiry and is the first of the Parties' overlaps to be explored in depth in these provisional findings. That being the case, as set out in paragraphs 7.128 to 7.141, the Parties' groceries offering cannot be divorced from other parts of their businesses (in particular, the supply of fuel and the supply of GM). There are important interrelationships between these different parts of the Parties' businesses, and we have taken these into account in our assessment.
- 7.2 The Parties are large, nation-wide players: they operate under national brands; important elements of their offering are set centrally and applied uniformly across their national store estates; they advertise at a national level; their internal documents show that they monitor the competitive situation on a national level; and market commentators tend to do the same. This 'national' view is informed by an aggregation of the competitive conditions in every local area in which the Parties are present. Accordingly, we have assessed the effect of the Merger (and any reduction in competition) in aggregate, across the Parties' national store estates.⁸⁰
- 7.3 Competition for the supply of in-store groceries takes place primarily at the local level, as customers shop locally, choosing from the available options in their local area. As a result, the Parties will be competitively constrained by the competitors present in each local area in which they operate. It is therefore also relevant to assess the effect of the Merger (and any reduction in competition) in each local area in which the Parties' grocery stores overlap.⁸¹
- 7.4 In this chapter, we first discuss the relevant market(s) for the supply of in-store groceries (in which we distinguish between large, medium and convenience stores). We then discuss which parameters of competition the Parties flex at the local level, and which parameters they set centrally and

⁸⁰ CMA62, paragraphs 1.13–1.17.

⁸¹ CMA62, paragraphs 1.4–1.12.

apply uniformly across their national store estates, as well as the interaction between the Parties' businesses.

Market definition

Product market (supermarkets)

7.5 The Parties both supply in-store groceries. Sainsbury's and Asda are the second and third largest grocery suppliers in the UK respectively. Sainsbury's operates approximately 1,400 grocery stores of varying sizes, approximately 800 of which are convenience stores. Asda operates a network of around 650 grocery stores, the vast majority of which are mid-sized and larger supermarkets (it also operates a small number of convenience stores located at PFSs).^{82,83}

Previous cases

7.6 The CMA (and its predecessor bodies) have conducted a number of investigations into mergers involving grocery retailing in recent years.⁸⁴ In these cases, the CMA has analysed competitive constraints between grocery stores according to the size of their net sales areas and has distinguished between three sizes of grocery store:

- (a) One-stop shops (greater than 1,400 square metres), which for the purposes of this document we refer to as Large stores;
- (b) mid-sized stores (280 to 1,400 square metres), which for the purposes of this document we refer to as Medium stores; and

⁸² See paragraphs 4.29 and 4.30.

⁸³ The Parties also both offer 'Click and Collect' services, whereby groceries are purchased online and collected by the customer. Given that Click and Collect services are part of the service offered by some stores, and that location of the physical stores is important for the provision of these services, we do not consider Click and Collect services to be a separate relevant market, and as such, we have assessed them within the retail supply of in-store groceries.

⁸⁴ The CMA (and its predecessors) have analysed the groceries sector in a wide range of cases, including (within the last five years), Co-operative Group/Nisa retail merger inquiry (2018), [Phase 1 decision document](#); Henderson Retail/Martin McColl merger inquiry (2018), [Phase 1 decision document](#); Tesco/Booker merger enquiry, CMA decision of 21 July 2017 (Phase 1) and Final Report of 20 December 2017 (Phase 2); Martin McColl/Co-operative merger inquiry, CMA decision of 20 December 2016; Co-operative/ML Convenience and MLCG merger inquiry, CMA decision of 19 October 2016; Co-operative/Booker merger inquiry, CMA decision of 6 June 2016; Netto/Co-operative (stores) merger inquiry, CMA decision of 25 February 2016; Lincolnshire Co-op/Budgens (Holbeach) merger inquiry, CMA decision of 18 December 2014; Asda stores / Co-operative Group (5 stores) merger inquiry, CMA decision of 28 November 2014. A very significant amount of analysis relating to supermarket groups was also carried out in [The supply of groceries in the UK market investigation](#), Competition Commission, 30 April 2008; [Safeway plc and Asda Group Limited \(owned by Wal-Mart Stores Inc\); Wm Morrison Supermarkets PLC; J Sainsbury plc; and Tesco plc: A report on the mergers in contemplation](#), Competition Commission, 2003; and [Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom](#), Competition Commission, 2000.

(c) convenience stores (under 280 square metres), including both large convenience stores (100 to 280 square metres) and small convenience stores (under 100 square metres).

- 7.7 In these previous cases, the CMA (and its predecessor bodies) have found that the competitive constraint faced by such stores is asymmetric, in that Large stores will constrain a smaller store (ie Medium or convenience stores), but not vice versa.
- 7.8 The reasoning behind this delineation by store size has been that shoppers may not consider smaller stores to be good substitutes for larger stores, on the basis that they may not supply the full range of products which a larger store is able to offer, and therefore may be unable to cater for shopping 'missions' that involve a wider range of products.
- 7.9 According to the evidence in these previous cases, there is a strong relationship between store size and product range for stores with a net sales area larger than 280 square metres. This relationship between store size and product range supported the view that customers may not find stores with less floorspace an effective substitute for stores with more floorspace due to their smaller range of products.⁸⁵

Parties' views

- 7.10 The Parties submitted that all of their Large and Medium stores are constrained by other supermarkets of all sizes, discounter stores, online grocery retailers, bargain stores, convenience stores, independent and specialist retailers (eg butchers, bakers and greengrocers), stores 'outside' the geographic catchment area, and food delivery specialists (eg Just Eat, Deliveroo), subscription meal kits and prepared food specialists.

Store size

- 7.11 The Parties submitted that the CMA should reconsider the delineation used in previous merger cases involving grocery stores. They submitted that excluding Medium stores as a constraint on Large stores was no longer appropriate and that the market definition should comprise at least all 'supermarkets' (ie all grocery stores larger than convenience format, whether Medium or Large), whilst also including additional constraints such as online grocery retailers and stores outside of the geographic catchment area.

⁸⁵ Groceries market investigation (2008), [Final report](#), paragraph 4.22.

- 7.12 The Parties recognised that there are limited data points available on which to calibrate any specific approach. The Parties therefore suggested we should adopt the CMA's traditional classification boundary of 1,400 square metres, but to calibrate the weights attributable to stores in the categories above and below that boundary (ie Large stores and Medium stores) to reflect the average competitive constraint within that store size category.
- 7.13 In support of this argument, the Parties explained that market developments have had a significant impact on larger format stores, with the largest stores particularly struggling in light of the increased emphasis on convenience and smaller shopping missions. The Parties also noted that convenience stores continue to grow in number, whilst the Large stores opening programmes of traditional retailers have effectively ceased. According to the Parties, the economic evidence shows that Medium stores can and do constrain Large stores: the Parties noted that according to the results of their surveys, their respective internal 'impacts' analyses, the Parties' gravity models and econometric analysis of competitor entry and exit events, competitors' Medium stores place a material constraint on Large stores. The Parties also noted that on a like-for-like floor space basis, Medium stores exert a larger impact on Large stores given that smaller stores generally have a greater sales density per square metre, and as such, the aggregate constraint of two identically sized Medium stores is greater than the constraint of one Large store that is twice as large as the two Medium stores.

Discounters

- 7.14 In relation to discounters, the Parties submitted that the significant and growing proportion of UK shoppers shopping at Aldi and Lidl evidences their mainstream appeal, having increased their combined market share from 3.8% in 2007 to 11.1% in 2018. According to the Parties, Aldi and Lidl offer a sufficient range for most shopping needs and missions, and they compete closely with the traditional retailers for large baskets and main shops. The Parties submitted that Aldi and Lidl's strength is intrinsically linked to the changes that have taken place in the last decade or so with respect to how customers shop, as statistics show that big weekly shops have now fragmented into several grocery shops, shopping in a variety of different retailers, and Aldi and Lidl are part of the enlarged mainstream set of grocery stores used by UK customers for these shopping needs.

Online delivered groceries

- 7.15 The Parties submitted that the supply of online delivered groceries does not constitute a separate market and that the in-store groceries channel,

accounting for 94% of retail supply, competes closely with the online channel (6% of supply). According to the Parties, both in-store and online grocery channels serve the same customer demand and offer the same products. The Parties submitted that survey and switching data suggests that online delivered groceries are constrained by the presence of in-store groceries in every area in which the Parties deliver.

Bargain stores

- 7.16 The Parties submitted that 'bargain stores' (including B&M, Home Bargains, Wilko, Poundland and Poundstretcher) have been attracting increasing numbers of UK shoppers. According to the Parties, Nielsen data shows that bargain stores have significant shares in certain branded grocery product categories, and therefore represent a significant constraint for branded products. The Parties also noted that bargain stores are a growing constraint and gave the example of B&M opening more than 200 stores in the past five years with an ultimate store target of 950.

Convenience stores

- 7.17 The Parties submitted that shopping habits have evolved and customers in aggregate are now more likely to do smaller 'main' shopping trips for key items, topping-up with (fresh) items as needed through the week. According to the Parties, this has resulted in an exponential growth of convenience shopping options and grocery retailers have been investing heavily in the convenience format to ensure that they are aligned with short term meal planning and more flexible consumption occasions, such that it is now the second fastest growing channel in food and grocery retail, after online.

Others

- 7.18 The Parties submitted that competitive pressures from food chains, food service and food delivery specialists (such as Just Eat, Deliveroo and UberEATS) are also likely to increase. According to the Parties, these players may not be on par with the numerous grocery rivals of the Parties but their growth contributes to the leakage of sales away from home-prepared lunch and evening meals and thus supermarkets.
- 7.19 The Parties also submitted that their Medium and Large stores are constrained at a local level by specialist grocery retailers (including bakeries, butchers, fishmongers, greengrocers, health food shops and off-licences).

Third parties' views

- 7.20 The Parties submitted that third party views submitted to the CMA in this investigation, in particular by Tesco and Aldi, were inconsistent with statements made by the same retailers in earlier inquiries or in public statements. They submit that their competitors had a clear commercial incentive to object to the Merger (on the basis that it will narrow the cost gap and competitive advantage that at least Tesco, Aldi and Lidl enjoy, and result in a dynamic market-wide increase in competition) which affects the extent which these views can be relied upon.
- 7.21 We acknowledge that different retailers will have different incentives when engaging with the CMA, and that views submitted by third parties (as with all evidence, including that of the Parties) should be carefully evaluated in light of all of the available evidence. We note, however, that a retailer's statements in previous inquiries and public statements must also be carefully evaluated, as these too will have their own motivations. We have taken this into account when considering the views of third parties and the weight that can be placed on them.

Store size

- 7.22 Third parties generally indicated that the frame of reference used by the CMA in previous cases involving Large and Medium stores was an appropriate starting point for its analysis in this case. Third parties' responses (Tesco, Morrisons, Aldi, Lidl, M&S, Waitrose) suggest that Medium stores exert a lower competitive constraint on Large stores compared to other Large stores. One of these third parties (M&S) noted that distinctions between different types of shopping mission and different types of store had become more blurred in recent years, such that some shoppers may be willing to substitute some parts of their shopping demands between different store sizes (eg substituting parts of their 'main shopping basket', traditionally purchased at larger stores, to top-up or convenience purchases in smaller stores). However, this third party also submitted that this trend should not be over-exaggerated, indicating that for customers of Large stores, the next best alternative remained another Large store.

Discounters

- 7.23 Third parties generally indicated that discounters have a different offering compared to that of traditional retailers, and that they offer a smaller range compared to the UK's traditional grocery retailers.

- 7.24 The discounters generally emphasized that they had a very different offering to the traditional retailers, and that they did not compete with them for all products or for all customers. Aldi highlighted as differences between Aldi and the 'Big 4' retailers: smaller average store size; more limited range of products offered; lower proportion of items on promotion; lower staffing level (due to a more efficient operating model) and significantly higher range of own-branded products (designed to keep complexity and costs to a minimum). Aldi noted that customers may however choose to use a combination of retailers: for example, customers may source their core grocery needs from a discounter like Aldi to maximise value for money, but visit a 'Big 4' retailer to supplement this with products from their more extensive range. As a result, Aldi submitted that it competed with the 'Big 4' retailers for a share of customer wallet for some customers.
- 7.25 However, we also note that in their public statements, both discounters have claimed that more customers are doing their main shop at their stores.⁸⁶
- 7.26 Other third parties (Tesco, Morrisons, Waitrose) noted that discounters compete with traditional retailers but that there are some differences in terms of store environment, breadth of range and level of customer service, and as such they are not full effective competitors to the Parties. One of these third parties (Tesco) submitted that the discounters only compete with traditional retailers over a small share of the range meaning that 'they are not yet a full substitute' for customers, while another of them (Morrisons) submitted that while competition from discounters had had an effect on traditional retailers' pricing of commodity items, their effect had been limited beyond this due to their different position. However, we also note that in previous submissions to the CMA (ie the Tesco/Booker merger inquiry),⁸⁷ Tesco submitted that the discounters (and also Iceland) were effective competitors across all customer missions.⁸⁸ In that case, Tesco submitted that it had made several significant commercial decisions to respond to the competitive threat of discounters and Iceland and that the strong competitive pressure exerted by discounters had resulted in Tesco (and other retailers) significantly changing their offering to consumers.⁸⁹ In public statements, Morrisons has also acknowledged that consumers have started to shop at the discounters in the same way they would a traditional supermarket.⁹⁰

⁸⁶ BBC (27 September 2017), [The man driving Aldi's remarkable growth](#); Lidl Press Release (2016), [Lidl beats Waitrose to be named Good Housekeeping Supermarket of the Year 2016](#).

⁸⁷ See [Tesco/Booker merger inquiry](#).

⁸⁸ [Tesco/Booker response to phase 1 decision and Issues statement](#), page 11, paragraph 3.18.

⁸⁹ [Tesco/Booker response to phase 1 decision and Issues statement](#), page 10, paragraph 3.16.

⁹⁰ Morrisons (13 March 2014), [News Release](#).

- 7.27 Two competitors (Co-op, Iceland) made a reference to the direct impact of discounters in the Parties' competitive offering and commercial strategy. These third parties stated that a focus for Asda has been on competing on price with discounters and seeking to offer the lowest possible prices. One of these competitors (Iceland) also noted that they expect the Parties to improve their fresh food offering in response to the discounters' efforts in this area. Another ([redacted]) noted that both Sainsbury's and Asda had indicated an aim to close the price gap relative to the discounters, although this third party noted that the discounters retained a strong price advantage.
- 7.28 Another two competitors (M&S, Booths) also noted that in the last few years, there has been a change in the market linked to the growing strength of discounters. According to one of them (M&S), this change means that discounters have moved 'value' associations towards them and away from other retailers such as Asda and Tesco.

Online delivered groceries

- 7.29 Third parties submitted mixed views on the degree to which the in-store groceries channel constrains online delivered groceries and vice versa. Some third parties (Ocado, Amazon) noted that there was a single grocery market segment that encompassed both online and in-store channels. Some third parties (Co-op, Iceland, Lidl) submitted that online delivered groceries constrain in-store groceries and vice versa to some extent. One third party (Morrisons) noted that online delivered groceries provide only a limited constraint to in-store groceries since customers use the two channels for predominantly different shopping missions.

Bargain stores

- 7.30 One third party (Morrisons) noted that bargain stores (including B&M, Poundland and Home Bargains) offer a very limited constraint to the supermarkets. Tesco submitted that bargain stores (B&M, Home Bargains etc) are increasingly important competitors in some packaged categories (noting for example that Tesco [redacted]), but that they are yet to establish a significant presence in most of fresh. Generally, few third party grocery retailers who responded to the CMA's investigation listed the bargain stores as amongst their main competitors.

Convenience stores

- 7.31 One third party (Tesco) noted that convenience shopping has become more popular in the last few years, however, the main shop is still happening in Large stores.

- 7.32 A number of third parties (Tesco, Waitrose, Lidl) differentiated Co-op from other retailers on the basis of its greater focus on convenience missions or its store locations while one third party submitted that Iceland targets specific categories, missions and customer demographics.

Others

- 7.33 With respect to other grocery retailers, in general, third parties identified M&S and Waitrose as high-priced retailers with a higher perceived level of quality and service.

Our assessment

- 7.34 We have assessed the effect of the Merger on the retail supply of in-store groceries in the local area surrounding each of the Parties' stores. In past cases involving the retail supply of groceries, the CMA has defined the relevant market primarily to determine the framework (typically described as a filtering methodology) used to identify relevant local overlaps and exclude from further analysis local areas where competition concerns are unlikely to arise. In this case, we have defined the relevant market primarily to determine the parameters of the systematic model (the weighted share of shops (WSS) model) that we have used to conduct our local assessment.

Store size (supermarkets)

- 7.35 We consider that the delineation used in previous merger cases between Large, Medium and convenience stores is a good starting point for our analysis. As noted in paragraph 7.8 above, shoppers may not consider smaller stores to be good substitutes for Large stores, on the basis that they may be unable to cater for shopping 'missions' that involve a wider range of products. While the Parties submit that there is no 'step change' that distinguishes Medium and Large stores from each other, they supported this classification as a pragmatic means to take size differences into account (subject to the weights attributable to each category being calibrated appropriately). This classification was also supported by the majority of third parties.
- 7.36 According to the available evidence, the strongest constraint on the Parties' Large stores and Medium stores are the Large and Medium stores of other traditional retailers,⁹¹ discounters and, to a much lesser extent, Iceland. As

⁹¹ The term 'traditional retailers' or 'traditional groceries retailers' has been used in the industry to refer collectively to the Parties, Tesco, Morrisons, Waitrose, Co-op and M&S. We use it as a shorthand in these

explained in the competitive assessment in Chapter 8, our survey and entry-exit evidence suggest that Medium stores do constrain Large stores:⁹²

- (a) across all surveyed local areas in the CMA's store exit survey, total diversion to the Medium traditional retailers, Medium discounters (ie Aldi and Lidl) and Iceland is on average [20-30]%; and
- (b) the entry-exit analysis⁹³ suggests that Medium stores constrain Large stores, albeit, on average, to a lesser extent than Large stores constrain Large stores. For example, a Large Tesco (-0.08) has a stronger impact compared to a Medium Tesco (-0.04) on Asda's revenue at a 0–5 minutes distance band.⁹⁴

7.37 However, within the broad category of Large and Medium stores, the strength of constraint varies considerably by size (Large versus Medium) and different types of competitors (eg traditional retailers versus discounters). As stated in the local competitive assessment in Chapter 8:

- (a) Individual Medium stores exert a material constraint on the Parties' supermarkets, but this is materially weaker than the constraint exerted by Large stores:
 - (i) The CMA's store exit survey suggests that the larger a competitor's store when compared to the size of the Parties' stores, the greater the strength of constraint.
 - (ii) We note that there are often several Medium stores in the local area surrounding the Parties' supermarkets. In the 100 surveyed local areas of the CMA's store exit survey, there are on average seven Large stores and 17 Medium stores within 15 minute drive-time per local area. However, despite there being more Medium stores, total diversion is still higher to Large stores than to Medium stores. Across all surveyed local areas of the CMA's store exit survey, total diversion to the Large stores (traditional retailers and discounters)⁹⁵ is on average [50–60%], whereas as noted above, total diversion to the

provisional findings, but no inference should be made regarding the relevance of the use of this term to the CMA's competitive assessment of the Merger.

⁹² Paragraph 8.169.

⁹³ As explained in paragraph 8.137, entry-exit analysis is used to assess whether and how the entry and exit of competitors' stores affect the Parties' grocery sales. It allows us to estimate the average impact of one additional (or one fewer) competitor store on the Parties' sales. The more customers consider a new or closing store a good substitute to the Parties' stores, the larger the impact of the entry-exit of the competitor on the Parties' sales at those stores.

⁹⁴ Appendix C.

⁹⁵ Iceland has [X] active stores larger than 1,400 sqm., but none of these stores fall into the catchment area of any of the areas where the Parties overlap.

Medium stores (traditional retailers, discounters and Iceland) is on average [20–30%].

- (b) The constraint exerted on the Parties' supermarkets varies depending on the type of fascia. As explained in the competitive assessment below, the constraint exerted by the other 'Big 4' on the Parties' stores is stronger than the constraint exerted by other grocery retailers.
- (c) According to the CMA's store exit survey, [50–60%] of respondents said they would divert to another supermarket store of the 'Big 4' excluding the own brand. By contrast, only [10–20%] of respondents would divert to a discounter, [0–5%] to Waitrose, [0–5%] to Co-op, [0–5%] to M&S and [0–5%] Iceland.

7.38 In light of the above, for the purposes of the product market definition, we have included Large and Medium stores of traditional retailers, discounters and Iceland in the same product market. However, within our competitive assessment we consider the variation in the strength provided by different brands.

Relevant competitor set

7.39 We identified which grocery retailers provide a competitive constraint to the Parties' Large and Medium stores. Each of them was given a weight depending on their relative competitive strength.

7.40 In previous cases, the CMA has used a list of relevant competitors to reflect that not all supermarket store brands compete against each other equally strongly. The list itself has varied according to the focus of the investigation (eg the size or type of stores involved), but in all these cases the CMA (and its predecessors) has concluded that the relevant competitor set includes the traditional retailers, although noting that the competitive constraint exerted by each of them varies.⁹⁶ Given that the Parties have not disputed this (subject to the weights attributable to each brand being calibrated appropriately) and that the available evidence suggests that this is also appropriate in this case, we have included the traditional retailers in our relevant competitor set. Within our competitive assessment we take account of the variation in the strength of constraint provided by different individual brands.

⁹⁶ [Co-operative Group / Nisa retail merger enquiry](#), CMA decision of 23 April 2018; [Henderson Retail / Martin McColl merger enquiry](#), CMA decision of 16 February 2018, para. 46; [Tesco / Booker merger enquiry](#), CMA decision of 21 July 2017 (Phase 1) and Final Report of 20 December 2017 (Phase 2), para. 7.18; [Martin McColl / Co-operative merger enquiry](#), CMA decision of 20 December 2016.

7.41 In the rest of this section, we assess in further detail the degree of competition between the Parties and other non-traditional grocery retailers.

- *Discounters*

7.42 As discussed in paragraph 7.36, according to the available evidence, the strongest constraint on the Parties' supermarkets are the Large and Medium stores of other traditional retailers and discounters.

7.43 In some previous grocery retailing cases the CMA has taken into account the constraints provided by discounters when assessing competition in particular local areas,⁹⁷ and in the Tesco/Booker merger inquiry included them in the relevant competitor set.⁹⁸

7.44 As previously explained in Chapter 4, one of the major developments in the groceries sector in recent years has been the growth of the discounters. The growth is set to continue as both Aldi and Lidl have announced they are planning more store openings this year and thereafter.

7.45 We have also received evidence that, in the past few years, customers' perceptions of Aldi and Lidl have changed, particularly with regard to their views on the quality of their products, which are seen as having improved towards being broadly comparable to some of the traditional retailers.

7.46 The large majority of discounters' stores are Medium stores. The CMA store exit survey suggests that discounter stores represent a materially weaker constraint than the Large supermarkets of traditional retailers. However, the constraint from discounters is higher than the constraint from 'Big 4' Medium stores, although this differs between Sainsbury's and Asda and between Aldi and Lidl. According to the CMA's exit survey:

- (a) [10-20]% of respondents said they would divert to a Medium discounter, while [0-5]% of respondents said they would divert to a Medium store of the 'Big 4'; and
- (b) for Asda, Aldi is a stronger constraint than the Medium stores of the other 'Big 4' (and Lidl).

⁹⁷ Martin McColl/Co-operative merger inquiry (2017), [Phase 1 decision document](#), paragraphs 121 and 127; Co-operative/ML Convenience and MLCG merger inquiry (2016), [Phase 1 decision document](#), paragraph 67.

⁹⁸ Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 7.50.

7.47 Further, we agree with the Parties that where discounters are present, the cumulative constraint of multiple discounter supermarkets may together represent a substantial constraint on traditional retailers.

7.48 Based on the above, we have decided to include the discounters in our product market definition.

7.49 We take account of the variation in the strength of their constraint on the Parties' supermarkets in our competitive assessment.

- *Iceland/The Food Warehouse*

7.50 In some previous grocery retailing cases the CMA has taken into account the constraints provided by Iceland when assessing competition in particular local areas.⁹⁹ In *Tesco/Booker*, the CMA did not find necessary to conclude on the extent of the constraint that Iceland provided. The CMA conducted a sensitivity testing showing that the inclusion of Iceland did not materially affect the results.¹⁰⁰

7.51 As noted in Chapter 4, Iceland is the tenth largest grocery retailer in the UK operating over 900 stores across the UK. Iceland has had a stable share of supply in recent years.

7.52 According to the available evidence, the strongest constraint on the Parties' supermarkets are the Large and Medium stores of other traditional retailers, discounters and, to a much lesser extent, Iceland (see paragraph 7.36). The CMA store exit survey suggests that Iceland stores represent a materially weaker constraint compared to the 'Big 4' or discounter stores. According to the CMA's store exit survey only 2% of respondents said that they would divert to Iceland. By contrast, 57% of respondents would divert to another supermarket of the 'Big 4' and 17% to a discounter.

7.53 As noted in Chapter 8, based on our review of the Parties' internal documents, both Parties regularly monitor a broad range of grocery competitors, including Iceland. However, Iceland appears with less frequency or prominence than other competitors such as the traditional retailers or the discounters.

7.54 Based on the above, we have decided to include Iceland in our product market definition. We take account of the variation in the strength of their constraint on the Parties' supermarkets in our competitive assessment.

⁹⁹ Martin McColl/Co-operative merger inquiry (2017), [Phase 1 decision document](#), paragraphs 96 and 112.

¹⁰⁰ Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 7.51.

- *Online*

- 7.55 The Parties submitted that switching data suggests that online grocery is constrained by the presence of physical grocery stores in every area in which the Parties deliver. However, we consider that this data is not useful for our analysis for two reasons: first, we are considering whether online grocery retailers constrain in-store and not vice versa, and this data does not provide this information; also we are interested in what customers would choose as an alternative for a given mission, which is more likely to reflect their specific requirements. Finally, this data does not allow us to understand whether customers are switching shopping missions between online and in-store in response to changes in the offers of different retailers.
- 7.56 The CMA store exit survey suggests that the constraint from online retailers on the Parties' Medium and Large stores is relatively weak. When asked what they would do in the hypothetical situation where a store is closed, on average, [0-5]% of respondents from the CMA store exit survey said that they would divert online, including to the own-party website. For these shopping missions, the online channel would appear to be a poor alternative as many of these customers may want these items immediately or they would like to see or test what they are purchasing instead of somebody else picking for them.
- 7.57 Based on the above, online delivered groceries have been provisionally excluded from our market definition. However, they will be considered within the competitive assessment below as out-of-market constraints.

- *Bargain stores*

- 7.58 Bargain stores have been growing in recent years although they remain a small proportion of the overall groceries sector. According to the CMA store exit survey, the total diversion to other brands is small.¹⁰¹ Only [0-5]% of respondents would divert to a brand other than the traditional retailers, discounters and Iceland, though with some variation between the stores surveyed.
- 7.59 According to the available evidence, bargain stores are not perceived as a main competitor by third party grocery retailers (see paragraph 7.30). This is also supported by Kantar switching data which shows that bargain stores are a very weak constraint to the Parties, each accounting for less than 5% of switching losses.

¹⁰¹ All fascia other than the Parties, Tesco, Morrisons, Waitrose, M&S, Aldi, Lidl, Co-Op and Iceland.

7.60 Based on the above, bargain stores have been provisionally excluded from our market definition. However, they will be considered within the competitive assessment below as out-of-market constraints under the category of ‘Other’ retailers.

- *Convenience and specialist stores*

7.61 As noted in Chapter 4, the convenience channel has been growing in recent years in line with the gradual trend in the industry with consumer purchasing behaviour moving away from a single, big weekly shop, towards shopping ‘little and often’. However, whilst this is clearly a gradual trend, evidence shows that larger stores remain important for consumers. Industry reports have found that 89% of customers still do a weekly shop where they get all or most of their grocery shopping in one go, although 45% of customers combine this with other top-up shops.¹⁰²

7.62 In 2017, IGD stated that 98% of shoppers claim to use a supermarket or a hypermarket for some of their grocery shopping every month, with the most frequently cited reasons being the convenience of having everything under one roof and the wider available choice.¹⁰³

7.63 The CMA store exit survey suggests that the total diversion to convenience stores and specialist stores from the Parties’ Large and Medium stores is small. Only [5-10]% of respondents to the CMA store exit survey said that they would divert to a convenience store, a corner shop, or a specialist store though with some variation between the stores surveyed.

7.64 Based on the above, we have provisionally excluded convenience and specialist stores from the market definition. However, they will be considered within the competitive assessment below as out-of-market constraints.

- *Others*

7.65 Finally, we note that for the purposes of our current analysis, we have included a range of different types of retailer within a category of ‘Other’ retailers.¹⁰⁴ This category includes bargain stores (as noted above), Symbol groups and some other retailers with a small number of stores nationally. We note that this category of stores will be considered within the competitive assessment below as out-of-market constraints.

¹⁰² Mintel (November 2016), [UK Supermarkets](#).

¹⁰³ IGD (2017), [UK Food and Grocery](#).

¹⁰⁴ ‘Other’ refers to those stores above 280 square metres of Booths, Costcutter, Dunnes, Farmfoods, Heron Foods, Musgrave, Nisa and Spar.

Provisional conclusion on product market definition (supermarkets)

- 7.66 As noted above, unlike in previous cases in which the CMA has defined the relevant market primarily to develop a filter to screen out overlap areas where there are unlikely to be competition concerns, in this case we have defined the relevant market primarily to determine the parameters of the WSS model we have used to conduct our local assessment.
- 7.67 Based on the above, regarding the product market, we provisionally conclude that:
- (a) it remains appropriate to distinguish between Large, Medium and convenience stores;
 - (b) Medium stores are constrained by other Medium stores and also by Large stores, with Large stores exerting a stronger constraint than Medium stores;
 - (c) Large stores are constrained by other Large stores, but also by Medium stores, although to a lesser extent than by other Large stores.
- 7.68 We have therefore provisionally concluded that the product market definition includes all Large stores and Medium stores of traditional retailers, discounters and Iceland. We take account of the variation in the strength of constraint provided by different brands, especially due to distance but also depending on the brand of the store, within our competitive assessment.
- 7.69 We provisionally conclude that online retailers, bargain stores, specialist stores and other grocery retailers that are not traditional retailers, discounters or Iceland are not part of the same product market. These other players will be considered within the competitive assessment below as out-of-market constraints.

Geographic market (supermarkets)

Previous cases

- 7.70 The CMA has previously adopted a geographic scope whereby:
- (a) Medium stores are constrained by other Medium stores within a 5–10 minute drive-time (urban/rural areas), and by Large stores within a 10–15 minute drive-time (urban/rural areas); and

- (b) Large stores are constrained by other Large stores within a 10–15 minute drive-time (urban/rural areas).¹⁰⁵

Parties' views

- 7.71 The Parties submitted that the CMA should carry out the assessment of competition between grocery retailers at the local level. According to the Parties, the competitive constraints on local stores vary according to a number of factors (such as store proximity, distance, size, and brand) that influence the intensity of the constraints faced by the Parties' local stores. The Parties consider that the WSS methodology is the most appropriate methodology to account for the impact of any competitive constraints within a given catchment area from a store.
- 7.72 The Parties submitted that there was no need for a separate 'national' assessment independent of local overlaps.¹⁰⁶ According to the Parties, retail competition is fundamentally local in nature and, as set out in the 'Retail mergers commentary', the total effect of any change in the retail offer is determined by the aggregate change in competitive conditions across all individual stores operated by that retailer.¹⁰⁷
- 7.73 With respect to the size of catchment areas, the Parties proposed that evidence from various sources (including Sainsbury's Nectar customer loyalty card data, Asda's till survey, each of the Parties' impacts data and entry/exit analysis) suggested that drive-time catchments in urban areas should be 10 minutes for Medium stores and 15 minutes for Large stores, and 15 and 20 minutes for Medium and Large stores in rural areas.

Third parties' views

- 7.74 We received mixed evidence from third parties. Two third parties (Tesco, Waitrose) agreed with the approach to the geographic scope adopted by the CMA in previous cases.
- 7.75 Two competitors (Morrisons, Lidl) submitted that particularly for urban stores, the relevant catchment areas should be smaller compared to the approach adopted by the CMA in previous cases.

¹⁰⁵ For example, Martin McColl/Co-operative merger inquiry (2017), [Phase 1 decision document](#), paragraph 32; Co-operative/ML Convenience and MLCG merger inquiry (2016), [Phase 1 decision document](#), paragraph 43; and Co-operative/Booker merger inquiry (2016), [Phase 1 decision document](#), paragraph 37.

¹⁰⁶ The Parties also noted: Grocery retail competition is fundamentally local. National competition is the sum of local competition. All relevant unilateral effects can fully be captured in the local analysis.

¹⁰⁷ [CMA62](#), paragraph 1.15.

7.76 Finally, one third party (Aldi) response suggests that the relevant catchment areas should be larger compared to the approach adopted by the CMA in previous cases but smaller compared to the approach submitted by the Parties.

Our assessment

7.77 The catchment areas, measured using drive-times, which were suggested by the Parties are wider than the catchments used previously by the CMA (and its predecessors). According to the Parties, it would be inappropriate to use old catchment areas from previous cases rather than following conclusions deriving from the contemporary empirical evidence.

7.78 The drive-times underpinning the Parties' data and analysis are derived using specific assumptions about the average driving speeds in local areas. In this regard, we note that the choice of assumptions underpinning the drive times does not affect our competitive analysis as we have sought to use similar drive-time assumptions to the Parties. However, it could affect comparability with past cases, including the CC's Groceries market investigation,¹⁰⁸ as any differences in drive-times with these previous cases could be due to the use of different drive-time assumptions, and not necessarily to a change in consumer shopping habits.

7.79 From a demand-side perspective, we understand that when consumers choose a grocery retailer, they are selecting from a set of options within a relatively limited geographic area. This is supported by the CMA store exit survey results which indicate that the majority of diversion is to Large stores within 15-minutes' drive-time and Medium stores within 15-minutes' drive-time of the Parties' stores. Large stores within 15-minutes receive [50-60]% of diversion on average, while Medium stores within 15-minutes receive [20-30]% of diversion on average.¹⁰⁹ The diversion analysis in the local assessment shows that the weightings for all stores declined to zero after approximately 15 minutes' drive-time.¹¹⁰ This means that stores that are outside of these areas are at best very weak demand-side substitutes.

7.80 On the supply-side, as noted in the competitive assessment below,¹¹¹ we consider that there are barriers to entry and expansion for in-store grocery

¹⁰⁸ See [Groceries market investigation](#).

¹⁰⁹ These averages are calculated across all local areas and include only traditional retailers (the Parties, Tesco, Morrisons, Waitrose, Co-op and M&S), Iceland and Discounters (Aldi and Lidl).

¹¹⁰ See paragraph 8.124.

¹¹¹ See paragraphs 8.284 to 8.291.

retailers, and competitive conditions – the identity, number and strength of competitors – vary from local area to local area.

- 7.81 Based on the above, we consider that the conditions for aggregating markets together and assessing them as a group are not met, and markets are therefore local.
- 7.82 As set out above, we are considering the exact competitive constraints exerted by different sizes and brands at different distances. According to the available evidence, within the broad category of Large and Medium stores, the strength of constraint decreases with the distance between a competitor and the Parties' stores, as shown by the entry-exit analysis.
- 7.83 Based on the survey evidence and the entry-exit analysis, Medium stores' competitive strength 'decays' slower than Large stores with distance.
- 7.84 The Parties submitted that the overwhelming number of the Parties' stores are located in urban areas.¹¹² As explained in the local assessment, the evidence suggests that customers are generally willing to travel further to stores in rural areas. However, the evidence for rural catchment areas is limited given that the CMA's exit survey contains a limited number of observations concerning rural stores. For these reasons, we have treated rural areas in the same fashion as urban areas.
- 7.85 Based on the above, we have decided to assess the constraints within a 15 minute drive time catchment around each Large and Medium store, with reducing weight given to competitors at further distances within this catchment. Those supermarkets located more than 15 minutes away from each Large and Medium stores are treated as out-of-market constraints.

Provisional conclusion on geographic scope (supermarkets)

- 7.86 In light of the evidence set out above, we provisionally concluded that the geographic scope is local. For the purposes of the local competitive assessment, we have assessed the constraints within a 15 minute drive time catchment area around each Large and Medium store of the Parties, with reduced weight given to competitors at further distances within this catchment.
- 7.87 However, in this sector, important elements of the competitive offering are set centrally and applied uniformly across the retailers' estate. In addition, as

¹¹² According to the dataset provided by the Parties, the Parties' Large and Medium stores located in urban areas amount to 94%.

mentioned in paragraph 7.2 above, the Parties are large, nation-wide operators operating in a large number of local markets across the UK. These factors suggest that there is a national dimension of competition. We therefore have also assessed the effect of the Merger (and any reduction in competition) in aggregate, across the Parties' national store estates.¹¹³

Product market (convenience stores)

Previous cases

7.88 With respect to convenience stores, in previous cases the CMA (and its predecessors) have concluded that convenience stores are constrained by other convenience stores, Medium stores and Large stores.¹¹⁴

7.89 In these previous cases, the CMA has sometimes distinguished between large convenience stores (100–280 square metres) and small convenience stores (under 100 square metres):

- (a) In some cases where the CMA has considered possible worsening of services at large convenience stores (100–280 square metres), it has taken a cautious approach and excluded small convenience stores from its analysis – meaning that for large convenience stores it considered constraints only from other large convenience stores, Medium stores and Large stores, but not smaller convenience stores (under 100 square metres).¹¹⁵
- (b) The CMA has also noted that there is no clear threshold between smaller and larger convenience stores,¹¹⁶ and has sometimes taken account of competition between small and large convenience stores, albeit noting that the strength of constraint may differ by size of store.¹¹⁷

¹¹³ [CMA62](#), paragraphs 1.13–1.17.

¹¹⁴ For example Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 6.13; Groceries market investigation (2008), [Final report](#), paragraph 4.63; Tesco/Spar store in Wroughton (2009), [Phase 1 decision](#).

¹¹⁵ The exclusion of convenience stores under 100 square metres was first introduced in the Co-operative/Booker merger inquiry (2016), [Phase 1 decision document](#), and then applied in Co-operative/ML Convenience and MLCG merger inquiry (2016), [Phase 1 decision document](#). The OFT also previously considered that smaller convenience stores (including kiosks attached to petrol stations) may not be in the same frame of reference as larger convenience stores due to factors such as their small size and more limited range: Co-operative Group/David Sands (2012), [Phase 1 decision document](#), paragraph 20.

¹¹⁶ The CMA recognised in Co-operative Foodstores Limited/Booker that there was no clear threshold between smaller and larger convenience stores. However, the CMA considered that, in that case, using a threshold of 100 square metres provided a useful starting point for segmenting between different sizes of convenience store: Co-operative/Booker merger inquiry (2016), [Phase 1 decision document](#), footnote 16.

¹¹⁷ Martin McColl/Co-operative merger inquiry (2017), [Phase 1 decision document](#), paragraph 43.

Parties' views

7.90 As noted above, the Parties propose that we adopt the CMA's traditional classification between Large stores, Medium stores and convenience, but to calibrate the weights attributable to Large and Medium stores.

Third parties' views

7.91 The CMA has not received any submissions from third parties in this regard.

Our assessment

7.92 The Parties both operate Large, Medium, and convenience stores, although Asda's convenience stores are limited to smaller convenience stores at PFSs.

7.93 As noted above, the convenience store sector has been the subject of several phase 1 investigations and a recent in-depth phase 2 investigation by the CMA and we consider that the conclusions on market definition in the Tesco/Booker case are unlikely to have materially changed. As the majority of the overlaps between the Parties arise from their respective Medium and Large stores, and in view of this recent investigation into convenience stores, we did not consider it necessary to undertake a detailed assessment of the market definition for convenience stores thereby adopting an approach which reflects proportionality to the particularities of this case. We therefore provisionally consider that the conclusions regarding the relevant market definition for convenience stores in the Tesco/Booker investigation are also valid for this case. As such, we consider that convenience stores are competitively constrained by other convenience stores (small and large), Medium and Large stores, but in the competitive assessment we will take account of the likely variation in the strength of constraint provided by different brands.

Provisional conclusion on market definition (convenience stores)

7.94 In line with evidence from past cases, we provisionally conclude that convenience stores are constrained by convenience, Medium and Large stores. We have considered small and large convenience stores together, given the lack of evidence on an appropriate size threshold at which competition ceases between smaller and larger convenience stores.

Geographic market (convenience stores)

Previous cases

7.95 At a local level, the CMA has previously adopted a geographic scope of a 5 minute drive-time catchment¹¹⁸ or a 1 mile catchment area in both rural and urban areas, noting that the constraint is likely to be stronger the closer another retailer is to the store in question.¹¹⁹

Parties' views

7.96 The Parties have not made any submissions in this respect.

Third parties' views

7.97 The CMA has not received any submissions from third parties in this regard.

Our assessment

7.98 As noted in paragraph 7.93 above, given that this issue has been investigated recently in Tesco/Booker,¹²⁰ and insufficient time has passed for the conclusions to have materially changed, we provisionally consider that the conclusions reached in that investigation are also valid for this case, and as such, we consider that the geographic scope is local, and that it is appropriate to have 1 mile catchment areas for the purposes of the competitive assessment.

Provisional conclusion on geographic market definition (convenience)

7.99 Consistent with previous cases, we provisionally conclude that the geographic scope is local. For the purposes of the local competitive assessment, we have provisionally considered a 1-mile catchment area, noting that the constraint is likely to be stronger the close another retailer is to the store in question.

¹¹⁸ Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 6.15. For example, Martin McColl/Co-operative merger inquiry (2017), [Phase 1 decision document](#), paragraph 32; Co-operative/ML Convenience and MLCG merger inquiry (2016), [Phase 1 decision document](#), paragraph 43, Co-operative/Booker merger inquiry (2016), [Phase 1 decision document](#), paragraph 37.

¹¹⁹ Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 6.24.

¹²⁰ [Tesco / Booker merger enquiry](#), CMA decision of 21 July 2017 (Phase 1) and Final Report of 20 December 2017 (Phase 2).

Nature of competition

7.100 In this section we consider how grocery retailers compete to attract customers, and in particular:

- (a) whether grocery retailers locally flex competitive parameters in response to competition; and
- (b) the interrelations between business lines of grocery retailers.

Local flexing

7.101 A retailer will take account of the extent of local competition faced by its stores when making decisions regarding prices and other competitive variables, regardless of whether these are set uniformly across all stores or not.¹²¹ Local flexing refers to whether retailers set some aspects of their offering locally with regard to local competitive conditions (ie whether retailers vary certain parameters of PQRS from store to store in response to local competition). For instance, an example of local flexing is when a retailer sets the range available at a store taking into account the number and type of competitors present in the local area where the store is located. As a result of this strategy, there is unlikely to be two stores in a retailer's estate with identical ranges, as the mix of competitors will be different in each local area in which the retailer has a store. Other examples include where a retailer might change staffing levels, opening hours or invest in the presentation of products in its store in order to respond to local competition.

7.102 The benefits of local flexing come from the ability to degrade the retail offer where a store faces less competition and to improve it where it faces more competition. The benefits are greater when local demand and the intensity of local competition differ between the areas where the retailer operates.¹²²

7.103 The costs of local flexing might include the cost of carrying different ranges in different stores, the fragmenting of sales volumes with suppliers and the additional complexity associated with such a change in policy, which may require different systems or adverse reputational effects for other stores or for the brand as a whole.¹²³

¹²¹ [CMA62](#), paragraph 1.14.

¹²² [CMA62](#), paragraph 1.11.

¹²³ [CMA62](#), paragraph 1.10.

Previous cases

- 7.104 The CMA has found local flexing to be likely in past cases of groceries. In particular, in the Groceries market investigation,¹²⁴ the CC conducted an econometric analysis on the relationship between local competition and store profit margin.¹²⁵ The CC found that more intense local competition results in lower store-level variable profit margins, suggesting that the extent of local competitive constraint faced by individual grocery stores is one of the factors that determine store profits.
- 7.105 The CC found that the greater the degree of concentration faced by a store, the lower the store's variable profit margin. Specifically, the CC estimated several regressions, each time using a slightly different measure of local concentration to shed light on different aspects of competition and to check for robustness.¹²⁶ Regardless of which of the concentration measures the CC included in the model, the results consistently indicated that high concentration causes high store margins. All results were statistically significant.
- 7.106 The CC also found that the effect of an additional competitor is much larger for a monopoly store than for a store that faces competition within a 10-minute isochrone; the further away the competitors are, the higher the variable profit margin of the centre store; and that competing larger grocery stores have a significant impact on the variable profit margin of other larger grocery stores, while mid-sized grocery stores do not appear to have any statistically significant effect.¹²⁷
- 7.107 In Morrisons/Safeway, the CC noted that there was scope for local pricing and as such, there was no reason to conclude that national pricing must or will inevitably continue in the future. The CC noted that the same distinction between national and local applies to other aspects of the parties' one-stop offering, including product range and quality, store layout and fittings, and levels of service. The CC noted that they would expect firms to pursue whichever of the two strategies (ie national or local) was most profitable in the prevailing circumstances of the market.¹²⁸

¹²⁴ Groceries market investigation (2008), [Final report](#).

¹²⁵ Groceries market investigation (2008), [Final report](#), Appendix 4.4.

¹²⁶ These were: the number of competitor fasciae within a 10 minute drive-time (isochrone) from the store in the centre of this isochrone (centre store); the number of competitor stores within a 10 minute drive-time from the centre store; the combined net sales area of competitor stores within a 10 minute drive-time from the centre store; and the share of competitors' net sales area within a 10 minute drive-time from the centre store.

¹²⁷ Groceries market investigation (2008), [Final report](#), Appendix 4.4, paragraphs 9, 10 and 13.

¹²⁸ Safeway merger inquiry (2003), [Final report](#), paragraphs 2.94–2.98.

7.108 Therefore, according to previous cases grocery retailers vary (or can vary) competitive parameters locally. In the present case, we have not seen any evidence which would make us reconsider this conclusion.

Parties' views

7.109 The Parties did not submit whether there have been any significant changes to the factors assessed by the CC in the market investigation or in any other previous cases.

7.110 The Parties submitted that competition between grocery retailers across key competitive parameters is fundamentally local (either because elements of competition can be flexed at local level or because they are uniformly applied but set by reference to aggregate performance across the retail estate).

7.111 The Parties submitted that, whilst most competitive elements are set centrally by the Parties, many are flexed specifically by reference to local considerations. The Parties submitted that as regards those parameters of competition that are centrally-set and uniformly applied, such as pricing, the Parties factor an aggregate assessment of performance across their entire retail estates into their decision-making.

7.112 In particular, the Parties submitted that when setting PQRS they consider a range of information relating to local store performance, and as such, any significant changes across the local estate will contribute to central decision-making. In this regard, the Parties submitted that:

- (a) Pricing decisions are primarily [~~§~~]. This data comes from aggregated store performance and is the most important input into determining price changes.
- (b) They receive ongoing feedback from stores to understand how centrally made decisions are impacting store sales. This comes not only from financial performance figures, but also from regular communication with store managers. [~~§~~].
- (c) Central decisions about quality and service are similarly determined centrally but take into account local and aggregate performance in local stores. Centrally set quality standards for own-brand products and in-store service are tracked and monitored at a local level, with performance at store level feeding into the Parties' positioning and decision-making at a central level.
- (d) Ranging decisions are similarly not determined in a purely 'top down' manner. Whilst decisions on range are taken centrally, no two stores in

either Party's estate has the same product range mix on shelves as any other [REDACTED]. [REDACTED].

- (e) Innovation is similarly based on aggregate store performance, as competition to roll out new in-store, services or multi-format offerings, for example, will depend on how those innovations perform locally across stores in an initial trial set of stores, (or across all stores if there is no trial on a subset first). The Parties' incentives to innovate depend on the return made from that innovation; the more competition a retailer faces at local level, the greater the incentive to innovate, in order to win share. Therefore, incentives to innovate will depend on the aggregate level of competition across the estate.
- (f) Brand perception is simply a composite reflection of more tangible competitive variables such as QRS and convenience experienced by customers. The Parties submitted that all of these elements are fundamentally local and therefore so is brand.

7.113 In the hearing, Sainsbury's told us that price and quality are nationally led for either brand reputation or practical reasons, whereas range and service were the most 'locally optimised' levers of these four levers. In the face of new local competition, Sainsbury's told us that [REDACTED].

7.114 Asda also told us that decisions on competitive parameters (with the exception of price) are based on what they see happening locally and how they drive sales locally. Asda said that there are always local variations based on a number of different factors, such as the local population in terms of ethnicity, demographic and adjacencies (eg whether the store is next to a football stadium). Asda also told us that there are some categories of products that are much more sensitive to economic demographics versus some categories that are much more sensitive to local competition. Asda also said that, in general, local managers know their local competition and they will take actions to ensure their particular store is competitive with the other stores in that local area (for instance, Asda mentioned that if in a local area there is a Lidl store with a 'fantastic bakery', the store manager will make sure that Asda's bakery is 'in great shape').

Quality, Range and Service (QRS)

7.115 To test whether there is variation in QRS, we asked the Parties to provide data on store-level Key Performance Indicators (KPIs) on QRS variables over time. However, the Parties were unable to provide evidence on how these factors varied locally over time. Their service-level metrics are measured infrequently and when they are measured, this is in some cases only at a

subset of stores. Repeated measures sometimes capture different elements – for example, their mystery shopper exercises considered different aspects of service. This meant it was not possible to examine variation in QRS over time in response to changes in the level of competition. We similarly do not have access to margin analysis over time at a sufficiently granular level to identify the impact of changes in competition (which can happen during a year) on margins, as these are calculated on an annual basis.

Third parties' views

- 7.116 We asked third parties some factual questions about how their businesses work. The responses generally suggest that grocery retailers vary some competitive parameters locally (although it is often not clear whether this is directly due to competition or a competitive response to changes in performance or any other factors) and apply other parameters uniformly throughout the estate.
- 7.117 Some third parties noted that they set locally certain competition parameters by measuring competition, identifying specific competitors, or reviewing competitive conditions in that particular area:
- (a) Two competitors (Morrisons, Lidl) told us that store opening hours vary locally considering the competitive set of a particular local area. One of these competitors (Morrisons) also told us that local marketing activity is dependent on two key factors: the proximity of the competitors' stores and the proposition overlap of the competitor.
 - (b) Another competitor (Aldi) submitted that they do occasional vouchering to support store openings/re-openings or to counter a direct discounter competitor.
- 7.118 Some of the evidence received from third parties shows that there is an indirect link between competition and flexing some competitive parameters, by which retailers alter local parameters due to store performance. For instance:
- (a) One competitor ([redacted]) told us that for larger stores, store managers can add lines not centrally stocked if requested by customers. This procurement is managed through store systems and measured centrally. The amount of local choice is managed to below 5% of the range. For smaller stores, the primary driver of range is customer preference, whereby the range is adjusted to reflect factors such as affluence, regional/local preferences or customer shopping missions. Whilst this lead to variation on a store by store basis, this is determined centrally, by categorising stores into clusters to determine the range applied to stores

in local areas. This third party also submitted that they may review trading hours on the basis of store performance relative to equivalent stores.

- (b) With respect to staffing levels, two third parties (Morrisons, [redacted]) submitted that staffing levels differ on a store level depending on sales performance, among other factors ([redacted] noted that although staffing levels can differ on a store, these are set centrally), and another competitor (M&S) told us that stores will be staffed appropriately to meet historical trading patterns.
- (c) As regards local vouchering, a third party (Morrisons) noted that it is initiated usually as a result of a new store opening or refurbishment or a competitor's store opening or refurbishment that could have an impact on their store performance. Another third party ([redacted]) told us that advertising or vouchering can be used to support underperforming stores.

7.119 One competitor (Morrisons) told us that range is specified based on clustering similar stores together (primarily using demographics and identifying which products reflect the needs of the customer within each cluster).

7.120 Finally, third parties also submitted that they set other competitive parameters uniformly throughout the estate:

- (a) The majority of third parties (Aldi, Lidl, M&S, Waitrose, Co-op, Tesco, Morrisons) submitted that price is centrally-set and uniformly applied.
- (b) Some third parties (Tesco, Aldi, Waitrose) submitted that quality is uniform across their stores in the UK.
- (c) Some third parties (Aldi, Lidl, M&S) told us that range is set centrally and applied uniformly.¹²⁹ Another third party (Tesco) submitted that range decisions are taken centrally on a national basis and do not take into account conditions of local competition.
- (d) Some third parties (Aldi, Lidl, Waitrose, Tesco) submitted that they do not vary their local offer in terms of service.

Internal documents

7.121 We reviewed various forms of evidence from internal documents, including an email from Sainsbury's that discusses [redacted]. [redacted].

¹²⁹ [redacted]. Some of these retailers noted that they stock a negligible amount of regional products in some of their stores, and that they offer a slightly reduced range in some of their stores due to store size constraints.

7.122 A document entitled [REDACTED].

7.123 One document wherein Bernstein, an analyst firm, carried out local reviews of competitor stores suggested it was accepted in the grocery business that staffing, availability and quality were flexed locally in response to competition.¹³⁰

Our assessment

7.124 We found that good prices, convenient location and range are key factors for consumers when choosing a grocery retailer. According to the CMA's store exit survey data, the number one driver of customer choice is convenient location (68% of Sainsbury's respondents / 71% of Asda respondents), followed by good prices (9%/35%), familiarity with the store (19%/14%) and a wide range of products (15% for both).¹³¹

7.125 We consider that even within those broad aspects of PQRS there are a range of subtle ways in which supermarkets improve their offers, as submitted by the Parties and third parties operating in these markets.

7.126 The evidence submitted by the Parties suggested that the Parties:

- (a) vary some parameters locally although it is often not clear whether this is directly due to competition or a competitive response to changes in performance or any other factors (such as customer demographics) and there appears to be limited evidence that the results of local actions are systematically monitored or assessed by the Parties themselves; and
- (b) set other parameters uniformly throughout the estate, such as pricing, overall brand positioning, innovations that affect product quality and negotiations with suppliers on promotions.

7.127 Based on the above, we consider that there is scope for and sufficient evidence to consider that at least some aspects of PQRS are or would be flexed locally in response to competition. In light of this, we consider the Parties have the ability to respond to competition and, as such, to the extent they have the incentive, we consider they will alter their local offering. However, the fact that there are parameters that are set uniformly (such as pricing) and which we do not think will start being varied locally post-Merger means we also need to consider the incentive to degrade those as a result of

¹³⁰ Bernstein said 'Perhaps a reaction to high levels of local competition, or perhaps a change in tactics by Asda, this Asda store was well staffed, availability was excellent everywhere and the bakery section had good quality products ...'.

¹³¹ See paragraph 8.48.

the loss of overall constraint from the Merger. We make this analysis in the national assessment of in-store groceries in Chapter 8.

Interrelations between business lines

7.128 In this section we consider the interactions between the different areas of the Parties' activities. In particular, we consider whether the Parties' ability to offer additional products and services on-site such as GM and fuel has an impact in the supply of in-store groceries and whether this could make them a more attractive retailer for some consumers (as opposed to other retailers who do not offer these additional services).

Parties' views

7.129 The Parties submitted that it is wrong to take into account apparent differences between business models and in-store offerings as a proxy of customer preferences. In particular, the Parties submitted that additional facilities are not perceived by customers as important drivers of store choice and account for a [X] proportion of the Parties' sales. The Parties submitted that according to their survey data, non-grocery/GM retail offers are not the predominant or sole driver of store visits for more than a small fraction of customers.

7.130 With respect to fuel, the Parties submitted that PFS customers that also shop in the grocery store have a positive impact on grocery volumes which is part of the reason why supermarkets choose to operate PFSs adjacent to their stores. However, the Parties also submitted that only a minority of customers buy both groceries and fuel in a single transaction. Based on Sainsbury's analysis of Nectar data, only [20–30%] of customers bought groceries in the same visit, and only [10–20%] of customers at stores with a PFS also bought fuel.

Third parties' views

7.131 Some competitors (Aldi, Lidl, Iceland) noted that offering GM drives footfall in their stores. [X]. Similarly, another competitor ([X]) submitted that GM products complement the grocery food missions. According to this third party, GM products drive incremental profit as they operate at higher margins than grocery lines and as such, increase average basket value through the inclusion of additional items in the basket.

7.132 Another third party (M&S) submitted that it offers a substantial GM offer as this is what customers are used to and expect in its larger stores.

7.133 A third party (Tesco) noted that additional products and services including fuel, GM, banking facilities or pharmacies are important for attracting customers to large stores. This competitor submitted that, for some customers and missions, these additional products and services may also provide an added incentive to choose its store over other competing food retailers. With respect to fuel, this competitor submitted that it sells fuel as customers indicate that PFSs are an important part of the large store offering, and one that they value.

7.134 Another third party (Morrisons) submitted that it offers GM to ensure they provide their customer with a wide range of products all under one roof, offering maximum convenience to the customers' shopping trip. This third party noted that GM drives a higher basket spend and can be used as a differentiator of offer versus the heavily branded grocery offer.

Internal documents

7.135 The Parties' internal documents indicate that they believe that having a PFS on-site or adjacent to a supermarket leads to an increase in groceries sales. For example, one Sainsbury's document estimated that a PFS delivered an increase of [redacted]% in groceries sales (a 'sales halo'). Similarly, a 2017 Asda document [redacted].

Our assessment

7.136 Alongside core groceries in their larger stores, the Parties also sell items such as GM, and typically PFSs are located adjacent to these larger grocery stores and are also operated by the Parties. A successful and profitable national grocery retailer, like the Parties (or similarly Morrisons or Tesco) is more than the sum of its parts. In particular, there is considerable operational integration between in-store groceries, online delivered groceries and fuel. These retail channels are supported by sophisticated distribution and logistics, which are optimised to the current configuration of the Parties' store network.¹³² Many of the stores fulfil a dual role of in-person shopping and acting as a supply point for online operations.

7.137 The available evidence shows that there are some interactions between these different areas of the Parties' activities. In particular, by attracting a customer

¹³² According to the available information, Asda has 676 stores employing more than 145,000 colleagues, and 39 distribution centres employing 12,000 colleagues, 4,000 HGVs and 2,000 home delivery vehicles (see Asda's website: [company facts](#)). This meant a spend on retail staff of £[redacted] and a spend of £[redacted] on staff in warehouse and logistics in the last financial year. Sainsbury's has 33 distribution centres (including Argos) and a spend of c.£[redacted] on staff in warehouse and logistics and £[redacted] on retail staff in the last financial year.

to a store to purchase one of these items increases the probability that they will also make purchases of the other item.

7.138 With respect to GM we consider that by offering these items alongside their grocery proposition, supermarkets are able to fulfil a larger number of customer shopping missions and allow for cross-selling between GM and groceries, as shown by the available evidence:

- (a) according to the CMA store exit survey, 27% of Sainsbury's customers and 29% of Asda's customers said they had just bought non-grocery items (clothing, stationery, electricals, toys, etc) in addition to their grocery shopping; and
- (b) the Parties' transaction data indicate that for Asda typically [20–30%] of all baskets contain both GM and groceries, and for Sainsbury's [10–20%]. Non-groceries account for [10–20%] of store sales (excluding fuel) for Sainsbury's and [10–20%] for Asda.

7.139 With respect to fuel, we consider that supermarkets use their fuel offering as part of their overall proposition to attract customers, and so are often local price-leaders as a result.¹³³ As submitted by the Parties, the PFS customers that also shop in the grocery store have a positive impact on grocery volumes which is part of the reason why supermarkets choose to operate PFSs adjacent to their stores.

7.140 The quantitative available evidence also suggests that there is interaction between this area of the Parties' business and groceries:

- (a) according to the CMA store exit survey, 18% of Sainsbury's customers and 15% of Asda's customers at those stores with a PFS had also bought fuel there or were planning to do so; and
- (b) fuel sales account for [20–30%] of store sales ([10–20%] across all stores including those with no PFS) for Sainsbury's and [10–20%] ([5–10%] across all stores including those with no PFS) for Asda.

7.141 In the next chapters, we have taken these interdependencies into account in our investigation and considered how the Parties' activities across all markets in which they operate impact upon how the Merger affects competition in any of these markets.

¹³³ For example, the [AA estimated](#) that supermarket prices were 3.5 pence/litre lower than the UK average for unleaded petrol in October 2018.

8. In-store groceries: unilateral effects

- 8.1 In this chapter we set out our assessment of the effect of the Merger on the supply of in-store groceries. We first assess the effect of the Merger on Large and Medium stores (collectively referred to as supermarkets), and then assess the effect of the Merger on convenience stores.
- 8.2 In each case, we start with an assessment of whether the Merger gives rise to competition concerns, in aggregate, across the Parties' national store estates. This would be the case if the Parties had an incentive to deteriorate elements of PQRS across all of their stores – for example, through national price rises. In this case, we may find an SLC in each local market where one or both of the Parties is present (on the basis that harm to consumers would arise in areas where the Parties do not overlap, as well as where they do). By way of shorthand, we refer to this as our 'national assessment' or our 'assessment of competition concerns at a national level'.
- 8.3 We undertake this assessment by considering a range of qualitative and quantitative evidence (including market share information, internal documents, third party submissions, national switching data, and pricing pressure analysis, amongst others), to form a decision in the round.
- 8.4 We then assess whether the Merger gives rise to competition concerns in certain local markets. By way of shorthand, we refer to this as our 'local assessment'. This would be the case if the Parties had an incentive to deteriorate elements of PQRS only at certain stores – for example, through worsening in-store service levels or stock availability, or reducing range in those stores. In this case, we may find an SLC in each local market where this incentive is likely to arise.
- 8.5 Given the very many local areas in which the Parties overlap, it would not have been possible to assess each of these areas in turn, using the same range of qualitative and quantitative evidence used for our national assessment. We therefore adopted a method to assess, in a consistent way, the potential effect of the Merger in every local market. This involved constructing a model (referred to as the weighted share of shops, or WSS, model), using evidence of competitive conditions and competitive interactions at a local level, to measure the degree of competition the Parties face in each local area. The WSS model then allowed us to produce a measure known as the gross upward pricing pressure index, or GUPPI for each local area. The GUPPI is a tool used to 'score' the merging parties' incentives to raise prices and/or degrade the quality of their offering, their product range or their service levels (ie worsen their PQRS) post-merger. It does this by combining information on diversion ratios (to measure the closeness of competition

between the merging parties) and margins (to measure the additional profit the merging parties would gain from sales diverting between them).¹³⁴ The greater the incentive to deteriorate PQRS (signalled by a higher GUPPI figure), the more likely the merger may be expected to result in an SLC.

- 8.6 For the purposes of our local assessment, having produced a GUPPI measure for each local area, we assessed at what GUPPI threshold the Merger may be expected to give rise to competition concerns, and used this as the basis of a decision rule to conclude provisionally on which local markets the Merger gives rise to an SLC.

National assessment (supermarkets)

- 8.7 In this section, we examine whether the Merger would give rise to an incentive to degrade PQRS across the Parties' national supermarket estates, resulting in an SLC in each local area where one or more of the Parties' supermarkets is present.
- 8.8 Many of the Parties' commercial decisions are taken centrally (rather than at the store level), and many competitive parameters are applied uniformly, across the Parties' national supermarket estates. For the Parties, this importantly includes pricing.
- 8.9 If the Merger may be expected to result in competition concerns in local areas representing a significant proportion of the Parties' overall supermarket estates, the Merger may create an incentive to worsen the Parties' offerings across all of their supermarkets. We consider that the most likely way in which this could arise is through a national price rise. This would affect each local area where one or more of the Parties is present, including areas where they do not overlap. Any such deterioration across the Parties' estates would reflect the aggregate effect of the competitive constraints that the Parties face in each of the local areas where they operate.¹³⁵
- 8.10 To undertake this assessment, we have considered a range of evidence which provides a centralised, or aggregate, view of the competition which the Parties face.¹³⁶ We have assessed what this evidence shows about the closeness of competition between the Parties, and the constraints they face

¹³⁴ The GUPPI calculation also takes into account the ratio between the Parties' prices (ie the extent to which one Party's prices are higher or lower than the other). We discuss the price ratio in footnote 206.

¹³⁵ [CMA62](#), paragraphs 1.13–1.17.

¹³⁶ Some of this evidence provides an indication of the relative strength or positioning of individual competitors (but does not necessarily take into account the extent to which these competitors overlap with the Parties, in aggregate, across their estates), while other evidence takes into account both the strength of competitors and the extent to which they overlap with the Parties.

from other grocery retailers. We first set out the Parties' submissions, before reviewing in turn the following:

- (a) Evidence on shares of supply and the scale of the local overlaps between the Parties;
- (b) Evidence from the Parties' internal documents on the competitors they monitor, and the importance of different competitors in their strategy setting;
- (c) Customer switching patterns, on an aggregated national basis, based on Kantar data;
- (d) Views from other grocery retailers on the offerings of different retailers, and the competition between them;
- (e) Responses from the CMA store exit survey regarding which elements of a grocery retailer's offering were most important to customers (which helps inform our understanding of the parameters on which the Parties compete with other grocery retailers), and on the items or services customers purchased (ie whether this included GM and fuel);
- (f) Evidence on the Parties' and rivals' in-store offering, in terms of amenities, services, range, product offering, and how these differ;
- (g) Other evidence, including on customer demographics, cross-shop data, and geographic overlaps; and
- (h) For each Party, the national weighted average GUPPI: an index measure calculated from combining diversion ratios and margin information, to provide an indication of the upward pricing pressure incentive that is expected to result from the Merger.

Parties' views

8.11 The Parties submitted that the Merger would not result in an incentive to worsen parameters of competition which are set centrally and applied uniformly across the Parties' respective store estates for the following reasons:

- (a) There are no discrete 'national' parameters of competition that exist in isolation from, and are not economically determined by, individual or aggregate local competition pressures. To the extent that certain competitive variables, notably pricing but equally brand factors or

innovation, are set centrally across stores, these are based on the aggregated pressure of local competition across the estate.

- (b) The aggregate incentives of the Parties will not change post-Merger as there will be no substantial reduction in aggregate competitive pressure. The national average GUPPI for both Parties (on the Parties' calculations) is less than 3% and hence suggests insufficient upward pricing pressure to be consistent with an expectation of a material adverse effect.
- (c) In any event, the Parties submit that the Merger will result in a low combined market share (between 23% and 26.2%), and that their market share has been declining over recent years.
- (d) The Parties submitted that over the last few years there have been some changes in consumer demand and in the supply-side options available to meet these demands that have resulted in a transformation of how customers shop for groceries and mean that distinctions between shopping missions of 'main shop' and 'top up' are obsolete. In particular, the Parties submitted that the 'big weekly shop' at a traditional grocery retailer and the popularity of large stores is in decline. According to the Parties, customers in aggregate are now more likely to purchase food for dinner on the way home from work, do smaller 'main' shopping trips for key items topping-up with (fresh) items as needed throughout the week, and using online home delivery to buy bulk or heavy items several times a month. The Parties also submitted that the brand loyalty to traditional retailers has decreased, as shown by market research.
- (e) As set out in chapter 7, the Parties submitted that they face significant competition from rivals that are as close or closer competitors to the Parties than they are to each other. The Parties submit that each faces significant individual constraint from each of at least eight grocery operators (Tesco, Morrisons, the other Party, Waitrose, M&S, Co-op, Aldi and Lidl).
- (f) The Parties submit that Aldi and Lidl particularly have had a profound impact on the UK retail market in recent years, moving from niche players to mainstream rivals. The Parties submit that these retailers provide strong offerings in both quality and price and that there is no significant difference in the type of 'baskets' their customers purchase, or the

proportion of 'main shops' they serve compared the Parties and other 'traditional retailers'.¹³⁷

- (g) The Parties submit that they also face competition from other grocery retailers such as Iceland, bargain stores, and many strong smaller and regional operators (amongst other constraints).
- (h) Meanwhile, the Parties submit that they are not particularly close competitors to each other. The Parties submit that customer perception data shows that customers perceive the Parties' brands as significantly different and each of the Parties appeals to different consumer demographics. They state that switching data indicates that both Parties experience [X] losses to Aldi and Lidl combined than they do to each other, and that cross-shopping data shows that a higher proportion of each Party's customers also shopped in Tesco, Morrisons, Aldi and Lidl than also shopped at the other Party.

Third parties' views

- 8.12 We received a range of views from other grocery retailers on the relative positioning of the Parties and their competitors.
- 8.13 As noted in paragraph 7.21, we acknowledge that different retailers will have different incentives when engaging with the CMA, and that views submitted by third parties (as with all evidence, including that of the Parties) should be carefully evaluated in light of all of the available evidence. We have taken this into account when considering the views of third parties and the weight that can be placed on them.
- 8.14 In general grocery retailers agreed that there was a degree of differentiation in the market, with different retailers (or groups of retailers) positioned to serve different types of customers and shopping trips or 'missions'. Some third parties also indicated that different groceries retailers competed more or less closely depending on the customer mission (eg whether the customer is undertaking a 'main shop' or just purchasing a few items for dinner), product category (eg fresh, packaged) and product tier (eg 'entry level' vs 'finest').
- 8.15 A number of third parties identified the 'Big 4' retailers as overall having similar business models, customer offerings, and brand positioning. For example, Tesco submitted that while its core competitors varied depending on the customer and the mission, for many missions, the rest of the 'Big 4'

¹³⁷ By which the Parties meant in this case the Parties, Tesco and Morrisons. The Parties use 'traditional retailers' to mean other groupings of retailers in other contexts.

retailers were its closest competitors given their comparable breadth of range, offer and pricing. Tesco submitted that the 'Big 4' are the closest in terms of offering similar pricing, the same breadth of range, stores of the same size, and the most comparable in-store offer (in terms of meat and fish counters, general merchandise and additional products like fuel). Morrisons submitted that there were a limited number of grocery retailers that operated 'one-stop' shops in the way operated by Tesco, Morrisons and the Parties and identified these retailers as its closest competitors. M&S also noted that it groups Tesco, Sainsbury's, Asda and Morrisons as having similar associations and therefore perceived as performing broadly similar roles for consumers.

- 8.16 Some third parties nevertheless perceived some differences within the 'Big 4', with Asda generally perceived as the price leader and Sainsbury's generally perceived as having a higher quality of service and products. For example, Aldi submitted that Asda's and Sainsbury's current strategies had each sought to differentiate themselves from other 'Big 4' retailers: Sainsbury's through becoming 'more premium' and Asda through strengthening its position as a value retailer.
- 8.17 With respect to discounters, while third parties generally noted a degree of competition between traditional retailers and discounters, they indicated that the constraint from discounters on traditional retailers is more limited than from other traditional retailers. Various reasons were given for this, including: the different offering and more limited range of discounters, differences in store environment, breadth of range and level of customer service. Some third parties nevertheless noted the direct impact of discounters on the Parties' competitive offering and commercial strategy. A more detailed description of third parties' views on discounters is included in paragraphs 7.23 to 7.28.
- 8.18 With respect to other grocery retailers:
- (a) In general, third parties identified M&S and Waitrose as high-priced retailers with a higher perceived level of quality and service (see paragraph 7.33);
 - (b) generally, few third party grocery retailers who responded to the CMA's investigation listed the bargain stores as amongst their main competitors (see paragraph 7.30); and
 - (c) a number of third parties differentiated Co-op from other retailers on the basis of its focus on convenience missions (in which it was perceived as a strong competitor) or its store locations while one third party (Tesco) submitted that Iceland targets specific categories, missions and customer demographics (see paragraph 7.31 to 7.32).

Our assessment

Shares of supply and scale of local SLCs

- 8.19 As set out in paragraphs 2.1, 2.3 and 4.27, the Parties are the second and third largest grocery retailers in the UK. Together, we estimate that the Parties' combined share is 29% of sales on a UK-wide basis.¹³⁸ While this level of share of supply may not be expected to give rise to concern in a market where products are undifferentiated, in a differentiated market such as the supply of in-store groceries, we consider that shares of supply are only one indicator of potential competitive constraint, and must be considered alongside the body of evidence on the closeness of competition between the Parties set out in the remainder of this chapter.
- 8.20 The Parties' store estates also overlap to a very significant degree. While the Parties submit that they overlap geographically less often than each Party overlaps with Tesco and Lidl, and around the same as the frequency of overlap with Morrisons and Aldi, the extent of the overlap between the Parties is nevertheless very substantial: the Merger gives rise to [X] overlaps between the Parties' supermarkets (when taking into account pipeline stores), which represents [80–90%] of Asda's estate and [70–80%] of Sainsbury's estate.
- 8.21 Further, the provisional findings of our local assessment (discussed at paragraph 8.80 onwards below) are that the Merger will result in an SLC in 629 local markets centred on their supermarkets. This represents approximately 50% of the Parties national supermarket estate. As set out in paragraph 8.9, if the Merger may be expected to result in competition concerns in local areas representing a significant proportion of the Parties' overall supermarket estates (which this assessment indicates it would), the Merger may create an incentive to worsen the Parties' offerings across all of their supermarkets.

Internal documents

- 8.22 The Parties provided a large number of internal documents to the CMA in response to information requests. These included:
- (a) documents presented at a number of key commercial boards and committees of each Party, dating between 2015 to 2018 (the 'Board and Committee documents', around 2,650 documents); and

¹³⁸ See paragraph 4.27 and footnote 60 in Chapter 4.

(b) internal email files selected on the basis of keyword searches across the email files of identified key custodians of each Party, dating between 2015 and 2018 (the 'internal email files', around 136,000 documents).

8.23 The Board and Committee documents were individually reviewed by the CMA, while the internal email files were reviewed on the basis of further keyword searches using a specialist document review software platform. The findings summarised in this section are informed by all the above documents, but focus particularly on the documents of certain commercial boards and committees which we found to be most relevant for our assessment.

8.24 Based on this review we found that:

(a) Both Parties regularly monitor a broad range of grocery competitors.

While the precise competitor set varies between documents, and some competitors feature more prominently in one Party's documents than the other, overall the group of competitors each Party monitors is similar. For both, at a minimum this typically includes Tesco, the other Party, Morrisons, Aldi and to a lesser extent Lidl. For Sainsbury's particularly, Waitrose, M&S and Coop also feature prominently. Other competitors, including Iceland and the bargain stores (eg B&M and Home Bargains), appear, albeit with less frequency or prominence.

(b) Both Parties recognise the 'Big 4' (a term used in both Parties' documents as a shorthand term)¹³⁹ as a distinct group, and regularly refer to their own performance relative to this group. In Sainsbury's documents, the performance of [X]. For both, performance against the 'Big 4' is an important strategic focus.

(c) Aldi and Lidl are a clear focus in both Parties' documents. Each Party frequently compares its own performance (or that of the 'Big 4' generally) to that of the discounters (with Aldi discussed more frequently than Lidl) and ensuring competitiveness against these retailers is a strategic focus.

8.25 The Parties dispute that the 'Big 4' feature 'most prominently' in their internal documents. The Parties argue that their internal documents show that the Parties monitor a wide range of competitors with Aldi and Lidl being a clear focus. In particular, the Parties use a simple counting measure to record the number of competitor mentions. According to the Parties, this shows that

¹³⁹ In Asda's documents, 'Big 3' rather than 'Big 4' is also frequently used when Asda refers to Tesco, Sainsbury's and Morrisons as a group.

within a subset of the Asda Board and Committee documents, [REDACTED]. In a subset of Sainsbury's Board and Committee documents, [REDACTED].

8.26 We note that there are shortcomings to using a simple competitor count, particularly where an in-depth review of the documents has been possible. This approach fails to account for the context in which a term is used, or the reasons why some terms may appear more frequently than others. First, it counts all mentions as 'equal', whereas a mention that appears as the titular, or first, point on a slide/page may tell us something about its relative importance. Second, it does not account for the fact that where competitors are used as a benchmark or proxy, they will be cited more frequently. One recent Asda internal document indicates that [REDACTED],¹⁴⁰ and Sainsbury's has submitted that [REDACTED]. [REDACTED] and we would expect that the use of [REDACTED]. Similarly, where collective terms are used for groups of retailers, this will reduce mentions of individual retailer names (both Parties frequently use the terms 'Big 4' and 'discounters', as well as 'traditional retailers' and 'premium retailers'). Finally, new developments and rising competitors may receive more focus (and therefore get more mentions) than established patterns or players. As set out in paragraphs 4.8 to 4.10, the growth of the discounters is a major recent development and we would expect these players to therefore be monitored closely. However, high frequency of mentions will not necessarily mean that these are the retailers which the Parties consider to be their closest competitors.

8.27 While a competitor count may be a useful measure in some contexts (including where it is possible to take into account the relative importance of mentions),¹⁴¹ we consider that an overall assessment of the documents based on our in-depth review is preferable to using a simple counting measure across the total document population in the circumstances of this particular case.

Parties monitor a wide range of competitors

8.28 With regard to our review of Sainsbury's internal documents:

- (a) Some Sainsbury's documents identify a 'wider market' that comprises a broad range of food and non-food offerings, including supermarkets, discounters, online grocers, bargain stores, wholesalers, convenience stores, home and beauty, beer, wine and spirits retailers, and restaurants.

¹⁴⁰ One chart reads [REDACTED].

¹⁴¹ For example, in *Electro Rent/Microlease*, the CMA was able to take into account when counting competitor mentions that several mentions of a competitor may nevertheless all relate to a single point, and in these cases did not count these references more than once: [Electro Rent/Microlease](#), footnote 306.

- (b) However, Sainsbury's regular reporting typically monitors a subset of competitors, comprising [REDACTED].
- (c) Sainsbury's monitors its position via a 'Value Index', which tracks Sainsbury's price positioning relative to its competitors. The Value Index currently tracks against a wide set of competitors, [REDACTED].¹⁴²
- (d) Under its [REDACTED].
- (e) On a periodic basis, the commercial and strategy pricing strategies of certain competitors may receive added focus through 'deep dive' assessments ([REDACTED]). Other competitors are commented upon on a more ad hoc basis in regular reporting.

8.29 With respect to our review of Asda's internal documents:

- (a) Asda, too, monitors a range of competitors. Asda's regular reporting focuses on a subset of competitors which in some cases is slightly narrower than Sainsbury's, although the competitor set chosen varies [REDACTED]. For example:
 - (i) Recent editions of the Asda Customer Board reproduce charts on grocery spend growth, switching trends, and performance against factors such as growth in number of shoppers, frequency of visit and basket size, against [REDACTED].
 - (ii) In Asda Customer Board and Commercial Board packs, a slightly narrower competitor set of [REDACTED].
 - (iii) On a more ad hoc basis, charts compare Asda's position against a narrower or wider competitor set (which may additionally include eg [REDACTED] appear consistently, and [REDACTED].
- (b) The Parties submitted that the more limited set of competitors shown in some of these charts is a function of the fact that Asda chooses to reduce the number of lines (ie retailers) to make them more readable. The Parties submitted that senior management also receive Kantar data containing information on a much wider set of competitors, showing that the competitors shown in Asda's documents should not be considered a 'more typical' set of comparators. However, we consider that where certain retailers have been specifically chosen for inclusion in Asda's

¹⁴² This wider competitors are shown in [REDACTED].

internal documents, this is likely to be informative of which competitors Asda considers important from within any wider set.

'Big 4' identified as an important comparator, members of 'Big 4' (especially Tesco) feature more prominently than other retailers

8.30 With respect to our review of Sainsbury's internal documents:

- (a) While Sainsbury's typically monitors a wider set of retailers, its documents identify the 'Big 4' (a term used frequently) as an important reference group within this wider competitor set. [REDACTED].
- (b) In some analyses, Sainsbury's relative position to the other members of the 'Big 4' is discussed first, ahead of other competitors. [REDACTED].
- (c) Tesco tends to receive additional focus. [REDACTED].
- (d) This focus on the 'Big 4' and Tesco was also visible in [REDACTED].
- (e) One recent document indicates that [REDACTED].
- (f) Asda and Morrisons do not individually receive more prominence in regular reporting compared to other retailers (outside of references to the 'Big 4'), [REDACTED].
- (g) Finally, some documents indicate that while Sainsbury's recognises differences within the 'Big 4' retailers, it nevertheless perceives the 'Big 4' to be distinguishable from other 'more distinctive' offers. [REDACTED].

8.31 With respect to our review of Asda's internal documents:

- (a) Asda's documents also identify the 'Big 4' (sometimes referred to as the 'Big 3', excluding Asda) as an important reference group within its wider competitor set. For example, the [REDACTED]. Performance against the 'Big 4' is cited frequently in regular reporting.
- (b) Members of the 'Big 4' feature prominently in Asda's KPIs. [REDACTED].
- (c) As noted in paragraph 8.29(a)(iii), when presenting charts tracking performance of a number of retailers, [REDACTED] appear consistently in all charts, sometimes as the only competitors. [REDACTED].

Discounters

8.32 Both Parties' documents demonstrate a clear focus on Aldi and Lidl. In strategic overviews, the 'threat' of the discounters is a common theme, and in

regular reporting, both Parties compare their performance relative to these competitors. Aldi is mentioned more frequently than Lidl.

8.33 With respect to our review of Sainsbury's internal documents:

- (a) In Sainsbury's strategic documents, discounters are presented as a key competitive threat to Sainsbury's and other members of the 'Big 4', offering a strong customer proposition across both price and quality to rival traditional retailers. In [REDACTED].
- (b) Strategic and board level documents discuss strategies to counter the discounters both in general terms and [REDACTED]. [REDACTED].
- (c) Comparisons of Sainsbury's performance against the discounters also appear frequently in regular reporting. [REDACTED].

8.34 With respect to our review of Asda's internal documents:

- (a) [REDACTED]
- (b) [REDACTED]

Conclusion on internal documents

8.35 In conclusion, the evidence from the Parties' internal documents shows that while each Party monitors a wide range of competitors (which includes one another, other traditional retailers, the discounters, and others), both Parties recognise the 'Big 4' retailers as a distinct group, against whom they regularly measure their own competitive performance. Tesco features [REDACTED] in both Parties' documents, although [REDACTED], its prominence may overstate the extent to which it represents a greater constraint to the Parties than they do to each other. Both Parties' internal documents also show a clear competitive focus on the discount retailers. That being the case, a mere competitor count is likely to overstate the extent to which these retailers impose a constraint on the Parties, given that we would naturally expect more frequent mentions to be made to rising competitors such as these, over more established (and potentially closer) rivals.

Kantar Worldpanel switching data

8.36 We have analysed data on customer switching habits, compiled by the third-party data provider Kantar. This information is gathered from a panel of 30,000 households who scan in the barcode of the grocery products they purchase. As the same households are tracked over time, this allows Kantar to establish whether households are shifting some grocery spend from one

retailer to another, as well as whether they are increasing or decreasing spend in total.

- 8.37 We consider that for the purposes of assessing closeness of competition, information on customer diversion (that is, the extent to which customers would switch in response to a small change in PQRS) is generally more informative than customer switching data (which does not account for the reason for changes in customer purchasing habits, which may be unrelated to competition). For this reason, we place significant weight on customer diversion ratios¹⁴³ calculated from the CMA store exit survey, as discussed in the context of our local assessment (paragraphs 8.101 to 8.169 below). Nevertheless, we consider that the Kantar switching data may also provide a useful indication of the degree of competition between the Parties, and between each Party and other grocery retailers. It provides data on real observed customer behaviour; many grocery retailers use the data in their own businesses; and the sample size is large, so we consider the results to be robust.
- 8.38 However, in order to interpret the data correctly for the purposes of our assessment, we consider that it is important to make some adjustments to account for the fact that some of the switching recorded in the Kantar data may represent migration of customers; eg, customers moving to a preferred retailer that has opened in a new area. Where customers migrate in this way, they may be less likely to switch back, even if the 'losing' retailer improved its PQRS (as we are most interested in how customers would respond to changes in PQRS, this is relevant). We consider that this is particularly important in this case, given that Aldi and Lidl are growing quickly through store openings. While the opening of an Aldi or Lidl store may result in an initial migration of customers, subsequent small changes in PQRS, by Aldi/Lidl or the Parties, may have much less impact on these customers. As such, the level of switching between the Parties and each of Aldi and Lidl as shown through the Kantar data may not accurately represent the ongoing constraint from those retailers. We note that analysis in one [redacted] distinguishes between switching driven by store openings and switching on a 'like-for-like basis'.
- 8.39 We have adjusted the Kantar data to disaggregate switching driven by new store growth from switching driven by like-for-like sales growth, using the

¹⁴³ The diversion ratio from Store A to Store B is the proportion of customers that would switch to Store B in response to a worsening of Store A's competitive offering, as a proportion of all customers that would switch away from Store A. In other words, if Store A raises its price and 100 customers switch away from Store A and, of those 100 customers, 20 choose Store B, the diversion ratio from Store A to Store B would be 20%.

analysis in this [REDACTED], which suggested that like-for-like growth as a proportion of all growth was [REDACTED]% for Aldi and [REDACTED]% for Lidl.

- 8.40 The Parties submitted that we had not applied the adjustment to Aldi's and Lidl's switching losses correctly,¹⁴⁴ and therefore Aldi and Lidl were a stronger constraint than our analysis suggested.
- 8.41 We applied the Parties' suggested amendments, with a small adaptation. The resulting effect on the implied constraint from Aldi and Lidl is very modest. We explain the Kantar switching data and our methodology for the adjustment described above in Appendix B.
- 8.42 The results are shown in Figures 8.1 and 8.2. We have focused on switching losses, as the measure that we consider most closely proxies for diversion and is most informative about closeness of competition.¹⁴⁵ This shows that Tesco acts as an important constraint on both Parties, accounting for approximately [25–30%] of switching losses. For both Parties, Morrisons and the other Party are the next most important constraints, each accounting for 10–15% of switching losses. For Asda, this is followed by Aldi, Lidl and Co-op (5–10% each), and then Iceland, Waitrose, M&S and the bargain stores (each [0–5%]). For Sainsbury's, the picture is similar, although Waitrose is a more important constraint (5–10%) compared with Aldi, Lidl, Co-op and M&S who are slightly less important ([5–10%] each).

Figure 8.1: Adjusted switching losses from Asda: Proportion of value lost to each retailer

[REDACTED]

Source: CMA analysis of Kantar WorldPanel 52 week switching 2015,2016,2017,2018 (provided by Asda)

Figure 8.2: Adjusted switching losses from Sainsbury's: Proportion of value lost to each retailer

[REDACTED]

Source: CMA analysis of Kantar WorldPanel 52 week switching 2015,2016,2017,2018 (provided by Asda)

- 8.43 We consider the results from this Kantar switching analysis support a finding that, for both Parties, Tesco is an important constraint, with Morrisons and the other Party the next most important constraints. It also supports a finding that Aldi and Lidl are a constraint to some degree on both Parties, but not to the extent of Tesco, Morrisons and the other Party. Waitrose, Co-op, M&S and

¹⁴⁴ On the basis that we exclude all sales to new stores, and apply our reduction directly to switching losses, rather than net switching.

¹⁴⁵ The Parties argue that we should be looking at net switching because this measures exactly how much sales they are losing to competitors. We disagree, given that net switching masks competitive interaction (as two retailers that lose large, but very similar, amounts of sales to each other will look the same as two competitors which lose very few sales to each other.)

Iceland also impose an smaller constraint than Tesco, Morrisons and the other Party.

Survey responses

- 8.44 The CMA store exit survey was a substantial evidence-gathering exercise, interviewing over 20,000 of the Parties' in-store customers across the UK. The Parties also submitted a number of their own surveys. We discuss these further in the context of our local assessment, in paragraph 8.101 onwards and in Appendix B.
- 8.45 The CMA store exit survey asked Asda and Sainsbury's customers a range of questions about where they would have done their shopping had they not been able to shop at the Party's store (diversion questions). We use the results of these questions in the local assessment. Other questions asked which elements of a grocery retailer's offering were most important to customers (choice attributes), which helps inform our understanding of the parameters on which each of the Parties compete with other grocery retailers. Others asked about what items or services customers purchased, to understand how customer purchases interact across the Parties' businesses. We review the results of these questions in aggregate, across the surveyed sample.
- 8.46 The Parties submitted concerns regarding the representativeness of the CMA store exit survey. These concerns are described more fully in paragraph 8.131. As discussed in our local assessment, we consider that the survey produces robust results across the sampled stores and that, when analysed and interpreted appropriately, it is a robust source of evidence for the purposes of our assessment.
- 8.47 The Parties submitted that the CMA store exit survey generally supports the submissions made by the Parties – particularly regarding the constraint on the Parties from Aldi and Lidl. In particular, the Parties submitted that the survey supported that there is significant diversion of the Parties' customers to Aldi and Lidl; that Medium stores, including those of Aldi and Lidl, exert a constraint on the Parties' stores (including Large stores); that having a wide range of products is only an important determinant for a very small proportion of customers; and that customers who would divert to Aldi and Lidl are on average more likely to increase the number of items they would buy from the discounters (showing that customers are not switching only a small proportion of their baskets in light of more limited range).
- 8.48 Regarding the choice attribute questions, the first set of questions was 'unprompted' (ie the questions did not suggest any particular reasons for

shopping at that store), while the second set was prompted (ie the questions asked customers to say how important four attributes were in their decision to shop at that store: 'good special offers', 'wide choice of products', 'having well-known brands' and 'short waiting times at checkout'). In response to the unprompted questions, over two-thirds of respondents mentioned convenient location as a reason for their choice of store (68% of Sainsbury's respondents / 71% of Asda respondents), with good prices (9% / 35%), familiarity with the store (19% / 14%) and a wide range of products (15% / 15%)¹⁴⁶ being the attributes next most frequently referenced. In response to the prompted questions, over two-thirds of respondents said that having 'a wide choice of products' was essential or very important (68% of Sainsbury's respondents / 71% of Asda's respondents), around half said good special offers was essential or very important (45% / 56%) and two-fifths said 'having well-known brands' was essential or very important (38% / 41%).¹⁴⁷

- 8.49 Considering respondents' purchasing decisions, 27% of Sainsbury's customers and 29% of Asda's customers said they had just bought non-grocery items (clothing, stationery, electricals, toys, etc) in addition to their grocery shopping. 18% of Sainsbury's customers and 15% of Asda's customers at those stores with a PFS had also bought fuel there or were planning to do so.
- 8.50 We consider that these results show that while location and price are the most important attributes for the Parties' supermarket customers, a wide range of products, and the availability of brands, are important factors for some customers' purchasing choices (and are factors which, as discussed in the following section, not all grocery retailers offer to the same degree). Further, a material proportion of customers purchase GM and/or fuel together with their groceries. Again, as discussed in the following section, this option is only available to customers of certain retailers who, like the Parties, offer a full range of products across groceries, GM and fuel.

In-store offering (amenities, services, range, product offering)

- 8.51 We have considered whether differences in the in-store offering of different retailers, range and product offering, in-store amenities and additional services, are informative of the closeness of competition between the Parties and between the Parties and other grocery retailers.

¹⁴⁶ In their response, the Parties refer only to the proportion of respondents that listed that this as the 'main' reason.

¹⁴⁷ Unless otherwise specified, results quoted here from the CMA store exit survey are taken from the [Kantar Report](#) and are unweighted.

8.52 The Parties submitted that it is wrong to take into account apparent differences between business models and in-store offerings of different retailers as a proxy of customer preferences. We agree that evidence on customer preferences (whether revealed, as in the switching data discussed above, or stated, as in the survey diversions discussed in detail as part of our local assessment) are particularly valuable evidence for the purposes of our assessment, but we believe that differences in in-store offerings are also informative, particularly given that a significant proportion of respondents in the CMA store exit survey listed factors such as range and branded goods as important elements of their choice of retailer, and given that a significant proportion of respondents also purchased their groceries in combination with non-grocery items.

8.53 With respect to the in-store offering of different grocery retailers, the Parties submitted in particular that:

- (a) Aldi and Lidl offer a range that covers the majority of the grocery shopping requirements of customers. This is shown by the fact that Kantar data shows that the proportion of spend at Aldi characterised as a 'main shop' exceeds that for traditional retailers, whilst the proportion of 'main shop' spend at Lidl is similar. [✂]. This shows that even though Aldi and Lidl stock fewer SKUs, they carry a sufficient range to cater to customers' needs.
- (b) In any event, having a wide product range is not a key driver for customers, as demonstrated by the CMA store exit survey and supported by industry surveys undertaken by YouGov and IGD (all of which show convenience is the most important driver).
- (c) The fact that Aldi and Lidl stock fewer branded products does not detract from their ability to compete with the Parties: Kantar data shows that customers regularly substitute own-branded goods for branded goods; the CMA store exit survey shows that the availability of branded goods is not an important driver of choice for consumers; and customers are in any event able to purchase a select number of favourite branded products from a range of retailers beyond the Medium and Large stores of the traditional retailers, reducing the significance of the difference between the discounters and the Parties.
- (d) There is no significant difference in the type of 'baskets' of customers of Aldi or Lidl compared to traditional retailers and the proportion of spend, frequency of visit and items per trip are not significantly different at Aldi/Lidl versus the traditional retailers (with the number of items per basket higher for Aldi and Lidl).

- (e) The proportion of cross-shop for main baskets¹⁴⁸ at Aldi and Lidl is similar to that for the traditional retailers, indicating that the discounters are not used disproportionately for specific products that are complementary to those offered by the traditional retailers.
- (f) Additional services are not perceived by customers as important drivers of store choice and account for a [~~3~~] proportion of the Parties' sales. The Parties submitted that according to their internal survey data, cafés, concessions or non-grocery/general merchandise retail offers are a reason for choosing a store for only a small fraction of customers. Specialist food counters are similarly not intrinsic to a store's success.

- 8.54 As regards third parties, the more limited range of the discounters, in terms of number of SKUs, lack of choice within particular product categories (including both grocery and non-grocery products), and lack of branded products, was mentioned by a number of third parties in their submissions to the CMA. Some third parties also highlighted that discounters do not offer the full range of amenities (such as cafes, food counters, pharmacies, ATM machines, PFS or car parking) that are often provided by the 'Big 4'. Morrisons submitted that the 'Big 4' compete closely in terms of level of in-store service, including in relation to store cleanliness, product availability, staff helpfulness, check out queues and facilities.
- 8.55 We note that there are important differences in the in-store offering of the Parties (and other members of the 'Big 4') compared to other retailers, including the discounters. This includes in relation to: the range of grocery products sold; the overall pricing level; the extent of in-store services and amenities provided; and the offer of additional products and services on-site such as GM and fuel.
- 8.56 The Parties submitted that the 'big weekly shop' at a traditional grocery retailer and the popularity of large stores is in decline. However, as noted in the chapter 4, there remains a substantial proportion of the population (89%) that continue to conduct a single, main weekly shop. For some of these consumers, at least, this is likely to necessitate shopping at a grocery store of a certain minimum size and these consumers may have limited willingness to conduct these shopping trips at smaller stores. The 'Big 4', unlike other grocery retailers, have Large stores with a wide range that allow customers to conduct a one-stop shop.

¹⁴⁸ That is, the proportion of customers that also shop at other retailers.

- 8.57 In terms of range, a Large store of the Parties (similarly to Tesco and Morrisons), will typically stock around [20,000–30,000] SKUs, offer an extensive own-label offering (including a good/better/best range hierarchy aiming to cater for all customer budgets), and a wide range of well-known brands. By comparison, discounters (which primarily operate Medium stores) offer a limited range of circa 1,800–2,000 SKUs, and the majority of this range is own-label, offering fewer branded goods than any other supermarket: approximately [90–100%] of Aldi’s product range consists of own-label brands, and approximately [90–100%] of Lidl’s product range. Meanwhile, [40–50%] and [50–60%] of Sainsbury’s and Asda’s sales respectively come from branded products. While we acknowledge the Parties’ submissions that some customers will substitute between branded and own-branded goods, we note that the fact that the Parties (and Tesco and Morrisons) continue to offer this broad range of goods, including branded goods (despite the fact that discounters are able to save cost by having a more limited range and higher proportion of own-branded goods) indicates that this is an important part of their offering to customers.
- 8.58 The Parties submitted that even despite these differences in range, there is no significant difference in the product mix comparison of ‘baskets’ of customers of Aldi or Lidl compared to those of the ‘Big 4’ retailers, as shown by Kantar data on the proportion of ‘main shop’ missions served by those retailers. We acknowledge that this data shows that many customers do use Aldi and Lidl for their ‘main shop’. Nevertheless, we also note that the ‘profile’ of different grocery retailers in terms of the proportion of spend by customer ‘mission’ served (Kantar distinguishes between four customer missions: ‘for tonight’, ‘main shop’, ‘replenishment’ and ‘specific journey’) shows significantly more similarities between the Parties, Tesco and Morrisons, than it does between the Parties and other retailers. The proportion of spend on each of these four missions is almost identical for Tesco, Asda, Sainsbury’s and Morrisons across all missions, while Aldi caters for a smaller proportion of ‘specific journeys’ and Lidl a greater proportion of ‘replenishment’. More generally, the differences are particularly marked between the ‘Big 4’ retailers and Co-op, Waitrose and Iceland, with Co-op and Iceland serving substantially more ‘for tonight’ missions and Co-op in particular serving substantially fewer ‘main shops’.
- 8.59 In terms of overall pricing level, the discounters operate at a substantially lower price point than the Parties: Aldi has stated publicly that it aims to be at least 15% cheaper than the ‘Big 4’ retailers on a comparable basket of goods. While we have seen evidence in the Parties’ internal documents that [redacted], there remains a significant difference between their relative pricing levels.

8.60 In terms of in-store amenities and services, Asda and Sainsbury's (and the other 'Big 4' retailers) are differentiated from other grocery retailers. Particularly in Large stores, these retailers offer amenities such as food counters, cafés and pharmacies, and services such as ATM machines and car parking that many other grocery retailers do not offer. While the Parties submit these services are not the main driver of customer choice, and [redacted], we consider that the fact that the Parties choose to offer these services (despite [redacted]), indicates they believe it to be an important part of their customer offering. Indeed, the Parties submitted that both Sainsbury's and Asda Large stores offer third parties concessions (eg Lloyds Pharmacies and Timpson for Sainsbury's, and Timpson and McDonalds for Asda), to give customers 'the convenience of a wider range of in-store amenities'.¹⁴⁹ The CMA store exit survey found that a wide range of products, and good car parking facilities, was a reason for choice of store for some respondents.¹⁵⁰ In the Groceries Market Investigation, the CC found that these factors were correlated with store size, ie larger stores tended to offer a wider range of products and a wider offering of facilities, and that larger stores also tended to be more attractive as an alternative for customers.¹⁵¹

8.61 Finally, in terms of additional goods and services sold alongside their groceries offering, particularly in Large stores, both Parties offer a consistent year-round GM offering. This differs to the 'when-it's-gone-it's-gone' model that Aldi and Lidl operate, where particular lines of GM may be offered at different points of the year, with limited stocks which are not restocked once depleted. As discussed further in chapter 14, the Parties also operate PFSs adjacent to some of their stores; something which is unique amongst grocery retailers to Tesco, Morrisons, the Parties, the Co-op and (to a lesser extent) Waitrose.¹⁵² As discussed in paragraph 14.72, the Parties have analysed internally how having a PFS on-site or adjacent to a supermarket leads to an increase in groceries sales, producing a 'halo' effect on the grocery stores profits. We consider that this demonstrates that operating PFSs is an important point of competitive differentiation for those grocery retailers that operate them. This is further supported by the fact that the Parties are continuing to open new PFSs.¹⁵³

¹⁴⁹ The Parties also described 'in-store aspects of the retail food offer beyond the core aisles, such as fresh food counters (bakery, meat, fish) and food to go counters (eg roast chicken, pizza, sushi), and concession partners' as [redacted] [which] are central to the customer's shopping experience'.

¹⁵⁰ See Kantar Report, page 26.

¹⁵¹ Groceries market investigation (2008), [Final report](#), paragraphs 4.25 to 4.32.

¹⁵² Waitrose partners with Shell at 29 PFSs. [redacted].

¹⁵³ The Parties have a number of pipeline PFSs, which are taken into account as part of our assessment with respect to the supply of fuel in Chapter 14.

8.62 We consider that the factors above indicate that the Parties (together with the other 'Big 4' retailers) are close alternatives for customers in terms of their in-store offering, providing a range of services which meet particular customer needs that other retailers do not serve, or at least not to the same extent.

Other evidence

8.63 The Parties referred in their submissions to a number of further sources of evidence which they considered relevant in assessing closeness of competition between the Parties, and the constraint from other grocery retailers. This includes evidence from the Parties' entry-exit and impacts analyses, and from their internal gravity model, all of which are discussed further in the local assessment. The Parties also cite:

- (a) Data on customer demographics, which they submitted shows that they are not particularly close competitors: Asda generally over indexes (ie performs higher than average) on consumer groups in which Sainsbury's under indexes, and vice-versa; and Asda is much closer to Aldi and Lidl in terms of consumer profile than to Sainsbury's (which, in turn, has the most in common with Waitrose).
- (b) The OC&C Index of customer perception, which they submit shows a significant 'gap' between the Parties, with Tesco and Morrisons situated between them, and Aldi and Lidl positioned most closely to Asda.
- (c) Cross-shop data from GlobalData, which shows that in the past year: a higher proportion of Sainsbury's food and grocery shoppers also shopped in Tesco, Aldi, Lidl and Morrisons than also shopped at Asda; and a higher proportion of Asda food and grocery shoppers also shopped at Aldi, Tesco, Morrisons and Lidl than also shopped at Sainsbury's.

8.64 Regarding the data on customer demographics, we note that while customers' differing demographic characteristics may affect their purchasing choices, this does not exclude the fact that there may remain a significant proportion of customers who see the Parties as close substitutes. We therefore consider that the diversion ratios estimated by the CMA store exit survey (as discussed in our local assessment) and the Kantar switching data discussed in paragraphs 8.36 to 8.43 above, are more informative on how closely customers perceive the Parties to compete. Further, we note that this data demonstrates important differences between the demographic profile of all grocery retailers, and not just the Parties. While we agree that this data shows that Asda and Aldi have a broadly similar index levels in many demographic categories, it also shows stark differences between Sainsbury's customers and a number of competitors that the Parties have submitted are close

competitors to it: including the discounters, Co-op and Waitrose (while both may over or under-index in particular categories, the index levels of each is starkly different). We acknowledge that Tesco and Morrisons appear situated broadly between the Parties.

- 8.65 Regarding the OC&C Index of customer perception, we note that this has similar constraints to the demographic data, in so far as it does not provide any information on whether there remains a significant proportion of customers by whom the Parties are seen as close substitutes. Similarly to the demographic data, we acknowledge that this shows Asda as most closely positioned to Aldi and Lidl, however this again reinforces the gap between Sainsbury's and the discounters, which the Parties have submitted are 'close competitors' to it. Again we acknowledge that Tesco and Morrisons appear situated broadly at the 'midpoint' between the Parties.
- 8.66 Regarding the GlobalData cross-shop data, we note that data on cross-shopping does not necessarily provide information on the extent to which consumers are switching between different retailers, and a significant proportion of 'cross-shopping' may relate to customers complementing their purchases across retailers, rather than substituting between them. Where we have available data on diversion ratios and switching patterns, we therefore consider this to be more informative for our assessment.
- 8.67 For the reasons above, we have placed very limited weight on these additional sources of evidence.

National average weighted GUPPI

- 8.68 As noted in paragraphs 8.5 and 8.6, we use GUPPI as the basis of our decision rule for the purposes of our local assessment. We therefore discuss in detail how we have calculated the GUPPI for each local area as part of our local assessment.
- 8.69 For the purposes of our national assessment of the Parties' supermarket overlaps, we have used the GUPPIs calculated for each local area to also calculate a national weighted average GUPPI. We have used this national average weighted GUPPI as one indicator, in combination with the range of qualitative and quantitative evidence discussed in previous sections, to conclude whether, in the round, the Merger gives rise to competition concerns at a national level in relation to the supply of in-store groceries through the Parties' supermarkets. As set out in paragraph 8.214 onwards, the GUPPI calculation itself incorporates inputs drawn from a range of evidence, and in deciding on the correct values to use for these inputs, we have undertaken a detailed assessment.

8.70 Our calculations (described in Appendix E) produce a national weighted average GUPPI for Sainsbury's of [0-5%] and for Asda of [0-5%].^{154, 155} Having taken into account the same factors described in our local assessment (paragraphs 8.233 to 8.248) when interpreting this figure (including that merger-specific efficiencies may offset upward pricing pressure, the requirement that any lessening of competition must be substantial, and allowing for some degree of uncertainty), we consider that GUPPIs of this level support a provisional finding that the Merger gives rise to an incentive to degrade PQRS across the Parties' national supermarket estates, resulting in an SLC in each local area where one or more of the Parties is present.

Provisional conclusion on national assessment

8.71 Based on the evidence set out above, we provisionally find that the Parties are significant national players in in-store groceries and are close competitors to each other. They face varying degrees of competitive pressures from a range of other groceries retailers, but these constraints would not be sufficient to offset the substantial loss of competition between the Parties post-Merger.

8.72 We provisionally consider that there is an important competitive interaction between the 'Big 4' grocery retailers (of which the Parties are two), and that after Tesco, each Party generally acts as the other's next closest competitor (together with Morrisons).

8.73 The evidence from the Parties' internal documents shows that while each Party monitors a wide range of competitors (including Aldi and Lidl), both Parties recognise the 'Big 4' retailers as a distinct group, against whom they regularly measure their own competitive performance. Tesco features [X] in both Parties' documents, but [X] and [X], which leads us to believe that its prominence overstates the extent to which it represents a greater constraint to the Parties than they do to each other. Both Parties' internal documents also show a clear competitive focus on the discount retailers. That being the case, as noted in paragraph 8.35, a mere competitor count across these documents

¹⁵⁴ For some aspects of PQRS of the Parties' competitive offerings that are set uniformly at the national brand level, notably including price, the level of PQRS set by the Parties for their supermarkets is the same as the level set for their online grocery store. As such, for these parameters, it would be appropriate for the weighted average national GUPPI for these aspects of PQRS to be based on a weighted average of the GUPPI values for the Parties' supermarkets and the GUPPI values for their online business together. We have not made this adjustment as (i) there are likely to be some national, uniform parameters of competition for the Parties' supermarkets that are not set consistently across their supermarket and online businesses, for which the supermarket-only GUPPI would be an appropriate indicator; (ii) more than [X]% of the Parties' revenue is supermarket revenue, implying that any adjustment resulting from including online in the weighted average would be small, and (iii) the national GUPPI is one piece of evidence taken into account in the round alongside other pieces of evidence, and therefore small adjustments to its value would not significantly influence the assessment.

¹⁵⁵ In the case of Asda, as discussed in paragraph 8.257, pricing is uniform across the supermarket and convenience store estates. We have not adjusted the national supermarket GUPPI given the very small number of convenience stores, and the relatively small weighting each of these would receive.

is likely to overstate the extent to which these retailers impose a constraint on the Parties, given that we would naturally expect more frequent mentions for rising competitors such as these, over more established (and potentially closer) rivals.

- 8.74 Once the Kantar switching data is adjusted to reflect switching driven only for like-for-like growth, this shows that for both Parties, Tesco is an important constraint, with Morrisons and the other Party the next most important constraints. It also supports a finding that Aldi and Lidl are a constraint to some degree on both Parties, but not to the extent of Tesco, Morrisons and the other Party.
- 8.75 Third party submissions support a degree of distinction between the 'Big 4' retailers and other grocery retailers, albeit also recognising certain differences within this group. These third parties highlighted important points of difference between the 'Big 4' retailers and the discounters which some submitted reduced the extent to which they competed closely.
- 8.76 Our review of the in-store offering (in terms of amenities and services, product range and offering) support some of these points of difference, including on factors (wide range of products, availability of brands, offering of general merchandise/fuel) which the CMA store exit survey demonstrates are important factors for some customers' purchasing choices. We believe that these factors indicate that the Parties (together with the other 'Big 4' retailers) are close alternatives for customers in terms of their in-store offering, providing a range of services which meet particular customer needs that other retailers do not serve, or at least not to the same extent.
- 8.77 As a result, we provisionally found that the discounters do provide a degree of competitive constraint on the Parties, but that this constraint is less important than that provided by the other 'Big 4' retailers.
- 8.78 The closeness of competition between the Parties and the absence of sufficient post-Merger constraints is consistent with our national weighted average GUPPI calculations, which at [0-5]% (for Sainsbury's) and [0-5]% (for Asda) indicate a level of upward pricing pressure that we consider would be substantial, having taken into account the efficiencies which are expected to arise.
- 8.79 As a result, we provisionally found, on the balance of probabilities, that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade PQRS across the Parties' national supermarket estates, resulting in an SLC in each local area where one or more of the Parties' supermarkets is present.

Local assessment (supermarkets)

Parties' views

- 8.80 The Parties submitted that the assessment of competition is appropriately carried out at the local level and proposed that the CMA should use a 'weighted share of shops' methodology to assess the Parties' incentives in each local area.
- 8.81 The Parties submitted that the relevant parameters for the competitive constraints faced by a supermarket were (i) geographic location and distance, (ii) store size, (iii) brand, and (iv) other constraints such as online, convenience stores, bargain stores, independent and specialist stores and constraints from stores located outside the geographic catchment. The Parties made submissions on each of these factors.
- 8.82 As discussed in paragraphs 7.73, with respect to geographic location and distance, the Parties submitted that a range of evidence supported that the geographic catchment areas should be more inclusive than those used by the CC and CMA in past investigations, and in particular that the Parties' stores are constrained by Large stores up to 15 minutes' drive away and Medium stores located up to 10 minutes' drive away. These drive times should be 5 minutes longer where the Parties' supermarkets are located in rural areas.
- 8.83 As discussed in paragraphs 7.11 to 7.13, with respect to store size, the Parties submitted that there was no 'step change' in the constraint from different supermarkets once they pass any specific threshold of store size. However, they submitted that larger supermarkets exert stronger constraints (although on a per square metre basis Medium Stores exert a stronger constraint on Large Stores than other Large Stores), and that it would be pragmatic to adopt the approach used by UK competition authorities in past cases concerning the supply of groceries to define two size categories, considering separately the constraint from Medium stores and Large stores with appropriate weighting.
- 8.84 With respect to brand, the Parties submitted that each brand exerts a different strength of constraint on the Parties, and therefore each should be analysed separately and, where possible, assigned a brand-specific weight. In particular, as set out in paragraphs 7.14 and 8.11, the Parties submit that Aldi and Lidl exert a strong constraint on the Parties' stores and that the weights given to those brands should reflect this. The Parties also submit that Tesco imposes a materially larger constraint on the Parties than Morrisons or either of the Parties impose on each other, that Aldi imposes a larger constraint on the Parties than Lidl and that the effect of M&S, Waitrose, and Co-op differs

(ie some of the brands exert a larger constraint than others) and that these effects differ between the Parties (ie they exert a different constraint on Sainsbury's than Asda). The Parties have submitted specific suggestions for the weights to be assigned to each competitor brand. The Parties also submit that one would ideally analyse the constraints of each rival separately for each of the Parties, although they note that the available data may not allow this to be done in a very reliable fashion.

- 8.85 With respect to other constraints, the Parties submit that, on average, 25% of all diversion goes to retailers other than Medium stores within 10 minutes' drive and Large stores within 15 minutes' drive. These other constraints include bargain stores, convenience stores, specialist stores (such as independent butchers or bakeries), supermarkets located more than 10-15 minutes' drive away, online delivered grocery retailers, and online delivery specialists.
- 8.86 We have considered these submissions and the supporting evidence in our assessment, which is set out in the following section.

Our assessment

- 8.87 In this section, we describe our approach to assessing whether the Merger gives rise to an incentive for the Parties to degrade PQRS at particular supermarkets. We have taken a different overall approach to this assessment compared to the assessment of the Parties' incentives to degrade PQRS across their national supermarket estates. In particular, in light of the large number ([X] overlaps) of individual local markets in which the Parties compete, we have developed a GUPPI-based approach for analysing in a consistent way the impact of the Merger on the Parties' incentives in each local area without requiring an analysis of each area in turn.
- 8.88 As part of this analysis, we have sought to take into account the most important factors that determine the extent to which a given store or brand will be a close competitive constraint to the Parties and, therefore, whether that store would be likely to benefit from customers switching away from one of the Parties' supermarkets in the event of a degradation in PQRS. We refer to this as diversion.
- 8.89 Where the Parties have high diversion between them, this implies that were there to be a degradation in PQRS at either Party's stores, a significant proportion of sales would be recaptured by the other Party, increasing the risk that the merged entity would have the incentive to unilaterally raise prices or degrade QRS post-Merger.

- 8.90 In assessing which factors are important drivers of closeness of competition, and therefore diversion, we have considered a range of evidence, including, but not only, from the CMA store exit survey, past evidence from the CC's groceries market investigation, and the submissions of the Parties and third parties. Our provisional findings are as follows.
- 8.91 First, the location of a store is a key driver of choice for customers. As such, the greater the number of stores a given brand has in a local area, and the closer those stores are located to the Parties' stores, the more likely it is that a large proportion of customers of the Parties would consider that brand to represent a good substitute. This is supported by the large proportion of customers that identify convenient location as a key driver of choice in the CMA store exit survey, with over 50% of respondents mentioning this as their main reasons for choice of store.¹⁵⁶ The CMA's entry-exit analysis (discussed further at paragraph 8.137 onwards) indicates that a small incremental increase in the distance between two supermarkets can materially reduce the impact they have on each other's sales.
- 8.92 Second, when choosing where to shop, respondents to the CMA store exit survey frequently cited factors that are commonly set uniformly at the national brand level, such as price, aspects of product quality, and brand reputation.¹⁵⁷ Different brands are therefore likely to exert different levels of competitive constraint on the Parties, depending on their perceived substitutability for the Parties' offerings. Given the national dimension to the overall brand positioning, there is likely to be a degree of consistency in the perceived substitutability between stores of specific brands.
- 8.93 Third, store size plays an important role. Customers frequently describe product choice and range of facilities (such as specialist food counters, cafés, concessions or car parking) as important factors affecting their choice of supermarket. In the CMA's store exit survey, almost 30% of customers mentioned the wide choice of products as a reason for their choice of store when asked unprompted. When prompted on the importance of choice of products, around 70% of customers said that range was very important or essential when they decided where to do their shopping. In the Groceries Market Investigation, the CC found that these factors were correlated with store size, ie larger stores tended to offer a wider range of products and a wider offering of facilities, and that larger stores also tended to be more

¹⁵⁶ See Kantar Report, page 25.

¹⁵⁷ Good prices were mentioned as a reason for choice of store by 9% and 35% of Sainsbury's and Asda respondents respectively; quality of fresh products by 15%/6% of Sainsbury's/Asda respondents respectively; quality of other products by 9%/4% of Sainsbury's/Asda respondents respectively; and reputation of supermarket brand by 9%/13% of Sainsbury's/Asda respondents respectively. See Kantar Report, page 26.

attractive as an alternative for customers.¹⁵⁸ As discussed in later sections analysing diversions from the CMA store exit survey (see paragraphs 8.117 to 8.123) and concluding on the relative weights (paragraphs 8.157 to 8.169), we find that Large stores consistently receive greater diversion than Medium stores.

- 8.94 In light of the above, we considered it appropriate to choose a methodology that would account for brand, size and distance (from the Parties' store in question) as the main factors driving closeness of competition between the Parties. The Parties agreed that these were the most important factors that should be taken into account in our local assessment methodology.
- 8.95 We considered which methodology would allow us to account for these factors. Given that the number of stores a brand has in a local area will increase the share of diversion it wins from other brands, we consider it appropriate to use a methodology that takes into account a brand's share of shops in the local area when estimating how much diversion it achieves. Furthermore, because not all stores are equal in terms of competitive strength – they differ in terms of brand strength, size, and relative convenience or distance – we have employed a WSS methodology to account for these factors.
- 8.96 The main premise of the WSS methodology is that, unlike a standard 'share of shops' methodology, where each store within a catchment area receives an equal weight of one, each store will receive a different weighting depending on its specific characteristics. In particular, in our WSS methodology a store will receive a higher weight if, all else constant, it is a Large Store (rather than a Medium Store), if it is located closer to the store from which diversion is measured from (which we refer to as the centroid store), or if it belongs to a brand that is perceived to be a stronger competitive constraint to the Parties, based on its offering.¹⁵⁹
- 8.97 The main steps we have followed to implement a WSS methodology as part of our local assessment are as follows:
- (a) First, we analysed different types of evidence to decide which weighting to attach to stores depending on their store characteristics (brand, size, distance). We discuss this in paragraphs 8.99 to 8.169.

¹⁵⁸ Groceries market investigation (2008), *Final report*, paragraphs 4.55.

¹⁵⁹ For example, in a hypothetical scenario: a Large Store may obtain a weight of 1, but a Medium Store of the same brand may obtain a weight of 0.5; a rival store right next Parties store may obtain a weight of 1, but a rival store that is far away from the Parties may obtain a weight of 0; a store that belongs to a brand that is perceived to be a stronger competitive constraint to the Parties may obtain a weight of 1, whereas a store that belongs to a brand that exerts a weaker competitive constraint may obtain a weight of 0.5.

- (b) Second, we considered the appropriate allocation for ‘out-of-market constraints’, discussed in paragraphs 8.170 to 8.175. We used the weights determined in the first step, as well as this ‘out-of-market allocation’ to generate our best estimate of the likely diversion between the Parties in each local market and, therefore, the likely extent to which the merged entity would recapture a substantial proportion of any sales lost in the event that one of the Parties degraded its competitive offering.¹⁶⁰ We discuss this in paragraphs 8.176 to 8.187.
- (c) Third, we assessed the economic value of sales we considered likely to be recaptured. We did this by using data on the Parties’ margins, combined with the diversion ratios to construct a GUPPI index for each of the Parties’ overlapping stores, to help us assess to what extent it would be profitable for the merged entity to degrade PQRS in individual local markets. We discuss this at paragraphs 8.188 to 8.211.
- (d) Finally, we considered carefully at what level to set the threshold for a GUPPI decision rule, such that we could be satisfied, on the balance of probabilities, that in each area failing the decision rule, the Merger would give rise to an SLC in the circumstances of this particular case. We discuss this at paragraph 8.212 to 8.251.

8.98 We applied our WSS approach to each of the Parties’ existing and pipeline stores.¹⁶¹

Evidence on weightings for different competitors

8.99 We considered a range of evidence related to closeness of competition between stores with different characteristics (ie brand, size and distance), including evidence from customer surveys, the analysis of competitor entry and exit events, and internal modelling performed by the Parties.

8.100 We discuss this evidence below, together with considerations around the weight we can attach to different pieces of evidence, and what the evidence suggests about the relative weightings of different types of store. By way of overview:

¹⁶⁰ We did this by applying our weightings to all stores identified in a store dataset of the Parties’ and their competitors’ stores in each local area of the UK where the Parties are present as set out from paragraph 8.176. We included all active stores as well as new stores likely to open in future.

¹⁶¹ We also took into account the pipeline stores of competitors in each overlap area.

- (a) we relied on the CMA store exit survey evidence as our primary source of evidence on the relative weightings that should be attached to stores of different types;
- (b) we then used the entry-exit analysis as complementary evidence which was used to cross-check and, in some cases, adjust the weightings, especially where the entry-exit evidence was relatively robust; and
- (c) we took into account qualitative evidence on the similarity between the Parties' businesses and those of their rivals and other qualitative evidence such as internal documents and evidence on the Parties' monitoring and benchmarking, as already discussed in the context of our national assessment of the Parties' supermarket overlaps.

Survey evidence

CMA store exit survey

- 8.101 To gather evidence on closeness of competition between different stores, including those of the Parties, the CMA commissioned a large survey of customers who had just shopped at one of the Parties' supermarkets (the CMA store exit survey). This survey covered 100 supermarkets (50 Sainsbury's and 50 Asda supermarkets) across the UK and is the largest exit survey the CMA has ever undertaken. The survey generated over 20,500 responses, with at least 150 at any one supermarket.
- 8.102 The survey was conducted as an exit survey, meaning that respondents were sampled by approaching customers who were leaving a supermarket, having just completed a shopping trip. Those respondents were asked questions relating to their choice of supermarket and their next-best, or closest, alternative. An important benefit of conducting an exit survey is that consumers have just completed their shopping trip, and can easily recall the broad contents and value of their basket, what factors drove their choice of store, and take into account the circumstances in which they made their choice when answering the survey questions. The survey methodology for the CMA store exit survey is described in greater detail in the Kantar Report and we discuss aspects of it further at Appendix B.
- 8.103 The sample of supermarkets we surveyed was selected at random¹⁶² and was predominantly made up of supermarkets in relatively more concentrated

¹⁶² Using a stratified random sample specified by Party, type of overlap area, and London/Northern Ireland/Other UK, as described in Appendix B.

overlap areas (3-to-2s and 4-to-3s), but also included some supermarkets in the most concentrated overlap areas (2-to-1s), in less concentrated overlap areas (5-to-4s or more) and in non-overlap areas.¹⁶³ We therefore collected more evidence for local areas likely to be of most interest to our inquiry (ie those where the Parties were likely to face the least amount of competition post-Merger), while making sure that we were able to complement this with evidence from a wider range of types of local areas. The Parties submitted that this approach had consequences for the representativeness of the CMA store exit survey: we discuss these submissions in paragraph 8.131 onwards.

8.104 We consider that the evidence provided by the CMA store exit survey has several strengths that make it a robust means by which to assess the level of diversion to different types of store and thus by which to establish relative weightings in our analysis. In particular, we designed the survey and questionnaire specifically with the evidential needs of our inquiry in mind; the sample of stores surveyed was large and we ensured we collected sufficient responses at each store to provide robust estimates; and we required that considerable effort was invested in interviewer briefing and monitoring of fieldwork to ensure the survey was conducted to a high quality standard.

8.105 For these reasons, we provisionally conclude that the CMA store exit survey findings provide a robust source of evidence on which to base our analysis.

Assessing diversion

8.106 The central question in the CMA store exit survey that focused on gathering evidence on customers' views on the closest alternative to the Parties' supermarkets asked customers to consider what they would have done if, prior to deciding to come to the supermarket, they had heard that it was closed.¹⁶⁴ Asking customers about what they would do in the hypothetical situation where a store is closed is known as a 'forced diversion question'.

8.107 The CMA store exit survey also asked what customers would have done if prices at the store had increased by 5%.¹⁶⁵ Customers who responded that

¹⁶³ As described in Appendix B, paragraph 14 and footnote 2, the classification of overlap areas as 4-to-3s, 3-to-2, etc was based on the CMA's precedent fascia counting methodology. For these purposes, only the following brands were included in the fascia count: Tesco, Sainsbury's, Asda, Morrisons, Waitrose, M&S and Co-op.

¹⁶⁴ This question was as follows: Now imagine that, before deciding to come here today, you knew that this store was closed for six months. Looking at card 2/3, how would you have made today's purchases instead?

¹⁶⁵ This question was as follows: Now imagine that, before deciding to come here today, you knew that this [Sainsbury's/Asda] store had increased its prices by 5%. This would mean that the items you have bought today would have cost you an extra £[5% OF AMOUNT FROM Q2]. Would you still have done your shopping here today or not?

they would have switched away from the store in response to such a price increase are referred to as 'price marginal' customers.

8.108 The advantage of using forced diversion questions is that it ensures we learn about the next-best alternative from all respondents (rather than just the price marginal customers). Gathering this evidence from all respondents ensures a large enough sample size for analysis of results at each individual surveyed store. However, a drawback of this approach is that the average response of all customers may differ from the average response of marginal customers, and it is marginal customers – ie those that would 'vote with their feet' – that affect the Parties' incentives to change PQRS.

8.109 For the estimation of weightings for the purposes of our analysis we use the results from the forced diversion questions as this ensures that at store level there are sufficient observations to provide robust estimates of customers' next-best alternatives. If we were to restrict our analysis to the diversion choices of those customers that indicated they would switch away in response to a 5% change in price, we would not have robust estimates in individual local areas as on average only a quarter of Sainsbury's respondents and about [20-30]% of Asda respondents were price marginal.

The Parties' surveys conducted pre-notification

8.110 The Parties commissioned three surveys prior to notification of the Merger in connection with their in-store offering:¹⁶⁶

- (a) a face-to-face exit survey at 14 of Sainsbury's Large Stores in areas where it competes with Asda within a 15-minute drive-time (the Sainsbury's exit survey).
- (b) an online survey of Sainsbury's Nectar Card customers who shopped in-store at the same 14 stores as in the exit survey and at an additional 11 Sainsbury's stores, totalling 25 Sainsbury's stores (the Sainsbury's online survey of store customers).
- (c) A face-to-face exit-survey at Asda's 13 Large Stores, in the same local areas as the face-to-face exit survey in the Sainsbury's stores (the Asda exit survey).

8.111 We consider that these surveys have the following limitations for the purposes of our analysis:

¹⁶⁶ A more detailed description of these surveys is provided in Appendix B.

- (a) As well as surveying in a relatively small number of stores and types of competitive environment, the sample for the store exit survey was not selected on a random basis.
- (b) The Parties' diversion questions relied on fixed prompted lists. As set out in Appendix B, we gave careful consideration to the use of prompted lists in the context of a survey of in-store groceries customers and considered that they were not appropriate for our face-to-face CMA store exit survey, for example because they may have prompted consideration of alternatives that would not otherwise have been thought of or led to an under-estimation of diversion to alternatives lower down the list and over-estimation of diversion to alternatives higher on the list.¹⁶⁷
- (c) We were not able to observe any of the fieldwork, nor to otherwise judge the standards of quality to which the surveys were conducted.¹⁶⁸ In addition, we note the fieldwork for these surveys took place some time ago: in July 2017 for the Sainsbury's exit survey and Sainsbury's online survey of store customers and February 2018 for the Asda exit survey.
- (d) The Sainsbury's online survey of store customers, by virtue of being conducted online, excludes those in-store shoppers that do not use the internet (who may not respond in the same way as online respondents). We consider that this has serious limitations when the purpose of the survey is to ask in-store shoppers about their next best alternatives for their recent in-store shopping visit. We expect, therefore, that the survey will have over-represented diversion to the online channel. In addition, the survey was only of Nectar Card customers who, as loyalty-card customers, may not be representative of shoppers as a whole.

8.112 In addition to these limitations, we note that it was not feasible for us to combine the Parties' survey response dataset with the CMA store exit survey response dataset, given they are based on two different questionnaires.

8.113 For the reasons set out above, and given we have access to a robust survey with a methodology designed specifically with the needs of our inquiry in mind, we do not propose including the results from the Parties' pre-notification surveys in our local assessment analysis.

¹⁶⁷ We note that this did not apply to the Parties' new exit survey, described in paragraph 8.114, where the list was randomised.

¹⁶⁸ [Good practice in the design and presentation of customer survey evidence in merger cases \(CMA78\)](#) (May 2018), paragraphs 1.23–1.25, discuss engagement with the CMA on proposed surveys.

The Parties' New Surveys

8.114 The Parties' submitted the results of two further surveys as part of their response to our working papers. The first (the Parties' new exit survey) surveyed 20 Sainsbury's and 20 Asda stores that were a sub-sample of the CMA's initial sample of 80 stores (that is, those 80 stores on which the analysis in our working papers had been based). The second (the Parties' new online survey) included all of the 50 Sainsbury's stores contained in the CMA's full sample; this survey was sent to Nectar Card customers of Sainsbury's who had visited one of the stores over the last four weeks.¹⁶⁹

8.115 We consider that these surveys have the following limitations:

- (a) The Parties' new exit survey only sampled stores the CMA had already surveyed. It therefore doesn't add much new information to evidence our inquiry. Notably, it doesn't in any way address the Parties' submission that our survey is not representative (discussed further at paragraphs 8.131).
- (b) The Parties submitted that they used the CMA's questionnaire, with some modifications. However, in our view modifications to the questionnaire mean that the Parties' results are not directly comparable with ours in a number of key respects.¹⁷⁰
- (c) As with the surveys conducted during pre-notification, we were not given the opportunity to assess or monitor the quality of the fieldwork, so are unable to determine the level of rigour with which the survey was conducted.
- (d) We consider that, in the context of seeking to elicit in-store shoppers' next best alternatives, the Parties' new online survey will suffer from the same limitation as we describe above in relation to the pre-notification Sainsbury's online survey of in-store customers.

8.116 For the reasons set out, and given that we have access to a robust survey with a methodology designed specifically with the needs of our inquiry in mind, we do not propose using the Parties' new surveys in our local assessment analysis.

¹⁶⁹ A more detailed description of these surveys is included in Appendix B.

¹⁷⁰ A fuller account of these differences is given in Appendix B.

Analysis of diversion from CMA store exit survey

8.117 In order to analyse the strength of constraint exerted by stores of different sizes and brands, we sought to classify different competitor supermarkets into 'brand-size' categories,¹⁷¹ and analysed the frequency with which respondents to the CMA store exit survey named stores in each of those categories as their preferred alternative should their current choice be unavailable. We then also analysed how this frequency varied with distance from the surveyed store. We carried out a separate analysis for Sainsbury's and Asda customers, given that the results of our analysis showed that the next-best alternatives for customers of each of Sainsbury's and Asda differed in some respects.

8.118 With respect to the size categories we used, we agreed with the Parties that there was not necessarily a 'step change' in the constraint exerted by Medium stores and Large stores, but that a pragmatic way to carry out the analysis would be to use these size categories.

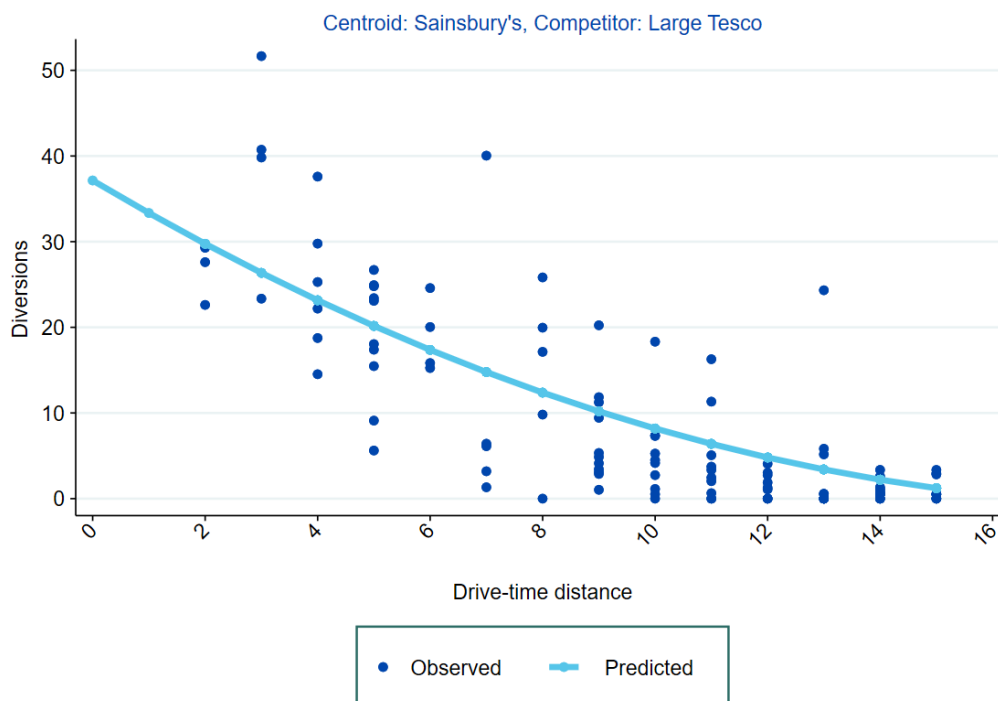
8.119 To illustrate the approach, Figure 8.3 shows the diversion ratios from surveyed Sainsbury's stores to various Large Tesco stores located within 15 minutes' drive of those surveyed stores, based on responses to our forced diversion question. Each 'dot' on Figure 8.3 represents a single Large Tesco store.¹⁷² The higher the dot, the more often it was named by respondents surveyed at a given Sainsbury's supermarket. The further to the right the dot, the further away the store was located from the surveyed Sainsbury's store. The downward slope suggests that stores that were located further away tended to be named less frequently. For example, Figure 8.3 shows that one particular Tesco store was chosen by more than 50% of respondents at a given Sainsbury's store (see the highest 'dot' on Figure 8.3 below). Several Tesco stores (all of which were located at least 8 minutes' drive away from the centroid Sainsbury's (ie the Sainsbury's store from which diversion is measured)) were not mentioned by any of the respondents surveyed at that store.

¹⁷¹ As discussed further from paragraph 8.127, the available data did not allow for all competitors' stores to be classified with the same level of granularity (ie both by brand and by size category). Therefore for some competitors, a weight was assigned for the brand without further disaggregation by size category. Accordingly, the following brand-size categories were adopted: Large Tesco, Medium Tesco, Large/Medium Morrisons, Large Asda, Medium Asda, Large Sainsbury's, Medium Sainsbury's, Large/Medium Waitrose, Large/Medium Aldi, Large/Medium Lidl, Large/Medium M&S, Large/Medium Co-Op and Iceland.

¹⁷² If a Tesco's store is a competitor (ie it is within the catchment area) for more than one centroid store, this store will appear more than once in the chart.

8.120 We then plotted a line between these dots (as shown by the light blue line), to provide a continuous picture of the average levels of diversion at each drive-time distance, based on the survey observations.

Figure 8.3: Proportion of Sainsbury's customers that chose a given Tesco Large store as their next-best alternative to Sainsbury's, by distance

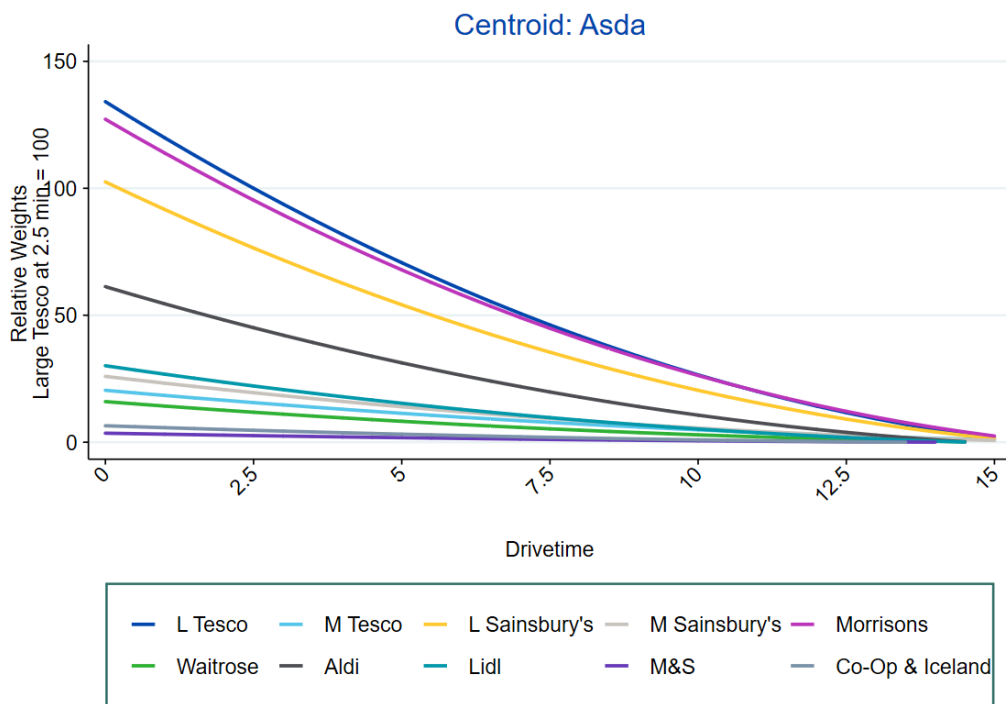


Source: CMA analysis of responses to the CMA store exit survey.

8.121 We carried out an equivalent analysis of diversion to each of the brand-size categories, separately for Sainsbury's and Asda stores. We then compared the average diversions of these brands and sizes, at different distances, to the average diversion of a Large Tesco located 2.5 minutes' drive away, which was given a weight of 1.¹⁷³ In practice, this means that if a brand-size category of supermarket was mentioned more frequently than a Large Tesco located 2.5 minutes' drive away, it would receive a weight of more than 1, in proportion to the higher frequency it was mentioned by survey respondents. If mentioned less frequently, it would receive a proportionally lower weight. Figure 8.4 and Figure 8.5 show the estimated relative weights we calculated for each brand-size category (in the chart, L denotes Large and M denotes Medium).

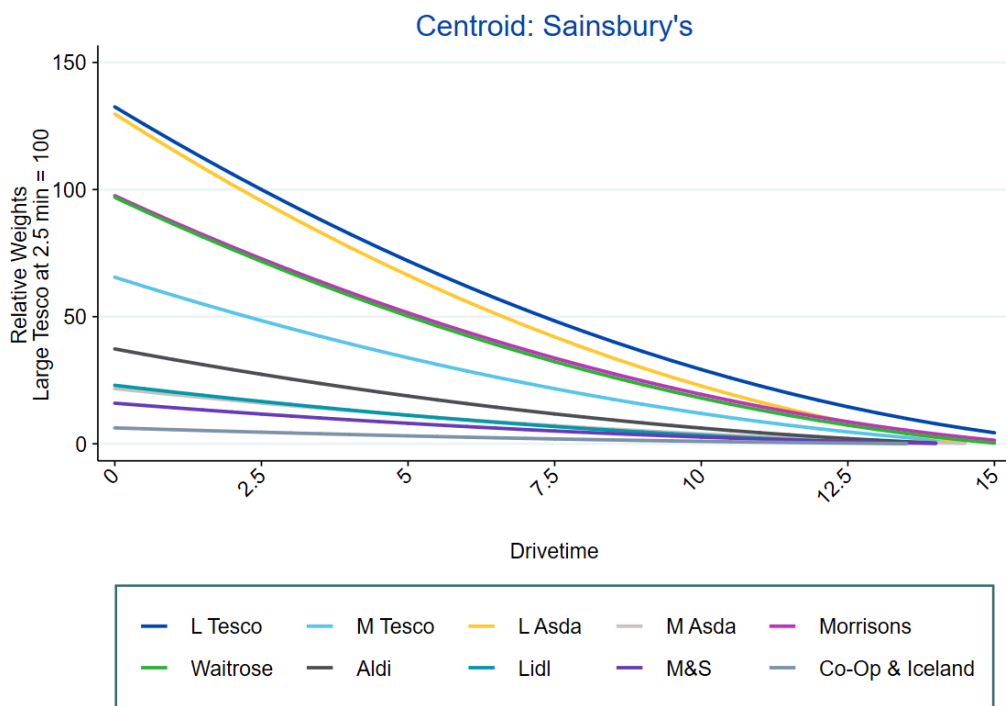
¹⁷³ Large Tesco stores within 2.5 minutes were chosen as the benchmark category because there are many stores of this brand-size-distance category in the survey data, meaning diversion to Large Tesco stores is relatively well-estimated, and because Tesco is a well-recognised and familiar brand which makes it a familiar reference point, ensuring our weightings are transparent.

Figure 8.4: Relative weightings of supermarket brand-size categories derived from the CMA store exit survey



Source: CMA analysis of CMA store exit survey responses.

Figure 8.5: Relative weightings of supermarket brand-size categories derived from the CMA store exit survey



Source: CMA analysis of CMA store exit survey responses.

8.122 As shown in the figures above, Large Tesco stores receive the highest weights for both Asda and Sainsbury's centroid stores. For Sainsbury's centroids, the next highest weighting is for Large Asda stores, whereas for Asda it is Morrisons. Overall, Large stores receive higher weights than Medium stores, for the same brands, but the weights of Medium stores are not insignificant.

8.123 The figures also show that Aldi and Lidl have been attributed a significant weighting. This is in contrast to previous cases involving the supply of groceries through supermarkets, where Aldi and Lidl have not typically been included within the 'competitor set' (although they have in some cases been taken into account when assessing competition in particular local areas).¹⁷⁴ The weighting for Aldi is higher than for Lidl, and Aldi in particular receives a higher weight for Asda centroids than for Sainsbury's centroids. In contrast, Waitrose and M&S have much higher weights for Sainsbury's centroids than for Asda centroids.

- *Catchment area*

8.124 The analysis in Figure 8.4 and Figure 8.5 suggests that the weightings tended to decline to zero after approximately 15 minutes' drive-time. This was the case for both Large and Medium stores. On this basis, we used the survey analysis to assign weights to supermarkets up to 15 minutes' drive away for both Large and Medium stores (adopting the same approach for both urban and rural stores, for the reasons discussed in paragraph 8.130(d)). The treatment of supermarkets located more than 15 minutes' drive away is discussed in conjunction with other out-of-market constraints from paragraph 8.170.

8.125 Given that we observed some diversion beyond 15 minutes' drive, we also conducted a sensitivity analysis whereby we increased the catchment area by 5 minutes and therefore generated weights for all stores located within 20 minutes' drive and reduced out-of-market diversion accordingly. We found that the GUPPI analysis was not very sensitive to this adjustment.¹⁷⁵

8.126 We note that our approach expands the overall catchment area compared to the practice used in previous cases concerning the supply of groceries through supermarkets, although importantly the WSS also allows us to take account of the fact that the constraint from rivals declines with distance across this catchment area. The catchment used is also generally in line with the

¹⁷⁴ See paragraph 7.43.

¹⁷⁵ Adding 5 minutes to the catchment area would increase the national GUPPI for both Parties by 0.1 percentage points.

catchment proposed by the Parties (which was to assign a weight to Large stores up to 15/20 minutes' drive away in urban/rural areas, and Medium stores up to 10/15 minutes' drive away in urban/rural), albeit that it is larger for Medium stores in urban areas, and smaller for Large stores in rural areas.

Disaggregation of fascia

8.127 We considered whether any further disaggregation of weightings of the chosen brand-size categories was appropriate, or whether some of these weightings should be aggregated together.

8.128 The benefit of disaggregation is that it results in more 'tailored' weights for more specific categories of competitor store. The drawback is that those weights will be estimated with a smaller sample size, and therefore are less robust. We took this trade-off into account when deciding the appropriate level of disaggregation for the weightings.

8.129 The Parties submitted that:

- (a) The evidence shows that differentiation is an important part of competition in the grocery sector and it was important that the weightings for different brands be disaggregated, given evidence that the constraints exerted by different brands were substantially different;¹⁷⁶
- (b) there is evidence to group M&S and Waitrose, but it may also be possible to group Co-op and Iceland. The weights for the other major retailers should be calculated separately.
- (c) categorisation of store size into Medium and Large is pragmatic as this allows for the effect of store size to be captured by calculating separate diversions for each brand's Large and Medium Stores. The Parties submit that it may make sense to combine Medium and Large weights for those main rivals with a limited Large Store estate such as M&S, Waitrose, Aldi, Lidl, Iceland and Co-op.
- (d) one should calculate diversions separately for both Parties, however the Parties recognise that the available data may not allow this to be done in a very reliable fashion. Therefore, a pragmatic approach may be to pool the Parties' data whilst splitting the groups into individual brands.

¹⁷⁶ This was because it could cause the diversion between the Parties to be overstated and the constraint of rivals to be understated. By way of example, the Parties submitted that grouping Tesco with weaker brands would cause Tesco's weight to be understated (and other rivals in the group to be overstated), which would cause the overall constraint on the Parties to be understated in part because Tesco stores are relatively numerous.

- (e) in estimating separate weights for Large and Medium centroids the CMA is forced to rely on very small sample sizes for medium centroids. As such it may make sense for the CMA to investigate further whether the data supports there being a significant difference between the brand-size-distance weights depending on the size of the centroid. To the extent that it does not, it may make sense to use the Large Store results for both Medium and Large centroids – on the basis that the Medium store results are imprecisely estimated.

8.130 As explained in more detail in the from paragraph 2 in Appendix E, taking into account the trade-off between having less ‘tailored’ weights and having the weights estimated less robustly due to low sample size, our approach to estimating weights for individual brand-size categories was as follows:

- (a) We estimated separate weights for each brand except for Co-op and Iceland, which have been assigned the same weights, given the limited number of observations for these competitors in the survey results. This reflects our agreement with the Parties that there is value in disaggregating brand weightings where the data allow.
- (b) We agreed with the Parties that aggregating the size categories of stores for certain brands is a pragmatic approach to increasing sample size where the brand’s store estate is largely concentrated in one size category, or where there were few observations for a particular size category of that brand. We therefore split the weights by size (ie Large vs Medium) for Tesco, Sainsbury’s and Asda, but did not differentiate between Medium and Large Stores for Morrisons, Aldi, Lidl, Co-op/Iceland, M&S and Waitrose stores.
- (c) We estimated separate weights for Asda centroids and Sainsbury’s centroids. However, the constraints were modelled in the same fashion regardless of whether the centroid was a Medium or a Large store.
- (d) We treated rural stores in the same way as urban stores, due to limited evidence on rural stores. We note that past cases in the supply of groceries through supermarkets have found that rural supermarkets compete over longer distances than urban stores.¹⁷⁷ We note that our approach of using a consistent catchment for urban and rural may therefore underestimate the true catchment area for rural stores. We note that this would have two effects: firstly, some diversion between the Parties’ rural stores located further apart will be excluded, causing

¹⁷⁷ See paragraph 7.70, which notes that catchment areas for Large and Medium stores have typically been 5 minutes longer for rural stores.

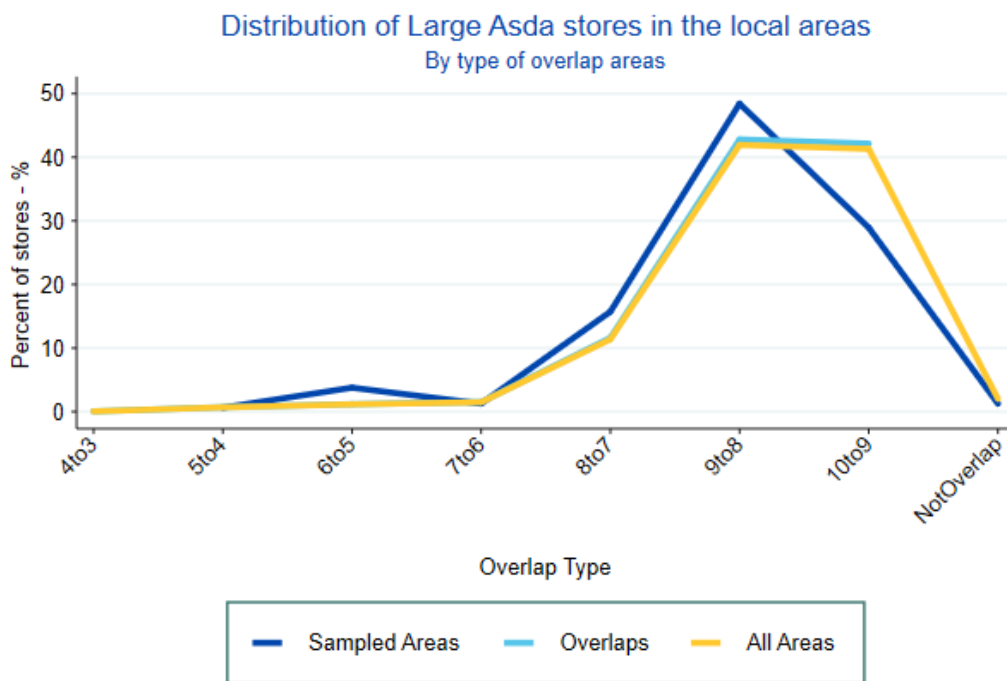
diversion between the Parties to be underestimated; secondly, some diversion to competitors located further away from the Parties' rural stores will also be excluded, causing diversion between the Parties to be overestimated. As there are typically more rival stores than stores of the other merging Party in any given local area, we consider that the net effect will usually be that diversion between the Parties is overestimated in rural areas. Conversely, by generating average weightings based on evidence from urban areas and rural areas, diversion between the Parties may be underestimated in urban areas. Overall, we would expect this to have a small impact on our assessment overall, given that the vast majority of the Parties' stores are in urban areas.

Representativeness of CMA store exit survey

- 8.131 The Parties submitted that the sampling methodology used to decide which stores to survey in the CMA store exit survey means that our results would tend to overstate the diversion between the Parties and understate the diversion from the Parties to other competitors. This was because (i) the average diversion to a given store will be lower if there are more competitors and (ii) in our sample, the Parties tend to be present in areas with fewer competitors (leading to higher diversion estimates) and (iii) in our sample, other competitors, such as Aldi and Lidl, tend to be present in areas with more competitors (leading to lower diversion estimates).
- 8.132 As set out in paragraph 8.103, the purpose of oversampling concentrated areas was to improve the ability of the survey to predict diversion in areas with fewer competitors, which may be more relevant to the assessment of competitive effects. In addition, in response to the Parties' concerns on this point and our own developing thinking, the CMA expanded the sample to include 20 additional areas, many of which were areas with more competition than the initial sample of 80 stores.
- 8.133 Nevertheless, we considered the extent to which the Parties' supermarkets in our sample tended to be overrepresented in concentrated areas relative to all supermarkets in their estate. We also assessed the extent to which any such overrepresentation in concentrated areas was more pronounced for the Parties' sampled supermarkets than for competitors' supermarkets in those sampled areas.
- 8.134 To this end, we prepared charts which compare, for each brand, how often they appear in more or less concentrated areas which participated in the CMA store exit survey, relative to all overlap areas and relative to all local areas where the Parties are present. Charts for Large Asda stores and Aldi stores

are presented in Figure 8.6 and Figure 8.7 respectively.¹⁷⁸ The light blue line in Figure 8.6 for example shows the proportion of Large Asda stores which appear in 4-to-3 overlap areas, 5-to-4 overlap areas, 6-to-5 overlap areas and so on. The dark blue line shows the same but only for the areas covered by the CMA store exit survey. We note that the measure of concentration adopted in these charts accounts for the presence of all effective competitors to the Parties and therefore reflects the actual degree of concentration in the local areas.

Figure 8.6: Distribution of Large Asda stores by concentration, in the CMA store exit survey and in all areas of overlap

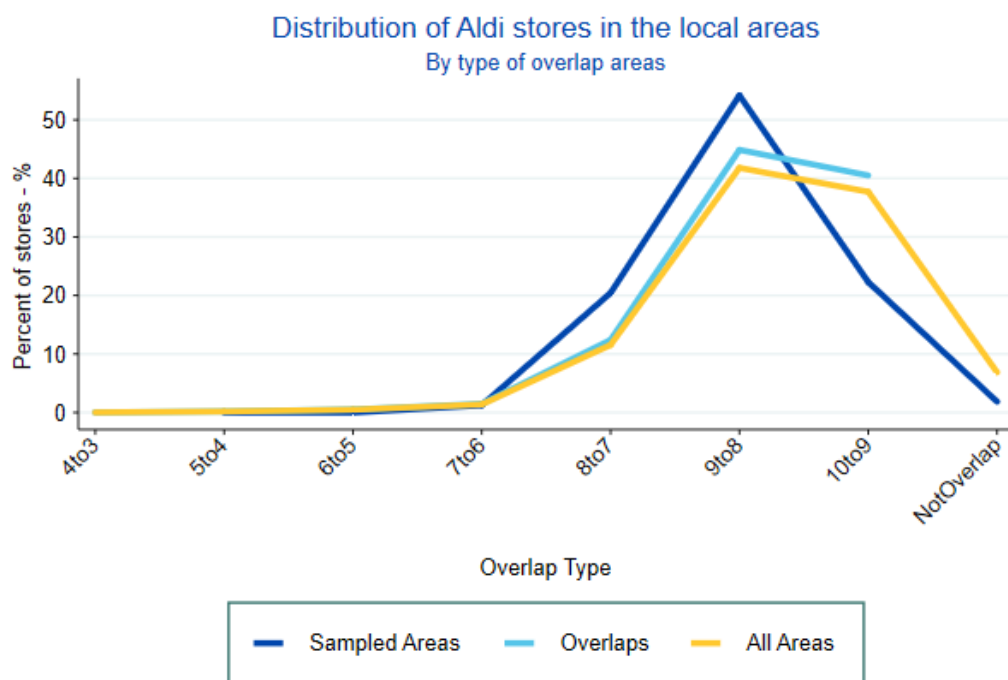


Source: CMA analysis of the stores dataset internally compiled.

Source: CMA analysis.

¹⁷⁸ For the rest of the graphs see Appendix E, paragraphs 12 to 22.

Figure 8.7: Distribution of Aldi stores by concentration, in the CMA store exit survey and in all areas of overlap



Source: CMA analysis of the stores dataset internally compiled.

Source: CMA analysis.

8.135 These charts suggest that no brand is particularly over-represented in more or less concentrated areas in the survey sample compared to the areas of the overlap between the Parties. This therefore suggests that the sample of the CMA store exit survey is not unrepresentative in a way that would result in a significant overestimate or underestimate of diversion between the Parties.

8.136 Further concerns raised by the Parties are discussed in detail in Appendix E. We do not consider that any of these undermine the robustness and usefulness of our WSS analysis.

Entry-exit analysis

- *CMA analysis*

8.137 Entry and exit analysis is used to assess whether and how the entry and exit of competitors’ stores affect the Parties’ grocery sales. It allows us to estimate the average impact of one additional (or one fewer) competitor store on the Parties’ sales. The more customers consider an opening or closing store a good substitute to the Parties’ stores, the larger the impact of the entry or exit of the competitor on the Parties’ sales at those stores.

- 8.138 This type of analysis can be used to compare the relative strength of constraint exerted by stores of different brands, sizes and distances.¹⁷⁹
- 8.139 There are certain caveats to this analysis. Entry-exit analysis does not directly measure diversion. Rather, it examines how customers respond to a store opening or closing. This may not be the same as how customers would respond to small changes in PQRS.¹⁸⁰ Evidence on entry-exit also may understate the actual impact of store entry, because competitive responses to expected or recent entry can dampen the effect on revenues.¹⁸¹ In addition, in the context of store exit events, it is more likely that poorly performing stores will exit, and this will cause their impact on sales to be smaller than might be expected if an 'average' store were removed. Nevertheless, we think entry/exit is still informative of the relative constraint exerted by stores, especially when considered in the context of other evidence.
- 8.140 We analysed a dataset provided by the Parties which contained data on entry and exit events by competitor supermarkets over the period 2014 to 2017. Considering an area of a 15-minute drive-time from each of the Parties stores, this dataset contained:
- (a) 488 instances in which an Asda's store was affected by a Large store entering or exiting¹⁸²;
 - (b) 638 instances in which a Sainsbury's store was affected by a Large store entering or exiting,
 - (c) 3,222 instances in which an Asda's store was affected by a Medium store entering or exiting;
 - (d) 3,106 instances in which a Sainsbury's store was affected by a Medium store entering or exiting.
- 8.141 Our econometric approach in conducting this entry-exit analysis, and the results of the analysis, is described in detail in Appendix C.
- 8.142 Similar to our approach described above with respect to the diversions estimated from the CMA store exit survey, we use the results from the entry-

¹⁷⁹ For example, imagine that when a new Tesco opens within 5 minutes' drive of one store, Sainsbury's sales fall by 6%, but when a new Tesco opens within 20 minutes' drive of an otherwise similar store, Sainsbury's sales do not show a statistically significant reduction in sales. This might suggest that we should consider Sainsbury's stores to be constrained by stores within 5 minutes' drive but not by stores within 20 minutes' drive.

¹⁸⁰ This may be because, for example, some customers make their choice purely on the basis of location, and the new store is closer to their home or, alternatively, some customers have a strong preference for a particular brand, and the new store is the first and only store of that brand in their local area.

¹⁸¹ This is discussed in greater detail in Appendix C.

¹⁸² An entering or exiting store may affect more than one centroid store.

exit analysis to calculate relative weights for each brand-size-distance category. As we did when calculating the weights derived from the CMA store exit survey, we used Tesco as a benchmark. Therefore, all weights were calculated relative to the weight assigned to a Large Tesco store located 0-5 minutes' drive away, which was given a weight of 1.

8.143 The key results are shown in the tables in the Appendix C, paragraph 12. These show that:

- (a) The impact of entry-exit on a store's revenues overall decreases with distance. We interpret this as indicative evidence of a weakening competitive constraint with distance.
- (b) Aldi and Lidl stores have a smaller yet meaningful impact relative to Tesco on revenues, in particular within 0-5 minutes' drive from a Sainsbury's or Asda centroid. Overall, we take this as evidence that Aldi and Lidl pose some competitive constraint on the Parties' stores.
- (c) The impact of Large stores is, broadly speaking, stronger compared to the constraint from Medium stores. We therefore interpret this as supporting evidence that Large stores have a stronger impact compared to Medium stores.
- (d) Some of the estimated weights are unexpectedly negative. This might be because we are not fully able to account for confounding factors at the local level, specifically factors that change over time (see paragraph 13 of Appendix C for detailed discussion).

8.144 We describe at paragraphs 8.157 onwards how we have used the results of this entry-exit analysis in combination with the evidence from the CMA store exit survey to construct the weights used in the WSS.

Impact analysis

8.145 Similarly to an entry-exit analysis, the Parties' internal impact analysis ('impact analysis') evaluates what happens to the Parties' sales after a competitor enters or exits. The Parties submitted that they generate impact analyses during the normal course of business in order to estimate the impact of store entry on individual stores.

8.146 To measure the impact of an entry or exit event, one would want to compare the revenue of an affected store with and without the impact. However, it is

difficult to establish the revenue pattern of a store in the absence of the entry/exit event. To establish this, the Parties [redacted].¹⁸³

- 8.147 We considered the relative merits of the CMA's entry-exit analysis, and the Parties' impact analysis for the purposes of our assessment. In this respect, we noted several points.
- 8.148 First, the entry-exit analysis is conceptually similar to the impact analysis in the sense that they both evaluate the impact on Parties' revenues after a competitor enters/exits. Indeed, the Parties' impact analysis is based on the same entry and exit events as our entry-exit analysis.¹⁸⁴
- 8.149 Second, the advantage of the fixed effects approach of the entry-exit analysis (described in Appendix C) is that we can account for factors that affect outcomes in the local market. In contrast, the impact analysis may not allow use to directly account for those factors.
- 8.150 Third, in the entry-exit analysis we are able to identify potential biases and their direction, which is not possible in the impact analysis (see Appendix C for discussion). It is not immediately obvious what the biases in the impact analysis are and what their direction is.
- 8.151 Finally, the impact analysis would need to be aggregated above the level that we decided to use for the purposes of the local assessment to be able to make reliable inferences.
- 8.152 In light of the factors above, we have not attached weight to the impact analysis in our assessment at this stage.

Gravity models

- 8.153 The Parties submitted that both Parties use a 'gravity model' to forecast sales for new supermarket sites, and on an ad hoc basis to measure performance, particularly of newly opened stores. [redacted].
- 8.154 The Parties provided to the CMA (i) the main parameters of the gravity model, including 'attractiveness weights' applied to stores of different brands and different sizes and (ii) a new simulation produced for the purposes of our inquiry (ie not used by the Parties in the ordinary course of business), which we refer to as the gravity model simulation. We sent the Parties several

¹⁸³ It is our understanding that for Sainsbury's, the control group does not include stores that experience an entry/exit event or have other specific impacts that make them unsuitable as a comparator. [redacted].

¹⁸⁴ Although the entry-exit analysis covers more entry/exit events compared to the impact analysis, which has been carried out for a selected number of stores only.

detailed information requests aimed at understanding this evidence in more detail, and have considered the Parties' responses.

8.155 For the following reasons, we have provisionally decided that the gravity model, and gravity model simulation, do not provide evidence that is sufficiently robust, or verifiable, to use for the purposes of our assessment:

- (a) The Parties' gravity models are coded in a programming language that is not accessible to the CMA.¹⁸⁵ The CMA has therefore not been able to review the steps taken to convert the raw data into the Parties' proposed brand weights, or to fully interrogate the gravity model simulation.¹⁸⁶
- (b) While the Parties offered to supply a copy of the gravity model simulation on a laptop, and Sainsbury's staff to work with CMA staff to understand the gravity model simulation in greater detail, we considered that this would be insufficient to allow us to interrogate the model to the standard required for us to fully understand, and rely, upon its results.
- (c) This importance of being able to fully interrogate this model (and all underlying assumptions) is only reinforced by the fact that the gravity model simulation produced some results that are materially out of line with the results from other pieces of reliable evidence (particularly the CMA store exit survey, which was subject to significant amounts of quality assurance, as described in paragraph 8.104 and Appendix B), and which in our judgment seem unlikely to be correct, such as an out-of-market diversion value of [50-60]%.
- (d) The Parties themselves have also indicated certain factors which may make us less certain about the robustness of the gravity model as evidence in our investigation. Sainsbury's submitted that the absence of new supermarket openings in recent years means that its usage of the model has been low in recent years. Further, both Parties submitted that there were 'significant variations' in the accuracy of the model when compared to actual sales of stores.¹⁸⁷ The CMA has not formed a view as

¹⁸⁵ We note that the Parties' economic advisers were also reliant on the Parties to effect the modifications needed to produce the gravity model simulation. 'CRA discussed the analysis separately with each Party and the instructions were given verbally as follows [...]'.

¹⁸⁶ The CC's 'Suggested best practice for submissions of technical economic analysis from parties to the Competition Commission (which has been adopted by the CMA)' explains at paragraph 8 that 'In a number of cases, the CC will want to replicate the results of the analysis that has been submitted. This means that parties should be prepared to respond to a CC request, at very short notice, for all relevant computer code and data files necessary for the CC's economists to reproduce the results presented in the parties' submission.' Where the CMA is unable to reproduce the analysis in this way, this clearly undermines the CMA's ability to verify it and, consequently, to rely upon it.

¹⁸⁷ This concern regarding the accuracy of the model was raised in response to the CMA's requests to better understand the inputs to the model, in particular the 'attractive weights', and how these might be assessed as

to whether the models are in fact reliable, but the Parties' view of the accuracy of their own models was relevant to our decision whether to invest further resource in interrogating this evidence. As regards the gravity model simulation, this was produced for the purposes of our investigation, and the simulation is not done routinely by the Parties, which may make us less inclined to place weight upon it.¹⁸⁸

8.156 Taking these factors together, in the context of a large merger investigation with a tight statutory deadline where we already have a large amount of robust evidence on which to base our decisions, we have provisionally decided not to further interrogate this evidence, and therefore not to place weight upon it in our assessment.

Provisional conclusion on relative weights

8.157 We considered the weight to attach to the different pieces of evidence in calculating weights for our WSS and associated GUPPI analysis.

8.158 For the reasons set out above, we consider that the CMA store exit survey provides robust evidence to use for the purposes of calculating weights for each brand-size category, over the 15 minutes' drive-time catchment. We also consider the entry-exit analysis provides useful complimentary evidence to the findings from the CMA store exit survey. For the reasons set out above, we have not put weight on the Parties' impact analysis or gravity model in our assessment.

8.159 We plotted the weights derived from the entry-exit analysis (which are calculated in brackets of 5 minutes' drive-time) against the weights derived from our analysis of the CMA store exit survey (which are shown in a 'curve' that plots the weights for all drive-time distances up to 15 minutes).

8.160 For a large proportion of brand-size categories, the weights derived from both pieces of analysis were consistent. Examples of some categories with consistent weights are shown in Figure 8.8. Consistency between the two pieces of analysis is shown where statistically significant entry-exit weights (denoted with red 'dots') fall close to the curve derived from the survey.

8.161 We have also considered the extent to which the weights indicated by these analyses are consistent with qualitative evidence, including in particular evidence on the relative constraints imposed on the Parties by different

part of the CMA's investigation. The Parties did not repeat these concerns when later submitting their simulation on the gravity models, on which they submitted we should rely.

¹⁸⁸ Although the Parties submit that the same assumptions were applied to the simulation, as area applied when the gravity model is used in the ordinary course.

competitor brands. This evidence is described as part of our national assessment, in paragraphs 8.19 to 8.79 above, and included evidence from the Parties' internal documents and evidence regarding differences in in-store offering between different competitors. Based on this evidence, we provisionally found (amongst other things) that: the Parties are close competitors to each other; that there is an important competitive interaction between the 'Big 4' grocery retailers (of which the Parties are two), and that after Tesco, each Party generally acts as the other's next closest competitors (together with Morrisons); and that the discounters provide a degree of competitive constraint on the Parties, but that this constraint is less important than that provided by the other 'Big 4' retailers. We consider that the relative weights shown in the Table 8.1 are consistent with this evidence. For instance, the weights indicate that Aldi and Lidl stores impose a constraint on the Parties' stores, but not as strong a constraint as Large stores of the 'Big 4' retailers.

Figure 8.8: Examples of consistent entry-exit and survey weights



Source: CMA analysis.

8.162 In a small number of cases, there was a material difference between the survey evidence and the statistically significant entry/exit evidence. In each case where there was an inconsistency, we considered whether to make an adjustment to the weight derived from the survey evidence. In doing so, we considered factors such as the relative sizes of the sample used to generate the estimates in either piece of evidence and the consistency of the suggested weights with other pieces of qualitative evidence.

8.163 Based on this review, we made adjustments to six of the survey weights, by increasing the weight to bring it closer into line with the entry-exit analysis or other evidence. These adjustments are discussed in further detail in Appendix E (paragraphs 49 to 60).

8.164 As a robustness check, we conducted a sensitivity analysis considering the impact of making these adjustments. We found that the GUPPI analysis was not very sensitive to this adjustment.¹⁸⁹

8.165 The final weightings we applied in our analysis are summarised in Table 8.1.

¹⁸⁹ Not making these adjustments reduced the national GUPPI for Asda by 0.1 percentage points while the national GUPPI for Sainsbury's was not affected.

- 8.166 We make a number of observations in relation to the final weightings applied in our analysis.
- 8.167 First, for both Sainsbury's and Asda, Large Tesco stores have the highest weight. This is followed by the other members of the 'Big 4' retailers (Asda Large stores followed by Morrisons for Sainsbury's, and Morrisons followed by Sainsbury's for Asda).
- 8.168 Second, we note that Aldi and Lidl supermarkets receive material weightings, albeit smaller than those applied to Large stores of the 'Big 4' retailers (and for Sainsbury's, less than the weight given to Waitrose). For Sainsbury's, the weightings for Aldi and Lidl are also generally smaller than the weights for Medium Tesco and Asda stores (although this is not true over all distances).¹⁹⁰ For Asda however, the weights of Aldi and Lidl stores exceed those of Tesco and Sainsbury's Medium stores, at least over shorter distances). This is consistent with the Parties' submissions regarding the strength of constraint exerted by discounters.
- 8.169 Third, we note that Medium stores receive a positive weighting. In previous cases concerning the supply of groceries through supermarkets, Medium stores were not considered to constrain Large stores. The CMA store exit survey and entry-exit evidence suggest that Medium stores do constrain Large stores, albeit to a lesser extent than Large stores constrain Large stores. This may be driven by changing shopping habits as a greater proportion of consumers are willing to make smaller and more frequent shopping trips, or place additional value on convenience, as described at paragraphs 4.11 to 4.14. Again, this is consistent with the Parties' submissions on the constraint exerted by Medium stores.

¹⁹⁰ We note that it is not inherently problematic for the relative weightings of different fascia to change with distance, to the extent those changes are driven by the data rather than by assumption.

Table 8.1: Summary of weightings applied

	0-5 minutes		5-10 minutes		10-15 minutes	
	Sainsbury's	Asda	Sainsbury's	Asda	Sainsbury's	Asda
Large						
Tesco	100	100	48	46	15	12
Morrisons	73	95	34	45	9	12
Sainsbury's		76		35		9
Asda	96		42		8	
Waitrose	72	37	32	5	7	1
Medium						
Aldi	32	45	12	20	2	4
Lidl	22	22	7	10	1	2
Asda	51		7		2	
Sainsbury's		25		14		8
Tesco	54	16	27	8	10	3
Iceland & Co-op	4	5	2	2	0	0
M&S	12	3	5	1	1	0

Source: CMA analysis of CMA store exit survey responses.

Note: Weightings presented in this table refer to weightings at the midpoint of the range. For example, the weighting in the 0–5 minutes column refers to the weighting assigned to supermarkets located 2.5 minutes' drive away.

Note: Aldi, Co-op, Iceland, Lidl, M&S, Morrisons and Waitrose and include Medium and Large stores.

Note: Co-op and Iceland have been assigned the same weights due to the small number of respondents that would divert to a store from Co-op or Iceland in the CMA store exit survey.

Weighting 'out-of-market' constraints

8.170 The Parties submitted that their Medium and Large supermarkets are constrained by a range of competitors other than other supermarkets located in the immediate local area of the Parties. This includes:

- (a) types of store other than supermarkets, such as bargain stores, specialist stores (such as butcher shops and bakeries) and convenience stores;
- (b) stores belonging to brands other than the 10 main brands considered in our analysis;
- (c) online grocery retailers; and
- (d) supermarkets located outside the immediate local areas of the Parties (ie more than 10-15 minutes' drive away).

8.171 The Parties submitted that an overall allocation for 'out-of-market' diversion should be made for alternatives in these categories.

8.172 The Parties submit that the true constraint as estimated by aggregating these alternatives in the CMA store exit survey is 26% (using a 15-minute drive-time

catchment area). We estimate this constraint using the same data source to be similar, at 25%.¹⁹¹

Table 8.2: Out-of-market diversion based on CMA store exit survey

<i>Category</i>	<i>Parties' analysis of CMA store exit survey</i>	<i>CMA analysis of CMA store exit survey</i>
Stores outside 15 minutes' drive-time, stores excluded from the relevant product market	18.5	18.3
Online	6.0	4.7
I would not have made the purchases	1.8	2.4
Total	26.3	25.3

Source: CMA analysis, Parties (15 minute drive-time catchment area, full survey sample).

8.173 In addition, the results of our entry-exit analysis broadly suggests, judged by the lack of statistical significance of coefficients, that the geographic market is no larger than 15 minutes' drive-time. Therefore, it is unlikely that there is a strong out-of-market constraint from stores that are further than 15 minutes' drive from a given store.

8.174 The Parties submitted that by comparing the WSS to the surveyed diversion to stores within the market, it is possible to estimate the total out-of-market constraint. Applying the Parties' proposed method to our WSS suggests that the out-of-market constraint should be 25%, which is consistent with our approach.¹⁹²

8.175 Based on the above, we considered the out-of-market constraint of 25% to be appropriate.

Diversion ratios

Converting weights to diversion ratios

8.176 Having established the weights for different competitors, we use these to construct diversion ratios to the existing and pipeline stores of the Parties and their competitors.¹⁹³ We did this by:

¹⁹¹ The numbers calculated by the Parties are not exactly comparable to the numbers calculated by the CMA because the Parties used the diversions weighted by expenditure while the CMA used diversions non-weighted by expenditure.

¹⁹² The Parties submit that the survey diversions contain all constraints, whilst the WSS diversion only includes diversions to those retail competitors explicitly modelled and physically within the catchment area, and that therefore the average difference between the two provides an estimate of the importance of the additional constraints. We calculated the line of best fit between the WSS diversions and the survey diversions. We estimated that the line of best fit has a slope coefficient of 0.75, and therefore a 100% WSS diversion corresponds to a 75% survey diversion. Based on the Parties' arguments, this would be equivalent of there being a 25% uplift for additional constraints.

¹⁹³ We have also excluded any Party or competitor stores that are expected to close in the next two years.

- (a) Applying a weight to each store in the local area according to its brand, size and distance from the Parties' stores;
- (b) Adjusting those weights upwards or downwards such that they add to 75%, without changing the *relative* weighting between them;
- (c) Allocating the remaining 25% to out-of-market diversion, of which 2 percentage points was attributed as out-of-market diversion between the Parties, as a result of sales diverting to the other Party's brand through some combination of their convenience stores, online groceries business or supermarkets located more than 15 minutes' drive away.¹⁹⁴

8.177 The resulting proportions were used as the diversion ratios.

8.178 We considered whether, in areas where we had direct evidence from the CMA store exit survey, we should use the survey estimate of diversion rather than the estimate extrapolated from the WSS.

8.179 The Parties submitted that direct survey results should not be used in local areas, because the survey estimates of diversion will have some degree of noise around them and do not take account of imminent new stores openings. However, they submitted that we should use survey diversions as an additional screen to assess whether the WSS diversion and survey diversion were consistent.

8.180 We consider that all sources of evidence on diversion (whether calculated from the survey, or from the WSS) will be subject to some noise. We have made an allowance for this in our assessment and have considered in particular to what extent any noise is biased, make it more likely that the diversions will be over- or underestimated. However, for areas where we carried out a direct survey of the local area and we identified no plans for stores to open in the area,¹⁹⁵ we considered it appropriate to use the diversion ratio between the Parties indicated by that survey evidence, rather than using our WSS model. We consider the WSS is a robust methodology by which to estimate diversion between the Parties in the large number of overlaps in which they compete. It also has the advantage of drawing on survey evidence from across local areas, which will tend to reduce any effect of sampling error on the estimated diversion ratio for a given local area. However, a direct

¹⁹⁴ We allocated 2 percentage points of diversion to the Parties in this way only in cases where they overlapped locally. For areas where they did not overlap within 15 minutes' drive, we made no such allocation. This would tend to understate diversion between the Parties and, while unlikely to influence the local GUPPI assessment, it would cause the overall national GUPPI to be understated.

¹⁹⁵ Stores opening in a local area would mean that the contemporaneous responses to a survey would no longer be fully reflective of the competitive environment in that local area.

survey of a local area has the advantage that it takes into account not only brand, size and distance, but a wide range of factors that influence diversion between the Parties in that local area.

8.181 As a robustness check, we conducted a sensitivity analysis to assess the impact of making this adjustment. We found that the GUPPI analysis was not very sensitive to this adjustment.¹⁹⁶

Treatment of own-brand diversion

8.182 Some respondents to the CMA store exit survey indicated that, in the event the store they had just shopped at was closed, they would switch to another supermarket of the same brand (whether in the same local area, or further away), a convenience store of that brand, or the brand's online delivered groceries business.

8.183 Including these 'own-brand diversion' responses may cause the extent of diversion between the Parties to be understated for a number of reasons:

- (a) First, in areas where one of the Parties has multiple stores, we must take into account the possibility that the relevant Party would have the incentive to raise prices at each of its stores, rather than just at a single store in isolation. This is especially likely when their stores are located close together, as this increases the likelihood that they face similar competitive constraints. It is in this scenario – where stores are located close together – when own-brand diversion is most likely to make a difference to the assessment, but least likely to be appropriate to include.
- (b) Second, a degradation of price or QRS at a given store may reduce the propensity of a customer to attend any other store of the same brand (or even of the same channel), because of an impact on their perception of the brand. This effect would suggest that survey diversion (which is based on a hypothetical store closure, which is less likely to affect brand perception) would overstate diversion to stores of the same brand and thus understate diversion between the Parties.
- (c) Third, customers that indicate they would stay with the same brand are more likely to be loyal customers and, therefore, less likely to be marginal customers. This will tend to cause responses to a forced diversion

¹⁹⁶ Using the WSS in all local areas would increase the national GUPPI for both Parties by 0.1 percentage points.

question, which include own-brand diversion, to understate diversion between the Parties.

8.184 In light of the above, in our assessment, we excluded own-brand diversion to the Parties' supermarkets.¹⁹⁷

8.185 We recognise that excluding all own-brand diversion to the Parties' supermarkets may cause us to overstate the extent of diversion between the merging Parties (whilst including all own-brand diversion may understate it).¹⁹⁸ In this case, however we consider based on the points set out above that our approach is not likely to overstate diversion between the Parties in a significant way. To check the sensitivity of this assumption, we considered the approximate overall effect of moving to the midpoint between including and excluding own-brand diversion, which, given the various effects set out above, we consider would still tend to understate diversion between the Parties. This sensitivity suggested that such a change would not have a substantial impact on the overall assessment.¹⁹⁹

8.186 We also take into account any possible overestimation of diversion between the Parties in our approach to setting an appropriate threshold for our GUPPI decision rule.

8.187 The Parties submitted that it was possible to model the joint incentives of the Parties and thereby address the first of the effects set out in paragraph 8.183(a). We did not implement the proposed model in our analysis, given the high cost of doing so; the low impact on the outcome given the lack of sensitivity to our approach; the fact that the proposed modelling approach does not address the issues set out in paragraph 8.183; and the fact that we have taken into account possible overestimation in our approach to setting an appropriate threshold for intervention.

Value of recaptured sales

8.188 In the previous sections, we discussed our analysis of different types of evidence to decide which weights to attach to different stores depending on

¹⁹⁷ We included own-brand diversion to the Parties' online groceries business. However, we recognize that this will tend to understate diversion between the Parties in light of the finding of national and local SLCs in online groceries (Chapter 11). We included own-brand diversion to the Parties' convenience business, in light of our assessment that convenience stores face a wider range of constraints compared to supermarkets, as set out in our assessment of the effect of the Merger on the Parties convenience stores (see paragraphs 8.269 to 8.283).

¹⁹⁸ We note that this concern only applies to the local assessment. At the national level, it would be inappropriate to allow for own-brand diversion, as acknowledged by the Parties in Schedule 10 to the Merger Notice and indicated in the Retail Merger Commentary. This is because a customer who decides to leave a shop of one party in response to a deterioration in PQRS (eg price increase) is very unlikely to go a different shop of the same party as this will also experience the same deterioration in PQRS.

¹⁹⁹ Moving to the midpoint between including and excluding own-brand diversion would lead to a reduction in the national GUPPI for both Parties by less than 0.1 percentage points.

their characteristics, as well as the weight to attach to out-of-market constraints.

- 8.189 On this basis we generated our best estimate of the likely diversion between the Parties in each local area. That is, we have estimated the proportion of customers that would treat Sainsbury's as their next-best alternative in the event that Asda raised its prices and/or worsened QRS in the local area, and vice versa. This estimate takes into account the number of supermarkets in the local area, the profile of those supermarkets brands, the sizes of those supermarkets, and their relative location.
- 8.190 In this section, we discuss how the extent of expected diversion by customers between the Parties (and the recapture of that diversion post-merger) might make it profitable for the Parties to degrade their offer. As part of this assessment, we have considered the value of recaptured sales.
- 8.191 The value of recaptured sales refers to the economic value to each of the Parties of the sales they would lose if they degraded PQRS that would be recaptured by the other merging Party. The greater is the value of recaptured sales relative to current prices, the greater the importance of those recaptured sales when deciding whether to raise price. If their value is high (ie if margins are high) then small amounts of sales recaptured by the other merging party are more likely to put substantial upwards pressure on prices.

Variable margins

- 8.192 To assess the value of recaptured sales in the supply of groceries, we have taken as a starting point the Parties' variable margins.
- 8.193 The Parties provided estimates of their grocery margins and the variability of individual cost items at a national level. We have used these figures as the basis for calculating a national average instore grocery margin for each of the Parties.
- 8.194 The Parties also provided their local-level management/impairment accounts, which we used to develop estimates for local variable margins. In a number of places, the national and local accounts were not directly comparable because of different splits of cost lines, or did not exactly reconcile as a result of not all relevant costs being allocated to a local level. The Parties also did not have the split of certain cost lines between groceries and GM. In these circumstances, we have made a best estimate of an adjustment or allocation methodology. For recently opened stores, where cost data is not available, or where the local data may not be fully reflective of local conditions, we have used the respective average national margin for each of the Parties.

- 8.195 Certain cost synergies arising from the Merger would impact the variable margin figures. For example, procurement savings would reduce the Parties' cost of goods sold, and hence increase the gross margin and any associated variable margins. We have discussed the likelihood of procurement savings in more detail in chapter 16, where we provisionally conclude that the Merger is likely to result in £[~~3~~] of rivalry-enhancing efficiencies. For the purposes of calculating the post-Merger margins, we have allocated these efficiencies equally between the Parties.
- 8.196 Additional details on the specifics of the local variable margin calculations are included in Appendix F, including an assessment of the additional evidence submitted by the Parties.
- 8.197 As noted above, in order to calculate the in-store variable grocery margins we have used the variability of individual cost lines submitted by the Parties. However, in doing so, we note that there are a number of reasons to believe that the resulting variable margins may be underestimated, which would result in the GUPPI estimate also being underestimated. These reasons are discussed below.

Halo effect

- 8.198 In assessing the value of recaptured sales, we have sought to take into account interactions between the Parties' businesses. As set out in paragraphs 7.128 to 7.141 there are important interactions between the Parties' business areas, including between the sale of in-store groceries, GM, online delivered groceries and fuel. In particular, by attracting a customer to a store to purchase one of these items, it gives rise to a probability that they will also make purchases of the other item. This may be to take advantage of increased convenience, reduced transport costs or lower search costs (the 'one-stop shopping principle') or may also arise because each transaction increases loyalty (either through explicit loyalty schemes or for non-financial reasons, such as increased familiarity with the store and its product range).
- 8.199 Overall, this results in a 'halo effect', whereby the overall performance and profitability of some business lines are strengthened by the Parties being present in the other 'adjacent' business lines. We have considered whether our assessment of the effect of the Merger on the supply of in-store groceries should take into account the Parties' margins on sales from their other business areas, by accounting in our GUPPI calculation for the expected GM and fuel sales that would also divert with any diverting in-store groceries sales. We refer to the GUPPI adjusted in this way as the 'multi-product GUPPI', as it takes into account the Parties' activities in both the supply of in-store groceries, and the supply of GM and fuel.

- 8.200 The Parties submitted that applying an adjusted multi-product GUPPI for GM and fuel in our assessment of the supply of in-store groceries would require an assumption that competitive parameters that are varied locally must be set separately for groceries and for GM and fuel. They submitted this was not the case because groceries and GM are sold at the same stores and use the same facilities and checkouts, and therefore QRS cannot be set separately for the two.
- 8.201 However, both groceries and GM are differentiated products with a range of aspects of PQRs that matter to consumers, including some with the scope to be flexed in ways that are not strictly set uniformly for everything that is sold in any given store. For example, the breadth of product range stocked in groceries is not clearly tied to GM. Ensuring good availability of grocery products (which entails wastage costs) is not clearly associated with availability of GM in the same supermarket. Aspects of service may also vary, to the extent for example there are separate staff and queuing times for the GM section of the Parties' supermarkets.^{200,201}
- 8.202 The Parties submitted that any contribution of GM to the GUPPI calculated in our in-store groceries assessment requires four inputs to be measured accurately: measures of the proportion of customers that would divert both groceries and GM together in response to a grocery-only price increase, a measure of the value contributions of groceries and GM to the overall basket (in particular, a measure that is specific to the baskets of those customers that would divert both), a specific estimate of variable margin for those GM products that would be recaptured by the other Party; and a specific estimate of diversion of the GM part of diverted baskets to the other Party in response to a grocery-only price increase.
- 8.203 Our starting point for assessing whether to make an adjustment for the halo effect is that there is clear evidence that a halo effect exists. As set out in paragraph 7.128 to 7.141, several third parties recognised that GM sales drove incremental profit through increased average basket value and higher margins. Survey evidence shows that many customers of either groceries or GM also buy products from the other. As set out in Appendix M, [the consultant] assumed a [X]% uplift in the revenue from Asda's stores receiving an Argos store due to (i) a grocery 'halo' effect (that is, an increase in footfall and grocery sales as a result of the Argos in-fill presence); and (ii) a revenue uplift also assumed for the in-filled Argos stores. The Argos halo

²⁰⁰ This may be the case, for example, in the Argos department of Sainsbury's supermarkets.

²⁰¹ Moreover, the local GUPPI analysis is used as a piece of evidence in the national assessment (see paragraphs 8.19 to 8.79), and therefore is relevant to the Parties' post-Merger incentives to set prices for groceries, which are separate from GM prices.

effect is explicitly referred to in the Parties' internal documents and was also given as a key rationale behind Sainsbury's acquisition of Argos.

8.204 We do not have perfect data to estimate the precise value of the halo effect. However, to assign a value of zero to the halo effect would, in our provisional view, result in a material underestimate of the economic value of any grocery sales lost and recaptured by the other Party. We have therefore sought to generate a best estimate of the appropriate value of this adjustment with the available data. Our approach is as follows:

- (a) We consider that any given groceries customer has a probability of also purchasing GM. As [10–20%] of Sainsbury's groceries transactions and [20–30%] of Asda groceries transactions contain GM, we use these values as an approximation of the probability that any given groceries customer will also purchase GM;
- (b) The uplift to the groceries margin for these customers depends on:
 - (i) the relative magnitude of GM margins compared to groceries margins, each of which we have calculated in our Appendix F; and
 - (ii) the relative size of GM purchases compared to groceries purchases, which we have approximated using data on average transaction values for GM and for groceries.

8.205 Based on these factors, we calculated that incorporating the halo effect would increase Sainsbury's national groceries margin from [X] % to [X] % (a [X] percentage point increase), and Asda's national groceries margin from [X] % to [X] % ([X] percentage point increase).²⁰² We have correspondingly increased Sainsbury's and Asda's margin by an equivalent proportional increase in each local area.

8.206 With respect this approximation:

- (a) this may understate the proportion of grocery purchases at Sainsbury's that include GM because Sainsbury's is still rolling out Argos in-fill in its

²⁰² This is calculated as the weighted average of the groceries margin and a blended 'groceries plus GM' margin, weighted by the proportion of transactions that contain groceries only versus the proportion containing both groceries and GM. The blended 'groceries plus GM' margin is given by taking the groceries-only margin and GM-only margin and weighting them based on their approximated share of baskets that contain both GM and groceries. The approximated share for groceries is given by (Average transaction value of groceries)/(Average transaction value of groceries plus average transaction value of GM). The approximated share for GM is given by (Average transaction value of GM)/(Average transaction value of groceries plus average transaction value of GM).

supermarkets, which we consider will cause us to understate the value of sales recouped at Sainsbury's;

- (b) we have made no adjustment for fuel halo effects (grocery customers that also purchase fuel), which would cause us to understate the value of sales recouped by the Parties to a small degree;
- (c) while some customers that currently buy groceries and GM together may no longer do so if they divert from one Party to the other, others that currently only purchase groceries may begin purchasing groceries and GM together once they divert. We consider our approach allows for both possibilities.

Provisional conclusion on margins

8.207 The margins used in our analysis are set out in Table 8.3.

Table 8.3: Average post-efficiencies variable margins

	%	
	<i>Asda</i>	<i>Sainsbury's</i>
In store groceries, ex. halo effect	[REDACTED]	[REDACTED]
GM	[REDACTED]	[REDACTED]
In-store groceries, incl. halo effect	[REDACTED]	[REDACTED]

Source: CMA analysis.

8.208 We consider that in adopting the cost variability estimates provided by the Parties for in-store groceries, the variable margins we have calculated are likely underestimated and, as a result, the value of recaptured sales is likely also underestimated. This is because:

- (a) Since the Parties' online groceries accounts do not bear their full allocation of costs their in-store groceries costs are likely bearing an overallocation of costs. We note that in-store groceries margins would increase if the online accounts include its full allocation of cost.
- (b) Sainsbury's [REDACTED].²⁰³
- (c) We have concerns about the specifics of the bottom-up analysis and the econometrics submitted by the Parties which shows high variability of cost resulting in lower margins, as discussed in paragraph 17 of Appendix F.
- (d) As a sense-check we note that the difference between our estimates of gross and variable margins for both Parties (which would represent the

²⁰³ [REDACTED].

variability of cost lines) are at the top end of the values quoted Tesco/Booker.²⁰⁴

Calculating local GUPPIs

8.209 The GUPPI, as described in paragraph 8.5, is designed to score the merging parties' incentives post-merger to raise prices and/or degrade the quality of their offering, their product range or their service levels (ie worsen their PQRS).

8.210 We calculated a GUPPI measure for each local area in which the Parties overlap, combining information on local diversion ratios (taken from the CMA store exit survey where the store was surveyed²⁰⁵ or, in non-surveyed areas, the CMA's WSS model, which additionally incorporates evidence from an entry/exit analysis) and local margins.²⁰⁶

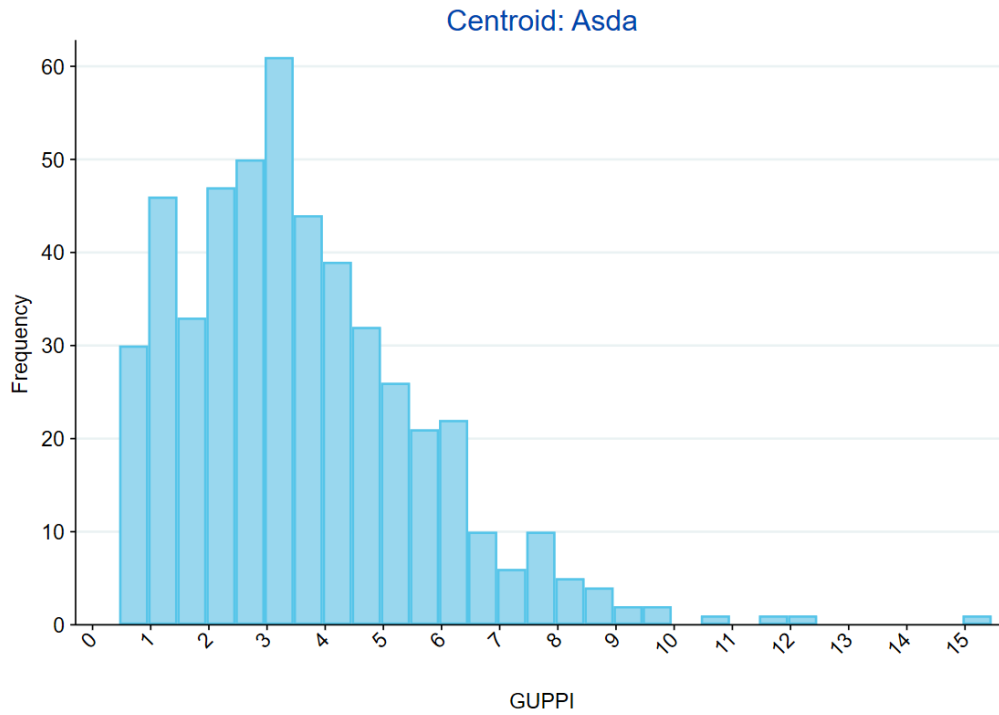
8.211 The distribution of the GUPPI for Asda and Sainsbury's stores are presented in Figure 8.9 and Figure 8.10 below.

²⁰⁴ 'The variability percentages described above generally results in an observed decrease from gross margin to variable margin of around a quarter to a third' ([Tesco/Booker merger inquiry, Final report, Appendix C](#), paragraph 70). The figure for the Parties' in-store grocery are around [x%] for Asda and [x%] for Sainsbury's (before the effect of efficiencies).

²⁰⁵ Provided there were no pipeline stores in the local area. Where there were pipeline stores in the local area of a surveyed store, the WSS model was instead used to calculate diversion ratios (so as to also factor in the expected constraint from these pipeline stores), rather than the direct survey diversions.

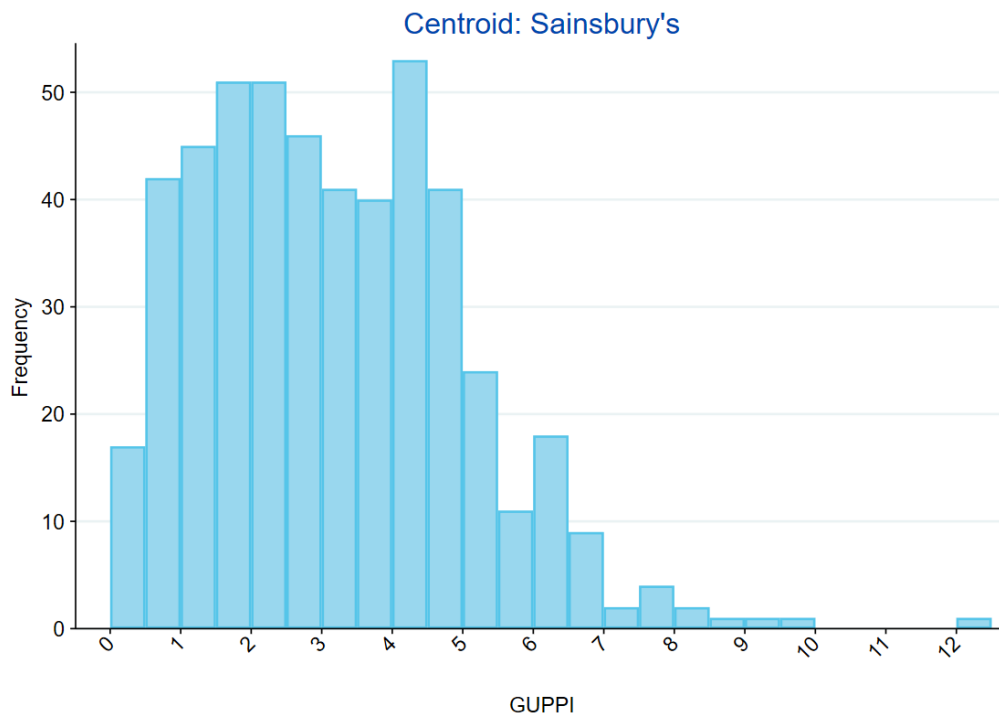
²⁰⁶ In addition to diversion and margins, GUPPI takes into account the ratio between prices at the Parties stores (referred to as the price ratio). This ratio affects the value of the potentially recaptured sales. The higher this ratio, the greater the value of recaptured sales relative to the current price, and therefore, the greater the incentive to increase prices. The magnitude of the price ratio used in the local assessment of supermarkets and the GUPPI formula are provided in Appendix E, paragraph 68.

Figure 8.9: Distribution of the GUPPI for Asda's stores that overlap with Sainsbury's stores



Source: CMA analysis.

Figure 8.10: Distribution of the GUPPI for Sainsbury's stores that overlap with Asda stores



Source: CMA analysis.

Using GUPPI as the basis of a decision rule

8.212 As described in paragraph 8.69 above, for the purposes of our national assessment of in-store groceries, we have used a national weighted average GUPPI as one indicator (derived from various pieces of evidence), in combination with the range of qualitative and quantitative evidence, to conclude whether, in the round, the Merger gives rise to competition concerns at a national level in relation to the supply of in-store groceries.

8.213 For the purposes of our local assessment, given the very many local areas in which the Parties stores overlap (around 1000), it would not be practicable to perform an assessment of each local area in turn within the timeframe of a Phase II merger inquiry. Accordingly, we considered that it was necessary to devise a decision rule to establish whether the Merger is, on the balance of probabilities, likely to give rise to an SLC on any local markets for the supply of in-store groceries.

8.214 Given this context, we consider that the GUPPI framework, and the underlying analysis that it relies upon, provide an appropriate and reliable measure for assessing the competitive effects of the Merger, and for using as the basis for our decision rule:

- (a) It relies on evidence that we consider to be robust, and which has been the subject of careful scrutiny. This includes the extensive CMA store exit survey (which was the subject of careful planning, and high-quality fieldwork) and the entry/exit analysis and margin information submitted by the Parties, which we have carefully assessed (as discussed in greater detail in Appendices C and F).
- (b) It allows us to effectively combine these pieces information in a single measure, thereby allowing us to take into account the fullest evidence available to us; including on brand, store size and distance, which our investigation has confirmed are key factors affecting competitive strength. The Parties submit, and we agree, that the GUPPI captures more information on closeness of competition (diversion ratios) and the significance for pricing incentives (variable margins), than other potential measures, such as concentration measures.
- (c) We carefully assessed the assumptions underlying each of the components of the GUPPI (as detailed above and in Appendix E);
- (d) Finally, it allows us to directly factor into a GUPPI-based decision rule an allowance for rivalry-enhancing efficiencies. The Parties have also highlighted this as a benefit of the GUPPI approach.

8.215 For these reasons, we believe that the GUPPI incorporates the best available evidence and is sufficiently robust to form the basis of our decision rule. We have therefore proceeded to assess the appropriate threshold at which a GUPPI-based decision rule should be set.

Setting an appropriate GUPPI threshold

8.216 In the following sections, we first set out the Parties submissions regarding the use of GUPPI in our local assessment. We then describe the use of GUPPI (and similar measures) by UK competition authorities in past cases. Finally, we describe the factors we have taken into account in deciding on the appropriate threshold for concern, before concluding on our decision rule.

8.217 Before turning to these issues, we note two preliminary points:

(a) First, while the GUPPI expresses the incentives of the Parties to raise prices, we note that for the purposes of our local assessment (given that prices are set nationally, rather than locally), we have also taken into account what any given GUPPI figure may indicate about the Parties' incentives to degrade other non-price factors of their offering.

(b) Second, we have also used GUPPI as part of our assessment of the Parties' overlapping activities in the supply of online delivered groceries and fuel. While the ways in which GUPPI has been used as part of each of these assessments has varied to take account of specific features of each assessment, some of the issues discussed in the following sections will also be relevant to our use of GUPPI in those other parts of our assessment, and we therefore refer back to these issues, as relevant, in later chapters.

Parties' views

8.218 The Parties submitted that, for the purposes of the local assessment of in-store groceries, a GUPPI threshold should be used as an initial screen, with local areas failing this screen then subject to further inquiry through the application of additional screens (such as margin sensitivities for local areas with 'outlying' margins, or the use of survey diversions rather than the WSS-calculated diversions).²⁰⁷

²⁰⁷ As set out in paragraph 8.179, the Parties submitted that for all local areas (including surveyed areas), diversion ratios should be calculated using the WSS. We have instead taken the approach that where a local area was surveyed, diversion ratios directly taken from the survey (rather than WSS) are used given some advantages over the WSS.

- 8.219 The Parties submit that there is no basis for adopting a threshold lower than 5% for this initial screen, consistent with what the Parties submit is an established practice of UK competition authorities ruling out concerns where the GUPPI is less than 5%, which the Parties characterise as a ‘safe harbour’.²⁰⁸ The Parties refer particularly to the use of 5% GUPPI threshold in *Tesco/Booker* and *Co-op/Nisa*, which they submit are highly analogous and recent examples of the use of GUPPI in the groceries sector. The Parties submit that these cases show that a 5% GUPPI threshold is itself conservative, with in both cases the CMA subsequently finding local markets with GUPPIs of 5-10% to be unproblematic on further inspection.
- 8.220 Where the CMA instead chooses to use the GUPPI as part of a determinative decision rule (rather than as an initial screen), the Parties argue that the chosen GUPPI threshold should be a ‘step change’ higher than 5%, to avoid the risk of ‘false positive’ results, that is, finding an SLC in a local area where no such SLC exists. The Parties submit that in *Ladbroke’s/Coral*, the only UK case where the CMA has used a GUPPI threshold as a definitive decision rule, this threshold was [10–20%], which reflects such a ‘step change’.
- 8.221 The Parties made a number of specific submissions regarding the calculation of the GUPPI and its component parts. These included:
- (a) Given that the GUPPI is necessarily bounded by zero (on the basis that diversion ratios and price ratios cannot be negative), if there is uncertainty (eg in the estimate of the diversion ratio), then the threshold cannot be zero, given the measurement errors are no longer symmetric.
 - (b) While the Parties acknowledged that it was for the CMA to form an overall judgment on whether the Merger resulted in an SLC, on the balance of probabilities, where the inputs it was relying upon to form this judgment were statistical inputs, the CMA should be satisfied that each of those inputs were statistically significant at the 90%, 95% or 99% confidence interval. The Parties submitted that this in turn meant that any GUPPI threshold must be significantly above zero, in order to be confident (to that 90-95% interval) that the GUPPI was truly at a level where significant pricing pressure could be expected.

²⁰⁸ The Parties also referred to a public statement by senior US antitrust agency staff in 2010 relating to GUPPI safe harbours. The US Horizontal Merger Guidelines state that ‘if the value of diverted sales is proportionately small, significant unilateral price effects are unlikely’. The DOJ statement said that a 5% increase in price was considered ‘small but significant’ and therefore that a 5% GUPPI could also be considered proportionately small. We note however that in a retail merger in 2015, *Family Dollar/Dollar Tree*, the FTC explicitly rejected using a 5% GUPPI threshold as a safe harbour (ie as a threshold below which local areas would be identified as unproblematic and given no further consideration). In that case, 27 of the 330 divestment stores had GUPPIs of less than 5%.

- (c) The standard GUPPI measure does not capture any assumed efficiencies ‘credit’. As such, to the extent that efficiencies are proven in a given case (which the Parties submitted they had been here), these should be factored directly into the GUPPI calculation as decreasing the level of any expected upward pricing pressure.
- (d) Other factors which might be argued to affect the GUPPI calculation (or the threshold of concern), such as the feedback effects, had only been postulated, rather than proven, in this case. In any event, the Parties submitted economic modelling to show that that feedback effects are likely to be small relative to first-order effects, and only large when first-order effects would already identify a potential problem, such that they did not form a good basis for changing the GUPPI threshold.

Past cases

- 8.222 The CMA and its predecessors have used GUPPI in its merger assessments on many occasions. In some past cases (discussed below), UK competition authorities have alternatively calculated a measure known as an illustrative price rise (IPR), which is similar to the GUPPI in that it measures the post-merger upward pricing pressure using diversion ratios and profit margins, but differs in that it seeks more directly to measure the expected price rise flowing from a merger. Calculating an IPR requires additional information about the degree to which pricing pressure will translate into higher prices for consumers (‘pass-through’).²⁰⁹ We have not sought to calculate IPRs in this case. Nevertheless, to aid interpretation of previous cases that have used IPR, we discuss below how GUPPI and IPR measures may be compared.
- 8.223 While the precedents discussed below may be informative to our assessment, we are nevertheless required to determine whether the evidence supports an SLC finding on the facts of the present case. While we have had regard to the approach taken in past cases, our use and interpretation of GUPPI has therefore been assessed afresh in this case, based on the available evidence.
- 8.224 When considering any read-across from past cases, it is important to take account of the case-specific nature of merger control, and the different ways in which GUPPI and IPR have been used (eg, whether as a filtering tool to exclude concerns in certain areas/markets, as one piece of evidence assessed in combination with others, or as a decision rule to decide upon the existence or otherwise of an SLC). It is also important to bear in mind that

²⁰⁹ This is in turn determined by the shape of the demand curve. A demand curve shows how the demand for a given product or service varies with changes in its price.

merger investigations will vary widely in the extent and quality of the available data, which will affect the accuracy with which it is possible to estimate the GUPPI.²¹⁰ The CMA's guidance does not indicate a particular GUPPI or IPR figure that may be considered to give rise to concern (nor to any assumption of a 'safe harbour'), and (as discussed the remainder of this section) a review of previous cases shows that there has not been convergence of practice on a single figure.

8.225 We disagree with the Parties' submission that UK competition authorities have always, or consistently, used a 5% GUPPI threshold as a means of excluding areas as non-problematic. We note that the use of GUPPI and IPR in past cases demonstrates a range of approaches, including implied GUPPIs significantly below 5% giving rise to potential concern. We also note that a review of these cases demonstrates the fact-specific nature of the assessment that applied in many cases in deciding whether a given GUPPI figure was or was not supportive of an SLC finding. Further, we consider that there are important differences between the current case and the Tesco/Booker and Coop/Nisa precedents on which the Parties rely.

(a) In both Tesco/Booker and Coop/Nisa, the primary (and in Coop/Nisa, sole) focus of the CMA's investigation was the vertical overlap between the Parties' activities. The index measure used in those cases was therefore primarily a vertical GUPPI measure (or vGUPPI). Any thresholds applied in those cases will be specific to the vertical context. Vertical mergers are inherently more efficiency-driving than horizontal mergers (as discussed further below, the level of efficiencies is a relevant factor when interpreting whether a given GUPPI figure may give rise to concerns). There may also be a lower likelihood that any upstream price rises will be passed on to end-consumers.²¹¹ The use of a 5% GUPPI as a filter (and the absence of concerns at 5-10% GUPPI) in these cases must be considered in that context. While the CMA also used a 5% GUPPI in its horizontal assessment in Tesco/Booker, this was a very minor part of the case (only 2 horizontal overlaps were found to be potentially problematic following the Phase 1 investigation).

²¹⁰ In this case, we have had access to extensive and robust data, including plentiful industry data, the results of three extensive consumer surveys, and the results of detailed econometric analyses undertaken by the Parties, which we have carefully critiqued.

²¹¹ The Parties submitted that the Act does not discriminate between different customer types, and does not accord more weight to end-customers than other customers. However, the CMA's statutory duty explicitly prioritises consumers: 'The CMA must seek to promote competition, both within and outside the UK, **for the benefit of consumers**' (ERRA s25(3), emphasis added).

- (b) Taking a broader view of the approach taken in previous horizontal merger investigations in the groceries sector, an IPR measure has been used more frequently than GUPPI. This stems particularly from the CC's approach in *Somerfield/Morrisons*,²¹² subsequently adopted in a number of Phase 1 investigations (*Morrisons/Co-op*,²¹³ *Asda/Netto*,²¹⁴ *One Stop/Alfred Jones*,²¹⁵ *Midcounties/Tuffin*,²¹⁶ and *Asda/Co-op*²¹⁷). In these cases, the CC and OFT's starting point was that an IPR at 5% or above gave rise to prima facie concerns, although it was made clear that this was merely a guide as opposed to a definitive threshold.²¹⁸ Further, it was noted that in *Somerfield/Morrisons*, the CC performed sensitivity checks at 1% and 2% IPR, while in *Midcounties/Tuffin*, the OFT found concerns in one area where the IPR was below 5%. While it is not possible to definitively translate IPR into GUPPI, we note that where demand is isoelastic²¹⁹ (as the CC found for the supply of groceries in *Somerfield/Morrisons*, and in its subsequent Groceries Market Investigation, and as applied in many subsequent groceries cases) and in a market with a margin of [~~8~~] % (as in the case), a 5% IPR would equate to a [0–5%] GUPPI.²²⁰
- (c) Cases in other sectors where GUPPI has been assessed in the round with other evidence have found concerns at GUPPI levels both above 5% (eg 7% in bowling,²²¹ 5-6% in cinemas²²²) and below 5% (eg in petrol stations²²³ and building supplies²²⁴).

8.226 With respect to the use of GUPPI as part of a decision rule in *Ladbrokes/Coral*, we note that there are differences between that case and the present case. The decision rule adopted in that case was based on the diversion ratios implied by the WSS and while the decision translated these diversion ratios into GUPPIs to aid with interpretation, there was no discussion in the decision as to the threshold at which a given GUPPI would or would not support the finding of an SLC (a point to which we have given careful consideration in this case). Further, we note that the case involved a

²¹² [Somerfield/Morrisons merger inquiry](#) (2005).

²¹³ [Morrisons/Coop \(30 stores\)](#) (2009).

²¹⁴ [Asda/Netto merger inquiry](#) (2010).

²¹⁵ [One Stop/Alfred Jones](#) (2013).

²¹⁶ [Midcounties Co-operative/Tuffin Investments](#) (2013).

²¹⁷ [Asda/Co-operative Group](#) (2014).

²¹⁸ [One Stop/Alfred Jones](#) (2013), paragraph 36. Also noted in [Asda/Netto merger inquiry](#).

²¹⁹ An isoelastic demand curve has the same elasticity across all price levels – visually, it appears convex to the origin in price/quantity space.

²²⁰ Where demand is linear, a 5% IPR will equate to an 8% GUPPI.

²²¹ [The Original Bowling Company/Bowlplex](#), paragraph 81.

²²² [Cineworld Group plc/City Screen Limited](#).

²²³ [MRH/ESSO](#) (2015); [Shell/Rontec](#) (2012).

²²⁴ [Jewson/Build Center](#) (2012).

very different market context, and that case-specific evidence (eg on the circumstances in which new entry prompts a refurbishment and when concessions are offered) played an important role in setting the WSS threshold used.²²⁵ This highlights the importance of considering each case on its facts.

8.227 Finally, we disagree with the Parties' apparent suggestion that it would be appropriate to add an additional 'allowance' to the threshold of concern in this case, to account for the fact we are using the threshold as a decision rule (whereas in many previous cases it was an initial filter). While we have regard to past CMA cases, our focus, as set out below, is the evidence in this case, and we have provisionally decided to use a decision rule approach rather than a filter. As set out further below, we are confident that our GUPPI estimates, which are a product of specific local evidence on diversions and margins, are a good measure of the potential harm arising from the Merger in each local area, and that our assessment of efficiencies and of substantiality and uncertainty provides an appropriate method for determining the threshold at which we would expect an SLC to arise.

Our assessment

8.228 Using a 'filtering' approach involves choosing a set of conditions to identify areas where the likelihood of an SLC is sufficiently low that it can be ruled out for further assessment. In some cases, applying such an approach will result in a number of potential SLC areas that is sufficiently small that each can then be assessed one-by-one, taking into account a range of idiosyncratic factors and specific local evidence (including qualitative evidence), to identify those in which an SLC is more likely than not. However, in this case, we consider that applying a filter that is sufficiently cautious not to rule out areas where an SLC may be more likely than not would result in hundreds of remaining local areas. It would not be possible to assess each of these one-by-one within the statutory timetable: a 'decision rule' approach is therefore required in these circumstances.

8.229 With respect to the Parties' submission that our analysis should use GUPPI only as an initial screen, and then subject the remaining areas to further assessment using additional 'screens', we believe that the evidence which the Parties suggest should be incorporated through these additional screens (local margins, and local surveyed diversion ratios) is already incorporated in the GUPPI calculations.

²²⁵ [Ladbrokes/Coral](#) (2016), paragraph 28.

8.230 We therefore consider that applying a consistent GUPPI-based decision rule is the most appropriate approach in this case. In setting the appropriate threshold for the decision rule, we must be satisfied, on the balance of probabilities, that in each local area captured by the decision rule, the Merger would result in an SLC. We consider that this is achieved by assessing at what level we consider a given GUPPI, calculated using robust evidence, would be expected to translate into a price rise or other degradation of PQRS that would cause substantial harm to consumers (that is, would represent a substantial lessening of competition), after accounting for any downward effect of pricing pressure resulting from efficiencies.

8.231 We note that the GUPPI calculates only the expected pricing pressure; it does not calculate the price rise (or other deterioration) by the Parties that may be expected to result from this. It also does not take into account the potential for any so-called 'second order' or 'feedback effects', that is, any knock-on price rises (or other deterioration) by competitors which may flow from this, and indeed further upwards price moves by the Parties in response to these knock-on effects, and so on. We reflect on these issues when setting any threshold of concern.

8.232 When interpreting the GUPPI figures resulting from our assessment in this case, and subsequently in deciding the appropriate threshold at which to set our GUPPI decision rule, we consider that it is important to account for (i) efficiencies and (ii) substantiality and uncertainty. We consider these factors in turn.

Efficiencies

8.233 Mergers can give rise to rivalry-enhancing efficiencies, which introduce downward pressure on prices. Where this downward pressure is sufficient, it may eliminate (or even surpass) any expected upward pricing pressure indicated by the GUPPI calculation.

8.234 The Parties submitted that the Merger would give rise to very substantial rivalry-enhancing efficiencies of at least £[~~£~~]. We have carefully examined the Parties' efficiencies claims and thoroughly tested the estimates produced by the Parties, as set out in detail in Chapter 16.

8.235 For the reasons explained in Chapter 16, we have provisionally found that it is appropriate to assume that the Merger will give rise to around £[~~£~~] of efficiencies, all of which can be expected to accrue to the Parties' groceries and GM operations.

8.236 For the purposes of the GUPPI assessment, £[~~£~~] efficiencies would translate into a downward pressure of around 1% in a GUPPI analysis.²²⁶ Having satisfied ourselves that efficiencies of this level may be expected to arise from the Merger, we consequently do not consider that a GUPPI of around 1% or below would be supportive of an SLC finding.

Substantiality and uncertainty

8.237 Having provisionally excluded concerns below a 1% GUPPI, we must satisfy ourselves that any lessening of competition (as indicated by the GUPPI figure) will be substantial.

8.238 The term ‘substantial’ is not defined in the Act, nor in the CMA’s guidance. Whether a lessening of competition may be considered ‘substantial’ is therefore a question of judgement in each case.

8.239 In assessing what may constitute ‘substantial’ for the purposes our national assessment of in-store groceries, we have had regard to the fact that groceries are a non-discretionary expenditure that accounts for a significant share of household spend; proportionally more so for low income households.²²⁷ Government estimates are that UK households’ share of income spent on food (excluding tobacco and alcohol) is around 10%, increasing to 14-16% for those on lower incomes.²²⁸ As a result, even a small percentage increase in the price of groceries (or equivalent worsening of QRS) would have a significant adverse impact on UK consumers.

8.240 GUPPI is a measure of pricing pressure; not price increases. The Parties acknowledge that where the UK competition authorities have ruled out concerns at a given GUPPI level, this should not be interpreted to mean that the authorities have concluded that such a figure represents only a small price increase which is somehow ‘tolerable’. We agree, and as set out above, even a small price increase in this market would give us cause for concern. Rather,

²²⁶ Downward pricing pressure is equal to the level of efficiencies divided by the Parties’ total combined revenue. If efficiencies are equal to £[~~£~~], and the combined groceries and general merchandise revenues of the Parties is £[~~£~~], this equates to approximately 1%.

²²⁷ The Parties submitted that market importance is not a relevant factor for the purposes of the SLC assessment. However, market importance has played a role in past merger and market investigations, including the groceries sector, and we believe it also has relevance in the current assessment. For example, in considering what constituted a ‘small but significant’ price increase for the purposes of establishing market definition (the SSNIP test), the CC in the Groceries Market Investigation explicitly acknowledged that the importance of groceries expenditure in the household budget may justify using a figure lower than 5%, referring to a US precedent where a 1% price increase was instead used: CC Groceries Market Investigation, paragraph 4.11 and footnote 1 on page 49. The Parties themselves acknowledge that early US commentary on GUPPI referenced the percentage price increase used in the SSNIP test when considering the appropriate threshold for a GUPPI screen.

²²⁸ Of this spend, over 70% is eating-in (excluding tobacco and alcohol again). Chart 1.1, excl alcohol: <https://www.gov.uk/government/publications/family-food-201617/expenditure>. If alcohol and tobacco were included, this would increase further.

the Parties submit that previous cases have ruled out concerns at low levels of GUPPI on the basis that, at such levels, authorities cannot be satisfied (on the balance of probabilities) that *any* harm will arise to consumers; ie there cannot be sufficient certainty that the pricing pressure indicated by the GUPPI calculation would translate into harm to consumers.

- 8.241 In assessing this argument, we have considered what factors may lead us to provisionally conclude that small (but positive) levels of pricing pressure would not be likely to translate into price increases (or other deterioration in QRS) that would be consistent with an SLC. In addition to the downward pressure exerted by efficiencies (discussed above), this may arise where: there was expected to be little or no pass through to consumers; there would be a cost to the merged entity of implementing the price rise or QRS degradation (eg because of operational difficulty); and/or the size of the gain was somehow insufficient to motivate the merged entity to take action, even if potentially profitable.
- 8.242 However, none of these factors would appear to apply in this case: pass through in the groceries sector has previously been considered likely to be over 100%;²²⁹ the potential degradations of the Parties' PQRS considered are not predicated on the Parties changing their approach to how they set aspects of PQRS, so no operational adjustment would be required to effect a change in PQRS; and given the scale of the Parties' groceries businesses, even a small percentage price increase would lead to a substantial uplift in revenue and, potentially, a significant increase in profits.
- 8.243 Furthermore, as discussed above, any GUPPI must be interpreted in light of the fact that it accounts for only the individual first-order incentives of each merging party and therefore considers neither feedback effects between merging parties nor second order effects from third parties. We note that as the markets under discussion involve competition in prices which are strategic complements, second order effects will augment the initial price increases, exacerbating the initial effect. If it were shown that these effects were unusually limited in a particular case (for any given first-order price increase), this would also reduce the likelihood that a relatively low GUPPI would translate into a price increase consistent with an SLC. We consider that there is no reason to think that feedback effects would be particularly low relative to the first-order effect identified in the GUPPI in this case.

²²⁹ As shown eg by the fact that in [Somerset/Morrisons](#), isoelastic demand was assumed.

- 8.244 Finally, we have considered whether it would be appropriate to take account of the possibility that there may be some residual uncertainty or bias around the accuracy of our precise GUPPI estimates or our efficiencies estimates:
- (a) we may be aware that certain assumptions will tend to result in our analyses underestimating or overestimating the true level of pricing pressure, albeit with some uncertainty as to the magnitude of the effect. In such instances we may find it appropriate to raise or lower the GUPPI threshold.
 - (b) in some instances, there will inevitably be some uncertainty around elements of our evidence but, in contrast to (a) above, we have no reason to consider that this would bias the analysis in any particular direction. In such instances, we may find it appropriate to raise the threshold in order to avoid deciding there was an SLC in areas where this was not the case on the balance of probabilities (albeit this would increase the risk that we would wrongly decide that there was no SLC in some areas).
- 8.245 With respect to (a), we note that there are assumptions underlying our analysis that individually may cause us to overestimate or underestimate the pricing pressure in certain cases (for example, see paragraphs 8.206 and 8.277). We have considered these where relevant in deciding on the appropriate threshold.
- 8.246 With respect to (b), we have undertaken a significant amount of analysis to calculate the local GUPPIs, as described fully in the paragraphs above and in Appendix E. As set out in paragraph 8.214, it relies on evidence that we consider to be robust, and which has been the subject of careful scrutiny. This includes the extensive CMA store exit survey (which was the subject of careful planning, and high-quality fieldwork) and the entry/exit analysis and margin information submitted by the Parties, which we have carefully assessed and incorporated as appropriate (as discussed in greater detail in Appendix C and F). After careful analysis the estimates made represent, in our judgement, an unbiased estimate of the relevant variables. Furthermore, our assessment of the expected rivalry-enhancing efficiencies arising from the Merger has also been the product of extensive information gathering and scrutiny.
- 8.247 Nevertheless, there is inevitably some uncertainty around any estimates. In order to reduce the risk of 'false positives', we believe it would be appropriate to account for this in the GUPPI threshold.
- 8.248 However, we disagree with the Parties' submission that we must be confident, to within a 90-95% confidence interval, that the final output of the GUPPI

analysis is indicative of upwards pricing pressure after efficiencies have been accounted for, or that we should include an additional 'buffer' in our threshold where this is not the case. In this case, we consider that the evidence used to underpin the GUPPI calculation is the best available evidence in this case, and that the GUPPI is a reliable indicator of the likelihood of an SLC on the basis of a balance of probabilities.

Provisional conclusion on threshold for GUPPI decision rule

8.249 Taking the factors above in the round, we provisionally decided to set the threshold for the GUPPI decision rule for our local assessment at 2.5%. We believe this allows a sufficient margin above the lower bound of 1% (which accounts for efficiencies) for us to be satisfied, on the balance of probabilities, that in each area failing the decision rule, the Merger gives rise to an SLC in the circumstances of this particular case. This takes into account the need for any lessening of competition to be substantial, and allows for some degree of uncertainty.

8.250 Each of the local areas where the GUPPI exceeds this threshold are set out in Chapter 17.

8.251 On this basis and subject to our assessment of any countervailing factors, we provisionally find that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade those parameters of PQRS that can be locally flexed at certain supermarkets, resulting in an SLC, in 629 local areas.

National assessment (convenience)

8.252 The preceding sections discussed our assessment of the effect of the Merger which results from the overlap between each of the Parties' supermarket estates (ie Large and Medium stores). In addition, Sainsbury's operates a large convenience store estate (with 781 convenience stores).²³⁰ While Asda does not operate any standalone convenience stores, it operates convenience stores at 61 of its PFSs.²³¹

8.253 Given Asda's limited convenience store estate, the Merger gives rise to significantly fewer overlaps between the Parties' stores when considering only their convenience stores. Nevertheless, as set out in paragraph 7.94, given that each Party's convenience stores will not only be constrained by other

²³⁰ In addition, Sainsbury's has around [X] planned stores which we have included for the purposes of our assessment as if they were existing stores – see paragraph 8.288.

²³¹ Asda submitted that they have [X].

convenience stores, but also by any Medium and Large stores, the Merger has the potential to also give rise to competition concerns if the constraint on one of the Party's convenience stores is substantially lessened, as a result of the loss of competition from the other Party's Large, Medium and convenience stores.

- 8.254 As set out in paragraph 7.99, we consider that the relevant market for the supply of in-store groceries through convenience stores is local.
- 8.255 Nevertheless, as set out in paragraph 8.9, where the Merger may be expected to result in competition concerns in local areas representing a significant proportion of the Parties' overall convenience estates, the Merger may create an incentive to worsen the Parties' offerings across all their convenience stores, including aspects of their offerings that are set centrally and applied uniformly on a national basis.
- 8.256 Earlier in this chapter, we provisionally found that the Parties would have an incentive post-Merger to degrade their in-store offering across their national supermarket estates, including in particular by increasing prices. We note that Sainsbury's operates a separate (uniform) national price file for their convenience stores, with prices being higher at its convenience stores than at its supermarkets for the majority of, but not all, products.²³² As a result, our provisional finding of competition concerns at a national level with respect to Sainsbury's supermarket estate would not necessarily equate to us also finding competition concerns at a national level with respect to Sainsbury's convenience store estate, as prices could conceivably be increased at Sainsbury's supermarkets without also being increased at Sainsbury's convenience stores.
- 8.257 The same does not hold true for Asda, as Asda operates consistent pricing across its supermarkets and its convenience stores (all of which are attached to PFSs). For Asda convenience stores, therefore, we consider that our provisional finding that the Merger would result in an SLC in each local area where one or more of the Parties' supermarkets is present would also mean that the Merger would result in an SLC in each local area where an Asda convenience store is present.²³³

²³² The difference in pricing between its supermarkets and convenience stores is also confirmed on Sainsbury's website: <https://help.sainsburys.co.uk/help/prices-payment/convenience-store-prices>

²³³ We are not aware of any other parameters of competition that are set centrally and applied uniformly on a national basis, across Asda's store estate, that are unique to convenience stores, and which would therefore not already be captured by our national assessment of Asda's supermarkets.

- 8.258 We focus in the rest of this section on whether the Merger gives rise to competition concerns at a national level with respect to Sainsbury's convenience store estate.
- 8.259 We did not receive any specific submissions from the Parties on this point. We also did not receive any concerns from third parties regarding the potential for an SLC with respect to the Parties' convenience stores.
- 8.260 We provisionally find that the Merger would not create an incentive to worsen the offering across all Sainsbury's convenience stores, including aspects of their offerings that are set centrally and applied uniformly on a national basis, such as national convenience store pricing. For Sainsbury's, our local assessment (discussed at paragraph 8.262 onwards below) provisionally found that the local markets which give rise to an SLC in the local analysis represent a small part of their overall convenience estate (54 out of around 800 stores, ie less than 7%), such that we do not consider that Sainsbury's would have an incentive to degrade convenience store pricing across all of its convenience stores. In general, we note that the Parties compete with a wider range of competitors in respect of their convenience stores than in respect of their Medium and Large stores. In addition to the Medium and Large stores of the retailers assigned WSS weights for the purposes of our local assessment of the Parties' supermarket overlaps (summarised in Table 8.3 above), this also includes: the convenience stores of these same retailers (to the extent they operate convenience stores – this excludes Aldi and Lidl); the convenience stores of a number of largely convenience-only chains (eg McColls, Spar, Costcutter); and a large number of independently owned convenience stores. While we do not believe that each of these retailers exerts an equal constraint on the Parties' convenience stores (as discussed further in paragraph 8.272 to 8.274 below) we nevertheless note that this represents a wide pool of potential competitors.
- 8.261 On this basis, we provisionally find that the Merger would not create an incentive to worsen Sainsbury's offerings across all Sainsbury's convenience stores, and as such the Merger does not give rise to an SLC in each local area where one or more of Sainsbury's convenience stores is present.

Local assessment (convenience)

- 8.262 In this section, we describe our approach to assessing whether the Merger gives rise to an incentive for the Parties to degrade PQRS at particular convenience stores, giving rise to an SLC in particular local markets.

Approach to competitive assessment

8.263 We consider that there are important differences between convenience stores on one hand, and Large and Medium stores on the other, that mean it is appropriate to conduct a separate assessment with respect to the effect of the Merger on the Parties' convenience stores. As set out in paragraph 7.99, the scope of the geographic market for convenience stores differs from that for Large and Medium stores, which is in turn reflective of evidence gathered in past cases that customers at convenience stores tend to travel much shorter distances (and choose from available options within a much smaller geographic area) than customers of larger stores.²³⁴ Further, the range of retailers that operate convenience stores, and therefore that have the potential to act as effective competitors to the Parties' convenience stores, is substantially wider than those that operate Large and Medium stores. In addition to the convenience stores of many traditional retailers, this includes convenience stores operated by Symbol group retailers²³⁵ and independent retailers.²³⁶ In addition, the factors that the average customer considers, and the weight that they attach to those different factors, may be different when shopping at a convenience store as compared to a supermarket. In particular, customers may attach greater value to convenience or location and lesser value on other factors, such as price and range.

8.264 We consider that it is appropriate to take a similar analytical approach to our local assessment of the Parties' convenience store overlaps, as we took in our assessment of the Parties' supermarkets overlaps. That is: constructing a WSS model that allows us to calculate weights (which proxy for diversion ratios) for each local overlap, and using these, together with information on local margins, to produce GUPPIs for each overlapping convenience store. We also consider that it is appropriate to again use a GUPPI-based decision rule to then determine in which local markets the Merger gives rise to an SLC. We discuss our reasons for this further below.

8.265 However, we note that it would not be appropriate to apply the same weights used in the supermarkets WSS for the purposes of our convenience assessment, given the differences between these different markets, as set out

²³⁴ Eg [Tesco/Booker merger inquiry, paragraph 6.25](#).

²³⁵ Symbol group retailers are grocery retailers which operate stores under a common brand (or symbol) and undertake common marketing activities. Stores within a symbol group may be independently owned and use the common brand under a franchise or membership agreement, or alternatively, may be directly owned by the symbol group or affiliated wholesalers. Symbol group retailers generally source supplies through affiliated wholesalers. The central organisation of the symbol group undertakes joint marketing and advertising, coordinates promotions, arranges for the provision of own-label products using the symbol group brand, and supplies support services (eg staff training, financial management and merchandising).

²³⁶ We use independent retailers to mean grocery retailers that are not part of a national or regional retail chain and are not part of a symbol group.

in paragraph 8.263. Indeed, the WSS used for our supermarket assessment classifies other convenience stores (of all brands) as ‘out of market’ constraints, and affords these (and a wide range of other constraints) a collective weight of 25%. It is clearly unlikely to be appropriate to take a similar approach, when the focal store is itself a convenience store.

8.266 As noted above, the direct overlaps arising between Sainsbury’s and Asda convenience stores represent a small proportion of the total number of overlaps, across the Parties’ store estates. The focus of our investigation has therefore been on the potential loss of constraint from each of the Parties’ Medium and Large stores and our evidence gathering and analysis in relation to the supply of in-store groceries has therefore equally been on the Parties’ supermarket estates. For example, the CMA store exit survey (which forms a key source of evidence for the assessment of supermarkets), interviewed only customers of the Parties’ Large and Medium stores (as did the Parties’ surveys). Other analysis relied upon for constructing the WSS used in our supermarkets assessment, such as the entry/exit analysis, similarly focuses on the constraints imposed by Medium and Large stores.

8.267 In determining our approach to the competitive assessment of the Parties’ convenience store overlaps, we have therefore drawn on the evidence and analytical approach adopted in the recent CMA Phase 2 investigation of Tesco/Booker. We consider that this case provides a good starting point for our own analysis, given that it represents a recent, in-depth investigation focusing principally on the convenience sector (in particular, the overlap arising between Tesco’s convenience stores and the symbol group and independent convenience stores supplied by Booker). In view of this recent investigation into convenience stores, and taking into account the CMA’s discretion to prioritise the use of its resources within the confines of the statutory timetable, we did not consider it necessary to conduct an in-depth assessment of the conditions of competition with respect to convenience stores. We have nevertheless assessed afresh whether certain assumptions or inputs underlying the analysis used in Tesco/Booker remain relevant in the particular circumstances of this case and have departed from them where appropriate.

Parties’ views

8.268 The Parties submitted that:

- (a) Regarding the CMA’s proposal to adopt the approach used in the Tesco/Booker Phase 2 investigation:

- (i) They could not comment meaningfully on the appropriateness for the present case of using the weights calculated in Tesco/Booker (having not had sight of the full evidence available to the CMA in that case). However, in any event, these weights reflect the CMA's view of the constraint that different brands exert on Tesco convenience stores, and it is not clear that these constraints would be the same for Sainsbury's and Asda;
 - (ii) In Tesco/Booker, the CMA ruled out concerns in local markets where the GUPPI was less than 5%, and subjected those above 5% to a 'second screen' fascia count. The CMA should equally exclude concerns in local markets where the GUPPI was under 5% in this case.
 - (iii) In Tesco/Booker, the CMA applied both a 10% and a 20% out-of-market constraint, and acknowledge that 10% was likely to be conservative.
- (b) The CMA's proposed approach for the convenience store analysis differed from that proposed for the supermarkets analysis in a number of material respects (including in terms of using weights that were constant over distance, rather than declining over distance; and the treatment of own-brand diversion), where there was no clear reason for it to do so.

Our assessment

WSS

8.269 As set out in paragraph 8.264 above, we believe that it is appropriate to use a WSS methodology. As with our assessment of the Parties' supermarket overlaps, this involved:

- (a) applying a weight to each store in the catchment area of the centroid convenience store;
- (b) adjusting those weights upwards or downwards such that they sum to a particular percentage of 'in market' constraints, without changing the *relative* weighting between them; and
- (c) allocating a remaining percentage to out-of-market diversion.

Relative weights

8.270 Consistent with the approach taken in Tesco/Booker,²³⁷ we derive the weight for each competitor store based on two factors:

- (a) *Distance*. Stores next to the Parties' store received a weighting of one, and stores at the very edge of the catchment area received a weighting of zero. Between these points, the weightings of stores decline from one to zero in a linear way.²³⁸
- (b) *Brand*. Each brand is given a weight to reflect the competitive constraint it poses.

8.271 With respect to distance, we note that using a weight which declines with distance is consistent with the approach taken in our assessment of the Parties' supermarket overlaps, which reflected the evidence gathered in this case that competitive constraint for Large and Medium stores declines with distance.²³⁹ It is also consistent with the findings of the CMA in Tesco/Booker (based on its analysis of the Parties' internal documents, survey evidence from market research companies, its entry/exit analysis, and third party submissions) that distance is particularly important in convenience grocery retailing. We think it is appropriate to adopt the same approach in this case.

8.272 With respect to brand, in Tesco/Booker, when considering the constraints on Tesco convenience stores, the following weights were employed:

- (a) a weighting of 1 was given to each brand listed in the 'effective competitor set' adopted by the CMA and its predecessors in previous cases concerning the supply of groceries, with the following exceptions:
 - (i) Aldi, Lidl and M&S were given a weighting of 0.8, to reflect the fact that these retailers do not stock tobacco products, which the CMA's investigation in that case showed were an important product category in convenience stores.²⁴⁰ For Aldi and Lidl, this also reflected their lack of convenience focus, and the CMA's findings (based on the results of its review of the Parties' internal documents, survey evidence, its entry/exit analysis, and third party submissions)²⁴¹ that

²³⁷ [Tesco/Booker merger inquiry, Appendix C](#), paragraphs 40-42.

²³⁸ For example, if a competing store is located 0.75 miles away (ie 75% of the way to the edge of the geographic market, in the case of convenience stores), the store's weight is reduced by 75%.

²³⁹ Although this decline is not modelled in a linear way in our supermarkets assessment.

²⁴⁰ [Tesco/Booker](#), paragraph 7.44.

²⁴¹ [Tesco/Booker](#), paragraph 7.37-7.44.

these retailers did not exert as strong a competitive constraint on Tesco convenience stores as did other retailers.

- (ii) Symbol stores were given a weighting of 0.8, to reflect the evidence found in that case (based on the results of the CMA's review of the Parties' internal documents, survey evidence, its entry/exit analysis, and information on the range and services available in such stores)²⁴² that Symbol stores do not exert as strong a competitive constraint on Tesco as do stores of other retailers.
- (iii) Independent retailers were given a weighting of 0.5, to reflect the evidence found in that case (based on survey evidence, third party views and information on the range and services available in such stores),²⁴³ that independents exert a weaker competitive constraint than Symbol groups do.²⁴⁴
- (iv) Iceland was not given a weight in the CMA's base case, on the basis that the CMA's investigation found (based on the Parties' internal documents, survey evidence, entry/exit analysis and third-party submissions)²⁴⁵ indicated that Iceland may not be an effective convenience store competitor. Like with Aldi and Lidl, this reflected the fact that Iceland does not sell tobacco products and its lack of convenience focus. However, the CMA also applied a sensitivity to assess the incremental impact on their assessment if Iceland stores were treated as effective competitors.²⁴⁶

²⁴² [Tesco/Booker](#), paragraph 7.23-7.30 (particularly with respect to the constraint as between Tesco and Booker-supplied Symbol group retailers); paragraph 7.45-7.49 (regarding the constraint on Tesco of Symbol group retailers more generally).

²⁴³ [Tesco/Booker](#), paragraph 7.47-7.49.

²⁴⁴ [Tesco/Booker](#).

²⁴⁵ [Tesco/Booker](#), paragraph 7.37-7.44.

²⁴⁶ This was also the case for two further Symbol group chains: Bargain Booze and Lifestyle Express.

Table 8.4: Retail brands deemed effective competitors for local analysis of convenience store overlaps in Tesco/Booker

<i>Retailers</i>	<i>Symbol groups/fascia operated by wholesalers</i>
Aldi [^]	Bargain Booze ^{^*}
Asda	Best-One [^]
Booths	Budgens [^]
Co-op	Centra [^]
Dunnes	Costcutter
Iceland [*]	Key Store/Key Shop [^]
Lidl [^]	Lifestyle Express ^{^*}
M&S [^]	Londis [^]
McColls	Mace [^]
Morrisons	Nisa [^]
Sainsbury's	P&H Retail ^{^†}
Tesco	Premier [^]
Waitrose	Spar [^]
Whole Foods	Supervalu [^]
	Today's [^]
	VG/Vivo [^]

Source: CMA analysis: [Tesco/Booker merger inquiry](#), Table 5.

[^] These competitors received a reduced weighting of 0.8 (compared to a weighting of 1 for all other listed fascia).

^{*} These stores were included in a sensitivity test only in the Tesco/Booker analysis.

[†] At the time of publishing the Tesco/Booker decision, it was noted that P&H Retail (via its operating company, WS Retail Limited) had not been placed in administration.

Costcutter was not included in this list in Tesco/Booker. However, this was an omission in the published version of the report. It has therefore been added above.

8.273 For the purposes of the present case we note that:

- (a) With respect to the down-weightings (or absence of weightings) applied in Tesco/Booker as listed in paragraphs 8.272 above, these were based on significant evidence gathering and analysis conducted in the context of that case. Given the recent nature of that case, we consider it unlikely that the conditions of competition which led to those weightings have materially changed. We noted that it continues to be the case that Aldi, Lidl and M&S do not offer tobacco products.
- (b) With respect to Iceland, as in Tesco/Booker, we have performed a sensitivity check where we have included Iceland as a competitor, with a weighting of 0.8. We note that this did not make a significant difference to our analysis.
- (c) With respect to the Parties' arguments that there is no evidence to support the assumption that the constraints on Tesco stores would apply equally to Sainsbury's and Asda convenience stores, we note that in Tesco/Booker, the competitor weights given were the same whether or not the centroid store was a Tesco store or a Booker Symbol group retailer (with the exception of the Symbol group retailer weight). The weights were also consistent for all major competitor convenience chains (ie excluding those under Symbol groups or independently owned) that sold tobacco. This consistency of weighting would appear to support a finding that the constraints on Tesco's convenience stores are likely to be comparable to the constraints on Sainsbury's and Asda's convenience

stores. This is particularly so when considered in light of the evidence, discussed in the context of our assessment of the Parties' supermarket overlaps, which suggests that (at least with respect to Large and Medium stores), Tesco is each Party's closest competitor.

(d) We note that in Tesco/Booker, the CMA did not give any weight to Bargain stores. As this is consistent with our supermarket assessment, where we treat Bargain stores as part of the out-of-market constraint, we think the same approach is appropriate for our assessment of the Parties' convenience overlaps in this case.

8.274 For the reasons set out above, we believe that it is appropriate to apply the same brand weights as used in Tesco/Booker.²⁴⁷

Out-of-market

8.275 In Tesco/Booker, the CMA incorporated an out-of-market constraint of 10% in its base case, while also using 20% as a sensitivity.²⁴⁸ In that case, the CMA noted that survey evidence from the Association of Convenience Stores (ACS) suggested that 20% of customers travelled more than a mile (the geographic catchment for convenience stores used in the CMA's analysis) to carry out shopping. However, it also noted that the ACS survey included some mid-sized stores and therefore may have overstated the degree of out-of-market diversion from convenience stores. It was however noted that a 10% figure may be cautious in some local areas.²⁴⁹ Acknowledging the CMA's view in Tesco/Booker, we have in this case adopted an out-of-market diversion figure of 15%.

Treatment of own brand diversion

8.276 The Parties proposed that we should include own-brand diversion.

8.277 We took the approach of excluding all own-brand diversion. We note that an approach which excludes own-brand diversion when the overlapping Party store is a Large/Medium store (given the greater prevalence of SLCs centred on Large/Medium stores) and includes own-brand diversion when the overlapping Party store is a convenience store, may be preferable, however we have not implemented this in our analysis. We note that our current approach may overstate the likelihood of the Merger giving rise to an SLC in

²⁴⁷ Although we note that a small number of the brands listed in Table 8.4 did not appear in the store dataset provided the Parties, and were therefore not included in the analysis.

²⁴⁸ Tesco/Booker, Annex C, paragraphs 59-62.

²⁴⁹ Tesco/Booker, paragraph 10.19 and 11.14.

some local markets. We take this into account when considering the threshold at which we set our GUPPI decision rule.

Local GUPPIs

8.278 As with our assessment of the Parties' supermarket overlaps, we used these weights (as a proxy for diversion ratios), in combination with the following information, to produce a GUPPI value for each of the Parties' convenience overlaps:

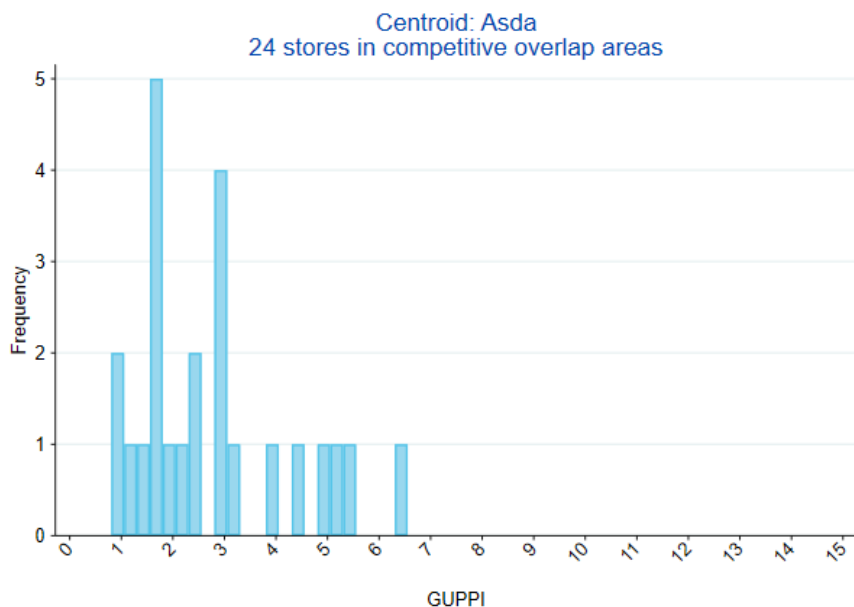
- (a) Price ratios: we used the same ratio as used for our assessment of the Parties' supermarket overlaps. However, as noted in paragraph 8.256 above, Sainsbury's operates a separate (uniform) national price file for their convenience stores, with prices being higher at its convenience stores than at its supermarkets for the majority of, but not all, products. As a result, the relative price difference between the Parties may be greater for their convenience stores than their supermarkets. We note that adopting the same price ratio as used for our assessment of the Parties' supermarket overlaps may tend to overstate the GUPPI for Sainsbury's convenience stores.²⁵⁰ We take this into account to when considering the threshold at which we set our GUPPI decision rule
- (b) Margins: we have used store-specific local margins for each convenience store. On this point, we make two observations;
 - (i) As set out in paragraph 8.208, we consider that the margins used in our assessment (for all of the Parties stores, including their convenience stores) are likely to be understated and, therefore, that the GUPPIs are also understated. In our provisional view, the same considerations apply in respect of the use of variable margins in the Parties' convenience stores;
 - (ii) Unlike our assessment of the Parties' supermarket overlaps, we have not included an adjustment to the margins to account for the so-called 'halo effect', that is, the fact that some customers also purchase GM when purchasing groceries. We note that GM is particularly stocked at the Parties' Medium and Large stores (see paragraph 8.61) and so we have not made this adjustment when considering the Parties' convenience store overlaps. However, we note that to the extent that

²⁵⁰ Where the analysis is centred on an Asda convenience store, the effect will depend on whether the overlapping Sainsbury's store is a convenience store or a supermarket. There will be no effect where the overlapping Sainsbury's store is a supermarket (as in this case, we are essentially using the 'correct' price ratio). However, where the overlap is with a Sainsbury's convenience store, the price ratio is likely to be understated, and therefore the GUPPI will also be understated.

some GM sales are made in convenience stores, this would lead to the GUPPIs being understated.

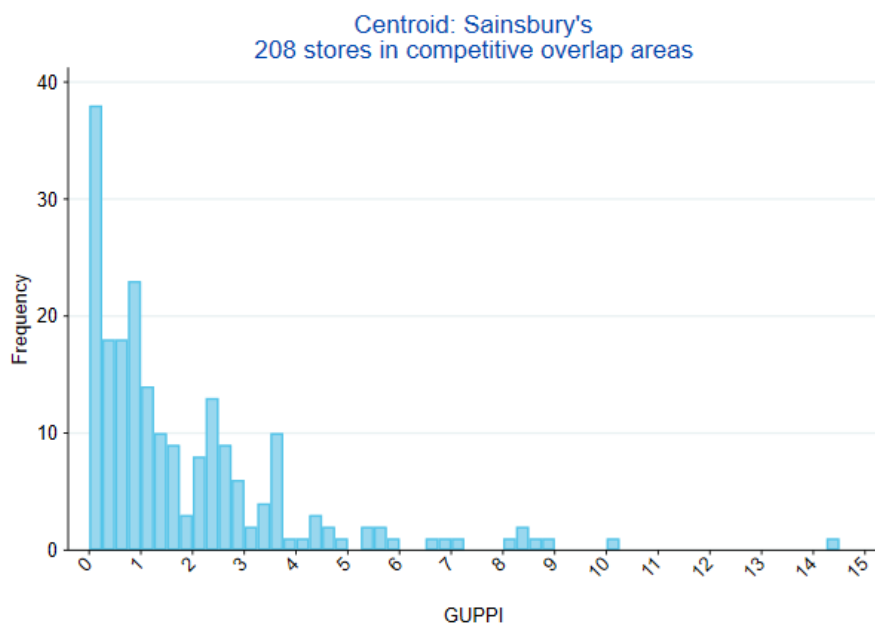
8.279 The distribution of the GUPPI figures produced for each of Asda and Sainsbury's convenience stores are presented in Figure 8.11 and Figure 8.12 below.

Figure 8.11: Distribution of the GUPPI for Asda's stores that overlap with Sainsbury's stores



Source: CMA analysis.

Figure 8.12: Distribution of the GUPPI for Sainsbury's stores that overlap with Asda's stores



Source: CMA analysis.

GUPPI decision rule

8.280 While the number of overlaps arising from the Parties' convenience stores is fewer than for their Large and Medium stores ([X]), compared to around [X]), the number of overlaps is still such that it would not be practicable to perform an assessment of each local area in turn (whether or not that would have been desirable) within the timeframe of a Phase 2 merger inquiry. As such, consistent with our assessment of the Parties' supermarket overlaps, we considered that it was necessary to devise a decision rule to establish whether the Merger is, on the balance of probabilities, likely to give rise to an SLC on any local markets for the supply of in-store groceries (convenience). In determining the appropriate threshold for concern for this decision rule, we have considered the same factors as considered for the purposes of our assessment of the Parties' supermarket overlaps:

- (a) **Efficiencies.** For the reasons set out in paragraphs 8.233 to 8.236, we provisionally found that we can rule out concerns below a 1% GUPPI, given that we believe that the rivalry-enhancing efficiencies evidenced in this case accruing to the Parties' grocery businesses (which would include through the supply of convenience stores) would have a downward effect on pricing pressure commensurate with a GUPPI of that level. We therefore believe that the GUPPI threshold should be above 1%.
- (b) **Substantiality and uncertainty.** For the reasons set out in paragraphs 8.237 to 8.248, (which we consider would apply equally to our assessment of the Parties' convenience store overlaps), above a 1% GUPPI, we would be concerned that even limited levels of pricing pressure may translate into a deterioration of the Parties' offer, and that in the context of these markets, even a small percentage increase in the price of groceries (or equivalent worsening of QRS) would have a significant adverse impact on UK consumers. We also note that, as set out in paragraph 8.243, the GUPPI accounts for only the individual first-order incentives of each merging party, and we have no reason to think either feedback effects between merging parties or second order effects from third parties would be particularly low relative to these first-order effects. As regards any potential bias, or other uncertainty, in our estimates, we note that the weights used to proxy for diversion ratios in the GUPPI calculation are based on substantial evidence gathering in the context of the Tesco/Booker merger investigation, and as set out above they provide a good basis for our analysis. While we note that these weights have not been subject to the same level of scrutiny in this investigation as the weights calculated for our assessment of the Parties' supermarkets overlaps, the Parties' margins have however been carefully scrutinised. We note that there are assumptions underlying our analysis

that individually may cause us to overestimate or underestimate the pricing pressure in certain cases (for example, see paragraph 8.277 and 8.278).

- 8.281 Taking the factors above in the round, we provisionally decided that, consistent with supermarkets, it was appropriate to set the threshold for the GUPPI decision rule for our local assessment at 2.5%. We believe this allows a sufficient margin above the lower bound of 1% (which accounts for efficiencies) for us to be satisfied, on the balance of probabilities, that in each area failing the decision rule, the Merger gives rise to an SLC in the circumstances of this particular case. This takes into account the need for any lessening of competition to be substantial, and allows for some degree of uncertainty.
- 8.282 Each of the local areas where the GUPPI exceeds this threshold are set out in Chapter 17.
- 8.283 On this basis and subject to our assessment of entry and expansion, we provisionally find that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade those parameters of PQRS that can be locally flexed at certain convenience stores, resulting in an SLC, in 65 local markets.

Countervailing factors

Entry and expansion

- 8.284 As set out in our guidance, any analysis of a possible SLC should take into account the responses of others including rivals. We need to consider whether the entry of new firms or the expansion of operations by existing firms would mitigate the initial effect of the Merger on competition, such that no SLC would arise. In assessing whether entry or expansion might prevent an SLC, we consider whether it would be timely, likely and sufficient. This also involves a consideration of any barriers to entry which may give incumbent firms advantages over potential competitors.²⁵¹
- 8.285 The Guidance suggests that entry or expansion may be considered timely where it takes place within less than two years but this needs to be assessed on a case by case basis. The assessment of likelihood takes into account whether there are any factors in addition to the scale of entry barriers that would impact on the ability and incentive of firms to enter the markets. Finally,

²⁵¹ [Merger Assessment Guidelines \(CC2 Revised\)](#), paragraphs 5.8.1 to 5.8.15.

entry should be of a sufficient scope to deter or defeat any attempt by the merged firm to exploit any lessening of competition resulting from the merger.

8.286 The UK competition authorities have previously found that there are barriers to entry and expansion in certain relevant markets for groceries retailing. In the Groceries Market Investigation, the Competition Commission found that barriers to entry or expansion constrained competition by impeding the emergence of competitors able to challenge the existing offer of grocery retailers. In particular, the planning system was found to constrain entry by new Large stores but only placed limited constraints on entry or expansion by Medium grocery stores and convenience stores.²⁵² Some evidence in our inquiry confirmed the existence of barriers to entry for Large stores and the generally reduced number of openings by the 'Big 4' retailers in recent years.²⁵³

8.287 For our assessment of the Parties' supermarket overlaps, we have gathered evidence on all planned new store openings of the Parties and of those competitors receiving a positive weighting in the analysis (ie Tesco, Morrisons, Aldi, Lidl, Waitrose, M&S, Co-op and Iceland). We considered that opening a new supermarket in a local area would provide an additional constraint in that area and should be taken into account in our analysis. In order to consider only those new store openings that were likely to open in a timely manner, we requested confirmation of whether the relevant planned store had received board approval or the relevant contract had completed and only took into account those stores where the expected opening date was in the next two years.

8.288 For our assessment of the Parties' convenience store overlaps, given the number of convenience store operators that receive a positive weighting in the analysis (including a very large number of independent retailers), we have not taken into account any planned new store openings of convenience stores (other than convenience stores operated by the Parties, and the retailers discussed in paragraph 8.287, which have been included).

8.289 For each of the planned store openings, we identified its location, its size and its brand, and added the store to the store dataset. In the WSS analysis set out above, these stores were assigned a weight and treated as an existing

²⁵² [Groceries Market Investigation](#), paragraphs 7.114-7.122; Also referred to in [Asda/Netto merger inquiry](#) (2011); CGL/Somerfield (2008)

²⁵³ The Parties' entry-exit dataset showed a far higher number of entries by Medium stores as compared to Large stores, see discussion at paragraph 8.140 above; Morrisons referred to significant barriers to entry in grocery retailing in its [Response to the Issues Statement](#), paras 3.63-3.67; M&S also referred to a general reduction in openings by the 'Big 4' in recent times in its response to our questionnaire; Tesco also referred to the fall in the number of new large stores in recent years in its response to our questionnaire.

competitor. As such, the WSS analysis already takes into account the effect of planned future entry in local areas and, therefore, overall expansion nationally.²⁵⁴

8.290 Where such timely and likely entry by rivals in a local area reduces the diversion ratio between the Parties to a point where the relevant GUPPI no longer meets the threshold used in our decision rule, the implication is that this entry would be sufficient to countervail an SLC.

8.291 We considered whether there was other evidence of plans to enter or expand in the relevant markets for in-store groceries that we should take into account. Whilst there have been some reports of potential entry or expansion in the relevant markets, we consider that any specific stores which are part of these plans and which would be likely to provide a competitive constraint on the Merged entity have already been taken into account as explained above.²⁵⁵ More general plans for entry or expansion would not meet our criteria and therefore would not affect our provisional findings in relation to our national assessment or our local assessment.

Efficiencies

8.292 Efficiencies arising from a merger may enhance rivalry with the result that the merger does not give rise to an SLC. To be satisfied that this is the case, the CMA must expect that the efficiencies will be timely, likely and sufficient to prevent an SLC from arising (having regard to the specific loss of competition that is being assessed) and the efficiencies must be merger-specific.²⁵⁶

8.293 In this case, we have considered the scale of rivalry-enhancing efficiencies in detail in Chapter 16 and found that they correspond to approximately £[~~0~~] per annum. As set out in paragraphs 8.70, 8.233 to 8.236 and 8.280 above, we have taken into account these efficiencies directly within our competitive assessment of the Parties' supermarket overlaps and convenience overlaps:

- (a) when interpreting the level of the GUPPI as part of our national assessment (in the case of the supermarket overlaps); and
- (b) when setting the threshold for the GUPPI-based decision rule for our local assessment (for both the supermarket and convenience overlaps).

²⁵⁴ The dataset has 270 pipeline stores.

²⁵⁵ Except for any planned convenience store openings of certain brands, which for the reasons in paragraph 8.288 have not been taken into account.

²⁵⁶ [Merger Assessment Guidelines \(CC2 Revised\)](#), paragraphs 5.7.1 to 5.7.5.

8.294 We therefore do not consider it necessary to assess efficiencies further here.

8.295 We have therefore provisionally found that there are no countervailing factors that would change our provisional SLC findings.

9. In-store groceries: coordinated effects

9.1 Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate, or align their behaviour, to limit their rivalry.²⁵⁷ Concerns regarding coordinated effects arise when a merger makes coordination more likely to emerge or makes pre-existing coordination more stable or effective.²⁵⁸ Coordination can be explicit or tacit. Explicit coordination is achieved through communication and agreement between the parties involved. Tacit coordination is achieved through implicit understanding between the parties, but without any formal arrangements.²⁵⁹ We are only considering the scope for tacit coordination in this investigation.

9.2 Our focus is on whether the Merger would make it easier for grocery retailers to coordinate or align their behaviour in a way which limits the rivalry between them without entering into any express agreement or direct communication. In concentrated markets where firms recognise their interdependence, repeated interaction between firms can lead them to refrain from competitive behaviours, such as initiating price cuts (as this is likely to provoke a matching price cut from competitors), or to initiate price rises (as competitors may recognise that following the price rise is the most profitable approach) without the need for any active collusion between them. This would result in prices above the counterfactual level, ie where they would be without the aligned behaviour.

9.3 The Guidelines set out that the CMA will first analyse the characteristics of the market that could be conducive to coordination. The CMA will then examine whether there is evidence that firms in the market were coordinating pre-Merger and if so, whether the merger would make coordination more stable or effective. If there is no evidence of pre-Merger coordination, the CMA will examine whether the merger makes it more likely that firms in the market will start to coordinate.²⁶⁰

²⁵⁷ [CC2 Revised](#), paragraph 5.5.1.

²⁵⁸ More stable or sustainable coordination would be more likely to continue whereas more effective coordination would result in an outcome closer to that a monopolist would achieve.

²⁵⁹ [CC2 Revised](#), paragraph 5.5.3.

²⁶⁰ [CC2 Revised](#), paragraph 5.5.4.

- 9.4 The Guidelines set out that all three of the following conditions must be satisfied for coordination to be possible:²⁶¹
- (a) Firms need to be able to reach and monitor the terms of coordination.
 - (b) Coordination needs to be internally sustainable among the coordinating group, ie firms find it in their individual interests to adhere to the coordinated outcome.
 - (c) Coordination needs to be externally sustainable, in that the coordination is not undermined by competition from outside the coordinating group.
- 9.5 We assessed whether the Merger might be expected to give rise to an SLC in in-store grocery markets through coordinated effects, using the framework set out in the Guidelines. As part of our assessment, we examined the extent to which the conditions set out in the Guidelines are met in the current market, and the extent to which they would be met following the Merger. We conducted our analysis with a form of hypothetical coordination in mind which takes into account the characteristics of the market and considers all the available evidence in the round.

Parties' views

- 9.6 The Parties contend that the UK grocery market is not conducive to coordination and the Merger will not make coordination more likely. The Parties argue this is a result of:
- (a) strong pre-Merger competition and no evidence of coordination;
 - (b) at least nine (and post-merger, eight) significant grocery players with diverse business models and therefore misaligned incentives; and
 - (c) competition encompassing the entire 'retail offer', covering a wide variety of products, quality, ranges, price points and other 'customer satisfaction' propositions, making finding a focal point for coordination extremely unlikely.²⁶²
- 9.7 The Parties consider that the conditions for coordination are not met in relation to in-store groceries, even in relation to coordination on price between the 'Big 4' retailers. They submit that it would not be feasible to reach alignment on the terms of coordination, nor would such coordination be either internally or externally sustainable given the complexity of competitive

²⁶¹ [CC2 Revised](#), paragraph 5.5.9.

²⁶² [The Parties' response to the Issues statement](#), paragraphs 217–230.

parameters, very significant differences in position and incentives of the so-called 'Big 4' retailers, and the key disruptive constraints posed by other retailers.

Third parties' views

- 9.8 Some competitors noted that the Merger would increase the likelihood of and opportunity for coordinated effects in relation to the supply of groceries. According to these third parties, the Merger will leave two very large retailers at the national level (the merged entity and Tesco), which will face very limited competition. Morrisons noted that there is a significant amount of transparency and competitor monitoring in the market.²⁶³
- 9.9 Morrisons said that the Merger will result in the creation of an effective duopoly formed by Tesco and the merged entity and as a result prices may increase between these two companies. Morrisons mentioned that it would be possible for Tesco and the merged entity to compete less fiercely and sustain this position, as they will be controlling the majority of the market.²⁶⁴ Waitrose was also of the view that if the Merger were to go ahead, the likelihood of coordination would increase. Waitrose submitted that the market would focus not only on price, but also on the range that the merged entity and Tesco would offer, resulting in increased prices over time.²⁶⁵
- 9.10 Lidl considered that if the 'Big 4' were to raise prices, sales would not be diverted to their business, as the 'Big 4' would increase prices in those ranges where they do not compete with discounters such as Lidl.²⁶⁶
- 9.11 Two suppliers considered that a merger between the second and third largest grocery retailers would be likely to lead to coordinated effects.²⁶⁷ One supplier ([REDACTED]) submitted that the UK retail grocery market was already concentrated and transparent and the increased market consolidation would make it even easier for grocery retailers to coordinate their behaviour without the need for express agreement. This supplier pointed to the fact that three out of the 'Big 4' supermarket retailers had dropped their low price guarantees to customers in the last year and submitted that this showed that the market was already characterised by conditions that facilitate collusive behaviour. It was submitted that post-Merger competitor monitoring and anticipation of competitor responses would be facilitated.

²⁶³ [Morrisons response to the Issues statement](#), paragraph 1.5(c).

²⁶⁴ [Summary of hearing with Morrisons](#), paragraph 39.

²⁶⁵ [Summary of hearing with Waitrose](#), paragraph 9.

²⁶⁶ [Summary of hearing with Lidl](#), paragraph 8.

²⁶⁷ [REDACTED].

Our assessment

Possible forms of coordination

9.12 It is appropriate to conduct our assessment of the potential for coordinated effects with a specific hypothetical form of coordination in mind. Based on our assessment of the characteristics of online delivered groceries and the evidence set out below in paragraphs 9.14 to 9.59, we considered that were tacit coordination (ie alignment without any explicit agreement among the coordinating group) to occur pre-Merger, it would most likely have the following characteristics:

- (a) Pre-Merger the coordinating group would include Asda, Morrisons, Sainsbury's and Tesco. These are the four largest grocery retailers and they are sufficiently similar such that we consider they would recognise their mutual interdependence and would likely have a shared incentive to price above the counterfactual level.
- (b) Price would be the most likely focus of coordination and would cover either all products or a subset of products not sold by Aldi and Lidl. We considered price to be the most likely focus of coordination due to the greater transparency around price.
- (c) The terms of coordination would be most likely to emerge over time through repeated interaction in the market. One or more members of the hypothetical coordinating group would either refrain from initiating price cuts or they would initiate price increases in anticipation of the other members doing the same. The responses of the other members would influence the reactions of each of the other group members so that members of the coordinating group come to the view that it is more profitable to forgo short-term market share gains in anticipation of greater profits from longer term more elevated market prices. Thereby the scope of the coordination would be defined. This mechanism would result in a price above the counterfactual level.

Pre-existing coordination

9.13 While pre-existing coordination is not required for a merger to lead to coordinated effects, in general, a merger in a market already showing coordinated outcomes would be likely to make coordination more sustainable or more effective, unless the structure and scale of the merged firm is so

different from those of its predecessors that the incentive to coordinate has been removed.²⁶⁸

Parties' views

- 9.14 The Parties submitted that the evidence in this case demonstrates clearly that the markets for in-store groceries are not subject to coordination. The Parties considered that the CMA's pricing data analysis showed that there was no pre-existing coordination and that this was also consistent with the Parties' and third parties' internal documents.

Our assessment

- 9.15 To assess whether there was evidence of pre-existing coordination, we considered:

- (a) Past mergers and market investigations.
- (b) Findings of past competition investigations.
- (c) Internal documents.
- (d) Pricing analysis.
- (e) Analyst reports.
- (f) Past observed outcomes.

Past mergers and market investigations

- 9.16 Concerns have been raised in previous inquiries in the groceries sector about the potential for coordinated effects. In 2003, the CC found that the acquisition of Safeway by Asda, Sainsbury's or Tesco might be expected over time to lead to coordinated behaviour.²⁶⁹ The CC 2008 Groceries market investigation concluded that the conditions necessary for tacit coordination to arise and be sustainable may be present in the groceries market.²⁷⁰ However, neither found evidence of pre-existing coordination.

²⁶⁸ [CC2 Revised](#), paragraph 5.5.8.

²⁶⁹ See [Safeway merger inquiry](#).

²⁷⁰ See [Groceries market investigation](#).

Findings of past competition investigations

- 9.17 We note that past proven or suspected cartel actions in the market(s) for the retail supply of groceries in physical stores may indicate that the conditions for coordination were met in that market, although this inference cannot automatically be drawn.²⁷¹ Any such evidence must be assessed alongside the current market characteristics. There have been two Competition Act cases in this sector which both involved behaviour in the early 2000s.²⁷²
- 9.18 We did not place weight on these cases because of the following factors:
- (a) the behaviour concerned occurred many years ago (most recently 2002/03);
 - (b) the cases concerned actual exchanges of information between retailers and suppliers rather than the form of tacit coordination which we consider to be most plausible; and
 - (c) there were successful appeals covering some of the findings of anti-competitive behaviour in relation to both cases.

Internal documents

- 9.19 We examined internal documents from the Parties and their competitors for evidence of behaviour that could be consistent, or inconsistent, with coordination.
- 9.20 In the internal documents we found evidence of the following:
- (a) While the Parties constantly analyse and attempt to anticipate their competitors' behaviour, they often appear to have a high degree of uncertainty around what their competitors will do. For example, the minutes of a Sainsbury's strategy conference state that: '[X]'. If there was pre-existing coordination, we would expect the Parties to be able to predict to some extent how their competitors would respond to their

²⁷¹ [CC2 Revised](#), paragraph 5.5.7.

²⁷² In 2010, the OFT found that two tobacco manufacturers and ten retailers, including Asda and Sainsbury's, engaged in unlawful practices in relation to retail prices for tobacco products between 2000 and 2003. A number of parties, including Asda, challenged the decision and it was overturned on appeal (see [Imperial Tobacco Group plc and Imperial Tobacco Limited v OFT](#), and related cases [2011] CAT 41); In 2011, the OFT issued an infringement decision finding that four supermarkets (including Asda and Sainsbury's) and five dairy processors had co-ordinated price increases for certain dairy products through indirect exchange of retail pricing intentions in 2002 and/or 2003. Each of the infringements involved an indirect information exchange whereby the supermarkets exchanged retail pricing intentions with each other via the dairy processors. All of the addressees of the OFT's decision, apart from Tesco, entered into early resolution agreements with the OFT, whereby the OFT granted a reduction in the fine in return for an admission of liability. Tesco appealed the decision and was partially successful (see: [Dairy retail price initiatives \(Decision of the OFT\)](#), CA98/03/2011, 26 July 2011).

initiatives. As such, we considered this evidence to be more consistent with competition than pre-existing coordination.

- (b) Sainsbury's considering the messages it wants to send to the market about pricing. For example, Sainsbury's [redacted] stated that Sainsbury's 'should signal that [redacted]'. We considered that such signalling could be an attempt to influence the pricing decisions of competitors and coordinate on higher prices. However, Sainsbury's submitted that the example given above was targeted at investors rather than competitors and should be read in the context of [redacted]. We took this into account and, on balance, considered this form of communication to be consistent with competition.
- (c) The Parties carrying out actions designed to (adversely) surprise competitors, for example taking 'the competition off guard' or giving 'competitors a headache'. These actions appear inconsistent with coordination, where we would expect competitors to attempt to make their conduct more predictable. The Parties submitted that these documents were clear examples of pricing conduct in the cyclical dynamic of the grocery market with some retailers doing better than others before the latter recover and reverse the position.

9.21 The internal documents we have reviewed show that the Parties closely monitor and attempt to anticipate their competitors' behaviour. However, we did not find evidence that the current extent of anticipation was inconsistent with competition. Furthermore, we found evidence of the Parties taking actions designed to hurt competitors that we considered to be inconsistent with pre-existing coordination.

Pricing analysis

9.22 We examined price movements at product level for any movements that may be consistent, or inconsistent, with pre-existing coordination. We consider that evidence of price rises by grocery retailers being consistently followed by other grocery retailers within a short period of time could, in some situations, be consistent with coordination (eg where they are not a result of common cost shocks).

9.23 Our analysis was based on SKU-level [redacted], which allowed us to compare prices between pairs of 'Big 4' retailers.²⁷³ The data comprises weekly price information (either including or excluding temporary promotions) across all product categories for the last two years (from 24 October 2016 to 15 October

²⁷³ [redacted]

2018). In the data we reviewed, we found that the members of the hypothetical coordinating group had not consistently changed their prices following price changes made by their competitors.²⁷⁴ For example, when [X] increased its price, [X] only increased its price within two weeks 7% of the time. We found comparable results for an assessment of higher revenue products,²⁷⁵ branded products and for a general analysis of price decreases.²⁷⁶ The low rate in the accommodating response to price movements between the 'Big 4' was also consistent across the following scenarios: (i) allowing for simultaneous price movements (ie within the same week); (ii) extending the time window allowed for competitors to adjust their price from two weeks to three or four weeks; (iii) [X]; (iv) including temporary promotions; and (v) disregarding price changes smaller than 5%. These do not significantly alter the response rate (see further results in Appendix G).

9.24 We also considered that price increases having been reversed within a short period of time in the absence of a response by competitors could be consistent with attempted coordination. As a starting point, we looked for instances where a member of the 'Big 4', increased its price and then reduced it again within six weeks. However, this type of price movement was rare (for example, for [X] we only saw this behaviour on 400 occasions over the last two years across over 14,000 products) and is significantly less frequent than instances where a retailer dropped its (non-promotional) price and then increased it again within six weeks (for example, for [X] we saw this 900 times for the same time period and products). We therefore did not consider whether these price movements were influenced by competitor behaviour.

9.25 Although we consider that the pricing analysis is sufficiently robust to take into account in our assessment of pre-existing coordination, there were certain limitations to our analysis. For example, we did not have cost data on the products meaning we could not identify price increases caused by increased costs. As such, while we consider that the pricing analysis does not support a finding of pre-existing coordination, we have considered it alongside other evidence.

Analyst reports

9.26 We examined whether there is evidence of signalling of pricing intentions through statements made publicly or to financial analysts. We considered that such signals may be consistent with coordination: for example, if such signals

²⁷⁴ [X]

²⁷⁵ [X]

²⁷⁶ For higher revenue products, we found that [X] increased its price within two weeks 15% of the time. For price decreases, the proportion of responses from [X] within two weeks was lower.

could be used as a means to reach a common understanding that competitors will compete less intensely.

- 9.27 We found examples of grocery retailers signalling intentions that could be interpreted as dissuading rivals from pro-competitive behaviour, such as reducing prices. For example, following a call with the CEO and CFO of Sainsbury's one analyst reported that 'Sainsbury's (and other retailers)' commitment to go toe-to-toe signals to Asda that there is nothing to be gained from starting such a price war'. However, we also found examples where the analysts suggested that the signals point towards increased competition. For example, one analyst reported that they 'believe there are signs that ASDA may be about to fundamentally reposition on price, bringing down sector profits'.
- 9.28 In relation to potential signalling through analysts, the Parties submitted firstly that there was no evidence that the Parties actually engaged analysts specifically to send any pricing signals, the analyst reports were independent and often speculative and should therefore be treated with scepticism; and secondly, that these reports do not play a material role in the Parties' commercial or operational decision making and are predominantly used in the context of investor relations. Finally, the Parties submitted that given the extent of product variation and differentiation between grocery retailers across which a coordinated strategy would have to take place, such vague and high-level speculation would be insufficient to allow retailers to reach a common understanding on the terms of coordination.
- 9.29 We considered that communication through analysts could be used to signal future intentions including intentions that could dissuade rivals from pro-competitive behaviour. However, the examples we found were not consistent with attempting to reach terms of coordination. Furthermore, we considered that these communications with analysts may serve some other legitimate purpose, for example communicating intentions to investors. We did not consider the behaviour we observed to be evidence of pre-existing coordination.

Past observed outcomes

- 9.30 We also analysed relevant market outcomes to assess whether these were consistent, or inconsistent, with pre-existing coordination. In particular, we considered margins, market shares and relative price levels.
- 9.31 Very high margins might be consistent with coordination, if firms are making additional profits as a result of their coordination, whereas very low margins could be inconsistent with (effective) coordination. However, in this case we

considered that an assessment of the levels of margins would be of limited value due to the difficulty in assessing the ‘competitive’ level of margins against which to compare.

- 9.32 Large grocery retailers’ margins moving in parallel over a period of time may be consistent with firms coordinating. However, the evidence does not suggest that the margins of different large grocery retailers have consistently moved together over the last few years. For example, Figure 9.1 shows that between 2013/14 and 2014/15 Tesco’s margin fell considerably more than Sainsbury’s although Tesco’s margin may have been affected by the accounting errors and other losses that were revealed during this time period.²⁷⁷ It is therefore difficult to draw any conclusions for the assessment of potential coordination from this data and we did not put much weight on this evidence.

Figure 9.1: Operating Margin/Trading Margin (%) (2008/09 – 2015/16)

[✂]

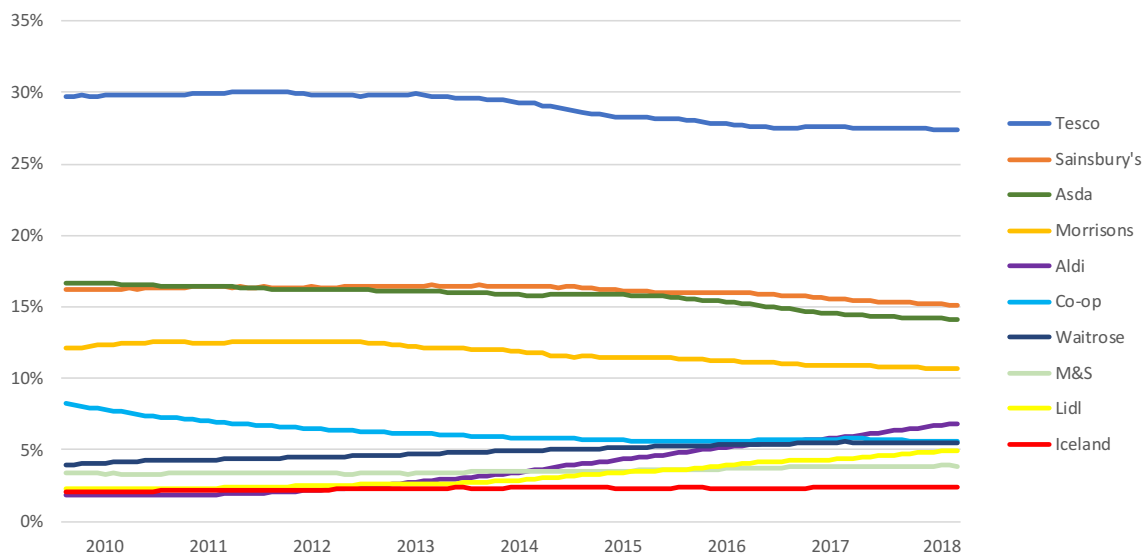
Source: Sainsbury’s.

- 9.33 Stable shares of supply over a period of time between grocery retailers may suggest coordination between those firms. As can be seen in Figure 9.2, the shares of supply of the ‘Big 4’ have been stable over time, particularly relative to each other. The Parties accepted that grocery shares over time ‘does not show a large percentage drop in market share over the past five years’, but they submitted that percentages alone understate ‘stability’. The Parties submitted that small changes in market share in a market of this size give rise to large impacts²⁷⁸ and so the changes in market share shown in Figure 9.2 have had a significant impact on the ‘stability’ of the Parties and their competitors. We took this into account, but we still considered that the level of stability shown in the market shares could be consistent with pre-existing coordination. However, these stable shares of supply may also reflect the outcome of competition between similar competitors each with a mostly fixed set of stores and, we did not put much weight on this as evidence of pre-existing coordination.

²⁷⁷ The Guardian (22 April 2015), [Tesco results: the five reasons behind Tesco's historic £6.4 billion loss](#).

²⁷⁸ The Parties submitted that a 1% drop in market share results (on the basis of Kantar market size data) in a loss of £1.1 billion (equivalent to [✂]% or [✂]% of the Parties’ total revenues).

Figure 9.2: Total Grocery Shares of Supply 2010 to 2018



Source: The Parties (Kantar).

9.34 Stable relative price levels over a period of time would be consistent with firms coordinating on price. The evidence from the relative price levels of the ‘Big 4’ does not appear consistent with pre-existing coordination. As can be seen in Figure 9.3, the relative price levels averaged across their full range of products appear to change frequently including large sustained changes, such as the decline in the price gap between Sainsbury's and Asda in 2014.

Figure 9.3: Price gap to Asda



Source: Asda's market volume-weighted pricing gap data (midweek gaps).

9.35 The Parties submitted evidence showing substantial noise in the price gaps between grocery retailers at a product category level. Figure 9.4 below shows the price difference between Sainsbury's and Tesco in each of the main branded product categories.

Figure 9.4: Sainsbury's Value Indices for Tesco for branded product categories, March 2015 – January 2018



Source: Sainsbury's.
Note: [redacted].

Provisional conclusion

9.36 While we found some evidence that could be consistent with pre-existing coordination (significant levels of competitor monitoring and stable shares of

supply), this evidence would also be consistent with competition. We have not seen evidence of significant or persistent pricing alignment or stable relative price levels or stable margins between the 'Big 4' for in-store groceries. Overall, we considered the evidence to be more consistent with competition and we therefore provisionally find that there is no pre-existing coordination in the markets for in-store groceries.

Conduciveness to coordination

9.37 Notwithstanding our provisional conclusion that there is no evidence of current coordination, we have considered to what extent the characteristics of the in-store groceries market are conducive to the hypothetical form of coordination set out in paragraph 9.12. This section considers the pre-Merger situation, with the change resulting from the Merger considered in the following section. The evidence from the previous section on pre-existing coordination is also relevant to this section.

Condition 1: Ability to reach and monitor the terms of coordination

9.38 For coordination to emerge, the coordinating online grocery retailers need to be able to reach a common view on the scope of such coordination. This need not involve a precise outcome, but needs to be sufficiently clear to enable their behaviour to be aligned. To sustain coordination, they will also need to be able to observe each other's behaviour sufficiently to ensure that deviation from the coordinated outcome can be detected. If deviation goes undetected then there will be no incentive to sustain a non-competitive outcome.

Parties' views

9.39 The Parties submitted that even when looking at the possibility of coordination amongst just the 'Big 4', the market conditions for reaching alignment on coordinated terms are not present. The Parties submitted that given the underlying changes in the UK groceries market, the essential feature of stability required for coordination was not present. Further, there were key differences between the 'Big 4' which meant that the structural symmetry necessary to reach alignment was absent. The Parties submitted that coordination over price alone would not be possible given the differentiated nature of the market and fact that retailers compete over other parameters of competition (QRS). Finally, there was a lack of transparency over pricing making it difficult to reach any common understanding either over pricing generally or a sub-group of prices or products.

Our assessment

- 9.40 We considered several factors which could affect the ability of grocery retailers to reach and monitor terms of coordination: stability of market conditions, symmetry between the coordinating retailers, the number of firms, transparency over parameters of competition, complexity and interactions between grocery retailers. We assessed these factors with the hypothetical form of coordination outlined in paragraph 9.12 above in mind.
- *Stability of market conditions*
- 9.41 Where market conditions are relatively stable it is generally easier to coordinate behaviour. Continually changing market conditions would potentially disrupt any common understanding and make it harder for firms to maintain coordination over time.
- 9.42 We found that shares of supply are relatively stable between the 'Big 4', although the shares of Aldi and Lidl have gradually grown since at least 2010 (see Figure 9.2 above). The Parties did not agree that their market position (or that of the other 'Big 4' retailers) is stable. They submitted that the changes in market share shown in Figure 9.2 have had a significant impact on the stability of the Parties and their competitors. We also note that only limited numbers of new large or medium-sized stores have been opened by the 'Big 4' in recent years although many medium-sized stores have been opened by Aldi and Lidl. Demand is relatively stable for the supply of groceries in physical stores although we noted that, as the Parties highlighted, there have been changes in consumer shopping habits such as decreasing basket sizes and own-brand switching. Finally, we have not seen evidence of significant disruption from innovation (which is not to say there is not ongoing innovation).
- *Symmetry*
- 9.43 The more similar the grocery retailers in the hypothetical coordinating group, the more likely they are to be able to arrive at a common perception of what the terms of coordination should be. However, it may be possible to account for differences between members of the coordinating group in any terms of coordination, for example price coordination need not be on the same price level, but could involve maintaining a relative price level with lower cost grocery retailers setting a lower price and higher cost retailers setting a higher price.
- 9.44 Each of the 'Big 4' operates a national chain of large and medium grocery stores and has a long-term commitment to the grocery sector. Whilst there are

some differences in their strategies and models, for example Tesco and Sainsbury's are active in the convenience sector whilst Asda and Morrisons are not, in general their customer propositions are not significantly differentiated. As the Parties highlighted there are also some structural differences such as the extent of vertical integration of Tesco/Booker (retail, wholesale and international operations) or Morrisons (retail, wholesale and upstream production), Sainsbury's ownership and operation of Argos and Sainsbury's Bank, materially different balance sheet propositions (eg different mixes of freehold vs leasehold properties) and the fact that Tesco now has a separate discount brand (Jack's). The Parties considered that these differences would each impact on the operational approach and incentives of the retailers. However, we did not consider that these differences would necessarily affect their incentives to coordinate in relation to their large and medium grocery store operations.

9.45 The hypothetical coordinating group differ in size. Tesco accounts for approximately 27% of total grocery sales with Sainsbury's, Asda and Morrisons each some way behind accounting for approximately 15%, 14% and 10% respectively (see paragraph 4.27). We considered that this market structure means that at present Tesco faces three other members of the hypothetical coordinating group that are all of a similar size and as a result there are multiple relationships of similar importance.

- *Number of firms*

9.46 The lower the number of firms which are coordinating, the easier it will be to reach a tacit understanding.²⁷⁹ As a starting point, it will generally be easier for a firm to monitor what its rivals are doing when there are fewer of them and it will therefore be easier to interpret market interactions and reach the terms of coordination between a smaller group of retailers.²⁸⁰

9.47 We considered that the most plausible hypothetical coordinating group in the markets for in-store groceries would consist of four members. This means there would be four sets of incentives that would need to be aligned within any common understanding forming the basis of coordination.

9.48 Potential coordination would be more likely where the hypothetical coordinating group is smaller as it would involve aligning fewer sets of behaviour based on a smaller number of relationships between the members. This could increase the likelihood of any common understanding emerging

²⁷⁹ [CC2 Revised](#), paragraph 5.5.11.

²⁸⁰ [CC2 Revised](#), paragraph 5.5.13.

given the greater likelihood that incentives would be aligned and the smaller number of interactions that may be required to effectively coordinate behaviour. This number of relationships and interactions required are important because participants would need to anticipate and react to the others' responses in the market in order to reach alignment without any direct discussion between the members of the hypothetical coordinating group.

- *Transparency*

- 9.49 Being able to observe the actions of competitors helps grocery retailers develop mutual awareness that may then help them reach a common understanding. The more transparent the market is the easier it will be to monitor any terms of coordination.
- 9.50 We have found that grocery retailers closely monitor other grocery retailers' prices and there is a considerable degree of transparency for prices of individual products. Although it can be complex, grocery retailers are able to match even differentiated products with the equivalent from their competitors' range. However, not all products are matched: as can be seen in Table 9.1, [redacted]. In the Parties' internal documents there are also examples of the difficulty of matching products across grocery retailers. For example, [redacted].

Table 9.1: [redacted]

[redacted]

Source: [redacted]

- *Complexity*

- 9.51 Reaching and monitoring terms of coordination will be harder where the market comprises a larger number of differentiated products.
- 9.52 The overall offer of the retailers covers many products and the multiple parameters of competition, ie PQRS. For example, Sainsbury's master assortment includes approximately [30,000 to 40,000] unique products and in-store service consists of multiple factors, including car park, exterior, toilets, colleague performance, availability and technologies, such as self-service checkouts and 'scan as you shop' technologies.
- 9.53 We found that pricing is further complicated by the need for alignment of price changes within the coordinating group to also fit with grocery retailers' other considerations when setting prices. We found the following elements of grocery retailers' pricing that would complicate aligning prices with other members of the hypothetical coordinating group:

- (a) Interdependencies of pricing between products, for example between tiers of own brand, between own brand and branded, between substitute and complementary products.
- (b) Frequent use of promotions.
- (c) Grocery retailers' wider priorities for their pricing beyond responding to competition. For example, Sainsbury's 'want to achieve prices that are fair, logical and genuine'. Priorities such as reducing the number of price changes would be likely to conflict with following the price changes of other grocery retailers.

9.54 We found that coordination on the overall price level of all products would be complicated by the need to weight individual prices according to level of sales to reach a view on the overall price level. Different weightings can result in different understandings of price levels and importantly different perceived price movements. The resulting differences in understandings of relative price levels can be seen in Figure 9.5 which plots both Parties' view of the price gap between Sainsbury's and Asda. While the Parties' perceptions of the price gaps are generally correlated, there are periods where they are moving in opposite directions.

Figure 9.5: The Parties' perceived price gaps

[✂]

Source: The Parties.

Note: More information can be found in Appendix G.

9.55 Grocery retailers recognise this problem and can use alternative weightings, as can be seen in Figure 9.6 below. While these could be used to reach more similar views on overall price movements, problems would remain due to imperfect information on competitors' sales and limited matching.

Figure 9.6: Sainsbury's calculating price index using different weightings

[✂]

Source: Sainsbury's.

9.56 The Parties submitted that Figure 9.6 is not representative of how Sainsbury's conducts price monitoring [✂]. Further, it submitted that Figure 9.6 [✂] thereby showing that it would not be feasible to monitor the terms of any coordination in this way.

9.57 Coordination on any subset of products would also be affected by the challenge of accounting for the relative importance of different products, ie reaching a common understanding of the appropriate weighting to use. There would also be the additional complexity of having to reach the common

understanding of what is included in the subset. This is a particular challenge where the subset is not readily defined, for example reaching a common understanding of which products are branded would be easier than reaching a common understanding of which products do not have a close substitute stocked by Aldi and Lidl.²⁸¹ A subset of 'known value items' would be easier to identify (eg milk, bananas, bread), but there are still extensive interdependencies with multiple types and sizes of each product.

9.58 In summary, we found that there would be significant challenges for the hypothetical coordinating group to reach a common understanding, in spite of the high levels of transparency and sophistication in the market, in relation to each of the different potential focal points for coordination for the following reasons:

(a) Coordination over individual products and smaller subsets is challenging due to: the volatility of pricing, including from promotions;²⁸² interdependencies with other products that differ between grocery retailers; and the need to choose which products are in scope of coordination.

(b) Coordination on the overall price level of groceries and larger subsets is challenging in terms of the appropriate weightings and the risk of divergent understandings in relation to different underlying data on sales.

Interactions between grocery retailers

9.59 Opportunities for members of a hypothetical coordinating group to interact with each other may help that group reach a common understanding of the terms of coordination.

9.60 We examined the following opportunities to interact:

(a) Communications through suppliers – previous investigations in this sector have found that suppliers have played a role in facilitating anti-competitive behaviour (see paragraph 9.17). However, we have not seen evidence of this type of communication and it is not relevant for the form of coordination we considered most plausible in this case.

²⁸¹ To coordinate on products without a close substitute stocked by Aldi and Lidl, each member of the hypothetical coordinating group would need to monitor the range of Aldi and Lidl (which would not be required if coordination was on branded items) and judge for each of their own products whether any of the products stocked by Aldi and Lidl were sufficiently close substitutes (which would be a more difficult judgement to align than whether a product is branded).

²⁸² We observed this volatility in pricing data referred to in paragraph 9.23.

- (b) Price leadership – if one supermarket (although which particular one may change over time) makes price changes that are then followed by the others, this price leadership could allow a common understanding to be reached more easily because the understanding could be based on repeated interaction in the market and following the price leader to a supracompetitive price level. While our pricing analysis (see paragraphs 9.22 and 9.23), did not find evidence of this, previous research has found evidence of price leadership in British supermarkets.²⁸³
- (c) Signalling through price movements (see paragraph 9.24).
- (d) Price matching schemes, such as Sainsbury’s Brand Match²⁸⁴ and Asda Price Guarantee (APG)²⁸⁵ – when in force, may have allowed grocery retailers to signal the scope for limitation of price competition with other grocery retailers, including over which products and with which competitors.²⁸⁶ This would help those grocery retailers reach a common understanding about the potential terms for coordination. Although the Parties’ schemes are no longer in place, it is possible that grocery retailers would seek to reintroduce them post-Merger.
- (e) Analyst reports/public statements (see paragraphs 9.26 to 9.29).

Provisional conclusion

9.61 There are many features of these markets that make reaching a common understanding feasible, including the relatively stable, transparent environment and the similarity in business models within the hypothetical coordinating group. We consider the main barrier to reaching and monitoring a common understanding to be the complexity of pricing across such a wide range of differentiated products. We do not consider the problem posed by this complexity to be entirely intractable; grocery retailers already deal with a

²⁸³ Seaton and Waterson (2013), *Identifying and characterising price leadership in British supermarkets*.

²⁸⁴ Sainsbury’s historically operated a brand match scheme between October 2011 and April 2016. At launch a customer’s total basket cost of branded items was matched to that of the same basket cost of Tesco and Asda. On 2 October 2014, Sainsbury’s removed Tesco from the match and only matched the branded basket cost with Asda. In April 2016, Sainsbury’s terminated its Brand Match scheme.

²⁸⁵ The APG was available until 3 October 2018. This compared purchases from Asda to Morrisons, Sainsbury’s, Tesco and Waitrose. If a customer’s grocery basket of comparable items as a whole was not 10% cheaper than the referenced retailer, Asda would refund the difference between the Asda basket and the compared basket through the provision of vouchers for use at a subsequent visit up to 28 days from the comparison.

²⁸⁶ Tesco operated the ‘Tesco Price Promise’ from 2012 which was relaunched as the ‘Tesco Brand Guarantee’ in 2015. This scheme was withdrawn in June 2018. Morrisons offered a similar scheme called ‘Morrisons More’ from October 2014 until October 2015. Waitrose offers a price match scheme against Tesco which was launched in October 2012. Ocado offers a ‘Low Price Promise’ where vouchers are provided if Tesco prices on certain products are cheaper.

high degree of complexity when pricing unilaterally and further advances in technology will likely increase their ability to do so. However, at present we consider this complexity to be a significant barrier. On balance, based on the factors discussed above, we provisionally conclude that it is not likely that grocery retailers would be able to reach and monitor terms of coordination over the pricing of in-store groceries at present.

Conditions 2 & 3: internal and external sustainability

9.62 Given that all three of the conditions must be satisfied for us to conclude that tacit coordination would be more likely than not,²⁸⁷ we therefore considered whether the Merger would have a sufficient impact on this first condition, such that it would be satisfied post-Merger, before considering whether any hypothetical coordination would be internally or externally sustainable. As set out below, we did not consider that the Merger would have a sufficient impact to make the first condition likely to be met following the Merger. Given this provisional finding, we have not needed to conclude on the internal or external sustainability of coordination in the markets for in-store groceries.

Evidence on merger effect

9.63 As noted above, based on the evidence related to pre-existing coordination, we provisionally consider it appropriate to proceed on the basis that there is no pre-existing coordination in the markets for in-store groceries. We also provisionally consider that pre-Merger the hypothetical coordinating group would not be able to reach and monitor the terms of coordination. We therefore considered whether the Merger would have a sufficient impact on this first condition, such that it would be likely to be satisfied post-Merger.

Impact on the ability to reach and monitor coordination

Parties' views

9.64 The Parties considered that none of the conditions for coordination were currently present on the market. Further they submitted that in light of the nature of competition on the UK groceries market and the evidence before the CMA, it is clear that the Merger will not have a sufficient impact on the three conditions for coordination such that they become satisfied.

²⁸⁷ [CC2 Revised](#), paragraph 5.5.9.

Our assessment

- 9.65 We considered whether the first condition of coordination, the ability to reach and monitor coordination, would be satisfied following the Merger. We examined whether the Merger would strengthen the ability to reach and monitor coordination as a result of:
- (a) there being fewer members of the hypothetical coordinating group – four instead of three; and
 - (b) the Merger creating two large entities with similar shares of supply – after the Merger the combined entity would be a similar size to Tesco, with a share of supply of groceries of 29% compared to Tesco’s 27% share (see paragraph 4.27 and Figure 4.3).
- 9.66 As a result of the Merger, the number of grocery retailers in the hypothetical coordinating group would be reduced from four to three. The Parties submitted that their dual brand strategy post-Merger would not make alignment between the Parties and Tesco/Morrisons easier as there would continue to be two separate price files and brand strategies and therefore similar levels of complexity around the competitor response. We considered that whilst the brands may maintain separate pricing in future, these pricing files would be controlled by the same firm (and competitors would be aware of this) and therefore pricing could be more easily aligned post-merger compared to currently.
- 9.67 Post-Merger, the merged entity and Tesco would be of similar size in the supply of groceries in physical stores. Although Morrisons would now be an outlier in terms of size, we consider that the symmetry between the merged entity and Tesco would make reaching a common understanding easier because any understanding that emerges between these two firms could then form the basis of a wider understanding including Morrisons. We consider this to be a difference to the pre-Merger situation where Tesco’s three largest competitors are all of a similar size and as a result there are multiple relationships of similar importance.
- 9.68 Fewer members of the hypothetical coordinating group would make reaching and monitoring an understanding within that group easier as there are fewer parties that need to share the understanding. Further, the Merger would mean one less set of incentives and one less approach to pricing to consider. However, we consider that the complexity over reaching a common view of the scope of coordination, as set out in paragraphs 9.52 to 9.58 above, would still apply to a coordinating group of three grocery retailers. It would still be difficult for the merged entity, Tesco and Morrisons to reach an understanding

of the products or prices over which to coordinate and navigate the complexity over weighting and pricing rules for monitoring purposes. Whilst interaction between three as opposed to four players would make this easier, we do not consider, on balance and in view of the sheer number of products and prices in these markets, that it would reduce the complexity to an extent that would make reaching and monitoring the terms of coordination more likely than not.

- 9.69 Based on the reasoning set out above, although we considered that, post-Merger it would be easier for the hypothetical coordinating group to potentially reach and monitor terms of coordination, overall, we did not provisionally consider that the Merger would have a sufficient impact to make this condition likely to be met following the Merger.

Internal and external sustainability

- 9.70 As we considered that the Merger would not have a sufficient impact on the ability of a hypothetical coordinating group to reach and monitor the terms of coordination, we did not need to conclude as to the internal and external sustainability of any potential coordination in these markets either pre- or post-Merger.

Provisional conclusion

- 9.71 As set out in paragraphs 9.65 to 9.69, we found that the Merger was likely to increase the ability to reach and monitor a common understanding to a certain extent. However, we did not consider that the Merger would make it more likely than not that the coordinating firms would be able to reach and monitor terms of coordination in relation to in-store groceries. We therefore did not need to assess the other conditions for coordination. As a result, we provisionally conclude that the Merger is not likely, on a balance of probabilities, to result in an SLC on the basis of coordinated effects in any of the markets for in-store groceries.

10. Online delivered groceries: overview

- 10.1 According to IGD, online groceries were worth around £11.4 billion in 2018, which represented around 6% of UK groceries. It is forecast to be the fastest growing grocery channel and is forecast to grow annually by 9% to £17.3 billion by 2023.²⁸⁸

- 10.2 There are two main models used for online delivered groceries.

²⁸⁸ IGD (5 June 2018), [UK food and grocery market to grow 14.8% by £28.2 billion by 2023](#).

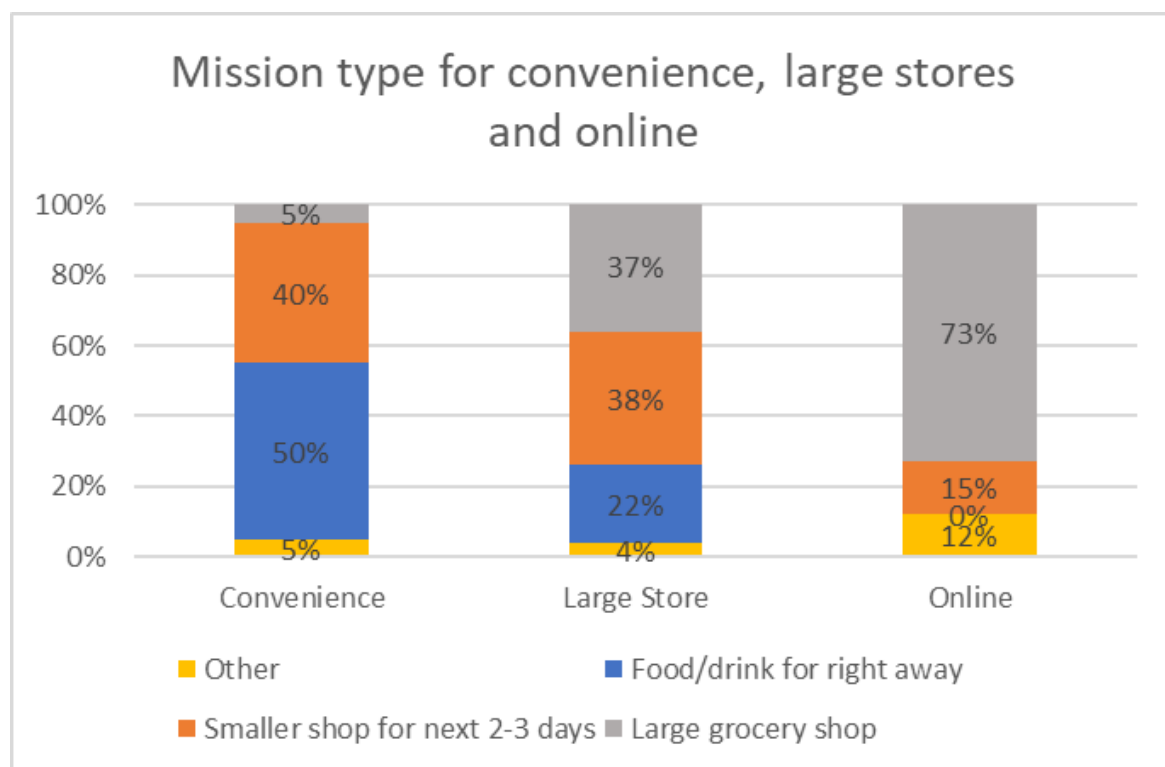
- (a) Store-pick: the retailer's employees walk around the supermarket to 'pick' the orders, and then a driver delivers the groceries to customers.
- (b) CFCs: groceries are picked in a specialised centre which only supports online sales. These centres typically service a larger geographic area than individual local stores. This is the method used by online-only grocery retailers such as Ocado, but other retailers also use CFCs in combination with store-pick.

Market definition

- 10.3 When assessing the relevant product market for online delivered groceries,²⁸⁹ we recognised that consumers shopping for groceries may use a mixture of different shopping missions at different times. For example, they may receive large online grocery deliveries and shop at a local convenience stores for perishable items. The fact that consumers engage in different types of grocery shopping missions, however, does not necessarily imply that they are substitutes for the purposes of market definition.
- 10.4 Figure 10.1 below from a Tesco internal document shows that 73% of online shopping missions at Tesco were a 'Large grocery shop' and only small proportions are for 'Food/drink for right away' and a 'Smaller shop for next 2–3 days'.

²⁸⁹ We use the term online delivered groceries to refer to groceries which are delivered to the customer's location following an order placed online. 'Click and Collect' is dealt with in our in-store analysis (see paragraph 7.5).

Figure 10.1: Online shopping missions



Source: CMA based on Tesco internal document.

10.5 With this in mind, in the assessment below we focussed on understanding the reasons why consumers shopped online for groceries and what the close substitutes were for those online shopping missions. We first consider the appropriate product market and then the appropriate geographic market.

Product market

10.6 Both Sainsbury's and Asda are grocery retailers and offer online delivered groceries across large parts of the UK.²⁹⁰ The question of whether there is a separate market for online delivered groceries has not been considered in detail in previous CMA cases and to identify the relevant product market containing online delivered groceries we considered multiple evidence sources.²⁹¹ In the text below we first consider demand-side substitution and then supply-side substitution. We then present our provisional conclusions on the relevant product market.

²⁹⁰ In addition to their standard online delivered grocery services, Sainsbury's offers a service called 'Chop Chop' where groceries can be delivered within 60 minutes. Asda does not currently offer this type of service [X]. Therefore, we have not considered this segment further (see [Sainsbury's Chop Chop website](#)).

²⁹¹ In the Co-op/NISA merger inquiry (2018), [Phase 1 decision document](#) (paragraph 125(b)) the CMA noted: 'it is not clear how strong a constraint online shopping provides for individual stores, particularly for convenience'.

Demand-side substitution

Parties' views

- 10.7 The Parties told us that online delivered groceries should not be considered a separate market from in-store groceries, for the following reasons:
- (a) Kantar online switching data showed that for Asda's sales (including 'Click and Collect') [70-80]% of switching losses were to in-store options. For Sainsbury's the same metric was 76%.
 - (b) The Parties submitted a series of Online Lapsed Surveys conducted by ABA as part of the Parties' regular course of business. These looked at lapsed online customers: one for customers who were no longer shopping at Asda online (this survey was carried out in August 2016) and one for customers who were no longer shopping at Sainsbury's online (this survey was part of a series of surveys conducted each year for Sainsbury's since 2015). We refer to these surveys as the Lapsed customer surveys. In these surveys, lapsed customers were asked where they were subsequently shopping. [50–60]% of Asda online customers who lapsed or reduced their spend at Asda online said that they did so because they were shopping more in-store and [30–40]% said they were using another online retailer. [60–70]% of Sainsbury's online customers who lapsed or reduced their online spend with Sainsbury's said they were spending more in-store and [30–40]% said they were using another online retailer.
 - (c) The parameters of competition in online delivered groceries are the same as for in-store. For example, product prices are the same in-store and online.
 - (d) Baskets purchased online and in-store had a similar product category mix, with no distinct 'online only' product offering.
 - (e) According to Kantar Worldpanel, 99.4% of online shoppers also bought groceries in store.
- 10.8 The Parties also submitted that the CMA online survey underestimated the importance of the constraint exercised by in-store options for three main reasons. First, it was not representative because it was based on customers who ordered within a specific week and included a much higher proportion of heavy online shoppers than what would be expected from the Parties' ordinary course of trading. Second, the diversion question was ambiguously worded. Third, since the survey was carried out online there could be a framing bias towards online diversion. This meant that the CMA online survey

evidence was inconsistent with other evidence sources, including Kantar data, the ABA survey, the Parties' analysis based on Asda and Sainsbury's sales data and Nielsen data.

- 10.9 The Parties submitted additional evidence derived from the Asda and Sainsbury's online customer databases. This analysis showed that [X]% of lapsed Sainsbury's online customers switched to Asda online and [X]% of Asda online customers switched to Sainsbury's online. The Parties told us that this evidence showed that their online delivered grocery websites did not strongly compete for the same customers. The Parties also submitted two analyses of customers in Northern Ireland. The analyses showed that when delivery prices increased by an average of [X], [X]% to [X]% of Sainsbury's lapsed online customers diverted to Asda online.

Third parties' views

- 10.10 Third parties had different views on the constraint exerted by in-store on online delivered groceries. For example:
- (a) Amazon told us that there was a single grocery market segment that encompassed both online and offline and consumers were increasingly switching between the online and the in-store channels on a shop-by-shop basis. Amazon told us that when it set its online offer, it also considered both online and in-store competitors.²⁹²
 - (b) Morrisons told us that customers that shop online often had a different shopping mission than customers that shop in-store. In particular, online customers valued the convenience that the online channel brought them. Morrisons therefore considered it unlikely that customers would switch from online shopping to in store grocery shopping in response to small changes in price or quality. Kantar Worldpanel data submitted by Morrisons showed that 99.6% of net switching to its online store came from other online competitors.
 - (c) Ocado told us that online delivered groceries and bricks and mortar stores competed for the same customers, so their offering tended to be similar in terms of price and range.

Our assessment

- 10.11 We assessed the evidence provided by the CMA online survey. For the reasons explained in Appendix B, we are strongly of the view that the CMA

²⁹² [Summary of hearing with Amazon](#), paragraphs 5 and 6.

online survey week is not biased towards heavy users of online delivered groceries. The CMA commissioned GfK to carry out an online survey of Asda and Sainsbury's online delivered groceries customers (the CMA online survey). A total of 31,404 online interviews were completed (20,032 Sainsbury's and 11,372 Asda).²⁹³ Table 10.1 below shows that the main reasons for shopping online were: saving time; an inability to transport heavy goods; flexibility over when customers could shop; and it was not easy to get to or around a physical store.

Table 10.1: Main reasons for buying groceries online

Reason	%	
	Asda Spend	Sainsbury's Spend
Saves time	35	42
Cannot transport a bulky shop myself	17	15
Can do my shopping when I like	14	15
Not easy to get to/around a physical store	13	12
Helps with budgeting	9	5
No physical store close to where I live/work/study	4	3
Better prices	2	0
Better special offers	1	1
Better range of branded products online	1	0
Better availability of products online	1	1
Have a voucher for online shopping	0	2

Source: CMA online survey report, 'Thinking about your spending on grocery shopping, what is the one main reason why you choose to buy of your groceries online for home delivery rather than doing the shop yourself in a physical store?'.
 Note: Percentages are spend weighted. Only responses from online delivered groceries customers are included.

10.12 The results suggest that many customers who have ordered online delivered groceries have done so for specific reasons related to the service provided by online delivered groceries. For these shopping missions, in-store would appear to be a poor alternative for customers who cannot transport bulky items and/or do not find it easy to get to/around a physical store. Furthermore, in-store shopping may take more time and restrict their ability to shop at a convenient time.

10.13 Respondents to the CMA online survey were asked about the balance of online and in-store shopping for groceries over the last three months. About three quarters of online delivery spend was to customers who responded that they had bought all, nearly all or most of their groceries online.²⁹⁴

10.14 Consistent with this, the CMA online survey showed only limited diversion from an online delivered grocery shop to in-store. In response to the 5% price increase question, and focussing only on the proportion of spend that would have switched, [20-30]% of Asda spend and [20-30]% of Sainsbury's spend

²⁹³ CMA online survey report. See Appendix B for a detailed discussion of the surveys.

²⁹⁴ Survey results from CMA online survey question.

would have switched to in-store.²⁹⁵ In response to the forced diversion question, [30-40]% of Asda spend and [30-40]% of Sainsbury's spend would have switched to in-store.²⁹⁶

- 10.15 As discussed in Appendix B, in a merger inquiry our focus is typically on the marginal customers and therefore we would typically place more weight on the responses to the price increase question. However, we have some concerns regarding whether customers understood clearly that the 5% price increase only related to online delivered groceries, not in-store groceries as well. We consider diversion estimated from responses to the forced diversion question to be the best estimates of in-store constraints provided by our survey.
- 10.16 We assessed the different pieces of evidence submitted by the Parties. The Kantar switching data submitted by the Parties looked at switching during a period of 52 weeks ending 17 June 2018. We considered that over these 52 weeks, some customers were likely to be switching from in-store to online shopping missions and vice versa due to changes in circumstances. For example, they may no longer be available at home for deliveries or they may have sold their car and can no longer easily get to a supermarket. The Kantar data does not allow us to understand whether customers switched shopping missions between online and in-store for these reasons or in response to changes in the offers of different retailers. When assessing the potential impact of a merger we are concerned about whether the merger could lead to a lessening of competition through the Parties degrading their offer. The CMA online survey is more relevant to this question as it asked current online delivered grocery customers how they would respond to changes in the current online delivered groceries offer.²⁹⁷
- 10.17 The Parties submitted data from their Lapsed customer surveys (described in paragraphs 10.7 above). We had some concerns about the relevance of this information for market definition. By their very nature a proportion of lapsed customers are likely to have already decided to stop having groceries delivered. Therefore, the responses are less informative for market definition purposes than the CMA online survey, which interviewed current users of Asda and Sainsbury's online delivered groceries services. It is also likely that some of the customer choices revealed in the Lapsed customer surveys may be driven by changes in circumstances, rather than changes in the offers of online delivered groceries retailers. Furthermore, the Lapsed customer

²⁹⁵ Survey results from CMA online survey. The 5% price increase is typically used in merger investigations to understand how customers will react to a change in the offer of the retailer they are currently using.

²⁹⁶ Survey results from CMA online survey question.

²⁹⁷ Further discussion of this evidence is contained in Appendices B and D.

surveys focus on customers, rather than sales. Finally, the Asda survey received a low response rate, around 1%, which raises questions regarding the representativeness of the respondents. We therefore consider that we cannot place weight on this survey's responses.

- 10.18 The Parties submitted a full switching analysis based on their customer order databases. The switching analysis examined customers that did not order on the Party's websites during 12-week periods and switching ratios were calculated from the proportion of customers, identified by their email addresses, who placed orders on the other Party's website. The Parties excluded from this analysis those customers who placed orders on both the Parties' websites in the preceding 12-week period to avoid including customers having used the two websites as complements. The Parties also looked at a range of sensitivities to the analysis including the exclusion of one-off orders and looking at 'seasoned' customers.²⁹⁸ The Parties did not explain why orders on other websites or in-store are not as likely to be complementary.
- 10.19 The Parties' reduced spend analysis followed a similar approach to their 'full-switching' analysis. This also included customers who had shopped on both Parties' websites in the 12 weeks prior to the reduced spend period. The Parties looked at the same sensitivities as the full switching analysis, but also included different definitions for the reduction in the level of spend relative to the 12 weeks prior. In our view, as with the full switching analysis, it is difficult to distinguish complements and substitutes in these analyses. The many instances of reduced spend may reflect the inclusion of infrequent shoppers, as well as potentially mis-interpreting changes in spend during and after the Christmas and New Year periods.
- 10.20 The Parties submitted analysis of switching from Sainsbury's to Asda's online offers in Northern Ireland. This analysis looked at the proportion of Sainsbury's online customers who switched to Asda in response to an average Sainsbury's delivery price increase of [X]. We expect this price change, which would represent around a [0-5]% change if the total delivered price was £60, is too small to have induced many customers to have switched from Sainsbury's to Asda even if they are close competitors. When assessing market definition for the purposes of a competitive assessment it is more typical to consider a 5% increase in price.²⁹⁹

²⁹⁸ Seasoned customers are defined as those customers who made five or more shops during the period covered by the data.

²⁹⁹ [CC2 Revised](#), paragraph 5.2.12.

- 10.21 We agreed with the Parties' evidence on competitive parameters: online delivered groceries and in-store groceries do currently share some competitive parameters, such as the quality of the products and the product prices. There are, however, other parameters, such as the website/app functionality, delivery prices, delivery pass prices, delivery slot availability and delivery service levels, which are specific to online.
- 10.22 The Parties' submitted evidence on the product mix between online and in-store shoppers. The Parties told us that whilst there was some over-indexing in certain categories, for example canned and packaged goods represented a higher proportion of online sales compared to in-stores sales, the extent of over-indexing was relatively small. We agree that the category mix shows relatively similar proportions across online and in-store, but this does not show whether customers are purchasing different types of products within those categories. For example, online customers may be more likely to purchase multiple packs of beer while in-store customers may be more likely to purchase single bottles of chilled beer.
- 10.23 The Kantar Worldpanel data submitted by the Parties showed that many customers used a mixture of online and in-store options. We note, however, that a different set of Kantar Worldpanel data submitted by Morrisons showed that 99.6% of net switching to its online store came from other online competitors. Our view is that we should place more weight on the CMA online survey, rather than Kantar Worldpanel data.³⁰⁰ This is because our survey asked customers more relevant questions relating to how they would respond to changes in the online offer, including price increases and the non-availability of the app or website.
- 10.24 As discussed in paragraphs 8.22 to 8.31 the Parties provided a large number of internal documents to the CMA. The evidence from Asda's internal documents [✂].
- 10.25 We also assessed the evidence from Sainsbury's internal documents. [✂].
- 10.26 In light of all the evidence discussed above, and taking account of the different strengths and weaknesses of particular pieces of evidence, our view is that demand-side considerations suggest that the relevant product market is the market for online delivered groceries.

³⁰⁰ See Appendix D for more discussion of the Kantar data.

Supply-side substitution

Parties' views

10.27 As noted in Chapter 4 there are two main models used to deliver groceries which have been ordered online – the ‘store-pick’ model and the CFC model. We use the term Supply Point to refer to both stores which are used for store-pick and CFCs. The evidence submitted by the Parties showed that the investment required for CFCs was around £[redacted] and the timelines from conception to operation were around [redacted]. The Parties told us that grocery retailers with an existing store estate could readily expand into online delivery services, either through the development of their own online fulfilment capabilities, the adoption of third party systems, or the use of third party delivery service providers such as Deliveroo, Grocemanía and Homerun.

Third parties' views

10.28 Third parties provided evidence on the assets, investment and timelines required for entry into online delivered groceries using an existing store portfolio and more detail is provided in Appendix H. The evidence is mixed and is influenced by the operating model adopted. In general, the evidence suggests that it would be quicker and easier to enter online delivered groceries if the retailer already has an existing store portfolio, although there would still be costs and time incurred adapting stores to act as a Supply Point for online delivered groceries. At the other end of the scale, construction of a CFC would entail substantial time and investment.

Our assessment

10.29 We note that the conditions for using supply-side substitution to widen the relevant market are relatively strict: ‘Supply-side substitution can be thought of as a special case of entry – entry that occurs quickly (eg less than one year), effectively, (eg on a scale large enough to affect prices), and without the need for substantial sunk investments’.³⁰¹

10.30 We do not believe that the conditions for supply-side substitution are met by entry through the construction of CFCs. Whilst we recognise that entry into the supply of online delivered groceries would be quicker for retailers with an existing store estate as they would be able to adopt a store-pick model, this would still require investment in a website, associated technological and logistical infrastructure and the adaptation of stores to enable delivery of

³⁰¹ OFT (2014), [Market Definition](#), paragraph 3.15.

groceries to customers' homes. Therefore, we did not think that the conditions would be met to use supply-side substitution to widen the relevant market to include all retailers of in-store groceries.

Provisional conclusion on product market definition

10.31 In light of all the evidence discussed above (and the more detailed review in Appendix H) we provisionally found that the relevant product market is the market for online delivered groceries. In-store groceries provides some level of constraint, but the focus of market definition is on the most important constraints on the Parties' online offer.

10.32 The eight retailers operating in this product market are AmazonFresh,³⁰² Asda, Iceland, Morrisons, Ocado, Sainsbury's, Tesco and Waitrose. While we have excluded in-store constraints from the relevant product market, we take account of the constraints from in-store in our assessment of the competitive effects. For example, we use diversion ratios based on survey questions where respondents could state that they would switch to in-store.

Geographic market

10.33 In this section we consider geographic market definition. We first consider demand-side substitution and then supply-side substitution. We then present our provisional findings.

Demand-side substitution

10.34 In this section we present evidence we have considered on demand-side substitution, covering Parties' views, third parties' views and our assessment.

Parties' views

10.35 The Parties told us that:

'The online channel is inherently local as online is constrained by the in-store channel, which is fundamentally local. Furthermore, online involves physical delivery of products to a customer's address, and for the Parties it typically involves local supply "picked" from the range in a relevant local store. Therefore, the

³⁰² We have excluded from the market definitions Amazon's Pantry and Prime Now services as these do not allow consumers to carry out a full online delivered groceries shop.

relevant geographic market is not national (or regional) in dimension any more than for instore sales’.

Third parties’ views

10.36 No third parties expressed a view on the correct geographic market definition for online delivered groceries.

Our assessment

10.37 On the demand side, customers typically order groceries for delivery to their home. Therefore, based on the basic purpose of the product, there is unlikely to be any demand-side substitution by customers to retailers that do not deliver to their address. This factor would suggest that the geographic markets are local in character from the point of view of the consumer.

Supply-side substitution

10.38 In this section we present evidence we have considered on supply-side substitution, covering Parties’ views, third parties’ views and our assessment.

Parties’ views

10.39 As discussed above, the Parties told us that grocery retailers with an existing store estate could readily expand into online delivery services using this estate. The Parties also told us that they did not understand the rationale of looking at share of supply by reference to Supply Points as distinct from the delivery area and that the key question should be the amount of retailers that can deliver to an area.

Third parties’ views

10.40 No third parties expressed a view of the impact of supply-side substitution on geographic market definition.

Our assessment

10.41 In relation to supply-side substitution, the evidence on entry and expansion in online delivered groceries discussed in Appendix H is consistent with the view that supply-side substitution constraints, through the ability to move production assets from one part of the UK to another part of the UK, are not strong enough to consider the geographic market as being UK wide.

10.42 However, we recognise that there does appear to be some scope for relatively quick entry into the supply of online delivered groceries by retailers who already offer in-store groceries and who have already invested in the infrastructure, including a website, required to offer online delivered groceries. Since supply-side substitution is a form of entry, we have taken account of these constraints in our competitive assessment in the section on entry and expansion in paragraphs 11.90 to 11.97 below.

10.43 In addition, we note that the Guidelines state:³⁰³

‘The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the Authorities may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices. They may do so when:

- production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each; and
- the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product; in this case aggregating the supply of these products and analysing them as one market does not affect the Authorities’ decision on the competitive effect of the merger’.

10.44 The Supply Point’s production assets that can be used to supply an individual address can also be used to supply other addresses within the Supply Point’s delivery area. For example, the van and driver used to supply one street can be used to supply other nearby streets. Therefore, rather than analyse the competitive conditions for groups of households at the level of the Postcode Unit or Output Area³⁰⁴, which may be suggested by demand-side substitution, we consider it appropriate to aggregate those households which are served by the same Supply Point. In this way, we are looking at the delivery area of the Supply Point which we believe is consistent with the approach suggested by the Parties. This aggregation of households surrounding a CFC or store is

³⁰³ [CC2 Revised](#), paragraph 5.2.17.

³⁰⁴ Postcode Units are the set of addresses sharing the same full postcode. Output Areas are used in the reporting of census data and are described [here](#).

analogous to the approach used in our in-store analysis. In in-store the geographic market is delineated by drive-times around each store, while in online delivered groceries the geographic market is delineated by the delivery area of each Supply Point. This approach is also analogous to the approach adopted in many retail merger inquiries.³⁰⁵

Provisional conclusion on geographic market definition

10.45 In light of the evidence set out above, balancing the evidence on demand-side and supply-side substitution, the nature of online competition, and the appropriate level of aggregation, we provisionally found that the appropriate geographic market definition is the delivery area served by each Supply Point. We consider that the conditions of competition within these Supply Point delivery areas are likely to be sufficiently similar such that they form appropriate geographic markets for the purposes of our competitive assessment. For online delivered groceries this led to 286 geographic markets for the Asda online Supply Points and 244 geographic markets for the Sainsbury's online Supply Points.

10.46 However, in this sector several elements of the competitive offering are set centrally and applied uniformly across the retailers' Supply Points. In addition, as mentioned in paragraph 10.6 above, the Parties are large, nation-wide operators operating in a large number of local markets across the UK. These factors suggest that there is a national dimension of competition. We therefore have also assessed the effect of the Merger (and any reduction in competition) in aggregate, across the Parties' Supply Points.³⁰⁶

Nature of competition

10.47 In this section we describe the nature of competition in online delivered groceries, describing the competitive parameters – price, quality, range and service – and whether these are set uniformly across the UK or varied locally. We cover the Parties' views and third parties' views and our assessment. We then present our provisional findings on the nature of competition.

³⁰⁵ For example: Ladbrokes/Coral merger inquiry, [Final report](#), paragraph 6.106; Co-op/NISA merger inquiry (2018), [Phase 1 decision document](#), paragraphs 34–35; and Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 6.24.

³⁰⁶ [CMA62](#), paragraphs 1.13–1.17.

Parties' views and third parties' views

10.48 We have set out below the Parties' and third parties' views on price, range, quality and service in relation to online delivered groceries.

Price

10.49 In this section we discuss product pricing, promotional pricing, delivery prices, delivery passes and vouchering.

Product pricing

10.50 Asda told us that its online product prices were set uniformly and were the same as its in-store prices. Furthermore, it did not [REDACTED].

10.51 Sainsbury's told us that it set product prices uniformly across the UK and it used the same pricing files for both its in-store and online delivered grocery offering. [REDACTED].

10.52 Iceland, Morrisons, Tesco and Waitrose told us that product prices were the same across both online and in-store. Amazon and Ocado told us that their prices were consistent across the UK.

Promotional pricing

10.53 Asda told us that it did not run online-specific product price promotions. However, [REDACTED]. Asda also did not run end-of-line promotions online.

10.54 Sainsbury's told us that it used the same promotions online and in-store.

10.55 Third parties provided mixed evidence in relation to promotional pricing and examples are provided below.

(a) Iceland told us that it might run different promotions online and in-store.

(b) Morrisons told us [REDACTED].

(c) Tesco told us that promotions were the same online and in-store.

*Delivery prices*³⁰⁷

- 10.56 Asda told us that it varied delivery prices by the time of day and day of the week. Asda told us that it rarely varied delivery prices by region, store, or over time. [REDACTED]. Asda did, however, vary the minimum basket sizes for online delivered groceries. In some areas the minimum was £25, while in others it was £40.³⁰⁸ Asda internal documents suggested that Asda added an additional 25 sites to the trial related to changing minimum basket sizes. These included all stores within the M25, excessive mile stores and a selection of high utilisation stores. Asda set delivery prices based on periodic reviews of the prices charged by [REDACTED]. Delivery prices were also influenced by capacity levels and supply and demand.
- 10.57 Sainsbury's told us that it operated [REDACTED] pricing clusters across the UK. [REDACTED].
- 10.58 Third parties provided mixed evidence on delivery prices and examples are provided below.
- (a) AmazonFresh, Iceland and Waitrose told us that they charged the same delivery prices across the UK.
- (b) Morrisons told us that delivery prices varied by [REDACTED].
- (c) Tesco told us that it had [REDACTED] delivery pricing in the UK: [REDACTED].

Delivery passes

- 10.59 Customers who purchase the Asda delivery pass obtain free delivery if they spend a minimum of £40 per order.³⁰⁹ Asda told us that the price setting approach for the delivery pass was the same as that for delivery prices. An Asda internal document from May 2018 suggested [REDACTED]% (calculated on a monthly basis) of Asda online customers had a delivery pass.³¹⁰ Currently Asda offers three national delivery passes: £55 for 12 months, £35 for six months and £24 for a 12 month pass where customers are restricted to midweek deliveries, all payable upfront.³¹¹ Customers are also able to pay on a monthly basis, £5 per month for a 12 month anytime pass or £6 for a six month anytime pass.
- 10.60 Sainsbury's told us that it offered delivery pass subscriptions and customers using a delivery pass represented [REDACTED]% of online baskets. The prices were

³⁰⁷ Delivery prices are discussed in more depth in Chapter 12.

³⁰⁸ See: [Asda website: What is the minimum order amount?](#)

³⁰⁹ See: [Asda website: Delivery pass.](#)

³¹⁰ [REDACTED]. [REDACTED].

³¹¹ See: [Asda website: Delivery pass.](#)

set uniformly nationally and Sainsbury's ensured its prices were competitive through monitoring [REDACTED]. Currently, Sainsbury's offers three anytime delivery passes: £60 for 12 months, £35 for six months and £20 for three months. It also offers discounted passes which restrict deliveries to Tuesdays, Wednesdays and Thursdays. These cost £30 for 12 months, £18 for six months and £10 for three months.³¹²

10.61 AmazonFresh,³¹³ Iceland³¹⁴ and Waitrose³¹⁵ do not offer delivery passes for online delivered groceries. Morrisons³¹⁶ and Ocado³¹⁷ offer annual, six month and monthly delivery passes. Tesco offers monthly and six month delivery passes.³¹⁸ Delivery passes were used for around [REDACTED]% of Tesco online sales.³¹⁹ All of the retailers that offer delivery passes do not vary delivery pass prices geographically.

Vouchering

10.62 Asda told us that in financial year 2017, vouchers accounted for just [REDACTED]% of total transactions and [REDACTED]% of sales. Asda ran [REDACTED] campaigns. [REDACTED].

10.63 Sainsbury's told us that [REDACTED]% of online transactions had a voucher associated with them. Sainsbury's told us that each vouchering campaign was [REDACTED].

10.64 Third parties had different approaches to vouchering and examples are provided below.

(a) Amazon told us that it used vouchering, but it did not target particular areas or competitors.³²⁰

(b) Morrisons told us that its approach to vouchering depended on the [REDACTED] circumstances. [REDACTED].

³¹² See: [Sainsbury's website: What is a Delivery Pass and how does it work?](#).

³¹³ See: [Amazon website: Amazon Fresh UK Grocery Shopping](#). Only members of Amazon Prime can use Amazon Fresh.

³¹⁴ See: [Iceland website](#).

³¹⁵ See: [Waitrose website: Free delivery on online shopping](#).

³¹⁶ See: [Morrisons website: Delivery Pass](#).

³¹⁷ See: [Ocado website: Ocado Smart Pass](#). (Users must create an account to access delivery pass prices).

³¹⁸ See: [Tesco website: Delivery saver](#).

³¹⁹ [REDACTED]. Note that this data relates to a period prior to 2016.

³²⁰ [Summary of hearing with Amazon](#), paragraph 3.

- (c) Waitrose told us that it vouchered based on a customer behaviour. While it did not respond to competitors directly, it responded indirectly through responding to customers.³²¹

Quality of website/app³²²

- 10.65 Asda told us that it invested in its website and [REDACTED].
- 10.66 Sainsbury's told us [REDACTED].
- 10.67 Several third parties told us that they had invested considerable sums in their digital platforms. Iceland told us that it invested millions in its new infrastructure and website to maintain its position. Morrisons told us that the quality of its digital platforms was one of the factors where it competed with online rivals. Ocado told us that the user interface was one of the areas where it competed with online rivals. Tesco told us that it had invested in the online customer experience, focussing on having a simple and easy to use website and app.

Range

- 10.68 Asda told us that [REDACTED]% of delivered grocery sales were picked from stores, where the online food range was largely similar to the store range. There were some exceptions, for example some variants of build your own pizza were not available on Asda's website. The online range was driven by stock availability in the delivering Supply Point.
- 10.69 Sainsbury's told us that [REDACTED]% of Sainsbury's online delivered groceries came from stores, with the remaining [REDACTED]% coming from its Bromley-by-Bow CFC. The online range was driven by stock availability in the delivering Supply Point.
- 10.70 Third parties typically told us that the product range available online depended on the range of the Supply Point used to pick the online delivery. For example, Ocado told us that its ranges were broadly consistent across all geographies to which it delivered. Tesco told us that the range that it had available online was the same as that in-store with the exception of items which it was not able to deliver due to size, safety/security or operational obstacles.

³²¹ [Summary of hearing with Waitrose](#), paragraph 11.

³²² In this section we focus on the quality of the websites and apps. Competition on quality of delivery, for example slot availability, is discussed below in the section on service. Product quality is discussed in Chapter 8.

Service

- 10.71 Asda told us that it tracked different KPIs covering different parts of the business including operational and financial performance and customer satisfaction. Whilst capacity investment decisions were not taken [REDACTED].
- 10.72 Sainsbury's told us that it tracked many KPIs to assess its online business, including substitutions, rejected substitutions, on time departures and on time deliveries. Capacity investment decisions were based on [REDACTED]. [REDACTED], local demand would be a function of competition in the local area.
- 10.73 Third parties provided little information on how service levels varied across the UK. Ocado told us that if its competitors improved their service levels, for example through shorter delivery slots, then it would expect to respond.³²³ Tesco told us that it monitored performance of its online business through the 'Grocery Customer Recommend Score' (Tesco's internal tracking). Tesco was typically in line with or ahead of [REDACTED], but behind [REDACTED].

Our assessment

- 10.74 The evidence provided by the Parties includes multiple examples of the Parties changing their offer across these aspects to respond to competitors.
- (a) Delivery prices. In August 2014 Asda reduced its delivery pricing to match [REDACTED]. In June 2017 Asda reduced the price of its six-month delivery pass to match the price offered by [REDACTED]. In 2016 Sainsbury's reported that it had changed its delivery pricing to bring it into line with [REDACTED].
- (b) Vouchering – In its 2018 Online Grocery Board meeting Asda set out a tactical vouchering plan to target [REDACTED]. Sainsbury's noted that it could use marketing to respond to [REDACTED], but this was not considered a viable option without [REDACTED].
- (c) Quality – Asda internal documents showed it was looking to improve its website and introduce guided searches, similar to [REDACTED]. Sainsbury's said it was developing its website and app to try and [REDACTED].
- (d) Range – Asda noted that its online availability was behind its rivals and to improve it aimed to better manage its suppliers and reduce maximum order quantities. Sainsbury's discussed improving its range to compete with [REDACTED].

³²³ [Summary of hearing with Ocado](#), paragraph 11.

(e) Service – Asda noted that its on time delivery was behind [redacted] and aimed to reduce later deliveries to improve customer satisfaction. Sainsbury’s stated that it would need to offer same day service as [redacted] were trialling this.

10.75 Within this there is some evidence of the Parties flexing their offer in specific local areas in response to local competitors.

(a) Sainsbury’s noted that it would offer [redacted] in some key geographical areas and then roll out by region. It would also consider [redacted] in some critical locations.

(b) Sainsbury’s aimed to improve its tactical marketing approach to support online grocery operations, [redacted].

10.76 We note that Sainsbury's has run [redacted] pricing trials [redacted]. This suggests that Sainsbury's has the technical ability to flex delivery prices in response to changes in competitive conditions. If this were the more profitable approach to delivery pricing, and the Merger went ahead, we consider that similar pricing policies could be implemented at Asda.

Provisional conclusion on nature of competition

10.77 Considering all the evidence above our provisional conclusion on the nature of the competition is that the Parties and third parties do or can compete based on elements of PQRS at the national and Supply Point level. For example, some parameters of competition such as the quality of their website and the price of delivery passes are set uniformly across the UK while other parameters such as the availability and pricing of delivery slots are, or can be, varied by Supply Point. We consider the implications of this for our competitive assessment in the following chapter.

11. Online delivered groceries: unilateral effects

Introduction

11.1 In this chapter we present our assessment of unilateral effects in online delivered groceries,³²⁴ by assessing whether the Merger would give the

³²⁴ As noted in Chapter 10, we use the term online delivered groceries to refer to groceries which are delivered to the customer’s location following an order placed online. Click and Collect is dealt with in our in-store analysis (see paragraph 7.5.).

Parties the incentive and ability to degrade any aspects of their online delivered groceries competitive offering.

- 11.2 We start with an assessment of whether the Merger gives rise to competition concerns, in aggregate, across the Parties' online delivered groceries businesses. This would be the case if the Parties had an incentive to deteriorate elements of PQRS across all of their Supply Points – for example, through national delivery pass price increases. In this case, we may find an SLC in each local market where one or both of the Parties is present (on the basis that harm to consumers would arise in areas where the Parties do not overlap, as well as where they do). By way of shorthand, we refer to this as our 'national assessment' or our 'assessment of competition concerns at a national level'.
- 11.3 We undertake this assessment by considering a range of qualitative and quantitative evidence (including share of supply information, internal documents, third party submissions, national switching data, and pricing pressure analysis, amongst others), to form a decision in the round.
- 11.4 We then assess whether the Merger gives rise to competition concerns in certain local markets. This would be the case if the Parties had an incentive to deteriorate elements of PQRS only at certain Supply Points – for example, through worsening delivery prices, service levels or stock availability, or reducing range in those Supply Points. In this case, we may find an SLC in each local market where this incentive may arise. By way of shorthand, we refer to this as our 'local assessment'.
- 11.5 Given the very many local areas in which the Parties overlap, it would not have been possible to assess each of these areas in turn, using the same range of qualitative and quantitative evidence used for our national assessment. We therefore adopted a method to assess, in a consistent way, the potential effect of the Merger in every local market. This involved constructing diversion ratios and producing a GUPPI for each local area. As noted in Chapter 8, the greater the incentive to deteriorate PQRS (signalled by a higher GUPPI figure), the more likely the merger may be expected to result in an SLC.
- 11.6 For the purposes of our local assessment, having produced a GUPPI measure for each local area, we assessed at what GUPPI threshold the Merger may be expected to give rise to competition concerns, and used this as the basis of a decision rule to conclude provisionally on which local markets the Merger gives rise to an SLC.

National assessment

11.7 Both Parties set product prices, promotional prices, delivery pass prices, the quality of their own-brand products, and the quality of their website and apps at the national level and apply them uniformly across their online offering (ie these parameters do not vary by geographic area). Asda also currently sets its delivery prices at the national level.³²⁵

Parameters that are uniform across online and in-store groceries

11.8 The evidence set out in Chapter 10 above indicates that the Parties set product prices, promotional prices and own-brand product quality uniformly nationally and uniformly across online and in-store grocery sales. We do not consider that this is likely to change post-Merger. We note that for Asda, online delivered grocery sales represent [5–10%] of total grocery sales in 2017 and for Sainsbury's it is [5–10%]. We therefore consider the incentive to deteriorate these parameters in respect of online sales is captured within our in-store competitive assessment.

11.9 In Chapter 8 we found that the Parties would have an incentive post-Merger to degrade PQRS across their national supermarket estates. Our provisional finding was therefore that the Merger would result in an SLC in each local area where one or more of the Parties' supermarkets is present. In the context of increasing product prices, we consider that this finding means that there is likely to be an equivalent increase in the prices of groceries sold by the Parties to their online delivered customers as the prices of these products are the same as in-store. This means that the Merger would result in an SLC in each local area where one or more of the Parties is present in online delivered groceries.³²⁶

Parameters that are specific to online delivered groceries

11.10 We have also considered whether the Merger would result in an incentive for the Parties to degrade elements of PQRS that are nationally uniform and specific to online delivered groceries. The remainder of this national assessment section considers this issue.

³²⁵ Asda varies the minimum basket size locally (see [Asda website: What is the minimum order amount?](#)).

³²⁶ It would be appropriate for the weighted average national GUPPI for these aspects of PQRS to be based on a weighted average of the GUPPI values for the Parties' supermarkets and the GUPPI values for their online business together. We have not made this adjustment, for the reasons described in Chapter 8.

11.11 Delivery pass prices and the quality of the website and apps for both Asda and Sainsbury's, and Asda's delivery prices, are set nationally and are specific to the Parties' online delivered groceries activities. In particular, delivery passes are used in [30-40]% of Sainsbury's orders and for [20-30]% of Asda customers.³²⁷ Therefore, we have assessed whether the Merger could lead to a substantial lessening of competition in every local market for online delivered groceries through the deterioration of these nationally uniform competitive parameters.³²⁸

Parties' views

11.12 With regard to competition in online delivered groceries, the Parties told us that they were not close competitors. The evidence they presented was as follows.³²⁹

- (a) Kantar switching data showed [X].
- (b) The Lapsed customer surveys showed that customers had most commonly switched to [X].
- (c) Nielsen data³³⁰ showed that, of shoppers who had used Sainsbury's online, more was spent at Tesco online than Asda online. Similarly, of shoppers that had used Asda online, more was spent at Tesco online than Sainsbury's online.
- (d) The Parties' analysis of transaction data showed that [0-5%] of lapsed Sainsbury's online customers switched to Asda online and [0-5%] of Asda online customers switched to Sainsbury's online.

11.13 The Parties also told us that they expected to see continued growth from Amazon Fresh, Ocado, Morrisons and other players. For example, they highlighted Amazon's expanding grocery offer and Iceland's expanded capacity. They also noted that grocery retailers without an online offer could expand by developing their own online fulfilment capabilities, adopting third party systems, or using third party delivery platforms (such as Deliveroo, Grocemanía and Homerun).

³²⁷ See paragraphs 10.59 and 10.60 in Chapter 10.

³²⁸ For instance, the merged entity may increase the price of delivery passes, or decide to save money by not investing in improving the website or app.

³²⁹ The quantitative evidence submitted by the Parties which is listed here and which is relevant to the assessment of unilateral effects is discussed in more detail in Chapter 10 above.

³³⁰ Nielsen share of wallet data shows, for all customers who purchase at least some groceries from each Party's online offering, what proportion of spend was also spent at other retailers. Nielsen collects this information from a panel of consumers who record/scan the purchases they have made (in a similar fashion to Kantar Worldpanel).

11.14 Asda told us that it tracked the delivery prices of [REDACTED].³³¹ Sainsbury's told us that it tracked delivery prices for [REDACTED].

11.15 The Parties submitted that there is a single market for in-store and online delivered groceries, and as such they consider there is no potential for competition concerns to arise in relation to online delivered groceries as they would continue to be constrained by in-store grocery retailers. Chapter 10 discusses the Parties' views on the constraint of in-store groceries on each of the Parties' online businesses. As explained in that Chapter, we have provisionally found that the relevant product market is the market for online delivered groceries, although in-store groceries provides some level of constraint.

Internal documents

11.16 Asda's internal documents suggest that Asda reviews [REDACTED], with much less focus on other suppliers.

11.17 Sainsbury's internal documents [REDACTED].

Third parties' views

11.18 The evidence from third parties showed, in general, that they were focussed on competition from the largest online delivered groceries retailers. For example, the internal documents of Morrisons showed that it benchmarked its online offer against the online offers of Asda, Sainsbury's and Tesco, and Morrisons told us it most closely competed against Asda, Tesco, Sainsbury's and Ocado as the other major online delivered grocery retailers. Ocado told us it aimed to remain competitive against the 'Big 4' (Tesco, Asda, Sainsbury's and Morrisons). Ocado did not list Iceland as a close competitor.

11.19 Tesco told us its closest competitors were Asda and Sainsbury's as the only two operators, along with Tesco, which offered almost national coverage. Ocado was the next most significant competitor, with coverage across the Midlands and south of England. Tesco said that Kantar Worldpanel data showed that it saw the greatest degree of switching to Ocado.

³³¹ [REDACTED].

Our assessment

Competitor offerings – business models and product range

11.20 As set out in Chapter 10 (paragraph 10.32), there are eight retailers of online delivered groceries that we consider to be competitors within the relevant product market: Asda, Sainsbury's, AmazonFresh, Iceland, Morrisons, Ocado, Tesco and Waitrose.

11.21 We have set out below a description of third parties' current online delivered grocery offerings, which we consider provides qualitative evidence on the competition between online delivered groceries retailers.³³²

- (a) Amazon told us its AmazonFresh service offered around 20,000 SKUs, including a broad range of fresh food, frozen food and other grocery items. AmazonFresh delivers groceries using a CFC based model.
- (b) Iceland told us its online range of products was more or less exactly the same as its in-store range (comprising approximately 3,500 SKUs). Iceland predominately uses a store-pick model to deliver groceries, but has one 'pick centre' also.
- (c) M&S told us it was running a trial of online delivered groceries at two stores with 4,500 SKUs available online, delivering within a three mile radius.
- (d) Morrisons told us it offered a grocery and general merchandise home delivery service via the Morrisons.com website. Its online product offer was broadly reflective of the range in one of its large format stores. Morrisons has a contract with Ocado whereby Ocado provide fulfilment services and technology to deliver orders placed on Morrisons' website. [X]% of all Morrisons sales are delivered through Ocado, with the rest being delivered by Morrisons directly through a store-pick model.³³³
- (e) Ocado told us it offered online delivered grocery services and a limited general merchandise range and its strategy was based on its unique operating model of centralised and automated warehouses.

³³² We also identified other smaller grocery operators who offered a more restricted online range or more restricted geographic coverage. For example, Abel and Cole, which focusses on organic food, and Farm Drop, which focusses on local produce.

³³³ Morrisons also has a supply contract with Amazon, whereby Morrisons goods can be purchased on AmazonFresh.

- (f) Tesco told us that in most parts of the country its online delivered grocery orders were picked from 346 stores. In some parts of London, customers were served from one of six dedicated grocery fulfilment centres.
- (g) Waitrose told us its main website, waitrose.com, sold its in-store range of grocery lines plus a range of lines for home delivery or pick up in store.

11.22 Aldi, Booths, Co-op, Lidl and Southern Co-op told us they did not offer online delivered groceries.

Competitor offerings – geographic coverage

11.23 We also considered the geographic coverage of the different suppliers, using the coverage data supplied to us by the Parties and third parties.³³⁴ This showed that Asda online, Sainsbury's online and Tesco online had the largest coverage areas, with other competitors having more limited coverage of the UK (see Table 11.1 below).³³⁵

11.24 For instance, Ocado have no presence in Scotland, Northern Ireland or much of Wales. In these areas the Parties face only Tesco, occasionally Waitrose and/or Iceland, and very occasionally, Morrisons. Morrisons, which is focused on Central and Eastern England has limited coverage in Scotland and counties that border the South Coast of England, while Ocado is focused on the South of England. AmazonFresh only operates in London and some of the home counties.

Table 11.1: Percentage of postcode units covered by each online grocer

[✂]

The CMA online survey

11.25 The CMA online survey is described briefly in Chapter 10, and in more detail in Appendix B. The Parties expressed concerns about the robustness of the CMA online survey, particularly in relation to the representativeness of the sample with respect to the proportion of customers' total grocery purchases spent online. For the reasons explained in Appendix B we are strongly of the view that the CMA online survey week is not biased towards heavy users of online delivered groceries. Indeed, we consider that the overall results of our survey are particularly robust given the large sample size and good response

³³⁴ Each merging Party and third party provided us with details of the postcodes that they deliver to. This is discussed in more detail in Appendix I.

³³⁵ Taking into account the submissions of the Parties regarding the accuracy of the coverage maps supplied by Tesco, we did not use these in our analysis of the effects of the Merger.

rates. We are therefore confident in placing significant weight on the evidence from the CMA online survey.

- 11.26 In relation to competition between online delivered groceries retailers, when considering diversion ratios, the CMA online survey results suggest that Asda's closest online competitors were Tesco online ([50–60%]), Sainsbury's online ([10–20%]) and Morrisons online ([10–20%]).³³⁶ A far smaller proportion of Asda spend would have switched to Iceland online ([0–5%]), Ocado ([0–5%]), Waitrose online ([0–5%]) and Amazon ([0–5%]).³³⁷
- 11.27 For Sainsbury's, the top three responses were Tesco online ([40–50%]), Waitrose online ([10–20%]), Ocado ([10–20%]) and Asda online ([10–20%]). A smaller proportion of Sainsbury's spend would have switched to Morrisons online ([5–10%]), Iceland online ([0–5%]) and Amazon ([0–5%]).³³⁸
- 11.28 The CMA online survey therefore suggests that, at the national level, Tesco is the closest competitor to each of the Parties from among the other online delivered groceries retailers. However, it also indicates that the Parties compete closely with each other. For Asda, the next-closest online competitors (after Tesco) are Sainsbury's and Morrisons, with all other online competitors offering only a limited constraint. For Sainsbury's it is Waitrose, Ocado and Asda, and to a lesser extent Morrisons.

Our assessment of the Parties' data

- 11.29 In Chapter 10 we described our views on the Parties' evidence in relation to market definition. The Parties submitted that the same evidence, namely the Kantar switching data, the Lapsed customer surveys, the Nielsen data and the Parties' switching analyses, is relevant for an assessment of closeness of competition between online delivered grocery retailers. With the exception of the Kantar data we consider that our concerns raised with these pieces of evidence in relation to market definition are equally applicable when considering closeness of competition, which we discuss in the following paragraphs.
- 11.30 In general, we consider that the most relevant evidence for closeness of competition would show how the sales (in terms of value) of an online

³³⁶ Based on the proportion of spend that would go to another online provider if faced with a 5% increase in the overall cost of their online delivered groceries or if the Asda website were no longer available.

³³⁷ CMA analysis of the CMA online survey.

³³⁸ CMA analysis of the CMA online survey.

delivered groceries retailer would be affected by a change in its offer, such as a price increase. With regards to the Parties' evidence:³³⁹

- (a) We are not able to assess what is driving any particular customer movement. Some switching (or lapsing) that is captured by this evidence will be driven by the customers' circumstances changing, not by changes in the offering.
- (b) Some of this evidence is representative of customers, but not of value. This evidence therefore does not fully capture closeness of competition because customers who spend more are more valuable to the Parties, and therefore it is the lost spend, rather than lost customers that is more important to our assessment.

11.31 We consider that we can place more weight on the Kantar Worldpanel switching data, given that: i) it is a large, robust survey; ii) the figures refer to sales value rather than customer numbers; and iii) we consider the likelihood of switching being driven by changes in circumstances is lower when comparing switching within a channel (ie online), than across channels (ie from online to in-store).^{340,341}

11.32 We note that overall, the evidence submitted by the Parties and the CMA online survey broadly corroborate each other regarding the closeness of competition between the Parties. The evidence suggests that Tesco online is the biggest constraint on both Parties' online operations, and both Parties face another online constraint that is similar to or marginally stronger than the constraint from each other's online offering (Morrisons for Asda, and Ocado for Sainsbury's). The evidence show that the Parties' online offerings are each a material constraint on each other. However, as with all national evidence, the data may not be representative of areas where certain competitors are not active and we would expect switching to vary according to the options available in an area.

National shares of supply

11.33 Table 11.2 below shows our estimates of the shares of supply at the national level for online delivered groceries, based on revenue. Post-Merger the

³³⁹ While we note two broad issues below, there are a range of other issues that are specific to each piece of evidence or analysis and are discussed in detail in Chapter 10, but not discussed here.

³⁴⁰ Kantar data is discussed in more detail in Appendix D.

³⁴¹ For instance, customers might switch between channels because they may no longer be available at home for deliveries or they may have sold their car and can no longer easily get to a supermarket. Equally, customers may switch within a channel because they move house and only certain providers deliver to the new address.

Parties would have a combined share of around [30–40%], with an increment of around [10–20%].³⁴²

11.34 As the table below shows, post-Merger the Parties would be the second-largest online delivered groceries retailer, after Tesco (with [30–40%]). The next-largest retailer would be Ocado, with [10–20%]. All other players each have a [5–10%] share or less.

Table 11.2: Shares of supply in online delivered groceries

<i>Party</i>	<i>Online Sales (£m)</i>	<i>Share of supply (%)</i>
Asda	[£]	[10-20]
Sainsbury's	[£]	[10-20]
Post-merger share		[30-40]
AmazonFresh	[£]	[0-5]
Iceland	[£]	[0-5]
Morrisons	[£]	[5-10]
Ocado	[£]	[10-20]
Tesco	[£]	[30-40]
Waitrose	[£]	[0-5]
Total	[£]	100

Source: CMA analysis.

Note: Shares of supply are based on sales revenue in 2017 (either 2017 calendar year or 2017/18 financial year).³⁴³

11.35 There are four key points we consider relevant to our assessment:

- (a) Tesco has a far higher share of supply than any other online delivered groceries retailer;
- (b) Asda, Sainsbury's and Ocado are the next largest, all of comparable size;
- (c) There are only four online delivered grocery retailers of significant size;
- (d) In comparison to in-store, Morrisons is much smaller, and the discounters are not present.

11.36 Further, the provisional findings of our Supply Point assessment (set out below in paragraph 11.88) are that the Merger will result in an SLC in 290 Supply Points. This represents approximately 55% of the Parties' Supply Points. As set out in paragraph 8.9, if the Merger may be expected to result in competition concerns in local areas representing a significant proportion of the Parties' online offer (which this assessment indicates it would), the Merger may create an incentive to worsen the Parties' offerings across all Supply Points.

³⁴² A description of how shares of supply were calculated can be found in Appendix I.

³⁴³ See Appendix I on the collection of revenue data and calculation of shares of supply.

Upwards pricing pressure estimated using GUPPI analysis

11.37 In Chapter 8 we discussed in detail why GUPPIs are appropriate for our assessment and the factors that are relevant in interpreting whether a given level of GUPPI indicates that an SLC may be expected to arise. In Chapter 8 we discussed GUPPIs in the context of in-store groceries, and we consider that many of the facts and issues described in Chapter 8 are also relevant to the discussion of GUPPIs for online delivered groceries.

11.38 In summary, in the context of online delivered groceries:

- (a) The GUPPI aims to measure the Parties' incentives to degrade any of their online-specific PQRS following the Merger.
- (b) The national GUPPI is calculated by taking the national diversion ratio from the CMA online survey (which is nationally representative of the Parties' orders) and combining this with online national margins. This GUPPI takes into account the fact that some of the customers who divert to the other merging party will divert to their online offer, while others will divert to their in-store offer.³⁴⁴

11.39 We are using national variable online margins of [X]% for Sainsbury's and [X]% for Asda.

11.40 The Parties did not provide online variable margins, so we have calculated national online variable margin using the Parties' national online management accounts, applying the same individual cost line variability estimated for instore groceries.³⁴⁵

11.41 We consider that the following factors indicate that the online delivered groceries variable margins, which we have derived from the Parties' management accounts, may be overestimated, particularly for Sainsbury's. This is because:

- (a) As discussed in paragraph 24 of Appendix F, the Parties' online delivered groceries accounts do not bear their full allocation of costs which would likely result in overstating the margins. We note that if the online margins were reduced, the margins on in-store groceries would increase.
- (b) Sainsbury's online delivered groceries margin appears to be [X]. Given the business model of picking from store, and incremental costs

³⁴⁴ The GUPPI is then the sum of the diversion to the merging Party online first multiplied by the online margin and the diversion to merging Party in-store first multiplied by the in-store margin.

³⁴⁵ Details on our calculation of online variable margins are in Appendix F.

associated with online delivered groceries (in particular the cost of picking and last-mile delivery), we would expect the online business to be less profitable than in-store groceries.

(c) In the main Party hearing, Sainsbury's told us that online delivered groceries are [REDACTED] than in-store but noted that [REDACTED].³⁴⁶

(d) The internal business cases for Asda [REDACTED].³⁴⁷

11.42 However, there is an additional factor that is not captured in the margins reported here, and that may mean that these margins are understated: the variable margins the Parties provided are accounting margins only, and do not take into account the economic value of future growth in the online business, or the positive impact that having an online offering has on in-store sales. We are not able to assess how these factors balance out, so for the purposes of our GUPPI analysis we have not made any adjustments to the margins provided by the Parties.

11.43 The diversion ratios that we have used for the GUPPI are calculated using responses to both the forced and price diversion questions in the CMA online survey. The diversion ratios also include (ie allow for) own-brand diversion to in-store. We discuss the treatment of own-brand diversion in Chapter 8 paragraphs 8.181 to 8.189. In deciding to include own-brand diversion for online delivered groceries we have taken into account how respondents may have interpreted the price and forced diversion questions³⁴⁸ and that there could be limited incentive for the Parties to degrade PQRS at their stores, given the competitive constraints and relevant competitive parameters are likely to be different between the online business and in-store business. However, we also note that we have provisionally found an SLC at all of the Parties' supermarkets (and a number of their convenience stores) (see Chapter 8), meaning that the store a respondent had in mind when answering the CMA online survey may face deterioration of PQRS. We consider this may mean that our approach underestimates the level of diversion between the Parties because respondents may not have taken this into account.

11.44 The national diversion ratio from Asda online to Sainsbury's online is [10-20]% (and Asda online to Sainsbury's in store is [0-5]%), while the national diversion ratio from Sainsbury's online to Asda online is [5-10]% (and Sainsbury's online to Asda in-store is [0-5]%). The greater diversion from Asda to Sainsbury's than Sainsbury's to Asda may be due to the asymmetric

³⁴⁶ [REDACTED].

³⁴⁷ [REDACTED].

³⁴⁸ In particular for the forced diversion question customers will likely believe the instore offer remains the same. See paragraphs 8.181 to 8.189 in Chapter 8 for a discussion of the treatment of own-brand diversion.

nature of online constraints, with Sainsbury's facing a greater level of competition from Ocado (and potentially Waitrose) than Asda.

- 11.45 Using these margins and diversion ratios³⁴⁹ we have estimated national GUPPIs. The results show that the Asda GUPPI is [0-5]% and the Sainsbury's GUPPI is [0-5]%.
- 11.46 The difference in the GUPPI between Asda and Sainsbury's can be explained in roughly equal parts by the greater diversion from Asda to Sainsbury's than Sainsbury's to Asda, [X%]³⁵⁰).
- 11.47 In assessing the level of the GUPPI and the impact on rivalry we have given consideration to:
- (a) The level of efficiencies that may be expected to arise from the Merger;
 - (b) The requirement that any lessening of competition must be substantial and any uncertainty regarding the accuracy and robustness of data and evidence used in the GUPPI calculation.
- 11.48 In relation to efficiencies, we consider that the reasoning set out in Chapter 8 at paragraphs 8.232 to 8.235, applies equally to the interpretation of the GUPPI for online delivered groceries. In particular, we have provisionally found that it is appropriate to assume that the Merger will give rise to around £[X] of efficiencies, all of which can be expected to accrue to the Parties' groceries and GM businesses (including online delivered groceries).
- 11.49 For the purposes of the GUPPI assessment, £[X] efficiencies would translate into a downward pressure of around 1% in a GUPPI analysis.³⁵¹ Having satisfied ourselves that efficiencies of this level may be expected to arise from the Merger, we consequently do not consider that a GUPPI of around 1% or below would be supportive of an SLC finding.
- 11.50 Similarly, in relation to substantiality, we consider that broadly the same reasoning set out in Chapter 8, paragraphs 8.236 to 8.242 applies to the interpretation of the GUPPI for online delivered groceries. In particular, we consider that there are no reasons to expect that small (but positive) levels of pricing pressure would not be likely to translate into price increases (or other deterioration in PQRS) that would be consistent with an SLC. In this regard we note groceries are a non-discretionary expenditure that accounts for a

³⁴⁹ And a price ratio of Asda to Sainsbury's of [X].

³⁵⁰ [X].

³⁵¹ Downward pricing pressure is equal to the level of efficiencies divided by the Parties' total combined revenue. If efficiencies are equal to £[X], and the combined groceries and general merchandise revenues of the Parties is £[X], this equates to approximately 1%.

significant share of household spend; that pass-through is unlikely to be low; that no operational adjustment would be required to change the elements of PQRS in question; and that the GUPPI considers neither feedback effects between merging parties nor second order effects from third parties. Further, as regards uncertainty, we consider that national diversion for online delivered groceries is robustly estimated (given the scale and representativeness of our survey) and whilst certain factors may lead us to consider that the online margins are overestimated the figures used may not take into account the wider economic benefit of providing an online delivered groceries delivery service.

The future of online delivered groceries

11.51 We are also conscious that while online delivered groceries only account for 6% of groceries, this is steadily growing and innovation may play a larger role than in other areas of groceries.³⁵² As discussed in Chapter 10, both the Merging Parties and third parties have invested in their digital platforms, while continually testing and developing their websites.³⁵³

11.52 As with other online services, the technology and service offering is likely to rapidly develop, and therefore any national deterioration of PQRS may not lead to a large reduction in the current service levels, but it may lead to a reduced incentive to innovate and continue to improve the online offering in the future.

Provisional conclusion on national assessment

11.53 The evidence set out above indicates that, nationally, the Merger would result in a reduction in the number of competitors in online delivered groceries from eight to seven. However, of these eight retailers, only four (Tesco, Sainsbury's, Ocado and Asda) have national shares of supply materially in excess of 5%. Morrisons, which has most of its online delivered groceries delivered through a contract with Ocado, has a national share of supply of around [5-10]%. This weak position relative to its position in in-store groceries may partly be explained by the fact that Morrisons entered online delivered groceries far later than Sainsbury's, Asda or Tesco,³⁵⁴ but may also reflect that it is a weaker competitor in certain areas due to consumer preferences, and is absent from some geographic areas. Iceland and AmazonFresh appear

³⁵² The online channel is forecast to be the fastest growing grocery channel, expecting to increase in value to £17.3 billion by 2023, equivalent to a compound annual growth rate of 9% (see Chapter 4).

³⁵³ In addition, there may be innovation in delivery fulfilment, for example Ocado's automated CFCs.

³⁵⁴ Morrisons entered online delivered groceries in 2014.

to provide a weak competitive constraint on the Parties: as well as their low national shares, [REDACTED].³⁵⁵ We cover the possibility of expansion by these smaller competitors in the section on entry and expansion. In addition, in contrast to in-store groceries, neither Aldi or Lidl offer online delivered groceries.

- 11.54 Further, while Ocado is a relatively strong player overall, with a national share of supply similar to Asda, it is limited to certain parts of the country (with [70–80%] coverage of UK postcodes). Only three online delivered groceries retailers (Tesco, Sainsbury's, Asda) have a near-national presence and a significant number of online delivered groceries customers would have a restricted choice of provider following the Merger: sometimes only the Parties and Tesco.³⁵⁶ We note that the Parties overlap in all but one Supply Point.³⁵⁷
- 11.55 We note that online delivered groceries are constrained to some extent by in-store groceries offerings. However, as set out in Chapter 8, the Parties are both significant national players in in-store groceries.
- 11.56 Consistent with this, the national GUPPI, based on a large, robust survey, shows that there would be material upwards pricing pressure post-Merger, particularly for Asda customers.
- 11.57 Lastly, we have also considered that the Merger may lead to a reduced incentive to innovate and continue to improve the online offering in the future.
- 11.58 In light of this evidence, we have provisionally found that the combination of two of the four largest online delivered groceries retailers (each with a share of supply of [10–20%]) is more likely than not to give rise to an incentive to degrade PQRS (in particular delivery pass prices and the quality of the website and apps) across the Parties' online delivered groceries offerings, resulting in an SLC in each local area where one or more of the Parties is present.³⁵⁸ The Parties face varying degrees of competitive pressures from a range of other groceries retailers, including in-store retailers, but these constraints would not be sufficient to offset the substantial loss of competition between the Parties in online delivered groceries post-Merger.

³⁵⁵ Asda's internal documents suggest that Asda reviews [REDACTED], with much less focus on other suppliers. Sainsbury's internal documents typically show a focus on [REDACTED].

³⁵⁶ Approximately [REDACTED] households have the Parties and Tesco as their only online delivered grocery options (based on an average of 15 households per postcode unit). This represents [0-5]% of UK postcodes. [5-10]% of UK postcodes face a reduction of 4 to 3 online competitors.

³⁵⁷ All of Sainsbury's Supply Points overlap with an Asda Supply Point, while only one Asda Supply Point does not overlap with any Sainsbury's Supply Points.

³⁵⁸ [REDACTED]

11.59 We therefore considered whether there were countervailing factors which could offset the potential SLC. We considered entry and expansion and efficiencies in paragraphs 11.90 to 11.99, following the Supply Point local assessment.

Supply Point local assessment

11.60 We have also considered whether the Merger would result in an incentive for the Parties to degrade parameters of competition at certain Supply Points.

11.61 At the Supply Point level the Parties can or do flex some aspects of their offering ([REDACTED]).³⁵⁹ Furthermore, post-Merger, the Parties could change their approach and flex more competitive parameters at the Supply Point level, the most obvious of which would be Asda delivery prices.³⁶⁰

11.62 Since these competitive parameters are set at the Supply Point level, or could post-Merger be set at the Supply Point level, it is appropriate to assess whether the Merger could lead to an SLC in certain local areas, through the deterioration of these Supply Point competitive parameters.

11.63 There are also further parameters, such as the range of products at store pick stores, that can vary locally by Supply Point, but are uniform across online and in-store. While we have not assessed this, it is possible that where we have found a local SLC in in-store supermarkets, there could be an equivalent degradation of the online offering in that area, if it were a store-pick store.

11.64 Our national assessment suggests that Asda, Sainsbury's, Tesco and Ocado compete closely, which is reflected in survey diversion analysis and, to an extent, UK coverage. Therefore, we would expect them to compete locally in many Supply Points.

Decision-rule approach

11.65 As the Parties operate 530 Supply Points across the UK we recognised that it would not be practicable to perform an assessment of each local area in turn within the time frame of a Phase II merger inquiry. As such, it was necessary to devise a decision rule to establish whether the Merger is, on the balance of probabilities, likely to give rise to an SLC in any local markets.

³⁵⁹ The range in store-picking stores for online delivered groceries is likely to be driven by competition between bricks-and-mortar stores. Therefore, for the reasons set out in paragraph 11.8, this assessment is carried out as part of our in-store assessment.

³⁶⁰ See paragraphs 10.56 to 10.58 in Chapter 10.

11.66 Our starting point is that GUPPI is an appropriate measure to use for our competitive assessment, because it aims to directly measure the upward pricing pressure that would result from the loss of competition between the Parties. As such, to the extent it is possible to calculate GUPPIs at a Supply Point level we consider this evidence to be most relevant to our assessment.³⁶¹

Calculation of Supply Point GUPPIs

11.67 We calculated a GUPPI for each Supply Point in which the Parties overlap by combining online margins with diversion ratios. As explained in Chapter 8, when calculating GUPPIs for our local assessment of the Parties' supermarket overlaps, we used direct survey diversion if the store was surveyed in the CMA store exit survey. Similarly, for online delivered groceries, diversion ratios have been calculated using the CMA online survey. Where the sample size was large enough we used the direct survey estimate of diversion for a given Supply Point (henceforth referred to as 'direct survey diversion').³⁶²

11.68 For our local assessment of the Parties' in-store supermarket overlaps (as set out in Chapter 8), where we had not directly surveyed a store, we used a WSS methodology to calculate diversion. The WSS methodology was based on distance, store size and brand strength. With regards to online delivered groceries, distance and store size are not relevant as customers make decisions based on the brands (and associated features) of retailers who deliver to their address.

11.69 Therefore, for online delivered groceries, as explained further below, where the survey sample size was below 100 we estimated a diversion ratio using information on the competitor set present at that Supply Point.

11.70 Following the CMA established best practice in survey design, we usually place more weight on survey diversion ratios when the underlying sample sizes are larger. Using the information provided in the CMA online survey regarding each customer's location and preferred option in response to our diversion questions, we have calculated diversion ratios to each of the other online delivered groceries' retailers in each of the Parties' Supply Points. However, there were a number of Supply Points (in particular for Asda) where the resulting sample size was less than 100 (notwithstanding the large sample

³⁶¹ The use of GUPPIs in this investigation is discussed in more detail in Chapter 8.

³⁶² As for our calculation of national diversion we have used respondent's answers to both forced and price diversion. See Appendix I and Appendix B for more details.

size overall). Therefore, in view of our best practice, we decided to calculate GUPPIs based on direct survey diversion only for those Supply Points where the sample size is at least 100.³⁶³

11.71 Where our sample size is less than 100 for a Supply Point we have estimated a diversion ratio for each Supply Point (henceforth referred to as ‘estimated diversion’). The methodology used to create these estimates is described in Appendix I, but the basic premise is that diversion from Sainsbury’s to Asda, for instance, in each Supply Point, is the revenue weighted average diversion from Sainsbury’s to Asda amongst different competitor sets present across the Supply Point’s delivery postcodes.

11.72 We compared the estimated diversion ratios with the direct survey diversion ratios across Supply Points. While Appendix I covers this in more detail, the key findings are:

- (a) as the estimated diversion ratio is constructed by averaging diversion amongst different competitor sets, it reduces variance and therefore the distribution of diversion ratios is nearer the national average diversion ratio than are the direct survey diversion ratios;
- (b) there is stronger correlation between the estimated diversion ratios and the direct survey diversion ratios for Sainsbury’s Supply Points than Asda Supply Points
- (c) there is a fairly reasonable correlation when the direct survey diversion has a larger sample size; and
- (d) the correlation between our estimated diversion ratios and the direct survey diversion is fairly weak when the direct survey estimate has a lower sample size.

11.73 The weak correlation is likely to be due to the small sample sizes for the direct survey diversion ratios and hence large sampling error,³⁶⁴ and in part because the estimated diversion ratios cannot fully capture all the possible factors that affect diversion at any given Supply Point.

11.74 We consider that the estimated diversion ratios are the best available evidence in the absence of sufficiently robust direct survey diversion ratios. We took the limitations of our diversion estimates into account when considering the appropriate threshold to apply for our decision rule approach.

³⁶³ [Good practice in the design and presentation of customer survey evidence in merger cases](#)

³⁶⁴ And Asda has smaller sample sizes per Supply Point.

GUPPI Threshold

- 11.75 As described above in paragraphs 11.37 to 11.50, for the purposes of our national assessment of online delivered groceries, we have used a national GUPPI as one indicator, in combination with a range of qualitative and quantitative evidence, to conclude whether, in the round, the Merger gives rise to an SLC.
- 11.76 For the purposes of the local assessment, in a similar way as for in-store groceries, we are using the GUPPI as the basis for our decision rule. We have set out the factors that are relevant to interpreting the level of the GUPPI above in paragraph 11.47. These are efficiencies and substantiality and uncertainty.
- 11.77 As regards efficiencies, as noted above, we have provisionally found that it is appropriate to assume that the Merger will give rise to around £[~~£~~] of efficiencies, which would translate into a downward pressure of around 1% in a GUPPI analysis.³⁶⁵ We consequently do not consider that a GUPPI of around 1% or below would be supportive of an SLC finding.
- 11.78 For the reasons set out in paragraph 11.50 above, we consider that the same factors which contribute to our assessment of the substantiality of the lessening of competition for in-store groceries would apply to online delivered groceries and this applies equally to our local assessment. This includes a wider point that groceries are a non-discretionary expenditure that accounts for a significant share of household spend; that pass-through is unlikely to be low; and that the GUPPI considers neither feedback effects between merging parties nor second order effects from third parties.
- 11.79 As regards uncertainty, we have undertaken a significant amount of analysis to calculate the Supply Point GUPPIs, but nevertheless there is inevitably some uncertainty around any estimates. In some instances, we have no reason to consider that this would bias the analysis in any particular direction.
- 11.80 However, we also recognise in particular that the diversion methodology for Supply Points with fewer than 100 survey responses tends to draw those local Supply Point GUPPI estimates towards the national average GUPPI. This will have led to GUPPIs below the national average being slightly overestimated and GUPPIs above the national average being slightly underestimated.³⁶⁶ We note that with reference to a 2.5% GUPPI threshold, this may lead us to

³⁶⁵ Downward pricing pressure is equal to the level of efficiencies divided by the Parties' total combined revenue. If efficiencies are equal to £[~~£~~], and the combined groceries revenue of the Parties and general merchandise is £[~~£~~], this equates to approximately 1%.

³⁶⁶ This is explained in Appendix I.

underestimate the extent of competition concerns for certain Sainsbury's Supply Points as the national average GUPPI for Sainsbury's is [0-5]%.

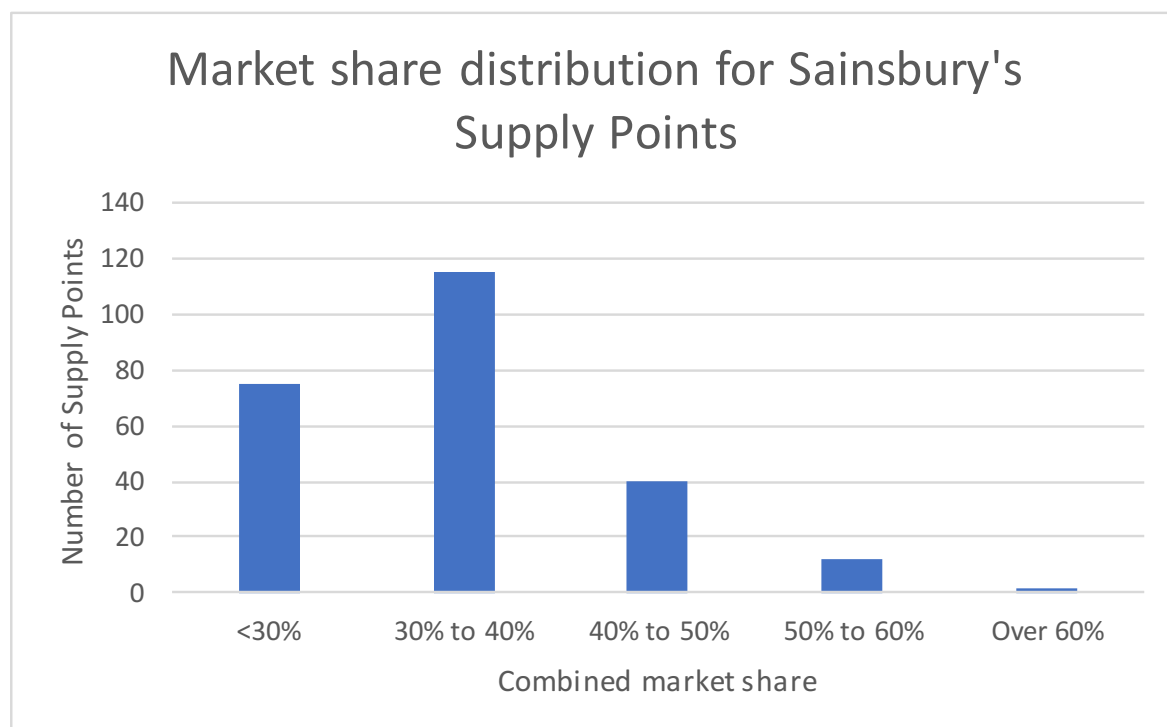
11.81 For Asda this may lead us to overestimate the extent of competition concerns at certain Supply Points as the national average GUPPI is [0-5]%. However, we consider that, given the large gap between the Asda national GUPPI and the GUPPI threshold level of 2.5%, we have correctly identified the Asda Supply Points in which the Merger would be expected to give rise to an SLC.

11.82 On this basis, we consider that it is appropriate to set the Supply Point GUPPI threshold at 2.5%.

Market share based decision rule

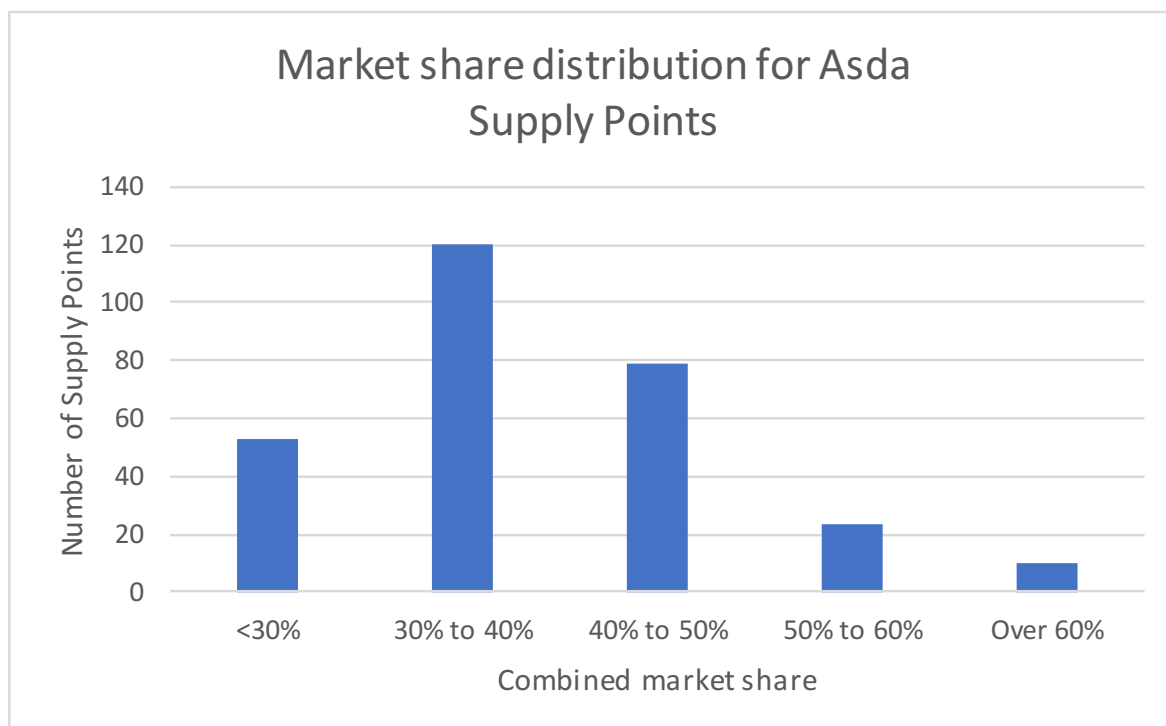
11.83 We have also considered the use of market shares in our Supply Point assessment. Market shares are a well-established concentration measure that have been applied in many merger investigations. We note that both Parties have a number of Supply Points which deliver to areas with high combined market shares. Figures 11.1 and 11.2 below show the distribution of market shares by each Parties' Supply Points.

Figure 11.1: Distribution of combined market shares for Sainsbury's Supply Points



Source: CMA analysis of Parties and third parties' revenue data

Figure 11.2: Distribution of combined market shares for Asda Supply Points



Source: CMA analysis of Parties and third parties' revenue data

- 11.84 We compared the combined market shares with our GUPPI estimates for each Supply Point. For Sainsbury's there is correlation between the GUPPIs and combined market shares, although there is a less clear picture for Asda. Nevertheless, we considered whether we should be concerned in cases where the GUPPI is not above our threshold, but the Parties' combined market share in the local area is high.
- 11.85 The Parties argued that our assessment should be based on GUPPIs and not on market shares because market shares do not take account of i) the constraint from in-store groceries, or ii) closeness of competition (ie they assume each competitor poses an equal constraint).
- 11.86 We recognise that at the Supply Point level GUPPIs based on diversion enable us to take account of direct evidence of competition between the Parties.
- 11.87 Therefore, we have provisionally found that the appropriate threshold to identify local areas where the Merger may be expected to give rise to SLCs is where the GUPPI for the Supply Point is above 2.5%. We are not currently proposing to rely directly on the Parties' combined market share (or other rules based on market share) in a given local area to identify SLCs, but we consider that market shares remain a potentially relevant indicator.

Provisional conclusion on Supply Point assessment

11.88 Based on the assessment carried out above we provisionally find that the Merger may be expected to result in an SLC in the markets for online delivered groceries around 290 Supply Points ([REDACTED]). The difference in the number of SLCs between Asda and Sainsbury's Supply Points is in part related to the difference in the national online margins (given that robust estimates for individual Supply Point margins are not available), but also related to differences in diversion ratios, suggesting that Sainsbury's currently acts as a competitive constraint on Asda in more local areas than the other way round (which we would expect, given the difference in the national diversion ratios).

11.89 We also considered whether there were countervailing factors which could offset the potential substantial lessening of competition in these local areas. In this regard we consider entry and expansion and efficiencies below.

Countervailing factors

Entry and expansion

11.90 In assessing whether entry or expansion might prevent an SLC we considered whether such entry or expansion would be timely, likely, and sufficient. Our detailed review of entry and expansion, including our assessment of the evidence submitted by the Parties and third parties, is contained in Appendix H.

11.91 We first assessed the investment required to enter online delivered groceries or expand coverage. The evidence suggests that investing in CFCs is expensive and, for Asda and Sainsbury's, [REDACTED]. This, and the extended timelines, suggest that there are considerable barriers to entry for firms who seek to enter online delivered groceries by building CFCs. Store-based picking models appear to be more profitable, but this option is only available to those firms which have existing stores in the areas they want to enter and the ability to convert those stores for use in online delivered groceries.

11.92 We then tested whether any grocery retailers had specific expansion plans in online delivered grocery services. Retailers' specific expansion plans showed varying appetites for expansion in online delivered groceries. For instance, we note that AmazonFresh, which launched in 2016, has very small market shares [REDACTED]. Our provisional conclusion is that only the planned expansion by Iceland and [REDACTED] will be timely and likely, and the scale of this expansion will be small ([REDACTED]).

11.93 We have also considered the threat of entry. If the Parties believe that they will face more competition in the near future this could act as a constraint on them raising prices, because an increase in price could trigger entry or wider expansion from a competitor. The Parties submit that M&S have stated they cannot ignore online delivered groceries (which could signal an intent to enter), and we note that some of the Parties' internal documents (and media/analyst reports) speculate that the discounters may start offering online delivered groceries. The Parties also refer to the increasing threat from Amazon following its acquisition of Wholefoods and partnerships with a number of grocery retailers. However, as it takes time to build up online capabilities, we consider that the Parties would only be constrained if there was strong evidence that these potential rivals were very close to entering or expanding significantly.³⁶⁷

11.94 Given our provisional conclusion that only the expansion by Iceland and [X] will be timely and likely, we consider that overall at the national level entry and expansion by rivals would not be timely, likely and **sufficient**.

11.95 However, to capture our view that expansion by [X] and Iceland is timely and likely in certain Supply Points we have included their expansions plans in our competitive assessment. This is included in the results reported above.

11.96 Here we describe our approach for including [X] and Iceland expansion areas in our competitive assessment:

- (a) First, we obtained from Iceland and [X] information on the additional postcodes where they planned to expand their coverage.
- (b) Second, we identified the sets of competitors that were already operating in those areas where Iceland and [X] planned to expand geographically.
- (c) Third, we updated the relevant weighting given to diversion ratios among different competitor sets, which has marginally changed the estimated

³⁶⁷ Given the substantial physical infrastructure required to support an online delivered grocery business, disruptive innovation from outside the current competitors may be difficult.

diversion ratios for Supply Points with fewer than 100 survey responses.^{368,369}

11.97 Therefore, we have taken account of any planned entry in a systematic way within our local analysis.

Efficiencies

11.98 In Chapter 16 we set out our analysis of the likely efficiencies generated by the Merger. As already referred to above at paragraphs 11.48, 11.49 and 11.77 on GUPPI thresholds our provisional conclusion is that it is appropriate to assume that the Merger will give rise to around £[X] of efficiencies, all of which can be expected to accrue to the Parties' groceries and GM operations. For the purposes of the GUPPI assessment, £[X] efficiencies would translate into a downward pressure of around 1% in a GUPPI analysis³⁷⁰ which we have taken into account in interpreting the national GUPPIs and in setting our threshold of 2.5% for the local assessment.

11.99 The Parties told us there was a merger-specific efficiency relating to online as Sainsbury's would have access to the Asda HSC located in [X]. In this area there was substantial demand for [X]. We have not, however, received evidence from the Parties on the size of these potential synergies and therefore have not been able to take them into account in our assessment.

12. Online delivered groceries: coordinated effects

12.1 This Chapter considers the potential for coordinated effects in online delivered groceries. As set out in Chapter 9, concerns regarding coordinated effects arise when a merger makes tacit coordination more likely to emerge or makes pre-existing coordination more stable or effective. In concentrated markets where firms recognise their mutual interdependence, repeated interaction between firms can lead them to refrain from initiating price cuts (as this is likely to provoke a matching price cut from competitors) or to initiate price

³⁶⁸ This approach to expansion does not affect the GUPPIs in Supply Points with over 100 responses (because they are direct survey estimates). We have therefore used indirectly estimated diversion ratios for one Supply Point with over 100 responses so that the expansion could be captured in the GUPPI estimate. There were further Supply Points with over 100 responses where expansion was planned. However, the GUPPI estimate was either below the threshold of 2.5% without expansion, or the extent of expansion was so limited in the Supply Point that less than [5-10]% of postcodes in the Supply Point would change competitor set as a result of expansion.

³⁶⁹ Where such timely and likely entry by rivals in a local area reduces the diversion ratio between the Parties to a point where the relevant GUPPI no longer meets the threshold used in our decision rule, the implication is that this entry would be sufficient to countervail an SLC.

³⁷⁰ Downward pricing pressure is equal to the level of efficiencies divided by the Parties' total combined revenue. If efficiencies are equal to £[X], and the combined groceries revenue of the Parties and general merchandise is £[X], this equates to approximately 1%.

rises (as competitors may recognise that following the price rise is the most profitable approach) without the need for any active collusion between them.

12.2 The Guidelines set out that all three of the following conditions must be satisfied for coordination to be possible:³⁷¹

(a) Firms need to be able to reach and monitor the terms of coordination.

(b) Coordination needs to be internally sustainable among the coordinating group, ie firms find it in their individual interests to adhere to the coordinated outcome.

(c) Coordination needs to be externally sustainable, in that the coordination is not undermined by competition from outside the coordinating group.

12.3 We assessed whether the Merger might be expected to give rise to an SLC in online delivered groceries markets through coordinated effects, using the framework set out in the Guidelines. As part of our assessment, we examined the extent to which the three conditions set out in the Guidelines are met currently, and the extent to which they would be met following the Merger. We have conducted our analysis with a form of hypothetical coordination in mind which takes account of the characteristics of online delivered groceries and considers all the available evidence in the round.

Parties' views

12.4 The Parties submitted that there would not be an SLC resulting from coordinated effects in online delivered groceries. The Parties consider that the conditions for coordination are not currently present in online delivered groceries and that the Merger will not materially change this in relation to any of the three conditions necessary for coordination to take place. In particular, the Parties highlighted the strength of the constraint from in-store groceries and the entry/expansion of online competitors. The Parties considered that each of these factors poses a significant constraint on the ability to reach and sustain a coordinated outcome in relation to online delivered groceries and that neither is impacted by the Merger.

³⁷¹ [CC2 Revised](#), paragraph 5.5.9.

Third parties' views

- 12.5 As set out in Chapter 9, several third parties were concerned about the level of concentration in the groceries sector that would result from the Merger and the potential for coordinated effects.
- 12.6 Morrisons considered that the impact of the Merger in online delivered groceries would be even larger than for in-store groceries, as post-merger approximately 75% of sales would be controlled by Tesco and the merged entity. Morrisons said that the online delivered groceries channel is a competitive market with high barriers to entry, and that a number of market players (including Morrisons) do not provide national coverage, which means that there are many areas in which customers would only have a choice between two retailers post-Merger. Morrisons said that the creation of this duopoly could mean that Tesco and the merged entity would potentially increase delivery prices and increase profits, given the lack of competition in some parts of the UK.³⁷²
- 12.7 We did not receive any further submissions from third parties on coordinated effects in online delivered groceries.

Our assessment

Form of coordination

- 12.8 It is appropriate to conduct our assessment of the potential for coordinated effects with a specific hypothetical form of coordination in mind. Based on our assessment of the characteristics of online delivered groceries and the evidence set out below in paragraphs 12.10 to 12.82, we considered that were tacit coordination (ie alignment without any explicit agreement among the coordinating group) to occur pre-Merger, it would most likely have the following characteristics:
- (a) The coordinating group would comprise Asda, Sainsbury's and Tesco, which are three of the four largest retailers of online delivered groceries at the national level and in most local areas and which have the broadest geographic coverage. As discussed in paragraphs 12.37 and 12.38, we considered it unlikely that the incentives of Ocado (which is one of the top four largest online delivered groceries retailers) or any other smaller online delivered groceries retailers, including Morrisons, would be sufficiently aligned with Asda, Sainsbury's and Tesco for a common

³⁷² [Summary of the hearing with Morrisons](#), paragraphs 41 and 42.

understanding to be reached with them. We therefore assessed the ability for Ocado and the other smaller online delivered groceries retailers, including Morrisons, to disrupt any coordination between Asda, Sainsbury's and Tesco. For the reasons set out below, we did not consider that this would undermine the external sustainability of such coordination.

- (b) The focal point of coordination would be delivery pricing, including delivery charges and other related elements, such as slot length and minimum basket size.³⁷³ This is a discrete parameter of competition specific to online delivered groceries, unlike the price of groceries,³⁷⁴ and over which there is a high level of transparency. We did not consider it likely for the terms of coordination to relate to these charges indirectly through an understanding to limit capacity growth because of a lack of transparency over capacity (see paragraph 12.47).
- (c) Given the differing levels of geographic coverage of retailers of online delivered groceries and the ability to flex delivery pricing by local area, the coordination would be most to likely to occur in geographic areas where the constraints external to the hypothetical coordinating group are weakest. This would most likely comprise areas where Ocado is not active. We considered a straightforward approach would be for coordination to emerge across Postcode Areas where Ocado is entirely absent. The geographic scope of coordination is further discussed in paragraphs 12.56 to 12.59.
- (d) We considered that this form of tacit coordination would be likely to emerge through amendment to the pricing policies of the hypothetical coordinating group over time and their repeated interactions.³⁷⁵ For instance, one member of the hypothetical coordinating group would increase its delivery prices and see how the other members responded. The final terms of coordination could then vary depending on those responses. For example, if the other members of the hypothetical coordinating group raised delivery prices across a wider set of areas, the geographic scope of coordination may be expanded.

12.9 While we considered this to be the most likely form of coordination, this does not mean that other forms of coordination, for example over a wider area or among a wider hypothetical coordinating group, would be implausible.

³⁷³ Where we refer to delivery pricing in the rest of this section, it should be understood to include delivery charges, slot length and minimum basket size.

³⁷⁴ Grocery prices are the same across both online and in-store for all online delivered groceries retailers, except for Amazon and Ocado which do not offer in-store groceries.

³⁷⁵ [CC2 Revised](#), paragraph 5.5.10.

However, we have not assessed other forms of coordination individually and therefore cannot reach specific conclusions in respect of them.

Pre-existing coordination

12.10 We first assessed whether there was any evidence of pre-existing coordination in online delivered groceries. While pre-existing coordination is not required for a merger to lead to coordinated effects, in general, a merger in a market already showing coordinated outcomes would be likely to make coordination more sustainable or more effective, unless the structure and scale of the merged firm is so different from those of its predecessors that the incentive to coordinate has been removed.³⁷⁶

Parties' views

12.11 The Parties submitted that there was no evidence of coordination in online delivered groceries and therefore the only possible conclusion was that such coordination was not present.

12.12 The Parties submitted that there was no evidence of coordination in areas where the CMA's theory would predict it should already exist and that this was primarily due to the constraint from in-store groceries. There was no evidence that delivery prices were higher in Northern Ireland, where there were fewer online retailers than elsewhere in the UK. Asda charged the same delivery price across the entire UK, and Sainsbury's used the same approach to delivery prices for customers in Northern Ireland as it did for those in other parts of the UK. [✂].

Our assessment

12.13 To assess whether there was any evidence of pre-existing coordination in online delivered groceries, we examined:

- (a) the current approaches to delivery pricing;
- (b) internal documents;
- (c) past observed outcomes, in particular the relative levels of delivery prices; and
- (d) the profitability of online delivered groceries retailing.

³⁷⁶ [CC2 Revised](#), paragraph 5.5.8.

Current approaches to delivery pricing

- 12.14 As explained in Chapter 10, online delivered groceries retailers currently set their delivery pricing in different ways including setting specific prices per slot, offering delivery passes, and providing deliveries for free over minimum spend levels. Some retailers do not vary delivery pricing according to the geographic location [redacted] (Asda, Iceland, Amazon) whereas others do (Sainsbury's, Ocado, Morrisons and Tesco).
- 12.15 Whilst Asda sets the same delivery prices across the UK, Tesco and Sainsbury's vary their charges by geographic location with Tesco having [redacted] sets of prices and Sainsbury's having [redacted] different sets of prices. We noted that these differing approaches made it unlikely that there was pre-existing coordination in relation to delivery prices. We also did not find evidence that the local variations in pricing that do currently exist (for Tesco and for Sainsbury's) are related to the presence or absence of certain competitors. As noted above, the Parties told us that until August 2018 [redacted]. However, we also noted that Sainsbury's accepted that this suggests that in those areas there is less demand for online delivered groceries. We considered that a comparison of prices between areas was of limited value unless it accounted for the impact of different demand and supply conditions.

Internal documents

- 12.16 We reviewed the Parties' internal documents and some of these suggested that there is an understanding of competitors' mutual interdependence in online delivered groceries. We also reviewed internal documents of Tesco, some of which appear also to show a desire to influence competitors' responses to Tesco increasing its delivery prices.
- 12.17 The Parties' internal documents show that they react to changes in competitors' delivery pricing, particularly [redacted]. For example, in 2016, Sainsbury's reported that it had changed its delivery pricing to bring it into line with [redacted]. Similarly, Asda in a 2016 delivery pricing review noted that in 2014 it had increased the number of £1 slots to match [redacted] and that in 2015 it rebalanced weekend slot pricing in line with [redacted].
- 12.18 We have seen evidence that in 2015/16 Tesco engaged [a consultant] 'to help [Tesco] develop a three to five year strategy for [their] Grocery Online business and to define the plan needed to deliver that strategy'. This was referred to in Tesco's internal documents as the 'Grocery Online Future Model'. The final form of [the consultant's] work was discussed at Tesco's UK board in January 2016 and a £[redacted] price rise in relation to delivery prices was recommended. [redacted]. [a consultant] found that 'the economic implications of the

agreed strategy are highly dependent on competitor and customer reactions. [REDACTED].

12.19 This provides evidence that in the view of Tesco's advisors there is a common interest across the industry in increasing delivery prices to reflect the value of the service provided and that the success of this plan would be influenced by competitors' responses. We noted that the plan does not appear to have been implemented exactly as envisaged. While the timing of the sharp increase in Tesco delivery prices seen in Figure 12.1 does not appear to line up with the timing envisaged in the documents, it is clear that Tesco has increased its average delivery prices over time. We asked Tesco about the progress on this project and it confirmed that [REDACTED].

Past observed outcomes

12.20 We reviewed evidence on average delivery prices between 2014 and 2018, as set out in Figure 12.1. This shows that there are material differences in the price levels and the average prices do not appear to move in parallel (which we might expect to see if competitors were already coordinating). While these national average slot prices do not enable an understanding of any underlying changes in local slot prices (and therefore we cannot be sure of the position in different geographic areas), we did not consider this evidence to be consistent with pre-existing coordination in relation to delivery prices.

Figure 12.1: [REDACTED]

[REDACTED]

Source: [REDACTED].

12.21 We see from Figure 12.1 that Tesco has increased its delivery prices since late 2015. In 2016, Sainsbury's 'increased [its] slot prices in April in response to [REDACTED] made'. However, it appears there was a limited response from Asda and Morrisons. Tesco confirmed that it took a long time for the sector to respond to its changes in delivery charge pricing 'I do not think anybody in the market moved for quite a long time, but I think, with the exception of Ocado, you will have seen everybody start to reintroduce some mechanism in terms of trying to charge for delivery'. We considered that the response to Tesco's increase in delivery prices could not necessarily be interpreted as evidence of pre-existing coordination however, because, Asda did not appear to respond and Sainsbury's then appeared to reverse partly its response, while Tesco maintained its pricing increase and made further small increases.

Profitability of online delivered groceries

- 12.22 Very high margins might be consistent with coordination, if firms are making additional profits as a result of their coordination, whereas very low margins could be inconsistent with (effective) coordination. However, in this case we considered that an assessment of the levels of margins would be of limited value due to the difficulty in assessing the 'competitive' level of margins against which to compare.
- 12.23 There is mixed evidence on the profitability of online delivered groceries. Our analysis of margins, based on figures provided by the Parties, found that Sainsbury's [redacted], [redacted] (see Appendix F for more detail). Although, as noted in Chapter 11 (paragraph 11.41), we consider that the online delivered groceries variable margins may be [redacted]. In addition, Tesco told us that its 'online business is less profitable than its stores business' as set out in a recent results presentation. The Tesco internal documents described above suggest this is an industry wide issue; they contained the following statement, 'Our similar competitors have comparable or worse economics. [redacted]'.

Provisional conclusion on pre-existing coordination

- 12.24 We did not find sufficient evidence to support a provisional finding of pre-existing coordination in online delivered groceries. However, there is some evidence of online delivered groceries retailers recognising their mutual interdependence and, in particular, Tesco being advised that the economic implications of a strategy to raise delivery prices were highly dependent on competitor responses. We consider that this evidence is relevant to our assessment of the conduciveness of the relevant markets to coordination and the likelihood of coordination emerging post-Merger.

Conduciveness to coordination

- 12.25 We have considered the extent to which characteristics of online delivered groceries may be conducive to coordination and the hypothetical form of coordination set out in paragraph 12.8. This section considers the pre-Merger situation, with the change from the Merger considered in the following section. The evidence from the previous section on whether there is pre-existing coordination is also relevant to this analysis.

Condition 1: Ability to reach and monitor the terms of coordination

- 12.26 For coordination to emerge, the coordinating retailers need to be able to reach a common view on the scope of coordination. This need not involve a precise outcome, but needs to be sufficiently clear to enable their behaviour to be

aligned. To sustain coordination, they will also need to be able to observe each other's behaviour sufficiently to ensure that deviation from the coordinated outcome can be detected. If deviation goes undetected then there will be no incentive to sustain a non-competitive outcome.

Parties' views

12.27 The Parties submitted that the lack of transparency and high degree of complexity in online delivered groceries precluded a hypothetical coordinating group reaching and monitoring the terms of coordination. The Parties highlighted complexity in delivery prices, for example Tesco charging higher prices for narrower slots, Ocado's dynamic delivery pricing, the numerous forms of delivery passes available and the diversity of business models. The Parties stated that Sainsbury's had little visibility or understanding of Ocado and Morrison's approaches to delivery pricing and that the varying approaches were not applied uniformly throughout the UK. According to the Parties, the complexity of online delivered groceries is compounded by the interaction between online and in-store and pure online retailers are likely to have different incentives compared to those with online and in-store operations.

Our assessment

12.28 As set out below, we considered several factors which could affect the ability of retailers to reach and monitor terms of coordination pre-Merger: stability of shares of supply and demand; symmetry of structure and business models; the number of firms; transparency over delivery pricing; complexity of delivery pricing; and complexity over the geographic scope of coordination.

Stability

12.29 Where market conditions are relatively stable it is generally easier to coordinate behaviour. Continually changing market conditions could disrupt any common understanding and make it harder for firms to maintain coordination over time.

12.30 We found that shares of supply among online delivered groceries retailers are relatively stable and that demand for online delivered groceries has been steadily growing at approximately [10–20%] per year, as can be seen in Figure 12.2.

Figure 12.2: Shares of supply for online delivered groceries



Source: Sainsbury's.

- 12.31 The Parties submitted that a market characterised by increasing demand would prevent alignment on a coordinated outcome in relation to online delivered groceries. We consider, however, that increasing demand is not a barrier to reaching a common understanding especially if, as in this case, growth appears to be steady and predictable as each coordinating firm would be able to assess their 'fair share' of steady growth such that they would still be able to detect deviations.³⁷⁷
- 12.32 As can be seen in Figure 12.2, there has been some entry and expansion in online delivered groceries, however this has not dramatically affected the shares of sales of the major online delivered groceries retailers. According to the data above, over the last seven years, Asda's share has changed from [10–20%] to [10–20%] and Sainsbury's share has remained around [10–20%]. Whilst Morrisons entered in 2014, it had only gained around a [0–5%] share by 2017³⁷⁸ according to these figures, and the shares of other players such as Ocado and Waitrose have been relatively stable. Tesco has experienced the biggest change with its share reducing from [50–60%] to [40–50%] over this time period but by a small amount each year. Therefore, despite the growth, there have not been sharp fluctuations in share and entrants, such as Morrisons and Iceland have not made major share gains.
- 12.33 We considered the degree of innovation in online delivered groceries. In particular, there have been innovations in the CFC model, especially by Ocado. While we considered that innovation may play a larger role than in other areas of groceries, we did not consider any of the innovations we are aware of to be disruptive to coordination.
- 12.34 The evidence suggests that this is a relatively stable sector and this stability would help a hypothetical coordinating group to reach an understanding.

Symmetry

- 12.35 The more similar the business models of online delivered groceries retailers, the more likely they are to be able to arrive at a common perception of what the terms of coordination should be. However, it may be possible for differences between members of a potential coordinating group to be reflected

³⁷⁷ Expected growth could also make deviations from coordination less likely as the benefit is a short-term gain and the cost is future lower prices when demand will be higher (see paragraph 12.61).

³⁷⁸ Based on IGD data and so may not match other share figures presented elsewhere.

in the terms of the coordination, for example with lower cost retailers setting a lower price, but maintaining relative price levels.

12.36 Asda, Sainsbury's and Tesco each has a similar online model, which primarily relies on delivering groceries through the 'store-pick' method. Similarly, they also offer in-store groceries. As the Parties highlighted, players with both in-store and online offerings are likely to have different priorities compared with those with only online offerings. Asda, Sainsbury's and Tesco, along with the other main online delivered groceries retailers, each offer a similar wide range of groceries. They are also the only three online delivered groceries retailers with near national coverage.

12.37 In comparison, Ocado's incentives appear different and we did not consider it as part of the hypothetical coordinating group. Ocado is likely to have less incentive to coordinate over online delivered groceries as a result of not having any physical stores through which to recapture any customers that divert away from online as a result of higher delivery pricing. Ocado is also a smaller grocery retailer than Tesco, Asda and Sainsbury's in absolute terms; as a result, any sales increase is likely to have a greater impact on Ocado's input prices.³⁷⁹ Ocado's geographic coverage is also more limited than the members of the hypothetical coordinating group.

12.38 We did not consider Morrisons would be part of the hypothetical coordinating group. Morrisons also has a different business model to Tesco, Asda and Sainsbury's as it has entered into agreements with Amazon and Ocado in relation to fulfilment services and technology and uses capacity in Ocado's fulfilment centres. Furthermore, Morrisons only entered the online delivered groceries sector in December 2013 and has a much smaller share and lower level of geographic coverage. Morrisons, as well as other smaller online delivered groceries retailers, would also have less incentive to coordinate if they believed the larger members of the hypothetical coordinating group would coordinate without them (see paragraph 12.67 below). Morrisons' geographic coverage is also more limited than the members of the hypothetical coordinating group.

Number of firms

12.39 The lower the number of firms which are coordinating, the easier it will be to reach a tacit understanding.³⁸⁰ As a starting point, it will generally be easier for a firm to know what its rivals are doing when there are fewer of them and it

³⁷⁹ See paragraphs 15.33 to 15.44 for more details of our analysis into scale and input prices.

³⁸⁰ [CC2 Revised](#), paragraph 5.5.11.

will therefore be easier to interpret market interactions and reach the terms of coordination between a smaller group of retailers.³⁸¹

12.40 Coordination would be more likely where the hypothetical coordinating group is smaller as it would involve aligning fewer sets of behaviour based on a smaller number of relationships between the members. This could increase the likelihood of any common understanding emerging given the greater likelihood that incentives would be aligned and the smaller number of interactions that may be required to effectively coordinate behaviour. The number of relationships and interactions required are important because, given we are assessing the potential for tacit coordination, participants would need to anticipate and react to the others' responses in the markets to coordinate without any direct discussion between the members of the hypothetical coordinating group.

12.41 Based on the market characteristics outlined above, we consider that at present the most likely hypothetical coordinating group in the markets for online delivered groceries would consist of three of the four largest UK online delivered groceries retailers: Tesco, Asda and Sainsbury's. This means there would currently be three sets of incentives that would need to be aligned within any common understanding forming the basis of coordination.

Transparency of delivery pricing

12.42 Being able to observe the actions of competitors helps online delivered groceries retailers develop mutual awareness that may then help them reach a common understanding. Further, the more transparent the markets are, the easier it will be to monitor coordination.

12.43 We have found that online delivered groceries retailers monitor their competitors' delivery pricing. Asda told us that it reviewed the delivery prices of [redacted]. Sainsbury's told us that it monitored delivery prices for [redacted]. This monitoring can be seen in Figure 12.3 showing Sainsbury's [redacted] and Figure 12.4 showing Asda's [redacted].

Figure 12.3: [redacted]

[redacted]

Source: [redacted]

³⁸¹ CC2 Revised, paragraph 5.5.13.

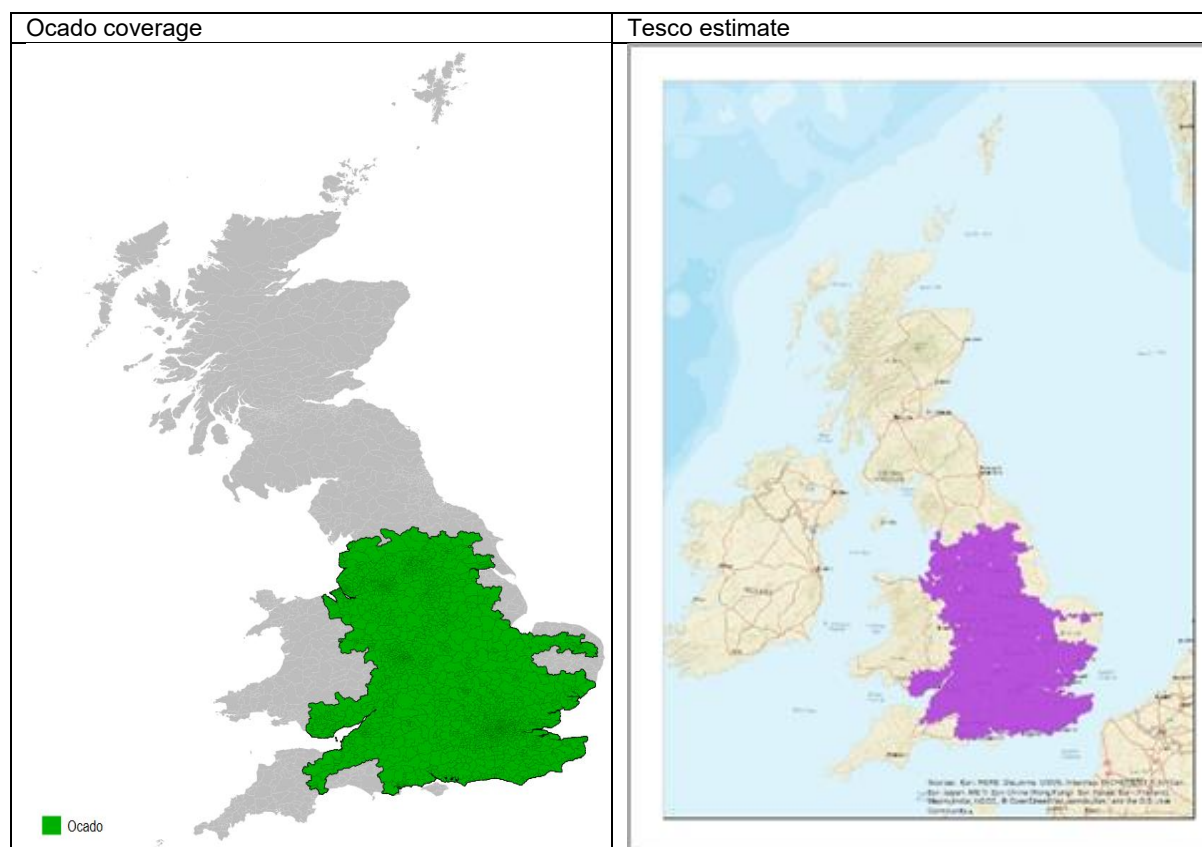
Figure 12.4: [REDACTED]

[REDACTED]

Source: [REDACTED]

- 12.44 While the delivery prices available to consumers on online delivered groceries retailers' websites are transparent, vouchering may make the effective charges paid by customers less transparent. We found that vouchering is not very commonly used at present – according to the Parties [REDACTED]% of Sainsbury's and [REDACTED]% of Asda's online transactions had a voucher associated with them, although we noted that the level of vouchering could change. Furthermore, while less transparent, we considered that voucher use is monitorable to some extent; for example, there are external companies, such as Kantar, that monitor voucher use.
- 12.45 We also considered that coordination could be monitored indirectly through impacts on each online delivered groceries retailer's own sales. If one of the members of the hypothetical coordinating group stopped coordinating and improved its offer to customers (for instance through greater use of vouchers), that would affect the sales of the other members of the coordinating group.
- 12.46 There is also transparency over the geographical coverage of each online delivered groceries retailer as this is easily obtainable from each retailer's website merely by inputting a postcode. Tesco's understanding of where Ocado operates compared to data submitted by Ocado can be seen in Figure 12.5. As such, we consider that the hypothetical coordinating group would already be aware of the competitors which they face in different areas.

Figure 12.5: Ocado coverage of GB ((i) Ocado coverage and (ii) Tesco estimate)



Source: Ocado and Tesco.

12.47 We considered whether the terms of coordination would relate to delivery pricing indirectly through an understanding to limit capacity growth. However, we understand that it is possible to add capacity to existing delivery networks simply through increasing the number of vans and drivers.³⁸² We therefore considered that it would be difficult for online delivered groceries retailers to monitor any common understanding to limit capacity and did not assess the likelihood of this form of coordination further.

12.48 We considered that the transparency of delivery pricing would assist in reaching a common understanding. The high degree of transparency would also allow for monitoring of any coordination on delivery pricing either directly or indirectly, through the impact on the sales of the member of the hypothetical coordinating group.

Complexity of delivery pricing

12.49 Reaching and monitoring terms of coordination will be harder where there is a greater degree of complexity in the markets concerned. The degree of

³⁸² [redacted].

complexity will depend on the number and type of products sold and the number of aspects of competition over which firms compete (eg price and non-price factors). Where there are fewer products and the aspects of competition over which the firms compete are simpler, it may be easier for the firms to identify a focal point around which to coordinate.

- 12.50 We found that there is some complexity around delivery pricing, including: different prices by time of the day, day of the week and by area; minimum basket sizes; delivery pass options (including variations in the length); free delivery over a minimum spend; and slot lengths. Online delivered groceries retailers adopt different approaches to these factors which may make understanding and responding to each other's behaviour more challenging. For example, the Parties stated that Ocado's dynamic pricing model is complex and they have limited understanding of Ocado's pricing as a result.
- 12.51 However, we note that the approaches of the Parties and Tesco to delivery pricing appear relatively comparable, with each charging for deliveries based on location and time of slot with a minimum basket size. This is one of the reasons why we consider that at present a hypothetical coordinating group of Tesco, Asda and Sainsbury's would be most likely.
- 12.52 We considered the degree of complexity of delivery offers among Asda, Sainsbury's and Tesco. In its monitoring of competitors' delivery offers, Sainsbury's compared the following elements of online deliveries: coverage; start and end time of deliveries; the availability of a delivery subscription; minimum basket size; and the availability of same day delivery (as can be seen in Figure 12.3). Each of Asda, Sainsbury's and Tesco have similar near-national coverage and all offer delivery passes. Delivery start and end times vary slightly, with Sainsbury's starting deliveries later and varying the time at the weekend. Sainsbury's and Tesco offer same day delivery whereas Asda does not. All have minimum basket sizes or a surcharge for smaller baskets. All also vary their prices by time of day and day of week. We considered that this showed that there may be some complexity in reaching a common understanding due to differences between the offerings of the Asda, Sainsbury's and Tesco and variations within their pricing, eg by time of day. We also noted however that these elements of complexity all appear monitorable reducing the impact of this complexity.
- 12.53 There is some evidence that online delivered groceries retailers already have some ability to manage this complexity in a way that would help in reaching and monitoring a common understanding, for example through calculating average slot prices (as can be seen in Figure 12.1 above). Further, the hypothetical coordinating group could simplify some of this complexity to facilitate coordination by more closely aligning the different elements of their

deliveries, for example, by having the same minimum basket sizes. Although we note that this simplification would need to be reached by all three of the hypothetical coordinating group.

- 12.54 We consider that delivery passes would not be part of the most likely terms of coordination. We note that each of Tesco, Asda and Sainsbury's currently set their delivery pass offering uniformly across the UK, whilst delivery prices (for Tesco and Sainsbury's) and minimum basket size (for Asda) vary by geographic area. We considered it unlikely that online delivered groceries retailers would introduce subnational delivery pass prices due to the visibility of the price of delivery passes. This means that coordination over delivery passes would need to be national and, for the reasons set out below in paragraphs 12.57 to 12.58, we do not think this is the most likely form of coordination. We further consider the impact of delivery passes on internal sustainability in paragraph 12.68.
- 12.55 Overall, we consider that at present while the complexity of current delivery pricing may be a challenge to reaching a common understanding, it is limited to variations around a single delivery service and could be simplified to facilitate coordination.

Complexity of the geographic scope of coordination

- 12.56 There may also be some complexity relating to the geographic scope of coordination. As set out in paragraph 12.8(d), we considered that the terms of coordination, including the scope, would be most likely to emerge through amendment to the pricing policies of the hypothetical coordinating group over time and their repeated interactions with the other coordinating group members. For example, one member of the hypothetical coordinating group could increase its delivery prices across a specific area or region and if, in response, the other members of the hypothetical coordinating group also raise their delivery prices across a similar area, this would be sufficient to establish the geographic scope of coordination.
- 12.57 As set out in paragraph 12.74, we consider that coordination would be more difficult in certain areas, particularly in and around London. As such, we considered whether pre-Merger the hypothetical coordinating group could reach terms of coordination that excluded these areas. As noted in paragraph 12.75, in the areas where the combined shares of supply of Asda, Sainsbury's and Tesco are lowest, the largest online constraint external to the hypothetical coordinating group is Ocado.
- 12.58 We considered that, at least at first, the hypothetical coordinating group would most likely seek a relatively simple approach to maximise the chance of

reaching a common understanding. As such, we provisionally considered that the most likely approach would be for one of the coordinating group members to raise its delivery prices, and for the others to follow, in areas where the external constraints are weakest. Many of these areas are relatively clear-cut, for example, Ocado is not at all present in Northern Ireland or Scotland. We considered a straightforward approach would be for coordination to emerge across Postcode Areas where Ocado is entirely absent.³⁸³ While coordination would likely be externally sustainable in an area wider than this, we considered that online delivered groceries retailers may be more uncertain of each other's responses in the areas of the country currently served by Ocado. For example, Ocado is a relatively closer competitor to Sainsbury's than to Tesco or Asda,³⁸⁴ meaning that the hypothetical coordinating group's incentives may not be as closely aligned in areas where Ocado is present.

12.59 We also recognise that at present there are different approaches to varying delivery pricing by area amongst Asda, Sainsbury's and Tesco. Asda does not currently vary its delivery prices by geographic area, although Asda told us it has done so, albeit rarely, in the past.³⁸⁵ Asda varies the minimum basket sizes for online delivered groceries between areas; in some areas the minimum is £25, while in others it is £40.³⁸⁶ Both Sainsbury's and Tesco already vary their pricing in different geographic areas, but to a limited extent. Sainsbury's has [redacted] different pricing grids across the UK and Tesco has [redacted] sets of delivery pricing. This shows that in the pre-Merger situation it is possible for Tesco, Asda and Sainsbury's to vary their delivery pricing by geographic area. Further, we understand that Asda, Sainsbury's and Tesco have been carrying out trials on their delivery pricing. Based on the evidence we have seen on Sainsbury's trials, we consider it has the ability to change delivery pricing at the Supply Point level. Tesco told us that [redacted]. However, the existing approaches do not appear to be targeted to areas according to the competitive dynamics, and therefore to coordinate in areas where Ocado is not present would require a change in approach. We consider the current lack of alignment of pricing by region, particularly Asda's current uniform approach, to be a challenge to coordination.

³⁸³ We also excluded Postcode Areas where just one of the hypothetical coordinating group are present. The resulting Postcode Areas are: AB, BT, CA, DD, DG, DH, DL, EH, FK, G, HS, IV, KA, KW, KY, LD, ML, NE, PA, PH, PL, SA, SR, TD, TR and TS.

³⁸⁴ Our online survey found that [10-20]% of Sainsbury's customers who diverted to an online delivered groceries retailer diverted to Ocado compared to [0-5]% of Asda's customers.

³⁸⁵ [redacted].

³⁸⁶ [Asda website: What is the minimum order amount?](#)

Provisional conclusion on ability to reach and monitor coordination

12.60 Based on the factors discussed above, we provisionally consider that online delivered groceries retailers would not currently be able to reach a common understanding in relation to online delivery pricing. This is primarily due to the fact that we think that each of the members of the most likely hypothetical coordinating group currently takes a different approach to setting delivery prices. However, given the high levels of transparency in the markets for online delivered groceries, monitoring of any common understanding would be relatively easy. We consider it relevant that, as noted in the section on pre-existing coordination, there may have been attempts to influence the responses of competitors to increases in delivery pricing in the past. On balance, although there are some aspects which would point towards online delivered groceries retailers being able to reach a common understanding in the markets currently, we do not consider that it is more likely than not.

Condition 2: Internal sustainability

12.61 Coordination will be sustainable only where the additional profit from coordination is sufficiently high, and there is an effective mechanism to respond to deviation (making the profit from deviation sufficiently low to make it unattractive).³⁸⁷ If coordination is not sufficiently profitable, or the response of others to deviation is not sufficiently swift and costly to the firm deviating, an online delivered groceries retailer may prefer to deviate. It might do so if the short-term gain from having a more competitive offering than the other coordinating online delivered groceries retailers outweighs the costs to it of future lower prices due to the breakdown of coordination.

12.62 The hypothetical coordinating group's common understanding of objectives need not be precisely formulated, and so what constitutes 'deviation' may not be clearly defined. This does not affect the underlying assessment of internal sustainability. Coordinating online delivered groceries retailers still need to consider the short-term benefits of deviating against the cost of punishment, ie the loss of the gains from coordination.

Parties' views

12.63 The Parties submitted that online delivered groceries would not be subject to a deterrent effect of rapid responses to any deviation. According to the

³⁸⁷ [CC2 Revised](#), paragraph 5.5.15.

Parties, delivery prices are not changed very frequently, and therefore there is no evidence supporting the proposition that deviation could easily be policed.

Our assessment

- 12.64 We considered that the most likely response to deviation would be a reversion (or partial reversion) to more intense competition by the other coordinating online delivered groceries retailers rather than a deliberate punitive strategy.
- 12.65 How swiftly this breakdown of coordination would follow on from deviation is an important factor in assessing the benefit of deviation. This is because the benefit from deviation (ie having a more competitive offer than the remaining coordinating grocery retailers) only lasts until those grocery retailers who had been coordinating react to the deviation.
- 12.66 We considered that this reaction could very quickly follow on from deviation. Whilst we took into account the Parties' submission that Asda has only changed its delivery prices four times over the past three years, we also noted the evidence that Sainsbury's changes its delivery pricing [redacted]. For example, as part of slot pricing [redacted]. This means that, provided the external constraints were sufficiently limited (as we provisionally conclude they are in paragraph 12.83 below), the additional profit from coordination over price would be sufficiently high to make it worthwhile for grocery retailers to maintain a coordinated outcome given the ability to respond rapidly to any deviation.
- 12.67 We considered that the significant shares of supply of each of the hypothetical coordinating group would mean that it would be in the interests of each to respond should any of the others deviate. In contrast if the hypothetical coordinating group included any smaller online delivered groceries retailers, such as Morrisons, and it stopped coordinating, the larger members of the hypothetical coordinating group would probably not have the incentive to respond as the gain from the higher delivery prices would still outweigh the loss of volume from customers switching to Morrisons given its low share of supply.
- 12.68 Although not part of the terms of coordination, we considered whether it would be profitable for members of the hypothetical coordinating group to deviate from the coordinated outcome by reducing the price of delivery passes. We considered that delivery pass prices are easily observable and any change would trigger a similar response from other members of the hypothetical coordinating group, such as reducing delivery pass prices. While deviating by reducing delivery pass prices could have the benefit of tying customers in, it has disadvantages too. Delivery pass prices are set nationally, so reducing them in the areas where coordination is likely to take place would need them

to be reduced everywhere else too. For these reasons, we considered that delivery passes would not destabilise coordination on delivery pricing.

Provisional conclusion on internal sustainability

12.69 Based on the reasoning set out above, we provisionally concluded that the characteristics of the relevant markets are conducive to coordination on online delivery pricing being internally sustainable at present.

Condition 3: External sustainability

12.70 Coordination will be sustainable only if the outside competitive constraints on the grocery retailers involved in coordination are relatively limited. It is not necessary for all firms in the markets to be involved in coordination but those firms which coordinate need to be able collectively to exercise a degree of market power.

Parties' views

12.71 The Parties submitted that there are two sources of external competition that would undermine any attempt at coordination between the Parties and Tesco: Ocado and, more significantly, in-store groceries.

- (a) Ocado, the Parties submitted, is a strong competitor with a business model that relies heavily on scale, and accordingly, has a strong incentive to increase volumes and capacity and a weak incentive to follow any price increases given the importance of volume. The Parties said that Ocado, along with Amazon, must be considered as mavericks and are well-positioned to disrupt any attempted coordination in the online channel.
- (b) The Parties highlighted that given the essentially identical pricing and range across in-store and online delivered groceries, the only real trade-off that customers make when choosing channel is that of convenience versus delivery charge. Further, as the competitor set for in-store groceries is wider than that for online delivered groceries, the impact of increasing the relative attractiveness of in-store (by degrading the online offering in some way) would be to increase the number of competitors who could disrupt coordination between a set of online competitors. The importance of this constraint can be seen by the fact that delivery prices in Northern Ireland, where there are only three significant online players (the Parties plus Tesco), are no higher than in the rest of the UK.

12.72 The Parties told us that there was substantial evidence of new entry and expansion in online delivered groceries. The investment required for online delivered groceries was not sufficiently high to deter entry and expansion.

Our assessment

Current constraints

12.73 We considered the current level of concentration in online delivered groceries at a national level. Asda, Sainsbury's and Tesco have a combined national share of supply for online delivered groceries of around [70-80]%. Ocado has a [10-20]% national share of supply of online delivered groceries. Morrisons is the next largest online delivered groceries retailer although its national share of supply is much lower at around [5-10]%.³⁸⁸ All other online delivered groceries retailers are smaller, with Amazon, which was particularly highlighted by the Parties, having a less than [0-5]% national share.

12.74 We considered local shares of supply because delivery pricing is currently varied between areas and we consider that this local variation could be increased (see paragraph 12.59). We found that in many areas, particularly in Northern Ireland, Scotland, North and West Wales and North and South West England, Asda, Sainsbury's and Tesco had a combined share of supply greater than [90-100]%. In other areas, specifically London, we found the combined share of supply of Asda, Sainsbury's and Tesco was less than 50%. We considered in these latter areas the form of coordination we are considering would be less likely to be externally sustainable, because of the constraint from online delivered groceries retailers outside the hypothetical coordinating group. As a result of this we considered that the hypothetical coordinating group would seek to reach terms of coordination that excluded these areas.

12.75 The ability of the hypothetical coordinating group to reach terms of coordination in certain geographic areas is considered in paragraph 12.58. We found that where Asda, Sainsbury's and Tesco have lower combined shares of supply, Ocado was one of the largest online delivered groceries retailer outside the coordinating group. Morrisons is the only other online delivered groceries retailer with a share of supply over [10-20]% in any Postcode Area. While Morrisons' share is as high as [20-30]% in some areas, these are areas where Ocado is also present. In all areas where the hypothetical coordinating group has a combined share of less than 80%,

³⁸⁸ A description of how shares of supply were calculated can be found in Appendix I.

Ocado was the largest or second largest online delivered groceries retailer outside the hypothetical coordinating group.

12.76 As set out in paragraph 12.58, we considered that the hypothetical coordinating group would most likely reach an understanding to coordinate in areas where Ocado does not operate as this is where their mutual interdependence is highest. In those areas where Ocado does not currently operate, the hypothetical coordinating group has a combined share of supply of [90-100]%. Our online survey found that [80-90]% and [80-90]% of diversion from Asda and Sainsbury's respectively to online delivered groceries retailers is to other members of the hypothetical coordinating group.³⁸⁹ While we did not survey Tesco customers, we noted that Kantar Worldpanel switching data shows that a large majority of Tesco's losses and gains nationally are to Asda and Sainsbury's.³⁹⁰

12.77 We also considered the constraint from in-store grocery retailers. In response to the forced diversion question, [30-40]% of Asda spend and [30-40]% of Sainsbury's spend would have switched to in-store.³⁹¹ However, some diversion in-store is likely to be recaptured by Asda, Sainsbury's and Tesco in-store. Our online survey found that [50-60]% and [60-70]% of diversion from Asda and Sainsbury's respectively to in-store grocery retailers is to members of the hypothetical coordinating group. This limits the constraint on coordination from in-store groceries as some of the downside of sales lost from online will be offset by the benefit of sales recaptured by members of the hypothetical coordinating group – [REDACTED] [the consultant] noted the likely positive impact on Tesco's stores of its recommendation to Tesco of increasing delivery price, as result of slowed growth in online delivered groceries and spend returning to physical stores (including Tesco stores).

12.78 Coordination, compared to competition, would reduce the constraint on increasing delivery prices, because the probability of losing sales to other members of the hypothetical coordinating group would be reduced as a result of them also increasing their delivery prices. This means that the change in incentive on Asda, Sainsbury's and Tesco as a result of coordination depends on the degree to which they currently constrain each other. We considered that at present the members of the hypothetical coordinating group exercised a significant constraint on each other. Overall, our online survey found that in areas where Ocado does not operate, [70-80]% of diversion for both Asda

³⁸⁹ We recognise that the diversion figures in this Chapter are unweighted and do not consider that using weighted diversion would change our overall conclusions.

³⁹⁰ [REDACTED]

³⁹¹ Survey results from CMA online survey. Our assessment of the scale of the constraint from in-store is set out in Chapter 10.

and Sainsbury's respectively is to members of the hypothetical coordinating group either in-store or online.

12.79 We considered that the current constraint from outside the hypothetical coordinating group is very limited in areas where Ocado is not present. Across these areas the combined share of supply of online delivered groceries of Morrisons, Iceland, and Waitrose is just [5-10]%, with Iceland as the largest with [0-5]%. Similarly, they are collectively responsible for just [10-20]% and [10-20]% of online diversion from Asda and Sainsbury's respectively.

12.80 Overall, in view of the currently varying levels of constraint from Ocado, we consider it less likely that coordination would emerge in areas where Ocado is present. However, we do not consider that this would rule out any coordination between Tesco, Asda and Sainsbury's. As there are a large number of areas where Ocado is not currently active, we consider it likely that, if Tesco, Asda and Sainsbury's were able to reach terms of coordination in areas where Ocado is not present, current external constraints would not destabilise any such coordination.

- *Constraint from entry and expansion*

12.81 We examined whether the entry and expansion of online delivered groceries retailers outside the hypothetical coordinating group would undermine coordination. Our detailed review of entry and expansion, including our assessment of the evidence submitted by the Parties and third parties, is contained in Appendix H. In particular, we found:

(a) Ocado has told us [REDACTED].

(b) We consider that in some locations entry by Iceland and [REDACTED] will be timely and likely. However, we noted that recent entry does not appear to have resulted in rapid share gains. For example, [REDACTED] entered online delivered groceries in [REDACTED].

(c) The following third parties told us that they were not planning on expanding their geographic coverage: Tesco and [REDACTED].

(d) Amazon, told us [REDACTED].

(e) Lidl told us [REDACTED].

(f) The following third parties told us that they had no definitive plans to enter online delivered groceries: Aldi, Booths, Co-op and M&S.

12.82 Based on a review of the evidence, we found that entry or expansion was not likely to undermine coordination.

Provisional conclusion on external sustainability

12.83 We consider that the main constraints on raising delivery prices for each of the members of the hypothetical coordinating group are each other. The external constraint from those outside the hypothetical coordinating group varies according to the area, with Ocado being an important competitor who would potentially act as a constraint on coordination on delivery pricing in some locations. We do not consider the current constraint from any other online delivered groceries retailers to be sufficient to undermine coordination. We also provisionally find that entry or expansion is not likely to undermine coordination. As such we provisionally conclude that it is most likely that coordination would be externally sustainable in areas where Ocado does not operate at present.

Provisional conclusion on the three conditions pre-Merger

12.84 We provisionally conclude that at present one of the three conditions necessary for coordination is not met. On balance, we provisionally conclude that the hypothetical coordinating group would likely not have the ability to reach and monitor a common understanding in the markets pre-Merger. However, we do consider that the form of coordination we consider most plausible would likely be internally and externally sustainable.

Evidence on merger effect

12.85 As noted above, we consider there is no clear evidence of pre-existing coordination (although there is some evidence that online delivered groceries retailers recognise their mutual interdependence and that one of the three conditions for tacit coordination is not met pre-Merger). We therefore consider the impact of the Merger and whether coordination would be more likely to emerge post-Merger (ie whether each of the three conditions for coordination would be met post-Merger).

Parties' views

12.86 The Parties submitted that the conditions for coordination are not currently present in online delivered groceries and that the Merger will not materially change this in relation to any of the three conditions necessary for coordination to take place. In particular, the Parties submitted that in-store

options and the entry/expansion of online competitors each pose a significant constraint, and neither is impacted by the Merger.

Our assessment

12.87 Below we explore the impact of the Merger on the three conditions set out in paragraph 12.2. While we are looking at the impact on all three conditions, given that we provisionally find that the second and third conditions are likely to be met pre-Merger, it is not necessary for the Merger to affect those two conditions for the Merger to increase the likelihood of coordination.³⁹² While considering the impact of the Merger, we have in mind the form of coordination set out in paragraph 12.8, although the hypothetical coordinating group would consist of the merged entity and Tesco.

Impact on the ability to reach and monitor coordination

12.88 We considered whether following the Merger the ability to reach and monitor coordination would be satisfied.

12.89 We noted that the Merger would increase the symmetry between the members of the hypothetical coordinating group. In contrast to the pre-Merger situation where Tesco is substantially larger than each of Sainsbury's and Asda, post-Merger the two members of the hypothetical coordinating group (ie Tesco and the merged entity) would each have similar shares of supply both online and in-store, which is the key out-of-market constraint. This is likely to further align the incentives for these retailers to coordinate.

12.90 We examined whether the Merger would strengthen the ability to reach and monitor coordination because it reduces the number of members of the hypothetical coordinating group from three to two and as such from three relationships to just one. We consider that this would make it easier for the hypothetical coordinating group to reach a common understanding for the following reasons:

- (a) A reduction in complexity of delivery prices. Following the Merger, even if they maintain separate brands, Asda and Sainsbury's could internally align their approach to delivery pricing, reducing the overall degree of complexity within the hypothetical coordinating group. For example, at present Asda is the only member of the hypothetical coordinating group

³⁹² [Merger Assessment Guidelines](#), paragraphs 5.5.9 and 5.5.19. We also agree with the Parties response to the Coordinated Effects working paper (paragraphs 8-13) that all three conditions need to be met following the Merger and if we did not consider any of the conditions to be satisfied pre-Merger we would need to find a Merger effect on each condition.

that chooses not to vary delivery prices by location in the UK, although it does vary minimum basket sizes. At present this is a hindrance to coordinating in a subset of areas, such as where Ocado is not present. Following the Merger, the combined entity could decide to adopt an approach to delivery pricing that is more similar to Sainsbury's (which has carried out more tests of different delivery prices than Asda has and currently has different delivery prices in different parts of the UK). The reduction to two members of the hypothetical coordinating group also means that either could align their approach to pricing with the other. Pre-Merger it is not possible for any of the members to unilaterally align its pricing with both the other members.

- (b) A reduction in the number of relationships in the hypothetical coordinating group from three to one would make the process of reaching a common understanding more straightforward.³⁹³ We considered that this form of coordination could emerge through repeated interactions in the markets, as set out in paragraph 12.8(d). If there are three members of a hypothetical coordinating group and one increases its delivery prices above the competitive level, both other members of the hypothetical coordinating group must respond for coordination to occur. Following the Merger, there is just one other member of the hypothetical coordinating group that needs to respond. The decision whether to respond to an increase in delivery prices is also simplified. At present when considering whether to respond, each of the other two members of the hypothetical coordinating group needs to consider whether the other will also respond. Following the Merger, there is no third member to consider when thinking about whether to respond to the other member of the hypothetical coordinating group. As such, the Merger makes reaching a common understanding more likely.

12.91 We considered whether the fact that the Parties intend to keep their two brands separate after the Merger affected these reasons. We considered that decisions relating to delivery pricing could be aligned and taken collectively even while maintaining two brands. These decisions would be internal to the merged firm. Also, Tesco would know that the two brands were being operated by the same management and so could anticipate a consistent approach to delivery pricing. As such, we did not consider the ways in which the Merger affects the ability to reach and monitor a common understanding would be affected by keeping the two brands of the Parties separate.

³⁹³ With three firms there are three interrelationships, ie A-B, B-C and C-A, whereas with two firms there is just one, ie A-B.

12.92 Based on the reasoning set out above, we provisionally considered that the ability to reach and monitor coordination would increase as a result of the Merger. We considered that following the Merger, this condition would be met, a change from the present situation.

Impact on internal sustainability

12.93 We considered whether the Merger would impact the second condition of coordination, internal sustainability.

12.94 We considered that the Merger would not affect how quickly coordinating online delivered groceries retailers could respond to deviation or any of the other factors we considered in paragraphs 12.64 to 12.68. The Merger would reduce the likelihood of deviation given the fact that Asda and Sainsbury's would be under common ownership post-Merger and therefore each of Tesco and the merged entity would be more certain of the other's actions and there would be less incentive to deviate. As such, we provisionally concluded that the hypothetical coordination would be more internally sustainable post-Merger.

Impact on external sustainability

12.95 We considered whether the Merger would impact the third condition of coordination, external sustainability.

12.96 As both Parties are within the hypothetical coordinating group, we considered that the Merger would not have an impact on the overall external constraint on coordination. As such, we considered that following the Merger there would still be a limited external constraint in certain areas.

12.97 We also considered whether either Party has less incentive to coordinate as a result of external constraints than the other members of the hypothetical coordinating group and whether the Merger would be likely to remove that barrier to coordination. We noted that our online survey found Sainsbury's customers were marginally more likely than Asda's to divert to the other members of the hypothetical coordinating group. However, we considered that the difference was not large enough for there to be a significant change following the Merger.

12.98 Based on the reasoning set out above, we provisionally concluded that the external stability of coordination would not be significantly affected and that a hypothetical coordination would continue to be externally sustainable post-Merger.

Our overall assessment

12.99 As set out above, we provisionally find that the Merger will increase the ability of Tesco, Asda and Sainsbury's to reach and monitor a common understanding in relation to delivery pricing in certain local markets for online delivered groceries to a sufficient extent that this condition would be met post-Merger. We provisionally find that such a hypothetical form of coordination would be more internally sustainable and that external sustainability would not be reduced by the Merger.

12.100 Given that the Merger impacts on two of the three conditions for coordination and that all three conditions are likely to be met post-Merger, considering all the evidence in the round, we provisionally find that the Merger would make coordination over delivery pricing in online delivered groceries, in areas where Ocado does not operate, more likely than not. We therefore provisionally conclude that the Merger would be expected to result in an SLC in the 108 local markets for online delivered groceries which are listed in Chapter 17.

13. General merchandise

Parties' activities

13.1 As noted in Chapter 4, 'general merchandise' (GM) refers to the Parties' offering of non-consumable, non-food items. The Parties offer a wide range of GM products and overlap in the following GM categories: toys; electricals; homeware; nursery and baby; entertainment; clothing; stationery; DIY and garden; furniture; and various financial services, including credit cards, personal loans and non-life insurance.

13.2 We have focused our investigation on those GM segments (or sub-segments) in which the available information indicates the Parties have a relatively high share of supply and/or the Merger would lead to a material increment in the share of supply at the national level.³⁹⁴ These are clothing (in particular, childrenswear and generic schoolwear,³⁹⁵ which is a sub-segment of

³⁹⁴ In the [Issues statement](#) (paragraph 43) we stated that we did not plan to focus on other segments on GM given that the available evidence indicates that there will remain a sufficient degree of competition. We have not received any additional evidence since the publication of the Issues statement to depart from that view. As such, these other segments of GM are not addressed further in these provisional findings.

³⁹⁵ Generic schoolwear items are items that are not specific to a single school and can generally be purchased from several retailers. Bespoke schoolwear items are specific to a single school and often include the logo of that specific school. Many schools have exclusive agreements with specific retailers for the provision of bespoke schoolwear. The majority of school uniforms in the UK are comprised of both bespoke and generic items (Department for Education (June 2015), [Cost of school uniform 2015 research report](#), page 18).

childrenswear), electricals (in particular, personal care electricals (PCEs) and small kitchen appliances (SKAs)) and toys.

- 13.3 Sainsbury's offers clothing, footwear and accessories under its Tu brand and Asda offers clothing, footwear and accessories under its George brand. Both Parties sell childrenswear, including schoolwear. The Parties offer only generic schoolwear items (ie without school logo embroidery).
- 13.4 Sainsbury's Argos³⁹⁶ and Asda sell a variety of electrical products, including small domestic appliances (eg vacuum cleaners, fans), 'grey' goods (eg computers, tablets and phones), and 'brown' goods (eg televisions and other audio-visual appliances).
- 13.5 Sainsbury's Argos and Asda both supply a range of toys.
- 13.6 The Parties offer these products both in-store and online.
- 13.7 The Parties submitted that according to their survey data, non-grocery/GM retail offers are not the predominant or sole driver of store visits for more than a small fraction of customers.³⁹⁷

Market definition

Product scope

- 13.8 The Parties submitted that there is no need to define a precise product market for GM products given that there is a high degree of supply side substitutability, at the retail level, between GM segments.³⁹⁸
- 13.9 In previous cases, the CMA (and its predecessors) have assessed GM across separate segments and in some cases narrower sub-segments.³⁹⁹ We consider that this is a good starting point for determining the product market definition in this case. As explained below, the conditions of competition differ across segments, including the set of competitors and the Parties' relative positions.
- 13.10 In this context, in determining the appropriate product market definition for our competitive assessment, we have considered:

³⁹⁶ Given the different offerings with respect to GM that Sainsbury's and Argos offer, in this chapter there are references to 'Sainsbury's Argos' when we are referring to the company as a whole, and 'Sainsbury's' or 'Argos' when we are considering just one of these entities.

³⁹⁷ [The Parties' response to the Issues statement](#), paragraph 91.

³⁹⁸ [The Parties' response to the Issues statement](#), paragraph 292.

³⁹⁹ [Sainsbury's/Home Retail Group; GUS plc/Index \(part of Littlewoods Ltd\)](#); and [Tesco Holdings plc/Dobbies Garden Centres plc](#).

- (a) the GM segments of clothing, electricals and toys (in which the Parties have relatively high shares of supply), and whether within each of these segments it was appropriate to define more granular product markets (namely PCEs or SKAs for electricals, and childrenswear or generic schoolwear -as a segment of childrenswear- for clothing); and
- (b) for all these segments, the extent to which it is appropriate to differentiate between whether they are sold online or in-store. We have not performed this analysis for each segment (ie clothing, electricals and toys) given that the majority of the evidence received from the Parties and third parties referred to GM overall or there were not substantive differences on third parties' views across segments.

Clothing

Parties' views

13.11 The Parties submitted that the appropriate product market definition is the retail supply of clothing in the UK, without further segmentation, on the basis that:

- (a) the conditions of competition do not vary significantly across narrower segments of clothing, given that similar retailers are active in each segment and they can adjust their offerings within and across segments with relative ease (ie there is a high degree of supply-side substitutability);⁴⁰⁰ and
- (b) with respect to schoolwear specifically, several childrenswear competitors have launched schoolwear ranges in the last decade,⁴⁰¹ suggesting a high degree of supply-side substitutability between schoolwear and other segments of childrenswear. Many retailers, such as Primark, also sell items (eg white shirts and black trousers) that could be used as part of a school uniform even if the retailer does not have a specific schoolwear offering.

Third parties' views

13.12 Third party clothing retailers generally agreed that it was easy and quick to start offering or to expand their offering to childrenswear and schoolwear.

⁴⁰⁰ [The Parties' response to the Issues statement](#), paragraph 302.

⁴⁰¹ These competitors were: Next (2009), Morrisons (2010 and 2013 under their nutmeg range), Aldi (2012), Pep&Co (2015) and Lidl (2016).

- 13.13 Several competitors already offer all clothing segments including schoolwear, such as Tesco, M&S and Next. Some competitors such as Aldi do not offer clothing (including schoolwear) all year round but have back to school offerings at particular times of the year. Lidl submitted that they do not offer clothing (including schoolwear) on a listed basis but offer clothing lines at various times during the year on an in/out basis. There are other competitors that focus on or offer only childrenswear, such as Mothercare, Boots and Morrisons.
- 13.14 Several competitors (Boots, M&S, Debenhams, Morrisons, Boohoo.com), stated that it would not be difficult to expand clothing ranges or start offering childrenswear, and that it would take up to 12 months to extend clothing ranges, from the beginning of product design to delivering products in-store, based on supplier lead-times.
- 13.15 With respect to schoolwear, several competitors (Boots, Matalan, Tesco, Morrisons, Next) stated that there are no specific arrangements needed to offer generic schoolwear beyond those required to offer general childrenswear.

Our assessment

- 13.16 We have considered the impact of the Merger on the retail supply of clothing in the UK. We have also considered the impact of the Merger on the retail supply of the following narrower segments of clothing:
- (a) menswear;
 - (b) womenswear;
 - (c) childrenswear; and
 - (d) generic schoolwear (as a sub-segment of childrenswear).
- 13.17 In particular, we believe that it is appropriate to assess the impact of the Merger across these narrower segments as:
- (a) There is limited demand-side substitution between these different segments.
 - (b) With respect to childrenswear and, in particular, schoolwear, the Parties have a higher share of supply than in other clothing segments. For this reason, we have decided to focus our competitive assessment on these segments and not other segments such as menswear and womenswear, where the Parties' share of supply is lower.

13.18 However, it was not necessary for us to reach a conclusion on the precise product market definition, since, as set out below, no competition concerns arise on any plausible basis.

Electricals

Parties' views

13.19 The Parties submitted that it is not appropriate to segment the electricals market into narrower product markets. According to the Parties, retailers supplying products in any sub-segments of electricals will typically supply those products alongside a much wider set of products and they can also easily expand their offering across segments (ie there is a high degree of supply-side substitution).⁴⁰²

Third parties' views

13.20 Several competitors (Boots, Debenhams, B&M) stated that they offer, or would consider offering, either SKA or PCE, but were unlikely to expand to other segments of electricals because it did not fit with their current offering. Two third parties (Morrisons and Dixons Carphone) submitted that it would not be difficult to expand its PCE or SKA range, but others (Boots and B&M) noted that any expansion would be constrained by limited space.

Our assessment

13.21 We have considered the impact of the Merger on the retail supply of electricals. We note that in previous cases concerning the supply of electricals, the CMA has assessed the impact of the merger on the retail supply of electricals across narrower sub-segments.⁴⁰³ Based on the lack of evidence from third parties on supply side substitutability between sub-segments of electricals, different competitor sets across different sub-segments and that the Parties have a higher share of supply in these sub-segments, we have also considered the impact of the Merger on the following narrower sub-segments of electricals:

(a) PCE; and

(b) SKA.

⁴⁰² [The Parties' response to the Issues statement](#), paragraphs 298 and 299.

⁴⁰³ [Sainsbury's/Home Retail Group decision document](#), 22 July 2016.

13.22 However, it was not necessary for us to reach a conclusion on the precise product market definition, since, as set out below, no competition concerns arise on any plausible basis.

Toys

Parties' views

13.23 The Parties submitted that it is not appropriate to segment the toys segment because:

- (d) the Parties and major competitors are active across all sub-segments;
- (e) retailers of toys are readily able to alter their competitive positioning (product portfolio, marketing, etc) to focus on any toy sub-segment to respond to competitors; and
- (f) as noted by the CMA in VTech/LeapFrog merger inquiry,⁴⁰⁴ there is no commonly accepted segmentation within toys.⁴⁰⁵

Third parties' views

13.24 On ease/difficulty of expanding range, no third-party retailers who responded to the CMA's investigation stated that it would be difficult to expand their toys range to cover other segments of toys not currently offered.

Our assessment

13.25 We note that in previous cases concerning the supply of toys, the CMA has assessed the impact of the merger on the retail supply of toys, with no further sub-segmentation.⁴⁰⁶ In light of the evidence set out above, we have provisionally decided that this approach is also appropriate in this case.

13.26 However, it was not necessary for us to reach a conclusion on the precise product market definition, since, as set out below, no competition concerns arise on any plausible basis.

⁴⁰⁴ [VTech/LeapFrog merger inquiry](#).

⁴⁰⁵ [The Parties' response to the Issues statement](#), paragraph 296.

⁴⁰⁶ [Sainsbury's/Home Retail Group decision document \(22 July 2016\)](#). [VTech/LeapFrog merger inquiry Final report](#) (12 January 2017).

Delineation by supply channel

13.27 For each of the categories above (ie clothing, electricals and toys), we considered whether it was appropriate to segment the product market by supply channel (in particular in-store versus online).

Parties' views

13.28 The Parties submitted that it is not appropriate to consider separate sales channels (namely, in-store and online) as separate product markets, because:

- (a) many leading retailers, including the Parties, operate both in-store and online channels and supply products at a uniform price across channels, many with free delivery on orders above a total sales amount;
- (b) high and rapidly growing internet penetration can be clearly observed across all major non-food product segments, including clothing, which the Parties submit is evidence of competitive substitution from in-store channels;
- (c) 'customer (and retailer) journeys' now combine multiple channels, meaning that the boundary between online and offline is increasingly blurred; and
- (d) enhancements to the online models have eroded the competitive distinctiveness of physical stores, such as immediacy, availability, and ability-to-inspect.

Third parties' views

13.29 Most third-party retailers in clothing, toys and electricals were of the view that the retail supply of GM online competes with and constrains the supply of GM in-store.

13.30 Given that the reasoning given by these third parties and the set of competitor retailers differ between each segment, we provide a detailed summary of the third-party views for each of these segments on the constraint from online retailers in the competitive assessment below.

Our assessment

13.31 With respect to defining separate product markets for different supply channels, in our view the Parties' submissions do not address whether there exists a sufficiently large group of 'marginal' customers who would be willing to switch between supply channels in response to a small but significant

change in the relative competitive offerings in the in-store and online channel for GM.

- 13.32 In any event, unlike in online groceries, we note that in GM online deliveries there is a large number of players in the market. There are also differences in the business models employed: for instance, some GM online retailers use third party established operators (eg Royal Mail, DPD) for their delivery networks, and distribution generally is less costly given that products can be delivered without the need of refrigerated vans.
- 13.33 We have received mixed and limited evidence on whether online and in-store GM retailers belong to the same product market. In each of the GM segments we have assessed (ie clothing, electricals and toys), online sales have grown in the last few years; however, the proportion of in-store sales is still higher than the proportion of online sales (see paragraphs 13.73, 13.109 and 13.148). Online penetration varies by segment: in 2017, online clothing sales amounted to only 25.7% of all clothing sales, whereas for electricals the equivalent figure was 48.6% and for toys 36.8% (see paragraphs 13.73, 13.109 and 13.148). Also, in each of these segments, there is a large variation in the proportion of sales conducted online between different retailers with an in-store presence (see paragraphs 13.74, 13.110 and 13.149).
- 13.34 Nevertheless, it has not been necessary for us to conclude on whether this distinction is appropriate since, as set out below, no competition concerns arise on any plausible basis. We consider further the constraint between online and in-store sales of GM as part of our competitive assessment below.

Provisional conclusion on product market definition

- 13.35 For the reasons set out above, we have conducted our assessment within the following product markets:
- (a) the retail supply of clothing, including the narrower segment of childrenswear, and the sub-segment of generic schoolwear;
 - (b) the retail supply of electricals, including the narrower segments of PCE and SKA; and
 - (c) the retail supply of toys.
- 13.36 However, in each case, it has not been necessary for us to reach a conclusion on the precise product market definition, since no competition concerns arise on any plausible basis.

Geographic scope

Parties' views

13.37 The Parties submitted that although retail competition is fundamentally local in nature, it is not necessary to carry out a separate local analysis for any GM segment because, in their view, there could not plausibly be a competition issue for GM in local areas where no equivalent competition issue exists for groceries. This is because:

- (a) the Parties' grocery competitors also sell similar ranges of GM, including clothing;
- (b) in addition to competition from other grocers, the Parties also face a wide range of competition from generalist retailers (such as department stores and discounters) and specialist retailers in each GM category; and
- (c) online retailers deliver to nearly every address in the UK and are a strong constraint in every local market.

Third parties' views

13.38 We have not received any submissions from third parties with respect to the geographic scope.

Our assessment

13.39 We agree that retail competition, including for GM, is local, particularly on the demand side, as noted in the CMA's 'Retail mergers commentary'.⁴⁰⁷ In our view, the arguments submitted by the Parties are insufficient on their own to conclude that there are no concerns with respect to GM in any local areas where there is no concern with respect to groceries. For instance, grocery competitors' Medium stores may provide some constraint on the Parties' groceries offering without providing a material constraint on the Parties' GM offering in a local area.

13.40 We do however note that some in-store retailers with online offerings and some online-only retailers deliver to nearly every local area in the UK. This may impose a competitive constraint in every local area.

⁴⁰⁷ [CMA62](#), paragraph 1.6.

13.41 Given that consumers shop in local retail stores,⁴⁰⁸ our starting assumption is that there will be material local competition on one or more aspects of PQRS. However, in some cases the available evidence may also indicate that PQRS is in fact set on a national basis (and not in a way which responds locally to local competition).

13.42 As explained in paragraphs 13.44 to 13.54 below, we have considered the evidence available in this case to determine whether the Parties and third parties adjust the specific parameters of competition relating to GM on a national basis, and not in a way which responds locally to local competition.

Provisional conclusion on geographic scope

13.43 Our provisional conclusion on the geographic market definition is that the market is fundamentally local. However, as noted in paragraphs 13.44 to 13.54 below, we have also assessed whether in this case the Parties and third parties adjust one or more aspects of PQRS relating to GM nationally (and not in a way which responds locally to local competition).

Parameter flexing

13.44 We have considered whether, as a result of the Merger, the Parties would be able or incentivised to exploit any potential SLC in local areas by altering the parameters of competition (such as price, range, and availability) in some stores and not others (ie at the local level). If not, then it may not be necessary to carry out a local analysis for GM.

Parties' views

13.45 In general, the Parties set prices uniformly across their stores. However, store managers are [REDACTED].

13.46 Sainsbury's submitted that, in contrast to allocation of food space, [REDACTED]. Generally, [REDACTED].

13.47 Asda submitted that local store managers can [REDACTED], however they do not feed into decisions made on line-level product choices. [REDACTED]. Asda submitted that the reason for this is [REDACTED].

13.48 The Parties indicated that range is set nationally. In particular, Asda stated [REDACTED].

⁴⁰⁸ [CMA62](#), paragraph 1.6.

13.49 Many other parameters of competition such as opening hours, staffing levels, and store cleanliness are not specific to their GM offering, but are common across all areas of the Parties' in-store businesses and are taken into account in our groceries assessment.

Third parties' views

13.50 To understand if, as a result of the Merger, the Parties would flex competitive parameters locally in clothing, electricals and toys, we sought to understand common industry practices and asked third parties about their approach to local flexing.

13.51 With respect to clothing, we received mixed evidence. Tesco indicated that the extent of local variation is limited (10% of stores), and that it does not reflect local competition. Other third parties (JD, Morrisons, Mothercare) said that range is set at a national level, mainly because they want a consistent brand offering to the consumer and Morrisons said that purchase volumes are fixed. However, some competitors (Debenhams, M&S, Matalan, John Lewis, Primark) noted that store size, customer profiles and space allocation play a role in range setting. Debenhams stated that local stores can approach the buying team if they see a local opportunity, for instance a competitor closing nearby. Matalan told us that it considers new store openings and closures and, depending on who the competitor is, it may tailor the range accordingly.

13.52 With respect to electricals, most third parties (B&M, Boots, Morrisons, Superdrug, Wilko, Tesco, Dixons Carphone) said that they set range nationally. For example, Morrisons said that the main reason was fixed purchasing volumes. Only two competitors (Debenhams and Robert Dyas) stated that they do flex range locally. For instance, Debenhams said that local managers can approach the buying and planning team if they see a local opportunity (like a competitor closing nearby).

13.53 With respect to toys, some third parties (B&M, ELC, Morrisons, Tesco, The Entertainer, Smyths) said that they set range at a national level, because it is too complex or costly to adjust at store level they want to provide a consistent offering to consumers across the country or they have fixed purchasing volumes. However, other third parties (John Lewis, M&S) allow for some local flexibility.⁴⁰⁹ John Lewis said that in some instances, the propensity of location to sell a particular brand/category/product well or poorly will be accommodated in ranging decisions. It noted that generally, applying ranging decisions nationally is efficient and allows to build scale. However, exceptions

⁴⁰⁹ In the case of M&S, we note that these statements apply to its whole GM business, and not just to the specific category of toys.

at local level can improve sales, reduce mark downs and give better service. It indicated that stores can be affected by local competitive landscapes. M&S said that local store conditions such as size, customer demographics as well as competitive landscapes are all considered.

Our assessment

13.54 The Parties and the majority of third parties adjust the specific parameters of competition relating to GM, such as price, range and space allocation (as opposed to other parameters relating to the overall store environment) on a national basis (and not in a way which responds locally to local competition). Only a minority of third parties submitted that they set some of these aspects locally, but they do this with respect to factors such as store size or customer profiles and not in a way which responds locally to competition, with the exception of one third party. Given this, any SLC would result from the aggregate impact of the changing competitive dynamics in each local area. Because the Parties' stores are spread widely across the UK we believe that the national shares of supply, and evidence on competition at the national level such as internal strategy documents, are indicative of this aggregate impact. Given this, and taking into account the CMA's discretion to prioritise the use of its resources within the confines of the statutory timetable, we have not conducted an area-by-area local analysis to assess the effect of the Merger in GM.

Unilateral effects

13.55 With respect to GM, we have assessed the Merger on the basis of horizontal unilateral effects. We have assessed whether the merged firm would profitably raise prices (or otherwise degrade its offering) on its own and without needing to coordinate with its rivals.⁴¹⁰ We conduct this assessment separately for segments of clothing, toys and electricals (and the sub-segments) below.

Clothing

National shares of supply

13.56 The UK market for clothing is fragmented, with the Parties and their top ten competitors accounting for 49% of sales value and 70% of sales volume. GlobalData estimated that clothing specialists accounted for around 71.2%

⁴¹⁰ [CC2 Revised](#), paragraph 5.4.1.

clothing sales in 2017, with grocers and department stores accounting for around 9.5% each.

13.57 The Parties have relatively low national shares of supply in clothing with a combined share of supply of 6.8% by value and 15.5% by volume.⁴¹¹ Considering the narrower sub-segments of womenswear, menswear and childrenswear, the Parties have higher shares of supply in childrenswear: 15.6% by value.⁴¹² This would mean that post-Merger, the Parties would have the largest share of supply by value in childrenswear in the UK. Table 13.1 and Table 13.2 below displays the shares of supply of the Parties and its closest competitors for the segments of clothing and childrenswear respectively.

Table 13.1: The Parties and closest competitors' shares of UK clothing, footwear and accessories sales, 52 weeks ending 11 February 2018

%			
<i>Retailer</i>	<i>Sales value</i>	<i>Retailer</i>	<i>Sales volume</i>
Sainsbury's (Tu)	2.3	Sainsbury's (Tu)	4.8
Asda	4.5	Asda	10.7
<i>Combined</i>	<i>6.8</i>	<i>Combined</i>	<i>15.5</i>
M&S	9.3	Primark	16.2
Next/Dir	7.2	M&S	10.5
Primark	5.8	Next/Dir	6.1

Source: The Parties (Kantar).

Table 13.2: The Parties and closest competitors' shares of GB childrenswear sales, 52 weeks ending 11 February 2018

%			
<i>Retailer</i>	<i>Value</i>	<i>Retailer</i>	<i>Volume</i>
Asda	11.5	Asda	20.0
Sainsbury's	4.1	Sainsbury	6.5
<i>Combined</i>	<i>15.6</i>	<i>Combined</i>	<i>26.5</i>
Next/ Dir	13.0	Primark	14.7
Primark	7.2	Next/ Dir	10.0
M&S	6.2	Tesco	8.4

Source: The Parties (Kantar).

13.58 Within the segment of childrenswear, the Parties appear to compete closely in the sub-segment of generic schoolwear. Post-Merger the Parties would have a combined share of supply in schoolwear of 23.4% by value, making the merged entity the largest generic schoolwear retailer in the UK.⁴¹³ Table 13.3

⁴¹¹ We have included both value and volume shares on basis that GlobalData reports both measures. However, according to [CC2 Revised](#) (paragraph 5.3.3), when products differ in quality it may be appropriate to use sales revenue as the basis to measure concentration. Given that clothing products differ in quality and that we do not have evidence to demonstrate whether the items have been defined accurately for the calculation of volume shares, we consider that it is appropriate to use value shares instead of volume shares for our competitive assessment. Shares of supply for the top ten UK retailers are displayed in Table 1 of Appendix J.

⁴¹² A separate set of estimates by GlobalData suggests that Asda's shares of supply by value in 2017 was 3.5% and Sainsbury's share of supply by value in 2017 was 2.0%, which are lower than the Kantar estimates. Shares of supply for the top 20 UK retailers are displayed in Table 2 of Appendix J.

⁴¹³ Data comes from Kantar and is 12 w/e for 27 August 2017 and 28 August 2016. Shares of supply for the top ten UK retailers are displayed in Table 3 of Appendix J.

displays the shares of supply of the Parties and its closest competitors in the retail supply of generic schoolwear.

Table 13.3: The Parties and closest competitors' shares of supply in generic schoolwear in the UK, 12-week period ending last week of August 2017

Retailer	%	
	Volume	Value
Asda	28.3	17.4
Sainsbury's	9.9	6
<i>Combined</i>	<i>38.2</i>	<i>23.4</i>
M&S	16.1	21.1
Tesco	13.5	9.7
School/School shop	2.6	6.9

Source: The Parties. Data comes from Kantar and is 12 w/e for 27 August 2017.

Note: It is unclear if the geographic area covered in the Kantar data is from the whole of the UK or only GB.

Parties' views

13.59 The Parties submitted that:

- (a) they have low national market shares in clothing;
- (b) they are not particularly close competitors in clothing and face a range of competitors. This is demonstrated in their internal documents by the range of competitors benchmarked, and by survey evidence conducted by GlobalData, which indicates that a significant proportion of customers that shopped for clothing at each Party also shopped at M&S, Primark, Next and Tesco (and for Asda, also at Primark, Tesco, M&S, Next and New Look);
- (c) any competition concerns in childrenswear, and in particular, schoolwear are unfounded given the ease of entry and expansion;
- (d) the sale of generic schoolwear is constrained by independent shops that sell bespoke schoolwear; and
- (e) there are no grounds to assess the sale of clothing in-store separately from online, on the basis that the UK clothing market has been characterised in recent years by the large growth of online sales, with third party reports showing that online sales growth is higher than for in-store, and that the Parties' internal documents show that they monitor the clothing offerings of online competitors.

Internal documents

13.60 Our review of the Parties' internal documents showed that the Parties specifically tracked other supermarket competitors; however, they also considered a number of specialist clothing retailers. The Parties appear to compete closely in childrenswear (although there are several other key competitors in this area) and even more closely in schoolwear. This may be because an important childrenswear competitor, Primark,⁴¹⁴ does not supply schoolwear as a discrete category, although Primark does supply childrenswear items that can be used as part of school uniforms.

Asda internal documents

13.61 Asda's internal documents show that Asda's key competitors for childrenswear are [REDACTED]. They also show [REDACTED]. In schoolwear, Asda reported in 2015 that its key competitors were [REDACTED].

Sainsbury's internal documents

13.62 Sainsbury's internal documents show that it [REDACTED].

13.63 One of Sainsbury's strategy document [REDACTED].

13.64 In a 2018 Sainsbury's report [REDACTED].

Third parties' views

13.65 According to some third parties (Aldi, Debenhams, JD, M&S, Matalan, Mothercare, Tesco, Boohoo.com, John Lewis, Shop Direct), the Parties are important competitors and compete closely in the supply of clothing, childrenswear, and schoolwear, having similar propositions. One competitor (Matalan) noted that the Parties are very close competitors, although it noted that other supermarkets and Primark also compete very closely, offering similar value, convenience and range.

13.66 On the breadth and similarity of the Parties' range, we received mixed evidence. One competitor (M&S) indicated that it perceived the Parties' ranges as both being more focused on value and considered the Parties' range breadth to be relatively similar, whereas another (Boots) submitted that Sainsbury's offers a more premium clothing range in terms of quality, design and price in comparison with Asda. Another (Amazon) noted that the Parties

⁴¹⁴ Primark is referred to as the 'price leader' in the UK clothing market.

focus on their own label products and that there is limited overlap of identical products though they offer many competitive alternatives.

- 13.67 Some third parties (JD, Matalan, Morrisons, Boohoo.com, Shop Direct) mentioned that the Parties have strong positions and compete closely in childrenswear, with both Parties being seen as offering a similar proposition, range and value point.
- 13.68 Some competitors (John Lewis and Matalan) noted that the Parties and other supermarkets benefit from providing a combined offering of groceries and clothing. One competitor (John Lewis) stated that the supermarkets promote during key selling periods (eg Back to School), and benefit from economies of scale to set low prices.
- 13.69 Some third parties (Debenhams, Mothercare, Shop Direct) expressed concern about the effect of the Merger on the supply of clothing (particularly childrenswear), alluding to a high combined market share, higher prices, lower quality and more buyer power post-Merger. (Buyer power is discussed in Chapter 15).

Survey evidence from market reports

- 13.70 The Parties and one third party competitor submitted evidence from GlobalData's online survey of shoppers in 2017, on the proportion of surveyed shoppers who bought clothes from multiple retailers. We note that patterns of cross-shopping may reflect customers making complementary purchases within clothing, rather than substituting between retailers, and may therefore provide only limited evidence on the closeness of competition between different retailers.
- 13.71 According to the GlobalData survey, of the customers that shopped in Sainsbury's for clothing, 31.5% of those customers also bought clothing from Asda, behind M&S's (42.4%) and similar to Primark (32.5%), Next (29.8%) and Tesco (29.5%).⁴¹⁵
- 13.72 While the survey does not contain information about the proportion of Asda customers also shopping at Sainsbury's' (as Sainsbury's is not in the top ten clothing retailers considered in the analysis), it does indicate that a sizable proportion of Asda clothes shoppers also shop at Primark (39.3%) and Tesco (27.6%).

⁴¹⁵Information on cross-shopping between the top ten UK clothing retailers in 2017 can be found in Figure 1 of Appendix J.

Competitive constraint from online

- 13.73 GlobalData estimated that online sales growth for clothing is higher than for in-store, and that online sales accounted for 25.3% of total clothing spend in 2017.⁴¹⁶
- 13.74 Among retailers with an in-store presence, there is large variation in the proportion of sales conducted online: for instance, one competitor (Matalan) told us that it makes only [0–10%] of its overall clothing sales online, whereas another (John Lewis) told us that this proportion is [higher].⁴¹⁷ According to the Parties' data for schoolwear sales, Asda made [20–30%] of their schoolwear sales online in the first 10 months of 2018,⁴¹⁸ and Sainsbury's Argos c. [20–30%].⁴¹⁹

Parties' views

- 13.75 The Parties argue that the UK clothing market has been characterised in recent years by the large growth of online sales. They quote third party reports that indicate that online growth continues to surpass in-store growth. They also refer to high street retailers reassessing their traditional brick-and-mortar stores, shifting attention to their online offering (eg M&S and Zara).

Internal documents

- 13.76 Our review of the Parties' internal documents has identified very few examples of the Parties monitoring the clothing offerings of online-only competitors [X].⁴²⁰ The Parties conducted their own review of internal documents provided to the CMA. The Parties' review of Sainsbury's Argos internal documents dated between 1 May 2015 and 30 April 2018, found that [X] were mentioned in [X] internal documents respectively. The Parties review of Asda internal documents produced to the CMA, found that [X] were mentioned in [X] internal documents respectively. We have placed limited weight on this evidence because it is not clear in what context these mentions

⁴¹⁶ In our assessment of GM, we have included click and collect services as part of our figures on the online market. This is in contrast to our approach in groceries outlined in footnote 83. We have adopted this approach because GM products are more commonly one-off purchases where the ability to inspect products in-store is a more important consideration for in store purchases. In comparison, grocery purchases involve a higher proportion repeat purchases of identical products. However, we have not found it necessary to reach a precise definition on the scope of an online market in GM because no competition concerns could arise on any plausible basis.

⁴¹⁷ Information on the percentage of sales made online by competitors is displayed in Table 8 of Appendix J.

⁴¹⁸ Based on Asda schoolwear sales for the 2018 year up until October.

⁴¹⁹ Based on schoolwear sales values (net of returns) for the 2018 year up to the w/e 20 October.

⁴²⁰ We note that we did not review every internal document that the Parties submitted to us which was relevant to GM. Instead, we selected a sample of documents from the Parties using a one-in-n approach and supplemented this random sample with additional documents that seemed particularly likely to be relevant to GM based on their filenames.

were made, and we do not know how many internal documents mention competitors with in-store offerings.

13.77 However, one Sainsbury's internal document notes [redacted].

Third party views

13.78 Most third-party competitors (including Aldi, Amazon, Debenhams, JD, Morrisons, Boohoo.com) were of the view that the retail supply of clothing online competes with and constrains the supply of clothing in-store.

13.79 In addition, some competitors (Amazon, Matalan) noted that customers increasingly switch between online and in-store shopping in their 'customer journey', and that the distinction between in-store and online offerings are increasingly blurred given the growth of click-and-collect and other delivery models. However, one third party (Tesco) noted that these general patterns of customer behaviour are different for clothing at supermarkets, where the majority of spend comes from customers who shop in-store only.

13.80 Some competitors (Aldi, Boots, Tesco) also noted that online clothing sales are growing at a faster rate than in-store sales, and one competitor (Tesco) submitted that online is an important part of the clothing market accounting for just under a third of sales, and online sales are growing whilst in-store sales are shrinking.

13.81 Competitors (Aldi, Debenhams, M&S, Mothercare) further noted that consumers are increasingly shopping online, due to the convenience, ease of comparison, and wider range available online, and some (John Lewis, Debenhams) also noted that online clothing customers are more sensitive to prices.

13.82 Only one online-only competitor (Shop Direct) stated that, for own branded clothing, the extent to which a customer will switch between channels may be lower because of the bespoke nature of the product (quality, design, fit). Several other competitors (M&S, Morrisons, Mothercare, John Lewis), whilst stating that online clothing offerings constrain in-store offerings, also acknowledge the relative advantages of in-store offering such as ability to inspect items before purchase, and better customer service and advice.

13.83 On delivery pricing and coverage, in general, third parties confirmed that they deliver to nearly everywhere in the UK, except for outlying islands and other more remote parts of the UK. Click and collect in store is often free or lower cost than delivery to home and some third parties offer free delivery to home for purchases above a certain amount.

Our assessment

- 13.84 We have assessed whether the Merger is likely to result in an SLC for clothing in general, as well as for the segment of childrenswear and the sub-segment of generic schoolwear.
- 13.85 Our analysis indicates that the Parties compete closely in clothing and in the segments and sub-segments that we have considered. The Parties are particularly close competitors in childrenswear and generic schoolwear, where the shares of supply show that the merged entity would be the UK's largest retailer. However, our review of the available evidence suggests that both Parties face major competitors in each segment and sub-segment of clothing.
- 13.86 In the wider segment of clothing the merged entity would have a low national share of supply of 6.8% and the Merger would result in a small increment of 2.3% (both figures by value). Post-merger the Parties would be constrained by a large number of competitors with similar offerings. We therefore provisionally conclude that the Merger would not be expected to result in an SLC with respect to the clothing segment.
- 13.87 In childrenswear we note that the Parties have limited national shares of supply, with a combined share of 15.6% and the increment resulting from the Merger would be small given Sainsbury's low share of 4.1% (both figures by value). Although the Parties appear to compete closely in the retail supply of childrenswear, there are a number of other close competitors, such as: Tesco, Next, Primark, M&S, Matalan or Debenhams that would impose a competitive constraint on the merged entity. On this basis, we provisionally conclude that the Merger would not be expected to result in an SLC with respect to childrenswear.
- 13.88 Within childrenswear, the Parties appear to compete closely in the sub-segment of generic schoolwear. Within this sub-segment, the Parties have a combined national share of supply of 23.4%, with an increment of 6% (both figures by value). However, there are a large number of competitors offering generic schoolwear at competitive prices and with a wide geographic coverage, such as: Tesco, M&S, Next, Matalan, Debenhams, Shop Direct, Morrisons or Aldi. Additionally, the Parties' shares may be overstated as our data does not include retailers such as Primark that supplies childrenswear items that can be worn as part of a school uniform, but which are not specifically marketed as schoolwear.⁴²¹ In this regard, according to the available evidence, we consider that Primark seems to be a strong competitor

⁴²¹ For example, [Wyvern Primary School suggests](#) that parents can purchase uniform items from Primark.

in childrenswear generally, and particularly at the lower price end (where the Parties operate), and is monitored closely by the Parties.

13.89 On this basis, we provisionally conclude that the Merger would not be expected to result in any SLC with respect to the narrower sub-segment of generic schoolwear.

Electricals

National shares of supply

13.90 In the widest segment of electricals, the Parties would have a combined share of supply of less than 12% with an increment of less than 0.7%. We have also considered two narrower sub-segments of electricals where the Parties have relatively higher shares of supply (PCE and SKA). The Parties' combined shares accounted for between 15.1% and 16.5% of sales of PCE in 2018 and 24.4% of sales of SKA in 2017. Table 13.4 below displays the shares of supply of the Parties and its closest competitors in the retail supply of electricals.

13.91 For PCE, the Parties had previously submitted an older estimate which suggested that the Parties' combined share of PCE in 2016 was 24.2%. This suggests either that there was a material reduction in PCE share of supply over two years or that the 2016 and 2018 estimates, which are from two different sources, are calculated on different bases. The latter explanation seems more likely given the lack of other evidence pointing to a material reduction in the Parties' market position, but we considered both estimates in our assessment and note that our provisional conclusion would be the same on either basis. Table 13.5 and Table 13.6 below displays the shares of supply of the Parties and its closest competitors for the segments of PCE and SKA, respectively.

Table 13.4: The Parties and closest competitors share of supply in electricals, 2017

	%
<i>Retailer</i>	<i>Share of supply</i>
Sainsbury's	<0.7
Argos	10.6
Asda	<0.7
<i>Combined</i>	<i><12.0</i>
Dixons Carphone	26.4
Amazon	16.6
John Lewis	8.0

Source: The Parties (GlobalData)

Table 13.5: The Parties and closest competitors shares of supply in PCE, 2018 (published in August)

	%
<i>Retailer</i>	<i>Share of supply</i>
Sainsbury's	2.7
Argos	12.4
Asda	<1.4
<i>Combined</i>	<i><16.5</i>
Boots	21.1
Amazon	17.0
Tesco	9.4

Source: The Parties (GlobalData)

Table 13.6: The Parties and closest competitors share of supply in SKA, 2017

	%
<i>Retailer</i>	<i>Share of supply</i>
Sainsbury's	3.6
Argos	15.6
Asda	5.2
<i>Combined</i>	<i>24.4</i>
Amazon	10.6
Dixons Carphone	10.4
Tesco	7.2

Source: The Parties (GlobalData)

Parties' views

13.92 The Parties stated that there is no prospect of an SLC arising in electricals, or with respect to the narrower PCE and SKA segments. The Parties submitted that:

- (a) they have relatively low combined shares of supply in electricals, and in the particular segments the CMA is considering, with shares recently declining as shown in estimates and forecast from GlobalData; and
- (b) they are not particularly close competitors in electricals and noted that Asda supplies a significantly more limited range of electrical products than Sainsbury's, and that both Parties benchmark against a wide variety of competitors, including online and in-store players.

13.93 With respect to the competitive constraint from online, the Parties submitted that two large online-only competitors (AO.com and Amazon) are among the range of competitive constraints that they face in electricals.

13.94 The Parties noted that online penetration is high, and that customers are increasingly switching between channels. The Parties submitted that this strong constraint from online will continue post-Merger, and therefore, 'in-store only' shares do not give an accurate view of the market dynamics.

Internal documents

- 13.95 Our review of the Parties' internal documents showed that a number of competitors are mentioned.
- 13.96 A 2015 Argos internal document indicates that the market of core electricals and PCE in particular [REDACTED].
- 13.97 A 2017 internal document by Sainsbury's Argos reported that key competitors for SKA are [REDACTED]. For PCE, their key competitors listed are [REDACTED]. In the same document, Sainsbury's Argos [REDACTED].
- 13.98 From these documents, [REDACTED]. Another internal document [REDACTED].
- 13.99 Asda has [REDACTED].

Third parties' views

- 13.100 Overall, there were mixed views about the extent to which the Parties compete closely in SKA and PCE.
- 13.101 Several competitors (Dixons Carphone, Shop Direct, Debenhams, John Lewis) did not regard the Parties as close competitors. However, two competitors (Morrisons, Tesco) noted that the 'Big 4' are close competitors to one another in electricals (and GM generally), as they have similar ranges and propositions, based on GM areas that are complementary to the grocery shopping trip.
- 13.102 Sainsbury's (or Argos) was mentioned as a close competitor in SKA and PCE by all third parties who responded to the CMA's investigation. Asda was also mentioned by many third parties but was generally regarded as a more distant and weaker competitor than Argos. However, all third parties also mention a large group of other close competitors, including both multi-channel retailers and online-only retailers.
- 13.103 The main concern expressed by third-party competitors was a possible increase in buyer power post-Merger. (Buyer power is discussed in Chapter 15.)

Price points

- 13.104 According to the information provided by the Parties, there are differences in the Parties' average price within the segments of PCE and SKA. These different average prices may indicate that the types of goods the Parties sell differ or that one of the Parties offers the same or similar products

at lower prices. Lower average prices may suggest smaller impulse purchases, whereas higher average prices could be indicative of larger planned purchases. In PCEs the average price points are Asda [£10–20], Sainsbury’s [£20–30] and Argos [£30–40]. In SKAs the average price points are Asda [£10–20], Sainsbury’s [£20–30] and Argos [£20–30].

Survey evidence from market reports

- 13.105 The Parties and third parties submitted evidence from GlobalData’s survey of shoppers in 2017, on the proportion of surveyed shoppers who bought electricals from multiple retailers.⁴²²
- 13.106 The competitive constraints between the Parties in electricals is asymmetric. According to the GlobalData’s survey, of the customers that shopped in Argos for electricals, 6.8% of those customers also bought electricals from Asda. According to this evidence, Argos customers are more likely to shop from Dixons Carphone (21.5%) and Amazon (13.1%).
- 13.107 Conversely, according to GlobalData’s report, 31.1% of Asda’s electrical customers also bought electricals from Argos, and Argos appears to be the most common other shopping location for Asda electrical customers. Asda’s customers are also likely to shop at Dixons Carphone (20.0%) and Amazon (14.4%).
- 13.108 However, as noted in paragraph 13.70, the patterns of ‘cross-shopping’ could reflect customers making complementary purchases within electricals rather than substituting between retailers and may therefore provide only limited evidence on the closeness of competition between retailers.

Competitive constraint from online

13.109 There is a relatively high online penetration in electricals. According to GlobalData 48.6% of electrical sales in 2017 were made online. For the sub-segments of electricals where the Parties have a strong position, online penetration is lower relative to electricals as a whole. This is consistent with the view that online is less relevant for lower-value, impulse GM products.

- (a) Verdict Retail estimated that the percentage of sales online for PCEs was 32.6% in 2016.

⁴²² Information on cross-shopping between the top ten UK electrical retailers in 2017 can be found in Figure 2 of Appendix J.

(b) GlobalData estimated that the percentage of sales online for SKAs was 36.3% in 2017.

13.110 For in-store competitors, electrical retailers' proportion of sales made online varies widely: for instance, one competitor (Aldi) told us that it makes only [0–10%] of its overall electrical sales online, whereas another (John Lewis) told us that this proportion is [higher]. Argos's proportion of sales made online in electricals is [60–70%]. This proportion remains above [50–60%] in both PCEs and SKA.⁴²³ Sainsbury's and Asda have a relatively low proportion of sales made online, with neither having a proportion of more than [0–10%] in any of the three segments.

Parties' views

13.111 The Parties cite two online-only electrical competitors, AO.com and Amazon, as being among the range of competitive constraints that they face in electricals.

Internal Documents

13.112 [redacted], according to one of Sainsbury's internal documents. In that document, Sainsbury's [redacted].

Third party views

13.113 All third parties who responded to the CMA's investigation indicated that online offerings constrain in-store offerings. Some competitors (Morrisons, Dixons Carphone, Shop Direct) noted the price comparison role of online as well as the importance of price for electrical products, and indicated that online customers were more price sensitive, and that the branded/commoditised nature of the products made it easier to compare prices. Several competitors (Amazon, Boots, Dixons Carphone) stated that consumers increasingly switch between online and offline shopping. Two competitors (Boots, Superdrug) specifically noted that, for electricals, if the price drops online, this can lead to lower sales in-store.

13.114 One competitor (AO.com) told us that their research showed that consumers frequently shop across channels for PCE and SKA whilst another (Dixons Carphone) stated that, although the online and in-store channels constrain each other, the online channel is a more important constraint on the

⁴²³ Information on the percentage of sales made online by competitors is displayed in Table 9 of Appendix J.

retail channel because customers can use mobile devices to check prices online whilst they are in the shop.

13.115 Some competitors (Boots, Morrisons) noted that physical stores retained some advantages for consumers relative to online sales, such as customers wanting to ask staff questions about products and test products. One competitor (Debenhams) noted that certain SKA brands, such as Kitchenaid, have selective distribution agreements in place which require stock to be displayed in stores in order to supply that retailer.

13.116 Other competitors (Amazon, B&M) said that it was difficult to identify what constitutes an in-store or online offering in small electricals, with one of them noting in this regard the growth of click-and-collect and different delivery models.

Implications of a hypothetical separate market for online and offline

13.117 The national shares of supply noted in paragraph 13.90 include in-store sales, as well as sales made online. These shares of supply are appropriate for assessing the impact of the Merger on a hypothetical market that includes both online and in-store sales of electricals and the sub-segments of PCE and SKA. Additionally, we have also considered the impact of the Merger if online and in-store were separate markets.

13.118 GlobalData estimated that 48.6% of sales in electricals in 2017 were made online. Given that Asda's proportion of electricals sales made online in 2017 was less than [0-5]%, we were able to estimate that Asda's market share in a hypothetical online only market for electricals in 2017 was [0-5]%. Therefore, the increment in market share resulting from the Merger would be negligible. Following the same approach, we estimate that Asda's market share in the hypothetical online only markets for PCE and SKA were [0-5]% and [0-5]% respectively.

13.119 We have also estimated the combined shares of the Parties' in a hypothetical in-store market for electricals, PCE and SKA to be [10-20]%, [10-20]% and [20-30]% (by value), respectively. These are lower shares of supply (or almost exactly the same share in the case of SKA) than the Parties would hold in a wider market that included both online and in-store sales.

Our assessment

13.120 Our assessment of the available evidence suggests that the Parties compete in electricals, including the narrower segments of PCE and SKA.

However, each are constrained by a range of grocery and non-grocery retailers, such as: Boots, Dixons Carphone, Tesco and Amazon.

- 13.121 Asda's share of supply in all three segments is relatively low, with the highest being 5.2% in SKA. In addition to this, third parties generally did not think that Asda competed as strongly as Sainsbury's Argos in electricals.
- 13.122 Third parties also suggested that the Parties may not compete closely in PCE and SKA because of their different offerings and Sainsbury's Argos' broader range. This view is supported by the evidence submitted by the Parties on average price points which shows that Sainsbury's and Argos have a higher average product price than Asda in both PCE and SKA.
- 13.123 In addition, we provisionally consider that online may impose some constraint in electricals on the Parties across the UK, although this constraint appears to be slightly weaker in the segments of PCE and SKA. All third parties who responded to the CMA's investigation stated that online retailers constrained sales in physical stores. Notably, Sainsbury's Argos internal documents suggest that Amazon impose a strong competitive constraint.
- 13.124 On the basis of the evidence outlined above, we provisionally conclude that the Merger would not be expected to result in an SLC with respect to electricals, or the narrower segments of PCE or SKA.
- 13.125 Our provisional findings do not depend on the extent to which online sales constrain in-store sales. We also provisionally conclude that no SLC would be expected to arise in either a market for the online sales of electricals, PCE and SKA, or an equivalent market for in-store, or a market that included both online and in-store sales:
- (a) No SLC would exist in an online market because Asda's online proportion of sales online is very low and would lead to a very small increment in an online market in each of the three segments.
 - (b) We would not find an SLC in-store on the basis that Argos' low proportion of in-store sales would lead to relatively low shares of supply in each of the three segments.
 - (c) Finally, we would not find an SLC in a market that included both online and in-store given that, as mentioned in paragraphs 13.120 to 13.123 above, the merged entity will be constrained by a wide range of competitors, the combined shares of supply would be low and they seem to have a different offering.

Toys

National shares of supply

13.126 The Parties have a combined share of supply in toys of 23.6% with an increment of 5.6%. We also considered shares of supply excluding Toys R Us who recently exited the market: here the Parties' combined share of supply was 26% with an increment of 6.2%.⁴²⁴ Table 13.7 below displays the shares of supply of the Parties and its closest competitors in the retail supply of toys.

Table 13.7: The Parties and closest competitors shares of supply in toys, 2017

<i>Retailers</i>	<i>Share of supply</i>
Sainsbury's	3.6
Argos	14.4
Asda	5.6
Combined	23.6
Toys R Us	10.2
Amazon	10.1
Tesco	9.1

Source: The Parties (NPD)

Parties' views

13.127 The Parties submitted that they face strong competition from a wide range of competitors, many of which are increasing their shares of supply, including Amazon, Smyths, The Entertainer and B&M. According to the Parties, the UK toy industry is highly fragmented with a large number of retailers active both in-store and online, with online penetration being strong and predicted to keep growing.

13.128 The Parties indicate that Sainsbury's and Asda are not close competitors in toys. According to its internal documents, Sainsbury's considers its top competitors to be [redacted].⁴²⁵

13.129 As regards the competitive constraint from online players, the Parties noted that one of the trends characterising the UK toy sector is the continuing growth of online sales, led by the growth of Amazon which is predicted to grow its share of supply from 9.6% to 13.3% over the next five years.

⁴²⁴ We considered two further sensitivities: A sensitivity to excluding online only providers and shares of supplies provided a different source (GlobalData). Full shares of supply are displayed in Table 7 of Appendix J.

⁴²⁵ [The Parties' response to the Issues statement](#), paragraphs 307 and 308.

Internal Documents

- 13.130 A report from Sainsbury's [REDACTED].
- 13.131 An Argos 'Toy Strategy' document from 2015 indicates that [REDACTED].
- 13.132 We identified limited information on Asda's key toy competitors in Asda's internal documents. However, the evidence suggests that [REDACTED].
- 13.133 Asda also reports [REDACTED].
- 13.134 Sainsbury's documents.
- 13.135 In 2017, Sainsbury's Argos reported [REDACTED].
- 13.136 One Sainsbury's Argos document [REDACTED].
- 13.137 In 2017, Argos recorded a [REDACTED]. An internal document stated [REDACTED].

Third parties' views

- 13.138 Overall, some competitors believe that the Parties compete closely, and the main concern regarding the Merger was a possible increase in buyer power of the merged firm. (Buyer power is discussed in Chapter 15.)
- 13.139 Five competitors (B&M, ELC, Tesco, John Lewis, Smyths) noted close competition between the Parties. John Lewis said that along with Tesco, the Parties operate a very similar model/pricing strategy and approach to Toy customers. Tesco corroborated this statement, noting that the 'Big 4' are close competitors to one another.
- 13.140 All third parties who responded to the CMA's investigation consider Sainsbury's Argos to be a close competitor in toys. Asda is also mentioned by many third parties, though three of them did not mention it as a close competitor. Many other competitors are mentioned, including Amazon which is mentioned as a close competitor by every respondent.
- 13.141 On merger concerns, some third parties mentioned they were worried about an increase in buyer power, referring to the waterbed effect. Some competitors noted the effect on availability of in-demand toys and the merged firm being able to arrange more deals for exclusives.
- 13.142 Some third parties (ELC, Ocado, Smyths) also referred to the dominance the combined firm would have in the toy market. Two of them (Ocado and ELC) noted that this dominance would be greater given the demise of Toys R Us.

Price points

13.143 According to the information provided by the Parties, there are differences in Sainsbury's and Asda's average prices for toys and Argos' average prices. As noted in paragraph 13.104, lower average prices may suggest smaller impulse purchases, whereas higher average prices could be indicative of larger planned purchases. On average, price points for toys are similar for Asda and Sainsbury's at [£0-10] and [£0-10] respectively. Argos has a relatively higher price point of [£10-20].

Survey evidence from market reports

13.144 The Parties and third parties submitted evidence from GlobalData's survey of shoppers in 2017, on the proportion of surveyed shoppers who bought toys from multiple retailers.⁴²⁶

13.145 The competitive constraints between the Parties in toys may be somewhat asymmetric. According to the Global Data survey, of the customers that shopped in Argos for toys, 22.3% of those customers also bought toys from Asda. According to this evidence, Argos' customers are more likely to shop at Amazon (46.7%) and a similar number of customers are likely to shop at Smyths Toys (22.4%) and Tesco (20.4%).

13.146 Conversely, 51.9% of Asda's toys customers also bought toys from Argos, and Argos appears to be the most common other shopping destination for Asda's toys' customers. However, Asda's customers are similarly likely to shop at Amazon (45.4%) and significantly likely to shop at Smyths Toys (22.4%) and Tesco (20.4%).

13.147 However, as noted in paragraph 13.70, patterns of 'cross-shopping' could reflect customers making complementary purchases within toys rather than substituting between retailers and may therefore provide only limited evidence on the closeness of competition between retailers.

Competitive constraint from online

13.148 Online penetration in toys is strong and predicted to continue growing. Global Data estimated that 36.8% of sales in toys and games in 2017 were made online. It also expects that Amazon will overtake Argos as the leading

⁴²⁶ Information on cross-shopping between the top ten U.K. electrical retailers in 2017 can be found in Figure 3 of Appendix J.

toy retailer by 2020. The proportion of consumers who did not shop for toys and games online in 2017 was 37%, decreasing from 40% in 2016.

13.149 For in-store competitors, there is large variation in the proportion of sales conducted online between different toy retailers: for instance, one competitor (Morrisons) told us that it makes only [redacted] [0–10%] of its overall toy sales online, whereas another (John Lewis) told us that this proportion is [higher].⁴²⁷

Parties' views

13.150 The Parties submitted that one of the trends characterising the UK toy sector is the continuing growth of online sales, led by the growth of Amazon which is predicted to grow its share off supply from 9.6% to 13.3% over the next five years.

Internal documents

13.151 In a 2018 Sainsbury's internal document, [redacted].

Third party views

13.152 Most third parties indicated that online offerings constrain in-store offerings to some extent. Some competitors (Morrisons, Dixons Carphone, Shop Direct) noted the price comparison role of online, the importance of price and availability for toys, that online customers were more price sensitive and that the branded/commoditised nature of the products made it easier to compare prices. Several competitors (Amazon, Boots, Dixons Carphone) stated that consumers increasingly switch between online and offline shopping.

13.153 Some competitors (Boots, Morrisons) noted that physical stores retained some advantages for consumers relative to online sales, such as customers wanting to ask staff questions about products, test products, and a more tangible shopping experience.

13.154 One competitor (The Entertainer) noted that it offers the same prices for some products both in-store and online. Another competitor (Amazon) said that it was difficult to identify what constitutes an in-store or online offering in toys. It noted that with the growth of click-and-collect and different delivery models, it is increasingly difficult to identify what constitutes an in-store or online offering. Other competitors (Shop Direct, Smyths) said that the level of

⁴²⁷ Information on the percentage of sales made online by competitors is displayed in Table 10 of Appendix J.

switching between channels was high. Another competitor (Tesco) indicated that online is more relevant for higher priced, branded or commodity products, such as toys.

Implications of a hypothetical separate market for online and offline

13.155 The national shares of supply noted in paragraph 13.126 include sales from in-store as well as online sales. These shares of supply are appropriate for assessing the impact of the Merger on a market that includes both online and in-store sales of toys. Additionally, we have also considered the impact of the Merger if online and in-store sales of toys were separate markets.

13.156 GlobalData estimated that 38.6% of sales in toys and games in 2017 were made online. Given that Asda's proportion of toy sales made online in 2017 was [10-20]%, we were able to estimate that Asda's market share in an online only market for toys in 2017 was [0-5]%. Given this, the increment in market share resulting from the Merger would be small.

13.157 We have also estimated the Parties' combined share of supply in an in-store only market for toys to be [20-30]%. This is a lower market share than the Parties would hold in a wider market that included both online and offline sales.

Our assessment

13.158 Our assessment of the available evidence suggests that the Parties do compete closely in toys. However, the available evidence also shows that they are constrained by a range of grocery and non-grocery retailers, such as Tesco, Smyths, the Entertainer, and Amazon.

13.159 Third-parties suggested that the Parties compete closely in toys, although several third-parties noted that Sainsbury's Argos was a stronger competitor than Asda. This is reflected in the shares of supply: Sainsbury's Argos has a share of supply 18% (largely Argos with 14.4%) whereas, Asda has a smaller share of supply of 5.6%.

13.160 Evidence submitted by the Parties on average price points shows that Argos has a significantly higher average product price than Asda and Sainsbury's. This may suggest that Argos's offering is different and may not compete as directly with Asda as the shares of supply may suggest.

13.161 Argos made [60-70]% of its sales online compared to Asda and Sainsbury's whose online sales account for [10-20]% and [0-5]% respectively.

In conjunction with internal document evidence that suggests Argos [X], this may suggest that Argos targets different consumers or types of purchases.

13.162 The evidence suggests that online retailers may constrain to some extent in-store retailers in the sale of toys. GlobalData estimated that 36.8% of sales in toys and games in 2017 were made online. Most third parties stated that online retailers constrained in-store sales. Further to this, Sainsbury's internal documents suggest that Amazon imposes a competitive constraint.

13.163 On the basis of the above we provisionally conclude that the Merger would not be expected to result in an SLC with respect to the retail supply of toys.

13.164 Our provisional findings do not depend on the extent to which online sales constrain in-store sales of toys. We also provisionally concluded that no SLC would arise in either a hypothetical market for the online sales of toys or the equivalent market for in-store sales, or a market that included both online and in-store sales:

(a) We would not find an SLC in an online market because Asda's proportion of sales online is very low and would lead to a very small increment in an online market.

(b) We would not find an SLC in-store on the basis that Sainsbury's Argos' high proportion of online sales would lead to relatively low combined market share.

13.165 Finally, we would not find an SLC in a market that included both online and offline sales given that, as mentioned in paragraphs 13.158 to 13.162 above, the merged entity will be constrained by a wide range of competitors, Sainsbury's Argos seems to be a stronger competitor (according to shares of supply figures and third parties' evidence) and they have a different focus: Asda is mainly present in-store whereas Sainsbury's Argos have a greater focus online (mainly due to Argos which has made [60-70]% of its sales online).

14. Fuel

14.1 The Parties overlap in the retail supply of fuel (both petrol and diesel, and to a lesser extent auto-LPG) in the UK. Sainsbury's has 314 PFSs and Asda has

320 PFSs; the Parties also have a small number of additional petrol filling stations (PFSs) in the pipeline ([redacted] for Asda and [redacted] for Sainsbury's).⁴²⁸

14.2 In the Issues statement,⁴²⁹ we stated that we were not minded to conduct any further investigation into the supply of auto-LPG, on the basis that our initial assessment indicated that there remained sufficient competition in the two local areas in which the Parties' overlapped (on any plausible market definition) in the supply of auto-LPG. We have not received any further evidence since the publication of the Issues Statement to depart from that view. The supply of auto-LPG is therefore not addressed further in our provisional findings.

Market definition

Product scope

Parties' views

14.3 The Parties submit that:

- (a) consistent with previous decisions by the OFT and the CMA, the relevant product market is the retail supply of road fuels, encompassing both petrol and diesel;
- (b) consistent with previous decisions by the OFT and the CMA, the retail supply of auto-LPG forms a separate product market from the retail supply of fuel; and
- (c) it is not necessary to consider further segmentation, such as a distinction between motorway and 'off-motorway' PFSs.

Third parties' views

14.4 We did not receive any submissions from third parties on the scope of the relevant product market.

⁴²⁸ The CMA's analysis is based in part on the Experian Catalist forecourt site dataset from November 2018, at which point Sainsbury's had 312 and Asda had 319 PFS.

⁴²⁹ [Issues statement](#), paragraph 12.

Our assessment

- 14.5 The CMA (and its predecessors) have conducted a number of investigations in relation to the retail supply of road fuels, most recently in its phase 1 merger investigation MFG/MRH.⁴³⁰
- 14.6 We have not received any evidence to support departing from the product scope adopted in those previous cases. We therefore adopt as the relevant product market definition the retail supply of road fuels.

Geographic scope

Parties' views

- 14.7 The Parties submitted that there is evidence to suggest that the catchment areas for the Parties' PFSs are significantly wider than the catchments adopted by the OFT and CMA in past decisions. The Parties submitted that a geographic catchment of 25 minute drive-time was appropriate, based on the following evidence:
- (a) Sainsbury's [REDACTED].
 - (b) Asda [REDACTED].⁴³¹
 - (c) Sainsbury's submitted the results of an analysis of Nectar data ([REDACTED]% of Sainsbury's customers use a Nectar card for their fuel purchase). Using data on home addresses and excluding 'commuter' and 'seasonal' stores,⁴³² Sainsbury's submitted that 80% catchment area drive-times are [REDACTED] minutes for urban stores and [REDACTED] minutes for rural stores.
 - (d) The Parties conducted an exit survey of ten pairs of PFSs, and Sainsbury's separately conducted an online survey via its Nectar customer database of 20 Sainsbury's PFSs (the same ten as the Parties' exit survey, plus an additional ten sites) (together referred to as the 'Parties fuel surveys'). The Parties stated that their surveys focused on those PFSs where the Parties' sites are relatively close and/or there are relatively few competitors nearby. The surveys asked respondents how long it took them to travel to that PFS. The average 80th percentile response, across the surveyed PFSs, was around [REDACTED] minutes.

⁴³⁰ [Motor Fuel Group \(MFG\)/MRH merger inquiry](#).

⁴³¹ [REDACTED].

⁴³² In its normal course of business, [REDACTED].

(e) [REDACTED].

Third parties' views

14.8 We did not receive any submissions from third parties on the scope of the relevant geographic market.

Our assessment

14.9 Our starting point is that competition takes place mainly at the local level, as customers will consider options available to them in a local area when they need to buy fuel. This is consistent with the position adopted in previous cases in which, for petrol and diesel, past OFT and CMA decisions have adopted a 10-minute drive-time catchment in urban areas and a 20-minute drive-time in rural areas.⁴³³

14.10 We had some concerns regarding the evidence submitted in support of each of the Parties' arguments for a 25-minute drive-time catchment area:

- (a) While Sainsbury's [REDACTED].⁴³⁴ The Parties have explained that Asda's [REDACTED].⁴³⁵
- (b) Nectar customers may not be representative of all Sainsbury's fuel customers. For instance, they may be willing to travel further to a PFS that offers Nectar points⁴³⁶ than customers who do not collect Nectar points.
- (c) Using Nectar customers' home addresses is likely to overstate the distance travelled, as many PFS customers may be travelling from another destination rather than directly from their home. While the Parties have tried to correct for this by excluding PFSs which are adjacent to 'commuter' and 'seasonal' grocery stores, this may also apply to customers of other PFSs which are not adjacent to such stores.

14.11 Nevertheless, we consider it is likely that supermarket PFSs may have wider catchment areas than non-supermarket PFSs (which have been the focus of the CMA's past decisions relating to the supply of road fuels) because:

⁴³³ Anticipated acquisition by MRH (GB) Limited of 78 service stations from Esso Petroleum Company Limited paragraph 28; Completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, paragraph 35; Anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell U.K. Limited and GOGB Limited, paragraph 25.

⁴³⁴ [REDACTED]. For instance, a Sainsbury's internal document, [REDACTED].

⁴³⁵ [REDACTED].

⁴³⁶ In addition to Sainsbury's PFSs, Nectar points can be collected from BP PFSs.

- (a) Supermarket PFSs have lower prices for fuel than non-supermarket PFSs,⁴³⁷ and some customers will be prepared to travel further to obtain these cheaper fuel prices; and
- (b) Customers may be willing to travel further for a combined groceries and fuel shopping mission than for a fuel mission alone.

14.12 As part of our investigation, we have conducted a number of analyses and gathered a range of evidence on the Parties' pricing practices and consumer preferences. These are discussed in more detail in paragraphs 14.75 to 14.143 below. We discuss here our findings from these sources of evidence that are relevant to the scope of the geographic market:

- (a) *Price concentration analysis (PCA)* (paragraphs 14.96 to 14.106 below and paragraphs 17 to 37 in Appendix K). Using the prices of all fuel retailers in our dataset, we found that rival supermarket PFSs up to a 15-minute drive-time continued to have an effect on a centroid PFS's prices, but that non-supermarket PFSs beyond a 5-minute drive-time had no statistically significant effect on those prices.
- (b) *Pricing analysis* (paragraphs 14.129 to 14.143 below and Appendix K (paragraphs 55 to 86)). According to our models of the Parties' pricing rules (which predicted the competitor that each of the Parties' PFSs would set prices in response to on each day, based on a simplified version of their overall approach to pricing):
 - (i) Sainsbury's PFSs [REDACTED].
 - (ii) Asda's PFSs [REDACTED]. When interpreting these results, we note however that our pricing rule does not take into account [REDACTED].
- (c) *CMA fuel survey* (paragraphs 14.85 to 14.88 below). Analysing the responses to the CMA fuel survey, 80% of respondents stated that they travelled [REDACTED] minutes' drive-time or less (Asda) and [REDACTED] minutes' drive-time or less (Sainsbury's) to arrive at the PFS at which they were surveyed. Considering the distance to the PFS that respondents said that they would divert to if they knew that the PFS was closed for refurbishment, 80% of respondents stated that they would divert to a PFS which was [REDACTED] (Asda) and [REDACTED] (Sainsbury's) minutes' drive-time or less from the PFS at which they were surveyed. There was no material

⁴³⁷ In our fuel price dataset, covering the period 1 April 2016 to 31 July 2018, the median supermarket PFS fuel price was consistently below the median non-supermarket PFS fuel price on each day, for both diesel and unleaded petrol. The average difference was around 4ppl for both diesel and unleaded petrol.

difference in these responses depending on whether the PFS diverted to was a supermarket or non-supermarket PFS.

14.13 We consider that:

- (a) greater weight should be given to evidence which is directly informative of the set of relevant competitive constraints facing each PFS. We consider that this includes: (i) the PCA; (ii) the distance to the competitor PFS in response to which the Parties' PFS set prices according to their pricing approach; and (iii) the distance to the PFS that survey respondents said they would divert to;
- (b) less weight should be given to the evidence that relies on or could reflect distances to PFSs from customers' home addresses, such as the Parties' Nectar data analysis and responses to survey question about travel times, because a significant proportion of fuel customers may not be travelling directly from home and may need to refuel, for example, near their place of work or during a long journey far from home. Moreover, as observed at paragraph 14.10(b) above, Nectar customers may be willing to travel further to a PFS that offers Nectar points than customers who do not collect Nectar points.

14.14 Taking into account all of the evidence, we consider it is appropriate to adopt a different approach to the size of the relevant catchment area, depending on whether the PFS in question is a supermarket or a non-supermarket PFS.

14.15 Given the evidence reviewed above, we do not consider it appropriate to adopt the 25-minute drive-time catchment areas proposed by the Parties. We provisionally adopt as the relevant geographic market local catchment areas which include:

- (a) competitor non-supermarket PFSs up to 10-minutes' drive-time; and
- (b) competitor supermarket PFSs up to 20-minutes' drive-time.

14.16 We recognise that market definition is a useful tool and not an end in itself and while in our competitive assessment we analysed in more detail the competitive constraints from the set of competitors within the relevant geographic market as defined above, we also take account of and make explicit adjustment for any 'out-of-market' constraints.

Unilateral effects – national assessment

14.17 As set out in paragraphs 14.7 to 14.16, the relevant markets for road fuels are local. Pricing in fuel is largely local. Nevertheless, in our view, there are

currently parameters of competition in the Parties' fuel business which are not varied at the local level and are instead set centrally and applied uniformly across the Parties' PFS estate. This includes the overarching elements of the Parties' national pricing strategies, [REDACTED].

- 14.18 We also note that the Parties overlap across a high proportion of their PFS estate. Sainsbury's has 314 PFSs (and we are aware of [REDACTED] Sainsbury's pipeline PFSs) and Asda has 320 PFSs (and we are aware of [REDACTED] Asda pipeline PFSs). Using a 20-minute drive-time, 250 Sainsbury's PFSs (and [REDACTED] of its pipeline PFSs) overlap with an Asda PFS, and 278 Asda PFSs (and all [REDACTED] of its pipeline PFSs) overlap with a Sainsbury's PFS.
- 14.19 In theory, if the Merger is expected to significantly reduce competition in local areas representing a significant proportion of the Parties' overall PFS estates, the Merger may create an incentive to worsen the Parties' offerings across all their PFSs, including aspects of their offerings that are set centrally. The effect would be a deterioration of the Parties' offering in each local area where one or more of the Parties is present (that is, including areas where they do not overlap). Any such deterioration across the Parties' estates would reflect the aggregate competitive constraints that the Parties face in each of the local areas where they operate.⁴³⁸
- 14.20 To undertake this assessment, we have considered a range of evidence which provides a centralised, or aggregate, view of the competition which the Parties face. We first set out the Parties' submissions, before reviewing in turn the following:
- (a) Evidence on national shares of supply;
 - (b) Evidence on which factors mostly affect customers' choice of PFS (which helps inform our understanding of the parameters on which the Parties compete with other grocery retailers);
 - (c) Evidence on the degree to which the main parameters of competition are set locally and how the incentive to localised setting may change post-Merger;
 - (d) For each Party, the national weighted average GUPPI: an index measure calculated from combining diversion ratios and margin information, to provide an indication of the upward pricing pressure incentive that is expected to result from the Merger.

⁴³⁸ See [Retail Mergers Commentary](#), 1.13-1.17.

Parties' views

- 14.21 The Parties state that competition is fundamentally local in fuel retailing, and that the key aspects of their fuel offers are either set locally or through a central framework that is implemented or varied locally, in either case driven by local competitive conditions. The Parties submit that there is no basis for any national theory of harm that would go beyond concerns arising from an aggregation of local competitive interactions. In the Parties' view, there are no national concerns that would not be resolved straightforwardly by addressing any local concerns.
- 14.22 The Parties also point to national shares of supply, stating that the UK fuel retail sector is not concentrated and that the Parties on any measure will have a combined share of no more than 18% by volume, and to the relatively low industry margins which reflect, in their view, the intense competition between fuel retailers.

Third party views

- 14.23 We asked third parties to comment on how fuel prices are set, closeness of competition (particularly between supermarkets and non-supermarkets), overall profitability and views on the Merger. The evidence received from third parties, set out in paragraphs 14.25 to 14.39 below, suggests that:
- (a) price and location are the two most important factors for customers' choice of PFS;
 - (b) pricing is set by all operators at a local level and takes into consideration nearby competitors' prices and promotions;
 - (c) supermarkets, and Asda in particular, have the lowest fuel prices, and Asda is perceived to be the first to cut prices;
 - (d) supermarkets are cheaper due to economies of scale, buyer power and willingness to forgo profits on fuel sales in order to drive footfall into their stores (we note however that this was not supported by one supermarket competitor's response);
 - (e) oil majors invest more than supermarkets in providing higher quality fuel; and
 - (f) the Merger would lead to a high combined market share, especially in certain local areas and this could raise prices, particularly Asda's prices.

14.24 Third-party views are also relevant to and have been taken into account in our local assessment.

Competitive parameters

14.25 Third parties ([X]) said that the main focus of customers when choosing a PFS is price. [X] noted that fuel is a homogeneous product and that brand is not as important as price. It further said that transparency of pricing is a particular feature of the market, as pricing is clearly displayed at the road-side, which means that customers can easily compare pricing between sites.

14.26 Apart from price, [X] believe that important factors are availability and ease of use of the PFS. [X] said that its customer research shows that after price, convenience of location is the second most important factor for customers. One competitor ([X]) said that some customers are fully price sensitive while others prefer to use their local sites even if there is a price difference with other service stations.

14.27 BP said that the key factors that contribute to customer choice in selecting which PFS to visit will depend on their customer mission: fuel price is one factor, but the non-fuel retail offering may also be a key part of a customer's decision-making. The relative importance of these factors varies from area to area.

Closeness of competition between supermarket and non-supermarket PFSs

14.28 Some third parties ([X]) said that supermarket fuel prices are often lower than non-supermarket prices. [X] said that grocery retailers are both invariably the first to cut prices (usually nationally or to certain price points) and the last to raise them. MFG said that supermarkets often constrained other players from raising prices. [X] also said that Asda particularly was the price leader, and [X] noted that the other three larger grocery retailers (ie Tesco, Sainsbury's and Morrisons) usually follow Asda with price cuts.

14.29 MFG said that supermarket fuel providers are a very strong competitive constraint, which is set to increase further as they continue to grow their networks by acquiring new sites or developing new PFS on their existing grocery store sites. Moto said that competition between supermarket PFS and non-supermarket PFS is asymmetric, ie that supermarket PFS constrain non-supermarket PFS, but non-supermarket PFS do not constrain supermarket PFS.⁴³⁹

⁴³⁹ [Moto response to Issues Statement](#), paragraph 1.3.

14.30 Some third parties ([REDACTED]) said that oil majors invest in providing better quality fuel than supermarkets. [REDACTED] further said that they tend to invest in differentiating their fuel offering from the supermarket – including the grades on offer (eg super unleaded and differentiated diesel), additives and/or advertising/promotion of fuel quality claims. [REDACTED] said that there is a general assumption that some supermarket fuels do not carry, for example, the same level of additive for engine cleaning and are therefore not of the same quality as the fuel supplied by the major oil companies. It added that the supermarket did not make claims about the quality of their fuels in the same way as the oil companies.

Why supermarkets are cheaper

14.31 Some third parties ([REDACTED]) said that supermarket fuel operators are cheaper because they benefit from negotiations with wholesale fuel suppliers due to the large volumes of fuel they can expect to sell. Moto stated that it believes that supermarket fuel operators are able to price more cheaply because they have the resources to source a sophisticated supply and distribution network and have the ability to use fuel as a loss leader to increase store profits, offsetting any reduction in fuel margins.

14.32 Tesco said that one reason that [REDACTED] may be that most Asda stations are unmanned, and therefore they have a lower cost operating model. More generally, Tesco believes that one reason for higher prices at the oil majors may be that their sales per outlet are typically lower, and therefore the fixed costs of operating a site are spread over lower volumes. Tesco does not believe there is buying advantage between players.

Typical margins and common industry practice in setting fuel prices

14.33 We reviewed common industry practice in fuel pricing from third parties' responses. Although there is some variation in the way that different competitors approach fuel pricing, the emphasis of the Parties' current approaches on local competitor PFS prices, the frequency of price changes, and a site-by-site approach to setting prices, is not out of line with many other competitors' approach to fuel pricing.

14.34 We also reviewed gross margins reported by third parties, and the Parties' current national variable margins are broadly in line with those of their competitors. Third parties who responded to our question said that margins were in the range of 5–6% or less.

Closeness of competition between the Parties

- 14.35 Some third parties ([REDACTED]) believe that the Parties compete closely. BP said that competition between local sites is strong and, at a brand level, BP would regard Sainsbury's and Asda as close competitors, such that if one of the competitors raised their prices, a significant proportion of customers would switch to the other competitor, or to other supermarket brands.
- 14.36 Harvest Energy's perception is that Asda has been the cheapest fuel retailer in the UK for at least the last two years at least. Its perception is that Sainsbury's has come a somewhat distant second with the price gap between the two being wider than between other competitors but that, overall, this varies from area to area.
- 14.37 [REDACTED] said that the Parties are not, in general, any closer competitors to each other than any other suppliers. [REDACTED] said this would depend on local market conditions and that it does not generally observe a distinction between Sainsbury's and Asda's prices on the one hand, and other supermarket competitors on the other, albeit that Asda might have a more pronounced discount policy.

Views on the Merger

- 14.38 Some third parties ([REDACTED]) do not anticipate negative effects from the Merger. [REDACTED] thinks that supermarket sites would continue to have a constraining effect on prices post-Merger. BP does not anticipate any negative effects of the Merger on the market for retail supply of road fuels in the UK or any local area in the UK.
- 14.39 Other third parties (Morrisons, Tesco, [REDACTED]) believe that competition might be lost as a result of the Merger.⁴⁴⁰ [REDACTED].⁴⁴¹ [REDACTED] understands that Sainsbury's [REDACTED], whilst its buying power will be enhanced, it may have less incentive to pass any benefit on to the consumer. Tesco said that given the pricing dynamics, the Parties may have a reduced incentive to maintain Asda's low prices, particularly in areas where there is not either a Morrisons or a Tesco. [REDACTED].

⁴⁴⁰ [Morrisons response to Issues Statement](#), paragraph 1.14.

⁴⁴¹ [Morrisons response to Issues Statement](#), paragraph 1.14.

Our assessment

Shares of supply and scale of local overlaps

14.40 The Parties' combined share of supply (18% of estimated volume, and 7.5% of sites) may not be expected to give rise to concern in a sector where products are largely undifferentiated.

Table 14.1: National fuel retail shares by brand, 2018

<i>Brand</i>	<i>Share of volume %</i>	<i>Share of sites %</i>	<i>Ratio of volume share to site share</i>
Sainsbury's	10.2	3.7	2.76
Asda	7.7	3.8	2.03
<i>Parties combined</i>	<i>17.9</i>	<i>7.5</i>	<i>2.39</i>
Tesco	16.1	6.0	2.68
BP	14.8	14.8	1.00
Shell	13.6	12.4	1.10
Esso	11.9	13.6	0.88
Morrisons	9.8	4.0	2.45
Texaco	5.2	8.8	0.59
Gulf	2.3	5.6	0.41
Jet	2.2	3.9	0.56
Other	5.6	21.1	0.27

Source: The Parties' (Final Merger Notice, Table 30).

14.41 We note, however, that national shares of supply do not take account of the relative closeness of competition of different retailers. In particular, supermarket fuel retailers are likely to compete more closely with each other than with non-supermarket fuel retailers. This is confirmed by our local analysis (see paragraph 14.103). Moreover, shares of supply do not account for the extent of geographic overlap between the Parties' PFSs and those of competing retailers, which is important as the Parties and other retailers do not compete for national customers but rather for local customers.

Parameters of competition and degree to which they apply uniformly across the Parties' estates

14.42 Evidence from third parties (paragraphs 14.25 to 14.27) and from the CMA fuel survey (paragraphs 14.87(c) and (d)) consistently indicates price and location as the two main parameters of competition in the supply of motor fuel. Supermarket PFSs, in particular, tend to have lower prices, while non-supermarket PFSs tend to be more conveniently located.

14.43 Although the Parties set prices which are varied locally and take into account local competitive conditions, the central framework that they are implementing to set these local prices has an intrinsic level of aggressiveness (ie tendency to set lower prices to defend share or take share from competitors) and is viewed in a wider context. Both Parties have national 'pricing rules' (discussed in paragraph 14.131 below) which are applied uniformly nationally, although

they result in local variations in prices. Asda's overall pricing approach, [REDACTED], [REDACTED]. Third parties told us that Asda was the price leader and often the first to cut prices among the major supermarket retailers, and this is confirmed by [REDACTED]. We also note that [REDACTED].

14.44 The provisional findings of our local assessment (discussed at paragraphs 14.54 to 14.161 below) are that the Merger will result in an SLC in 132 local markets centred on the Parties PFSs. This represents more than 20% of the Parties PFS estates. As set out in paragraph 14.19, if the Merger is expected to result in competition concerns in local areas representing a significant proportion of the Parties' overall PFS estates (and assuming that the Parties do not find it profitable to simply depart from a uniform national approach), it may create an incentive to worsen the Parties' offerings across all of their PFSs (such as changing their overall approach to price setting to a less aggressive one, having fewer or higher national price caps, etc.).

14.45 We note that Sainsbury's, through its [REDACTED]. In our view, [REDACTED] suggest that:

- (a) it would be feasible for the merged entity to change its pricing approach and adopt even more localised price setting rules for fuel than under the Parties' current approach; and
- (b) the additional complexity and implementation costs to Sainsbury's of doing so are outweighed by the benefits of increasing profits by [REDACTED].

14.46 The merged entity will have a larger PFS estate with greater variation in local demand and competition across local areas than Sainsbury's current PFS estate. Since the benefits of more localised price setting are greater if there is more variability in local demand and in local competition between the areas, we provisionally conclude that the merged entity will also likely find it profitable to adopt more localised pricing approaches. All other things equal, this makes it less likely that the Merger would lead to higher prices in every local area of the Parties' PFS estate.

National weighted average GUPPI

14.47 As described in Chapter 8, GUPPI is designed to score the merging parties' incentives post-merger to raise prices and/or degrade other elements of PQRS. It does this by combining information on diversion ratios and margins.⁴⁴² The greater the incentive to raise prices (signalled by a higher

⁴⁴² The GUPPI calculation also takes into account for the ratio between the Parties'. In relation to fuel, prices are very similar at the Parties' PFSs, so that the ratio is approximately one.

GUPPI figure), the more likely the merger may be expected to result in an SLC.

- 14.48 In this part of our assessment, we have used a national weighted average GUPPI as one indicator, in combination with the range of qualitative and quantitative evidence discussed above, to conclude whether, in the round, the Merger gives rise to competition concerns at a national level in relation to the supply of road fuels.
- 14.49 As described in detail in our local assessment (paragraphs 14.113 to 14.128 below), we calculated a GUPPI measure for each local area in which the Parties are present,⁴⁴³ combining information on local diversion ratios (which combine evidence from the CMA fuel survey and from a price concentration analysis) and local margins. To measure the expected upward pricing pressure in aggregate across all of these local areas, we calculated averaged the local GUPPI at each of the Parties' PFSs, weighting each PFSs according to the volume of fuels sold, to produce a national weighted average GUPPI for each of the Parties. We obtained a national weighted average GUPPI for Sainsbury's of [0-5]% and for Asda of [0-5]%.
- 14.50 The GUPPI values reflect the low average variable margins the Parties generate from PFS sales ([x] % for Sainsbury's and [x] % for Asda; see Appendix F). The GUPPI also accounts for the recapture of supermarket revenue when customers divert both PFS and supermarket spending.
- 14.51 As discussed in paragraphs 14.168 to 14.169 below, we do not have sufficient evidence to support the existence of rivalry-enhancing efficiencies in relation to fuel. Therefore, unlike in our assessment of unilateral effects in in-store groceries, we did not assume any associated downward pressure in a GUPPI analysis.
- 14.52 Nevertheless, considered in light of the other evidence reviewed above, and taking into account the same factors described in our local assessment (paragraphs 14.152 to 14.154) when interpreting GUPPI levels, we did not consider that the national weighted average GUPPI that we had calculated implied a material incentive on the Parties to degrade competitive parameters at a national level post-Merger.

⁴⁴³ GUPPI is 0 in all local areas where the Parties do not overlap.

Provisional conclusion on unilateral effects – national assessment

14.53 Overall, on balance and based on the analysis set out above, we provisionally concluded that the Merger may not be expected to lead to an SLC in every local area where one or more of the Parties is present.

Unilateral effects – local assessment

Parties' views

14.54 Given that competition in fuel retailing takes place mainly at the local level, as customers will consider options available to them in a local area when they need to buy fuel, the Parties submit that the degree to which they are close or more distant local competitors will depend on the local circumstances, in which the key factors are the number of rivals, convenience of location for customer (including ease of access), price, and convenience on-site of the fuel purchase itself (eg ability to pay in cash or by card at an automated pump) and the non-fuel retail offer.

14.55 The Parties submit that non-supermarket fuel rivals will continue to constrain the Parties post-merger and should be given appropriate weight in any competitive assessment at the local level. The Parties highlight that:

- (a) Non-supermarket PFSs are typically better able to compete on convenience of location, which is a primary driver of customer choice. Oil majors like BP and Shell typically have the most convenient sites, which are easier to access and exit from main thoroughfares and visible at some distance. In contrast, supermarket PFSs are generally constrained by the locations of their existing grocery stores, as their fuel sites are almost always located in or around these stores.
- (b) The proportion of the Parties' fuel customers that combine both purchases in a single trip is relatively low. Moreover, even if the ability to combine a fuel purchase with a grocery shop was a strong driver of choice for fuel customers, many non-supermarket PFSs are increasingly expanding their non-fuel offerings, particularly food-to-go, convenience grocery and coffee.

14.56 The Parties argued that the CMA should apply a systematic approach focused on the key factors of competition at the local level, including location and price. The Parties drew attention to the filters used in previous CMA (and OFT) cases in the fuel retailing sector at phase 1, which the CMA and OFT have used to identify sites/local areas which may raise prima facie concerns. These are:

- (a) nearest competitor: the merging parties are each other's nearest competitor by drive time;⁴⁴⁴
- (b) fascia counts: '4 to 3' or worse on a 10-minute drive time catchment (urban areas) or 20-minute drive time catchment (rural areas) – in more recent cases on both a fascia and an ownership basis;⁴⁴⁵
- (c) price marking:⁴⁴⁶ either party identifies a site of the other party as its primary price marker or either party identifies a site of the other party as one of three or fewer competing sites;⁴⁴⁷ and
- (d) supermarket fascia count: '2 to 1' in supermarket fascia on a 10-minute drive time catchment (urban areas) or 20-minute drive time catchment (rural areas), ie the merger removes the only remaining supermarket rival in the relevant catchment area.⁴⁴⁸ This filter has only been used in one previous case.

14.57 The Parties submitted that, although these are phase 1 filters (and therefore will be generally be more conservative than required for a phase 2 assessment, given the lower legal threshold that applies at phase 1), for the most part they provide a useful starting point for our investigation in this case, except that they should be adapted to reflect a catchment area of 25-minute drive-time.

⁴⁴⁴ See, for example, CMA, anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell UK Limited and GOGB Limited, Case No. ME/6534/15, decision of 26 August 2015, paragraph 53; CMA, completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, Case No. ME/6471-14, decision of 16 February 2015, paragraph 64; OFT, completed acquisition by Shell of 253 petrol stations from Consortium Rontec Investments LLP, Case No. ME/5191/11, decision of 3 February 2012, paragraph 64; and OFT, anticipated acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, Case No. ME/5139/11, decision of 20 October 2011, paragraph 30.

⁴⁴⁵ See, for example, CMA, anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell UK Limited and GOGB Limited, Case No. ME/6534/15, decision of 26 August 2015, paragraph 53; CMA, completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, Case No. ME/6471-14, decision of 16 February 2015, paragraph 64; and OFT, anticipated acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, Case No. ME/5139/11, decision of 20 October 2011, paragraph 30.

⁴⁴⁶ Some road fuels retailers identify, for each of their PFSs, a list of local competing PFSs whose prices are closely monitored. These PFSs are called 'price markers'. In some cases, one of these PFSs is chosen as 'primary' price marker.

⁴⁴⁷ See, for example, CMA, anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell UK Limited and GOGB Limited, Case No. ME/6534/15, decision of 26 August 2015, paragraph 53; CMA, completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited, Case No. ME/6471-14, decision of 16 February 2015, paragraph 64; OFT, completed acquisition by Shell of 253 petrol stations from Consortium Rontec Investments LLP, Case No. ME/5191/11, decision of 3 February 2012, paragraph 80; and anticipated acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, Case No. ME/5139/11, decision of 20 October 2011, paragraph 37.

⁴⁴⁸ See OFT, anticipated acquisition by Tesco plc of former BP/Safeway petrol forecourts and stores from Wm Morrison Supermarkets plc, Case No. ME/1975/05, decision of 24 October 2005, paragraph 42.

14.58 The Parties also submitted that the CMA's consideration of survey evidence should follow the approach taken in previous cases, such as *Shell/Rontec*,⁴⁴⁹ which suggests that an area is unlikely to raise competition concerns even on a phase 1 'realistic prospect' standard where there is good survey evidence that the diversion ratio between the relevant parties is under 40%. They said this is particularly the case given the evidence of the Parties' [REDACTED]. The Parties submitted that this would imply that raising prices would not be profitable unless extremely high diversions between Sainsbury's and Asda were observed. In this respect, the Parties considered that diversion ratios based on in-person exit surveys are likely to overestimate diversion between the Parties due to a framing bias in favour of supermarket fuel retailers, as the respondents are in a supermarket PFS environment. The Parties noted that their online fuel surveys, which would be less subject to this framing bias, on average tend to find lower diversion ratios between the Parties than exit surveys taken in the same areas.

14.59 The Parties stated that [REDACTED]: [REDACTED], and [REDACTED].

14.60 The Parties further submitted that it is pragmatic to use an approach such as GUPPI or WSS analysis as an initial screening mechanism and then, given the relatively small number of areas that (in the Parties' view) are likely to be identified by the initial screen, it would be feasible to conduct in-depth reviews of each local area and take account a broader range of local evidence. The Parties submitted that any additional overlaps created through new openings that are planned can be addressed on a case-by-case basis at the local level, using the same systematic approach as for overlaps generated by existing sites.

14.61 The Parties also submitted that, in constructing the weights to be used in a GUPPI, it would be appropriate to take account of the evidence beyond the CMA fuel survey and, in particular, of the findings of the price concentration analysis (PCA).

14.62 We discuss further specific submissions from the Parties on elements of our analysis where relevant below.

⁴⁴⁹ OFT, completed acquisition by Shell of 253 petrol stations from Consortium Rontec Investments LLP, Case No. ME/5191/11, decision of 3 February 2012, paragraphs 99 and 107.

Third party views

14.63 The third-party views discussed in paragraphs 14.23 to 14.39 above are relevant to and have been taken into account in our local assessment of unilateral effects.

Our assessment

Approach to competitive assessment

14.64 The CMA and OFT have conducted a number of merger investigations in the fuel retailing sector. Each of these cases has been resolved at phase 1. In these cases, the CMA (and OFT) used a number of filters to identify sites/local areas which may raise prima facie concerns, and therefore required a more in-depth review. The filters used in previous CMA and OFT cases are described at paragraph 14.56, above.

14.65 Given the large number of overlaps between the Parties' PFSs (174 Sainsbury's PFSs and 192 Asda PFSs when using a ten-minute drive-time), including after the application of the above filters (85 Sainsburys PFSs and 81 Asda PFSs), we concluded that it would be impractical to use the above initial filters as the starting point for our analysis, given the need to then conduct an in-depth, area-by-area assessment on PFSs that failed those filters, as has been done in past cases resolved at Phase 1.⁴⁵⁰

14.66 Instead, we sought to devise an approach that would: (i) allow us to systematically take account of the wide variety of evidence available in this case, without the need to conduct a manual assessment of a large number of local areas; and (ii) best reflect the key parameters of competition at the local level, in particular the importance of price and location.

14.67 On this basis, we adopted a decision rule to establish whether the Merger would, on the balance of probabilities, be likely to give rise to an SLC in certain local markets. This decision rule combines three analytical approaches, each incorporating different evidence:

- (a) A WSS analysis reflecting how customers would divert from the Parties' centroid PFS to local competing PFSs; this analysis is based on evidence on customers' diversion from the CMA fuel survey. We refer to this as the survey-based WSS.

⁴⁵⁰ The initial filters set out in paragraph 14.64 were however used as a starting point for identifying a pool of potentially problematic PFS, from which the CMA selected 32 PFS to survey for the CMA fuel survey.

- (b) A WSS analysis reflecting how prices at supermarket PFSs are affected by the presence of local competitors; this analysis is based on a PCA using the prices of all supermarket PFSs. We refer to this as the PCA-based WSS.
- (g) A pricing analysis based on the internal pricing rules on which the Parties' fuel prices are based, which incorporate the prices and other characteristics of local competing PFSs.

14.68 As discussed further in paragraphs 14.113 to 14.128, we use the diversion ratios produced from the first two of these analytical approaches, in combination with information on the Parties' margins, to calculate a GUPPI for each local area where their PFSs are present.

14.69 We introduce these analytical approaches in the following subsections. We also explain the relative merits of each and therefore the weight we attach to each in our competitive assessment. Finally, we explain how we have combined each of these analytical approaches into our decision rule.

Interaction between groceries and fuel

14.70 Before discussing the component parts of each analytical approach, we consider how the Parties' ability to offer customers both groceries and fuel may affect our assessment of the competitive effects of the Merger in the supply of road fuels.

Parties' views

14.71 The Parties consider that it is appropriate for the CMA to examine the competitive effects of groceries and fuel separately, because the competitor set and the way that competition works is different in each category. However, the Parties argue that any competition concerns would be addressed by a separate assessment of each segment, because:

- (a) A minority of customers buy both groceries and fuel in a single transaction. Based on the Parties' analysis of Nectar data, only [20-30]% of Sainsbury's fuel customers bought groceries using their Nectar card in the same visit, and only [10-20]% of Sainsbury's groceries customers at stores with a PFS also bought fuel using their Nectar card. This means that the merged firm will primarily compete for customers who are not buying both groceries and fuel, for whom there is no reason to believe that competitors without a combined offer would be a less effective competitor.

- (b) Even for customers that currently purchase both groceries and fuel in a single visit, there is no evidence to suggest that they would not split their basket if the price of either element were to increase. The Parties' fuel surveys suggest that less than a quarter of those customers who used the main grocery shop as well as buying fuel would divert both purchases to a single alternative rival if the price of fuel were to increase (rather than either keeping their grocery shop with the survey grocery store, or diverting their grocery and fuel purchases to two different rivals).
- (c) The evidence used to assess customers' preferences and diversion patterns would already capture any interdependencies that could suggest that stores with both groceries and fuel are closer competitors than stores with just one or the other. For instance, surveyed customers that sufficiently value a combination offer will say that they will divert to another store that offers both groceries and fuel.

Our assessment

14.72 There are several sources of evidence that support the view that it is appropriate to consider the Parties' fuel and groceries operations together:

- (a) The Parties' internal documents⁴⁵¹ indicate that they believe that having a PFS on-site or adjacent to a supermarket leads to an increase in groceries sales. For example, one Sainsbury's document [REDACTED]. Similarly, an Asda document [REDACTED].⁴⁵²
- (b) In addition, Sainsbury's [REDACTED].

14.73 We further note that, in the CMA fuel survey, 33% (Sainsbury's) and 43% (Asda) of respondents had used or were planning to use the supermarket in addition to buying fuel, and 10% (Sainsbury's) and 13% (Asda) of respondents stated that they would divert their supermarket spending as well as their fuel spending if the PFS were not available.

14.74 In our view, the Parties' post-Merger incentives to worsen any aspect of their competitive offering for fuel will be affected not only by the loss of revenue from fuel sales, but also by the extent to which loss of fuel customers would also lead to a loss of revenue from non-fuel sales (groceries and general merchandise) to those customers, and the extent to which these would be recaptured by the other Party. We discuss at paragraphs 14.120 to 14.128

⁴⁵¹ We reviewed the internal documents that the Parties submitted as annexes to their Merger Notice and in their response to our requests for information.

⁴⁵² [REDACTED].

how we have integrated the interaction between fuel and non-fuel sales into our local assessment.

Survey-based WSS

14.75 A WSS analysis based on customer diversions (estimated from survey evidence) enables us to incorporate the following evidence:

- (a) price and location, which are the two most important factors for customers choosing which PFS to attend (see third-party views at paragraphs 14.25 to 14.27 and the findings from the CMA fuel survey at paragraphs 14.87(c)-(d) below);
- (b) supermarket PFSs are cheaper than non-supermarket PFSs, on average and controlling for a range of factors (see third-party views at paragraph 14.28 and our analysis at paragraph 14.11(a));⁴⁵³
- (c) the competitive constraint from one PFS on another diminishes as the distance between them increases, and this effect depends on whether the PFS is operated by a supermarket or not, with a supermarket PFS continuing to exert a material competitive constraint at greater distances relative to a non-supermarket PFS (see paragraphs 14.102 and 14.103 on the PCA results, below); and
- (d) in areas where a competitor owns several PFSs within close proximity, the competitive constraint that the competitor exerts on the merging Party's PFS is determined by the number and location of all its nearby PFSs, not just by the PFS that is closest (see paragraphs 14.87(g)-(i) on diversion patterns by destination site from the CMA fuel survey, below).

14.76 The WSS methodology systematically incorporates these findings by applying a specific weight to each PFS in a given local area based on whether it is a supermarket PFS and on its distance from a given merging Party's PFS (which we call the 'centroid' PFS). The weights are derived by estimating the relation between customer diversion, obtained through the CMA fuel survey, and the characteristics of local competitors. The estimated coefficients are then applied to PFSs in non-surveyed areas to assign weights to each of them. The weights obtained from this approach are an estimate of the proportion of customers that would divert to each PFS in the case of a price increase at the centroid PFS. By adding the weights of all PFSs of one of the Parties in a given local area, the analysis captures the competitive constraint

⁴⁵³ OFT (2013) published a report on the determinants of fuel prices (diesel and petrol), for which they measured local market concentration with fascia counts. Available [here](#).

exercised by that Party on a given PFS of the other Party, taking account of the competitive effect of other PFSs in that area.

14.77 Before providing a more detailed explanation of our survey-based WSS methodology, which draws from the results of the CMA fuel survey, we discuss the evidence from:

- (a) The Parties' fuel surveys, which include an online and an exit survey; and
- (b) The CMA fuel survey.

The Parties' online and exit surveys

14.78 As explained in paragraph 14.7(d), the Parties submitted the results of an exit survey for 20 PFSs (10 Sainsbury's PFSs and 10 Asda PFSs) and an online survey of Nectar customers for 20 PFSs (the 10 Sainsbury's PFSs covered by the exit survey and an additional 10 Sainsbury's PFSs). The Parties stated that their surveys focused on those PFSs where the Parties' sites are relatively close and/or there are relatively few competitors nearby.

14.79 The Parties submit that an online/telephone survey is useful to counter a potential bias from an in-person exit survey, for which respondents may be skewed towards stating that they would consider/divert to competitors that happen to be geographically close, rather than to competitors that might be convenient to the customer over a less immediate time frame (eg regular commute).

14.80 We have some concerns with the quality of the Parties' surveys, as discussed below and with further details in Appendix B:

- (a) We were not provided with any evidence that PFSs were chosen at random to survey.
- (b) The interviewer instructions for the Parties' fuel surveys did not provide sufficient assurance that the interviewers across the surveyed sites recruited respondents in a consistent and random way.
- (c) The Parties were unable to provide evidence of sufficient quality assurance of the fieldwork.
- (d) The Sainsbury's PFS online survey is a survey of Nectar customers only. These customers are unlikely to be a representative sample of all users of Sainsbury's PFSs.
- (e) We do not agree with the Parties' assertion that an online survey would be more accurate than a face-to-face survey. The Parties report that their

online survey gave different diversion results than their face-to-face survey, but they do not provide any convincing evidence that it is less biased.

- 14.81 The Parties' fuel exit survey also took a different approach to the diversion question than the CMA fuel survey. In the Parties' survey respondents were first asked which fuel company they would have switched to; this question was first asked unprompted, but respondents answering 'don't know' were prompted with a list. Once the respondent had chosen a fuel company they were then prompted with a list or map of all of that company's PFSs (and no others) within a 25-minute drive time and asked which of these they would have been most likely to use.
- 14.82 In our view, the Parties' approach assumes that respondents will be able to recall the brand of their alternative PFS. Once the respondent has selected a brand, they are not presented with PFS of other brands. We had concerns that there may be a sizable group of respondents who might recall the location of the alternate PFS that would divert to more readily than the brand of that PFS, particularly as brand is a relatively less important parameter of competition in fuel retailing relative to price and location.
- 14.83 Therefore, in the CMA fuel survey, we asked an unprompted diversion question and probed for a response, without requiring respondents to pre-select a brand of PFS. Starting with unprompted questions is our standard method of measuring diversion. We consider it reduces bias, when compared with the Parties' suggested prompted approach.
- 14.84 For these reasons, we have decided not to place any weight on the Parties' surveys for the purpose of our local competitive assessment, and to rely instead on the results of the CMA fuel survey, the PCA and pricing analysis, which we provisionally consider are likely to provide more reliable evidence for the purposes of our assessment.

CMA fuel survey

- 14.85 For the purposes of identifying the sample of PFSs to be surveyed, we first identified the Parties' PFSs failing the filters used in past cases (excluding pipeline PFS; see paragraph 14.56 above), based on the information available at the time, and then took a stratified random sample by:
- (a) ensuring a range of drive-time to the nearest PFS of the other merging Party;
 - (b) including the only two PFSs failing the filter in Northern Ireland (one for each Party); and

- (c) avoiding picking two PFSs from the same Party within the same postcode area.

14.86 The Parties broadly agreed with this approach. After consultation with the Parties, we also checked the sample to ensure a good balance of: Asda PFSs with different payment types (such as staffed PFSs with a full shop, staffed PFSs with only a payment kiosk, and unstaffed PFSs); geographic distribution; PFSs which were standalone and PFSs which were adjacent to a supermarket; and presence of competitors.

14.87 The main findings of the survey are as follows:

- (a) The majority of customers travel less than 10-minutes to their PFS. Asda PFS customers have a slightly longer journey time on average.
- (b) For approximately two-thirds of Sainsbury's (71%) and Asda (65%) customers the primary purpose of travel is to visit the PFS, the shop or the supermarket.
- (c) Price is mentioned as a reason for their choice of PFS by 48% of Sainsbury's customers and 71% of Asda customers. It is the one main reason for 29% of Sainsbury's customers and 49% of Asda customers.
- (d) Location is mentioned as a reason for their choice of PFS by 61% of Sainsbury's customers and 60% of Asda customers. It is the one main reason for 40% of Sainsbury's customers and 32% of Asda customers. Related to location, 16% of Sainsbury's customers and 20% of Asda customers said that 'proximity to the supermarket' was a reason for their choice of PFS, and 8% of Sainsbury's and Asda customers gave this as their one main reason for their choice of PFS.
- (e) A third (33%) of Sainsbury's PFS customers also visit the supermarket, compared to more than two-fifths (43%) of Asda PFS customers. Less than a fifth of customers visited the PFS shop or kiosk.
- (f) Customer mean spend on fuel and distribution of spend is comparable between Sainsbury's and Asda PFSs, with mean spends at both Parties' PFSs at just over £[redacted].
- (g) There is a clear negative correlation between fuel spend-weighted diversion ratio to the other merger Party and distance to nearest PFS of the other merger Party.
- (h) Over three-quarters of both Sainsbury's and Asda customers diverting their fuel only would go to a site within a 10-minute drive. Over two-thirds

would do the same when diverting their combined fuel and supermarket spend.⁴⁵⁴

- (i) The diversion ratio to the other merger Party is higher for customers diverting their fuel and supermarket spend together than it is for those diverting their fuel spend alone.

14.88 The fuel spend-weighted diversion ratios to the other merging Party from the CMA fuel survey are reported in Appendix K. Our approach to own-brand diversion is discussed in Chapter 8, paragraphs 8.181 to 8.186. In summary, our approach has been to exclude own-brand diversion when calculating diversion ratios between the Parties.⁴⁵⁵

Predicted diversion ratios and WSS

14.89 As we did not survey every PFS, we do not have an estimate of the diversion ratio to the other Party for each of the Parties' PFSs.

14.90 The evidence from consumer surveys, third-party views, and the Parties' views suggests that the key factors for customers' choice of PFS, and hence diversion, are location and price. The latter is significantly affected by whether the PFS is operated by a supermarket or not.

14.91 Based on these insights, we used regression analysis to estimate a relationship between diversion from each centroid PFS in the CMA fuel survey to other local PFSs and the following explanatory variables: a) the drive-time distance of the local PFS to the centroid PFS;⁴⁵⁶ and b) whether the local PFS was a supermarket or a non-supermarket PFS. Unlike for the analysis of in-store groceries, we do not distinguish between different supermarket fasciae nor between different non-supermarket fasciae. This was because survey evidence (see paragraph 14.87) and third-party evidence (see paragraph 14.25) indicate that brand (except for the distinction between supermarket and non-supermarket PFSs) is much less important than price and location as a determinant of customer choice of PFS.

14.92 Using this estimated relationship between diversion and the location and type of PFSs, we derived estimates for the diversion to local PFSs around each of the Parties' PFSs that were not surveyed. Using the predicted diversion ratios

⁴⁵⁴ We note, however, that in relation to non-supermarket PFSs, the survey results may underestimate diversion beyond a 10-minute drive (see paragraph 14.94).

⁴⁵⁵ We recognise that this approach to own-brand diversion could result in an overestimate of the GUPPI in some circumstances (if, for example, one of the Parties' other PFSs has a lesser incentive to raise its price than the centroid PFS for which the GUPPI is calculated). We take this into account when determining the appropriate GUPPI threshold.

⁴⁵⁶ Formally, we used the inverse of the distance ($1/(1+d)$).

from our regression, we constructed a WSS measure for each competitor within the relevant drive-time catchment around each of the Parties' centroid PFSs.

- 14.93 For the Parties' PFSs where we conducted the CMA fuel survey, WSS were computed using the diversion information directly obtained from survey respondents at each PFS, rather than the estimated diversion derived from the regression discussed above. This is consistent with the approach we adopted in relation to in-store groceries and allows us to account for those variations in competitive conditions across the surveyed areas that are not captured by the regression.
- 14.94 All WSS were then adjusted to allow for out-of-market constraints. To determine the appropriate level of the adjustment, we considered the results of the CMA fuel survey, which showed that, on average across the surveyed PFSs, [5-10]% of diversion takes place either to supermarket PFSs further than 20-minute drive-time or to non-supermarket PFSs further than 10-minute drive-time. The Parties argued that, particularly in relation to non-supermarket PFSs, the survey results underestimate diversion beyond a 10-minute drive time from the centroid PFS. The issue is discussed more fully in Appendix B. To account for this potential bias, we adopted a 7.5% out-of-market adjustment.
- 14.95 Our approach to the regression analysis is described more fully in Appendix K.

PCA-based WSS

- 14.96 The PCA-based WSS methodology incorporates the same findings outlined in paragraph 14.75, but uses a different dataset as a starting point for the analysis. As above, weights are assigned to each PFS in a given local area based on whether it is a supermarket PFS or a non-supermarket PFS and on its distance from the centroid PFS. The weights, however, are now obtained by analysing how prices charged by supermarket PFSs are affected by changes in the number of competing supermarket and non-supermarket PFSs in a local area around the centroid PFS. We also look at how the effect on prices varies with competing PFSs' distance from the centroid PFS. The coefficients from the regression are then used to create weights for each competing PFS in all local areas. The weights so obtained are an estimate of the impact each PFS in a local area has on the prices charged at the centroid PFS.

14.97 This methodology provides an alternative estimate of the competitive constraint exercised by one Party on a given PFS of the other Party, taking account of the competitive effect of other PFSs in that area.⁴⁵⁷

PCA

14.98 A PCA aims to identify the effect that market concentration has on prices. We use it to help inform whether a reduction (or increase) in local competition is likely to lead to higher (or lower) fuel prices in areas where the Parties overlap in the supply of road fuels. For the purposes of this assessment, the PCA is a useful tool to empirically estimate the effect that one additional competitor in the catchment area has on prices.

14.99 A PCA can also help us understand whether supermarket fuel providers exert a stronger competitive constraint than non-supermarket fuel providers on all PFSs and on the Parties' PFSs particularly. This would be reflected in a larger negative effect of one additional supermarket PFS on fuel prices in the catchment area, compared to one additional non-supermarket PFS.

14.100 The analysis is based on data (including pricing data) collected by Experian Catalist, a third-party provider of petrol forecourt information, covering daily prices at all PFSs in the UK for the period Q1 2016 to Q2 2018. This is supplemented with the Parties' own pricing data for the same period. We describe this data more fully in Appendix K.

14.101 We used this data to analyse changes in prices and local concentration (based on a count of the number of competing PFS in the local area) for each PFS on a quarterly basis. We counted supermarket and non-supermarket PFSs separately, grouping each type of PFS in five drive-time bands (up to 5 minutes, 5-10 minutes, 10-15 minutes, 15-20 minutes and 20-25 minutes). This allowed us to estimate parameters representing the average effects that an additional supermarket and non-supermarket PFS within each of these bands has on fuel prices at a centroid PFS.⁴⁵⁸

14.102 The results of the analysis (set out in full in Appendix K) suggest that:

⁴⁵⁷ We implemented a PCA-based WSS in response to the Parties' submission, which we agreed with, that it is appropriate to also use evidence from the PCA in constructing a WSS model.

⁴⁵⁸ We accounted not only for the opening of new PFSs or their closures, but also for changes of ownership from a non-supermarket to a supermarket owner (and vice versa). A change of ownership from non-supermarket to supermarket is treated in the analysis as the exit of a non-supermarket PFSs and the simultaneous entry of a supermarket PFS.

- (a) the number of supermarket PFSs up to 15-minute drive-time from a centroid PFS has a statistically significant impact on fuel prices at the centroid.⁴⁵⁹
- (b) non-supermarket PFSs have a statistically significant effect on prices only when located within a 5-minute drive-time from the centroid.⁴⁶⁰

14.103 The PCA suggests that, in general, supermarkets have a larger effect on fuel prices than non-supermarket PFSs. For example, on one version of our analysis, within a 5-minute drive-time, the impact of one additional supermarket PFS is almost six times as large as that of an additional non-supermarket PFS. An additional competing supermarket PFS within 5-minutes' drive-time lowers fuel prices at the centroid PFS by 0.71%, while the reduction is only 0.12% for an additional non-supermarket PFS within 5-minutes' drive-time.

WSS calculation

14.104 Using these parameters, we constructed a WSS measure for each competitor within the relevant catchment area around each of the Parties' centroid PFS, analogously to what we did for the survey-based WSS (see paragraph 14.92). We calculated weights by assigning the relevant estimated parameters from the regression for each competitor PFS and rescaling these so that they sum to one within the relevant geographic area around each centroid PFS (20-minute drive time for supermarket PFSs and 10-minute drive-time for non-supermarket PFSs).

14.105 All WSS were then scaled down to adjust for out-of-market constraints. We used the same out-of-market adjustment (7.5%) adopted for the survey-based WSS.

14.106 Our approach to the regression is described more fully in Appendix K.

Relative merits of survey-based WSS and PCA-based WSS

14.107 Both the survey-based WSS and the PCA-based WSS provide useful evidence on local conditions of competition.⁴⁶¹ However, each approach has specific potential drawbacks, which must be taken into account when

⁴⁵⁹ The effect is not statistically significant for supermarket PFSs located between 15- and 20-minute drive-times. For the version of our PCA which analyses supermarket PFS prices (but not the version that analyses all PFS prices, there is a small but statistically significant effect is found for supermarket PFSs between 20- and 25-minute drive-times. See Appendix K for the full results.

⁴⁶⁰ This effect is only marginally significant (ie significant at the 10% level) under the version of the version of our PCA which analyses supermarket PFS prices. See Appendix K for the full results.

⁴⁶¹ The Parties agreed with this.

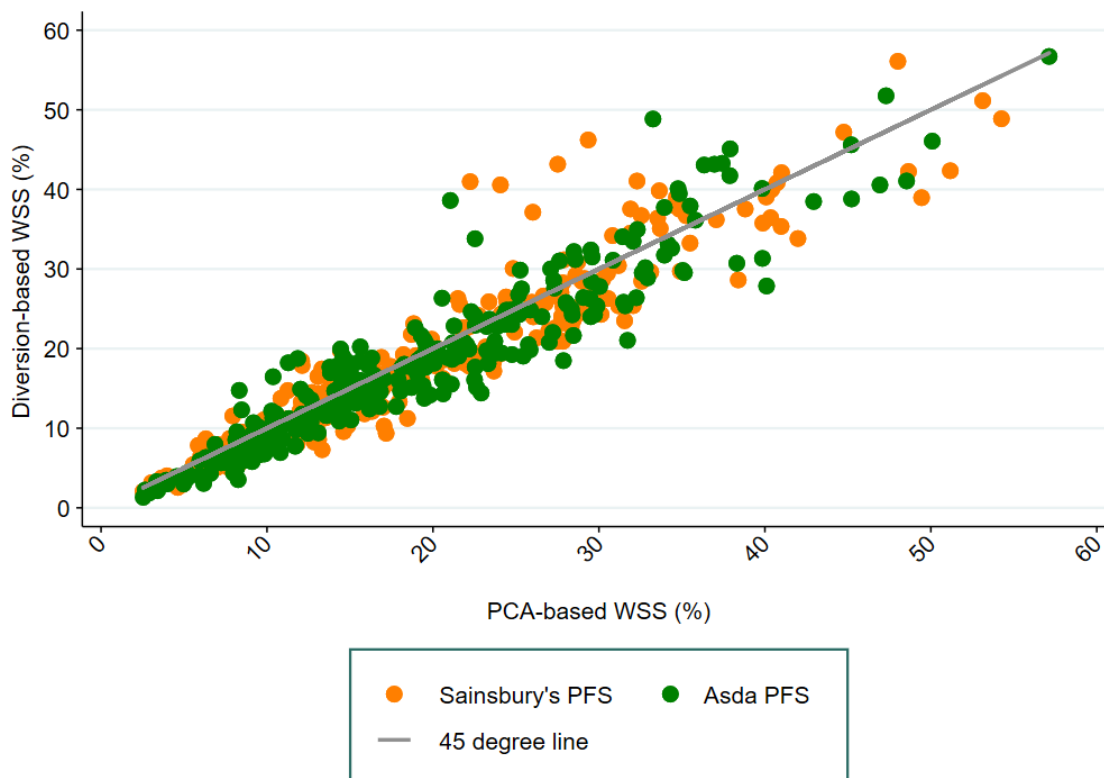
interpreting the results and which provide a rationale for considering the combined evidence from both approaches to decide whether the Merger is more likely than not to give rise to an SLC in a local area.

14.108 One potential drawback of the survey-based WSS approach is that it is based on the results of the diversion ratios from the CMA fuel survey. The surveyed sites were randomly selected from those PFSs that failed the filters used in previous CMA and OFT retail fuel merger cases (set out in paragraph 14.56, above). As the Parties argued, the methodology used to select the PFSs to be surveyed implies that they are not representative of the Parties' wider PFS estate. This may limit the reliability of any inferences that we draw from the survey about the Parties' wider PFS estate.

14.109 However, the high correlation between the weights estimated through the survey-based WSS analysis and those obtained from the PCA-based WSS approach, which does not suffer from area selection bias, reduces our level of concern with respect to the reliability of survey inference and makes us confident that we have robustly estimated how the competitive constraint imposed by a local PFS on a centroid PFS changes with its distance and varies according to whether or not it is a supermarket PFS.

14.110 The following graph shows, for each of the Parties' PFSs, the WSS associated with the other Party. Each dot corresponds to one of the Parties' PFSs and its position reflects the WSS computed with the two methodologies discussed above: the analysis of customer diversion and the price concentration analysis. The high correlation between the two measures is apparent.

Figure 14.1: Comparison of survey-based WSS and PCA-based WSS



Source: CMA analysis.

14.111 The PCA-based WSS analysis also has potential weaknesses. The changes in concentration used to estimate the impact of competition on fuel prices are unlikely to be random. In particular, PFSs that exit outright are typically non-supermarket PFSs, and are likely to be weaker than average and to have exerted a more limited impact on competitors' prices before their exit. As a result, the analysis could assign a weight to non-supermarket PFSs which is too low relative to their actual competitive impact.⁴⁶²

14.112 The high correlation between PCA-based and survey-based WSS discussed above reduces our level of concern with respect to this potential bias. As noted in paragraph 14.58 above, however, the Parties have argued that diversions from an exit survey such as the CMA fuel survey, whose results are used to compute the survey-based WSS, could be similarly biased towards supermarket PFSs.

⁴⁶² The Parties also raised a number of other potential issues with the data underlying the PCA, which we address in more detail in Appendix K.

GUPPI analysis

- 14.113 We used the results of the two analyses discussed above (survey-based WSS and PCA-based WSS) as inputs for computing a GUPPI.
- 14.114 For the purposes of this part of our assessment, the GUPPI is designed to assess the Parties' post-merger incentives to deteriorate aspects of their fuel offering. We have therefore calculated a GUPPI based on the WSS of competitors estimated from each of the WSS methodologies, and information on the Parties' fuel margins. We refer to this as the 'single-product GUPPI', as it only takes into account the Parties' activities in the supply of road fuels.
- 14.115 However, as described in paragraphs 14.72 to 14.74 above, the Parties' post-merger incentives to worsen any aspect of their competitive offering for fuel will be affected not only by the loss of revenue from fuel sales, but also by the extent to which loss of fuel customers would also lead to a loss of revenue from non-fuel sales to those customers, and the extent to which these would be recaptured by the merging Party. To reflect this, we adjust the GUPPI to also take into account the Parties' margins on non-fuel sales that would also be expected to divert with any diversion of fuel sales. We refer to this as the 'multi-product GUPPI', as it takes into account the Parties' activities in both the supply of road fuels and the supply of in-store groceries and general merchandise.
- 14.116 Given the important interaction between the Parties' fuel and non-fuel operations, we consider that the multi-product GUPPI is a better measure for the purposes of our assessment. However, as the single-product GUPPI is used to calculate the multi-product GUPPI, we discuss this first, before discussing the multi-product GUPPI.

Calculating the single-product GUPPI

- 14.117 As in our assessment of in-store groceries, we calculated a single-product GUPPI for each of the Parties' PFS, combining information on local diversion ratios and local margins.
- 14.118 For the diversion ratios, as discussed at paragraph 14.93 above (and consistent with the approach taken in our assessment of in-store groceries), for PFSs that were surveyed, we used evidence on diversion ratios taken directly from the CMA fuel survey, as incorporated in the survey-based WSS, as we consider that this direct evidence on local competitive interactions is likely to be the most informative for the purposes of our assessment. For non-

surveyed PFSs, we used an average of the survey-based WSS and the PCA-based WSS.

14.119 For the margins, we estimated individual variable margins for each of the Parties' PFSs. We have also included the non-fuel revenue and cost associated with the PFS site (eg shops, carwashes, ATMs, etc). Our methodology for estimating the margin is explained in Appendix F. For the recently opened or pipeline PFSs, for which individual cost data were not available, we used each Party's average national margins.

Calculating the multi-product GUPPI

14.120 To account for the interaction between fuel and non-fuel sales and the impact this would have on the pricing pressure the Parties would face post-merger, we add to the single-product GUPPI a component reflecting the impact of non-fuel sales. In determining the appropriate adjustment, we took into account the following evidence:

- (a) The proportion of fuel customers who also purchase groceries;
- (b) The patterns of diversion for customers who purchase both fuel and groceries, including the proportion of customers who would divert their fuel spending alone and those who would divert both their fuel and groceries spending, either separately or together; and
- (c) The variable margins on groceries and GM at the supermarket adjacent to each PFS.

14.121 On the first of these points, as set out in paragraph 14.87(e), in the CMA fuel survey, 33% (Sainsbury's) and 43% (Asda) of respondents have used or were planning to use the supermarket in addition to buying fuel.⁴⁶³ 10% (Sainsbury's) and 13% (Asda) of respondents stated that they would divert their supermarket spending as well as their fuel spending if the PFS were not available. Of these respondents:

- (a) 7% (Sainsbury's) and 9% (Asda) would divert fuel and supermarket spend together, ie to the same location, which would necessarily be a supermarket with adjacent PFS;

⁴⁶³ We also note that the Parties submitted that, according to an analysis of Nectar customers who purchased fuel, [20-30]% of Nectar customers purchasing fuel at a Sainsbury's PFS were found to also have bought groceries from the main grocery store on the same visit.

(b) 3% (Sainsbury's) and 4% (Asda) would divert fuel and supermarket spend separately.

14.122 On the second point, the CMA fuel survey collected information about the brand of supermarket where respondents said that they would divert their supermarket spend, in response to forced diversion of their fuel spend. However, the CMA fuel survey did not collect information about the specific store to which the respondent would divert their supermarket spend.⁴⁶⁴ Given the lack of direct evidence on where the respondent to the CMA fuel survey would divert their supermarket spending, for the purpose of the GUPPI we assumed that the customers diverting their supermarket spending separately from the fuel spending followed the same diversion pattern as the customers responding to the CMA store exit survey who told the interviewer they had also bought (or were going to buy) fuel at the adjacent PFS; we computed WSS following the same approach used for in-store groceries (see paragraphs 8.99 to 8.186). For customers diverting both supermarket and fuel spending to the same location, we estimated diversion by excluding the grocery stores without a PFS and rescaling the weights of the remaining stores accordingly. The calculation is described more fully in Appendix K.

14.123 On the third point, we have also reflected in our analysis the effect of grocery and GM variable margin at the adjacent supermarket. The variable margin for grocery and GM are set out in Table 8.3 of Chapter 8.

14.124 Taking into account the three factors set out above, to produce the multi-product GUPPI we added to the single-product GUPPI for each of the Parties' PFSs an adjustment obtained as the sum of the following components:

(a) The proportion of customers who would divert non-fuel and fuel spend separately, multiplied by the WSS of the other merging Party and by the corresponding variable margin;⁴⁶⁵ and

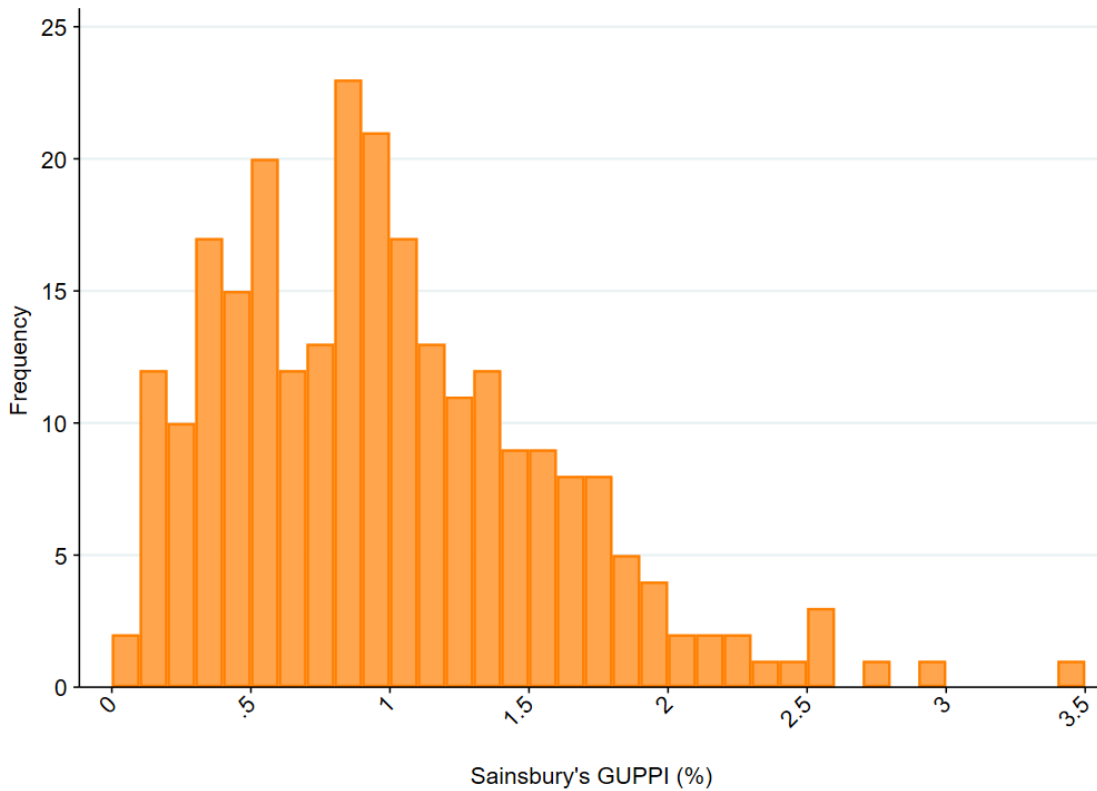
⁴⁶⁴ This was because it was decided that it was important to ensure that the survey did not take more than five minutes on average, in order to achieve good response rates at PFS.

⁴⁶⁵ Technically, we should also multiply by the ratio of one Party's average groceries transaction value to the other Party's average fuel transaction value. In practice, these quantities are very similar, so the ratio will be approximately one. For instance, the CMA fuel survey informs us that the average transaction value and the distribution of the Parties' fuel customers spend on fuel is comparable between Sainsbury's and Asda PFSs (with mean spend of [redacted] at Sainsbury's and [redacted] at Asda, DJS Fuel Survey Report, Table 4), and it also informs us that the average transaction value for the Parties' fuel and groceries customers on fuel and groceries is very similar, with average spend at supermarket around £[redacted] (DJS Fuel Survey Report, Table 5) and average spend at PFS (fuel and kiosk) around £[redacted] for Asda and £[redacted] for Sainsbury's (calculated as the mean fuel and kiosk spend for fuel and groceries customers, based on the DJS survey dataset).

(b) The proportion of customers who would divert non-fuel and fuel spend together, multiplied by WSS of the other merging Party when assuming that the customer can divert only to supermarkets with a PFS, and by the corresponding variable margin.⁴⁶⁶

14.125 The distribution of the multi-product GUPPIs across the Parties' PFS estates is set out in Figures 14.2 and 14.3 below.

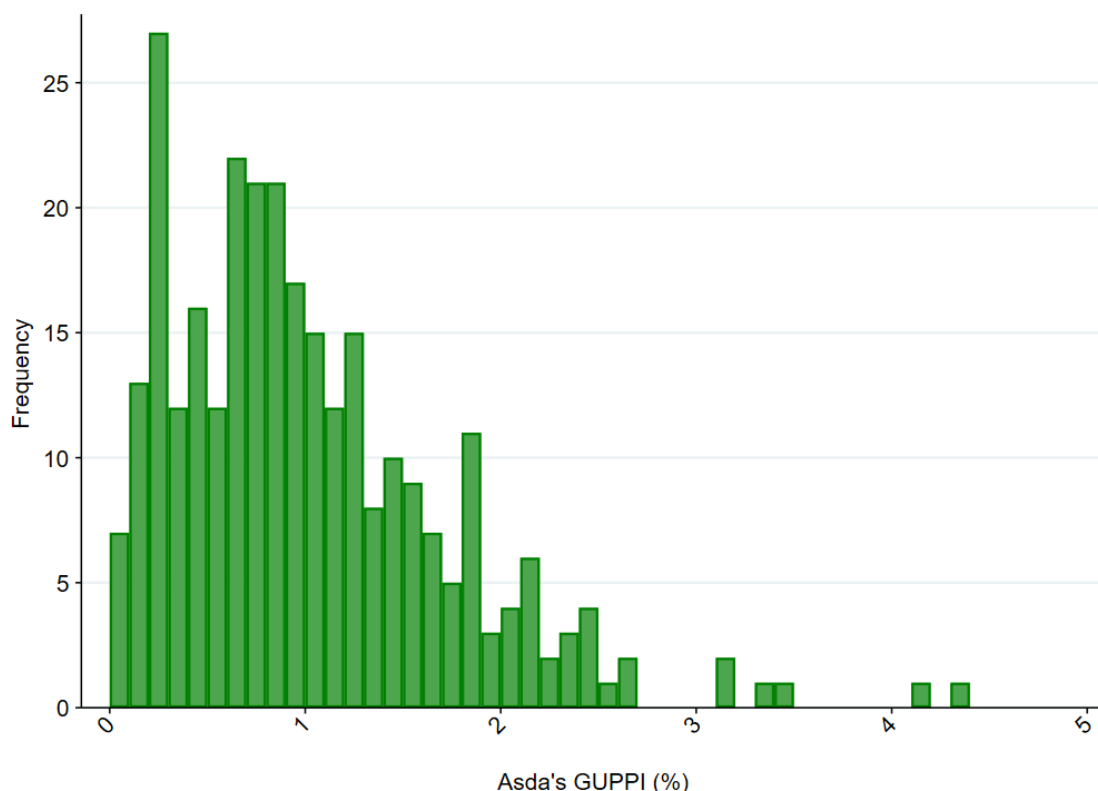
Figure 14.2: Distributions of multi-product GUPPIs across Sainsbury's PFS estates



Source: CMA analysis.

⁴⁶⁶ The same considerations as in footnote 465 apply here.

Figure 14.3: Distributions of multi-product GUPPIs across Asda's PFS estates



Source: CMA analysis.

Parties' views

14.126 Respondents to the CMA fuel survey were asked about diversion in the case that the PFS had not been available (forced diversion). The Parties argued that the proportion of respondents who would divert both their fuel and groceries spend in case of forced diversion is likely to be higher than the corresponding proportion in response to an increase in the price of fuel. In other words, customers of both fuel and groceries are likely to be less sensitive than fuel-only customers to an increase in the price of fuel. If this is the case, the diversion rates in paragraphs 14.121(a) and (b) would overestimate the frequency of diversion of groceries spend and, as a result, our multi-product GUPPI would be too high.

14.127 Given this potential bias, the Parties further argue that it will be important to take account of both the fuel-only (ie single-product) GUPPI and the multi-product GUPPI in our assessment.

14.128 We consider that a fuel-only single-product GUPPI is likely to underestimate the pricing pressure faced by the Parties. We recognise that the Parties' argument implies that our multi-product GUPPI may overestimate the actual pricing pressure faced by the Parties. On the other hand, it is also

possible that customers that currently only purchase fuel may begin purchasing fuel and groceries together once they divert. As our multi-product GUPPI does not account for this possibility, it may underestimate the pricing pressure. We take this uncertainty into account when determining the appropriate GUPPI threshold to use in our decision rule, discussed further in paragraphs 14.144 to 14.159.

Pricing analysis

14.129 The pricing analysis incorporates some of the main findings in our evidence base, including that:

- (a) the Parties' PFS prices [REDACTED]; and
- (b) the Parties' PFS [REDACTED].

14.130 Prices are very transparent in the retail fuel market. Many fuel retailers, including the Parties, receive daily prices for most PFSs in the UK from Experian Catalist, and take this into account in their own pricing decisions. Many retailers, particularly those who have a large number of PFSs and including the Parties, use national pricing formulae, rules-of-thumb, or algorithms to inform the prices for each of their PFSs, often taking into account the prices of other competing PFSs in the local area.

14.131 According to the Parties, their overall approach to pricing is as follows:

- (a) [REDACTED], Sainsbury's [REDACTED]. Additional details on Sainsbury's pricing algorithm are set out in Appendix K.
- (b) Asda's [REDACTED]. Additional details on Asda's pricing approach are set out in Appendix K.

14.132 We programmed pricing rules to simulate Sainsbury's algorithm and Asda's pricing approach:

- (a) For Sainsbury's, our pricing rule includes the core logic of the '[REDACTED] rule' and [REDACTED].
- (b) For Asda, our pricing rule is [REDACTED].

14.133 These pricing rules generated a set of daily diesel and unleaded petrol prices for each of the Parties' PFSs, which can be compared with the actual prices set by the Parties.

14.134 The Parties have argued that these rules radically simplify the Parties' pricing approaches, [REDACTED]. While we recognise that our model is a simplification,

we think it captures the core logic of Asda's pricing approach. As we use the result of our pricing analysis as an indicator, rather than a precise estimate, of the likely local merger effects, we think such a simplified rule is acceptable.

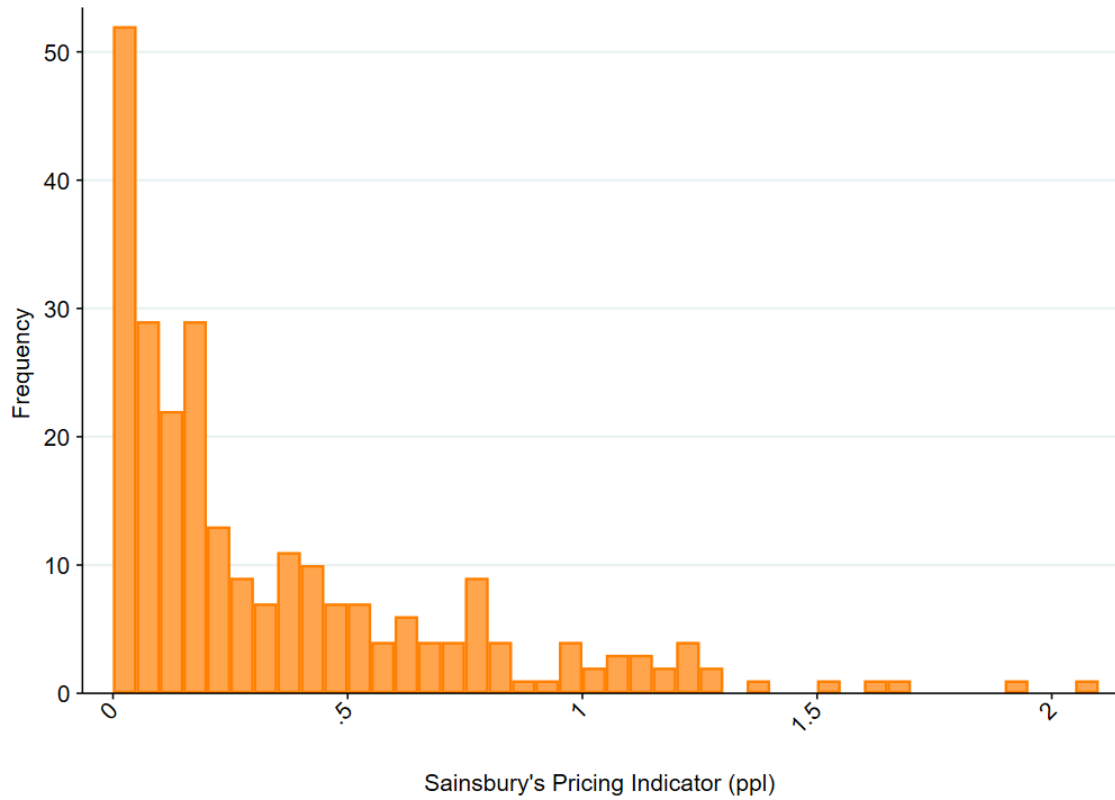
14.135 We compared the outputs from our pricing rules and the actual prices that the Parties set. Further details are provided in Appendix K, but overall, the pricing rules appear to capture the Parties' pricing behaviour the majority of the time (c.50-55% to within +/- 0.2ppl and c.75-80% to within +/- 1ppl). We view this as a sufficient degree of accuracy to place weight on this analysis as being informative of the Parties' actual pricing behaviour.

14.136 The Parties have argued that the level of accuracy is too low to represent a validation of the underlying pricing rules; indeed, it is easy to set up pricing rules totally unrelated with the Parties' actual pricing approaches but that achieve higher levels of 'accuracy', eg always setting the same prices as the day before. We agree with the Parties that the accuracy level achieved by our pricing rules cannot by itself validate the rules. However, we have designed the pricing rule so that they mimic the Parties' actual pricing approaches. The level of accuracy we achieved makes us confident that the rules broadly reflect those approaches.

14.137 One feature of both Parties' pricing [~~ⓧ~~]: [~~ⓧ~~], [~~ⓧ~~]. We can think of this competitor PFS as the effective constraint on the Party's centroid PFS on that day.

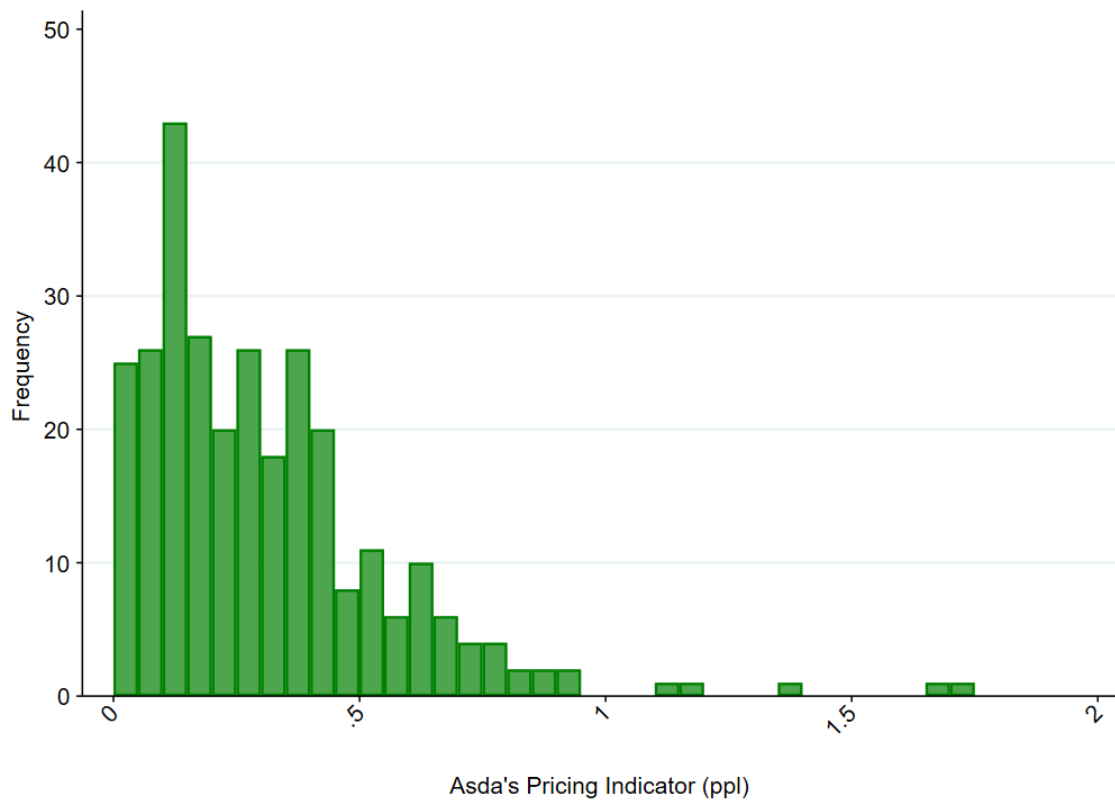
14.138 Where the other merging Party's PFS was the effective constraint for one of the Parties' centroid PFS, we analysed the difference in the prices generated by the Parties' pricing rules if the rules ignored the other merging Party's PFS. For each of the Parties' PFSs, we computed a volume-weighted average of the price differences for diesel and unleaded. We call this average difference the 'Pricing Indicator'. While we do not see the Pricing Indicator as a precise estimate of the Parties' post-Merger fuel prices at each PFS, we consider it to be a reliable indicator of the likely Merger effect at each PFS, ie the higher its value, the greater the Merger effect is likely to be. The following figures show the distribution of the values of the Pricing Indicator the Parties' PFS estates.

Figure 14.4: Distributions of the values of the Pricing Indicator across Sainsbury's PFS estates



Source: CMA analysis.

Figure 14.5: Distributions of the values of the Pricing Indicator across Asda's PFS estates



Source: CMA analysis.

14.139 There are two caveats with this exercise that are worth noting:

- (a) It assumes that all competitor PFSs would set the same prices post-Merger, and would not take into account any changes in the Parties' prices;
- (b) It ignores any incentive for the Parties to jointly increase prices in the merged parties' PFSs, as a result of recapture of any induced diversion, and it implicitly assumes that the Parties will retain their current overall pricing approach post-Merger, with the only change being that the Parties will no longer price match against PFSs they own post-Merger.

14.140 The first assumption is in common with any analysis that only looks at the 'first-order effects' of a merger, including GUPPI analysis. This assumption tends to reduce the predicted impact and, as such, understate the Merger effect.

14.141 The second assumption is clearly a simplification of the Parties' post-Merger behaviour. The Parties argued that this is not a credible hypothesis and that changes in local competition post-merger may lead to the Parties modifying their pricing approaches. They have also argued that the pricing rules that we use are not profit maximising, so cannot be used to predict merger effects.

14.142 We acknowledge that the Parties may amend their pricing rules in the future, but we further note that:

- (a) the current pricing rules appear to represent the Parties' best attempt to maximise profits under current competitive conditions and practical constraints;
- (b) apart from the internalisation of sales that are diverted to the other Party, we are not aware of any major planned entry or exit, changes in ownership, or any other changes in post-merger competitive conditions that would mean that the current pricing rules would be highly inaccurate post-Merger; and
- (c) even if there were changes to the Parties' pricing approach post-Merger (including deviations from these approaches by manual overrides), unless there are material and merger-specific efficiencies for the Parties' fuel business, these changes are more likely than not to result in overall price increases for consumers rather than pro-competitive changes, and so the pricing analysis may overall tend to underestimate the likely Merger effect.

14.143 We agree with the Parties that the results of the pricing analysis cannot be interpreted as accurate predictions of post-Merger prices. A relatively high level of the Pricing Indicator is indicative of weaker local constraints from the Parties' competitors, or areas where the Parties are closely located and setting low prices, and third-party competitors are further away and/or setting higher prices. The Parties expressed a similar view. We consider that the Pricing Indicator is a reliable indicator of the magnitude of the likely Merger effect on the Parties' local prices. The indicator is probably biased downwards, for the reasons discussed above. We take the accuracy level of our pricing rules into account when determining the appropriate threshold for concern to be applied to the Pricing Indicator, as discussed in paragraph 14.157 below.

Decision rule

The Parties' views

14.144 The Parties submitted that we should follow the approach taken in previous cases, such as Shell/Rontec, which suggests that an area is unlikely to raise competition concerns, even on a Phase 1 'realistic prospect' standard, where there is good survey evidence that the diversion ratio between the relevant parties is under 40%.⁴⁶⁷

14.145 The Parties agreed with the CMA that all three sources of evidence incorporated in the analytical approaches outlined above (the survey evidence used in the survey-based WSS, the PCA used in the PCA-based WSS and the Parties' pricing rules incorporated in the pricing analysis) can in principle shed light on local conditions of competition. However, for the purposes of deciding in which local areas the Merger may be expected to give rise to an SLC, the Parties submitted that the CMA should follow a two-step process:

- (a) First, use metrics such as GUPPI to identify areas where there are plausible concerns of a possible SLC, adopting thresholds at the 5-10% level;
- (b) Then, conduct an in-depth area-by-area assessment on these areas, using a broader range of evidence. The Parties submitted that the pricing analysis could be incorporated as part of the suite of evidence considered in this in-depth review.

⁴⁶⁷ OFT, *Completed acquisition by Shell of 253 petrol stations from Consortium Rontec Investments LLP*, Case No. ME/5191/11, decision of 3 February 2012, paragraphs 99 and 107.

Our assessment

14.146 Given the limitations of each strand of analysis discussed above, in combining the evidence and results of the three pieces of analysis, we adopt the following principles:

- (a) As explained in paragraph 14.118, when assessing competition in non-surveyed areas, we assign equal weight to the survey-based and the PCA-based WSS analysis, computing average weights for each PFS in the local areas. This makes the weights less sensitive to the potential biases that affect each of the two analyses.
- (b) In surveyed areas, however, we rely only on the weights obtained through survey evidence. This is because survey evidence, unlike PCA evidence, directly relates to the local area being examined and would account for all non-observable local factors that affect customers' preferences and diversion beyond price and location.
- (c) We use the pricing analysis as a further indicator of the magnitude of the likely merger effect, while recognising that it is not an accurate prediction of post-merger prices.

14.147 For the purposes of our local assessment, and consistent with the approach adopted in our assessment of the supply of in-store groceries, given the number of local areas in which the Parties PFSs overlap (in excess of 540), it would not be practicable to perform an assessment of each local area in turn. We therefore considered that it was necessary to devise a decision rule to establish whether the Merger is, on the balance of probabilities, likely to give rise to an SLC on any local market for the supply of road fuels.

14.148 To take into account the widest range of available evidence, we determined that this should be a two-part decision rule based on:

- (a) Whether the GUPPI (used as an indicator of the pricing pressure generated by the Merger in relation to each of the Parties' PFSs) is above a given threshold;⁴⁶⁸ and
- (b) Whether the Pricing Indicator, ie the difference between the price implied by our pricing rules when considering the other merging Party's PFSs and the price obtained when ignoring them, is above a given threshold.

⁴⁶⁸ As set out above, in surveyed areas, the GUPPI is based purely on survey-based WSS; whereas in non-surveyed areas, the GUPPI uses weights resulting from averaging the survey-based and PCA-based WSS.

14.149 In determining how to combine these parts (in particular, whether both or only one part must be satisfied in order to give rise to an expectation of an SLC), we have taken into account that the Pricing Indicator is based on an individual assessment of each local area. Conversely, for PFSs not covered by the CMA fuel survey, the GUPPI combines local information on the location of competing PFSs with parameters of competition derived from a national-level analysis (in the case of PCA) or extrapolated from what we observed in the areas included in the survey. As a result, the pricing analysis may capture variations in the local conditions of competition across different local areas that cannot be reflected in the GUPPI. On the other hand, the pricing analysis is subject to the limitations discussed at paragraphs 14.139 to 14.143, while the GUPPI is a direct estimate of the incentive to raise prices due to the ability to recapture sales at a nearby PFS, which is at the heart of unilateral effects theory.

14.150 Therefore, we consider that a high GUPPI would be indicative of a problematic area even if the Pricing Indicator is low (and vice versa). This makes it appropriate to use a rule according to which an SLC is found for any PFS where *either* the GUPPI *or* the Pricing Indicator are above the respective thresholds.

14.151 The following paragraphs discuss our considerations when determining the appropriate thresholds for the GUPPI and for the Pricing Indicator.

- *The GUPPI threshold*

14.152 In determining the appropriate threshold for the GUPPI component of the decision rule, we have taken into account the same factors discussed in Chapter 8, paragraphs 8.230 to 8.231, in relation to the supply of in-store groceries. In particular, we have taken into account:

- (a) The level of efficiencies that may be expected to arise from a merger;
- (b) The requirement that any lessening of competition must be substantial and any uncertainty regarding the accuracy and robustness of data and evidence used in the GUPPI calculation.

14.153 With respect to efficiencies, for the reasons explained in Chapter 16, paragraph 16.132, we have provisionally found that it is appropriate to assume for the purposes of our assessment that the Merger will give rise to no rivalry-enhancing efficiencies in the Parties' fuel operations. It has therefore not been necessary to make an allowance for efficiencies in the GUPPI calculation.

14.154 With respect to the requirement in the legal test that any lessening of competition must be substantial, and in relation to uncertainty, we have had regard to the fact that:

- (a) As with groceries, fuel is for many consumers a non-discretionary expenditure that accounts for a significant share of household spend (3.7% of total household expenditure in the financial year ending 2018).⁴⁶⁹ As a result, even a small percentage increase in the price of fuel would have a substantial adverse impact on UK consumers. We note that PFSs advertise their prices in fractions of a penny, which indicates that even small differences in price matter to customers.
- (b) As with groceries, we consider that small (but positive) levels of pricing pressure would represent a substantial lessening of competition and would be likely to translate into price increases. The Parties set prices locally, and change prices frequently, such that there would be no material cost (from an operation point of view) to the Parties in implementing price rises at individual PFSs. The Parties keep a close watch on competitors' prices in the local area and [redacted], meaning that changes in the intensity of local competition are likely to feed directly into the Parties' local prices. Given the scale of the Parties' fuel businesses (particularly in volume terms), even a small percentage price increase would lead to a substantial uplift in revenue and profit margin.
- (c) GUPPI accounts for only the individual first-order incentives of each merging party and therefore considers neither feedback effects between merging parties nor second order effects from third parties. We note that as the markets under discussion involve competition in prices, which are strategic complements, second order effects will augment the initial price increases, exacerbating the initial effect. We consider that there is no reason to think that feedback effects would be particularly low relative to the first-order effect identified in the GUPPI in this case.
- (d) We note that there are assumptions underlying the analysis that point in both directions. These are discussed in Appendix K (this includes the point noted in paragraphs 14.126 to 14.128 above that the adjustment made to the multi-product GUPPI to account for the Parties' groceries activities may lead to an overestimation of the actual pricing pressure faced by the Parties) and, for the assumptions underlying non-fuel diversion, in Appendix E.

⁴⁶⁹ Office for National Statistics, Detailed household expenditure as a percentage of total expenditure by disposable income decile group: Table 3.2; available [here](#).

(e) As explained in paragraph 14.109 above, the high correlation between the WSS obtained from the survey analysis and from the PCA makes us confident in the reliability of that evidence. We have also carefully scrutinised the Parties' margins, so we are confident in the accuracy of our estimates. Further, as explained in paragraph 14.146 above, we have used evidence directly taken from the survey for surveyed PFSs, and combined evidence from both the survey-based WSS and PCA-based WSS for non-surveyed PFSs: we consider both of these approaches contribute to robust diversion estimates. Nevertheless, there is inevitably some uncertainty around any estimates. In order to reduce the risk of 'false positives', we believe it would be appropriate to account for this in the GUPPI threshold.

14.155 Taking into account that we consider that even small percentage increases in fuel prices would give rise to significant harm to UK consumers, and in the expectation that even small increases in pricing pressure would translate into price rises, we consider that even relatively small GUPPI figures would support the finding of competition concerns in individual local markets.

14.156 Taking these factors in the round, we provisionally decided to set the threshold for the GUPPI decision rule for our local assessment at 1.5%. We consider this allows a sufficient margin for us to be satisfied, on the balance of probabilities, that in each area failing the decision rule the Merger gives rise to an SLC in the circumstances of this particular case. We note that this is consistent with the threshold applied in our local assessment of in-store groceries, once accounting for the difference in efficiencies.

- *The Pricing Indicator threshold*

14.157 In determining the appropriate threshold for the Pricing Indicator, we took into account the same considerations relating to efficiencies, substantiality and uncertainty as for the GUPPI threshold, including:

- (a) As we have provisionally found that it is appropriate to assume that the Merger will give rise to no rivalry-enhancing efficiencies in the Parties' fuel operations (see Chapter 16), no allowance for efficiencies needs to be made.
- (b) For the reasons discussed in paragraph 14.154, we consider that even small increases in fuel prices would give rise to significant harm to UK consumers.
- (c) As we explained in paragraph 14.135, the pricing rules used in our analysis to compute the Pricing Indicator do not always generate the

prices actually set by the Parties, and hence the Pricing Indicator is not a precise prediction of the post-Merger prices (and we are not using it as a straightforward price predictor in this way). We understand that this deviation is often due to [✂]. There are areas where the pricing rules generate higher prices than the ones that were actually set by the Parties. In these cases, the pricing rules may underestimate the strength of local competitive constraints pre-Merger, which could mean our Pricing Indicator overstates the post-Merger prices.⁴⁷⁰

- (d) The Pricing Indicator is computed assuming that competitor PFSs would set the same prices post-Merger; however, should the Parties increase their prices, competitors may respond by doing the same. The calculation also assumes that the Parties will retain their current overall pricing approach post-Merger. To the extent that the Parties may amend their pricing rules, for the reasons discussed in paragraph 14.142(c), these changes are more likely than not to result in overall price increases for consumers rather than pro-competitive changes. Therefore, the Pricing Indicator would overall tend to underestimate the likely Merger effect.

14.158 Taking these factors in the round, we provisionally consider it appropriate to set the threshold for the Pricing Indicator at 0.75ppl, on the basis that in each area exceeding this threshold the Merger is more likely than not to give rise to an SLC in the circumstances of this particular case.

- *Application of decision rule*

14.159 Applying the above thresholds:

- (a) 111 PFSs fail the GUPPI component of the decision rule;
- (b) An additional 21 PFSs fail the Pricing Indicator component of the decision rule.

14.160 Accordingly, we provisionally find that the Merger is expected to result in SLCs in each of those local areas.

Provisional conclusion on unilateral effects – local assessment

14.161 On the basis of the evidence set out above, and applying the decision rule as detailed above, we provisionally found that the Merger gives rise to an SLC, on the balance of probabilities, in the local markets surrounding 68 Asda

⁴⁷⁰ There are also areas where the pricing rules generate lower prices than the ones set by the Parties.

PFSs and 64 Sainsbury's PFSs. A list of these PFSs is included in Chapter 17.

Countervailing factors

Entry and expansion

14.162 In local areas where, based on the current conditions of competition, the Merger is more likely than not to give rise to an SLC, an SLC might be prevented by entry or expansion by competitors. When assessing whether this is the case, the CMA considers whether such entry or expansion would be (a) timely; (b) likely; and (c) sufficient.⁴⁷¹

14.163 The evidence described above shows that the strongest constraint faced by the merging Parties comes from other supermarket PFSs, while the constraint imposed by non-supermarket PFSs is much more limited. This is supported by the following pieces of evidence:

- (a) Supermarket PFSs are cheaper than non-supermarket PFSs, on average and controlling for a range of factors (see paragraph 14.11(a) above);
- (b) Our pricing analysis indicates that supermarket PFSs are the effective constraint on the Parties fuel prices for [X] % of the time or more (see Appendix K);
- (c) Unlike supermarket PFSs, non-supermarket PFSs have a significant impact on prices only when located within a 5-minute drive-time from the centroid PFS (see paragraph 14.102 above);
- (d) Within a 5-minute drive-time, our price concentration analysis indicates that the impact of one additional supermarket PFS on prices at a centroid PFS is almost six times as large as the impact of an additional non-supermarket PFS (see paragraph 14.103 above).

14.164 Based on this evidence, we consider that entry and/or expansion would be sufficient to prevent an SLC in a local area only if it involved new entry from a supermarket competitor.⁴⁷² This could take the form of:

- (a) A new third-party supermarket with an adjacent PFS being opened in the local area;

⁴⁷¹ *Merger Assessment Guidelines (CC2 Revised)*, paragraph 5.8.3.

⁴⁷² We also note that the number of non-supermarket PFSs in the UK has been declining in recent years, from 7,018 in the first quarter of 2016 to 6,847 in the second quarter of 2018.

- (b) A new PFS being opened at an existing third-party supermarket; or
- (c) A third-party supermarket acquiring an existing adjacent PFS currently owned by a non-supermarket rival.

14.165 We note that there has not been significant new entry of third-party supermarket PFSs in the UK in recent years. According to Catalist data, between Q1 2016 and Q2 2018, there were:

- (a) six new PFSs and 51 acquisitions of existing non-supermarket PFSs by Co-op (which is offset by 13 closed PFSs and three disposals of Co-op PFSs to non-supermarket owners), of which seven are adjacent to large groceries stores;
- (b) one new PFS by Morrisons (offset by one disposal of a Morrisons PFS to a non-supermarket owner); and
- (c) two new PFSs by Tesco (offset by 1 closed PFS).

14.166 Consistent with the approach taken in our assessment of in-store groceries, to the extent that supermarket competitors have sufficiently certain plans to open new PFSs in a timely manner in any of the areas of overlap between the Parties, we plan to factor this into our analysis as if the pipeline store was an existing PFS. This analysis has not currently been factored into our assessment; however, we note that this may reduce the number of local markets giving rise to an expectation of an SLC.

Efficiencies

14.167 As discussed in Chapter 16 (paragraphs 16.96 and 16.100) and Appendix M, the Parties estimated that the Merger would lead to savings from aligning prices on the commercial aspects where fuel is being sourced by both Parties from the same or nearby terminals [REDACTED], and reducing delivery costs [REDACTED]. They also estimated that additional savings could be achieved by [REDACTED]. The total efficiencies estimated by the Parties in relation to their fuel operations amount to [REDACTED].

14.168 However, as explained in Chapter 16 and in greater detail in Appendix M, we do not consider that the Parties' submissions around [REDACTED] [the consultant's] calculated synergies in fuel represent a robust estimate of the likely rivalry-enhancing efficiencies arising from the Merger.

14.169 Given the concerns we have about the estimates submitted by the Parties, and in the absence of any other robust sources of evidence, we do not consider that there is evidence of any rivalry-enhancing efficiencies being

likely to be generated in fuel by the Merger. Therefore, unlike in relation to our assessment of groceries, we have therefore not incorporated any allowance for efficiencies as part of our GUPPI calculations.

15. Buyer power

15.1 We have considered whether a potential increase in the buyer power of the merged entity could distort competition in the supply of groceries. For the purposes of our competitive assessment, we would only be concerned by an increase in the buyer power of the merged entity to the extent that it may distort competition in the supply of groceries and result in adverse effects on end consumers.⁴⁷³ In and of itself, a reduction in the profitability of suppliers does not give rise to an SLC.

15.2 Our Issues statement set out two theories of harm in this respect:

- (h) the exercise of increased buyer power by the merged entity might result in reduced incentives to invest and innovate on the part of suppliers; and
- (i) the exercise of increased buyer power by the merged entity might raise the purchasing costs of rival retailers, which, under certain circumstances, may result in price increases to certain customers.⁴⁷⁴

15.3 The remainder of this chapter sets out our assessment of these two theories of harm.

Effect on innovation and investment in the supply chain

15.4 The first theory of harm we considered is that the exercise of increased buyer power by the merged entity might result in reduced incentives to invest and innovate on the part of suppliers. This effect is more likely to materialise in circumstances where three conditions are met:

- (a) investment by suppliers involves significant upfront costs;
- (b) suppliers and retailers find it difficult to contract for future terms of supply in advance of making the investment; and
- (c) the merger increases the bargaining power of the merged entity.

⁴⁷³ This is the approach prescribed in [CC2 Revised](#), paragraphs 5.4.19–5.4.21, and followed in the Groceries market investigation (2008), [Final report](#), paragraph 9.3 and the Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 8.10.

⁴⁷⁴ [Issues statement](#) (16 October 2018), paragraphs 117 and 121.

15.5 If the merged entity has increased buyer power, it may have the ability and the incentive to force the price of new products down towards the marginal cost of supplying the products. Anticipating this outcome, suppliers may refrain from making the investments in the first place. This theory of harm is sometimes referred to as the ‘hold up problem’.

Third party views

15.6 We sent a questionnaire to a sample of 38 large suppliers of the Parties.⁴⁷⁵ We received 34 responses in return, covering 19 suppliers of branded goods, 8 suppliers of private label goods, 5 suppliers of both branded and private label goods and 2 wholesalers. In response to the questionnaire, 17 suppliers said that they did not expect the Merger to have an impact on their investment and research and development (R&D), while 13 suppliers thought that such an effect was likely or possible. The majority of private label suppliers in our sample thought that the Merger was unlikely to have an impact on their incentives or their capability to invest, whereas half of branded goods suppliers thought that the Merger might have such an impact. In general, the concerns of branded goods suppliers revolved around incentives for New Product Development (NPD) rather than investment in new capacity or production processes. Most of these suppliers explained that they do not normally contract the terms of supply for new products before the products are ready to be launched, and any increase in the concentration and buyer power of retailers might reduce the profitability or increase the risk profile of NPD projects.

15.7 We also sent a questionnaire to a sample of 110 of the Parties’ smaller suppliers,⁴⁷⁶ and received 33 responses. Twenty-one respondents told us that they did not expect the Merger to have an impact on their investment and R&D, while 11 respondents thought that there might be such an impact (and one respondent said that it would need to **increase** its R&D as a result of the Merger).⁴⁷⁷

15.8 A few suppliers and retailers explained that in some cases they use exclusivity arrangements to set out the terms of supply of a new product in advance of a launch in the UK market. Exclusivity contracts typically last for one to twelve months and entail certain obligations on the part of the retailer

⁴⁷⁵ To obtain this sample [redacted].

⁴⁷⁶ We built that sample by ranking suppliers by size and picking the ten largest suppliers for each increment of five percentiles in the distribution (so we sample ten suppliers at the fifth percentile, ten at the tenth percentile, etc) until we reached a cost of goods sold (COGS) of £2 million.

⁴⁷⁷ Of the 11 small suppliers who said the Merger might affect incentives to invest and innovate, four were suppliers of branded products, two were suppliers of own-brand products, and the others supplied both types of products.

as well the supplier. In particular, the retailer is required to guarantee certain volumes and/or distribution levels in exchange for exclusivity. However, such arrangements appear to be negotiated relatively late in the NPD process, and tend to cover a small minority of NPD (typically less than 5% of product launches). The British Brands Group (BBG) also said that increased pressure to supply new products on an exclusive basis could increase costs and reduce revenue potential.⁴⁷⁸

- 15.9 The BBG said that nine of its members reported that ‘innovation would be significantly more challenging post-Merger should their products not be listed in either of the two near-duopoly retailers’. The BBG emphasised that the climate for innovation in UK grocery was already increasingly challenging, mainly because suppliers are finding it more difficult to find the distribution needed to make a success of NPD.⁴⁷⁹
- 15.10 The Food and Drink Federation (FDF) provided the results of a survey of its members on the expected impact of the Merger on the supply chain, including incentives to develop new products.⁴⁸⁰ The survey indicated that roughly a quarter of NPD projects involve upfront costs greater than 25% of revenues expected in the first year after launch. The survey also showed that roughly one-third of NPD projects benefited from some kind of commitment or support from retailers prior to any upfront investment (although only in 9% of cases did this involve agreement of supply terms), and 35% of respondents said that such commitments were usually necessary for NPD to take place. The survey also indicated that Asda and Sainsbury’s were the two retailers most likely to offer commitments in support of NPD. Overall, 19% of respondents said that the Merger would make their business less likely to engage in product innovation (59% said that their incentives would be unchanged, 9% said the Merger would make their business more likely to engage in product innovation and 13% did not know).
- 15.11 Overall, the submissions from suppliers indicated some concerns from suppliers around the impact of the Merger on investment incentives. These concerns were stronger for investment in NPD for branded products.

⁴⁷⁸ [BBG Initial Submission](#), paragraph 67.

⁴⁷⁹ [BBG Initial Submission](#), paragraph 60.

⁴⁸⁰ The FDF stated that ‘[s]uppliers effectively operate in a climate of fear as Sainsbury’s and Asda act as gatekeepers to the market. As a result, suppliers are reluctant to share information that could risk identifying themselves’ ([FDF response to Issues statement](#), paragraph 7). This is consistent with the Groceries market investigation (2008) ([Final report](#), paragraph 9.59 and footnote 1 on page 168) which found that suppliers were reluctant to provide the CC with details of specific instances of conduct by grocery retailers, with suppliers noting the potential damage to their business. However, we are satisfied that we have sufficient evidence on which to make provisional findings in relation to these issues for the purposes of this investigation.

New product development project investment

- 15.12 To better understand the economics of NPD and how they could be affected by the Merger, we asked suppliers to provide their internal business plans for their most recent NPD projects.⁴⁸¹ We received information on 58 projects from 20 suppliers (14 large suppliers and 6 small suppliers). We focused our attention on the size of the investment relative to expected revenues (which is an indicator of the extent to which a project might be liable to a ‘hold up’ problem in the sense specified in paragraph 15.4), and the share of revenues which is expected to come from the Parties over the first three years (which is an indicator of the extent to which the business case of a project is contingent on the terms obtained from the Parties).
- 15.13 The Parties represented on average 37% of revenues expected over the first three years for these projects.⁴⁸² There is a broad dispersion around the share of revenues from the Parties, and for 17% of the projects the Parties represent more than half of expected revenues.⁴⁸³
- 15.14 Some suppliers reported zero investment figures for certain projects. This was either because the project involved the introduction in the UK market of a product that had been developed elsewhere, or because the project related to the extension of an existing product line (eg a new flavour or a new packaging) which involved relatively small development costs that were not recorded. Even excluding these cases, the majority of projects in our sample involved only fairly small development costs, generally representing less than 10% of the revenues expected for the first three years (which is broadly consistent with the results from the FDF survey). In most cases, these projects also related to the extension of existing product lines. In general, the NPD activity of small suppliers involved less upfront cost (relative to expected revenues over the first three years) than that of large suppliers.
- 15.15 There were only two projects that involved significant upfront cost **and** for which the Parties accounted for a significant share of short-term revenues (approximately one-third). One of these projects was in the confectionary

⁴⁸¹ We asked suppliers to provide their internal business plans for the last three NPD projects that they launched in the UK. As part of this request, we asked suppliers to identify the initial investment incurred to develop the product, the expected revenue from the product over the first three years, and a split of the expected revenue by country and customer. We addressed that request to the large suppliers of branded goods who replied to our phase 1 questionnaire, and to the small suppliers who had said during the phase 1 investigation that the Merger might impact their investment and innovation activity.

⁴⁸² This figure only includes projects for which explicit information was provided by the suppliers. In some cases, the suppliers did not provide any information on the share of revenues expected from the Parties, even though they expected to supply at least one of the Parties. These projects are not included in the average figure provided. The sample average might exceed the population average if the suppliers who responded to our questionnaire are particularly exposed to UK retailers.

⁴⁸³ This figure excludes own brand products.

category, and the other was in the drinks category. Both projects involved significant R&D and customer research in the development phase, and were undertaken by large multinational companies.

- 15.16 We asked the two suppliers concerned to comment on the financials of these two projects.
- 15.17 [X] told us that ‘the revenue for the [X] product is relatively small as these are single [X] ranged in the [X] segment. [X] represents c.1% volume share of the [X] market so we expect smaller initial returns. It is however a segment which we would like to grow in the future which is why the investment is relatively high’.
- 15.18 [X] told us that ‘to date, [X] has only been launched in the UK. There are currently no concrete plans to launch the product in other countries until those countries can evaluate the outcome of the UK launch and consider potential improvements to the recipe. Therefore, while it is possible that the product may be launched in other countries within the three year period ([X]), [X] has not yet forecast sales projections outside of the UK.
- 15.19 These comments suggest that the suppliers developed these two products with a view to growing a particular category or concept in the medium- to long-term. As such, it is possible that the Parties’ share of expected revenues over the first three years might overstate the extent to which the business case of these projects depended on the terms obtained from the suppliers.

Parties’ views

- 15.20 The Parties submitted that the sample of NPD projects used by the CMA was small and potentially ‘self-selecting’ (in the sense that suppliers more concerned about the Merger might have been more likely to respond), such that caution should be exercised in drawing conclusions from the results. Notwithstanding this issue with representativeness, the Parties submitted that the evidence gathered by the CMA did not indicate any cause for concern. The analysis identifies only a very limited subset of products that might meet the criteria for competitive harms implied by the theory of harm. In general, NPD rarely involves significant upfront investment, and where it does, the Parties do not account for a large share of expected revenues. The Parties also pointed out that one of the NPD projects identified as potentially ‘at risk’ in the CMA’s sample is in the drinks category, where many new products are tested and launched through smaller retailers or the ‘on-trade’ channel, such that suppliers are even less dependent on large retailers than in other categories.

15.21 The Parties also submitted that suppliers do not generally require ex ante support for innovation but that where they do, the Parties can provide such support. For example, Sainsbury's has a [redacted] year contract with [redacted], a UK-based branded supplier, which enabled the supplier to introduce a new [redacted] product. Sainsbury's also co-invested with the supplier to set up a new packing line for the product. This contract was agreed at the same time as the investment was undertaken. Sainsbury's also has a [redacted] team dedicated to discovering new suppliers and products in the UK and globally, [redacted]. The Parties [redacted].

Provisional conclusion on effect on innovation and investment

15.22 The evidence available to us indicates that only a small minority of NPD projects involve significant upfront costs and significant reliance on the terms obtained from the Parties. The few projects in our sample that appear to meet these criteria were developed by large multinational companies, typically with a view to initiating a new product line or broadening distribution in the medium- to long-term, such that their profitability might be less dependent on the terms obtained from the Parties than might be implied from short-term financial forecasts. There are also indications, both from FDF's survey and the Parties' representations, that in certain circumstances retailers can and do provide some forms of commitments to support the NPD activity of suppliers. For these reasons, our provisional finding is that there is insufficient evidence to conclude that the Merger is likely to significantly reduce incentives to invest and innovate on the part of suppliers.

Effect on procurement costs for rival retailers

15.23 The second theory of harm is that the exercise of increased buyer power by the merged entity might raise the purchasing costs of rival retailers, which, under certain circumstances, may result in price increases to certain end customers. This theory of harm is often referred to as the 'waterbed effect' in competition inquiries. It was considered by the CMA in the Tesco/Booker merger inquiry in 2017,⁴⁸⁴ and by the CC in the Groceries market investigation in 2008.⁴⁸⁵

15.24 The key steps of this theory of harm can be summarised as follows. In the first instance, the lower wholesale prices obtained by the merged entity allow it to reduce retail prices, and thereby attract customers from other, smaller retailers. As smaller retailers lose market share, their bargaining positions and

⁴⁸⁴ Tesco/Booker merger inquiry (2017), [Final report](#), paragraph 8.11.

⁴⁸⁵ Groceries market investigation (2008), [Final report](#), paragraph 5.19.

their purchasing costs deteriorate. These smaller retailers then face two competing incentives: on the one hand, they would like to pass on some of the increase in their purchasing costs; on the other hand, they need to maintain lower prices to resist increased competition from the large retailer. If the former effect dominates the latter, then smaller retailers respond by increasing their prices, which harms these retailers' customers (even if the customers of the Parties benefit from lower prices).

15.25 This theory of harm is therefore premised on the Parties obtaining significant reductions in procurement costs. We consider this issue in Chapter 16 and provisionally conclude that the Parties are likely to generate around £[X] of rivalry-enhancing efficiencies from the Merger as result of improved buying terms with suppliers. Notwithstanding the specific quantum of synergies we have estimated, this section considers whether, assuming the Parties were likely to achieve lower procurement costs, waterbed effects could materialise in the UK grocery industry.

Third parties' views

15.26 We asked large suppliers whether they would expect to change their prices or any other commercial terms to other customers because of the Merger. Most of the comments we received in response to these questions were offered tentatively, and qualified by a level of uncertainty surrounding the future market structure. The responses we received were split as follows:

- (a) Twenty suppliers said that they would **not** change the terms applied to rival retailers. In general this was because they conducted negotiations with different customers independently, or because their markets were very competitive.
- (b) Ten suppliers said that they might **increase** the prices charged to rival retailers. In general this was because these suppliers had fixed profit targets and therefore would look to recoup the lost margin elsewhere.
- (c) 2 suppliers said that they might need to **decrease** the prices charged to rival retailers. In general this was because these retailers might seek to obtain better terms to remain competitive as a result of the Merger.

15.27 We also asked suppliers to comment on whether they had increased prices to their customers as a result of previous mergers (eg Tesco/Booker, Booker/Musgrave, Asda/Netto).⁴⁸⁶ Almost all the suppliers who replied to this

⁴⁸⁶ See [Tesco/Booker merger inquiry](#), [Booker/Musgrave merger inquiry](#) and [Asda/Netto merger inquiry](#).

question (22 out of 24) said that this had not been the case, although some of them pointed out that this Merger was different in nature and scale.

- 15.28 To further explore suppliers' pricing incentives, we asked the ten suppliers who said they would seek to increase prices to rival retailers to comment on the likelihood of success of this strategy, and the factors that might affect the outcome of these negotiations. The responses were split, and most of these suppliers emphasised that the outcome of these negotiations was very difficult to predict. One supplier ([redacted]) stated that the likelihood that other customers would accept price increases was low as there were already many inflationary pressures in the industry. In contrast, five suppliers were confident or fairly confident in their ability to increase prices, although there were some qualifications. For example, one supplier ([redacted]) said that it might need to provide some counterpart of value to the retailer, and three suppliers said that while they might enforce price increases, this might result in volume losses from retailers as a result of falling demand.
- 15.29 We asked smaller suppliers whether, in the event that they had to lower prices to the merged entity as a result of the Merger, they would expect to change prices to other customers. Responses were split as follow: 17 respondents said they would not change prices to other customers; four respondents said they might **increase** prices to other customers; and 12 respondents said they might need to **decrease** prices to other customers. Respondents who said they might need to decrease prices generally said that they would expect such requests to come from smaller retailers as they faced lower retail prices from the merged entity.
- 15.30 In FDF's survey, 53% of respondents said they would increase prices to other customers if they obtained lower prices from the merged entity. However, only 8% of respondents said that they had increased prices to other customers when they obtained lower prices from the combined Tesco/Booker. The FDF pointed out that it was still 'early days' since this merger, and few suppliers in the sample previously had separate terms of supply to Tesco and Booker. The FDF submitted that the terms negotiated between suppliers and retailers reflect a broad range of factors beyond their size, and a substantial deterioration in the price obtained from the merged entity may just be the type of 'shock' that causes suppliers to re-evaluate the prices charged to other customers.
- 15.31 In summary, suppliers had mixed views with respect to the effect of the Merger on purchasing costs for rival retailers. Roughly one third of large suppliers said they would seek to increase their prices to rival retailers, though only some of them were confident in their ability to carry this out. In contrast, only 12% of small suppliers said they would seek to increase their prices to

rival retailers, whereas 36% of small suppliers said that they would **reduce** their prices to these retailers.

15.32 This plurality of views likely reflects the complex balance of incentives facing suppliers after the Merger: on the one hand, suppliers might have a greater relative bargaining power with respect to rival retailers if their purchasing volumes are reduced, which might create an incentive for these suppliers to seek price increases; on the other hand, the demand from rival retailers might become more price-elastic if they face stronger competition from the merged entity, which might mitigate any incentives for suppliers to increase prices to these retailers.

Quantitative analysis of the prices charged by suppliers to grocery retailers

15.33 To obtain more evidence on the relationship between purchasing shares and prices, we asked large suppliers of branded goods to provide data on the prices they are currently charging to different retailers for a sample of SKUs.^{487,488} Our analysis of this data is summarized in Appendix L. In summary, this analysis indicates that the relationship between the procurement share of a retailer for a particular SKU and the price paid for that SKU by that retailer is non-linear, in the sense that it is stronger for smaller procurement shares than for larger procurement shares. For example, starting from a 5% procurement share, a retailer increasing its share by one percentage point (so, from 5 to 6%) would see its average relative price decrease by a factor of 0.009 (ie its procurement costs would decrease by roughly 1%), while starting from a 15% procurement share a retailer increasing its share by one percentage point would see its average relative price decrease by a factor of 0.005 (ie its procurement costs would decrease by roughly 0.5%). In fact, our analysis indicates that the effect of a small increase in procurement share is not statistically significant when starting from a share of 20 or 25%.

15.34 Overall, this analysis shows that there is a statistically significant relationship between procurement volumes and costs for branded products over some ranges of procurement shares, and that this relationship is non-linear. These findings are consistent with those reached by the CC Groceries market investigation in 2008.⁴⁸⁹ This analysis also shows that for relatively small

⁴⁸⁷ A SKU identifies a distinct product based on attributes such as brand, quantity and packaging.

⁴⁸⁸ Our analysis focuses on the 'net price' charged for a SKU, which is the price per unit after all discounts, promotions and payments have been accounted for.

⁴⁸⁹ See [Groceries market investigation](#).

changes in procurement share, which would be the likely result of price reductions by the merged entity, the impact on procurement costs is modest.

Pricing incentives for rival retailers

- 15.35 Waterbed effects materialise only if rival retailers respond to an increase in their procurement costs by increasing their retail prices. However, a reduction in the prices charged by the merged entity associated with an increase in the procurement costs of rival retailers is likely to create two different incentives for rival retailers, working in opposite directions: on the one hand rival retailers would like to pass through a share of any increase in their procurement costs to their customers; on the other hand they might face stronger price competition from the merged entity.
- 15.36 The net effect of these two forces is very difficult to predict, and there can be no general presumption that they will result in a price increase. Instead this is likely to depend on the particular economic context faced by rival retailers: if costs vary significantly with procurement volumes and customers are not too price-sensitive, rival retailers are more likely to **increase** their prices in response to stronger competition by the merged entity; in contrast, if costs do not respond much to changes in procurement volumes, and if customers are fairly price sensitive, rival retailers are more likely to **reduce** their prices in response to stronger competition by the merged entity.
- 15.37 It should also be emphasised that the balance of these incentives is not necessarily the same for all retailers. The evidence summarised in the previous section indicates that the relationship between procurement costs and volumes varies along the volume curve: it is stronger for small retailers than it is for medium to large retailers. Similarly, the price-sensitivity of customers is likely to vary: in general, the customers of a particular retailer will be more sensitive to the price charged by a rival retailer if that rival retailer has a similar positioning in the market (in terms of product offering or store locations).
- 15.38 Finally, it should be noted that even if waterbed effects materialise and result in higher prices for some customers, the **overall** impact on customer welfare is ambiguous. The price changes harm some customers (namely, the customers of any retailer which decides to increase its prices in response to the Merger) while benefiting other customers (namely, the customers of the merged entity and of any retailer which decides to lower its prices in response to the Merger). Given that the evidence above suggests that the relationship between procurement costs and volumes is relatively flat for a large part of the volume range, under most plausible assumptions the overall impact on customer welfare is unlikely to be negative.

Parties' views

15.39 The Parties submitted that their combined procurement share is below 30% in all product categories, and that this implies that the Parties will have no 'anti-competitive buyer power' post-Merger. In principle, waterbed effects may arise whenever the merging parties achieve significant reductions in their procurement costs, irrespective of whether this is due to increase scale or other factors. As such we did not consider it possible or necessary to identify a particular procurement share beyond which anti-competitive effects might be expected.

15.40 The Parties also pointed out that, considering all the suppliers who have engaged with the CMA, over three quarters said that they would not increase prices to rival retailers, and that those suppliers who said that they might increase prices to rival retailers qualified their predictions in various ways. The Parties submitted that a more likely outcome of the Merger is that other retailers would fight to obtain similar benefits to avoid being placed at a disadvantage to the Parties.

Provisional conclusion on effect on procurement costs for rival retailers

15.41 In summary, we found that:

- (a) the majority of the suppliers who engaged with us do not expect to change their prices to rival retailers following the Merger;
- (b) for most retailers a small loss of market share is unlikely to lead to a significant increase in procurement costs; and
- (c) a price reduction by the merged entity produces conflicting incentives for rival retailers, which might lead some rival retailers to reduce, rather than increase prices.

15.42 Overall, it seems unlikely that many retailers will raise their prices in response to the Merger; and even if it were to occur for some individual retailers, the overall net effect on UK customers is unlikely to be negative. On that basis, our provisional finding is that the Merger is unlikely to lead to customer harm through a waterbed effect.

16. Efficiencies

Introduction

- 16.1 The Parties stated that the Merger offers the opportunity to generate cost savings for both Sainsbury's and Asda on a 'transformational scale'.
- 16.2 The possibility of efficiencies exists in many transactions; however, it is relatively unusual for them to be explicitly examined (particularly in a quantitative fashion) in the competitive assessment of a merger. In this case we have sought to quantify the effect of any such efficiencies, in part due to:
- (a) The potentially material impact these figures could have on our competitive assessment;
 - (b) The high degree of confidence which the Parties have submitted that the CMA can place on these figures, given the level of work undertaken; and
 - (c) The fact that quantified incorporation of such rivalry-enhancing efficiencies directly into a competitive effects analysis sits particularly well with the GUPPI model.
- 16.3 We note that the terms 'synergy' and 'efficiency' can have specific technical meanings in some contexts. Consistent with the Parties' submissions, we have used both of these terms to represent financial benefits to the Parties which may arise from the Merger, noting that these can take the form of revenue benefits (ie increasing sales by using the combined business to improve their overall proposition, for example by cross-selling additional products to existing customers) or cost benefits (ie reducing their costs as a result of combining their businesses for example by rationalising their supply chain).

Economic rationale and legal framework

- 16.4 It is possible that efficiencies brought about by a merger wholly or partially counteract the otherwise adverse effects on competition and any potential harm to consumers.
- 16.5 The CMA's merger assessment guidelines state that 'Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to an SLC. For example, a merger of two of the smaller firms in a market

resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms'.⁴⁹⁰

- 16.6 When considering the existence of any such efficiencies, our guidance states that It is not uncommon for merger firms to make efficiency claims. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC [...] the [CMA] must expect, that the following criteria will be met:
- (a) the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and
 - (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it'.⁴⁹¹
- 16.7 In addition to the four criteria stated above (ie timeliness, likelihood, sufficiency, and merger-specificity), our guidance also explains that savings resulting from supply-side efficiencies, such as cost reductions, are not necessarily rivalry-enhancing if they would not incentivise the company to improve their competitive offer. For example, the merged entity may have the incentive to retain the savings, rather than investing in their customer offer (eg by lowering prices). It explains that 'The Authorities are more likely to take cost savings into account where efficiencies reduce marginal (or short-run variable) costs as these tend to stimulate competition and are more likely to be passed on to customers in the form of lower prices. The Authorities will not in general give as much weight to savings in fixed costs because they may often represent private gains to firms and are less important in short-run price formation, although reductions in fixed costs may play an important role in longer-term price formation'.⁴⁹²
- 16.8 Accordingly, we consider it necessary to assess the source of any synergies, and the implied incentives on the Parties as a necessary part of the test to determine the extent of rivalry-enhancing efficiencies.
- 16.9 When assessing the scale of any potential efficiencies, the guidance also states that 'Efficiency claims can be difficult for the Authorities to verify because most of the information concerning efficiencies is held by the merger firms. The Authorities therefore encourage the merger firms to provide

⁴⁹⁰ [CC2 Revised](#), paragraph 5.7.2.

⁴⁹¹ [CC2 Revised](#), paragraph 5.7.4.

⁴⁹² [CC2 Revised](#), paragraph 5.7.9.

evidence to support any efficiency claims whether as part of the SLC analysis or the consideration of relevant customer benefits'.⁴⁹³

16.10 In summary, in order for any potential synergies to be found to be rivalry-enhancing efficiencies, the evidence must lead the CMA to expect that the following cumulative criteria would be met:

- (a) Timely;
- (b) Sufficient;
- (c) Likely;
- (d) Merger-specific; and
- (e) Incentivise the Parties to improve their customer offer in the relevant market(s).

Parties' views

16.11 The Parties submitted that the Merger would be pro-competitive and would result in substantial benefits to consumers across UK grocery markets as a result of the synergies generated. The Parties stated that the scale of savings was independently calculated (by consulting firm [X]) [afterwards 'the consultant'] to be at least £[X] on an annually recurring basis,⁴⁹⁴ which would allow for a significant reduction of the Parties' combined cost base post-Merger. The Parties considered that a large proportion of these savings would be passed on to consumers in the form of price reductions, or investments in greater quality, range, service and convenience to deliver a more compelling customer proposition overall.

16.12 The Parties' submissions discussed a number of different sources of potential synergies, with some including quantified estimates. These are summarised below, including [the consultant's] estimated ongoing annual recurring synergies, where available:

(a) Quantified purchasing synergies

- (i) **Purchasing synergies from 'harmonisation' (c.£[X]):** Pre-Merger, each Party is uncertain as to whether it is receiving the best buying terms from its suppliers. The Merger would allow the Parties to compare actual buying terms currently being achieved, and so would

⁴⁹³ [CC2 Revised](#), paragraph 5.7.5.

⁴⁹⁴ We note that this consisted of £[X] and £[X], and so [X].

demonstrate where suppliers are able to profitably supply at a lower price on some or all of their products. The Parties would then seek to renegotiate with their suppliers to achieve terms on the total combined volumes which are equivalent to the best that one Party currently receives. This includes savings on groceries, GM, and fuel.

- (ii) **Additional purchasing synergies (c.£[REDACTED]):** Savings from enhanced scale of the combined entity following the Merger, resulting in increased efficiencies that scale allows for the Parties' suppliers (eg from dealing with a single customer rather than two). These are particularly important in own-brand ranges, where harmonisation of specifications may result in more efficient manufacturing.

(b) Other quantified synergies

- (i) **Property (c.£[REDACTED]):** Extending the Argos proposition to Asda customers through relocating existing Argos stores into Asda stores, or opening new Argos stores in Asda stores. In addition, [REDACTED].
- (ii) **Goods not for resale (c.£[REDACTED]):** Benefits from consolidating spend on items such as marketing, professional services, and security through supplier harmonisation and operational improvements.
- (iii) **Other operational synergies (c.£[REDACTED]):** [REDACTED].

(c) Unquantified

- (i) **Synergies in clothing (N/A):** Beyond the cost savings discussed above, the Merger would provide the opportunity to [REDACTED].
- (ii) **Synergies in financial services (N/A):** The Merger would create the opportunity for [REDACTED].

16.13 The Parties emphasised that these calculations were generated by an independent consultancy, but that the Parties themselves have confidence in these estimates as being a conservative estimate of the overall synergies available. In particular, they noted that the calculations had relied on a conservative methodology, and that there would be additional potential benefits in [REDACTED].

16.14 In addition to the specific points raised above, at various times during the investigation, the Parties have mentioned the possibility of additional synergies from other sources [REDACTED], but we have not received evidence on these synergies and therefore have only assessed the Parties' efficiency claims detailed above.

Purchasing synergies

16.15 In order to calculate their estimated £[§] of purchasing synergies (the 'Purchasing Synergies Analysis'),⁴⁹⁵ [the consultant] used the following methods (more details on these are included in Appendix M):

- (a) **SKU Approach (own-label food products):** [the consultant] estimated the purchasing synergies from harmonisation of own-brand food products through a direct SKU-by-SKU comparison on a sample of own-brand products, coupled with an extrapolation to the un-sampled own-brand sales.
- (b) **Supplier Approach (most branded groceries):** Due to the existence of different contractual terms (eg over-riders across multiple products), a direct SKU-by-SKU comparison across branded products would be difficult. Therefore, [the consultant] estimated the purchasing synergies on branded grocery products of [<100] suppliers using a comparison of supplier margins for each Party (ie the gross margins generated by the Parties based on the sale of goods from these suppliers), adjusting for differences in retail prices. The Parties also considered the mix of products being sold from each supplier. The estimated purchasing synergies on the branded groceries of the remaining suppliers was reached by extrapolating the category savings from these [<100] suppliers to the remaining branded suppliers.
- (c) **Category Approach (GM including clothing, and selected grocery categories)⁴⁹⁶:** Similarly to the rest of branded grocery, the existence of different contractual terms makes a direct SKU-by-SKU comparison difficult. Therefore, [the consultant] used the same methodology as the Supplier Approach, but applied to whole sub-categories/categories (ie based on the gross margin generated by sales in sub-categories/categories as a whole), although no analysis of the mix of products was conducted in this approach.
- (d) **Fuel Approach (fuel):** [the consultant] estimated the savings [§] and [§]. Unlike the rest of the analysis, the estimate for fuel was conducted during the CMA investigation, rather than to support the Parties' assessment of benefits when the Merger was agreed and announced.
- (e) **Beyond Best Terms ('BBT') (all):** In addition to working out the effect of harmonising to the best terms achieved by one of the Parties on existing

⁴⁹⁵ Consisting of the c.£[§] purchasing synergies from 'harmonisation' and c.£[§] of additional purchasing synergies.

⁴⁹⁶ Beer, Wine & Spirits, as well as Baby & Beauty.

purchases, [the consultant] estimated the additional savings available from Merger as a result of either having higher volumes with a single supplier or lower supplier transaction costs through dealing with only one organisation. This was applied on top of each of the above approaches. For Grocery and GM this was based on a percentage reduction depending on the nature of the product and scale of volume changes. For fuel, this was based on [REDACTED].

16.16 The relative scale of estimated synergies calculated in each of these approaches is shown in Table 16.1 below:

Table 16.1: Estimated purchasing synergies, by approach (£ million)

<i>Approach</i>	<i>Harmonisation</i>	<i>BBT</i>	<i>Total</i>
SKU Approach	[REDACTED]	[REDACTED]	[REDACTED]
Supplier Approach	[REDACTED]	[REDACTED]	[REDACTED]
Category Approach	[REDACTED]	[REDACTED]	[REDACTED]
Fuel	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]

Source: [the consultant] analysis, and Parties' submissions.

Note: During the investigation, the Parties updated some aspects of their analysis at various times but stated that the changes did not result in material variations to the scale of estimated synergies, for example that changes had 'very limited impact on the overall synergy estimate'.

16.17 The Parties stated that the purchasing efficiencies were expected to be achieved on an annual recurring basis within [REDACTED] of the Proposed Merger, having been projected to [REDACTED]. They also noted that these timelines were used within their internal valuation modelling.⁴⁹⁷

Other synergies

16.18 As discussed above, the Parties included a description of other potential synergies arising as a result of the Merger. Additional details of these are included in Appendix M. We have discussed these in less detail since these efficiencies would be either (i) unquantified, or (ii) unlikely to offset a pricing pressure increase in the relevant markets (as calculated in the GUPPI and explained in paragraphs 16.120 to 16.122 below).

Ability to deliver, and associated risks

16.19 The Parties noted the caution expressed by the OFT previously that 'it would be disingenuous to ignore the fact that assessment of post-merger outcomes, both welfare enhancing [eg efficiencies leading to lower prices] and welfare-reducing [loss of rivalry leading to eg higher prices] is generally an inherently predictive exercise, and is based on probabilities, not certainties' and

⁴⁹⁷ [REDACTED].

acknowledged a 'healthy CMA scepticism towards efficiency claims, given the risk of self-serving (or simply unduly optimistic) claims made by Parties'. However, they submitted that the analysis conducted in this case is valid, robust, and meets any reasonable application of the relevant evidentiary standard.

- 16.20 The Parties' stated that each individual assumption 'needs to be considered in context of the conservatism of the synergies analysis as a whole. The Parties made their decisions in favour of the Proposed Merger not based on a line item [consultant] analysis of a particular SKU match but on the robustness of the overall synergies total (including the aggregate harmonisation total). In this respect it is important to remember that there was considerable conservatism built into the overall assessment and that [consultant] did not attempt to exhaustively cover every potential synergy pool'.
- 16.21 The Parties particularly highlighted aspects of their quantified approach to procurement synergies which they considered included conservative assumptions. For example, the application of caps on savings, the 'close match' criteria required for SKU matching, no savings being assumed on non-matching SKUs, the high proportion of overlapping suppliers and SKUs, and the relatively small proportion of savings associated with BBT compared to other indications of the benefits of increased scale.
- 16.22 The Parties highlighted that previous UK and European retail mergers (including in the grocery sector) have often featured procurement and harmonisation synergies.
- 16.23 The Parties also stated that they have experience of estimating and delivering synergies as they have done in the past, in particular in Sainsbury's/Argos and Asda/Netto where both successfully have delivered (or are on track to deliver) the total value of their predicted synergies. The Parties particularly highlighted that, in the case of Asda/Netto, they delivered higher synergies than were targeted pre-merger.
- 16.24 With regard to the uncertainty of supplier negotiations, the Parties noted that while these could inevitably be complex and involve a range of parameters, in many instances the arrangements that the Parties have with suppliers have no volume limits, so that volumes through one supplier can be transferred to the other supplier, subject to the supplier having sufficient capacity.

Review of potential synergies

- 16.25 The Parties hired [the third party] to conduct a review of their entire synergies plan (excluding those arising from fuel, as this analysis was not completed

prior to announcement of the Merger). The Parties noted that the level of estimated synergies was reviewed by [afterwards ‘the third party’] ‘in order to meet Sainsbury’s obligations in announcing that, post price investment, there would be £500 million net EBITDA synergies available for shareholders’. The Parties emphasised that ‘it was not necessary for [the third party] to verify the entire £[redacted] of synergies and, given the time and budget required for [the third party] to verify the synergies, there was no need to go substantially beyond the £500 million relevant to shareholders, presenting a conservative view of [the consultant’s] analysis for the purposes of announcement to shareholders’.

- 16.26 [The third party’s] report noted that their scope was to consider and comment on the preparation of the synergy plan, and they would carry out the review using the methodologies and standards which they would apply if the proposed announcement of synergies was covered by Rule 28 of the Takeover Code. As such, its work focused on understandability and reliability from an investor’s perspective, and the output would constitute a ‘Quantified Financial Benefits Statement’. Furthermore, [the third party’s] assessment was based on evaluating whether the Parties’ management had demonstrated appropriate rigour and objectivity in estimating the expected benefits of each synergy initiative.
- 16.27 [The third party] applied a weighting to the estimated synergy figures based on the extent to which it considered that the Parties’ management had demonstrated appropriate rigour and objectivity in estimating them. In doing this, it rated each initiative and applied a risk weighting to reflect its stage of development, the access to data and personnel possible, and the level of verifiable evidence.
- 16.28 [The third party’s] sensitised total for the Parties’ synergies plan was £[redacted] (of which £[redacted] was generated from purchasing synergies) by the end of [redacted].
- 16.29 [The third party] stated that its report might be relevant for the CMA’s considerations because it provided information on all of the underlying initiatives, but due to the different contexts and objectives and the methodologies used in coming to conclusions, it would be of limited use for the CMA’s purposes of assessing the likelihood of estimated synergies being delivered. In addition, [the third party] noted that [redacted].

Third parties’ views

- 16.30 We have also received submissions from third parties regarding the potential for, and size of, expected synergies from the Merger, in particular around purchasing synergies. These are laid out below, although we note that, as with the Parties, there is the potential for submissions to be coloured by the

specific interests of the third party. This consideration is discussed in more detail in our assessment.

Suppliers

- 16.31 We asked suppliers about their views of the Proposed Merger on their ongoing negotiations with the Parties, and in particular whether they would expect to reduce their prices to the combined entity. However, we note that this exercise was largely qualitative in nature, and should not be considered to be a representative sample of all suppliers.
- 16.32 In response to our supplier questionnaires, branded suppliers generally emphasised the complexity of negotiations, and the numerous factors which would be taken into account as a part of these, including: unit prices, discounts for efficiency of logistics or manufacturing, payment terms, levels of investment/promotional support, growth over-riders, gate fees, supporting strategic priorities, ranging, merchandising, new product development, exclusivity, etc.
- 16.33 Many of these suppliers noted that as a result of all these factors, it was hard to predict the outcome of these negotiations ahead of time, but that it was unlikely to be simply about cost price.
- 16.34 In addition to this, numerous suppliers noted that any concessions would be predicated on the supplier receiving reciprocal benefits, such as support, listings, or in store activity ([redacted]), a large branded supplier, stated that it would 'not plan on agreeing to additional investments to either Asda or Sainsbury's without securing value from the merged Parties, such as [redacted]', or as a result of genuine savings in the supply chain.
- 16.35 Larger branded suppliers generally expressed scepticism about the extent of efficiency savings available as a result of the Merger, noting that the Parties' operations were already at scale given their number 2 and 3 positions in UK groceries. They considered that the increment from the Merger would do little to change this unless their operations were integrated (eg [redacted] stated that 'there is no volume benefit for two existing customers becoming one (1+1=2)' which would justify a scale discount but that it would consider, if requested by the merged entity, agreeing to a lower cost per unit 'at the point the two Supply Chains merge' if 'this would provide efficiencies in our Supply Chain (delivering to one point rather than two)').
- 16.36 A number of own label suppliers noted that differences in current specifications between the Parties meant that it would be difficult to align costs without aligning specifications as well. However, if specifications were

aligned, this could result in some degree of improved operational efficiencies which could lower costs.

16.37 Five large branded suppliers provided us with their own estimates of harmonisation, which can be directly compared with the outputs of the Parties' own analysis. We note that these estimates were simply the direct comparison of price differences, rather than any form of expectation associated with changes in costs from the Merger. The suppliers' calculations were very different to the Parties, with the suppliers' estimates ranging from 0.1-0.5 of the Parties' estimate, up to 2.5-5.0 times.⁴⁹⁸

16.38 The Parties submitted that these differences could reflect the self-interests of the suppliers, differences in the time period or exact methodology used, and would only reflect the individual supplier's position rather than the aggregate view. While all of these points may have some validity, we note that:

- (a) Most of these estimates were prepared for internal use within the supplier organisations, including presentation to senior management.
- (b) Even if the supplier wished to attempt to 'disprove' the Parties' analysis, the suppliers would not know what figure the Parties had calculated. In addition, the estimates produced did not appear to have any particular bias, with results which were well above and well below the numbers produced by the Parties.
- (c) These figures were generally prepared in response to the announcement of the Merger, and so should reflect similar (albeit not identical) timings to the Parties' analysis. In addition, if the harmonisation figures were very sensitive to specific timings then this could raise concerns in itself, including the risk that the estimate derived from the Purchasing Synergies Analysis may not be reliable due to the time that has elapsed since it was calculated.
- (d) The Parties' public statements regarding their approach to harmonisation were clear,⁴⁹⁹ and so should have an objective 'correct' figure. If there were large differences in the estimates using different approaches to achieve the same end, this would emphasise the importance in ensuring the methodology correctly reflects all potential issues. Furthermore, while

⁴⁹⁸ We note that since the Purchasing Synergies Analysis did not use SKU-level data for branded groceries, we are not able to directly compare between the submissions from the Parties and suppliers to identify specific differences.

⁴⁹⁹ For example, "The basis for our merger is to harmonise buying terms across both businesses. Currently, Sainsbury's and Asda pay large suppliers different prices for identical products. By converging on the same lower price, we will secure considerable savings", https://about.sainsburys.co.uk/~media/Files/S/Sainsburys/Sainsburys_Asda_rationale_FINAL.pdf

[the consultant] had to deal with time constraints and data availability concerns as well as having to construct a systematic approach to deal with thousands of different suppliers, the suppliers themselves would have more time and data to calculate a single figure, and could include internal members of the business who understand the specific relationship, contract, existing promotional strategies, and commercial context (due to lack of confidentiality issues).

16.39 We also note that a number of these suppliers highlighted that differences in promotional approach could result in the Parties miscalculating these figures. For example:

- (a) [X] stated that '[when considering] the net price of [X], for example, between Sainsbury's and Asda, and say, "[X], we are going to have the Sainsbury's net price for [X]'", (a) there is no net price, it does not exist, and (b) they could only deliver that outcome if they were to promote it the same in Asda as in Sainsbury's'.
- (b) [X] stated that: 'the merged entity could (and most likely would) seek to combine both i) the NET [X] costs of Sainsbury's and ii) the variable investment of Asda'. This would result in treating the promotional spend from each Party differently.
- (c) [X] stated that: 'the negotiations are likely to be complex in nature, reflecting the different nature of our invoice prices and promotion funding'.

16.40 The final price paid by a retailer is dependent on factors such as promotional activity and retailer support, which may not be fully captured on invoices. Furthermore, the recorded net price would be reduced if higher volumes are sold on promotion due to the support being provided by the supplier. [X] provided additional details on this, stating 'you will see that [Asda] sold a lot more of [X] than Sainsbury's. The reason they were able to sell more of that is because we have promoted it a bit heavier with them [X]. Therefore, they have sold a lot more at the promotional price and, therefore, that net price at the end of the year, mathematically, looks lower. There is no net price for [X]. There is no net price for [X]. It is an outcome of whether or not the retailer is ready to promote a product and push volumes'.

16.41 Own label suppliers more commonly noted that pure harmonisation of costs of existing products was unlikely since the products often had fundamentally different specifications, and the underlying costs were usually associated with these specifications. Therefore, any savings would need to be reflective of reduced costs to the supplier themselves (eg through specification alignment).

This was particularly true where the Parties had transparency agreements (such as open-book accounting or similar mechanisms) in place.

Expected impact on smaller suppliers

- 16.42 Of the 33 smaller suppliers who responded to our Phase 1 questionnaire, nearly 85% expected the Proposed Merger to have an impact on their supply terms with the Parties. Of the 30 which provided additional details on this, over 80% expected that the Proposed Merger would result in these suppliers receiving lower prices for their products from the combined entity.
- 16.43 Of the 23 smaller suppliers who currently serve both Parties and expressed a view, they expected the effect of harmonisation would be a reduction in price of between 0% and 33%. A weighted average of these responses⁵⁰⁰ would indicate an overall expected reduction of around [0–5%], with around [80%] of the respondents considering this to represent the full harmonisation of any price gap. We note that these are generally indicative estimates of the expected outcome, rather than being supported by detailed analysis, as well as being based on a relatively small (and potentially unrepresentative) sample.
- 16.44 A number of suppliers referenced the outcome of negotiations following previous mergers, but said that these varied.
- 16.45 The above observations are also consistent with evidence provided by the British Brands Group who sent a questionnaire to 36 of their members and received responses from a range of suppliers (with a bias towards small companies) and found:⁵⁰¹
- (a) Due to differences in their models for working with suppliers, the amount of funding received by each Party in terms of pricing discounts, and funding for trade marketing and promotional activities, will differ markedly, presenting major financial challenges were the merged entity to seek to harmonise buying terms without considering all aspects of supplier funding (eg promotions etc);
 - (b) Suppliers anticipate harmonisation of prices between the two businesses, with the focus single-mindedly on the unit price of products with no regard to the differing promotional and funding models operated by the two businesses (although in the medium- long-term, it is not clear such

⁵⁰⁰ Based on the stated combined sales with the Parties, and using midpoints of any ranges provided.

⁵⁰¹ [Submission from the BBG at launch of P2 enquiry](#), paragraphs 20(i), 28 and 34.

differences would be maintained). The financial implications on suppliers are anticipated to be significant; and

- (c) In terms of trade price differences between the two retailers, reports vary from [~~3~~] % at the upper end to [~~3~~] % or no differences at all at the lower end.

16.46 Similarly, the Food and Drinks Federation (FDF) expressed concerns that the Parties would be able to extract lower prices from suppliers, and that this was through the exercise of increased buyer power and would be for the benefit of shareholders. In particular:

- (a) The FDF considered that the Parties could be expected to have significantly greater buyer power as a result of their increased size post-Merger, and so could be expected to pay lower prices to suppliers as a result. However, the FDF considers that assessing this via a 'harmonisation' analysis is 'highly questionable', in particular since:
 - (i) many suppliers do not serve both Parties and so no harmonisation could occur;
 - (ii) where suppliers serve both Parties, but with different products, the underlying differences in these products would make cost comparisons meaningless;
 - (iii) it is questionable whether the concept of 'price harmonisation' could take account of promotional activity; and
 - (iv) even if some degree of harmonisation was achieved it would be a short-term effect, since it would be a one-off event that would then have no meaning in any subsequent price negotiations with suppliers.
- (b) The FDF did not consider that there was much opportunity for suppliers to reduce their costs in order to produce efficiencies in the supply chain. In particular, there are very limited opportunities to increase the overall volumes being purchased.
- (c) The FDF considered that the impression given by the Parties that only a small number of large suppliers would receive lower prices following the merger was incorrect, and that this would affect all suppliers. It also noted that 90% of respondents to its survey expected the proposed merger to have a negative or very negative impact on their prices and/or terms of supply.

Other third parties

16.47 Tesco told us that there are significant doubts that any synergies of the scale identified would be achievable in practice, and that the CMA should not offset estimated synergies against potential upward pricing pressures in its analysis. It particularly noted that:⁵⁰²

- (a) synergies are inherently uncertain and difficult to realise – there is a long history of unsuccessful mergers in UK grocery retail;
- (b) operating cost savings – which, unlike procurement synergies, are the only synergies that the merging parties have full control over – will be small, do not demonstrate scale economies, and substantially higher cost savings can be achieved without a merger; while there is no ‘Plan B’ for the merging parties to achieve significant merger benefits from operating cost savings, if their estimated procurement benefits fail to materialise;
- (c) a line-level comparison of cost prices is not a reliable indicator of the procurement synergies that will ultimately be achieved;
- (d) there is no evidence of scale advantages in procurement. Instead, volume, growth and efficiencies are key to unlocking procurement synergies with suppliers – the proposed merger does not suggest any of these will result (other than in respect of unbranded suppliers, who, as explained in the hearing Tesco had with the CMA, are not likely to be the source of any meaningful synergies); and
- (e) there are potential dis-synergies that may offset any benefits (eg integration costs, effect of distractions and delaying other plans, standardisation costs, etc).

16.48 Tesco provided additional details of its experience of attempting to harmonise prices following its acquisition of Booker. Tesco told us that:

- (a) There is a key distinction between branded and own-branded goods. In relation to branded goods, suppliers are able to charge a premium because they have developed brands that customers want and are prepared to pay a premium for. In Tesco’s experience, branded suppliers would not ‘give margin’ to customers unless this is compensated either by growth or efficiency. In relation to own-brand, suppliers are already working on such tight margins (around as low as 1%) that they do not have the headroom to offer any cost reductions funded out of margin.

⁵⁰² We presume that this is based on the Parties’ public statements that the Merger would generate net EBITDA synergies of least £500 million.

Instead, cost reductions in own label rely on realisation of volume, growth or efficiency benefits;

- (b) Negotiations with branded suppliers to reduce cost are primarily about volume, growth, and efficiency, and that unless the Parties' merger were able to offer at least one of these to compensate for the margin reduction for the supplier, then the suppliers would be very unlikely to reduce their prices;
- (c) Comparing genuinely like-for-like prices on products is difficult, but in Tesco's experience, it is highly unlikely that there would be any real differences in price which would not reflect differences in costs, in particular as this represented a reputational risk for suppliers (eg as buyers move between retailers, or between suppliers and retailer). Tesco would expect that most suppliers would, on a net basis, currently be offering similar terms to customers of similar size, including Asda and Sainsburys;
- (d) Based on Tesco's experience from the Tesco/Booker merger, it was impossible to estimate with any accuracy the level of potential buying synergies at an individual supplier-level based purely on an analysis by accountants of supplier terms. For example, an ex-post analysis of the level of net benefits found that the net realised synergies [X] ranged widely between [X] of the original estimates produced by its advisors; and
- (e) Given the limited proposed changes to the Parties' operations post-Merger, there does not appear to be the opportunity for many efficiencies of the kind needed to form the basis of a successful negotiation with suppliers to offer lower cost prices. Tesco gave the example of being able to take whole-truck deliveries for high-volume lines or combine deliveries for the two entities. However, Tesco considered that it was not clear from the Parties' public statements that they would be able to offer this kind of efficiency when maintaining separate brands, head offices and store networks.

16.49 Morrisons stated that price harmonisation will be difficult to achieve if the Parties are simply seeking to merge volumes, in particular since:⁵⁰³

- (a) Suppliers will only tend to invest in offering lower prices in exchange for growth in volumes, which unlocks additional production efficiencies. Simply merging Sainsbury's and Asda's volumes with a particular supplier

⁵⁰³ [Morrisons response to Issues Statement](#), paragraphs 6.1-6.5.

that was previously supplying both does not deliver any additional volume to that supplier over the pre-Merger situation.

- (b) The Parties would need to harmonise their respective supply chains, products, range, and potentially promotional activity, all of which could reduce choice for customers; and
- (c) To the extent that any synergies are volume related, then such savings are only likely to occur if Asda and Sainsbury's are purchasing (and stocking) the same product ranges.

Other available sources of evidence

16.50 In this section, we discuss other available sources of evidence for the existence of, and scale of, synergies in grocery and GM. We note that we do not have any similar additional evidence available for synergies arising in fuel.

Historical transactions

16.51 Although the level of synergies for a particular transaction will depend on the specifics of the businesses involved, it is common to consider benchmarks from completed transactions between similar companies in the past. We note that the Parties' advisors did this when reviewing the synergy plan, and numerous equity analysts did the same.⁵⁰⁴

16.52 We note that when undertaking this exercise, there are aspects of this which raise particular difficulties:

- (a) Often, companies publicly discuss the level of net synergies rather than the gross synergies which are expected to result from the merger, since this it is the value of net synergies which would be expected to accrue to shareholders who are often the audience for such announcements;
- (b) Companies will usually discuss the expected synergies prior to a transaction but may not announce the actual level of delivery against the original expectations. Therefore, this comparison is with other companies' expectations which may differ from actual performance (either higher or lower);
- (c) The Parties are proposing not to fully integrate Asda and Sainsbury's post-Merger, in particular as they are planning to maintain separate

⁵⁰⁴ Including Jeffries, Redburn, Bank of America Merrill Lynch, Bernstein, Exane BNP Paribas, Societe Generale, Macquarie, UBS, and Goldman Sachs.

brands. This could result in a difference in the relative scale of synergies available compared with other transactions; and

- (d) No two transactions are exactly alike, and there can be important differences in terms of the scale of the transaction or the nature of the market(s) involved.

16.53 As noted above, previous announced synergies do not always make clear whether they are net or gross estimates. This makes it difficult to compare these announcements with the Parties' gross synergies estimates, and so we consider that they would represent less useful comparators. For completeness, we note that [the third party] considered the level of expected synergies announced in seven 'comparable transactions'⁵⁰⁵ as averaging [0–5%] of the target cost base and [<1%] of the combined parties' cost base, while the Parties' gross estimates would represent [5–10%] and [0–5]% respectively, as shown in Figures 16.1 and 16.2 below:

Figure 16.1: Total synergies as percentage of target cost base

[✂]

Source: The Parties.

[✂]

Figure 16.2: Total synergies as percentage of combined cost base

[✂]

Source: The Parties.

[✂]

16.54 The only one of these commonly referenced historical transaction in the groceries sector which explicitly notes the expected value of gross synergies is Ahold/Delhaize which estimated €750 million of gross synergies (the majority arising from buying synergies, with the rest from general, administrative and other savings).⁵⁰⁶ This was equivalent to:⁵⁰⁷

- (a) 1.2% of the combined entities' revenues;
- (b) 1.5% of the combined entities' cost base.
- (c) 3.4% of the target revenue; and

⁵⁰⁵ Tesco/Booker; Empire/Safeway; Sainsbury's/Argos; Ahold/Delhaize; Morrisons/Safeway; Couche Tard/The Pantry; Kroger/Harris Teeter.

⁵⁰⁶ Eg https://www.aholddelhaize.com/media/6369/180228_ahold-delhaize_q4fy17_summary-report.pdf, page 8; https://www.aholddelhaize.com/media/1152/ahold_delhaize_presentation_final_3.pdf, slide 20.

⁵⁰⁷ Comparisons with revenues taken from UBS analyst report, comparisons with cost base taken from [the third party] report adjusting for net vs gross figure.

(d) 3.75% of the target cost base.

16.55 Applying these figures from Ahold / Delhaize to Sainsbury's / Asda would give an implied range of potential gross synergies of around £[REDACTED],⁵⁰⁸ of which around £[REDACTED] would be variable cost savings (based on €125-150 million of the €750 million total Ahold/Delhaize synergies being fixed cost savings (from "General & Administration and Other"), equivalent to around 20%).⁵⁰⁹

16.56 In addition to the public data discussed above, [the third party] provided anonymised estimates of the level of buying synergies available based on its experience of similar retail 'clean room' analyses.⁵¹⁰ This indicated the following:

(a) The Parties' estimations of savings on matched spend was [REDACTED]% (even excluding Beyond Best Terms contribution), which was more than twice the average ([REDACTED]%) and substantially higher than the maximum included in the comparator set ([REDACTED]%). Even adjusting for the fact that the Parties' analysis only included matching for own-label products would result in an estimated saving on matched SKUs of [REDACTED]%, well above the highest comparator.⁵¹¹

Figure 16.3: Percentage saving on matched spend

[REDACTED]

Source: Parties.

(b) The Parties' estimations of buying savings as a percentage of combined spend of [REDACTED]% (even excluding the BBT contribution) were more than twice the average ([REDACTED]%) and substantially higher than the maximum included in the comparator set ([REDACTED]%).

Figure 16.4: Percentage saving on combined baseline spend

[REDACTED]

Source: Parties.

⁵⁰⁸ Widest parts of the range based on applying [REDACTED]; and applying [REDACTED].

⁵⁰⁹ https://www.aholddelhaize.com/media/1152/ahold_delhaize_presentation_final_3.pdf, slide 20.

⁵¹⁰ These 'clean room' analyses involved using data from previous transactions. Therefore, the identities of the comparators were anonymised by [the third party].

⁵¹¹ The Parties' Supplier Approach estimated a [REDACTED]% saving across all branded spend. Since [REDACTED]% of branded spend is on common SKUs between the Parties, this would indicate an average saving of [REDACTED]% on matched branded SKUs. Combining with the [REDACTED]% average saving on own label products results in a weighted average matched saving of [REDACTED]%.

- 16.57 Applying the average comparison set out in paragraph 16.56(a) above would indicate expected gross buying synergies for the Parties of around £[REDACTED] (depending on whether GM is included).⁵¹²
- 16.58 Applying the average comparison set out in paragraph 16.56(b) above would indicate expected gross buying synergies for the Parties of around £[REDACTED] (depending on whether GM is included).⁵¹³
- 16.59 As noted above, the comparators used here were projections, rather than representing the actual level of synergies delivered. This was primarily because companies do not always publicly state the delivery against synergy targets due to the complexity of ringfencing merger-specific savings vs general savings, confidentiality, or reputational risks of under-delivery. The actual synergies delivered can be either higher or lower than the original estimate.
- 16.60 The Parties argued that there is evidence that announced synergies are underestimated and over-delivered, providing examples of previous transactions which support this. In particular, the Parties stated that announced synergies are typically conservative, given the statutory shareholder disclosure requirements and the reputational impact of under-delivery, and so a like-for-like comparison would require the respective companies' internal synergies plans.
- 16.61 We recognise that some previous mergers have over-delivered against their announced synergies, but there are also many examples where synergies have been overestimated and under-delivered.⁵¹⁴ In the absence of any evidence of systematic over-delivery (in part due to the problems discussed in paragraph 16.52 above), we consider that the announced figures represent the best estimate of likely synergies to arise from the mergers.
- 16.62 Furthermore, a number of the comparators discussed above use [the third party's] clean room data rather than relying on publicly announced figures. Accordingly, these comparators would not appear to be affected by the issues raised by the Parties.

⁵¹² Scaling down the total estimated procurement savings in grocery ([REDACTED]) and GM (£[REDACTED]) by a factor of [REDACTED].

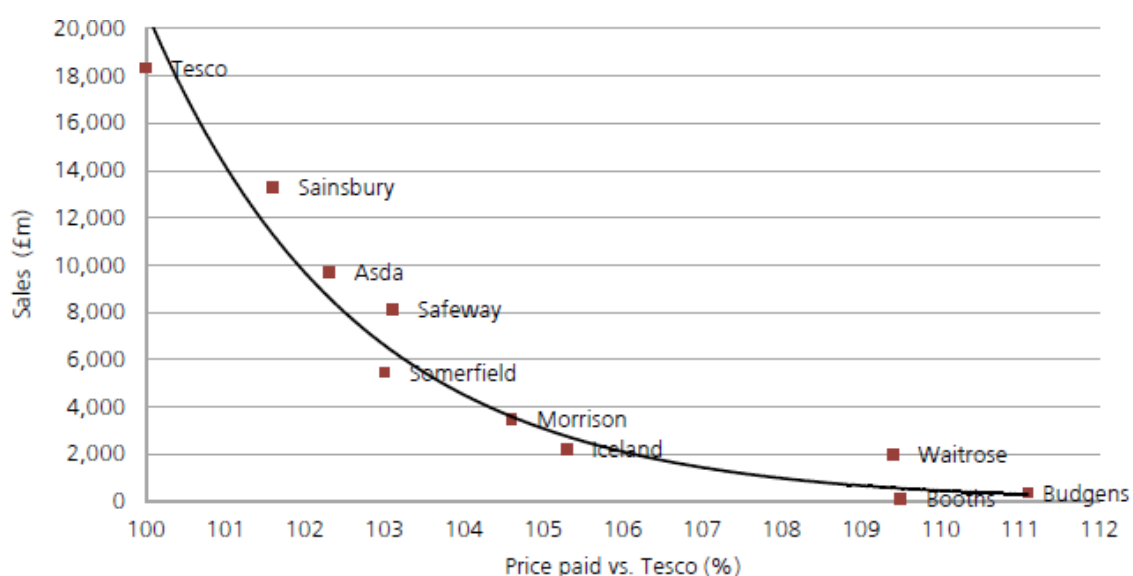
⁵¹³ Scaling down the total estimated procurement savings in grocery ([REDACTED]) and GM (£[REDACTED]) by a factor of [REDACTED].

⁵¹⁴ For example "Most buyers routinely overvalue the synergies to be had from acquisitions"; <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/where-mergers-go-wrong>

Analysis of the impact of scale on grocery purchase prices

- 16.63 There have been a number of pieces of analysis conducted by the CMA and its predecessor organisation the Competition Commission (CC) which investigated how grocery procurement costs are affected by changes in the volume of grocery products being purchased (ie scale).
- 16.64 By their nature, these analyses investigated the effect of increasing volumes on purchasing prices. They would not specifically reflect the effect of harmonisation but instead reflect all of the benefits of increased scale (eg buyer power, manufacturing and logistical efficiencies, reduced administrative costs etc), and do not account for aspects such as relationships with the retailer or any inefficiencies as a result of the post-Merger maintenance of separate brands (eg maintaining distinct ranges etc) as the Parties are intending.
- 16.65 In the Competition Commission's (CC's) 2000 supermarket market investigation, it published the results of an analysis on the relative purchasing prices being achieved by different UK grocery retailers.⁵¹⁵ A graphical chart of this produced in a recent analyst report is shown below.

Figure 16.5: UK grocers: Turnover (£ million) vs. purchasing price relative to Tesco (2000)



Source: Parties.

- 16.66 This broadly showed that doubling in sales was associated with a 2% reduction in prices paid by UK supermarkets.

⁵¹⁵ Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom, Table 11.10.

- 16.67 We note that the CC's views at the time were that 'All the larger main parties [supermarkets] should be able to take advantage of most of the cost savings associated with buying in large volumes, so significant differences in margins and prices are more likely to reflect the strength of the buyer than lower costs'.⁵¹⁶
- 16.68 In 2008, the CC conducted a market investigation into the supply of groceries, including supermarkets and other participants such as grocery wholesalers. As part of this, the CC conducted an econometric analysis of the prices which retailers and wholesalers paid their suppliers. It found that there was a statistically significant relationship between increased volumes and lower prices being paid to suppliers, although noted that volumes were not the only consideration, particularly noting the customer-product relationship was also important.⁵¹⁷
- 16.69 The CC found that the four largest grocery retailers (Asda, Morrisons, Sainsbury's and Tesco), paid, on average, between 4 and 6 per cent less than the mean. Within this group, Tesco paid, on average, a significantly lower price than the others. However this average masked variations in the individual prices paid by retailers, with Tesco not always paying less than the others. When considering larger changes in volume, the effect of growing from a very small customer (purchasing 10 per cent of the mean volume) to a very large customer (purchasing three times the mean volume) (ie a 30-fold increase in volumes) could lead to a reduction in prices of around 9 to 12 per cent.⁵¹⁸
- 16.70 For the purposes of this merger assessment, we did not rerun the analysis by the CC above which was completed in the context of a market inquiry. However, as a check to see whether conditions appear to have significantly changed in the intervening period, we conducted a sample-based analysis of the prices of branded goods which large suppliers are currently charging to different retailers.
- 16.71 The analysis of this supplier pricing data, which is summarised in Appendix L, supports the previous findings that there is a statistically significant relationship between procurement shares and procurement prices in the UK groceries market. However, this relationship is non-linear, and it tends to be quite weak for procurement shares higher than 15%. The nonparametric regression conducted for the purpose of this analysis indicates that the mean

⁵¹⁶ [Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom](#), paragraph 11.104.

⁵¹⁷ [CC Grocery Market Investigation \(2008\)](#), Appendix 5.3, paragraphs 9 and 12.

⁵¹⁸ [CC Grocery Market Investigation \(2008\)](#), paragraph 5.22.

difference in relative prices between a procurement share of 15% and a procurement share of 30% is roughly 2%.

16.72 Applying a 2% reduction in COGS for the Parties would be equivalent to around £[X] of savings for groceries, and an additional around £[X] of savings if also applied to GM.⁵¹⁹

Evidence from previous competition investigations

16.73 As discussed in paragraph 16.2 above, the potential for rivalry-enhancing efficiencies exists in all potential mergers, however it is relatively rare for their effects to be explicitly calculated and incorporated in the analysis in a quantitative manner.

16.74 The Parties highlighted two cases which they consider demonstrate that the CMA (and OFT) recognised the benefits of harmonisation previously:

(a) Asda / Netto; and

(b) Tesco / Booker.

16.75 In particular, the Parties stated that, despite the CMA noting the complexity associated with any supplier negotiations following the Tesco/Booker merger, the final report stated that *“the merged entity would likely benefit from better terms from some suppliers with regard to some products in grocery wholesaling through a degree of harmonisation of supply terms.”*

Our assessment

16.76 As explained in paragraphs 16.4 to 16.10 above, in order for any potential synergies to be found to be rivalry-enhancing efficiencies, the evidence must lead the CMA to expect that the following cumulative criteria would be met:

(a) Timely;

(b) Sufficient;

(c) Likely;

(d) Merger-specific; and

⁵¹⁹ Based on combined grocery COGS of £[X], GM COGS of £[X].

- (e) Incentivise the Parties to improve their customer offering in the relevant market(s).

16.77 We consider the cumulative effect of these criteria on any overall figure for rivalry-enhancing efficiencies below.

Timeliness

16.78 We consider that the purchasing synergies, while not being delivered immediately, would be deliverable within a reasonably short time period. The Parties have frequent discussions with their suppliers, and major annual reviews are used to develop Joint Business Plans or similar agreements. The main exception to this would be where tenders have been used (eg [X]), but even in these cases it would be unusual for the duration of these to exceed [X].

16.79 For the non-purchasing synergies, there may be longer lead times to certain aspects of the plan ([X]), but it appears that these would still be implementable within a foreseeable time period.

16.80 We understand that the timelines predicted by the Parties are broadly consistent with those predicted and currently being delivered in other similar transactions, most notably:

- (a) Ahold/Delhaize, where the majority of synergies were predicted to come from purchasing activities, and it appears that they are on track to deliver these within three years.⁵²⁰
- (b) Tesco/Booker, where although the scale of estimated synergies was lower and it is relatively soon after the deal was completed, Tesco has announced that it is on track to deliver its original estimates of £200 million in three years.⁵²¹
- (c) Sainsbury's/Argos, where the nature of the synergies are less directly comparable to the Merger (eg more reliant on property cost synergies than buying), but nevertheless demonstrates that Sainsbury's has been able to deliver these synergies ahead of the announced schedule.⁵²²

⁵²⁰ For example, see 'Synergy savings' section in [Ahold Delhaize's 2018 interim results](#).

⁵²¹ For example, "As planned, we anticipate that synergies associated with our merger with Booker will generate a benefit of at least £60m this year, growing to a cumulative c.£140m in 2019/20 and c.£200m by 2020/21." [Tesco Interim Results 2018/19](#), page 3.

⁵²² [Sainsbury's Interim Results 2018/19](#)

16.81 We therefore consider that any efficiencies that are likely to result from the Merger should be considered to be timely.

Sufficiency

16.82 The Parties submitted that incorporation of rivalry-enhancing efficiencies directly into a competitive effects analysis sits particularly well with the GUPPI model, and “*it is appropriate and straightforward to include these synergies directly in the GUPPI/WSS analysis*”. They subsequently explained that this would entail recalibrating the Parties’ relevant local diversion results downward or increasing the GUPPI threshold applicable to all local areas.

16.83 We consider that including any rivalry-enhancing efficiencies the CMA finds into the GUPPI threshold would allow for a direct quantitative measure of the extent to which these efficiencies would offset any incentives to increase prices as a result of loss of competition from the Merger. Therefore, the extent to which rivalry-enhancing efficiencies would be sufficient is discussed in more detail in other relevant sections of these Provisional Findings.

Likelihood

16.84 In this section, we consider the extent to which we believe that the Merger is likely to generate rivalry-enhancing efficiencies, based on the submissions and evidence provided by the Parties, as well as the body of evidence available to us regarding the likely level of synergies resulting from the Merger.

16.85 The large majority of synergies included in [the consultant’s] analysis are purchasing synergies. Therefore, combined with the fact that purchasing synergies represent variable cost savings which are likely to have a direct impact on the Parties’ pricing incentives (as discussed more in paragraph 16.122 below), we focus this section on these purchasing synergies.

Purchasing Synergies Analysis

16.86 The Parties have used the Purchasing Synergies Analysis to estimate the likely scale of purchasing synergies as being £[]. Initially, this was described as a simple harmonisation of buying terms. In their later submissions, they explained that they would expect to deliver this through a combination of:

(a) [];

(b) []; and

(c) [REDACTED].

16.87 We consider that the first two of these effects alone would be unlikely to provide the Parties with any substantial purchasing savings for a prolonged period. This is because:

(a) The effect of a one-time information transfer would be to reduce the level of information asymmetry between the Parties and their suppliers at that moment. However, this is reliant on suppliers recognising any differences and accepting the lower price on the combined volumes, which would depend on the relative negotiating power of the parties involved. Although it may be difficult for a supplier to change an individual price soon after it is set, as time progresses, and circumstances change (eg ongoing volatility in the suppliers' costs, investment strategies change, new products are released, and ranges continue to evolve), we would expect that any benefits of the additional information would be reduced as there are no structural changes to allow this improved information to continue. As such, we would expect that the Parties would revert to negotiating with suppliers on an equivalent level of information to prior to the Merger, albeit with increased scale. Therefore, one would expect the medium-term input prices to reflect the relative bargaining powers of the negotiating parties involved. In a rapidly changing and highly competitive market (such as UK grocery, as characterised by the Parties), we would expect this process to be relatively fast.

(b) The merger-effect of removing information asymmetry would not appear to alter the existing economics of the Parties' suppliers. If suppliers were able to profitably reduce their prices to retailers in order to benefit from higher volumes, they would have the incentive to be doing this already. Therefore, in the absence of any clear savings in the supply chain, any attempts to harmonise prices between Sainsbury's and Asda post-Merger would be expected to reduce supplier profitability, and so act against their incentives.

16.88 The Parties described these concerns as being "*unsubstantiated and are largely predicated on the submissions of third parties*". However, we consider that they are clear and well-founded concerns which arise directly as a result of the approach adopted in the Purchasing Synergies Analysis.

16.89 With regard to the third effect, that of increased buyer power, we consider that the Purchasing Synergies Analysis relies on a harmonisation approach to support the large majority of the £[REDACTED] figure, which is based on trying to compare existing estimates of unit costs between Sainsbury's and Asda. Therefore, even if this was a perfect reflection of current unit cost differences,

it provides no indication of the post-Merger outcome of increased scale. The relatively small additional contribution from BBT which the Parties have included does not, and is not designed to, reflect the full extent of post-Merger changes in buyer power.

16.90 Furthermore, the figures in the Purchasing Synergies Analysis are predicated on current procurement practices at the Parties being inefficient, and we consider do not adequately account for alternative explanations for apparent differences in cost prices. These are discussed in more detail in Appendix M, and include:

- (a) Residual differences in the underlying products (SKU Approach);
- (b) Differences in the cost to serve the Parties;
- (c) Differences in non-price terms with suppliers; and
- (d) Mix effects (Supplier Approach and Category Approach).

16.91 In addition to these fundamental methodological concerns with the Purchasing Synergies Analysis, there are numerous smaller steps in the analysis which would be likely to introduce additional uncertainty as to the estimate calculated, including clearly impossible outcomes (eg applying benefits of harmonising prices to branded suppliers which only serve one Party).

16.92 We note that when [the third party] applied the Quantified Financial Benefits Statement standard to all of the Parties' synergies estimates, it would have required that 'Any profit forecast or quantified financial benefits statement must be properly compiled and must be prepared with due care and consideration' and that it must be 'reliable'.⁵²³ Although the Parties and [the third party] have emphasised the different specific aim of its review of the synergies plan, we note that [the third party's] sensitisation of the Purchasing Synergies Analysis reduced the figure at the time [£] (£[£] compared with £[£]), reflecting that the majority of these synergies were characterised as 'Management not fully able to demonstrate due care and attention' or 'Management unable to demonstrate due care and attention'.⁵²⁴ [the third party] told us that these phrases represent a specific and specialist meaning, and that in this context 'due care and attention' should be interpreted as 'suitable for public disclosure by the client without risk adjustment and reporting by us without qualification'.

⁵²³ Extract from Rule 28.3 of the [Takeover Code](#).

⁵²⁴ [£].

16.93 These concerns with the Purchasing Synergies Analysis are further supported by the evidence received from third parties which shows that:

- (a) Many of the benefits from acquisitions are absent or reduced in this Merger, for example the decision not to integrate brands reduces the availability of savings, and there are no new routes to growth which would provide suppliers with additional value to offset any unit cost reductions.
- (b) The approach of a line-by-line comparison of accounting figures can be a very poor indicator of the likely outcome of actual supplier negotiations (as submitted by Tesco for Tesco/Booker). In particular, there are a large number of both price and non-price parameters included in supplier negotiations, and the Purchasing Synergies Analysis does not sufficiently control for all of these (as discussed in Appendix M).
- (c) While we do not place any significant weight on the individual figures from suppliers, the fact that their estimates of the effect of harmonisation on their own costs are often very different to that calculated in the Purchasing Synergies Analysis (with the different results being both higher and lower than the Parties) supports the methodological concerns we have identified. This is particularly relevant given the necessary restrictions on the Parties' direct access to the specific data and analysis.

16.94 Finally, the Parties have also stated that where their arrangements with suppliers have no volume limits, volumes through one supplier could theoretically be transferred to another supplier, subject to the supplier having sufficient capacity (as described in paragraph 16.24 above). This would equate to [REDACTED]. We noted several potential challenges with this approach:

- (a) [REDACTED].
- (b) [REDACTED],⁵²⁵ [REDACTED].
- (c) [REDACTED].
- (d) [REDACTED].
- (e) [REDACTED].
- (f) [REDACTED].

16.95 Given the evidence and arguments presented by the Parties, we recognise that the Merger is likely to give rise to opportunities to reduce procurement

⁵²⁵ [REDACTED].

costs. We also consider that the scale of these potential savings could be significant in absolute terms given the scale of purchasing across both Parties. However, based on our assessment above, we consider that the figures calculated in the Purchasing Synergies Analysis are unlikely to be a robust reflection of the likely level of procurement savings the CMA could expect to result from the Merger. Therefore, we have provisionally concluded that we are unable to attach any significant weight to the Purchasing Synergies Analysis submitted by the Parties as evidence of the rivalry-enhancing efficiencies which we could expect to arise from the Merger.

Fuel purchasing synergies

- 16.96 For completeness, we note that although the above assessment primarily discusses purchasing synergies for groceries and GM, the key points raised would also apply to the Fuel Approach, which was conducted subsequent to the announcement of the Merger.
- 16.97 As discussed in more detail in Appendix M, we do not consider that the Parties' submissions on [the consultant's] calculated synergies in fuel represent a robust estimate of the likely rivalry-enhancing efficiencies arising from the Merger.
- 16.98 As well as the general concerns we have expressed about [the consultant's] reliance on harmonisation described above, for fuel in particular the Parties have adopted significantly different approaches to purchasing and delivery, with Sainsbury's effectively outsourcing this [X], while Asda [X]. In addition, both Parties have explicitly stated that there are non-price factors in fuel which they take into account when considering decisions around procurement. Given the different approaches adopted by the Parties, it appears that Sainsbury's attributes greater value to the benefits of [X]. The [the consultant's] analysis of fuel efficiencies places no weight on any factors other than price, therefore excluding any benefits from choosing an arrangement with higher marginal costs but other offsetting benefits, [X].
- 16.99 The most likely explanation is that [X]. Therefore, the benefits the Parties argued for would either not materialise ([X]) or could already be achieved [X] unilaterally (ie would not be Merger-specific). Either way, the Parties' estimates would not reflect rivalry-enhancing efficiencies for the purposes of our assessment.
- 16.100 Therefore, we consider that the figures calculated in the Fuel Approach are unlikely to be a robust reflection of the likely level of procurement savings in fuel that the CMA could expect to result from the Merger.

Other available evidence

16.101 As described in paragraph 16.9 above, the Merger Assessment Guidelines note *‘Efficiency claims can be difficult for the [CMA] to verify because most of the information concerning efficiencies is held by the merger firms. The [CMA] therefore encourage[s] the merger firms to provide evidence to support any efficiency claims whether as part of the SLC analysis or the consideration of relevant customer benefits.’*⁵²⁶ Although we are unable to attach any significant weight to the figure calculated in the Purchasing Synergies Analysis provided by the Parties, in this case we consider that there is other evidence available which supports an expectation that some degree of procurement savings would be available from the Merger in grocery and GM, which allows the CMA to determine the amount of those savings which it is appropriate for us to include in this case. In particular:

- (a) Suppliers consistently expected to have to reduce their prices to the Parties post-Merger. However, the source and scale of these reductions varied substantially by individual supplier, and we do not have a representative estimate we could rely on. We also note that suppliers may have had the incentive to emphasise these effects to support their stated concerns about increased Buyer Power which could result in an SLC.⁵²⁷
- (b) The CMA/CC have estimated the benefits of increased scale in groceries both in previous market investigations, and in this case specifically. These consistently show purchasing benefits associated with scale, albeit (1) the significance of these benefit diminishes with size, and (2) scale does not explain all the differences in procurement costs, with the CC’s reports specifically observing there are other relevant factors as well (eg relationships with suppliers).
- (c) Previous grocery/retail mergers expected to generate, and have generated, purchasing synergies. However, the scale of estimates included varies between mergers, and announcements usually conflate, or do not clearly distinguish between, any effects of harmonisation compared with increasing buyer power and other considerations (eg additional growth potential, supply chain efficiencies in purchasing, etc).
- (d) Competitors stated that the Merger would generate very limited savings and provided arguments and evidence that harmonisation might be

⁵²⁶ [Merger Assessment Guidelines](#), CC2/OFT1254, paragraph 5.7.5.

⁵²⁷ For example, “we question Sainsbury’s and Asda’s logic on what they have said around supplier price reductions and synergies. [...] There is no way we think that this will not have an impact on suppliers of all types without increasing buyer power”, [Transcript of hearing with Consumer Council Northern Ireland, Food and Drinks Federation, National Farmers Union, National Farmers Union Scotland and Which?](#).

difficult. However, we note that these arguments are consistent with some degree of savings (as has been delivered in Tesco/Booker), and that the competitors may have the incentive to argue for minimal efficiencies arising from the Merger particularly if they were concerned that such efficiencies would improve the Parties' competitive offering.

16.102 We note that where these pieces of evidence include an estimated scale of savings, they are consistently substantially lower than the Parties' submitted estimates.

16.103 The Parties argued that the CMA's approach in Tesco/Booker and Asda/Netto recognised the principles of harmonisation. However, we do not consider that this strongly supports the use of harmonisation in this case. Both of the previous transactions involved a large company acquiring a substantially smaller company. In those cases, harmonisation would principally involve bringing the large company's buying power to bear across the combined entity, and so a comparison of pre-Merger prices between the two would represent the likely outcome by bringing the smaller company's terms in line with the larger (assuming no/limited benefits of increased scale from the combination). These circumstances are very different to the facts in this case where two similarly sized and very large retailers are merging.

16.104 In addition, we note that, the section of the Tesco / Booker report which is quoted by the Parties is heavily caveated (*"the merged entity would likely benefit from better terms from **some suppliers** with regard to **some products** in grocery wholesaling through a **degree** of harmonisation of supply terms"*, emphasis added) and the same paragraph also goes on to specifically state that *"we have not found it necessary to conclude on the magnitude of any procurement efficiencies."*⁵²⁸

Provisional conclusion on likelihood

16.105 When we are assessing the level of potential synergies in a merger, there is likely to be an element of judgement. There is a substantial asymmetry of information between the Parties and the CMA, and as acknowledged by the Parties, the calculation of likely efficiencies arising from a Merger is prone to *"the risk of self-serving (or simply unduly optimistic) claims made by Parties"*.

16.106 Where the Parties' evidence on rivalry-enhancing efficiencies are insufficiently robust for our purposes, the CMA would normally reject the

⁵²⁸ [Tesco/Booker Final Report](#), paragraph 26.

submissions, effectively adopting a value of zero. However, we consider that exceptionally in this case there is a body of evidence available to us which provides evidence on the degree of procurement savings in grocery and GM which are likely to arise as a result of the Merger.

16.107 In these circumstances, we have weighed the other evidence available to the CMA which indicates the likely quantum of savings in these areas in the round, in particular:

(a) As discussed in paragraphs 16.63 to 16.72 above, the CMA and CC analyses investigated the total benefits of increasing purchasing volumes in groceries and found there to be a statistically significant relationship. Combining the Parties' volumes of groceries would result in an expected reduction in costs of around 2%, which would equate to around £[redacted] of savings, with the potential for an additional £[redacted] if also applying this level of saving to GM.

(b) A range of historical transactions, including gross purchasing savings announced in Ahold/Delhaize, and comparisons using equivalent data in previous transactions, all provide a broadly similar estimate when applied to the Parties. The estimates from these range from around £[redacted] to £[redacted].

16.108 We would also note that the scale analyses and comparisons with historical transactions would reflect the total variable cost benefits from increasing scale, including increases in buyer power, and improving efficiencies in the supply chain.

16.109 However, there are reasons to believe that the estimates derived from the evidence above would overstate the likely savings from the Merger, given the specific facts of this case. In particular, by not fully integrating the businesses and brands (as generally occurred in other mergers), the Parties will reduce the potential for fixed cost savings but are also likely to affect procurement benefits, since they will need to maintain a wider range of products, which in turn reduces SKU velocity and effective purchasing scale.

16.110 Furthermore, achieving this scale via a merger rather than organic growth has a larger execution risk both in terms of successfully integrating the acquired company and avoiding disruption to existing operations. Although the Parties have been able to successfully integrate acquisitions previously, this is a substantially larger merger with significantly increased associated risks than previous mergers (eg, in Asda/Netto, Asda estimated pre-merger that there would be buying synergies equal to [$<£50$] million per year).

16.111 In addition, there is the potential for dis-synergies arising from the Merger, including increased staff costs from harmonisation of employment

terms, IT costs, and management distraction reducing focus on existing cost saving initiatives (eg whilst the Parties submit that “[✂]”, Sainsbury’s is currently targeting at least £500 million of cost savings in the next three years).⁵²⁹

16.112 We will therefore consider the overall scale of likely rivalry-enhancing efficiencies in paragraphs 16.128 to 16.132 below.

16.113 We note that we do not have a similar body of evidence to demonstrates the existence of, or quantum of, potential synergies in fuel and so we consider that we are unable to conclude that any rivalry-enhancing efficiencies would be likely to arise from the Merger in fuel.

Merger-specificity

16.114 Our working counterfactual is the prevailing conditions of competition, so we need to consider broad alternative approaches which the Parties may have used to access some or all of the efficiencies discussed above. From this, we can infer the level of efficiencies which are specific to this Merger.

Loss of efficiencies in the counterfactual

16.115 The Parties are continuing to optimise and improve their existing operations, including by looking to make cost savings where possible. For example, Sainsbury’s is currently targeting at least £500 million of cost savings in the next three years.⁵³⁰

16.116 Even when well-managed, mergers are often disruptive to businesses and in particular where transactions are large (as in this case), there is a substantial risk that existing operations are affected. One potential impact of this is that the Parties (and their senior management in particular) may have less time to focus on their business-as-usual activities. This could result in a loss of savings which exist in the counterfactual, and so these should be removed from any benefits generated by the Merger.

Alternative approaches to achieving efficiencies

16.117 We consider that there may be other approaches whereby the Parties could replicate at least some of the synergies which are discussed above. In particular:

⁵²⁹ [Sainsburys 2018 annual report](#), page 5.

⁵³⁰ [Sainsburys 2018 annual report](#), page 5.

- (a) A buying alliance could reduce procurement costs.
- (b) A purchasing group could reduce the cost of purchasing, including allowing for harmonisation of existing terms.
- (c) Other initiatives could provide the benefits of non-purchasing through contractual alternatives, such as introducing GM concessions in Asda, providing financial services from other third parties, etc.

16.118 Although we recognise that any of these approaches is more limited than a merger, and so would be expected to deliver lower financial benefits, we are aware of UK grocers using each of the above approaches (eg Tesco / Carrefour buying alliance, the Co-operatives using the Co-operative Federal Trading Service as a buying group, and various grocers including concessions within their larger stores). It is therefore possible that the Parties could use similar approaches to achieve some synergies which they are currently targeting through the Merger.

16.119 However, [REDACTED], and they both emphasised the difficulties and limitations of these approaches, particularly if they were to be undertaken with a competitor. We consider these points to be reasonable, and therefore consider that the vast majority of any synergies (and procurement synergies in particular) beyond those already being achieved would be merger-specific.

Incentivise the Parties to improve their customer offering in the relevant market(s)

16.120 As discussed in paragraph 16.7 above, in order to incorporate any synergies into the GUPPI analysis (as proposed by the Parties), these savings would need to incentivise the Parties to improve their proposition(s) in the relevant market(s).

16.121 The Parties assert that due to the level of competition present, they would invest [REDACTED] in improving their customer-facing proposition. They state that their track record (including following Sainsbury's acquisition of the Argos business) supports this.

16.122 Consistent with the economic principles in the GUPPI and our guidance, we consider that variable cost savings can be directly incorporated into the GUPPI as a downward pricing pressure, which would act to offset some or all of the incentives to increase prices as a result of loss of competition from the Merger. However, this principle would not apply to fixed cost savings, revenue synergies, or capital expenditure. The Parties appear to recognise these principles as well. Therefore, it is appropriate to only include variable cost savings as rivalry-enhancing efficiencies in the GUPPI threshold,

and that these would accrue evenly between the Parties (since the benefits of increased scale would affect similarly-sized companies equally).

Effect of public statements

16.123 We note that the Parties have made a number of public statements which could impose conflicting incentives on their decisions on whether and where to invest any savings, and hence influence their future behaviour. In particular the Parties stated that they would:

(a) “[g]enerate net EBITDA synergies, post investments in price, across the enlarged group of at least £500 million”.⁵³¹

(b) “expect to lower prices by c.10 per cent on many of the products customers buy regularly”.⁵³²

16.124 The first public statement appears to represent a commitment to shareholders, which the Parties describe as “a “hard” and publicly-announced number, it was then considered a “fixed” promise that should not vary regardless of what proportion this ultimately was of the gross synergies total”. The Parties also noted that although the Merger was not subject to the Takeover Code and so did not require a Quantified Financial Benefits Statement, it was considered prudent to apply the same protocols [REDACTED].

16.125 We therefore consider that, in making a public commitment around the expected returns to shareholders, the Parties have placed additional potentially competing incentives on themselves. It is unclear exactly what the impact of this would be, but it could act to limit their capacity to invest variable cost savings into their customer offers.

16.126 The second public statement regarding price reductions is qualified, not specific, difficult for consumers or consumer bodies to directly monitor or enforce. In particular, the Parties have not made any public announcement of the absolute scale or specifics of price investments they would make. In contrast to the involvement of [the third party], the Parties’ analysis to support the latter statement consisted of a [REDACTED] based on [REDACTED].

16.127 The Parties submitted that the CMA was treating these public statements differently, and yet “*much of the same reasoning*” would apply to

⁵³¹ See: <https://www.about.sainsburys.co.uk/news/latest-news/2018/combination-of-j-sainsbury-plc-and-asda-group-limited>; http://www.j-sainsbury.co.uk/~/_media/Files/S/Sainsburys/documents/reports-and-presentations/2018/preliminary-results-booklet-2017-18.pdf slide 28, and <https://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/SBRY/13622801.html>

⁵³² See: <https://www.about.sainsburys.co.uk/news/latest-news/2018/combination-of-j-sainsbury-plc-and-asda-group-limited>

both. In particular, the latter statement would introduce serious reputational risks of them not investing in price. We disagree, principally as the risks and burden of proof differ. In particular, shareholders would expect the Parties to demonstrate the level of returns generated, whereas there is more scope to obfuscate changes in individual prices (in the context of continual range reviews and ongoing changes).

Provisional conclusion on efficiencies

16.128 In order to include any benefits from rivalry-enhancing efficiencies in a quantitative fashion in the GUPPI analysis, we require some form of quantitative measure of their scale. In this case we have serious concerns with the efficiency figures calculated in the Purchasing Synergies Analysis and are unable to place any significant weight on them. We nevertheless consider that other evidence available in this case demonstrates that there would likely be some degree of rivalry-enhancing efficiencies.

16.129 The best evidence we have available for the likely scale of procurement synergies (and hence the variable cost savings) arising from the Merger are the figures derived from the assessment of increased buying scale, and the comparisons with historical transactions. The estimates produced by these are restated below:

- (a) Ahold/Delhaize comparison: £[REDACTED],⁵³³
- (b) Comparison of percentage saving on matched spend: £[REDACTED],⁵³⁴
- (c) Comparison of percentage saving on combined baseline spend: £[REDACTED],⁵³⁵
and
- (d) Benefits of increasing purchasing volumes: £[REDACTED].⁵³⁶

16.130 Based on the evidence available, and the specific circumstances in this case, such as the Parties' adoption of a less cost-efficient structure post-Merger, the potential for dis-synergies, the risks associated with delivery including loss of counterfactual benefits, and the effect of the Parties' public statements regarding commitments to shareholders, we provisionally

⁵³³ Paragraph 16.55 above.

⁵³⁴ Paragraph 16.57 above.

⁵³⁵ Paragraph 16.58 above.

⁵³⁶ Paragraph 16.72 above.

conclude that the appropriate figure to consider as rivalry-enhancing efficiencies would be £[§].

16.131 We will therefore include the downward pricing pressure effects of £[§] of rivalry-enhancing efficiencies in any GUPPI thresholds used for instore grocery, online grocery, and GM.⁵³⁷

16.132 We note that we do not have sufficient evidence to support the existence of rivalry-enhancing efficiencies in fuel. Therefore, we make no contribution to the fuel GUPPI threshold in this regard.

17. Provisional findings

17.1 For the reasons set out in the preceding chapters, the Inquiry Group appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to [section 36\(1\)](#) of the Act:

- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
- (b) the creation of that situation may be expected to result in a substantial lessening of competition in the UK in the following respects:
 - (i) the supply of groceries in supermarkets on a national basis, ie in every local area in which one or both of the Parties are present;
 - (ii) the supply of groceries in supermarkets on a local basis in 629 of the local areas where both Parties are present (as listed below);
 - (iii) the supply of groceries in Asda convenience stores on a national basis, ie in every local area in which an Asda convenience store is present;
 - (iv) the supply of groceries in convenience stores on a local basis in 65 of the local areas where both Parties are present (as listed below)
 - (v) the supply of groceries ordered online and delivered to the customer's location (online delivered groceries) on a national basis, ie in every local area in which one or both of the Parties are present;

⁵³⁷ We note that this figure includes rivalry-enhancing efficiencies expected to be generated by instore grocery, online grocery, and GM. We would intend to apply the same contribution to GUPPI thresholds across these different products, which is equivalent to allocating based on revenue (since the downward pricing pressure is equal to efficiencies / revenue).

- (vi) the supply of online delivered groceries on a local basis in 290 of the local areas where both Parties provide online delivered groceries services (as listed below);
- (vii) the supply of online delivered groceries on a local basis in 108 of the local areas in which both Parties and Tesco are present in the UK through coordinated effects (as listed below); and
- (viii) the supply of fuel on a local basis in 132 of the local areas where both Parties operate petrol filling stations (as listed below).

17.2 We have set out below lists of the local markets for the supply of groceries in supermarkets, the supply of groceries in convenience stores, online delivered groceries and fuel in which we are provisionally finding an SLC.

Supply of groceries in supermarkets and convenience stores

Medium and Large stores (supermarkets)

17.3 As stated in Chapter 8, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade PQRS across the Parties' national supermarket estates, resulting in an SLC in each local area where one or more of the Parties' supermarkets is present.

17.4 In addition, as stated in Chapter 8, we have provisionally found that the Merger gives rise to an SLC in 629 local markets centred on supermarkets. These local markets are each defined by reference to a catchment area around a centroid supermarket. We list each of these centroid supermarkets below.

17.5 We would emphasise that should these provisional findings be confirmed in our final report and should divestiture be selected as the appropriate remedy, it does not follow automatically that the specific supermarkets listed below would need to be divested.

Table 17.1: Medium and Large centroid stores around which we provisionally find an SLC

	Postcode	Pipeline	GUPPI
1	AB10 7QA	No	[✂]
2	AB11 5EJ	No	[✂]
3	AB12 4XP	No	[✂]
4	AB22 8WQ	No	[✂]
5	AL10 0JP	No	[✂]
6	B14 7BW	No	[✂]

	Postcode	Pipeline	GUPPI
7	B29 5UP	No	[✂]
8	B32 1AD	No	[✂]
9	B63 4AB	No	[✂]
10	B69 4PU	No	[✂]
11	B76 1XL	No	[✂]
12	B78 3HB	No	[✂]
13	B90 3GG	No	[✂]
14	B98 7ER	No	[✂]
15	BA11 5LA	No	[✂]
16	BA14 8AT	No	[✂]
17	BB12 0EQ	No	[✂]
18	BB3 1BE	No	[✂]
19	BB8 8LU	No	[✂]
20	BD10 0BT	No	[✂]
21	BD12 9JF	No	[✂]
22	BD21 3ER	No	[✂]
23	BH15 1JQ	No	[✂]
24	BH8 8DL	No	[✂]
25	BH8 9UP	No	[✂]
26	BL3 4EB	No	[✂]
27	BN1 8AS	No	[✂]
28	BN12 6PN	No	[✂]
29	BN15 8AG	No	[✂]
30	BN2 5UT	No	[✂]
31	BN23 6JH	No	[✂]
32	BR8 7UN	No	[✂]
33	BS14 0ST	No	[✂]
34	BS3 4JY	No	[✂]
35	BS30 7DY	No	[✂]
36	BS34 7JL	No	[✂]
37	BT11 9BQ	No	[✂]
38	BT16 1RN	No	[✂]
39	BT20 4SD	No	[✂]
40	BT23 4EU	No	[✂]
41	BT52 1QP	No	[✂]
42	BT63 5AQ	No	[✂]
43	CA3 0JQ	No	[✂]
44	CB1 3ER	No	[✂]
45	CB7 5HH	No	[✂]
46	CF33 6BU	No	[✂]
47	CH41 6EB	No	[✂]

	Postcode	Pipeline	GUPPI
48	CH41 7BG	No	[✂]
49	CH45 4NZ	No	[✂]
50	CH49 5PD	No	[✂]
51	CH6 5BG	No	[✂]
52	CH62 3QP	No	[✂]
53	CH65 0BZ	No	[✂]
54	CM2 6RE	No	[✂]
55	CM20 1AN	No	[✂]
56	CM3 5SY	No	[✂]
57	CO4 5TU	No	[✂]
58	CR0 4XS	No	[✂]
59	CR4 3EB	No	[✂]
60	CT1 1DG	No	[✂]
61	CT10 2NR	No	[✂]
62	CT20 1AU	No	[✂]
63	CV11 4FL	No	[✂]
64	CV21 3EB	No	[✂]
65	CV3 4AR	No	[✂]
66	CV3 5HN	No	[✂]
67	CV31 1YD	No	[✂]
68	CV6 3EX	No	[✂]
69	CW9 5LG	No	[✂]
70	DA11 0DQ	No	[✂]
71	DA17 6DF	No	[✂]
72	DA6 7BN	No	[✂]
73	DA6 8EQ	No	[✂]
74	DA9 9BT	No	[✂]
75	DD4 7RX	No	[✂]
76	DE14 3TN	No	[✂]
77	DE21 7LW	No	[✂]
78	DE24 3DS	No	[✂]
79	DL1 2BJ	No	[✂]
80	DL1 4DF	No	[✂]
81	DL14 7LB	No	[✂]
82	DL16 6NE	No	[✂]
83	DL6 1DY	No	[✂]
84	DN15 6TA	No	[✂]
85	DN2 4PE	No	[✂]
86	DN31 1UF	No	[✂]
87	DN32 9DL	No	[✂]
88	DN7 5DX	No	[✂]

	Postcode	Pipeline	GUPPI
89	DT4 8JQ	No	[✂]
90	DY10 1HG	No	[✂]
91	DY2 9RF	No	[✂]
92	DY5 1QL	No	[✂]
93	DY5 3BJ	No	[✂]
94	E1 4UJ	No	[✂]
95	E10 5NH	No	[✂]
96	E14 3BT	No	[✂]
97	E17 7LS	No	[✂]
98	E5 9AG	No	[✂]
99	E6 5JP	No	[✂]
100	EH14 1RJ	No	[✂]
101	EH15 3AR	No	[✂]
102	EH20 9NY	No	[✂]
103	EH54 6NB	No	[✂]
104	EH6 6NX	No	[✂]
105	EN11 8HD	No	[✂]
106	EN3 4EF	No	[✂]
107	EX31 2BN	No	[✂]
108	FY4 4ES	No	[✂]
109	G23 5EZ	No	[✂]
110	G51 3HR	No	[✂]
111	G72 0AQ	No	[✂]
112	G77 6EY	No	[✂]
113	G81 2RZ	No	[✂]
114	GL1 1DS	No	[✂]
115	GL2 2SN	No	[✂]
116	GL51 6PN	No	[✂]
117	GU14 7LT	No	[✂]
118	GU21 5SE	No	[✂]
119	GU22 8BD	No	[✂]
120	HA2 8JN	No	[✂]
121	HA3 7AE	No	[✂]
122	HA4 0FY	No	[✂]
123	HA9 9EX	No	[✂]
124	HD2 2LQ	No	[✂]
125	HD5 9AD	No	[✂]
126	HG1 5DE	No	[✂]
127	HP12 4NU	No	[✂]
128	HP2 4AA	No	[✂]
129	HR2 7JE	No	[✂]

	Postcode	Pipeline	GUPPI
130	HU3 4PE	No	[✂]
131	HX1 4PG	No	[✂]
132	IG11 8FJ	No	[✂]
133	IP1 5PD	No	[✂]
134	IP2 9EG	No	[✂]
135	IP33 3SP	No	[✂]
136	KA12 8EH	No	[✂]
137	KA8 9BF	No	[✂]
138	KT2 6QL	No	[✂]
139	KT20 5NZ	No	[✂]
140	KY1 3NU	No	[✂]
141	L13 6RH	No	[✂]
142	L20 4BB	No	[✂]
143	L20 6HX	No	[✂]
144	L24 9WA	No	[✂]
145	L4 9XU	No	[✂]
146	L6 5DR	No	[✂]
147	LA1 5JR	No	[✂]
148	LA4 5QW	No	[✂]
149	LA9 7JA	No	[✂]
150	LE10 1SS	No	[✂]
151	LE12 9QE	No	[✂]
152	LE2 4AH	No	[✂]
153	LE3 2LL	No	[✂]
154	LE4 5NU	No	[✂]
155	LE4 8GN	No	[✂]
156	LL13 8HL	No	[✂]
157	LN6 8JY	No	[✂]
158	LS10 4TQ	No	[✂]
159	LS11 8AG	No	[✂]
160	LS14 6UF	No	[✂]
161	LS16 7RY	No	[✂]
162	LS21 1HE	No	[✂]
163	LS27 0BP	No	[✂]
164	LU2 9TA	No	[✂]
165	LU5 4JD	No	[✂]
166	M12 4NH	No	[✂]
167	M12 4QN	No	[✂]
168	M15 5AS	No	[✂]
169	M18 7JH	No	[✂]
170	M22 4QN	No	[✂]

	Postcode	Pipeline	GUPPI
171	M22 5HZ	No	[✂]
172	M30 7JA	No	[✂]
173	M41 7ZA	No	[✂]
174	M46 9JZ	No	[✂]
175	ME10 2PD	No	[✂]
176	ME5 9SE	No	[✂]
177	ME7 1RZ	No	[✂]
178	MK1 1QB	No	[✂]
179	MK12 5JQ	No	[✂]
180	MK14 6FF	No	[✂]
181	MK3 5QW	No	[✂]
182	ML3 6AD	No	[✂]
183	ML9 1QP	No	[✂]
184	N14 5PW	No	[✂]
185	N17 9JF	No	[✂]
186	N9 0AL	No	[✂]
187	NE12 9SJ	No	[✂]
188	NE15 8SD	No	[✂]
189	NE23 6QW	No	[✂]
190	NE24 4LZ	No	[✂]
191	NE28 6HH	No	[✂]
192	NE3 3HQ	No	[✂]
193	NE3 5BU	No	[✂]
194	NE30 1NT	No	[✂]
195	NE38 7NF	No	[✂]
196	NE4 6QA	No	[✂]
197	NE6 2XP	No	[✂]
198	NG16 4ED	No	[✂]
199	NG18 5LG	No	[✂]
200	NG2 7JA	No	[✂]
201	NG31 6NZ	No	[✂]
202	NG5 7ED	No	[✂]
203	NG7 5FP	No	[✂]
204	NG8 3AP	No	[✂]
205	NN16 9HU	No	[✂]
206	NN2 6LS	No	[✂]
207	NN2 7AZ	No	[✂]
208	NN4 8ER	No	[✂]
209	NP12 0NT	No	[✂]
210	NP20 2BH	No	[✂]
211	NP44 1UL	No	[✂]

	Postcode	Pipeline	GUPPI
212	NR30 1SF	No	[✂]
213	NR4 6DP	No	[✂]
214	NR6 5DT	No	[✂]
215	NW10 7LW	No	[✂]
216	NW9 0AS	No	[✂]
217	OL4 2RB	No	[✂]
218	OL6 7PF	No	[✂]
219	OL6 8ER	No	[✂]
220	OL8 4JZ	No	[✂]
221	OX11 6GD	No	[✂]
222	OX33 1YZ	No	[✂]
223	PE1 1ET	No	[✂]
224	PE30 3UG	No	[✂]
225	PL31 2AR	No	[✂]
226	PL6 8TB	No	[✂]
227	PO14 1TT	No	[✂]
228	PO302QH	No	[✂]
229	PO7 7XR	No	[✂]
230	PO9 3QW	No	[✂]
231	PR2 9NP	No	[✂]
232	PR9 0TY	No	[✂]
233	RG22 4DH	No	[✂]
234	RG30 4EL	No	[✂]
235	RG6 5TT	No	[✂]
236	RH11 7AH	No	[✂]
237	RM1 3EE	No	[✂]
238	RM18 7HJ	No	[✂]
239	RM8 1BB	No	[✂]
240	RM9 6SJ	No	[✂]
241	S12 2AB	No	[✂]
242	S2 4DR	No	[✂]
243	S20 7AB	No	[✂]
244	S41 8JZ	No	[✂]
245	S5 8NH	No	[✂]
246	S6 1TA	No	[✂]
247	S8 0SQ	No	[✂]
248	S80 2BJ	No	[✂]
249	S81 7AZ	No	[✂]
250	SE1 5AG	No	[✂]
251	SE13 7SD	No	[✂]
252	SE15 4NB	No	[✂]

	Postcode	Pipeline	GUPPI
253	SE7 7ST	No	[✂]
254	SE8 4AD	No	[✂]
255	SG1 1LA	No	[✂]
256	SG12 0AD	No	[✂]
257	SG18 0JS	No	[✂]
258	SG4 9TY	No	[✂]
259	SK1 1UA	No	[✂]
260	SK4 1JG	No	[✂]
261	SK4 1TN	No	[✂]
262	SK6 6AU	No	[✂]
263	SK7 4AG	No	[✂]
264	SK8 5BB	No	[✂]
265	SL1 9LA	No	[✂]
266	SM1 1LD	No	[✂]
267	SM3 9HB	No	[✂]
268	SN12 8LQ	No	[✂]
269	SN25 4BG	No	[✂]
270	SN5 7DL	No	[✂]
271	SO14 7EG	No	[✂]
272	SO30 3DQ	No	[✂]
273	SO40 3ZA	No	[✂]
274	SO53 3YJ	No	[✂]
275	SP10 2RW	No	[✂]
276	SR2 0AB	No	[✂]
277	SR2 9TT	No	[✂]
278	SR4 9AS	No	[✂]
279	SS14 1AE	No	[✂]
280	SS14 3AF	No	[✂]
281	SS3 8DA	No	[✂]
282	SS6 9RN	No	[✂]
283	ST13 6EN	No	[✂]
284	ST16 3TA	No	[✂]
285	ST2 9AL	No	[✂]
286	ST4 2HE	No	[✂]
287	ST5 0AP	No	[✂]
288	ST5 0EN	No	[✂]
289	ST6 4HE	No	[✂]
290	ST6 6AT	No	[✂]
291	SW11 1JG	No	[✂]
292	SW15 3DT	No	[✂]
293	SY3 7ET	No	[✂]

	Postcode	Pipeline	GUPPI
294	TA1 2AN	No	[✂]
295	TA21 8RQ	No	[✂]
296	TA6 5AZ	No	[✂]
297	TF3 4HZ	No	[✂]
298	TN2 3EY	No	[✂]
299	TN24 0SE	No	[✂]
300	TN37 7AA	No	[✂]
301	TQ12 1TG	No	[✂]
302	TQ2 7AN	No	[✂]
303	TQ4 7EP	No	[✂]
304	TR10 9LY	No	[✂]
305	TR7 1RN	No	[✂]
306	TS12 2ZL	No	[✂]
307	TS18 2DS	No	[✂]
308	TS18 2PB	No	[✂]
309	TW13 4BH	No	[✂]
310	TW7 7DY	No	[✂]
311	UB3 4AZ	No	[✂]
312	WA1 2QA	No	[✂]
313	WA14 5ZR	No	[✂]
314	WA3 3SP	No	[✂]
315	WA3 7PG	No	[✂]
316	WA5 8UG	No	[✂]
317	WD24 7RT	No	[✂]
318	WF12 9AE	No	[✂]
319	WF2 7EQ	No	[✂]
320	WF2 9BL	No	[✂]
321	WN3 6XA	No	[✂]
322	WN5 0XA	No	[✂]
323	WN7 1QX	No	[✂]
324	WN7 5RZ	No	[✂]
325	WR1 2DA	No	[✂]
326	WS11 1LH	No	[✂]
327	WS11 8UF	No	[✂]
328	WS3 3JR	No	[✂]
329	WV1 4DE	No	[✂]
330	WV10 0QB	No	[✂]
331	YO31 7UZ	No	[✂]
332	YO32 9LF	No	[✂]
333	[✂]	Yes	[✂]
334	[✂]	Yes	[✂]

	Postcode	Pipeline	GUPPI
335	AB10 7AY	No	[✂]
336	AB12 3SZ	No	[✂]
337	AB15 9SX	No	[✂]
338	AB25 3SA	No	[✂]
339	B14 5TN	No	[✂]
340	B14 7PT	No	[✂]
341	B29 6SJ	No	[✂]
342	B31 2TW	No	[✂]
343	B31 5AA	No	[✂]
344	B35 6HB	No	[✂]
345	B65 0HG	No	[✂]
346	B69 3DB	No	[✂]
347	B72 1YH	No	[✂]
348	B75 5BT	No	[✂]
349	B78 3HD	No	[✂]
350	B90 4AJ	No	[✂]
351	BA11 4DH	No	[✂]
352	BA14 8GF	No	[✂]
353	BA15 2AZ	No	[✂]
354	BB11 1BS	No	[✂]
355	BB3 2AD	No	[✂]
356	BB8 9HY	No	[✂]
357	BD10 0QF	No	[✂]
358	BD21 3RU	No	[✂]
359	BH1 4AP	No	[✂]
360	BH15 1XU	No	[✂]
361	BH8 9UW	No	[✂]
362	BL3 6DH	No	[✂]
363	BL5 3ZS	No	[✂]
364	BN16 3RT	No	[✂]
365	BN2 3QA	No	[✂]
366	BN3 7GD	No	[✂]
367	BS16 7AE	No	[✂]
368	BS22 6BL	No	[✂]
369	BS3 2NS	No	[✂]
370	BS34 8SS	No	[✂]
371	BS4 3BD	No	[✂]
372	BT11 9AE	No	[✂]
373	BT51 3QQ	No	[✂]
374	BT64 1AA	No	[✂]
375	CA2 5TF	No	[✂]

	Postcode	Pipeline	GUPPI
376	CB1 3HP	No	[✂]
377	CB2 3HX	No	[✂]
378	CF14 9BB	No	[✂]
379	CF32 9ST	No	[✂]
380	CH42 8PQ	No	[✂]
381	CH49 6QG	No	[✂]
382	CH6 5GB	No	[✂]
383	CH65 9HN	No	[✂]
384	CM2 5PA	No	[✂]
385	CM20 2AG	No	[✂]
386	CO15 1NU	No	[✂]
387	CO3 8AA	No	[✂]
388	CR0 4XT	No	[✂]
389	CT1 1BW	No	[✂]
390	CT12 5FJ	No	[✂]
391	CT20 2SB	No	[✂]
392	CV1 1FL	No	[✂]
393	CV11 4XS	No	[✂]
394	CV22 6HU	No	[✂]
395	CV6 7NS	No	[✂]
396	CW5 6PH	No	[✂]
397	CW9 5RT	No	[✂]
398	DA1 2HL	No	[✂]
399	DA1 4HW	No	[✂]
400	DA11 8JH	No	[✂]
401	DA6 7DF	No	[✂]
402	DD4 8XD	No	[✂]
403	DE1 2NQ	No	[✂]
404	DE14 1AA	No	[✂]
405	DE21 6NZ	No	[✂]
406	DE22 3FA	No	[✂]
407	DE24 8EB	No	[✂]
408	DE73 8FE	No	[✂]
409	DL1 5JG	No	[✂]
410	DL14 9AE	No	[✂]
411	DL7 8EA	No	[✂]
412	DN1 1TT	No	[✂]
413	DN15 7DE	No	[✂]
414	DN2 5PS	No	[✂]
415	DT3 5BJ	No	[✂]
416	DY11 6XP	No	[✂]

	Postcode	Pipeline	GUPPI
417	DY5 3JR	No	[✂]
418	E17 7JY	No	[✂]
419	E20 1DB	No	[✂]
420	E6 1HU	No	[✂]
421	E6 6JF	No	[✂]
422	EH14 2ER	No	[✂]
423	EH20 9PW	No	[✂]
424	EH54 6RQ	No	[✂]
425	EN11 8HF	No	[✂]
426	EX31 3NH	No	[✂]
427	FK6 5DN	No	[✂]
428	G15 6RX	No	[✂]
429	G53 7RH	No	[✂]
430	G66 1RA	No	[✂]
431	GL1 2AG	No	[✂]
432	GL2 5SA	No	[✂]
433	GL4 3RT	No	[✂]
434	GU14 7GL	No	[✂]
435	GU21 6XU	No	[✂]
436	HA0 1PF	No	[✂]
437	HA2 8EQ	No	[✂]
438	HA4 0HQ	No	[✂]
439	HA8 7BQ	No	[✂]
440	HD1 2ET	No	[✂]
441	HD1 6QR	No	[✂]
442	HD3 3XA	No	[✂]
443	HD6 1PQ	No	[✂]
444	HG2 8QZ	No	[✂]
445	HP2 7QH	No	[✂]
446	HP3 9QZ	No	[✂]
447	HR4 0AG	No	[✂]
448	HU12 8DJ	No	[✂]
449	HU13 9NS	No	[✂]
450	IG1 2AA	No	[✂]
451	IP2 0BX	No	[✂]
452	IP4 1DR	No	[✂]
453	KA12 8BH	No	[✂]
454	KA21 5DT	No	[✂]
455	KA9 1TW	No	[✂]
456	KT1 1BU	No	[✂]
457	KT2 5NZ	No	[✂]

	Postcode	Pipeline	GUPPI
458	KY13 8FH	No	[✂]
459	KY2 6QL	No	[✂]
460	L14 5PT	No	[✂]
461	L23 2SA	No	[✂]
462	L25 5QA	No	[✂]
463	L5 3LQ	No	[✂]
464	L9 1NL	No	[✂]
465	LA1 1HH	No	[✂]
466	LA4 5TJ	No	[✂]
467	LA9 6DL	No	[✂]
468	LE1 3PJ	No	[✂]
469	LE10 0QG	No	[✂]
470	LE18 1AD	No	[✂]
471	LE19 1WT	No	[✂]
472	LE2 4PE	No	[✂]
473	LE4 7SJ	No	[✂]
474	LL11 2BA	No	[✂]
475	LN6 7QN	No	[✂]
476	LS1 8EQ	No	[✂]
477	LS11 8LS	No	[✂]
478	LS15 9JA	No	[✂]
479	LS21 3AB	No	[✂]
480	LS6 2UE	No	[✂]
481	LU1 1DY	No	[✂]
482	LU5 4RF	No	[✂]
483	M1 2BN	No	[✂]
484	M14 6SS	No	[✂]
485	M34 3SJ	No	[✂]
486	M41 0NA	No	[✂]
487	M5 4QU	No	[✂]
488	M9 0QS	No	[✂]
489	ME10 4DN	No	[✂]
490	ME4 4HP	No	[✂]
491	ME7 3PB	No	[✂]
492	MK2 2JS	No	[✂]
493	ML3 0DF	No	[✂]
494	N17 0TX	No	[✂]
495	N21 1UJ	No	[✂]
496	N21 3RS	No	[✂]
497	NE11 0JY	No	[✂]
498	NE15 9AF	No	[✂]

	Postcode	Pipeline	GUPPI
499	NE23 6RT	No	[✂]
500	NE27 0SJ	No	[✂]
501	NE3 1JZ	No	[✂]
502	NE34 7LZ	No	[✂]
503	NE38 7RU	No	[✂]
504	NE7 7JW	No	[✂]
505	NG16 2LY	No	[✂]
506	NG18 1BW	No	[✂]
507	NG24 3HG	No	[✂]
508	NG31 6HJ	No	[✂]
509	NG5 1HH	No	[✂]
510	NG5 6BN	No	[✂]
511	NG7 1GX	No	[✂]
512	NN1 2EL	No	[✂]
513	NN16 8JY	No	[✂]
514	NN5 5DG	No	[✂]
515	NP12 2AN	No	[✂]
516	NP20 5NJ	No	[✂]
517	NP44 1UL	No	[✂]
518	NR1 3RX	No	[✂]
519	NR30 1NN	No	[✂]
520	NR5 0JS	No	[✂]
521	NW10 2TD	No	[✂]
522	NW11 7RX	No	[✂]
523	NW9 6JX	No	[✂]
524	OL1 1DJ	No	[✂]
525	OL6 7TE	No	[✂]
526	PL3 6RL	No	[✂]
527	PL31 2SS	No	[✂]
528	PO1 4BS	No	[✂]
529	PO16 8SU	No	[✂]
530	PO30 5ZB	No	[✂]
531	PO7 7UL	No	[✂]
532	PR1 6PJ	No	[✂]
533	PR3 2NA	No	[✂]
534	PR5 6BJ	No	[✂]
535	PR9 0AF	No	[✂]
536	RG22 4TW	No	[✂]
537	RG31 7SA	No	[✂]
538	RG41 5AR	No	[✂]
539	RH10 1EG	No	[✂]

	Postcode	Pipeline	GUPPI
540	RH10 8NF	No	[✂]
541	RM1 1AU	No	[✂]
542	RM16 6YJ	No	[✂]
543	RM6 6PB	No	[✂]
544	S1 4PA	No	[✂]
545	S20 7PJ	No	[✂]
546	S6 1LZ	No	[✂]
547	S80 3AT	No	[✂]
548	SA4 4NW	No	[✂]
549	SE13 7EP	No	[✂]
550	SE14 5UQ	No	[✂]
551	SE2 9NU	No	[✂]
552	SE3 9FA	No	[✂]
553	SE7 7SA	No	[✂]
554	SG1 4AE	No	[✂]
555	SG18 0NA	No	[✂]
556	SG2 7DU	No	[✂]
557	SG5 1PU	No	[✂]
558	SK1 1UB	No	[✂]
559	SK7 4AW	No	[✂]
560	SK8 3BB	No	[✂]
561	SL1 1SU	No	[✂]
562	SL1 4XP	No	[✂]
563	SL7 2NB	No	[✂]
564	SM1 1LD	No	[✂]
565	SM3 9AA	No	[✂]
566	SM6 9AA	No	[✂]
567	SN12 6LL	No	[✂]
568	SN4 7AX	No	[✂]
569	SN5 7AA	No	[✂]
570	SO15 5LL	No	[✂]
571	SO16 8HY	No	[✂]
572	SO17 2LB	No	[✂]
573	SO18 5RS	No	[✂]
574	SO30 2UH	No	[✂]
575	SO50 9FH	No	[✂]
576	SP10 1BG	No	[✂]
577	SP10 1DL	No	[✂]
578	SR3 1PD	No	[✂]
579	SS13 1SA	No	[✂]
580	SS7 3UB	No	[✂]

	Postcode	Pipeline	GUPPI
581	ST1 5SA	No	[✂]
582	ST13 8YG	No	[✂]
583	ST16 2TF	No	[✂]
584	ST4 7QD	No	[✂]
585	ST5 2AF	No	[✂]
586	SW18 4AD	No	[✂]
587	SW19 1DD	No	[✂]
588	SY3 9NB	No	[✂]
589	TA1 2LR	No	[✂]
590	TA1 3NE	No	[✂]
591	TA6 4AB	No	[✂]
592	TF3 4AG	No	[✂]
593	TN24 8YN	No	[✂]
594	TN37 7SQ	No	[✂]
595	TQ12 1BN	No	[✂]
596	TQ2 7HT	No	[✂]
597	TQ4 7PE	No	[✂]
598	TR11 2RZ	No	[✂]
599	TR7 1NF	No	[✂]
600	TS1 1RP	No	[✂]
601	TS12 1DG	No	[✂]
602	TS19 0QB	No	[✂]
603	TS26 0BF	No	[✂]
604	WA1 2TN	No	[✂]
605	WA13 9PR	No	[✂]
606	WA14 2SU	No	[✂]
607	WA3 4EH	No	[✂]
608	WA5 3AG	No	[✂]
609	WD25 9JS	No	[✂]
610	WF1 1QQ	No	[✂]
611	WF1 1RS	No	[✂]
612	WF12 8EB	No	[✂]
613	WN3 6XA	No	[✂]
614	WN7 5SJ	No	[✂]
615	WR2 4EL	No	[✂]
616	WR4 9JN	No	[✂]
617	WS11 8XP	No	[✂]
618	WS2 8XA	No	[✂]
619	WV11 1UP	No	[✂]
620	WV3 0ST	No	[✂]
621	WV5 8AP	No	[✂]

	Postcode	Pipeline	GUPPI
622	WV6 7QH	No	[✂]
623	YO31 7JB	No	[✂]
624	YO32 2HU	No	[✂]
625	YO32 9LG	No	[✂]
626	[✂]	Yes	[✂]
627	[✂]	Yes	[✂]
628	[✂]	Yes	[✂]
629	[✂]	Yes	[✂]

Convenience stores

17.6 As stated in Chapter 8, because Asda operates a single national price file, we consider that our provisional finding that the Merger would result in an SLC in each local area where one or more of the Parties' supermarkets is present would also mean that the Merger would result in an SLC in each local area where one or more of Asda's convenience stores is present.

17.7 In addition, as stated in Chapter 8, we have provisionally found that the Merger gives rise to an SLC in 65 local markets centred on convenience stores. These local markets are each defined by reference to a catchment area around a centroid convenience store. We list each of these centroid convenience stores below.

17.8 We would emphasise that should these provisional findings be confirmed in our final report and should divestiture be selected as the appropriate remedy, it does not follow automatically that the specific convenience stores listed below would need to be divested.

Table 17.2: Convenience centroid stores around which we provisionally find an SLC

	Postcode	Pipeline	GUPPI
1	BN1 8AS	No	[✂]
2	BS8 2XS	No	[✂]
3	BT52 1QP	No	[✂]
4	CV31 1YD	No	[✂]
5	LE3 2LL	No	[✂]
6	LS11 5BJ	No	[✂]
7	LS28 6AR	No	[✂]
8	M33 3NA	No	[✂]
9	SY3 7ET	No	[✂]
10	UB5 5AW	No	[✂]
11	WD6 3LS	No	[✂]
12	B61 0AR	No	[✂]
13	BH15 1EG	No	[✂]
14	BN1 8LE	No	[✂]
15	BS21 7PH	No	[✂]
16	CF62 6HE	No	[✂]

	Postcode	Pipeline	GUPPI
17	CV21 3PY	No	[X]
18	CV31 1JY	No	[X]
19	DA7 4EQ	No	[X]
20	EH6 4RR	No	[X]
21	FK5 4XT	No	[X]
22	G61 2DW	No	[X]
23	HG1 5JQ	No	[X]
24	HG2 0NJ	No	[X]
25	HU10 6UA	No	[X]
26	HU7 4BL	No	[X]
27	HU8 0NP	No	[X]
28	HX2 7NP	No	[X]
29	LL30 2PD	No	[X]
30	LS10 4HP	No	[X]
31	LS19 7PL	No	[X]
32	LS28 7LD	No	[X]
33	LS28 7RZ	No	[X]
34	NE3 1SR	No	[X]
35	NG2 6EP	No	[X]
36	OX11 0BS	No	[X]
37	RG2 8EX	No	[X]
38	RG6 3HE	No	[X]
39	S80 1LX	No	[X]
40	S81 7BP	No	[X]
41	SK1 3TA	No	[X]
42	SR7 7XR	No	[X]
43	SR8 4JJ	No	[X]
44	SS3 9BT	No	[X]
45	ST7 2EW	No	[X]
46	SY2 6AZ	No	[X]
47	SY3 7TJ	No	[X]
48	TF9 3EH	No	[X]
49	TQ12 1AQ	No	[X]
50	TS10 2RF	No	[X]
51	TS10 4NY	No	[X]
52	TS10 4SD	No	[X]
53	TS12 2NJ	No	[X]
54	TS17 6PS	No	[X]
55	TS17 8LU	No	[X]
56	TS22 5DE	No	[X]
57	TS3 0RY	No	[X]
58	UB5 5HF	No	[X]
59	W3 6UP	No	[X]
60	WF2 9DD	No	[X]
61	WF2 9PP	No	[X]
62	WF6 1JG	No	[X]
63	WR1 1DB	No	[X]
64	YO17 7JE	No	[X]
65	[X]	Yes	[X]

Online delivered groceries

Unilateral effects

- 17.9 For the reasons set out in Chapter 11, we provisionally found that the loss of competition between the Parties as a result of the Merger would give rise to an incentive to degrade PQRS across the Parties' online delivered groceries offerings, resulting in an SLC in each local area where one or more of the Parties is present.
- 17.10 In addition, we provisionally found that the Merger may be expected to result in an SLC in 290 local markets for online delivered groceries. These local markets are each defined by reference to a catchment area around a centroid Supply Point. We list each of these centroid Supply Points below.
- 17.11 We would emphasise that should these provisional findings be confirmed in our final report and should divestiture be selected as the appropriate remedy, it does not follow automatically that the specific Supply Points listed below would need to be divested.

Table 17.3: Supply Point centroids around which we provisionally find an SLC through unilateral effects

	Supply Point postcode	GUPPI
1	AB107QA	[X]
2	AB124XP	[X]
3	AB217NG	[X]
4	AB422FY	[X]
5	AL100JP	[X]
6	B100HH	[X]
7	B375EX	[X]
8	B437HA	[X]
9	B761XL	[X]
10	B987ER	[X]
11	BA115LA	[X]
12	BA148AT	[X]
13	BA202HB	[X]
14	BB120EQ	[X]
15	BB48EE	[X]
16	BB51QR	[X]
17	BB88LU	[X]
18	BD213ER	[X]
19	BH151JQ	[X]
20	BH88DL	[X]
21	BH89UP	[X]
22	BL18QG	[X]
23	BL66JA	[X]
24	BL98RS	[X]
25	BN126PN	[X]
26	BN18AS	[X]
27	BN236JH	[X]
28	BN25UT	[X]
29	BS140ST	[X]

	Supply Point postcode	GUPPI
30	BS233UZ	[X]
31	BS307DY	[X]
32	BS345TL	[X]
33	BS347JL	[X]
34	BS34JY	[X]
35	BT161RN	[X]
36	BT399DQ	[X]
37	BT401AX	[X]
38	BT414GY	[X]
39	BT521QP	[X]
40	BT635AQ	[X]
41	BT781QZ	[X]
42	BT808JR	[X]
43	BT828EQ	[X]
44	CA141NQ	[X]
45	CB13ER	[X]
46	CF110JR	[X]
47	CF147EW	[X]
48	CF238NL	[X]
49	CF313AG	[X]
50	CF482YF	[X]
51	CF625AT	[X]
52	CF833SX	[X]
53	CH14QG	[X]
54	CH454NZ	[X]
55	CH51TP	[X]
56	CH623QP	[X]
57	CH650BZ	[X]
58	CM26RE	[X]
59	CM35SY	[X]
60	CO153TH	[X]
61	CO45TU	[X]
62	CR04XS	[X]
63	CT102NR	[X]
64	CT11DG	[X]
65	CT201AU	[X]
66	CV114FL	[X]
67	CV213EB	[X]
68	CV22PN	[X]
69	CV311YD	[X]
70	CV34AR	[X]
71	CW12PT	[X]
72	DA110DQ	[X]
73	DA15ED	[X]
74	DD24WB	[X]
75	DD47RX	[X]
76	DE243DS	[X]
77	DH90NB	[X]
78	DL13RB	[X]
79	DL147LB	[X]
80	DN172XF	[X]
81	DN226EN	[X]
82	DN329DL	[X]
83	DN45NW	[X]
84	DT48JQ	[X]
85	DY40BP	[X]
86	DY47HW	[X]
87	DY51QL	[X]
88	DY53BJ	[X]

	Supply Point postcode	GUPPI
89	E105NH	[X]
90	E143BT	[X]
91	E65JP	[X]
92	EH141RJ	[X]
93	EH153AR	[X]
94	EH209NY	[X]
95	EH546NB	[X]
96	EH66NX	[X]
97	EX312BN	[X]
98	EX393QU	[X]
99	FK103SD	[X]
100	FK38TY	[X]
101	FY44QH	[X]
102	FY76NU	[X]
103	G314EB	[X]
104	G331AD	[X]
105	G420AE	[X]
106	G513HR	[X]
107	G671JW	[X]
108	G720AQ	[X]
109	G812RZ	[X]
110	G821RB	[X]
111	GL11DS	[X]
112	GL516PN	[X]
113	GU147LT	[X]
114	HA99EX	[X]
115	HD22LQ	[X]
116	HG15DE	[X]
117	HP124NU	[X]
118	HR27JE	[X]
119	HU114AL	[X]
120	HU34PE	[X]
121	HU73DA	[X]
122	HX14PG	[X]
123	IG118FJ	[X]
124	IP15PD	[X]
125	IP333SP	[X]
126	IV306YQ	[X]
127	KA128EH	[X]
128	KT205NZ	[X]
129	KY114LP	[X]
130	KY13NU	[X]
131	KY75QB	[X]
132	L103LN	[X]
133	L153JR	[X]
134	L204BB	[X]
135	L249WA	[X]
136	L367TX	[X]
137	LA145UG	[X]
138	LA15JR	[X]
139	LA97JA	[X]
140	LE24AH	[X]
141	LE32LL	[X]
142	LE45NU	[X]
143	LE48GN	[X]
144	LL138HL	[X]
145	LL185EQ	[X]
146	LL301PJ	[X]
147	LN68JY	[X]

	Supply Point postcode	GUPPI
148	LS270BW	[X]
149	LU54JD	[X]
150	M114BD	[X]
151	M263DA	[X]
152	M417ZA	[X]
153	ME102PD	[X]
154	ME194SZ	[X]
155	ME59SE	[X]
156	ME71RZ	[X]
157	MK11QB	[X]
158	ML36AD	[X]
159	NE119YA	[X]
160	NE129SJ	[X]
161	NE244LZ	[X]
162	NE331AZ	[X]
163	NE359AR	[X]
164	NE35BU	[X]
165	NE387NF	[X]
166	NE62XP	[X]
167	NE639XG	[X]
168	NG190HA	[X]
169	NG68XF	[X]
170	NN106AA	[X]
171	NN169HU	[X]
172	NN175DT	[X]
173	NN48ER	[X]
174	NP108XL	[X]
175	NP120NT	[X]
176	NP234SL	[X]
177	NR301SF	[X]
178	NR330PX	[X]
179	NR46DP	[X]
180	NR65DT	[X]
181	NW90AS	[X]
182	OL126XT	[X]
183	OL28QP	[X]
184	OL67PF	[X]
185	OX331YZ	[X]
186	PA12AB	[X]
187	PE11ET	[X]
188	PE131PE	[X]
189	PE218EQ	[X]
190	PE303UG	[X]
191	PH15AP	[X]
192	PL254PR	[X]
193	PL312AR	[X]
194	PL68TB	[X]
195	PO121SH	[X]
196	PO141TT	[X]
197	PO302QH	[X]
198	PO77XR	[X]
199	PO93QW	[X]
200	PR29NP	[X]
201	PR67JY	[X]
202	PR73DL	[X]
203	PR90TY	[X]
204	RG304EL	[X]
205	RG65TT	[X]
206	RH117AH	[X]

	Supply Point postcode	GUPPI
207	RM13EE	[X]
208	RM187HJ	[X]
209	RM96SJ	[X]
210	S139LR	[X]
211	S207JZ	[X]
212	S352UW	[X]
213	S58NH	[X]
214	S653SW	[X]
215	SE15AG	[X]
216	SE77ST	[X]
217	SG11LA	[X]
218	SG120AD	[X]
219	SG180JS	[X]
220	SK11UA	[X]
221	SK141BD	[X]
222	SK41TN	[X]
223	SL19LA	[X]
224	SN128LQ	[X]
225	SN254BG	[X]
226	SN57DL	[X]
227	SO147EG	[X]
228	SO403ZA	[X]
229	SO533YJ	[X]
230	SP102RW	[X]
231	SR29TT	[X]
232	SR85HA	[X]
233	SS141AE	[X]
234	SS38DA	[X]
235	ST163TA	[X]
236	ST50AP	[X]
237	ST66AT	[X]
238	SW111JG	[X]
239	SW153DT	[X]
240	TA12AN	[X]
241	TA65AZ	[X]
242	TA93BX	[X]
243	TD12AG	[X]
244	TF27RX	[X]
245	TF34HZ	[X]
246	TN23EY	[X]
247	TN240SE	[X]
248	TN377AA	[X]
249	TQ121TG	[X]
250	TR109LY	[X]
251	TR274HU	[X]
252	TS122ZL	[X]
253	TS179EN	[X]
254	TS182PB	[X]
255	TS240XR	[X]
256	TS66AB	[X]
257	TW134BH	[X]
258	TW59QA	[X]
259	WA12QA	[X]
260	WA145ZR	[X]
261	WA37PG	[X]
262	WA58UG	[X]
263	WA72PY	[X]
264	WA86AH	[X]
265	WD247RT	[X]

	Supply Point postcode	GUPPI
266	WN50XA	[X]
267	WN75RZ	[X]
268	WN86LU	[X]
269	WS111LH	[X]
270	WS11RS	[X]
271	WS33JR	[X]
272	WV14DE	[X]
273	YO329LF	[X]
274	BH124BA	[X]
275	BL36DH	[X]
276	CA117FG	[X]
277	CR04XT	[X]
278	DA118JH	[X]
279	DL149AE	[X]
280	DL15JG	[X]
281	DN25PS	[X]
282	HD16QR	[X]
283	HX11SB	[X]
284	LA11HH	[X]
285	LS118LS	[X]
286	M90QS	[X]
287	NE77JW	[X]
288	SR31PD	[X]
289	TA12LR	[X]
290	TS11RP	[X]

Coordinated effects

17.12 For the reasons set out in Chapter 12, we provisionally found that the Merger would be expected to result in an SLC through coordinated effects in 108 local markets for online delivered groceries. These local markets are each defined by reference to a catchment area around a centroid Supply Point. We list each of these centroid Supply Points below.

17.13 We would emphasise that should these provisional findings be confirmed in our final report and should divestiture be selected as the appropriate remedy, it does not follow automatically that the specific Supply Points listed below would need to be divested.

Table 17.4: Supply Point centroids around which we provisionally find an SLC through coordinated effects

	Supply Point postcode
1	AB107AY
2	AB107QA
3	AB124XP
4	AB217NG
5	AB253SA
6	AB422FY
7	AB548SX
8	BT119AE
9	BT153PR
10	BT161RN
11	BT275UQ
12	BT358QS

	Supply Point postcode
13	BT399DQ
14	BT39EJ
15	BT401AX
16	BT414GY
17	BT423AG
18	BT487TL
19	BT521QP
20	BT635AQ
21	BT746JG
22	BT781QZ
23	BT808JR
24	BT828EQ
25	CA117FG
26	CA141NQ
27	CA25TF
28	CA30JQ
29	DD24WB
30	DD47RX
31	DD48XD
32	DH90NB
33	DL13RB
34	DL147LB
35	DL149AE
36	DL15JG
37	EH112QW
38	EH141RJ
39	EH142ER
40	EH153AR
41	EH165PB
42	EH209NY
43	EH546NB
44	EH546RQ
45	EH66NX
46	FK103SD
47	FK38TY
48	FK81RA
49	G156RX
50	G314EB
51	G331AD
52	G420AE
53	G513HR
54	G537RH
55	G671JW
56	G720AQ
57	G744UN
58	G812RZ
59	G821RB
60	IV125QF
61	IV191NX
62	IV26BZ
63	IV306YQ
64	KA128EH
65	KA89BF
66	KA91TW
67	KY114LP
68	KY13NU
69	KY26QL
70	KY75QB
71	ML36AD
72	NE119YA
73	NE129SJ
74	NE244LZ
75	NE331AZ
76	NE359AR

	Supply Point postcode
77	NE35BU
78	NE387NF
79	NE387RU
80	NE62XP
81	NE639XG
82	NE77JW
83	PA12AB
84	PH15AP
85	PL254PR
86	PL312AR
87	PL36RL
88	PL68TB
89	SA18JA
90	SA68PS
91	SA726DA
92	SR29TT
93	SR31PD
94	SR53JG
95	SR85HA
96	TD12AG
97	TD58DW
98	TR109LY
99	TR138BN
100	TR13XL
101	TR183AP
102	TR274HU
103	TS11RP
104	TS122ZL
105	TS179EN
106	TS182PB
107	TS240XR
108	TS66AB

Fuel

PFSs

17.14 For the reasons set out in chapter 14, we provisionally find that the Merger gives rise to an SLC in 132 local markets for the supply of fuel. These local markets are each defined by reference to a catchment area around a centroid PFS. We list each of these centroid PFSs below.

17.15 We would emphasise that should these provisional findings be confirmed in our final report and should divestiture be selected as the appropriate remedy, it does not follow automatically that the specific PFSs listed below would need to be divested.

Table 17.5: PFS centroids around which an SLC has been provisionally found

	Postcode	Catalist number	Standalone	Pipeline	GUPPI	Pricing Indicator
1	AB10 7QA	[X]	No	No	[X]	[X]
2	AB12 4XP	[X]	No	No	[X]	[X]
3	B29 5UP	[X]	No	No	[X]	[X]
4	B78 3HB	[X]	No	No	[X]	[X]

	Postcode	Catalist number	Standalone	Pipeline	GUPPI	Pricing Indicator
5	B90 3GG	[X]	No	No	[X]	[X]
6	BA11 5LA	[X]	No	No	[X]	[X]
7	BN1 8AS	[X]	No	No	[X]	[X]
8	BN2 5UT	[X]	No	No	[X]	[X]
9	BS3 4JY	[X]	No	No	[X]	[X]
10	BS30 7DY	[X]	No	No	[X]	[X]
11	BT52 1QP	[X]	No	No	[X]	[X]
12	CF37 1HF	[X]	Yes	No	[X]	[X]
13	CH45 4NZ	[X]	No	No	[X]	[X]
14	CH49 5PD	[X]	No	No	[X]	[X]
15	CH62 3QP	[X]	No	No	[X]	[X]
16	CM2 6RE	[X]	No	No	[X]	[X]
17	CM3 5SY	[X]	No	No	[X]	[X]
18	CR0 4XS	[X]	No	No	[X]	[X]
19	CV21 3EB	[X]	No	No	[X]	[X]
20	CW9 5LG	[X]	No	No	[X]	[X]
21	DA11 0DQ	[X]	No	No	[X]	[X]
22	DA9 9BT	[X]	No	No	[X]	[X]
23	DE11 7JE	[X]	Yes	No	[X]	[X]
24	DE21 7LW	[X]	No	No	[X]	[X]
25	DE24 3DS	[X]	No	No	[X]	[X]
26	DY5 3BJ	[X]	No	No	[X]	[X]
27	EH20 9NY	[X]	No	No	[X]	[X]
28	GU21 5SE	[X]	No	No	[X]	[X]
29	HA4 0FY	[X]	No	No	[X]	[X]
30	HR2 7JE	[X]	No	No	[X]	[X]
31	IP33 3SP	[X]	No	No	[X]	[X]
32	KT20 5NZ	[X]	No	No	[X]	[X]
33	KY1 3NU	[X]	No	No	[X]	[X]
34	L20 4BB	[X]	No	No	[X]	[X]
35	L4 9XU	[X]	No	No	[X]	[X]
36	L6 5DR	[X]	No	No	[X]	[X]
37	LA1 5JR	[X]	No	No	[X]	[X]
38	LE10 1SS	[X]	No	No	[X]	[X]
39	LE4 5NU	[X]	No	No	[X]	[X]
40	LL18 5EQ	[X]	No	No	[X]	[X]
41	LU2 9TA	[X]	No	No	[X]	[X]
42	NE24 4LZ	[X]	No	No	[X]	[X]
43	NE35 9AR	[X]	No	No	[X]	[X]
44	NG2 7JA	[X]	No	No	[X]	[X]
45	NG31 6NZ	[X]	No	No	[X]	[X]
46	NG5 7ED	[X]	No	No	[X]	[X]
47	NG7 5FP	[X]	No	No	[X]	[X]
48	NR4 6DP	[X]	No	No	[X]	[X]
49	NW10 7LW	[X]	No	No	[X]	[X]
50	OX33 1YZ	[X]	No	No	[X]	[X]
51	PO14 1TT	[X]	No	No	[X]	[X]
52	PO20 0FR	[X]	No	No	[X]	[X]
53	PO7 7XR	[X]	No	No	[X]	[X]
54	PR2 9NP	[X]	No	No	[X]	[X]
55	SE7 7ST	[X]	No	No	[X]	[X]
56	SN25 4BG	[X]	No	No	[X]	[X]
57	SN5 7DL	[X]	No	No	[X]	[X]
58	SO53 3YJ	[X]	No	No	[X]	[X]
59	SR2 9TT	[X]	No	No	[X]	[X]
60	SR5 1SF	[X]	Yes	No	[X]	[X]
61	TA9 3BX	[X]	No	No	[X]	[X]
62	TF3 4HZ	[X]	No	No	[X]	[X]

	Postcode	Catalist number	Standalone	Pipeline	GUPPI	Pricing Indicator
63	TR10 9LY	[X]	No	No	[X]	[X]
64	WD24 7RT	[X]	No	No	[X]	[X]
65	WF2 7EQ	[X]	No	No	[X]	[X]
66	WS11 1LH	[X]	No	No	[X]	[X]
67	WV1 4DE	[X]	No	No	[X]	[X]
68	[X]	[X]	No	Yes	[X]	[X]
69	AB10 7AY	[X]	No	No	[X]	[X]
70	B31 5AA	[X]	No	No	[X]	[X]
71	B35 6HB	[X]	No	No	[X]	[X]
72	B69 3DB	[X]	No	No	[X]	[X]
73	BA1 2DR	[X]	No	No	[X]	[X]
74	BA11 4DH	[X]	No	No	[X]	[X]
75	BB8 9HY	[X]	No	No	[X]	[X]
76	BS3 2NS	[X]	No	No	[X]	[X]
77	BT51 3QQ	[X]	No	No	[X]	[X]
78	CF37 4BP	[X]	No	No	[X]	[X]
79	CH42 8PQ	[X]	No	No	[X]	[X]
80	CH49 6QG	[X]	No	No	[X]	[X]
81	CH61 7UB	[X]	Yes	No	[X]	[X]
82	CH63 8PZ	[X]	Yes	No	[X]	[X]
83	CM2 5PA	[X]	No	No	[X]	[X]
84	CO3 8AA	[X]	No	No	[X]	[X]
85	CR0 4XT	[X]	No	No	[X]	[X]
86	CV22 6HU	[X]	No	No	[X]	[X]
87	DD4 8XD	[X]	No	No	[X]	[X]
88	DE21 6NZ	[X]	No	No	[X]	[X]
89	DE24 8EB	[X]	No	No	[X]	[X]
90	DN31 1UF	[X]	No	No	[X]	[X]
91	DY5 3JR	[X]	No	No	[X]	[X]
92	EX31 3NH	[X]	No	No	[X]	[X]
93	HA4 0HQ	[X]	No	No	[X]	[X]
94	HR4 0AG	[X]	No	No	[X]	[X]
95	HU13 9NS	[X]	No	No	[X]	[X]
96	KA9 1TR	[X]	No	No	[X]	[X]
97	KT16 9AG	[X]	No	No	[X]	[X]
98	KY2 6QL	[X]	No	No	[X]	[X]
99	L14 5PT	[X]	No	No	[X]	[X]
100	L5 5AA	[X]	No	No	[X]	[X]
101	L9 1NL	[X]	No	No	[X]	[X]
102	LA4 5TJ	[X]	No	No	[X]	[X]
103	LE19 1WT	[X]	No	No	[X]	[X]
104	LE4 7SJ	[X]	No	No	[X]	[X]
105	LS11 8LS	[X]	No	No	[X]	[X]
106	NE23 6RT	[X]	No	No	[X]	[X]
107	NG2 6EP	[X]	Yes	No	[X]	[X]
108	NG31 6HJ	[X]	No	No	[X]	[X]
109	NG5 6BN	[X]	No	No	[X]	[X]
110	NG7 1GX	[X]	No	No	[X]	[X]
111	PO30 5ZB	[X]	No	No	[X]	[X]
112	PO7 7XE	[X]	No	No	[X]	[X]
113	PR5 6BJ	[X]	No	No	[X]	[X]
114	RG31 7SA	[X]	No	No	[X]	[X]
115	S20 7PJ	[X]	No	No	[X]	[X]
116	SE10 0QJ	[X]	No	No	[X]	[X]
117	SN3 4EW	[X]	No	No	[X]	[X]
118	SN5 7AA	[X]	No	No	[X]	[X]
119	SO22 4QB	[X]	No	No	[X]	[X]
120	SR3 1PD	[X]	No	No	[X]	[X]

	Postcode	Catalist number	Standalone	Pipeline	GUPPI	Pricing Indicator
121	SR5 3JG	[✂]	No	No	[✂]	[✂]
122	SY3 9NB	[✂]	No	No	[✂]	[✂]
123	TA1 2LR	[✂]	No	No	[✂]	[✂]
124	TF3 4AG	[✂]	No	No	[✂]	[✂]
125	TW18 3AP	[✂]	No	No	[✂]	[✂]
126	W10 5AA	[✂]	No	No	[✂]	[✂]
127	WD25 9JS	[✂]	No	No	[✂]	[✂]
128	WF12 8EB	[✂]	No	No	[✂]	[✂]
129	WV3 0TE	[✂]	No	No	[✂]	[✂]
130	WV6 7QH	[✂]	No	No	[✂]	[✂]
131	YO32 9LG	[✂]	No	No	[✂]	[✂]
132	[✂]	[✂]	No	Yes	[✂]	[✂]