

Proposed acquisition by Asda Stores Limited, a subsidiary of Wal-Mart Stores, Inc, of Safeway Plc

A report under section 125(4) of the Fair Trading Act 1973 on the advice of the Deputy Director General of Fair Trading, given on 13 March 2003, to the Secretary of State for Trade and Industry under section 76 of the Act

JURISDICTION

1. The merger satisfies the assets test of the Act since the gross assets to be acquired are valued at £4.9 billion. The European Community Merger Regulation does not apply since both parties achieve more than two-thirds of their aggregate Community-wide turnover in one and the same Member State (the United Kingdom).

THE PARTIES

2. **Asda Stores Limited (Asda)** is the UK's third largest supermarket chain with 258 supermarkets located across Great Britain - with a stronger presence in the North of England and Scotland - selling a range of grocery and non-grocery items. All but two of Asda's stores have a sales area above 15,000 square feet (average 43,700 square feet) and 141 have a petrol filling station on site. Asda was acquired by Wal-Mart Stores, Inc in 1999. In the period ended 31 December 2001, Asda reported pre-tax profit of £367 million on a turnover of £11.5 billion with gross assets, as at that date, of £3.6 billion.
3. **Safeway plc (Safeway)** is the UK's fourth largest supermarket chain with 479 stores (with an average store size of 21,000 square feet) - 121 of its stores are below 15,000 square feet in sales area - of which 184 stores have petrol stations on site. In addition, Safeway has a 50% stake in a joint venture with BP operating 55 food stores on BP's petrol forecourts. Safeway supplies its stores from 20 regional distribution centres and operates six of these itself. In the year ended 30 March 2002, it reported pre-tax profit of £355 million, on a turnover of £8.72 billion and gross assets of £4.9 billion.

ASSESSMENT

Relevant markets

Grocery retailing

4. The parties' primary overlap is in grocery retailing at supermarkets. Supermarket retailing is complex with highly heterogeneous retailers and consumers. In identifying the appropriate frame of reference for this competition analysis, the following issues need to be considered:
 - a. Product range – While supermarkets' core goods are grocery products, many also offer non-grocery items (e.g., magazines, clothes, electrical items and petrol). Grocery items are central to the concept of supermarket shopping but the extent to which non-grocery products are integral to customers' visits to a supermarket varies. Regularly purchased items such as weekly magazines might be part of a customer's core shopping list whereas clothes and electrical items might not. Other items are less intrinsic to one stop shopping but are used by supermarkets to attract shoppers, particularly their petrol offer. (Petrol is one of the few products that the major grocery retailers price locally. Discounts on petrol can be linked to the amount of groceries purchased.)
 - b. Type of shopping - The CC's report of October 2000 on Supermarkets¹ (the Supermarkets Report) acknowledged that shopping patterns in supermarkets are very complex. Three types of shopping can be identified: one-stop (major replenishment of supplies); secondary (topping-up of customary purchases); and convenience (emergency or impulse shopping). Although the boundaries between these types of shopping are unclear, application of the hypothetical monopolist test suggests that separate analysis of one-stop shopping is appropriate.²
 - c. Store size and type – The Supermarkets Report includes results of tests on the cross-price elasticity of demand between stores of different sizes. These results suggest that competition is generally stronger between larger stores and that smaller stores place less of a competitive constraint on larger stores. The Supermarkets Report concluded that the minimum store size required for a one-stop shop could be reasonably set at 15,000 square feet.
5. The OFT has received a substantial amount of information from the parties and third parties on the UK's shopping habits, in particular on changes that are said to have taken place since the Supermarkets Report. While some

¹ Cm 4842.

² Any increase in grocery prices at larger supermarkets (providing a one-stop shop) could cause consumers to switch to more frequent, smaller shopping trips that could be met by a wider number of stores. However, the fact that smaller stores generally charge higher prices and the inconvenience factor of more frequent shopping trips suggests that the increase in the overall cost of one-stop shopping might need to be considerable before a significant number of consumers began to switch their shopping habits. This is consistent with paragraph 2.32 of the Supermarkets Report.

have contended that an increasing number of consumers are making more frequent but smaller shopping trips (so-called 'repertoire' shopping), on the supply side there still appears to be a preference for building larger stores to provide one-stop grocery shopping as well as more opportunistic purchases. If there is a trend, it appears to be away from small local convenience stores towards mid-range High Street outlets many of which have been opened by the major supermarkets. Overall, there does not appear to be any compelling reason to differ from the CC's conclusions in its Supermarkets Report. Therefore, the appropriate frame of reference for this analysis is one-stop grocery shopping in stores greater than 15,000 square feet.

Convenience grocery retailing

6. It might be argued that the parties also overlap in convenience grocery retailing since supermarkets can be - and indeed are - used for secondary and convenience shopping.³ However, Asda has few stores of less than 15,000 square feet directed more specifically at this type of shopping [- see Note 1 -]. The overlaps at the convenience level are few with [10-15] [- see Note 2 -] of the [15-20] [- see Note 2 -] overlaps co-existing with overlaps in one-stop shopping. Taken together with the fact that barriers to entry in this segment are currently low, it therefore seems unlikely that any significant issues will be raised with regard to convenience shopping and therefore it has not been considered any further in this advice.

Petrol retailing

7. While the parties also overlap in petrol retailing, their combined UK share would be small; they have less than 3% of petrol stations in the UK (although their share of supply will be higher than this, possibly in the [5-10]% [- see Note 2 -] region). Again, the merger seems unlikely to lead to a substantial lessening of competition within this distinct segment and it is not considered further in this advice – although, as mentioned above, petrol does appear to be used by some grocery retailers as an element of their wider shopping offering.

Geographic market in one-stop shopping

8. There are both national and local elements to competition among major grocery retailers with inherent links between the two. The major grocery retailers undertake much of their procurement and set many of their competitive strategies (e.g., core product ranges, some or all prices, branding and advertising) at national level. These strategies then influence the way they compete locally. At a local level, however, stores appear to tailor their offerings in response to demographic and other factors, including local variations in opening hours, ranges, or promotional offers. In turn, performance at local level influences both their national

³ See the Deputy Director General of Fair Trading's advice dated 9 December 2002 to the Secretary of State in Tesco/T&S Stores published on the OFT website (www.offt.gov.uk).

procurement position and central decision-making on overall competitive strategies.

9. The scope of local competition in one-stop grocery retailing depends, to some extent, on the distance consumers are able or willing to travel to shop for groceries. The Supermarkets Report found that a 10 minute drive-time was appropriate for consumers in urban areas⁴ and a 15 minute drive-time was appropriate for rural areas. As a proxy for identifying the scope of an individual consumer's choice, the CC examined the number of major supermarket fascia within the drive-time areas (known as isochrones) around individual stores. This approach has also been used in this analysis to identify stores that "compete" with each other for business.
10. Accordingly, Asda has developed isochrones for those local areas where there is both an Asda and a Safeway one-stop store. The parameters of each overlap area created by this approach might not, however, represent accurately each individual shopper's willingness to travel, and thus the extent of the competitive constraint represented by, or faced by, an individual store. Any attempt to assess the loss of competition within an isochrone must, therefore, take into account a number of factors such as: the size and location of relevant stores; and the location of the population centre(s) in relation to those stores. Also, in some areas, chains of substitution might operate between adjacent areas blurring the boundaries between them. Nevertheless the use of isochrones is seen as the most appropriate way of identifying local areas where competition might be reduced as a result of the merger.

Competition analysis

11. In assessing whether a proposed merger may be expected to give rise to a substantial lessening of competition, we have to compare the expected position post-merger with that which might be expected to exist if the merger did not take place (the counterfactual). It is difficult to predict the likely future competitive situation if a merger does not proceed, so in the absence of evidence of immediate and certain changes in the structure of competition in a market the counterfactual is often taken to be the prevailing (i.e., pre-merger) conditions of competition.
12. A range of arguments have been put to us by a number of parties about what the relevant counterfactual should be. These include: the Safeway business being bought but subsequently broken up; Safeway continuing as now but as an increasingly less effective competitor; Safeway being acquired by another of the major supermarkets; or Safeway being revitalised by new management and strengthening its position. While some of these points have force, we are not convinced that any of these alternatives are sufficiently certain such that we should depart from using the prevailing conditions of competition as the counterfactual in this case.

⁴ The CC regarded an urban area as one where within the isochrone the population was above 200,000 and the area was one where consumers were "continuously surrounded by an urban and congested environment" and included stores " which lay within, but not on the edge of, the town/city and contiguous towns" (Appendix 6.3, paragraph 16).

National competition

13. At a national level the largest five grocery retailers (the major supermarkets) in one-stop shopping supplied [90-100]% [- see Note 2 -] of all sales (TNS data for the year to 8 December 2002). As a result of the merger, Asda's share of one-stop shopping sales would increase to [30-35]% [- see Note 2 -] (increment [10-15]% [- see Note 2 -]). The Herfindahl-Hirschmann Index (HHI) post-merger would reach [2650-2750] [- see Note 2 -], indicating a high degree of concentration, with an increment of [450-500] [- see Note 2 -]. This increment is well above the usual test for significance in a highly concentrated market. On the basis of the numbers equivalent HHI, the number of competitors in the market would fall [- see Note 1 -] - indicating the loss of [0.5-1.0] [- see Note 2 -] competitor.⁵ Thus the HHI indicators would tend to suggest a significant increase in concentration arising from this merger. The HHI is, however, only an indicator of the competitive effect of the merger and other criteria need to be assessed to determine the likely effect of a merger on competition.
14. The CC commented in the Supermarkets Report that one-stop grocery retailing was "broadly competitive and that, overall, excessive prices are not being charged"⁶ despite the market being nearly as concentrated then as it is now. The CC also, however, stated that, "further concentration could weaken competition and may result in a return to the higher levels of profitability".⁷ We have, therefore, sought to consider whether post-merger the combined Asda-Safeway would be able to act independently of other major one-stop grocery retailers when determining its competitive strategy. We have also considered whether competition in one-stop grocery retailing is constrained to a certain extent by all such retailers and thus whether any loosening of those constraints through the elimination of one major national grocery retailer might be expected to reduce substantially the intensity of competition nation-wide.
15. There is little doubt that an Asda/Safeway merger would lead to a significant increase in concentration at the national level. In particular, Asda and Tesco would together account for a significant proportion (almost [60-70]%) [- see Note 2 -] of one-stop shopping sales nationally (Asda [30-35]% - Tesco [30-35]%, [- see Note 2 -] based on TNS figures to December 2002). In some regions the combination would be even greater (Scotland [85-90]%; Wales/West [75-80]%) [- see Note 2 -]. In the short term, however, it seems likely that Asda and Tesco will constrain each other's competitive behaviour at the national level. Whether this will remain so in the longer term is less clear.

⁵ The numbers equivalent HHI is a means of converting the HHI into a number to indicate how many "effective" competitors exist in a sector. Where the reduction in the numbers equivalent HHI is substantially less than one, this may indicate that the competitor being lost is not a significant player.

⁶ Para. 2.557 Supermarkets Report

⁷ Para. 2.603 Supermarkets Report

16. Some third parties commented that, in the circumstances of this merger, Sainsbury would become an increasingly isolated and ineffective competitor with a share of supply significantly below that of the main two players. Accordingly, these third parties argued that an Asda/Safeway combination would potentially lead to a reduction in the number of national grocery retailers from four to two.
17. These views on the impact of the merger on Sainsbury may well overstate the consequences of the loss of Safeway as a constraint. However we note that Asda (and other supermarkets) include Safeway when benchmarking prices and other parameters of competition. This suggests that Safeway currently offers some constraint on the behaviour of the other major supermarkets. This is consistent with the price elasticity data in the Supermarkets Report which suggested that Safeway did constrain other major grocery retailers.⁸ We therefore believe that the merger could reduce the constraints on the other major supermarkets and that may result in an increase in prices or a reduction in competition in non-price parameters across the board.
18. These issues are exacerbated by the high barriers to entry at the national level, which imply that competitive entry to challenge the existing players seems unlikely. Given these considerations, the merger seems likely to reduce competition at the national level substantially.

Local competition

19. In assessing whether there is a significant prospect that the merger may be expected to lessen competition substantially at a local level, we have considered whether Asda and Safeway compete with each other locally and, if so, whether there will be sufficient post-merger constraints in individual areas to discipline their competitive behaviour.
20. We invited the parties and a number of competitors with relevant stores (those above 15,000 square feet) to provide information on their recent experiences of opening new stores in competition to the major supermarkets and their responses to the opening of relevant stores in competition with their own. This case study information tended to show a variety of competitive responses taken at the local level to perceived increases in local competition. It is clear that the competitive responses can include a wide range of factors including: pricing and promotional offers; changes to product range; improvements in stock availability and quality; and increased service levels. This information tended to confirm that Asda does have regard to Safeway's competitive position in setting its own local strategies.
21. In examining whether Asda and Safeway will continue to be constrained post-merger, it has been put to us that the position taken by the CC in the Supermarkets Report can be readily applied in the present case. That is to say, the CC concluded that where there were three one-stop grocery retail

⁸ Table 15, Appendix 7.8 Supermarkets Report.

fascias in a particular locality (i.e., isochrone), then consumer choice would be adequate (the "three fascia" principle).⁹ However, the available evidence suggests that the potential loss of competition from the merger is not a question purely of the number of one-stop grocery fascias in a particular isochrone. This is because the level of constraint any one store imposes on another is a function of a variety of factors: the size and identity of the store; the distribution of population (relative to the stores); the local transport links; the demographics of an area; and the number of other one-stop stores in that area (and the size, identity, location etc. of those stores). Nor is it possible to generalise across areas about how effective one fascia is against another. Implicitly, a Safeway one-stop store is more likely to offer a constraint on an Asda store the closer they are together.

22. In our view, the CC's use of a "three fascia" principle is helpful in suggesting that where a merged entity faces less than two independent one-stop grocery fascias in a given area then the merger may be expected to lessen competition substantially. However, for the reasons given above, we believe that it cannot be assumed that the reduction of competition within an isochrone will be markedly less if the reduction in the number of independent fascias is from 4 to 3 (or even 5 to 4) than it would if it were from 3 to 2, or 2 to 1. This view is borne out by considering the post-merger HHI (based on floorspace data) for individual overlap areas. In many Safeway-Asda overlap areas, the HHI shows a very high degree of concentration post-merger (an HHI in excess of 1800) and a significant increment (100 or more) as a result of the merger.
23. This suggests that where an Asda and Safeway store would overlap, it is necessary to examine each such area separately and carefully to determine whether the merger might in that locality give rise to an expectation that competition will be lessened substantially: a conclusion supported by the size (in value) of many of these local areas – on average a one-stop store's sales per year are in excess of £21 million.¹⁰ The one-stop sales in a local area with five average sized one-stop stores would thus exceed £100 million.
24. To undertake this detailed local area analysis, Asda has identified [more than 100] [- see Notes 2 and 3 -] overlap areas using the CC's approach to isochrone analysis as the basis for their methodology. Isochrones are, however, highly sensitive to the assumptions, data sets and methodologies used and the boundaries of the local areas are very difficult to identify precisely. There has been considerable variation in the approaches of the potential bidders for Safeway in this regard. The road speeds assumed by Asda are generally slower than those used by the other bidders for Safeway. This is not to say that the Asda approach was wrong but rather that different assumptions would produce different results. For example,

⁹ Paras 2.66-2.68 (incl.) Supermarkets Report. We leave open for present purposes the question whether "adequate consumer choice" is a synonym for "sufficient competitive constraints."

¹⁰ Based on information in para. 2.61 and table 2.3 Supermarkets Report

increasing the road speeds would be likely to increase the number of overlap areas even further.

Barriers to entry

25. The Supermarkets Report stated that the barriers to entry and expansion to one-stop grocery retailing made new entry difficult.¹¹ In particular, the planning regime appeared to restrict entry and expansion particularly for the bigger one-stop stores. We have seen little evidence to suggest that barriers to entry and expansion are any less great than identified by the CC. This fact would tend to support concerns in relation to increased concentration at the national or local level.

Buyer power

26. The issue of upstream buyer power, particularly negotiating strength, was considered at some length in the Supermarkets Report. The CC found that all the main buyers (Asda, Sainsbury, Somerfield and Tesco) "are, for the most part, able to control their relationships with suppliers to their own advantage, whilst the smaller multiples are not able to do so to anywhere near the same extent".¹² Further, it identified a number of practices which it concluded "when carried out...adversely affect the competitiveness of some of their suppliers and distort competition in the supplier market – and in some cases in the retail market".¹³ (The main buyers above did not carry out all of the practices identified by the CC.)
27. The question that needs to be addressed here is whether the proposed merger will affect the parties' buyer power and, if so, what impact, if any, this will have on competition in both the upstream (supply) sector and the downstream (retail) sector.
28. As a starting point, it is not possible to de-couple the effects of upstream buyer power and the downstream retail power. As the CC pointed out, where the retail sector is competitive, buyer power can be used to counter-balance the market power of large suppliers. Where the retail sector is not competitive, buyer power may mean lower wholesale prices, which might not be passed on to consumers.¹⁴
29. Some third parties suggested that Asda would gain little additional buyer power as a result of this merger since, as part of the Wal-Mart group, it already benefited from significant international buyer power. Asda noted that one of the main beneficiaries of a merger among suppliers might be its own-label manufacturers able to gain from increased volumes. Given the finding of a substantial lessening of competition in the downstream market, it is unclear that sufficient incentives would remain to ensure that any savings due to an increase in buyer power would be passed on to consumers.

¹¹ Para 2.202 Supermarkets Report

¹² Para 2.458 Supermarkets Report

¹³ Para 1.10 Supermarkets Report

¹⁴ Para 2.441 Supermarkets Report

30. The Supermarkets Code of Practice¹⁵ has been introduced to remedy some of the concerns identified in the Supermarkets Report. In the context of this merger, mixed views have been expressed as to how effective this Code has been. However, the question for this merger analysis is not whether the Code has been effective but whether the merger will lead to a reduction in its effectiveness that might result in a substantial lessening of competition. It would seem not, since both Asda and Safeway are already signatories to the Code.

Conclusion of competition analysis

31. The merger would lead to a substantial increase both in Asda's share of supply of one-stop grocery retailing and in concentration at the national level. The merger would also result in a substantial number of overlaps at the local level which would require careful consideration and assessment. Identifying in which of the overlap areas the merger is likely substantially to lessen competition is complex. The areas at issue would appear to comprise at least those where, post merger, the number of one-stop grocery fascias is less than three but, in practice, the total number of areas at issue may well be significantly greater than this. Determining the loss of competition will require a detailed assessment of each local area in which an Asda and Safeway store overlap. Given the total number of such overlaps, it seems clear that, cumulatively, there is a significant prospect that the merger will lead to a substantial lessening of competition.

Customer benefits

32. Having formed a belief that this merger raises a significant prospect that it may create a substantial lessening of competition, we have considered whether there are sufficient customer benefits to outweigh this. Any such benefits must be merger-specific, clear and quantifiable.
33. It has been argued by Asda that the proposed merger will result in customer benefits through the greater price competitiveness the merged firm might bring in a wider range of local markets. Asda contended that Safeway customers will benefit directly from Asda's lower prices – Asda estimated that its prices were 15% lower than those of Safeway. Asda also believed that customers would benefit more indirectly since the proportion of Tesco stores facing an Asda store would increase from [over 40]% to [over 60]% [- see Note 2 -]. Asda believed that such a move would be likely to trigger a strong competitive response (i.e., lower prices) from Tesco.
34. However, price comparisons are not always a reliable indicator of underlying competitiveness, especially in industries where there is significant non-price competition. Also, others have commented that price comparisons of a basket of goods may be unrepresentative of what

¹⁵ The CC believed that the most effective way of addressing the adverse effects that it identified regarding negotiating strength would be a Code of Practice (Morrison is not subject to the Code of Practice but would be as a result of this merger).

consumers actually purchase from that store.

35. To the extent that Tesco already benchmarks its prices against those of Asda (and vice versa), the fact that Asda may increase in size seems unlikely to lead to a commensurate increase in that benchmarking. Nor is it clear why the fact that [over 60]% [- see Note 2 -] of its stores face Asda rather than [over 40]% [- see Note 2 -] should trigger a particular price response from Tesco. Moreover, Asda has suggested that, where it is currently in direct competition with Tesco, the Tesco store is more likely to stock a greater proportion of its 'value' brands. Thus, the response is more likely to be in product range and other non-price factors rather than on price.
36. While the direct benefits for Safeway customers of Asda's lower prices seem more quantifiable, given the number of local overlaps mentioned above, it would appear that [about half] [- see Note 2 -] of all Asda stores are already within the catchment area of a Safeway store – thus those consumers already have the choice of a Safeway or Asda store.
37. On balance, while there appears to be some potential for customer benefits arising from the merger these do not, of themselves, appear sufficiently certain or substantial to outweigh the substantial lessening of competition identified in this case.

Undertakings in lieu

38. Asda has offered divestment undertakings to address any competition concerns at the local level. In order to accept such undertakings, we consider that it is necessary, as a general principle, to be able to identify both a clear-cut competition concern and a clear-cut remedy. As mentioned above, it is difficult to delineate precisely the local areas that would need to be considered. Seeking to quantify the extent of the loss of consumer choice in each of those areas is dependent upon the subjective assessment of a number of variables.
39. The CC in its Supermarkets Report indicated a number of factors that might be taken into account by the OFT when considering any new large store developments by any of the major supermarkets¹⁶ – the proposal that OFT should monitor new store openings or extensions was, however, not taken up subsequently. The CC also indicated that these criteria should be taken into account if one of the major supermarkets sought to acquire "one or more stores" for grocery retailing. We have given very careful consideration to whether it would be appropriate and practicable to apply the CC's criteria in this case. While the CC did suggest the criteria might be applied to the possible acquisition of one or more stores, in this case Asda is seeking to acquire 358 [- see Note 4 -] large stores creating over [100] [- see Notes 2 and 3 -] areas of overlap – depending how the isochrones are mapped. In our view, the numerous overlaps arising from

¹⁶ Para 2.607 Supermarkets Report – the main factors "would include: the number and size of other fascias in the isochrone; the distribution of the population and travel times; market shares of floor space and sales; and transport considerations."

this merger proposal seem to be far wider in scale than any situation in which the CC might reasonably have expected its criteria to be applied. We have considered whether it might be possible to construct an expanded set of criteria, based upon those suggested by the CC, to deal with the overlaps arising from this merger. However, we are not confident that we are in a position to establish all of the factors to be considered in these analyses nor the weight to be given to these factors in each area. For these reasons, we do not believe that acceptance of first-phase undertakings without a full and proper consideration of all the issues by the CC would be appropriate in this case.

40. Moreover, setting these difficulties aside, while divestments might address local issues there remains the issue of a substantial increase in concentration at the national level. Asda estimated that, after these divestments, its share of supply might fall to about [25-30]% [- see Note 2 -], reducing the share of Asda and Tesco together to [60-65]% [- see Note 2 -] (assuming Tesco did not acquire any of the divested stores). Divestments to address local concerns – even if they could be accurately quantified – would not, therefore, address the concerns at the national level. It would be inappropriate at this stage of the enquiry for the OFT to seek to set some acceptable level of national concentration in this market. For these reasons undertakings in lieu of reference would not be an appropriate and clear cut remedy in this case.

THIRD PARTY VIEWS AND PUBLIC INTEREST GROUNDS

41. Comments were received from a wide range of sources, including competitors, consumers' associations, consumers and suppliers. In general, there was concern about this proposed merger (both nationally and locally) and the resulting reduction in choice for consumers. Some suppliers were particularly concerned about the impact of increased buyer power on their profitability and viability. A number of consumers expressed concerns about Asda's US ownership and the fact that profits from the business would benefit the US more than the UK. This is not, however, a competition matter. Concerns were also expressed about Asda's international sourcing as part of Wal-Mart, particularly as regards bananas - with an implication that the terms of this arrangement resulted in low wages being paid to growers and workers. In response, Asda stressed that it took its responsibilities towards suppliers extremely seriously; that it sought to deal fairly with all suppliers; and that it had received an assurance that Asda's contract has not resulted in a lowering of wages. While it seems appropriate for consumers to be made aware of the country of origin of fresh produce – in order to inform their buying decisions – determining from which countries such produce should or should not be sourced is not a matter on which the OFT, as a competition authority, is best placed to advise.

CONCLUSION

42. The proposed acquisition by Asda of Safeway qualifies for investigation on the assets test of the Act. As mentioned above, the interaction of local and national competition issues in one-stop grocery retailing is complex.

At the local level, the loss of competition between Asda and Safeway in certain areas appears to be substantial. Moreover, at a national level the merger raises additional competition concerns, in particular, it would lead to a significant increase in concentration, with Asda and Tesco together supplying [60-65]% [- see Note 2 -] of all one-stop grocery shopping. On balance, we believe that there is a significant prospect that this merger may be expected to result in a substantial lessening of competition. The potential adverse effects we have identified do not appear to be outweighed by potential consumer benefits. Nor do we believe that undertakings in lieu of reference would be appropriate in this case because of the difficulties in identifying and addressing the local areas of concern.

43. I therefore conclude and **recommend** that you should **refer** this merger to the CC.

Notes

1. Commercially confidential information deleted.
2. Actual figures replaced by a range, or other alternative, at the request of Asda.
3. This figure indicates the total number of overlap areas that, in the OFT's view, might need to be considered and may not necessarily be indicative of the number of divestments that might be required to be made.
4. Asda has pointed out that the net effect, after allowing for the less than 80 areas of overlap where its methodology suggests that divestment might be required, would be it acquiring less than 275 of Safeway's large stores in GB.