

Anticipated acquisition by Co-operative Group Limited (formerly Co-operative Wholesale Society Limited) of the Funeral Business of George Burgess & Son Ltd

ME/3953/08

The OFT's decision on reference under section 33(1) given on 12 January 2009. Full text of decision published 27 January 2009.

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**Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Co-operative Group Limited (CGL)** is the UK's largest co-operative society with some 4.5 million members. It is active in food retail, pharmacy, banking, and travel agency (amongst other businesses). It is also active in the supply of funeral directing services through its Funeralcare business. It is the UK's largest provider of 'at need' funerals<sup>1</sup> in the UK, handling close to 100,000 arrangements in 2007.
2. **George Burgess & Son (Burgess)** is an established funeral directing business operating from one location at Ellon, some 15 miles to the north of Aberdeen, in Scotland. In 2007 it conducted [ ] 'at need' funeral arrangements.

## **TRANSACTION**

3. CGL proposes to acquire the funeral directing business of Burgess. CGL notified the proposed transaction on 26 November 2008 and the administrative deadline for a decision is 29 January 2009.

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<sup>1</sup> 'At need' funeral services are organised following a bereavement, in contrast to those organised 'pre need' through a pre-paid funeral plan.

4. Following the Monopolies and Mergers Commission (MMC) investigation into the Co-operative Wholesale Society's (CWS) acquisition of the funeral undertaking business of House of Fraser, the Secretary of State for Trade and Industry accepted undertakings from CWS on 27 November 1987 to notify the OFT of any future proposed acquisitions of funeral undertaking businesses in Scotland. CGL has complied with its obligations under the 1987 undertakings (which are still in place) in respect of this transaction.

## **JURISDICTION**

5. As a result of this transaction CGL and Burgess will cease to be distinct. The parties overlap in the supply of 'at need' funeral arrangements and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in respect of such services in Scotland, a substantial part of the UK. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **MARKET DEFINITIONS**

### **Product scope**

6. The parties overlap in the provision of funeral directing services, which include services provided directly by the funeral director to the individual (for example providing the coffin and managing the funeral) as well as arranging for the provision of services by others (for example church, cemetery or crematoria services). The majority of funeral directing services are provided to individuals as an 'at need' funeral package or, to a lesser extent, as a pre-paid funeral plan. However, in both cases the service provided will be the same and so these two services can therefore be considered together.
7. In previous cases<sup>2</sup> the OFT also considered the provision of mortuary services by funeral homes to local councils and Primary Care Trusts (PCT). However since [ ]<sup>3</sup> this market has not been considered further.

### **Geographic scope**

8. The 'at need' funerals market operates at a local level given the nature and extent of the search carried out by next-of-kin when looking to make funeral arrangements. This is consistent with past cases, and information

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<sup>2</sup> Completed acquisition by Co-operative Group (CWS) Limited of Fairways Group UK Limited (*CGL/Fairways*) (2006) and Anticipated merger between Co-operative Group (CWS) Limited and United Co-operatives Limited (*CGL/United*) (2007).

<sup>3</sup> There is no overlap between CGL and Burgess in the provision of mortuary services in Scotland.

provided by the parties supports the view that the market for funeral services to individuals is local in scope.<sup>4</sup>

9. Previous decisions have suggested two ways in which the geographic market may be examined. Firstly by way of the geographic area within which the target funeral branch derives 80 per cent of its funeral business, by number of funerals conducted, and alternatively, an isodistance analysis based on the geographic area described by centering rings, with radii of respectively two and five miles, on the target branch.
10. Nothing in the current case suggests that the OFT should depart from the 80 per cent catchment area definition considered in previous cases. An isodistance analysis is not considered appropriate in this case as the target is located in a relatively rural area and the appropriate distance for any radii has not been defined. However, CGL has submitted that on the basis of a five mile ring analysis centered on the target's sole branch, there is no overlap since [ ] funerals were conducted by CGL in this area in 2007.

## **HORIZONTAL ISSUES**

### **Market shares**

11. The parties overlap in the provision of 'at need' funeral services.
12. CGL applied the market share test based on an 80 per cent catchment area centred on the target business, both as a whole and broken down as between the nine individual postcode bricks that make up this area. Market shares have been calculated as the number of funerals conducted by each party in the area divided by total number of deaths as recorded by the Office for National Statistics (ONS).
13. On this basis, CGL estimates that the market share of Burgess from its sole branch at Ellon is [25-35] per cent ([ ] funerals) while CGL's [ ] funerals is [less than 5] per cent, giving a combined market share of [30-40] per cent, increment [less than 5] per cent.

### **Local competition test**

14. In the Monopolies and Mergers Commission's 1995 inquiry into the SCI/Plantsbrook merger, wherever the merger increased share of deaths<sup>5</sup> above 25 per cent within the relevant isochrone, the CC required

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<sup>4</sup> This is consistent with the MMC's conclusions in its reports on *Co-operative Wholesale Society Limited and House of Fraser plc* 1987, *Acquisition by Service Corporation International and Plantsbrook Group plc* 1995, *Anticipated acquisition by Co-operative Group Limited of McIntosh Funeral Directors* 2006, *CGL/Fairways*, and *CGL/United*.

<sup>5</sup> Share of deaths equates to the number of funerals conducted by a funeral home in a specified catchment divided by the total number of deaths in the same catchment area.

divestments (of either acquired or pre-merger homes) to reduce market share to no more than 25 per cent. For localities where the acquirer had a market share of over 25 per cent before the merger the CC asked for divestments of the acquired branches. However, in that case the MMC was required to consider a large number of potential overlaps in different geographic areas.

15. This approach has been followed in more recent merger investigations, giving rise to multiple potential overlaps, including CGL/United, and CGL/Fairways, although the approach to the geographic market definition within which market shares are assessed has varied, principally due to data availability. The 25 per cent 'rule of thumb', however, is a conservative threshold, particularly given that competition between funeral homes has been noted to be strongly muted.<sup>6</sup> However, it does provide a useful initial basis for assessing whether overlaps can be ruled out of giving rise to a substantial lessening of competition, thereby allowing the OFT to concentrate its analysis on the remaining overlap areas. In this case, however, there is a single overlap.
16. As noted above, in this case the post-merger combined market share is [30-40] per cent, passing the 25 per cent threshold, but with an increment of less than five per cent.
17. Looking at the individual postcode bricks that make up the 80 per cent catchment area suggests that the overlap between the parties in the postcode area immediately surrounding the target is minimal – Burgess conducted [ ] of its funerals (about [ ] of all its funerals) in this postcode area against just [ ] by CGL. In fact, in seven of the nine postcode bricks that make up the 80 per cent catchment area, CGL conducted [ ] funerals in 2007.<sup>7</sup>
18. In the remaining two postcode bricks, in each of which CGL conducted more than [ ] funerals, the parties' combined market share in each is relatively modest.
  - In postcode AB23 8, where CGL conducted [ ] funerals, Burgess conducted [ ], out of a total potential market of 58, which would create a combined market share of [25-35] per cent. There are four third party funeral businesses (with six branches) within five miles of the boundary of this postcode area, and these funeral businesses are all closer to this postcode brick than the target.

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<sup>6</sup> In CGL/United, previous merger cases and in this case, third parties indicated that the proportion of customers who obtained quotes is less than 10 per cent. They were broadly in agreement that the main factors influencing choice of funeral home are reputation and location.

<sup>7</sup> In none of these areas is the number of funerals conducted by CGL statistically significant at the 95 per cent confidence interval.

- In postcode AB21 0 where CGL conducted [ ] funerals, Burgess also conducted [ ] funerals, creating a combined market share of [20-30] per cent.
19. For completeness, if the catchment area were to be centred on the CGL funeral home nearest to the target, then within the 80 per cent catchment area, the parties submit that CGL conducted [15-25] per cent of funerals in 2007 whilst Burgess only conducted [less than one] per cent, a combined share of [15-25] per cent. These figures are explained by CGL's location in a more populated area in Aberdeen, which is closer to several other funeral homes owned by third parties.

### **Conclusion on unilateral effects**

20. The merger nominally fails the market share test given that the combined market share would be [30-40] per cent (equating to [ ] funerals out of a total potential market of 412). However, given that the OFT is examining in this case the acquisition of a single funeral directing business and given also that the combined market share is still relatively modest (at [30-40] per cent, with an increment of [less than 5] per cent) the OFT has considered whether the additional evidence available suggests that the merger creates the realistic prospect of a substantial lessening of competition.
21. The OFT notes that – significantly – neither of the local third party funeral businesses who replied to OFT questions considered Burgess and CGL to be in competition with each other. This is explained by the fact that CGL is located within Aberdeen – the main population centre in the area – along with a number of competitors, while Burgess has a single site in Ellon, some 15 miles north of Aberdeen. The catchment area analysis reflects this geographic differentiation, indicating that the merger would in aggregate result in an increment to Burgess's market share of less than 5 per cent with the main overlap being limited to one postcode area, within which the parties' market share is still relatively modest ([25-35] per cent). This evidence supports the parties' and third parties' view that competition between the parties did not occur to a significant extent before the merger.

22. In addition, the OFT notes there are four alternative funeral directors (six branches) located within five miles of the main postcode area overlap between the two parties.
23. Overall this evidence suggests that sufficient competition and choice will remain such that the merger does not give rise to any competition concerns.

### **THIRD PARTY VIEWS**

24. A limited number of third parties responded to the OFT's questionnaire. Those that did – two out of the four local funeral businesses representing three branches out of the six branches within 13.5 miles of Burgess – did not raise any competition concerns about this transaction. These third parties did not consider that they were competitors with Burgess or that Burgess and CGL's branches were competitors.

### **ASSESSMENT**

25. The parties overlap in the provision of 'at need' funeral services in the Aberdeen area. Following the previous cases in this market, the transaction has been examined at a local level, based on an 80 per cent catchment area centred on the target business.
26. Market shares, calculated as the number of funerals conducted by the parties in the area divided by total number of deaths as recorded by ONS, are estimated at [30-40] per cent with an increment of less than [5] per cent.
27. Although the combined market share for the whole 80 per cent catchment area will be over the 25 per cent 'rule of thumb' used in previous cases (when considering multiple overlaps), the OFT notes that the combined market share remains relatively modest at [30-40] per cent and that there is additional information that the OFT is able to consider given that it is examining the acquisition of a single funeral business.
28. That additional evidence indicates that, on balance, CGL and Burgess were not close competitors to each other pre-merger. In geographic terms, in the majority of the postcode bricks which go to make up the 80 per cent catchment area CGL conducted [ ] fewer funerals in 2007. In the remaining two postcode bricks the combined market shares were [25-35] per cent and [20-30] per cent. In the former postcode brick there are four third party businesses, with six branches, within five miles of the boundary of this postcode brick, and all closer to the area than Burgess' business.

29. This position was fully substantiated by third parties that responded to the OFT's questionnaire, who did not consider that CGL and Burgess were in competition with each other and had no competition concerns about the transaction.
30. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

31. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.