

Completed acquisition by Co-operative Group Limited of Somerfield Limited

ME/3777/08

The OFT's decision on reference under section 33(1) was given on 20 October 2008 (the Decision). The full text of the Decision was published on 17 November 2008.

THE PARTIES

1. **Co-operative Group Limited** (CGL) is the UK's largest co-operative with a diverse range of activities including the operation of banks, funeral services, farming, pharmacies and food retailing. This case involves CGL's food retailing business.
2. At the time of making its submission to the OFT, CGL had 2,228 food retail stores comprising 1,717 convenience stores, 452 mid size stores and 59 one-stop stores.
3. **Somerfield Limited** (Somerfield) is a food retailer with (at the time of making its submission to the OFT) 877 outlets comprising 221 convenience stores, 616 mid size stores and 40 one-stop stores.

TRANSACTION

4. In July 2008 the parties entered into a sale and purchase agreement under which CGL would acquire the entire share capital of Somerfield's holding company, Violet Holdings Limited (the Transaction). Completion of the Transaction was conditional on the OFT not referring the Transaction to the Competition Commission (CC).

JURISDICTION

5. As a result of this transaction CGL and Somerfield ceased to be distinct. The UK turnover of Somerfield exceeded £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) was satisfied.
6. The OFT concluded in its Decision that arrangements were in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

BACKGROUND

7. The Decision concluded that, on the evidence available, 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. Specifically, the OFT found that there was a realistic prospect of a substantial lessening of competition as a result of the proposed merger in the retailing of groceries in 133 local areas.
8. To remedy the loss of competition in these areas the OFT accepted undertakings in lieu from CGL on 15 January 2009, which subsequently came into force when CGL completed its acquisition of Somerfield on 27 February 2009 (the CGL/Somerfield undertakings). Under these undertakings, CGL was required to divest a store (or stores) in each of the 133 local areas (as listed in the annexes to the CGL/Somerfield undertakings).
9. Following the OFT's merger decision on CGL's merger with Lothian Borders & Angus Co-operative Society Limited (LBA),¹ the OFT agreed to supersede the Somerfield undertakings with new undertakings so as to take into account the fact that CGL now owned LBA. This was significant since there were five local areas in the CGL/Somerfield undertakings in which a realistic prospect of a substantial lessening of competition arose by dint of an overlap between Somerfield and LBA stores.² The supersession effectively gave CGL the choice of selling either the former

¹ Completed merger between Co-operative Group Limited and Lothian Borders & Angus Co-operative Society Limited, Case No. ME/3933/08, OFT decision of 6 March 2009.

² See paragraph 166 of the Decision for the general point about Somerfield/regional co-operative overlaps.

Somerfield store or the former LBA store in those five areas (previously CGL could sell only the Somerfield stores in each of these areas). Following public consultation, new undertakings were accepted by the OFT on 14 May 2009 (the new Somerfield undertakings).

10. The OFT has now decided to vary the new Somerfield undertakings (pursuant to section 73(5) of the Act) to remove the obligation to make a divestment in five local areas from the list of Divestment Stores in Annex 2 of the new Somerfield undertakings following a material change of circumstance in each of those areas (discussed below), which effectively removes the competition concern arising from the merger. The five local areas are Bideford, Llangefni, Newcastle Upon Tyne (Benwell), Stoke-on-Trent (Biddulph High Street) and Ipswich Carr Street.

REASONS FOR VARIATIONS

Bideford

11. The OFT found that CGL's acquisition of Somerfield created a realistic prospect of a substantial lessening of competition in the local area of Bideford because of the overlap between a Somerfield store and a regional co-operative store (Plymouth & South West Co-operative Society (PSW)).
12. On 3 September this year, PSW completed the surrender of the lease of its Bideford store to the freeholder and exited the local area. The OFT was satisfied, having considered all of the relevant business documents, that this decision was made independent of PSW's merger with CGL (which was being finalised around the same time) and that PSW would have exited the locality regardless of the CGL merger.³ Furthermore, because PSW had surrendered the lease before CGL completed its acquisition of PSW there was no possibility of CGL influencing the prospect of another grocery retailer operating from the site.
13. The OFT considers PSW's decision to exit the Bideford area (and its subsequent surrender of the lease) to be a material change of

³ See Anticipated acquisition by Co-operative Group Limited of Plymouth & South West Co-operative Society Limited, Case No. ME/4160/09, OFT decision of 4 September 2009.

circumstance such that no competition concern would result in this locality as a result of the merger.

Llangefni

14. At the time of the Decision, two CGL stores (at Llangefni and Menai Bridge) overlapped with the Somerfield store at Llanfairpwllgwyngyll.
15. Subsequent to the Decision, and as a result of the expiry of its lease on the premises, CGL closed its store at Llangefni in November 2008. The OFT understands that Iceland now operates from the site with no chance of CGL once again taking over the site.
16. CGL has entered into a sale and purchase agreement with an OFT-approved buyer for its overlapping store at Menai Bridge. Therefore, CGL will have a presence of only one store in the area (the former Somerfield store at Llanfairpwllgwyngyll) with Morrisons, Tesco, Asda and the new operator of Menai Bridge also present in the Llanfairpwllgwyngyll area.
17. The OFT considers that the opening of the Iceland store on the premises of the former CGL store at Llangefni (combined with the sale of the former CGL Menai Bridge store pursuant to the new Somerfield undertakings) is a material change of circumstance that has removed the harm to competition arising from the merger.

Newcastle Upon Tyne – Benwell

18. In the Decision the OFT found that a realistic prospect of a substantial lessening of competition arose as a result of the merger in Newcastle as a result of Somerfield's store at Benwell overlapping with CGL's Blaydon store.
19. Since the Decision, a competing Morrisons store has entered the local area. As a result of this entry, CGL has provided evidence to the OFT (in form of a new consumer survey) showing that the diversion ratio between the CGL and Somerfield stores (which was only slightly above 14.3 per cent at the time of the OFT's merger investigation) fell to less than five per cent in both directions.

20. The OFT considers that the entry of the competing supermarket in the area is a material change of circumstance which has removed the prospect of harm to competition arising from the merger.

Stoke-on-Trent – Biddulph High Street

21. In Stoke-on-Trent (Biddulph) the OFT considered in the Decision that the merger created a realistic prospect of a substantial lessening of competition on the basis of two Somerfield stores (one at Biddulph High Street and the other at Wharf Road) overlapping with a CGL store in Biddulph.
22. Since the Decision, in March 2009, the lease for Somerfield's Biddulph High Street store was terminated by the landlord and the site was subject to a compulsory purchase order by the local authority. After redevelopment, Sainsbury's is expected to operate from the site. However, the former Somerfield has continued to operate in the area from its Wharf Road site.
23. The OFT considers that the termination of the lease at the Biddulph High Street store to be a material change of circumstance since the Decision.

Ipswich Carr Street

24. The OFT concluded in its decision that CGL's acquisition of Somerfield created a realistic prospect of a substantial lessening of competition in the Ipswich Carr Street area because of the overlap between the (then soon to open) Somerfield store and a regional co-operative store (East of England Co-operative Society).
25. In July 2009, East of England Co-operative Society sold one of its two overlapping stores to Vergo Retail Limited. As a result of this exit CGL has provided evidence to the OFT (in form of a new consumer survey) showing that the diversion ratio between the former Somerfield store and the other East of England store fell to below 14.3 per cent.
26. The OFT considers that the exit of one of the East of England Co-operative Society stores is a material change of circumstance since the Decision which has removed the prospect of harm to competition.

CONSULTATION

27. On 1 December 2009 the OFT published the proposed new undertakings inviting interested parties to give their views on them by 16 December 2009 pursuant to paragraph 2(1) Schedule 10 of the Act.
28. The OFT did not receive any responses to its consultation.

DECISION

29. In light of the material changes of circumstances discussed above, the OFT considers that the new Somerfield undertakings should be varied so as to remove from the list of divestment stores the local areas of Bideford, Newcastle Upon Tyne (Benwell) and Ipswich Carr Street and to remove the obligation to divest the CGL Llangefni store and the obligation to divest the Somerfield High Street store in Biddulph. The OFT has therefore decided to accept the varied undertakings offered by CGL and they come into effect from today.