

Anticipated acquisition by Booker Group plc of Musgrave Retail Partners GB Limited

ME/6541-15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 2 September 2015. Full text of the decision published on 23 September 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Booker Group PLC (**Booker**) has agreed to acquire Musgrave Retail Partners GB Limited (**Musgrave**) (the **Merger**). Booker and Musgrave are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of symbol group services to convenience retailers throughout Great Britain through their Premier, Budgens and Londis brands. These retailers then supply groceries to local customers. The CMA has assessed the impact of the Merger in the supply of symbol group services to convenience retailers at a national and regional level and has also considered the potential impact of the Merger on the retail supply of groceries locally.
4. The CMA has found that in relation to the supply of symbol group services to retailers, the Parties will continue to face competitive pressure from remaining symbol group service providers and alternative wholesale channels. In addition, third parties who responded to the CMA's merger investigation indicated that the Parties are not particularly close competitors and that member stores could switch to alternative sources of wholesale supply.

5. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in the supply of symbol group services to convenience retailers either nationally or on a regional basis.
6. In relation to the potential impact of the Merger on the retail supply of groceries, the CMA found that the Parties would not have the ability or incentive to increase prices, or reduce the quality of the retail offer or facilitate coordination at the retail level as a result of the following factors: (i) the small number of stores where such a strategy may be profitable; (ii) the independence of member stores in setting prices and differentiating their offerings by sourcing from alternative providers; and (iii) the risk that they would switch to another symbol group. On that basis, the CMA did not consider that the Merger will give rise to a realistic prospect of a substantial lessening of competition between member stores at the local retail level.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Booker is a symbol group operator and wholesale supplier of groceries to the catering and retail sector in the UK. Booker provides wholesaling services as part of the symbol group services it provides to approximately 3,082 retail convenience stores operating under its Premier brand and 31 retail discount stores operating under its Family Shopper brand in the UK. All the stores supplied by Booker are independently owned. Booker's turnover in the financial year ending 27 March 2015 was approximately £4.7 billion in the UK.
9. Musgrave is a symbol group operator providing symbol and delivered grocery wholesaling services to approximately 1,659 convenience stores operating under its Londis brand and 159 convenience and mid-sized stores operating under its Budgens brand in Great Britain. Musgrave owns 27 of these Budgens stores but does not own any Londis stores. Musgrave is an indirect subsidiary of Musgrave Group plc. Musgrave's turnover in the financial year ending December 2014 was approximately £833 million in the UK.

Transaction

10. Booker has agreed to acquire all of the issued share capital of Musgrave. As a result, the Merger relates to Great Britain only, as Musgrave Group plc will retain its activities in Northern Ireland.

Jurisdiction

11. As a result of the Merger, the enterprises of Booker and Musgrave will cease to be distinct.
12. The UK turnover of Musgrave exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
13. The CMA 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.
14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 18 July 2015 and the statutory 40 working day deadline for a decision is therefore 14 September 2015.

Counterfactual

15. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the merging parties.¹
16. In this case, Booker submitted that that the appropriate counterfactual against which to analyse the Merger is not the prevailing conditions of competition, due to the increasing financial difficulties faced by Musgrave and the range of actions that it would have taken were it not for the Merger. However, evidence provided by the Parties does not support a different counterfactual. In particular, a Musgrave internal document indicates that there were alternative

¹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

purchasers for Musgrave under consideration.² Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

17. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³
18. As noted by the Competition Commission (**CC**) in *Booker/Makro*,⁴ grocery wholesalers bring suppliers of grocery and related non-grocery products together with retailers, caterers and other traders, who sell these products directly to the end-consumer (retailing).
19. Symbol groups are one of five grocery wholesale options for retailers, which also include cash-and-carry wholesalers, delivered wholesalers, buying groups and specialist wholesalers. In this context, symbol group stores are groups of stores, some of which may operate under a franchise arrangement with a grocery wholesaler, and trade under a common fascia (symbol). On that basis, the Office of Fair Trading (**OFT**) in *Costcutter/P&H*⁵ explained that in addition to the wholesale supply of groceries, the services provided to such symbol stores include branding the shop fascia of their members, access to own brand products, sourcing other products as part of a wider buying group and IT and logistical support.
20. The Parties overlap in the supply of symbol group services to retailers in the UK. As part of these services, the Parties offer delivered grocery wholesale services. Booker also offers delivered and cash and carry wholesale services outside symbol group arrangements.
21. The Parties do not overlap at the retail level. As noted above, Booker does not own or operate any of its own stores. However, the CMA has also considered the impact of the Merger on local retail competition and therefore

² Annex 18.6, Project Raven, Sales Process, Draft, page 7.

³ *Merger Assessment Guidelines*, paragraph 5.2.2.

⁴ Completed acquisition by Booker Group PLC of Makro Holding Limited, CC, 19 April 2013 (**Booker/Makro**).

⁵ Completed acquisition by Costcutter Supermarkets Group of the symbol group business of Palmer & Harvey McLane Limited and creation of a joint buying company, OFT, 15 August 2013 (**Costcutter/P&H**).

the relevant frame of reference for this assessment is discussed in more detail below.

22. In accordance with its usual practice, as a starting point for its assessment, the CMA considered the narrowest product frame of reference in which the Parties have overlapping activities, and then considered whether the product frame of reference could be widened on the basis of primarily demand-side (customer focused) factors.⁶

Product scope

Supply of symbol group services

Segmentation by supply channel

23. Booker explained that the Parties overlap in the supply of symbol group services to customers competing in the convenience retail market.
24. However, Booker submitted that the Parties consider the provision of symbol group services as one part of a broader market for the wholesale supply of groceries to convenience and mid-sized retailers and that this therefore should form the relevant product frame of reference in this case. In particular, Booker argued:
 - (a) Members of a symbol group have the ability not only to switch to another symbol group but also to elect to self-supply and that this is supported by the prevalence of independent retailers. Booker noted that unaffiliated independent stores account for 17.4% of the UK convenience sector by value of sales and 37.6% by number of stores.
 - (b) Symbol group retailers have the freedom to purchase a significant proportion of their goods from other wholesalers and provided estimates indicating that the Parties' customers purchased 65-70% of their goods from the Parties depending on the fascia they were using.
25. In *Booker/Makro*, the CC segmented the market by supply channel concluding that the relevant product market in that case was for cash and carry wholesaling of grocery and non-grocery related products but noting that this could be significantly constrained by other forms of wholesaling in local markets where these were present.

⁶ [Merger Assessment Guidelines](#), section 5.2.

26. In *Costcutter/P&H*, although it did not reach a definitive conclusion, the OFT did not include retailers replicating all the services of a symbol group through self-supply in the product frame of reference for the purposes of its assessment. It noted that customers (member stores) suggested that switching to self-supply was not substitutable with symbol group services as it would reduce their buying power and make their retail offer less competitive. In addition, partial reliance on alternative wholesaling options also varied across customers. Nonetheless, the OFT considered any constraints imposed by self-supply in its competitive assessment.
27. In the present case, customers who responded to the CMA's merger investigation indicated that complete self-supply may not be an attractive alternative to a symbol group offering but that they could partially rely on alternative wholesaling options. In particular:
- (a) A large majority of customers indicated that it would be difficult to run their businesses without the support of a symbol group as, for example, they may not be able to replicate the promotions, branding, IT or buyer power offered by their symbol group, which would ultimately lead to them being less competitive as against other retailers.
 - (b) Customers consistently indicated that if their supplier of symbol group services (ie, Booker or Musgrave) were to increase the prices they charge by 5% on a permanent basis, they would consider switching to another symbol group or reducing their purchases from their symbol group services provider and using alternative wholesale options.
 - (c) Most customers considered that it was generally easy to use alternative wholesale options, such as cash and carry wholesalers, specialist/local suppliers and delivered wholesale providers. However, customers also indicated that there were some constraints to using alternative wholesaling options, such as: (i) the availability of alternative cash and carry wholesalers in their area; (ii) the time cost of having to collect goods as opposed to having them delivered; (iii) the contractual restrictions on the extent to which customers can rely on alternative sources; (iv) the incentives from loyalty rebates; and (v) the easier integration of symbol group provider's stock onto the electronic point of sale (EPOS) system.

Segmentation by customer type

28. The Parties supply symbol group services to a range of customers, including: petrol forecourts, convenience stores, mid-sized stores and discounters. Third party responses indicated that the requirements of Budgens (generally mid-sized stores/supermarkets) and Family Shopper members could differ from

those of convenience stores. Therefore, as indicated above in paragraphs 8 and 9, the Parties only overlap in the provision of symbol store services to convenience stores. However, the CMA has not found it necessary to consider including other types of stores for the purposes of the product frame of reference as no concerns arise on that basis.

Conclusion on supply of symbol group services

29. Based on the evidence outlined above, the CMA has considered the supply of symbol group services to retailers as the relevant frame of reference. However, the CMA has not found it necessary to reach a definitive conclusion as no concerns arise on any plausible basis. In addition, the CMA has considered any constraints posed by alternative wholesale supply options in the competitive assessment where the evidence indicates the existence of such a constraint.

Retail supply of groceries

30. In line with its previous decisions,⁷ the OFT has also considered the possible impact of the Merger on local retail competition given that wholesale services are provided to competing retailers and such symbol group services affect the competitive interaction between suppliers and retailers.
31. Booker submitted that in line with previous decisions by the OFT and CC,⁸ grocery stores should be classified according to size, differentiating between: convenience stores;⁹ mid-sized stores¹⁰ and one stop shops.¹¹ On that basis, Booker explained that the Parties only overlap in the supply of symbol group services to convenience stores.
32. In its assessment of the retail supply of groceries, the CMA has not received any evidence to suggest that the approach adopted in its previous decisional practice – in relation to the classification of stores and the effective competitor set – is inappropriate in this case. Therefore, it has assessed the Merger on the basis of the retail supply of groceries by convenience stores. However, in

⁷ Most recently, *Costcutter/P&H*, supra.

⁸ See *Completed acquisition by the Midcounties Co-operative Group Ltd of Tuffin Investments Ltd*, OFT, 18 October 2012. See also, for example, *Anticipated acquisition by Co-operative Group Limited of Somerfield Limited*, OFT, 20 October 2008, *Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited*, OFT, 23 September 2010, *Anticipated acquisition by One Stop Limited (a wholly owned subsidiary of Tesco plc) of 33 stores owned by Alfred Jones (Warrington) Limited*, OFT, 18 September 2013.

⁹ Convenience stores have a net sales area of less than 280 square metres (sqm). Stores in this category compete with other stores of the same size and constrain stores of a smaller size.

¹⁰ Mid-size stores have a net sales area of 280 sqm to 1,400 sqm. Stores in this category compete with other stores of the same size, are constrained by one-stop stores but do not in turn constrain them.

¹¹ One-stop stores have a net sales area of 1,400 or more. Stores in this category compete with other stores of the same size and constrain stores of a smaller size.

the absence of competition concerns at the retail level on this basis, the CMA has not found it necessary to conclude on the precise scope of the market.

Conclusion on product scope

33. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) Supply of symbol group services to convenience retailers;
 - (b) Retail supply of groceries by convenience stores.
34. However, as noted above, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

Supply of symbol group services

35. Booker submitted that the relevant geographic frame of reference for the supply of symbol group services is national and that there is no clear regional scope which would be appropriate. In particular, Booker noted that:
- (a) The Parties provide symbol group services across Great Britain. Musgrave provides a delivered service from four regional distribution centres. Booker provides a delivered service from four regional distribution centres, two national distribution centres and from 196 of its 201 Makro stores.¹
 - (b) Price, quality, range and service offering is determined nationally.
36. In *Costcutter / P&H*, while the geographic scope was left open, the OFT adopted a cautious approach in analysing the impact of the transaction on the market for symbol services at both a national and a regional level as responses from third parties indicated that the market may be 'regional given some symbol groups have particular strength in some parts of the country due to historical factors'. In particular, one third party informed the OFT that from a logistics perspective, the geographic scope may be divided into six distinct regions (ie, England SE and London, England SW, Yorkshire and England Midlands, North Yorkshire and England North, Wales and Scotland and Northern Ireland).

37. In the present case, submissions from the Parties and third parties who responded to the CMA's merger investigation indicated that there may be some regional elements to the supply of symbol group services. In particular:
- (a) Booker's internal documents suggest that they review their symbol group operations across seven distinct regions in the UK.¹²
 - (b) Musgrave stated that it does not take into account the degree of regional competition when setting wholesale prices. However, Booker noted [X] short term pricing initiatives by many local and regional competitors (through the launch of a short term ad hoc product promotion).¹³
 - (c) Musgrave's promotions are determined in advance and are not in response to competitors' promotions or pricing. However, the promotions that Booker operates can be focused nationally, regionally and/or locally.¹⁴
 - (d) Customers generally viewed the supply/distribution of symbol group services to be UK wide in terms of symbol group service providers available to them but noted that different providers may have pockets of strength or popularity in terms of the prevalence of their brand, though no one specific area was consistently identified.
 - (e) Although competitors indicated that they considered the supply of symbol group services to have a national dimension they noted that some regions may have additional considerations with regards to alternative suppliers (such as the availability of cash and carry stores), which could supply symbol group members.
38. On the basis of the evidence above, the CMA has considered the impact of the Merger in relation to the supply of symbol group services at both a regional and a national level. However, as no concerns arise on any plausible basis, the CMA has not found it necessary to conclude on the geographic scope of the supply of symbol group services.

Retail supply of groceries

39. Booker submitted that, based on the OFT's decisional practice in *Costcutter/P&H*, a local geographic frame of reference covering an area within

¹² Namely: (1) Scotland, (2) North of England, (3) Wales, Wirral and West Central England, (4) Central and East England, (5) South East, (6) South West and (7) London.

¹³ Booker noted that there are [X] SKUs, which are price sensitive in Scotland, where Booker adjusts the wholesale price of these items on a weekly basis.

¹⁴ For example, where there is a price difference at a local level, these localised issues are normally managed through short term local or regional promotions.

10 minutes' drive-time around each relevant site would be appropriate for the purposes of the local assessment.

40. The CMA has not received any evidence to suggest that the local analysis adopted in its previous decisional practice, using a 5 minute drive-time around each convenience store is inappropriate in this case. However, the CMA has not considered it necessary to carry out a detailed local analysis given the findings from its market investigation discussed further below. In addition, in the absence of competition concerns at the retail level on this basis, the CMA has not found it necessary to conclude on the precise scope of the market.

Conclusion on geographic scope

41. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) The supply of symbol group services to convenience retailers regionally and nationally (across the UK).
 - (b) The retail supply of groceries by convenience stores locally.
42. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

43. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The supply of symbol group services to convenience retailers regionally and nationally (across the UK).
 - (b) The retail supply of groceries by convenience stores locally.

Competitive assessment

Horizontal unilateral effects

44. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.¹⁵ Horizontal unilateral effects are

¹⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply of symbol group services and in the retail supply of groceries.

45. The CMA has considered the evidence available on shares of supply, closeness of competition between the Parties and the level of remaining competitive constraints to assess the competition that may be lost as a result of the Merger.

Loss of competition in the supply of symbol group services

Shares of supply

- *Shares of supply by revenue*

46. Booker estimated that the Parties' combined UK share of supply by revenue is approximately [20–30]%, with Premier accounting for approximately [10–20]%, Londis approximately [5–10]% and Budgens approximately [0–5]%.¹⁶ⁱⁱ

- *Shares of supply by number of stores*

47. The Parties have also provided data from the Institute of Grocery Distribution (**IGD**) on the share of supply for symbol group services based on the number of stores that are members of a symbol group in the UK. Based on this data, Premier and Londis would account for [20–30]% of convenience stores in the UK, as can be seen by Table 1 below.

¹⁶ In estimating these market shares the Parties assumed that a typical member will purchase approximately [X] % of their total wholesale purchases from the Parties. This has been confirmed by customer responses to the CMA's market testing. As noted above, Booker owns a very limited number of Family Shopper stores, inclusion of which would not materially affect these shares.

Table 1: Supply of symbol group services in the UK (2014)¹⁷

Symbol Group	Number of Stores	Market Share (by store numbers)
Premier	3,193	[10–20]%
Londis	1,659	[0–10]%
<i>Premier and Londis</i>	4,852	[20–30]%
Best-One / Best-In (Bestway)	[X]	[10–20]%
Spar UK	[X]	[10–20]%
Costcutter	[X]	[10–15]%
Lifestyle Express	[X]	[10–15]%
Nisa	[X]	[0–10]%
Today's	[X]	[0–10]%
Thoroughgoods / Select (Bargain Booze)	[X]	[0–10]%
Key Store / Key Store Express	[X]	[0–10]%
Other	[X]	[0–10]%
Total	[X]	100%

Source: CMA analysis of IGD – Grocery Retail Structure 2014 Report.

48. At a regional level, the CMA does not have precise share data as the Parties were unable to provide postcodes for all their competitors' member stores and the CMA was unable to collect all of these. However, information provided by the Parties on their store concentration indicates that neither of the Parties are particularly concentrated in any particular area or indeed in the same area. Based on Booker's regional categorisation,¹⁸ Booker has a stronger presence in the North West and Central England, while Musgrave has a higher distribution of stores in the South West of England. On the basis of this and the analysis that follows, the CMA therefore considers that there are no specific regional issues over and above the national issues considered below.

Closeness of competition

49. Booker submitted that the Parties do not compete closely. In particular, Booker referred to:
- (a) A low incidence of switching between the Parties between 2013 and 2015, namely:¹⁹

¹⁷ This table does not include the 31 Family Shopper stores, which are typically larger than convenience stores or the 132 Budgens stores (of which 40% are convenience stores). The IGD figures have also been updated to reflect (i) that Mace stores are now part of Costcutter; (ii) the actual Londis and Premier store numbers rather than the IGD estimates; and (iii) that the Merger does not affect Northern Ireland by excluding those which are in Northern Ireland only.

¹⁸ See paragraph 37(a) above.

¹⁹ These figures are based on those members where it was known where they went to.

- (i) [REDACTED]% of members switching to other symbol groups joined Londis from Premier.²⁰
 - (ii) [REDACTED]% of members switching to other symbol groups joined Premier from Londis.
 - (iii) [REDACTED] Budgens members joined Premier.
- (b) The Parties' customers serve a significantly different demographic, where the percentage of customers across the ABC1²¹ grouping served by Budgens, Londis and Premier is over 70%, just over 50% and 36%, respectively.
- (c) The Parties set wholesale pricing with reference to the prices of national supermarket chains as well as a wide variety of cash and carry and delivered wholesalers.
50. The evidence available to the CMA based on these submissions, other evidence from the Parties' internal documents, and the views of third parties below is consistent with the Parties' view that they are not competing closely.
51. The CMA considers that the Parties' switching results may underestimate switching between the Parties as Booker submitted that the Parties are not aware of why a significant proportion of members left or, if they switched, where they switched to. However, the information provided by the Parties indicates that Spar or Nisa may be closer competitors to Londis than Premier is. Similarly, it suggests that Premier's members see Nisa, Costcutter and Spar as a better alternative (relative to Londis). The CMA's analysis of the Parties' switching rates also indicates that there is no significant difference in switching by members across the different regions.
52. The Parties' internal documents support Booker's submissions that they monitor a range of competitors and do not monitor each other particularly closely. The Parties monitor a range of other symbol groups, including Nisa, Spar, Today's, Best-one, Costcutter, Lifestyle Express and Mace. Musgrave, in particular, reviewed Costcutter, Nisa and Spar in terms of price and quality of offering when exploring its turnaround strategy.²² Both Booker and

²⁰ Based on CMA calculations.

²¹ A,B and C1 are a socio-economic classifications produced by the ONS (UK Office for National Statistics) by applying an algorithm developed by members of the MRS Census & Geodemographics Group. Broadly, AB refers to social groups with higher & intermediate managerial, administrative, professional occupations and C1 to social groups with supervisory, clerical & junior managerial, administrative, professional occupations.

²² [REDACTED]

Musgrave's documents also indicate that they monitor their competitiveness against other wholesale suppliers across a range of grocery categories.

53. Competitors who responded to the CMA's merger investigation indicated that the Parties were closely competing in the supply of symbol group services as they had similar offerings. However, customer comments consistently indicated that the Parties were not particularly close competitors as the Parties' offerings were differentiated across a range of factors, including product range and contractual terms of membership.

Competitive constraints

54. Booker submitted that the Parties would face sufficient competitive constraints post-Merger. In particular, Booker noted that:
- (a) The Parties' combined market share is low and that there are many competitors that would still provide symbol group services post-Merger.
 - (b) There are no material barriers to prevent their members from switching symbol group service providers as a significant proportion of the Parties' customers are either out of contract or can switch after a very short notice period.²³
 - (c) Premier and Lonsis symbol group members are able to use a range of alternative suppliers for approximately [X]% of their total annual purchases.
 - (d) Survey evidence²⁴ indicates that members of symbol groups use alternative wholesale suppliers for a range of products.
 - (e) Evidence on the Parties' customers using alternative wholesalers indicated that customers use a range of wholesale supply options and that Lonsis' customers who use alternatives do not mainly rely on Booker. In this regard, Booker noted that only [X]% of Lonsis' members used Booker for more than 20% of their total wholesale requirements in the last financial year.
55. Evidence from third parties who responded to the CMA's merger investigation confirmed Booker's submissions and the CMA considers that this indicates

²³ More specifically, the Parties submitted that [X]% of Premier customers are out of contract, [X]% of Lonsis customers could switch by giving 90 days' notice and [X]% of Budgens stores are out of contract.

²⁴ The *Booker/Makro* survey (2012) and Him! Survey of retailers using cash-and-carry stores (2012).

that there will be sufficient competitive constraints remaining on the merged entity regionally and nationally. In particular:

- (a) Most symbol group members who responded considered that it was relatively easy to switch symbol group. Some members also indicated that they had been approached by other symbol group operators in the past and had considered switching providers.
- (b) Most customers who responded confirmed the position reflected by the shares of supply above and noted that there were many symbol groups that competed with the Parties to a similar extent, including Nisa, Spar, Bestway and Today's.
- (c) Competitor responses also indicated that the Parties would face sufficient regional and national competition post-Merger. Competitors explained that Booker, Spar, Costcutter, Londis and Nisa are national symbol groups. While some competitors noted that other brands may, to varying degrees, have more regional or limited scope, the CMA considers that based on the Parties' relative regional positions (discussed above in paragraph 48), overall there will be sufficient competition remaining.
- (d) Third-parties also corroborated the Parties' submission that retailers use a range of alternative wholesale suppliers, such as cash and carry stores and delivered wholesalers for a significant proportion of their purchases (approximately 30%), although some constraints in using these alternatives do exist (as noted above in paragraph 27).

Conclusion on loss of competition in the supply of symbol group services

56. As set out above, the CMA considers that in light of the Parties' relatively low shares of supply, the number and strength of competitors post-Merger and relative lack of closeness of competition between the Parties, the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of symbol group services.

Loss of competition between member stores in the retail supply of groceries

57. As in *Costcutter/P&H*, the CMA considered whether the Merger could reduce local grocery retail competition between members of the Parties' symbol groups in the areas where the Parties' member stores overlap, despite these members' stores neither being owned nor operated by the Parties. The CMA notes that this could happen if the Parties increased wholesale prices (which would be passed on at the retail level) or reduced the quality of the members'

retail offer at the local level. The CMA therefore considered the degree of control conferred on the Parties' symbol groups through the contractual arrangements with their members and the extent to which the symbol groups may facilitate coordination at the retail level through, for example, recommended retail prices.²⁵

58. Booker submitted that:
- (a) Booker and Musgrave's member stores are independent and have the ability to source from outside the symbol group services provider.
 - (b) As indicated above, wholesale pricing is largely set nationally and there would be little incentive or practical ability for the combined entity to engage in bespoke pricing locally in order to increase or coordinate retail pricing.
 - (c) Customer's member stores face significant competition in all the local areas in which they overlap. Booker conducted a fascia assessment, which indicated there were 124 areas (Musgrave centred) and 135 areas (Booker centred) where there was a reduction from 4 to 3 or worse based on a 10 minute drive-time.
59. Evidence from customers who responded to the CMA's merger investigation on their independence and purchasing habits and the Parties' fascia analysis indicates that they consider they are sufficiently independent, have sufficient alternative sources of supply and face enough local competition to prevent a substantial lessening of competition at the retail level. The CMA considers on the basis of the evidence before it that the Parties will not have the ability or incentive to deviate from national pricing and offering and engage in bespoke pricing/offering strategies. In particular:
- (a) Although some of the Parties' contractual arrangements impose quite restrictive minimum purchase obligations, overall purchasing loyalty (as discussed above) indicates that the majority of the Parties' customers could source a significant amount of their purchases from alternative suppliers.
 - (b) Customers corroborated the Parties' submission that member stores are independent and have viable alternative sources of supply. For example, most customers noted that they would not automatically accept an increase to the RRP and would price according to their local competitive

²⁵ The symbol group would effectively allow members to coordinate at the wholesale level with increased wholesale prices with the increased input prices reimbursed from suppliers to retailers (through, for example, rebates).

conditions. Customers' would also not automatically pass through a 5% wholesale price increase but may, as discussed above, switch to alternative wholesale supply options.

- (c) The CMA notes that the geographic frame of reference used by Booker for its fascia analysis is wider and therefore less conservative than the 5 minute drive-time which has been used in previous decisional practice. This may overstate the competitive constraint that will be faced by member stores post-Merger. On the other hand, the analysis does not take into account all independent retailers, which may understate the competitive constraint that will be faced by the Parties' member stores post-Merger. On balance, and also in the context of the evidence outlined above, the CMA considers that the evidence provided by Booker indicates that the Parties will continue to face sufficient competition across a significant majority of their stores, post-Merger. Only 7% and 4% of the total stores supplied by Musgrave and Booker respectively would be in local areas subject to a reduction of 4 to 3 or worse. Indeed, if a broader competitor set is used,²⁶ then less than 1% of member stores would be in areas with a fascia reduction of 4 to 3 or worse.

Conclusion on loss of competition between member stores in the retail supply of groceries

60. In light of the above, the CMA considers that the Parties would not have the ability or incentive to increase retail prices, reduce the quality of members' retail offer at the local level, or facilitate coordination at the retail level. On this basis, the CMA does not consider that the Merger gives rise to a realistic prospect of a substantial lessening of competition between member stores at the local retail level.

Conclusion on horizontal unilateral effects

61. As set out above, the CMA considers that that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of symbol group services and the retail supply of groceries.

Barriers to entry and expansion

62. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial

²⁶ To include Limited Assorted Discounters, Iceland, petrol forecourts and Booker-verified independents.

lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁷

63. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

64. The CMA contacted customers and competitors of the Parties. Most customers who responded to the CMA's merger investigation had no concerns regarding the Merger. Many believed it would result in lower wholesale prices from the increased buyer power of the group. Three of the four competitors who responded noted that the Merger would remove a major competitor from the market. It was also noted that the Merger would add significant buyer power to Booker and make it harder to recruit members to their symbol group.
65. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

66. Consequently, the CMA 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.
67. The Merger will therefore **not be referred** under section 33(1) of the Act.

Jonathan Parker
Director, Mergers
Competition and Markets Authority
2 September 2015

ⁱ **End note:** In paragraph 35(a) '201 Makro stores' should be replaced by '201 cash-and-carry stores'.

ⁱⁱ **End note:** In footnote 16, 'owns' should be replaced by 'provides symbol group services to'.

²⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.