



PLANNING BULLETIN

Assessment of the Competition Commission's provisional remedies on the Competitiveness of the Grocery Retailing

The Competition Commission has published the long-awaited provisional remedies to its competition findings in UK Grocery retailing.

These include a recommendation for the inclusion of a 'competition test' in planning decisions on large grocery stores and measures to prevent exclusivity arrangements and restrictive covenants being used by retailers to restrict entry by competitors; the creation of a new strengthened and extended Groceries Supply Code of Practice (GSCOP), and a recommendation to establish an independent ombudsman to oversee and enforce the Code.

The Commission has not made any recommendations for changes to the "need" test or "town centre first" policy and has left the PPS6 to its forthcoming public consultation. In addition to this, the Commission has provisionally decided not to introduce any remedies on landbanks, leases and sub-leases, replacement stores and multiple stores.

The Commission considered that a competition test is necessary to prevent the emergence or strengthening of concentrated positions held by grocery retailers in local markets. The majority of retailers welcomed this test with the exception of Tesco who commented that this test would be anti-competitive and lead to less investment and fewer stores.

The competition assessment would be implemented within the planning system at the development control stage and the Office of Fair Trading (OFT) would act as a statutory consultee to the Local Planning Authority in considering major applications on grocery stores. The test has the following features:

- The competition assessment should apply to all grocery store developments (new stores, extensions/mezzanines, store relocations) above 1,000sq.m. in CC's market definition.
 - The local market should be defined by drive-time isochrones¹ centred on the site. The drive-times should be consistent with those used in the CC's market definition and should be based on a standard commercially available computer package.
 - For a new development, the competition assessment should take account of a combination of fascia and an assessment based on market shares (probably of grocery floor space) within the isochrone. The proposed criteria are listed as follow:
 - Entry by a fascia not already present in the isochrone would always be acceptable.
- * If there are four or more different fascias in the isochrone (including the proposed development) the development would be considered acceptable under the competition assessment.

¹ 10 mins drive time for urban area and 15 mins drive time for rural area.

- * If the grocery retailer proposed for the development has a share of net grocery sales floorspace (including the proposed development) of less than 60 per cent, this would be considered acceptable under the competition assessment.
- * If the proposed development did not satisfy the three criteria above, the OFT would advise the LPA that the development was not acceptable on competition grounds.

In addition to the above, different fascias which are owned by the same ultimate parent company would be included as the same fascia. The results of the competition assessment would be valid for 5 years in line with the validity period of a planning permission.

The next steps

Parties are now invited to write to the Commission and express their comments by 7 March 2008. Responses will be taken into account in preparing the final report which will be published by 8 May 2008.

Commentary

The competition assessment would be an added complication in obtaining permission for a new food store or a store extension.

With the suggested proposal of including the OFT as a statutory consultee to the Local Planning Authority, it could lengthen the planning application process for large grocery store developments especially if the local communities challenge the OFT assessment.

It is only likely to prevent development in a relatively small number of cases where the proposed retailer already has a dominant position.

It does not sit very comfortably with established planning guidance and practice which generally does not take into account the identity of the occupier.

It appears Councils may still be able to grant permission, even if the development fails the competition test if the planning considerations carry more weight although this is likely to be rare.

The proposed competition test has been carefully designed but is yet to prove its practicality. The definition of drive time isochrone and rural/urban area is rigid and may neglect other local factors which reflect the real marketshare of the local market.

Once the proposed remedies are implemented, they could lead to an increase of small foodstore applications by grocery retailers in order not to exceed the threshold, to avoid being assessed and to maintain a market share in the local market.

The draft revision of PPS6 will be published very shortly for consultation. A spokesman for Communities and Local Government indicated that the proposed new impact test (to supersede the current need and retail impact tests) will be tougher, better protect town centres and lead to more consumer choice and increased competition in the high street. It is yet to comment whether the proposed competition assessment would fit well with the new impact test.

For further information, please contact:

Malcolm Honour BLE, MRICS, MRTPI - Director

Tel: 020 7832 1468

Email: malcolm.honour@cgms.co.uk

John Stockdale BSc (Hons) MRICS - Finance Director

Tel: 020 7832 1461

Email: john.stockdale@cgms.co.uk

Peggy Hui BA (Hons), MSc, MFIA, MRTPI, AIEEMA - Associate Director

Tel: 020 7832 0265

Email: peggy.hui@cgms.co.uk

**LONDON
OFFICE**

Morley House
26 Holborn Viaduct
London
EC1A 2AT

Tel: 020 7583 6767
Fax: 020 7583 2231

**CHELTENHAM
OFFICE**

Burlington House
Lypiatt Road
Cheltenham
GL50 2SY

Tel: 01242 259290
Fax: 01242 259299

**NEWARK
OFFICE**

Newark Beacon
Beacon Hill Office Park
Cafferata Way, Newark
Notts NG24 2TN

Tel : 01636 653 060
Fax : 01636 653 065

**KETTERING
OFFICE**

Ragsdale
1 Church Lane
Great Cransley
Northants NN14 1PX

Tel: 01536 790447
Fax: 01536 799378

**BIRMINGHAM
OFFICE**

43 Temple Row
Birmingham
B2 5LS

Tel: 0121 237 6097
Fax: 0121 237 6100