

**IN THE MATTER OF A REFERENCE TO THE COMPETITION COMMISSION
DATED 19 APRIL 2007 CONCERNING THE COMPLETED ACQUISITION BY
TESCO PLC OF THE CO-OPERATIVE GROUP LIMITED'S STORE AT
UXBRIDGE ROAD, SLOUGH**

**Notice given under paragraph 2(4) Schedule 10 Enterprise Act 2002 of
proposed modifications to the draft Order published on 19 December 2008**

Introduction

1. A draft Order to be made by the Competition Commission ('CC') pursuant to section 84 of the Enterprise Act 2002 ('the Proposed Order') was published on 19 December 2008.
2. The period of consultation on the Proposed Order ended on 20 January 2009.
3. Having considered representations made during the period of consultation, the CC now proposes to make modifications to the Proposed Order ('the Proposed Modifications').
4. Pursuant to paragraph 2(4) Schedule 10 Enterprise Act 2002 the CC gives notice of the Proposed Modifications and seeks representations upon them.
5. The Proposed Modifications to the Proposed Order are set out below, together with an explanation of the reasons for making them.
6. A copy of the modified Proposed Order is attached.

Proposed Modifications

Order

Interpretation

7. The definition of 'Legally Binding Commitment' has been expanded to include reference to the only two elements of conditionality that may be contained in a relevant agreement: namely (i) that the party that is counterparty to the Approved Tenant is selected as a prospective Redevelopment Option Approved Purchaser or a Fallback Option Approved Purchaser as the case may be; and (ii) that a planning permission appropriate to that Approved Tenant is obtained.
8. This change has been made as a consequence of the deletion of paragraph 11 of Annex 1 (Divestiture Trustee): see further below. It introduces no new obligation into the Order.

Paragraph 3.7

9. The obligations on Tesco have been clarified to confirm that they extend to providing assistance to any prospective bidder for either the Redevelopment Option or the Fallback Option. These obligations were already implicit in paragraph 3.7, but the Order now specifically requires Tesco to assist prospective bidders to obtain

information about the Site, in particular by disclosing all material information and co-operating over access for the purpose of inspections and surveys.

Paragraph 3.9

10. For practical reasons, Tesco employees working in a store were formerly exempted from the obligation in paragraph 3.9 relating to the making of objections (other than in a personal capacity) to planning permission for the Site. That exemption has now been modified so as to except employees at the Tesco Brunel Way, Slough store. Tesco is therefore required to procure to the extent that it is able that its employees employed at its store at Brunel Way, Slough do not make or encourage any objection to any application for or variation to planning permission for the Site.

Paragraph 3.13.1 and paragraph 3.13.2

11. If a Redevelopment Option Approved Purchaser fails to secure Redevelopment Planning Permission, it will be required to build out the Original Proposed Development. The amendments in paragraphs 3.13.1 and 3.13.2 require Tesco, in those circumstances, to assign the benefit of any rights, copyrights or warranties relating to the Original Proposed Development. In some cases these will be critical to delivery of the Original Proposed Development, eg the copyright in the architect's plans.

Paragraph 7.2

12. This paragraph has been amended to align with the change made to paragraph 3.9.

Annex 1: Divestiture Trustee Mandate

Paragraph 4

13. The period for payment of the overage by the Redevelopment Option Approved Purchaser to Tesco has been extended from ten to 20 days. The CC considers that the originally proposed timescale was too short for a Redevelopment Option Approved Purchaser to arrange for the transfer of a substantial amount of money given that the timing of the grant of Redevelopment Planning Permission is likely to be uncertain and that it will probably only be possible to start making arrangements for the transfer of funds once formal notification is received from the planning authority.

Paragraph 6

14. This paragraph has been amended to clarify that the Divestiture Trustee will present *all* bids to the CC. This is consistent with the CC's approach that the Divestiture Trustee's role will be to market the Site but not to take any decision in relation to the evaluation process.

Paragraph 11 (old)

15. This paragraph largely replicated the definitions in paragraph 1 of the Order and arguably was capable of being read (though this was not the CC's intention) as suggesting that the Divestiture Trustee might have a role to play in the evaluation of bids. As already explained, the CC's approach is that the Divestiture Trustee will

market the Site but will not take any decision in relation to the evaluation process, which is for the CC alone.

16. Paragraph 11 has therefore been deleted. However, this deletion has required a consequent expansion to the definition of 'Legally Binding Commitment' (otherwise contained in the old paragraph 11) to explain the limits of any permissible conditionality contained within the Legally Binding Commitment.

Annex 2: Redevelopment Option Approved Purchaser Undertakings

Paragraph 3.4

17. The CC proposes two modifications to this paragraph. The first modification acknowledges the possibility that Redevelopment Planning Permission may be granted before a party is selected as Redevelopment Option Approved Purchaser (that is, where a party has before the coming into force of the Proposed Order made an application for Redevelopment Planning Permission to the relevant local authority). In these circumstances, it would be unfair to expect the Redevelopment Option Approved Purchaser to construct and commence operating a grocery retail store from the Site within 12 months of the granting of Redevelopment Planning Permission since a material part of that time period may have elapsed before the party has been selected as Redevelopment Option Approved Purchaser and has therefore been able to undertake any practical steps to implement the Redevelopment Planning Permission. To take account of this possibility, the CC proposes that the 12-month period for constructing and commencing the operation of a grocery retail store from the Site should run from the later of the grant of Redevelopment Planning Permission or Effective Disposal.
18. The second modification acknowledges that, because of circumstances outside the control of the Redevelopment Option Approved Purchaser, it may be impossible for it to construct and commence operating a grocery retail store from the Site with the 12-month period provided in the Proposed Order. The Proposed Order already recognized this possibility where there was a legal challenge to the Redevelopment Planning Permission. The CC now proposes that it may in its absolute discretion extend the period of 12 months for any other reason as well.

Paragraph 3.7

19. A similar modification, permitting the CC at its absolute discretion to extend the relevant time period, has been introduced to cover the situation where a Redevelopment Option Approved Purchaser either fails completely to secure Redevelopment Planning Permission or fails to secure it within the time period allowed by the CC and is consequently required to complete the Original Proposed Development.

Paragraph 3.8

20. This paragraph has been modified to clarify the options open to a Redevelopment Option Approved Purchaser in relation to the operation of a grocery retail store from the Site in circumstances where Redevelopment Planning Permission is not secured and the Redevelopment Option Approved Purchaser is required to complete construction of the Original Proposed Development.
21. As modified, paragraph 3.8 makes clear that in those circumstances a Redevelopment Option Approved Purchaser, if it is itself a grocery retailer, may choose to operate the store itself or find another grocery retailer to operate the store. Likewise,

where the Redevelopment Option Approved Purchaser is not itself a grocery retailer, if it is required to complete the Original Proposed Development it may nominate a different grocery retailer to operate the store from that envisaged if Redevelopment Planning Permission had been obtained. In all cases, the Redevelopment Option Approved Purchaser will need to secure the prior approval of the CC by providing relevant documentation.

22. Where an Approved Tenant is otherwise unable to operate a grocery retail store from the Site, for example where it becomes insolvent, the Redevelopment Option Approved Purchaser may similarly nominate an alternative Approved Tenant, subject always to securing the prior approval of the CC.

Annex 6: The Competition Commission's Approach to the Evaluation of Bids

23. This annex has been subject to some re-ordering and amendment.
24. The purpose of the amendments is partly to clarify the CC's approach and partly to ensure that prospective bidders do not undertake the costs of preparing a fully worked-up bid when there are fundamental objections to their suitability.
25. Annex 6 now confirms that the CC's assessment of suitability will be undertaken as a first step in the evaluation process. Any bidder that passes the threshold of suitability at this stage may proceed to work up a detailed bid in the knowledge that it will not subsequently be rejected from consideration on the grounds that, for example, it gives rise to competition concerns. This first stage assessment of suitability thus involves a binary pass/fail test.
26. At the second stage of the evaluation process, the CC will consider the extent to which the suitable bids represent an effective remedy to the significant lessening of competition it has identified. The CC may also consider the relative ability of bidders to compete successfully from the site, acknowledging that while all bidders who reach this stage would in principle be acceptable, some may provide a more effective remedy to the SLC.
27. Having identified which suitable bid (or bids) would most effectively remedy the significant lessening of competition, the CC will then consider whether it would be "wholly unreasonable" to require Tesco to accept it (or them).

Notice of Proposed Modifications

28. The CC now gives notice of the Proposed Modifications and invites written representations on them from any person or persons who wish to comment. Representations should reach the CC by 10 March 2009 and should be addressed to:

T J Oyler Esq
Inquiry Manager, Tesco/Slough merger inquiry
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

or email: tim.oyler@cc.gsi.gov.uk.

29. The CC will have regard to any representations made in response to this Notice and may make further modifications to the Proposed Order as a result. In the absence of

any written representations, or in the event that the CC decides on consideration of representations made not to further amend the Proposed Order, the CC proposes to issue an Order in its now modified form pursuant to section 84 of the Act. If the CC considers that any representation necessitates further changes to the Proposed Order the CC will give notice of the proposed modifications.

30. The Order may be varied or revoked by another Order under section 84 ((3) and (4)) of the Act.
31. This Notice and the modified Proposed Order will be published on the CC website.

Peter Freeman
Group Chairman
[date]

**IN THE MATTER OF A REFERENCE TO THE COMPETITION COMMISSION
DATED 19 APRIL 2007 CONCERNING THE COMPLETED ACQUISITION BY
TESCO PLC OF THE CO-OPERATIVE GROUP LIMITED'S STORE AT
UXBRIDGE ROAD, SLOUGH**

**Order made by the Competition Commission in accordance with section 84 of
the Enterprise Act 2002**

Recitals

On 19 April 2007, the Office of Fair Trading referred the completed acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road in Slough by Tesco plc to the Competition Commission (CC) for investigation and report under section 22 of the Act;

The CC published a report entitled *Tesco plc and the Co-operative Group (CWS) Limited A report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough, by Tesco plc* on 28 November 2007;

The Report concluded that:

- (a) the acquisition of the CGL store by Tesco constitutes a relevant merger situation;
- (b) the creation of that situation has resulted, and may be expected to result, in an SLC in the relevant market;
- (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
- (d) a divestiture remedy should be implemented in the terms described at paragraph 8.114 of the Report.

Accordingly, the CC resolved that an order should be made to give effect to the remedies identified by the CC at paragraph 8.114 of the Report; and

Now the CC makes the following Order under section 84 of the Enterprise Act 2002 for the purpose of remedying the SLC and the adverse effects resulting from it.

1. Interpretation

1.1 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

1.2 For the purposes of this Order the following terms have the meanings ascribed to them below:

'Act' means the Enterprise Act 2002;

'Agreement' means such contract, transfer, deed, licence, lease or other form of agreement as the context may require;

'Agreement for Lease' means an Agreement for the grant of the Lease substantially reflecting the indicative terms set out in paragraph 1 of Annex 5;

'Approved Agreement' means an Agreement or Agreements approved by the CC;

'Approved Tenant' means a grocery retailer whom the CC is satisfied (a) is independent of, and unconnected to, the Tesco Group; (b) has the incentive, the financial resources and the expertise to operate a grocery retail store from the Site that would compete effectively in Slough and in particular with the Tesco store at Brunel Way, Slough, so as to remedy the SLC or to remedy the SLC as far as possible; (c) is free from or capable of addressing any competition concerns arising as a result of its operation of a grocery retail store from the Site; and (d) will obtain all necessary approvals and consents (which, for the avoidance of doubt, excludes any necessary planning permission);

'Basic Amount' has the meaning ascribed to it in paragraph 4 of the Divestiture Trustee Mandate;

'CGL' means Co-operative Group (CWS) Limited;

'CGL Store' means the grocery retail store previously operated by CGL at 78 Uxbridge Road, Slough;

'Commencement Date' means the date on which this Order is made by the CC;

'Compliance Statement' means any statement made pursuant to paragraph 13.1;

'Construction Programme' means the programme for the building up to Practical Completion of the Unit and any units for non-grocery retail use on the Site benefiting from the Planning Permission;

'Divestiture Trustee' means any person appointed in accordance with paragraph 4;

'Divestiture Trustee Mandate' means the mandate given by Tesco to the Divestiture Trustee pursuant to this Order and incorporating the provisions set out in Annex 1 to this Order;

'Divestiture Trustee Obligation' means the obligation on the Divestiture Trustee to comply with the Divestiture Trustee Mandate;

'Divestiture Trustee Report' means the periodic report from the Divestiture Trustee to the CC supplied in accordance with paragraph [9] of the Divestiture Trustee Mandate;

‘Effective Disposal’ means either (a) in the case of the Redevelopment Option, completion of the contract for the sale of the freehold of the Site (together with the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity) to the Redevelopment Option Approved Purchaser; or (b) in the case of the Fallback Option, the grant of the Lease to the Approved Tenant and the completion of the contract for the sale of the freehold of the Site (together with the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity) to the Fallback Option Approved Purchaser;

‘Fallback Option’ means the execution of an Agreement for Lease followed by the grant by Tesco to an Approved Tenant of a Lease of a Unit benefiting from Planning Permission followed by a sale of the freehold of the Site (together with the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity) under an Approved Agreement to a Fallback Option Approved Purchaser;

‘Fallback Option Approved Purchaser’ means a person which the CC is satisfied (a) is independent of, and unconnected to, the Tesco Group; (b) has the incentive, the financial resources and the ability to own and manage the Unit that will be constructed on the Site under the Fallback Option; (c) is free from or capable of addressing any competition concerns arising as a result of its operation of a grocery retail store from the Site; and (d) will obtain all necessary approvals and consents (which, for the avoidance of doubt, excludes any necessary planning permission);

‘Gross Internal Area’ means the gross internal area measured in accordance with the Royal Institution of Chartered Surveyors Code of Measuring Practice (6th edition);

‘Indemnified Person’ means the Divestiture Trustee and the Monitoring Trustee and their employees and agents and advisers from time to time;

‘Lease’ means the grant by Tesco of a lease of a Unit on terms to be approved by the CC substantially reflecting the indicative draft heads of terms set out in paragraph 2 of Annex 5 of this Order;

‘Legally Binding Commitment’ means an obligation on the part of an Approved Tenant, contained within an enforceable contract between that Approved Tenant and either the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser, to operate a grocery retail store on the Site, that is subject only to (a) the approval of the CC to both the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser, as the case may be, and the Approved Tenant (who will be approved by the CC prior to exchange of contracts between Tesco and the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser); and (b) in the case of the Redevelopment Option, the securing of a planning permission appropriate to that Approved Tenant;

‘Monitoring Trustee’ means the person appointed in accordance with the provisions of paragraph 8 and any successor thereto;

‘Monitoring Trustee Mandate’ means the mandate given by Tesco to the Monitoring Trustee pursuant to this Order and incorporating the provisions set out in Annex 7 to this Order;

‘Monitoring Trustee Obligation’ means the obligation on the Monitoring Trustee to comply with the Monitoring Trustee Mandate;

'Monitoring Trustee Report' means the periodic report from the Monitoring Trustee supplied in accordance with paragraph 12 of the Monitoring Trustee Mandate;

'New Clapton Stadium Company Limited' means New Clapton Stadium Company Limited, a limited company registered in England and Wales with company number 827876 and with its registered office at Tesco House, Delamare Road, Cheshunt, Hertfordshire, EN8 9SL, UK;

'Notice' means a written communication from Tesco to the Relevant Contact at the CC or from the CC to the Relevant Contact at Tesco, as appropriate, sent by post, fax, personal delivery or, with the prior written agreement between Tesco and the CC, email and Notify, Notified and Notification shall be construed accordingly;

'OFT' means the Office of Fair Trading;

'Order' means this Order made by the CC under section 84 of the Act;

'Original Proposed Development' means the development of the Site in accordance with the Planning Permission and any associated agreement required under section 106 Town and Country Planning Act 1990 (as amended);

'Overage' has the meaning ascribed to it in paragraph 4 of the Divestiture Trustee Mandate;

'Planning Permission' means the planning consent relating to the development of the Site that Tesco has obtained pursuant to its application made on 28 May 2004 (with reference number P/00362/056) *Development of four retail units, Unit 3 for food* and the planning consents, once obtained and free from legal challenge, relating to the development of the Site which Tesco has applied for and will continue to pursue made on 12 February 2007 (with reference number P/00362/060) *Combination of Units 1&2 for food* and 7 November 2007 (with reference number P/00362/064) *Combination of Units 3&4 for food* including any variations thereof, provided that any such variation continues to provide for the Unit;

'Practical Completion' means the practical completion of building works (excluding any occupier's fitting out works) in accordance with a building contract let for those works and certified as Practical Completion by the architect or employer's agent having that responsibility;

'Redevelopment Option' means the sale of the freehold of the Site (together with the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity) its subsequent development and the operation of a grocery retail store in accordance with this Order;

'Redevelopment Option Approved Purchaser' means either

- (i) a grocery retailer whom the CC is satisfied (a) is independent of, and unconnected to, the Tesco Group; (b) has the incentive, the financial resources and the expertise to operate a grocery retail store from the Site that would compete effectively in Slough and in particular with the Tesco store at Brunel Way, Slough, so as to remedy the SLC or to remedy the SLC as far as possible; (c) is free from or capable of addressing any competition concerns arising as a result of its operation of a grocery retail store from the Site; (d) will obtain all necessary approvals and consents (which, for the avoidance of doubt, excludes any necessary planning permission); and (e) gives the undertakings set out in

Annex 2 to this Order or such other undertakings as the CC shall in its absolute discretion accept; or

- (ii) a purchaser who is not a grocery retailer but whom the CC is satisfied (a) is independent of, and unconnected to, the Tesco Group; (b) has a Legally Binding Commitment from one or more Approved Tenants to operate a grocery retail store from the Site; and (c) who gives the undertakings set out in Annex 2 to this Order or such other undertakings as the CC shall in its absolute discretion accept;

'Redevelopment Option Approved Purchaser Undertakings' means the undertakings given by the Redevelopment Option Approved Purchaser in the form set out in Annex 2 of this Order or such other undertakings as the CC accepts;

'Redevelopment Planning Permission' means planning consent for the construction of a grocery retail store on the Site which the CC is satisfied would compete effectively in Slough and in particular with the Tesco Store at Brunel Way so as to remedy the SLC or to remedy the SLC as far as possible;

'Redevelopment Planning Permission Period' means an initial period of 12 months from the date of Effective Disposal to the Redevelopment Option Approved Purchaser, extendable to 18 months provided that the Redevelopment Option Approved Purchaser can demonstrate positive progress in obtaining Redevelopment Planning Permission to the CC's reasonable satisfaction with any further extension beyond 18 months from the date of Effective Disposal being for such further period as the CC shall in its absolute discretion determine;

'Relevant Contact' means, in the case of the CC the Secretary of the Remedies Standing Group or such other person or persons as may be Notified to Tesco by the CC from time to time, and in the case of Tesco, Lucy Neville-Rolfe or such other person or persons as may be Notified to the CC by Tesco from time to time;

'Report' means the report published by the CC entitled *Tesco plc and the Co-operative Group (CWS) Limited A report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough, by Tesco plc* on 28 November 2007;

'Site' means the entire site at 78 Uxbridge Road, Slough, the title to which is registered at HM Land Registry under title number BK138832 together with the land demised by a lease dated 19 January 1967 between Courage Barclay & Simonds Limited and New Clapton Stadium Company Limited;

'SLC' means the substantial lessening of competition identified in the Report;

'Subsidiary' has the meaning given to that term in section 129(1) of the Act;

'Tesco' means Tesco plc, a public limited company registered in England and Wales with company number 445790 and with its registered office at Tesco House, Delamare Road, Cheshunt, Hertfordshire, EN8 9SL, UK;

'Tesco Group' means Tesco, its Subsidiaries from time to time, any company of which Tesco becomes a Subsidiary, and includes any person that becomes part of the Tesco Group on or after the Commencement Date, whether or not it was in existence at the Commencement Date;

'Tesco Indemnity' means an indemnity from Tesco in favour of the Redevelopment Option Approved Purchaser or Fallback Option Approved Purchaser in the terms of the draft at Annex 4 in relation to activities undertaken by the New Clapton Stadium Company and/or any of its subsidiaries prior to Effective Disposal;

'Unit' means a unit or combination of adjacent units on the Site dedicated for grocery retail use forming part of the Original Proposed Development and with a Gross Internal Area of no less than 3,600 square metres; and

'Working Day' means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971;

unless the context requires otherwise, the singular shall include the plural and vice versa.

2. Commencement

2.1 The obligations in this Order shall come into effect on the Commencement Date.

3. Tesco's obligations

3.1 Tesco shall dispose of the Site together with the entire issued share capital of New Clapton Stadium Company Limited and give the Tesco Indemnity in accordance with the provisions of this Order.

3.2 Tesco shall procure that its Subsidiaries comply fully with this Order.

3.3 Tesco shall at all times keep under consideration what steps it might reasonably take to bring about the Effective Disposal in accordance with the provisions of this Order and, to the extent that such steps are not expressly required by this Order shall either undertake them itself or, if appropriate, seek guidance from the appropriate person as to whether they should be taken or suggest to such person that such steps should be taken by others and will otherwise at all times act in the spirit of this Order. For these purposes the appropriate person shall be the CC in respect of Tesco's obligations under paragraphs 3.4, 3.5, 4, 5, 6, and 8; the Divestiture Trustee in respect of Tesco's obligations under paragraphs 3.2, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12.2, 3.12.3, 3.12.4, 3.12.5, 3.12.6, 3.13.1, 3.13.2, 3.14.4, 3.14.6, 3.14.7, 3.15, 3.16 and 7; and the Monitoring Trustee in respect of Tesco's obligations under paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5.

3.4 Tesco shall comply with such written directions as the CC may from time to time give to it and take all such steps within its competence and control for the purpose of carrying out or securing compliance with this Order, including any directions given by the CC to the Divestiture Trustee or to the Monitoring Trustee, provided that nothing in this Order shall require Tesco to accept a bid that is in the CC's view wholly unreasonable.

3.5 Tesco shall appoint a Divestiture Trustee and a Monitoring Trustee approved by the CC to give effect to its obligations set out in this Order in accordance with the procedures set out in paragraphs 4 and 8. Tesco shall remunerate and reimburse the Divestiture and Monitoring Trustees for all reasonable costs properly incurred in accordance with the terms and conditions of their appointment. Such terms of remuneration may include the provision of an incentive to the Divestiture Trustee that do not give rise to any conflict of interest and do not create any impediment to a

prompt Effective Disposal, provided that nothing in this Order shall require Tesco to accept a bid that is in the CC's view wholly unreasonable.

- 3.6 Tesco shall procure that, except with the prior written consent of the CC, no further construction work is carried out on the Site, other than such actions required by this Order, unless or until it is Notified by the CC that Effective Disposal is to be achieved through the Fallback Option.
- 3.7 Tesco shall, in particular at the request of the CC or the Divestiture Trustee, provide all assistance reasonably necessary to any prospective bidder for either the Redevelopment Option or the Fallback Option for the purposes of preparing its bid, including by disclosing all material information relating to the Site or to New Clapton Stadium Company Limited and providing reasonable access to the Site for the purpose of the bidder undertaking appropriate surveys and inspections. Tesco shall also, in particular at the request of the CC or the Divestiture Trustee, provide all assistance reasonably necessary to the Redevelopment Option Approved Purchaser, the Fallback Option Approved Purchaser or the Approved Tenant, as the case may be and take all such steps as may be necessary, in order to bring about the Effective Disposal, including for the avoidance of doubt providing to the Redevelopment Option Approved Purchaser, the Fallback Option Approved Purchaser and the Approved Tenant all relevant plans or documents of whatever description (including all documents and plans relevant to Planning Permission and the Original Proposed Development).
- 3.8 Tesco shall not take any steps to hinder the Effective Disposal to the Redevelopment Option Approved Purchaser, the Fallback Option Approved Purchaser or the Approved Tenant, as the case may be.
- 3.9 Tesco shall not and shall procure to the extent it is able that none of its employees, officers, agents or advisers (acting in their capacity as employees, officers, agents or advisers of Tesco) make or encourage any objection to any application for or variation to any planning permission relating to the Site either prior to Effective Disposal or following it until such time as a grocery retail store begins to operate on the Site provided that Tesco's obligations as regards its employees in this respect do not extend to employees whose place of work is within a store (save for those employed in its store at Brunel Way, Slough) and to the extent that it is able shall not encourage any such objection by any of its employees (howsoever defined), officers, agents and advisers acting in their capacity as private individuals.
- 3.10 Tesco shall, when requested to do so by the CC, take all reasonable steps until such time as a grocery retail store begins to operate on the Site to assist the Redevelopment Option Approved Purchaser with its applications for Redevelopment Planning Permission and provide assistance in its capacity as owner of the Site and the New Clapton Stadium Company Limited to the Fallback Option Approved Purchaser and to the Approved Tenant with any application for or variation to the Planning Permission relating to the Site.
- 3.11 Tesco shall provide all assistance as is reasonable prior to the Effective Disposal and following it until such time as a grocery retail store begins to operate on the Site to, as appropriate:
 - (a) the Redevelopment Option Approved Purchaser for the purpose of the redevelopment of the Site as contemplated by the Redevelopment Option;
 - (b) the Fallback Option Approved Purchaser for the purpose of its acquisition of the Site; and

(c) the Approved Tenant for the purpose of obtaining approvals under the Agreement for Lease and Lease.

For the avoidance of doubt, assistance shall include providing all relevant plans and documents of whatever description relating to the Original Proposed Development, the Planning Permission and any variation to planning permissions granted relating to the Site and reports and surveys commissioned by Tesco in relation to such applications and permissions.

3.12 Until the Effective Disposal Tesco shall:

3.12.1 maintain the Site in a safe condition and take all steps necessary to prevent any deterioration of the Site (including, but without limitation, the treatment of Japanese knotweed at the Site but without liability for the effectiveness of that treatment save insofar as Tesco is able to assign to the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser as the case may be the benefit of any guarantee from the contractor carrying out the treatment);

3.12.2 not enter into any agreement or arrangement relating to the purchase, leasing or occupation of the Site save as contemplated by this Order or with the prior written consent of the CC;

3.12.3 not seek any variations to the Planning Permission, save as contemplated by this Order and Tesco shall use its best efforts to secure the Planning Permission relating to the applications with reference numbers P/00362/060 (Combination of Units 1&2 for food) and P/00362/064 (Combination of Units 3&4 for food);

3.12.4 not sell transfer lease assign mortgage charge or part with possession of the Site or any part thereof nor grant any interest in or rights over the Site or any part thereof except as provided for in this Order or with the prior written consent of the CC;

3.12.5 make no change to the ownership or control of any companies that are the owner of the Site or New Clapton Stadium Company Limited without the prior express written consent of the CC, save as contemplated by this Order; and

3.12.6 take no steps that would impair the marketability, or that would jeopardize, delay or impede the sale of the Site to the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser as the case may be or the grant of a Lease of the Unit to an Approved Tenant.

3.13 In the event that the CC determines that the Effective Disposal is to be achieved through the Redevelopment Option Tesco shall:

3.13.1 use its best endeavours to exchange contracts for the sale of the freehold of the Site (and for the transfer of the whole of the share capital of New Clapton Stadium Company Limited) and the giving of the Tesco Indemnity together with the assignment of the benefit of any rights, copyrights or warranties relating to and necessary for the construction of the Original Proposed Development to the Redevelopment Option Approved Purchaser within a period of 20 working days from the date of the Notification of the CC's selection of the Redevelopment Option Approved Purchaser, or within such other period as the CC may allow; and

- 3.13.2 use its best endeavours to complete the contract for the sale of the freehold of the Site (and for the transfer of the whole of the share capital of New Clapton Stadium Limited), give the Tesco Indemnity and assign the benefit of any rights, copyrights or warranties relating to and necessary for the construction of the Original Proposed Development to the Redevelopment Option Approved Purchaser within a period of ten working days from the date of exchange of contracts, or within such other period as the CC may allow.
- 3.14 In the event that the CC determines that the Effective Disposal is to be achieved through the Fallback Option Tesco shall:
- 3.14.1 prepare a Construction Programme for the construction of the Original Proposed Development according to the Planning Permission and provide a copy of the Construction Programme to the CC, the Monitoring Trustee and the Divestiture Trustee within one month of its receiving Notification of the CC's determination that the Fallback Option is to be pursued;
- 3.14.2 commence the construction of the Original Proposed Development and take all necessary steps to achieve Practical Completion of the Original Proposed Development within ten months of its receiving Notification of the CC's determination that the Fallback Option is to be pursued so that the Unit is ready for occupation by the Approved Tenant at the end of the ten-month period;
- 3.14.3 provide details of any changes to the Construction Programme, regardless of whether in Tesco's view they are material or non-material, with the subsequent Compliance Statement, together with a revised copy of the Construction Programme reflecting those changes;
- 3.14.4 inform the CC, the Divestiture Trustee and the Monitoring Trustee of any applications for planning permission (a) made by Tesco and (b) made by other parties of which Tesco becomes aware in respect of the Site, including any applications for variations, and of any progress in relation to such applications;
- 3.14.5 keep the Monitoring Trustee, the Divestiture Trustee and the CC informed of the progress of the construction of the Original Proposed Development, including of any delays and of any material developments concerning any aspect of the Site;
- 3.14.6 use its best endeavours to exchange the Agreement for Lease of a Unit to an Approved Tenant within a period of 30 working days from the date of the CC's Notification of the selection of the Approved Tenant or such longer period as the CC may allow provided it is satisfied that Tesco has used its best endeavours; and
- 3.14.7 use its best endeavours to secure Effective Disposal within a period of ten months from the exchange of the Agreement for Lease with the Approved Tenant or such longer period as the CC may allow provided it is satisfied that Tesco has used its best endeavours.
- 3.15 For the avoidance of doubt, wherever in this Order Tesco is required to provide documents, plans or other similar material to any other party, it shall not be obliged to provide any (or any part of any) internal company documents, the disclosure of which would, in Tesco's reasonable view, be likely to compromise commercial

confidentiality and which is not necessary to give effect to the remedy pursued by this Order.

- 3.16 If Tesco or a subsidiary of Tesco, or any agent, adviser or contractor of Tesco or a subsidiary of Tesco, receives any inquiry (whether oral or written) concerning the Site from prospective purchasers, tenants or occupiers of the Site, or with any agent or adviser of a prospective purchaser, tenant or occupier of the site, then Tesco shall direct that person to the Divestiture Trustee.

4. Divestiture Trustee—appointment procedure

- 4.1 Before the appointment of the Divestiture Trustee, Tesco shall secure the prior approval in writing of the CC to both the identity of the Divestiture Trustee and all the terms and conditions under which it is proposed that the Divestiture Trustee shall be appointed. The terms and conditions of the appointment shall include the provisions set out in the Divestiture Trustee Mandate at Annex 1 of this Order.
- 4.2 Tesco shall submit to the CC for approval a list of two or more individuals, firms or companies whom Tesco proposes to appoint as Divestiture Trustee within a period of five working days from the Commencement Date or whichever other date the CC may determine. The list shall contain sufficient information for the CC to verify that each proposed Divestiture Trustee fulfils the requirements set out in paragraph 4.3 and shall include:
- (a) the full terms and conditions on which the Divestiture Trustee is to be appointed, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties in accordance with the Divestiture Trustee Mandate and to enable Tesco to terminate the appointment in accordance with paragraph 4.10; and
 - (b) a workplan comprising a schedule of the steps to be taken to give effect to the Trustee Mandate.
- 4.3 Each person on the list referred to in paragraph 4.2 shall be independent of the Tesco Group, possess the qualifications and resources necessary for the performance of the Divestiture Trustee Mandate, and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms on which it is remunerated.
- 4.4 The CC may meet with and approve or reject any or all of the proposed Divestiture Trustees and may approve the terms and conditions of appointment subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one proposed name is approved, Tesco shall use its best endeavours to appoint, or cause to be appointed, the individual, firm or company concerned as Divestiture Trustee in accordance with the terms and conditions of appointment approved by the CC. If more than one person is approved, Tesco shall be free to choose the Divestiture Trustee from among the persons so approved.
- 4.5 Tesco shall appoint the Divestiture Trustee as soon as is reasonably practicable and in any event within three working days of Notification of the CC's approval under paragraph 4.4. Once the Divestiture Trustee has been appointed, Tesco shall provide the CC with a copy of the terms and conditions of appointment within two working days.
- 4.6 If all the proposed Divestiture Trustees are rejected, Tesco shall submit the names of at least two further persons within five working days of being Notified of the rejection,

in accordance with the requirements and the procedure set out in paragraphs 4.2 to 4.5 above.

- 4.7 The provisions of paragraph 4.8 shall apply if:
- 4.7.1 Tesco fails to nominate further persons in accordance with paragraph 4.6; or
 - 4.7.2 those further persons are rejected by the CC; or
 - 4.7.3 Tesco is unable for any reason to conclude the appointment within the specified time limit.
- 4.8 The CC shall nominate one or more persons to act as Divestiture Trustee, and Tesco shall appoint, or cause to be appointed one such Divestiture Trustee within five working days from Notification of such nomination in accordance with the terms and conditions of appointment approved by the CC.
- 4.9 Tesco shall not change any of the terms and conditions of appointment of the Divestiture Trustee without first consulting and obtaining the prior written approval of the CC.
- 4.10 The appointment of the Divestiture Trustee pursuant to paragraphs 4.1 to 4.9 above shall be irrevocable save where the CC has discharged Tesco from its obligation to appoint a Divestiture Trustee or to the extent permitted under paragraph 6 below.
- 4.11 In the event that the appointment of the Divestiture Trustee is terminated pursuant to paragraph 6 below Tesco shall submit the names of at least two further persons to the CC within five working days, whereupon the requirements and the procedure set out in paragraphs 4.2 to 4.5 above shall apply. Where required by the CC, the outgoing Divestiture Trustee shall continue as Divestiture Trustee until a new Divestiture Trustee is in place and a full handover of all relevant information has taken place.
- 4.12 For the avoidance of doubt, the functions of the Divestiture Trustee and the Monitoring Trustee may, whether in whole or in part, be undertaken by the same person.

5. Functions of the Divestiture Trustee

- 5.1 The duty of the Divestiture Trustee is to give effect to the Divestiture Trustee Obligation.
- 5.2 The Divestiture Trustee shall take such steps and measures as it reasonably considers necessary to fulfil its duty and to that end the Divestiture Trustee may give written directions to Tesco.
- 5.3 The Divestiture Trustee shall comply with any directions or instructions issued to it by the CC.

6. Replacement, discharge and reappointment of the Divestiture Trustee

- 6.1 If the Divestiture Trustee ceases or is unable or is likely to be unable to perform its functions under this Order for any reason, including the exposure of the Divestiture Trustee to a conflict of interest, the CC may, after consulting the Divestiture Trustee,

require Tesco to replace the Divestiture Trustee with effect from a date to be determined, which may be immediately; or

- 6.2 If Tesco considers for any reason that the Divestiture Trustee is failing to perform its functions under this Order or is otherwise unsuitable to continue to act as Divestiture Trustee, it shall inform the CC immediately. The CC may, after consulting the Divestiture Trustee, require Tesco to replace the Divestiture Trustee or to modify the terms and conditions of the Divestiture Trustee's appointment as it shall in its absolute discretion determine.
- 6.3 If the Divestiture Trustee is removed in accordance with paragraph 6.1 or 6.2, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full hand over of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedures referred to in paragraph 4.

7. Duties and Obligations of Tesco in relation to the Divestiture Trustee

- 7.1 Tesco shall at all times keep under consideration what steps it might reasonably take to enable the Divestiture Trustee to fulfil the Divestiture Trustee Obligation and, to the extent that such steps are not expressly required by this Order, shall either undertake them itself or, where appropriate, seek guidance from the Divestiture Trustee as to whether they should be taken or suggest to the Divestiture Trustee that such steps should be taken by others save that the generality of this provision is without prejudice to the further provisions below.

- 7.2 Tesco shall cooperate, and shall use all reasonable endeavours to procure that its employees, officers, agents, and advisers (acting in their capacity as employees, officers, agents or advisers of Tesco), cooperate fully with the Divestiture Trustee and any advisers appointed by the Divestiture Trustee, in particular by providing the Divestiture Trustee with all assistance and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably require in fulfilling the Divestiture Trustee Obligation, including but not limited to:

- (a) the provision of such facilities as are necessary for the discharge by the Divestiture Trustee of its functions; and
- (b) the provision of full and complete access to all personnel (including personnel of agents, advisers and contractors), books, records, communications, documents, facilities and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Divestiture Trustee may reasonably require, including but not limited to all documents necessary to prove title to the Site, and all technical drawings and plans relating to the Site, and to allow the Redevelopment Option Approved Purchaser, the Fallback Option Approved Purchaser or Approved Tenant, as the case may be, to enjoy the full benefit of the Planning Permission;

provided that Tesco's obligations as regards its employees in this respect do not extend to employees whose place of work is within a store (save for those employed in its store at Brunel Way, Slough).

- 7.3 Tesco shall comply so far as is reasonable with any directions given by the Divestiture Trustee for the purpose of discharging the Divestiture Trustee Mandate.

- 7.4 At the request of the Divestiture Trustee, Tesco shall draw up and execute any documents required to give effect to the Divestiture Trustee Obligation.
- 7.5 Tesco will execute a power or powers of attorney in favour of the Divestiture Trustee granting the Divestiture Trustee authority to take all such steps as are necessary to fulfil the Divestiture Trustee Obligation in accordance with the Divestiture Trustee Mandate, including the authority to sell, lease or otherwise deal with the Site, provided that such power or powers of attorney are strictly limited to circumstances arising where Tesco, having been given at least two working days in which to execute documents pursuant to the provision in paragraph 7.4 above has in the CC's reasonable opinion failed without cause to do so. The power or powers of attorney granted by Tesco must in addition contain a clause that so long as the Divestiture Trustee Obligation remains undischarged the power of attorney will not be revoked by Tesco.
- 7.6 Tesco shall hold each Indemnified Person harmless against any liabilities arising out of the proper performance of the Divestiture Trustee's duty. An Indemnified Person shall have no liability to the Tesco Group for any liabilities arising out of the proper performance of the Divestiture Trustee's duty except to the extent that such liabilities result from actions or omissions that are contrary to law or from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 7.7 Tesco shall not take any steps towards the marketing or sale of the Site or granting of a lease over the Unit or any of the units within the Original Proposed Development save at the direction of the Divestiture Trustee.
- 7.8 Tesco shall make no objection to the Effective Disposal in whole or part save on the grounds of bad faith by the Divestiture Trustee or the failure of the Divestiture Trustee to protect the legitimate financial interests of Tesco, subject to the Divestiture Trustee Obligation, and where Tesco wishes to make an objection on such grounds it shall submit a Notice setting out its objection within five working days from the day on which it first became aware of the fact or facts giving rise to its objection.

8. Monitoring Trustee—appointment, duties and Tesco's obligations

- 8.1 Before the appointment of the Monitoring Trustee, Tesco shall secure the prior written approval of the CC to both the identity of the Monitoring Trustee and all the terms and conditions under which it is proposed that the Monitoring Trustee shall be appointed. The terms and conditions of appointment shall include the provisions set out in the Monitoring Trustee Mandate at Annex 7 of this Order.
- 8.2 The Monitoring Trustee shall possess appropriate qualifications and experience to carry out its functions.
- 8.3 The Monitoring Trustee shall neither have, nor become exposed to, a conflict of interest.
- 8.4 The Monitoring Trustee will carry out the duties set out in paragraphs 8.5 and 8.6 below.
- 8.5 The Monitoring Trustee shall monitor and, so far as possible, ensure Tesco's full and effective compliance with:
- 8.5.1 the obligations set out in paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of this Order; and

- 8.5.2 any such other matters as may be directed by the CC from time to time.
- 8.6 At all times, Tesco shall actively keep the Monitoring Trustee informed of any changes to the Construction Programme, as well as developments in relation to work on the Site and any variation to the Planning Permission.
- 8.7 Tesco shall at all times keep under consideration what steps it might reasonably take to enable the Monitoring Trustee to fulfil the Monitoring Trustee Obligation and, to the extent that such steps are not expressly required by this Order, shall either undertake them itself or, where appropriate, seek guidance from the Monitoring Trustee as to whether they should be taken or suggest to the Monitoring Trustee that such steps should be taken by others save that the generality of this provision is without prejudice to the further provisions below.
- 8.8 Tesco shall cooperate, and shall use all reasonable endeavours to procure that its employees, officers, agents and advisers (acting in their capacity as employees, officers, agents or advisers of Tesco) shall cooperate fully with the Monitoring Trustee and any advisers appointed by the Monitoring Trustee, in particular by providing the Monitoring Trustee with all assistance and information (excluding, for the avoidance of doubt, such information over which legal privilege may properly be asserted) as the Monitoring Trustee may reasonably require in fulfilling the Monitoring Trustee Obligation, including but not limited to:
- (a) the provision of such facilities as are necessary for the discharge by the Monitoring Trustee of the Monitoring Trustee's functions; and
 - (b) the provision of full and complete access to all personnel (including personnel of agents, advisers and contractors), books, records, communications, documents, facilities and information as the Monitoring Trustee may reasonably require.
- 8.9 Tesco shall comply with any directions given by the Monitoring Trustee for the purpose of discharging the Monitoring Trustee Mandate.
- 8.10 Tesco shall hold each Indemnified Person harmless against any liabilities arising out of the proper performance of the Monitoring Trustee's duty. An Indemnified Person shall have no liability to the Tesco Group for any liabilities arising out of the proper performance of the Monitoring Trustee's duty except to the extent that such liabilities result from actions or omissions that are contrary to law or from the wilful default, recklessness, negligence or bad faith of the Monitoring Trustee, its employees, agents or advisers.

9. Ancillary matters

- 9.1 Where Tesco requires the consent or approval of the CC (however that requirement is expressed in this Order) Tesco shall seek the prior consent or approval of the CC by the service of a Notice.
- 9.2 Tesco shall make full disclosure of every fact and matter that the CC, acting reasonably, may hold to be relevant to its decision when making any application for the CC's consent or approval. A consent or approval granted by the CC in default of such disclosure by Tesco or any member of the Tesco Group of all relevant facts and matters is voidable at the election of the CC.
- 9.3 In the event that Tesco discovers that an application for consent or approval has been made without full disclosure in accordance with paragraph 9.2 and is therefore incomplete Tesco shall:

- (a) so inform the CC by Notice identifying the particulars in which the application for consent is incomplete as soon as is reasonably practicable; and
- (b) at the same time or as soon as possible thereafter provide to the CC an application that is complete.

- 9.4 Tesco shall make each application for consent or approval by Notice so that it is received by the CC at least ten working days (except where this Order provides for a shorter period), or such lesser period as the CC agrees in writing, before the day on which the CC's consent or approval is necessary to avoid a breach of this Order.
- 9.5 Where the CC, the Divestiture Trustee or the Monitoring Trustee give directions to Tesco or its Subsidiaries pursuant to this Order the CC, the Divestiture Trustee or the Monitoring Trustee, as appropriate, shall give directions by the service of a Notice upon Tesco pursuant to paragraph 12.

10. Severability

- 10.1 If any provision of this Order be contrary to law or invalid for any reason Tesco shall continue to observe the remaining provisions.
- 10.2 Tesco shall not rely on any default or want of authority on the part of Tesco or of any officer or employee in the execution of this Order unless directed so to do by the CC.

11. Provision of information to the CC and the OFT

- 11.1 Tesco shall promptly provide to the CC such information as the CC may reasonably require for the purpose of performing any of its functions under this Order or under sections 82, 84 and 94(7) of the Act.
- 11.2 Tesco shall promptly provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under this Order or under sections 92, 93 and 94(6) of the Act.
- 11.3 If Tesco has a reasonable suspicion that any provision of this Order has been breached or is likely to be breached, it shall immediately write to the CC to advise the CC of the circumstances of such suspicions.

12. Service

- 12.1 Tesco hereby authorizes the Relevant Contacts at Tesco to accept on its behalf all documents (including any document of any kind which falls to be served on or sent to Tesco in connection with any proceedings in Courts in the United Kingdom) orders, requests, Notifications or other communications connected with this Order.
- 12.2 Any document, order, request, Notification or other communication shall be deemed to have been validly served on Tesco if it is served on the Relevant Contacts at Tesco; and service or receipt shall be deemed to have been acknowledged by Tesco if it is acknowledged by one of the Relevant Contacts at Tesco.
- 12.3 Any communication between the Tesco Group and the CC under this Order shall be addressed to the Relevant Contact at the CC, Victoria House, Southampton Row, London WC1B 4AD or such other address as the CC may direct in writing.

- 12.4 Any communication between the Tesco Group and the OFT under this Order shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2–6 Salisbury Square, London EC4Y 8JY or such other address as the OFT may direct in writing.
- 12.5 Any communication between the CC and the Tesco Group under this Order shall be addressed to the Relevant Contacts at Tesco, Tesco House, Delamare Road, Cheshunt, Hertfordshire, EN8 9SL or such other address as the Tesco Group may direct in writing.

13. Compliance

- 13.1 On [*date to be specified*] and subsequently on the []th day of each month (or where the relevant day of the month does not fall on a working day, the first working day thereafter), or at such times as may be specified by the CC by Notice, Tesco shall provide a statement to the CC:
- (a) confirming the compliance of Tesco and its Subsidiaries with all provisions of this Order in the form set out in Annex 3;
 - (b) providing details of any agreements or arrangements entered into by Tesco or its subsidiaries in relation to the Site; and
 - (c) providing details of the steps that Tesco has taken in order to verify the contents of the Compliance Statement.
- 13.2 The CC may in its absolute discretion determine that the Compliance Statement may be submitted more or less frequently, including in response to any submissions made by Tesco.

14. Delegated powers of direction

- 14.1 The CC may give directions falling within paragraph 14.2 to:
- (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- 14.2 Directions fall within this paragraph if they are directions:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
 - (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- 14.3 The CC may vary or revoke any directions so given.

15. Governing law

- 15.1 This Order shall be governed by and construed in all respects in accordance with English law.

15.2 Disputes arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.

16. Termination

16.1 This Order shall be in force until such time as they are varied or revoked under the Act.

16.2 The variation, release or supersession of this Order shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

Divestiture Trustee Mandate

1. In this Divestiture Trustee Mandate references to the 'Order' are references to the Order made by the Competition Commission (CC) on []. Terms and expressions defined in the Order shall have the same meaning in this Divestiture Trustee Mandate, save as the context otherwise requires.
2. The Divestiture Trustee shall monitor communications (including written and electronic communications, telephone conversations and meetings) between Tesco (or its subsidiaries) and its agents, advisers and contractors and/or Slough Borough Council and any other planning authority, as the Divestiture Trustee considers reasonably necessary for the fulfilment of the Divestiture Trustee Obligation.
3. The Divestiture Trustee shall simultaneously market the Redevelopment Option and the Fallback Option to as broad a range of potential purchasers as is reasonable. The Divestiture Trustee shall supply to Tesco a list of the potential purchasers to which it proposes to market, Tesco shall have a reasonable opportunity to propose additional entities to be included in the marketing activity before marketing commences and the Divestiture Trustee shall take account of any such proposals by Tesco.
4. The Divestiture Trustee shall require bidders for the Redevelopment Option to offer two separate amounts:
 - (a) the amount that the bidder, should it become the Redevelopment Option Approved Purchaser, would be willing to pay were it unable to obtain Redevelopment Planning Permission within the Redevelopment Planning Permission Period ('the Basic Amount'); and
 - (b) the additional amount that the bidder, should it become the Redevelopment Option Approved Purchaser, would be willing to pay were it able to obtain Redevelopment Planning Permission within the Redevelopment Planning Permission Period ('the Overage').

The successful Redevelopment Option Approved Purchaser will be required to pay to Tesco the Basic Amount upon Effective Disposal. Should the Redevelopment Option Approved Purchaser obtain Redevelopment Planning Permission within the Redevelopment Planning Permission Period, it will be obliged to pay to Tesco the Overage within 20 working days following the grant of Redevelopment Planning Permission.
5. When inviting bids for the Redevelopment Option and Fallback Option, the Divestiture Trustee will inform all prospective purchasers that the CC will not require Tesco to accept a bid which is, in the CC's view, wholly unreasonable.
6. The Divestiture Trustee will present all bids for the Redevelopment Option and Fallback Option, as appropriate, to the CC for evaluation, together with all relevant supporting documentation (including investment appraisals and business plans relating to the Site and information regarding the financing of the acquisition and the financing of the bidder's existing business) and any other relevant documentation which the CC may reasonably require to enable it to consider whether the disposal of the Site should proceed by either the Redevelopment Option or the Fallback Option. In presenting such bids for evaluation by the CC, the Divestiture Trustee will have

regard to the paper entitled 'The Competition Commission's approach to the evaluation of bids', attached as Annex 6 to the Order.

7. If the CC decides that the disposal shall be effected by the Redevelopment Option, the CC shall notify Tesco and the Divestiture Trustee shall use its best endeavours to:
 - 7.1 oversee the drawing up by Tesco of all agreements necessary to bring about the sale of the freehold of the Site (together with the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity);
 - 7.2 submit all such agreements to the CC for approval once they are in agreed form;
 - 7.3 oversee the undertaking by Tesco of the process of exchanging contracts for the sale of the freehold of the Site (and for the transfer of the whole of the share capital of New Clapton Stadium Company Limited and the giving of the Tesco Indemnity) to the Redevelopment Option Approved Purchaser within a period of 20 working days from the date of the Notification of the CC's selection of the Redevelopment Option Approved Purchaser, or within such other period as the CC may allow; and
 - 7.4 oversee the undertaking by Tesco of the completion of the contract for the sale of the freehold of the Site (and for the transfer of the whole of the share capital of New Clapton Stadium Limited and the giving of the Tesco Indemnity) to the Redevelopment Option Approved Purchaser within a period of ten working days from the date of exchange of contracts, or within such other period as the CC may allow.
8. If the CC decides that the disposal shall be effected by the Fallback Option, the Divestiture Trustee shall use its best endeavours to:
 - 8.1 oversee the drawing up by Tesco of all agreements necessary to bring about the grant of a Lease of a Unit on the Site benefiting from Planning Permission which has been consented and is free from challenge or potential challenge to the Approved Tenant;
 - 8.2 submit all such agreements to the CC for approval once they are in agreed form;
 - 8.3 oversee the exchanging by Tesco of the Agreement for Lease of the Unit to the Approved Tenant within a period of 30 working days from the date of the CC's Notification of the selection of the Approved Tenant or within such other period as the CC may allow provided it is satisfied Tesco has used best endeavours;
 - 8.4 let any units other than the Unit at the best available open market rent (taking into account and granting such rent-free periods as is commonly given in the market at the time) before the sale of the freehold of the Site, for which purpose the Divestiture Trustee shall appoint two letting agents on a joint agency basis, one such agent to be nominated by the Divestiture Trustee and one by Tesco;
 - 8.5 direct Tesco to secure Effective Disposal to the Fallback Option Approved Purchaser within a period of ten months from the exchange of the Agreement

for Lease with the Approved Tenant or such longer period as the CC's Notification may allow provided it is satisfied Tesco has used best endeavours; and

- 8.6 in all circumstances ensure that the grant of the Lease of a Unit occurs before the sale of the freehold of the Site and the transfer of the shares in New Clapton Stadium Company Limited.
9. The Divestiture Trustee will report to the CC fortnightly by means of the Divestiture Trustee Report (or as otherwise agreed with the CC) providing:
- (a) confirmation of Tesco's compliance with the obligations set out in paragraph 3 (save for those obligations contained in paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 or 3.14.5) and paragraphs 7.1 to 7.8 of the Order;
 - (b) if the Divestiture Trustee has a reasonable suspicion that there has been, or is about to be, a breach of any of the obligations contained in paragraph 3 (save for those obligations contained in paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 or 3.14.5) or paragraphs 7.1 to 7.8 of the Order, details of the grounds for that suspicion;
 - (c) a list of potential purchasers and lessees and a preliminary assessment of each of them against the criteria to be applied by the CC when determining whether a person is a Redevelopment Option Approved Purchaser, a Fallback Option Approved Purchaser or an Approved Tenant in accordance with the provisions of paragraph 11 below; the state of negotiations with such potential purchasers and lessees; and any issues or problems regarding the sale or marketing of the Redevelopment Option or any aspect of the Fallback Option;
 - (d) if the Divestiture Trustee considers that it is necessary or appropriate for it to appoint advisers in order for it to fulfil the Divestiture Trustee Obligation, a statement that is the case together with a list of advisers selected by the Divestiture Trustee for this purpose; and
 - (e) such information as the CC may require, and in sufficient detail for the CC to make an assessment, of compliance with the Order and progress towards Effective Disposal.
10. The Divestiture Trustee shall, on direction from the CC, within seven working days of having provided the Divestiture Trustee Report to the CC, provide a copy of the Divestiture Trustee Report to Tesco, such copy to be redacted as necessary in whatever way the CC shall in its absolute discretion determine, including if appropriate in its entirety.
11. The Divestiture Trustee will have the sole right to grant (by directing Tesco to grant or where appropriate exercising its power of attorney under paragraph 7.5 of the Order) leases of or sell the freehold of the Site during the period commencing on the Commencement Date and ending on the date the CC discharges Tesco from the obligation to appoint and keep appointed a Divestiture Trustee save where the CC has given to Tesco prior written consent.
12. The Divestiture Trustee shall, on direction from the CC, provide Tesco with details of the bids that are received for the Redevelopment Option and the Fallback Option and provide an opportunity for Tesco to comment on those bids. The Divestiture Trustee shall pass to the CC any comments that Tesco may have on the bids for the Redevelopment Option and the Fallback Option and shall in due course provide

Tesco with a summary of the CC's reasons for its proposed final choice of which option to pursue and the selected bidder, sufficiently in advance of the exchange of contracts for Tesco to have an opportunity to comment and for the CC to take Tesco's comments into account before the final decision is made. The timescales for such exchange of information shall be such as the CC shall in its absolute discretion determine. Where, whether under the Redevelopment Option or the Fallback Option, Tesco is required to proceed with the Original Proposed Development, the Divestiture Trustee shall likewise provide an opportunity for Tesco to comment on any bids received for any units other than the Unit before directing Tesco to grant a lease over that unit or proceed with the sale of the freehold of the Site. The timescales for such exchange of information shall be such as the CC shall in its absolute discretion determine.

13. Within 20 working days of receipt of, in the case of the Redevelopment Option, the Basic Amount from the Redevelopment Option Approved Purchaser or, in the case of the Fallback Option, the consideration for the sale of the freehold of the Site and the share capital of New Clapton Stadium Company Limited from the Fallback Option Approved Purchaser, Tesco shall pay to the Divestiture Trustee all outstanding costs and expenses reasonably incurred by the Divestiture Trustee in connection with the sale and notified to Tesco accordingly.
14. This Divestiture Trustee Mandate may only be amended in writing and with the CC's prior approval in writing.
15. The Divestiture Trustee may take such steps and measures as it considers necessary to fulfil the Divestiture Trustee Obligation and to that end the Divestiture Trustee may give written directions to Tesco.
16. At Tesco's expense the Divestiture Trustee may, with the prior approval of the CC, appoint such advisers as it may reasonably consider necessary or appropriate to enable it to fulfil the Divestiture Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Tesco is not to be entitled to issue instructions to these advisers. Tesco shall cooperate and shall use all reasonable endeavours to procure that its employees, agents, advisers and contractors (acting in their capacity as employees, officers, agents or advisers of Tesco) cooperate with any advisers appointed by the Divestiture Trustee. Before giving its approval to the appointment of any such advisers, the CC shall consult with Tesco save in cases where the CC considers it necessary for advisers to be appointed as a matter of urgency. Tesco shall be entitled to a monthly statement from the Divestiture Trustee of all fees and expenses incurred by the Divestiture Trustee and its advisers (if any). Any individual items of costs or expenses in excess of an amount at a level set in advance by the CC in consultation with the Divestiture Trustee shall not be incurred without the prior written consent of the CC, Tesco having had prior opportunity to comment to the CC on both the level to be set in advance and any individual items of costs or expenses which exceed that amount, provided that Tesco shall provide such comments to the CC within a timescale specified by the CC that shall be reasonable in all the circumstances.
17. The Divestiture Trustee may seek written directions or instructions from the CC in order to assist it in the fulfilment of the Divestiture Trustee Obligation and the Divestiture Trustee shall comply with those directions or instructions.
18. The Divestiture Trustee may include such terms and conditions as it considers appropriate in agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty.

19. The Divestiture Trustee shall protect the legitimate financial interests of Tesco subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation.
20. Where under the provisions of paragraph 8 of the Order a person other than the Divestiture Trustee is appointed to act as Monitoring Trustee, the Divestiture Trustee shall consult and cooperate as necessary with the Monitoring Trustee to facilitate the discharge of the respective functions of the Divestiture Trustee and Monitoring Trustee.
21. If the Divestiture Trustee is removed in accordance with paragraph 6.1 or 6.2 of the Order, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full hand over of all relevant information.

Redevelopment Option Approved Purchaser Undertakings

IN THE MATTER OF A REFERENCE TO THE COMPETITION COMMISSION DATED 19 APRIL 2007 CONCERNING THE COMPLETED ACQUISITION BY TESCO PLC OF THE CO-OPERATIVE GROUP LIMITED'S STORE AT UXBRIDGE ROAD, SLOUGH

Undertakings given to the Competition Commission by [Redevelopment Option Approved Purchaser] in accordance with section 82 of the Enterprise Act 2002 Dated []

Recitals

On 19 April 2007, the Office of Fair Trading ('OFT') referred the completed acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough by Tesco plc to the Competition Commission (CC) for investigation and report under section 22 of the Act:

The CC published a report entitled *Tesco plc and the Co-operative Group (CWS) Limited A report on the acquisition of the Co-operative Group (CWS) Limited's store at Uxbridge Road, Slough, by Tesco plc* on 28 November 2007:

The Report concluded that:

- (a) the acquisition of the CGL store by Tesco constitutes a relevant merger situation;
- (b) the creation of that situation has resulted, and may be expected to result, in an SLC in the relevant market;
- (c) the CC should take action to remedy the SLC and the adverse effects flowing from it; and
- (d) that a divestiture remedy should be implemented in the terms described at paragraph 8.114 of the Report.

Accordingly, the CC resolved that an order should be made to give effect to the remedies identified by the CC at paragraph 8.114 of the Report; and

Now the Redevelopment Option Approved Purchaser gives to the CC the following undertakings under section 82 of the Act for the purpose of remedying the SLC and the adverse effects resulting from it.

1. Interpretation

- 1.1 In these Redevelopment Option Approved Purchaser Undertakings references to the 'Order' are references to the Order made by the CC on []. Terms and expressions defined in the Order shall have the same meaning in these Redevelopment Option Approved Purchaser Undertakings, save as the context otherwise requires.

2. Commencement

- 2.1 The obligations in these Undertakings shall come into effect on [].

3. Planning Permission and Construction

- 3.1 The Redevelopment Option Approved Purchaser shall, if it is not itself a grocery retailer, have before the entry into force of these Undertakings secured a legally Binding Commitment from one or more Approved Tenants to operate a store on the Site. For these purposes, a Legally Binding Commitment is one that is subject only to (a) the approval of the CC to both the Redevelopment Option Approved Purchaser and the Approved Tenant (who will be approved by the CC prior to exchange of contracts between Tesco and the Redevelopment Option Approved Purchaser); and (b) the securing of a planning permission appropriate to that Approved Tenant.
- 3.2 A Redevelopment Option Approved Purchaser that is not itself a grocery retailer shall be required to have appropriate Legally Binding Commitments to ensure that a grocery retail store may be operated from the Site whether or not Redevelopment Planning Permission is obtained.
- 3.3 The Redevelopment Option Approved Purchaser shall apply for Redevelopment Planning Permission within three months of the date of Effective Disposal or within such other period as the CC may allow, except where a Redevelopment Option Approved Purchaser has already applied for Redevelopment Planning Permission prior to the entry into force of these Undertakings or undertakes to implement a Redevelopment Planning Permission granted pursuant to the application with reference number P/00362/063 or that with reference number P/00362/065.
- 3.4 The Redevelopment Option Approved Purchaser shall construct and either itself or, where the Redevelopment Option Approved Purchaser is not a grocery retailer, an Approved Tenant, commence operating a grocery retail store on the Site pursuant to the Redevelopment Planning Permission within 12 months of the granting of Redevelopment Planning Permission or the date of Effective Disposal (whichever is later) or otherwise within such longer period as the CC shall in its absolute discretion determine, in particular where the grant of planning permission is subject to legal challenge, howsoever arising.
- 3.5 The Redevelopment Option Approved Purchaser shall be required to pay to Tesco the Basic Amount upon Effective Disposal. Should the Redevelopment Option Approved Purchaser obtain Redevelopment Planning Permission within the Redevelopment Planning Permission Period, it will be obliged to pay to Tesco the Overage within ten working days following the grant of Redevelopment Planning Permission.
- 3.6 If the Redevelopment Option Approved Purchaser is not itself a grocery retailer and, following the securing of Redevelopment Planning Permission, the Approved Tenant is nonetheless unable to operate a grocery retail store from the Site (whether by reason of insolvency or otherwise), the Redevelopment Option Approved Purchaser

shall submit to the CC for prior approval a list of one or more further potential Approved Tenants, along with all relevant supporting documentation (including relevant investment appraisals and business plans) and any other relevant documentation which the CC may reasonably require.

- 3.7 Subject to the provisions of paragraph 3.7 below, the Redevelopment Option Approved Purchaser shall, if Redevelopment Planning Permission is not granted within the Redevelopment Planning Permission Period, take all steps necessary to complete the construction of the Original Proposed Development within 12 months or such longer period as the CC shall in its absolute discretion determine of either: (a) the date the Redevelopment Option Approved Purchaser is informed that its application for Redevelopment Planning Permission has been declined; or (b) the date upon which the CC declines to extend the Redevelopment Planning Permission Period following the initial period of 12 months and shall either:
- (a) if it is a grocery retailer, commence the operation by it of a grocery retail store in a Unit and continue operating the store for a period of no less than one year; or
 - (b) if it is a purchaser who is not a grocery retailer, grant a Lease of a Unit to an Approved Tenant who shall commence the operation by it of a grocery retail store and continue operating the store for a period of no less than one year.
- 3.8 Whether or not the Redevelopment Option Approved Purchaser is itself a grocery retailer, where the Redevelopment Option Approved Purchaser fails to obtain Redevelopment Planning Permission and is required to complete the construction of the Original Proposed Development in accordance with the terms of paragraph 3.7 above, it shall be open to the Redevelopment Option Approved Purchaser to nominate a different party to operate a grocery retail store from the Site from that intended under the Redevelopment Option. In those circumstances, the Redevelopment Option Approved Purchaser shall submit to the CC for prior approval a list of one or more (further) potential Approved Tenants, along with all relevant supporting documentation (including relevant investment appraisals and business plans) and any other relevant documentation which the CC may reasonably require. Where the Approved Tenant is otherwise unable to operate a grocery retail store from the Site (whether by reason of insolvency or otherwise), the Redevelopment Option Approved Purchaser shall similarly submit to the CC for prior approval a list of one or more (further) potential Approved Tenants, along with all relevant supporting documentation (including relevant investment appraisals and business plans) and any other relevant documentation which the CC may reasonably require.
- 3.9 In considering for approval as an Approved Tenant any person submitted by the Redevelopment Option Approved Purchaser in accordance with the provisions of paragraphs 3.6 and 3.7, the CC may approve any person whom the CC is satisfied (a) is independent of, and unconnected to, the Tesco Group; (b) has the incentive, the financial resources and the expertise to operate a grocery retail store from the Site which would compete effectively in Slough and in particular with the Tesco store at Brunel Way, Slough, so as to remedy the SLC or to remedy the SLC as far as possible; (c) is free from or capable of addressing any competition concerns arising as a result of its operation of a grocery retail store from the Site; and (d) will obtain all necessary approvals and consents (which, for the avoidance of doubt, excludes any necessary planning permission).
- 3.10 The Redevelopment Option Approved Purchaser shall comply with such written directions as the CC may from time to time give to it and shall provide any information and render any assistance required by either the Divestiture Trustee, the Monitoring Trustee and/or any person appointed by the CC in accordance with

paragraph 1 of the Order in particular in order to monitor compliance with these Undertakings.

4. Compliance

- 4.1 The Redevelopment Option Approved Purchaser shall provide to the CC such information as the CC may from time to time require for the purposes of monitoring compliance by the Redevelopment Option Approved Purchaser and its subsidiaries with these undertakings.
- 4.2 On [] and subsequently on the first day of each month (or, where the relevant day of the month does not fall on a business day, the first business day thereafter), the Redevelopment Option Approved Purchaser shall provide a statement to the CC:
- (a) confirming the compliance by the Redevelopment Option Approved Purchaser with these undertakings;
 - (b) describing progress made in relation to the application by the Redevelopment Option Approved Purchaser for Redevelopment Planning Permission or the construction and operation of a grocery store or leasing for operation of a grocery store as described in paragraph 3.3 on the Site as the case may be; and
 - (c) where the Redevelopment Option Approved Purchaser is not a grocery retailer, confirming that there is no reason to believe that any grocery retailer with whom the Redevelopment Option Approved Purchaser has a Legally Binding Commitment to operate a grocery retail store from the Site will be unable to meet its obligations under the agreement containing the Legally Binding Commitment.
- 4.3 Once the Redevelopment Option Approved Purchaser is informed of the outcome of the application for Redevelopment Planning Permission, it shall inform the CC as soon as is reasonably practicable by sending an email to the Relevant Contact with written confirmation being sent immediately thereafter.

5. Delegated powers of direction

- 5.1 The CC may give directions falling within paragraph 5.2 to:
- (a) a person specified in the directions; or
 - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- 5.2 Directions fall within this paragraph if they are directions:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, these Undertakings; or
 - (b) to do, or refrain from doing, anything so specified or described which the person might be required by these Undertakings to do or refrain from doing.
- 5.3 The CC may vary or revoke any directions so given.

6. Governing law

- 6.1 These Undertakings shall be governed by and construed in all respects in accordance with English law.
- 6.2 In the event that a dispute arises concerning these Undertakings, the Redevelopment Option Approved Purchaser will submit that dispute exclusively to the courts of England and Wales.

7. Termination

- 7.1 These Undertakings shall be in force until such time as they are varied or revoked under the Act.
- 7.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

Compliance statement for Tesco

I [insert name] confirm on behalf of Tesco that since the Order by the Competition Commission on [] ('the Order'):

- (a) Tesco has complied with the Order in the period from [insert date] to [insert date].
- (b) Tesco's Subsidiaries have complied with the Order in the period from [insert date] to [insert date].
- (c) *Provide details of any contact (whether oral or written) concerning the Site between Tesco or a subsidiary of Tesco, or any agent, adviser or contractor of Tesco or a subsidiary of Tesco, and prospective purchasers, tenants or occupants of the Site, including the identity of the other party, the nature of the contact and the purpose of the contact*
- (d) *Provide details of steps Tesco has taken to bring about an Effective Disposal, including assistance Tesco has provided to the Divestiture Trustee (eg access to facilities, books, records, communications, documents, etc) or Approved Purchaser/Tenant, as appropriate*
- (e) *Provide details of steps Tesco has taken to assist the Redevelopment Option Approved Purchaser, the Fallback Option Approved Purchaser and the Approved Tenant*
- (f) *Provide details of any agreements or arrangements entered into by Tesco or its subsidiaries in relation to the Site*
- (g) **If Fallback Option:** *Provide details of any changes to the Construction Programme*
- (h) **If Fallback Option:** *Provide details of any applications for planning permission in respect of the Site including any variations and of any progress in relation to such applications*
- (i) **If Fallback Option** *Provide details of the progress of construction on the Site including any delays and of any material developments concerning any aspect of the Site*
- (j) The following steps have been taken in order to verify the contents of this compliance statement *provide details including the name and position of all persons consulted.*

FOR AND ON BEHALF OF TESCO PLC

Signature

Name

Title

Date

Tesco indemnity

Tesco shall without limitation hold harmless the [Redevelopment Option Approved Purchaser/Fallback Option Approved Purchaser] their owners, directors, employees, agents, assignees and successors against any and all liabilities howsoever arising from any activity undertaken by, with the authority of, or otherwise in the name of New Clapton Stadium Company Limited and/or any of its subsidiaries up to the date of Effective Disposal.¹

¹This indemnity relates to a small part of the Site which is vested leasehold in New Clapton Stadium Company Limited and the freehold owner of which cannot be traced. New Clapton Stadium Company Limited is currently a wholly owned subsidiary within the Tesco group (Tesco having acquired the company from the Co-operative Group Limited (CGL) when it bought the Site, as it was not possible to trace the freehold owner at that time). In addition to transferring the freehold title to the main part of the Site, Tesco will sell the whole of the share capital in New Clapton Stadium Company Ltd to the freehold purchaser in order to transfer title to this part of the Site.

**Draft Heads of Terms for the Agreement for Lease and Lease to
the grocery retailer under the Fallback Option**

1. Agreement for Lease to grocery retailer (Fallback Option)

- 1.1 Tesco to have an initial maximum build period obligation to the tenant of 14 months.
- 1.2 Build period in paragraph 1.1 to be extended for delays caused by force majeure, variations required by the tenant or any delay caused during the tenant's access for fitting out.
- 1.3 Liquidated damages for tenant for delay in delivery (beyond 1.1 and 1.2).
- 1.4 Tenant to have no right to terminate unless the specified size is not achieved (subject to tolerances).
- 1.5 Rent frozen at the specified size even if unit is larger when built.
- 1.6 Stipulate any rent-free period or inducement given to tenant.
- 1.7 Landlord to supply available professional team and main contractor warranties: Tesco will be responsible during the defects liability period of 12 months thereafter normal warranties apply.
- 1.8 New Clapton Stadium provisions (Tesco to seek to secure freehold of the New Clapton land for Tesco Stores Limited and surrender the lease, or to secure assignment of the lease, or New Clapton Stadium Company Limited to contract to allow the estate to use the New Clapton land irrevocably).
- 1.9 Tenant to be allowed to request variations provided that it meets the additional cost and provided that the programme is not materially delayed.

1. Lease to grocery retailer (Fallback Option)

- 1.1 Term in excess of 15 years.
- 1.2 Rack rent payable with five yearly open market upward-only rent reviews.
- 1.3 Service area charge and insurance sums payable proportionate to Gross Internal Area.
- 1.4 Internal demise with repair obligation and alterations restricted to non-structural.
- 1.5 Tenant can assign whole or underlet whole or can underlet self-contained part (excluded from security of tenure).
- 1.6 Use is open A1 and ancillary uses (including A2 and A3) and rent review corresponds.
- 1.7 Requirement to trade as a grocery store for a specified period.
- 1.8 Specified external and estate signage zones.
- 1.9 Landlord service charge, insurance and car park opening/numbers obligations.
- 1.10 Service yard within demise and rights over estate.

THE COMPETITION COMMISSION'S APPROACH TO THE EVALUATION OF BIDS

Background

1. The acquisition by Tesco plc (Tesco) of the Co-operative Group Ltd (CGL) store at 78 Uxbridge Road, Slough (the site) was the subject of a Competition Commission (CC) investigation. The CC found that the acquisition had led, and could be expected to lead to a substantial lessening of competition in the market for grocery retailing in the Slough area. The CC decided that Tesco should sell the site, with the aim of restoring the level of competition in grocery retailing in the Slough area that would have existed had the acquisition not taken place.²

2. A Divestiture Trustee will simultaneously market both the 'Redevelopment Option' and the 'Fallback Option'. In the Redevelopment Option, bids will be sought from purchasers who will redevelop the site to construct and ensure the operation of a large grocery store if planning permission is secured. If planning permission is not secured the purchaser will complete the Original Proposed Development³ and ensure the operation of a grocery store of at least 3,600 sq metres gross internal area from the site. In the Fallback Option, the Divestiture Trustee will lease a unit of at least 3,600 sq metres gross internal area to a suitable grocery retailer and will lease the remaining units to other retailers, Tesco will complete the Original Proposed Development, and the Divestiture Trustee will sell the freehold of the entire development to a suitable purchaser.

3. In the final report (paragraphs 8.104 and 8.105) the CC said:
 - 8.104 The CC will not normally consider the costs of divestiture to the merger parties in completed mergers. However, we consider that the circumstances of this case are wholly exceptional and do require us to have regard to the costs to Tesco of our remedy. We do therefore consider that the financial loss to Tesco resulting from a sale is a factor that it should take into account, but that this has to be considered alongside other factors, and in particular the public interest in remedying the SLC, in determining a remedy which is reasonable.

 - 8.105 In order to achieve this, the evaluation of the bids received for the 'redevelopment plus fallback' option and the fallback option will be evaluated by the CC (not by Tesco or by a divestiture trustee). In evaluating the bids, the CC will have regard to (a) the effectiveness of the remedy and our strong preference for the 'redevelopment plus fallback' option over the fallback option; (b) the size of the unit or units from which the purchaser intends a grocery retailer to operate under the fallback option (alone or in combination with the redevelopment option); (c) the suitability of the purchaser (bearing in

²The Competition Commission's final report *Tesco plc and the Co-operative Group (CWS) Limited*, was published in November 2007 and can be found at: www.competition-commission.org.uk/rep_pub/reports/2007/534tesco.htm.

³**Original Proposed Development** is defined in the Order as the development of the Site in accordance with the Planning Permission and any associated agreement required under section 106 Town and Country Planning Act 1990 (as amended). **Planning Permission** is defined in the Order as: the planning consent relating to the development of the Site that Tesco has obtained pursuant to its application made on 28 May 2004 (with reference number P/00362/056) *Development of four retail units, Unit 3 for food* and the planning consents, once obtained and free from legal challenge, relating to the development of the Site which Tesco has applied for and will continue to pursue made on 12 February 2007 (with reference number P/00362/060) *Combination of Units 1&2 for food* and 7 November 2007 (with reference number P/00362/064) *Combination of Units 3&4 for food* including any variations thereof, provided that any such variation continues to provide for the Unit.

mind the factors discussed in paragraphs 8.52 to 8.69); (d) the price of the bid; and (e) the value of the bid to Tesco (excluding any cost to Tesco as a result of loss of trade at its Brunel Way store). The CC will not require Tesco to accept a bid which is, in the CC's view, wholly unreasonable.

4. Our approach to the assessment of bids follows the considerations set out in paragraphs 8.104 and 8.105 of the final report. The approach recognizes that, although the Divestiture Trustee will invite bids for both the Redevelopment Option and the Fallback Option,⁴ the CC has a strong preference for the Redevelopment Option over the Fallback Option, as it believes that only the Redevelopment Option can fully restore the competition that was lost as a result of Tesco's acquisition of the CGL store. However, it also recognizes the requirement not to require Tesco to accept a bid which is, in the CC's view, wholly unreasonable (in the context of, in particular, the public interest in remedying the SLC).

Process of evaluation

5. The criteria specified in paragraph 8.105 of the report include the suitability of the purchaser, taking account of factors identified in paragraphs 8.52 to 8.69 of the report. It is envisaged that the suitability of the purchaser can be addressed at an early stage in the process. The factors considered would be an assessment of the independence of the purchaser (paragraph 8.54 of the final report), competition concerns over the development proposed (paragraphs 8.61 to 8.67 of the report) and the purchaser's ability to finance an acquisition (paragraph 8.60 of the final report). If the retailer proposed to operate the store is not a large grocery retailer, an assessment of the capability of the grocery retailer would also be included in the assessment of suitability.
6. At this stage, a purchaser will be assessed as suitable or not. Once a purchaser has passed this threshold, it can proceed to invest in the further work necessary to develop a detailed bid in the knowledge that it will not subsequently fail for being unsuitable. However, within the pool of suitable purchasers, some may be regarded as more suitable than others in terms of how effectively their proposed development would remedy the SLC found. Consequently, in undertaking the subsequent evaluation of how effectively a particular bidder remedies the SLC, a more relative assessment of suitability may be taken into account as part of the overall decision on which bid or bids are ultimately capable of acceptance.
7. The assessment of the effectiveness of the remedy will be made on the basis of a number of balancing factors, including:
 - the size of the development proposed;
 - the nature of the development proposed and the likelihood of the development gaining planning permission); and
 - how strongly a retailer will be able to compete from the proposed development and the resulting competition in Slough compared with the counterfactual.⁵

⁴Note that a 'bid' under the Fallback Option will also be taken in this document to refer to a person who is bidding only to lease the grocery retail unit. In this document we still refer to such as person as a purchaser although in this particular case the purchaser is recognized formally in the Order as an Approved Tenant.

⁵The counterfactual was summarized in paragraph 6.18 of the report as Tesco Brunel Way expanded to an F80 or F90 format (net sales area of 80,000 to 90,000 sq ft), the CLG store operated by Sainsbury's, Asda operating its store at Telford Drive, and Morrisons/Safeway operating from Farnham Road, with Sainsbury's operating its store at Taplow.

8. The other criteria in paragraph 8.105 relate to the assessment of the price and value to Tesco of the bid and the CC's determination of whether a bid is wholly unreasonable in the context of, in particular, the public interest in remedying the SLC.
9. This annex outlines the three parts of the CC's evaluation of bids under both the Redevelopment Option and the Fallback Option, in line with paragraphs 8.104 and 8.105 of the report. The three parts are:
 - (a) an evaluation of the suitability of the purchaser;
 - (b) an evaluation of how effectively a particular bidder remedies the SLC; and
 - (c) an evaluation of the price and value to Tesco of a bid in determining whether the bid is wholly unreasonable in the context of remedying the SLC effectively.
10. The evaluation of suitability is the first phase in the process and may take place before detailed bids are received. The evaluation of the effectiveness and then the evaluation of the price and value of a bid will be undertaken when full bids have been received.
11. The process described in this annex is intended as a high-level outline. Depending upon the number of potential bidders and the nature of initial bids received, it may be necessary to provide for one or more further rounds of bidding during which particular aspects of the bid (such as, for example, price) are refined.⁶

The CC's approach to the assessment of suitability of purchasers

12. Any potential purchasers must be approved by the CC as 'suitable'. Tesco can only sell the site to a purchaser that has secured CC approval. The factors described below apply to both the Redevelopment and the Fallback Option, except for the issues concerning planning consent, which applies to the Redevelopment Option only.

Factors to be taken into account in assessing suitability⁷

Independence

13. To be considered suitable a purchaser must be independent of Tesco plc. This means that the purchaser should have no connection to Tesco plc that would reduce its incentive to operate a grocery store in competition with Tesco plc. The purchaser should not in any way be subject to ownership or control by Tesco plc, any of its subsidiaries, nominees, trust companies, agents, or employees. Neither should Tesco be in a position to influence the purchaser's decision-making. Note that significant commercial relationships (eg if one company is dependent on supplies from or the custom of another, including where one company leases premises from another), can provide a means of influence. Personal links between key people within the purchaser and Tesco may also compromise the independence of the purchaser. For this purpose 'key people' are those with an influence on the decision-making process within the purchaser and 'personal links' are any links between key people within the purchaser and Tesco that are not commercial relationships but which could or could reasonably be expected to influence decision-making within the purchaser.

⁶The detailed marketing process will be determined with the Divestiture Trustee.

⁷Note that most of the criteria will apply equally to the Redevelopment Option and the Fallback Option.

14. If a bid is from a developer the CC will also wish to ensure that the grocery retailer from which the developer has a commitment⁸ to operate from the site is also independent of Tesco plc. The CC will conduct this assessment in the same way as for the bidder for the site.
15. If a grocery retailer has links to Tesco plc this will not necessarily prevent the bidder from being approved as a suitable purchaser (this also applies, if a bid is from a developer, to the grocery retailer from which the developer has a commitment to operate from the site). However, if this is the case, the CC will need to consider carefully what arrangements are proposed to be put in place to deal with those links and whether they will be sufficient to overcome any concerns the CC may have.

Freedom from competition concerns

16. The other large grocery stores in the Slough area (with approximate net sales areas and drive-times (based on CACI analysis)⁹ from the Uxbridge Road site) are:
 - (a) Tesco Brunel Way (9,300 sq metres 3 minutes' drive-time);
 - (b) Asda Telford Drive, (6,500 sq metres 11 minutes' drive-time);
 - (c) Sainsbury's Taplow (3,000 sq metres 11 minutes' drive-time); and
 - (d) Sainsbury's Farnham Road (1,400 sq metres 7 minutes' drive-time).
17. All of these stores are operated by large grocery retailers. A 'large grocery retailer' was defined in the CC's recent market investigation into *Groceries*¹⁰ as one that:
 - (a) has operations throughout Great Britain;
 - (b) carries a full-range of grocery products;
 - (c) has an integrated wholesaling function that purchases direct from grocery suppliers;
18. The CC's *Groceries* report listed those retailers that the CC considered to be large grocery retailers as: Tesco, Sainsbury's, Asda, Morrisons, Waitrose, M&S, CGL, and Somerfield.
19. A grocery retailer who is free from competition concerns will be one whose operation of a large grocery store from the site will not itself significantly lessen competition among large grocery stores in the Slough area.¹¹ In an assessment of the possible competition concerns for each purchaser we will perform a detailed assessment of the local competitive environment and the impact on competition of each possible purchaser. Paragraphs 20 and 21 set out the general approach we will use, however, our approach will be more nuanced than a strictly mechanical approach.
20. A grocery retailer who is not present with a large grocery store in the Slough area will be free from competition concerns. If the bidder is a grocery retailer (or in the case of a developer the grocery retailer from which the bidder has a commitment to operate

⁸At this stage the commitment can take the form of a letter of intent, however by the time bids are made for the site the commitment should be legally binding.

⁹The drive-times used were generated by CACI Ltd, a provider of marketing and information systems and used during the CC inquiry into the Tesco acquisition of the Co-operative Group (CWS) Limited's store on the site.

¹⁰The CC's *Groceries* final report can be found at: www.competition-commission.org.uk/rep_pub/reports/2008/fulltext/538.pdf.

¹¹Compared with the counterfactual summarized in paragraph 6.18 of the final report (see footnote 4 above).

from the site), that is already present with a large store in the Slough area it may still be free from competition concerns. The less of a presence (in terms of grocery floorspace) it already has in the Slough area, and the further that presence is from the site, the more likely the CC will consider a bidder to be free from competition concerns.

21. If a grocery retailer's operation of a large grocery store on the site would result in it having more than 60 per cent of the grocery floorspace of large grocery stores in the Slough area (within a 10-minute drive-time of the site) the CC would be likely to consider that this raised possible competition concerns.¹² In itself, this would not necessarily make the grocery retailer unsuitable as a purchaser or as an operator of a grocery store acquired by a developer. If the CC considered that a grocery retailer that was bidding for the site, or a grocery retailer from which a bidder had a commitment to operate from the site—would raise competition concerns, this would not necessarily result in the bidder being considered an unsuitable purchaser. However, the CC would wish to see a compelling case as to how its concerns would be addressed.

Capability

22. The purchaser should be capable of operating a grocery store that would compete with other large grocery stores in the Slough area and restore the level of competition that would have existed among large grocery stores in Slough absent the merger. For a developer (which includes developers that are part of the same corporate group as a grocery retailer) to be considered a suitable purchaser it must be capable of ensuring that a grocery retailer capable of competing with large grocery stores in the Slough area will operate from the site.
23. If a developer wishes to bid, the CC will require it to have a commitment with one or more grocery retailers to operate from the site. The CC will then assess the capability of the grocery retailer(s) from which the developer has commitments to operate a grocery store on the site.
24. The CC's view is that a large grocery retailer is more likely to be capable of operating a grocery store from the site that will compete with other large grocery stores in the Slough area. If the bidder is not a large grocery retailer on the basis of the criteria set out above, or is a developer who can only ensure that a grocery retailer that is not a large grocery retailer on the basis of the criteria set out above will operate from the site, this does not necessarily mean that the CC will rule that bidder out as a suitable purchaser. But the CC will expect the bidder to provide a clear business case demonstrating how the grocery retailer will compete effectively with large grocery stores in Slough. The CC will want to see business plans and financial information in support of any such explanation.
25. In the case of a grocery retailer bidding under the Redevelopment Option the CC would wish to understand from the grocery retailer, if it failed to get planning permission for the Redevelopment Option and the fallback option was therefore pursued, whether it would operate the grocery retail unit itself or whether it would

¹²Note that in performing the analysis for the Tesco acquisition of the Co-operative Group (CWS) Limited's store on the site a nuanced view was taken on the analysis of the market and the competitive effects. It is possible that if the market share of grocery floor space was slightly below 60 per cent, or a grocery retailer operated a store just beyond a 10-minute drive-time from the site, this may still raise competition concerns.

propose to find an alternative grocery retailer acceptable to the CC, to operate the grocery retail unit.¹³

Process for the assessment of suitability

Submission and supporting documentation

26. In considering whether a bidder is a suitable purchaser the CC will first ask the bidder to provide an initial submission explaining the nature of the development it proposes for the site (including net sales area and grocery sales area) and why it considers itself to be a suitable purchaser by reference to the factors discussed above. The CC will ask it to include any material it has in support of the submission.
27. Grocery retailers or developers (which includes developers that are part of the same corporate group as a grocery retailer) that are interested in purchasing the site will be asked to include the following with their submission, in so far as they are reasonably available:
 - details of any large grocery stores the bidder already has in the Slough area, including net sales area and grocery floorspace;
 - a declaration of any links the bidder or any companies within the same corporate group as the bidder, has or has had in the last three years with Tesco plc or any of its subsidiaries, nominees, or trust companies;
 - a declaration of any links key staff within the bidder or its corporate group have or have had in the last three years with Tesco plc or any of its subsidiaries, nominees, or trust companies; and
 - documents demonstrating that the bidder has the necessary finance to acquire and develop the site.
28. If the bidder is a developer, the CC will also wish to receive from the grocery retailer:
 - details of any large grocery stores that the grocery retailer associated with the developer's bid already has in the Slough area, including net sales area and grocery floorspace;
 - a declaration of any links that the grocery retailer or any companies within the same corporate group as that retailer have or have had in the last three years with Tesco plc or any of its subsidiaries, nominees, or trust companies; and
 - a declaration of any links key staff within the grocery retailer or the retailer's corporate group have or have had in the last three years with Tesco plc or any of its subsidiaries, nominees, or trust companies.
29. If the grocery retailer that will purchase or operate the grocery store on the site is not a large grocery retailer, other information will also need to be provided to demonstrate the capability of the grocery retailer to compete (in so far as this information is reasonably available):

¹³Note that if the large grocery retailer was unable to find another grocery retailer that was acceptable to the CC the large grocery retailer would be expected to operate the grocery retail unit.

- full business plans in support of the grocery retailer's decision to trade from the site, including any investment appraisal; and
 - documents demonstrating that the grocery retailer has traded successfully from similar locations.
30. The CC would be happy to discuss the sort of material a bidder should include with its initial submission in advance of the bidder submitting it. If a bidder is unable to support its submission with the sort of material outlined above, this may not be a barrier to its approval, but the bidder may find it helpful to discuss with the CC in advance what material it is able to provide.

Discussions with the CC

31. CC staff are likely to want to meet with bidders to discuss their suitability but will not do this until the CC has received the submissions detailed in paragraphs 26 to 29 above and supporting documents. CC staff will wish to discuss those factors outlined above.
32. If the bidder is a developer it is also likely that CC staff will want to meet with the grocery retailer or retailers from whom the developer has commitments to operate from the site.

The CC's decision on suitability

33. When it has sufficient material to enable it do so, the CC will take a decision on each bidder's suitability as a purchaser. If the CC considers a bidder to be suitable, it will write to the bidder informing it of this. This letter will be copied to the Divestiture Trustee.
34. If the CC has concerns about a bidder's suitability, it will write to the bidder setting out these concerns. The bidder will then have an opportunity within a specified period to make a further submission addressing those concerns.
35. If the CC decides that a bidder is not suitable, it will write to the bidder setting out the reasons for this decision. It is unlikely that the CC will do this without first having written to the bidder expressing its concerns and giving the bidder an opportunity to respond (see above).

Questions and clarifications

36. If any bidders would like to discuss the factors the CC will take into account in assessing suitability or the process by which it will conduct this assessment, this can be arranged. Please contact the Divestiture Trustee,¹⁴ who will arrange this.

The CC's approach to assessing how effectively a particular bidder remedies the SLC

37. Once a decision has been taken on the suitability of a bidder the CC will consider how effectively a suitable bidder remedies the SLC. This decision will determine which bid or bids Tesco should be required to accept unless the bid is determined by

¹⁴Name and contact details will be provided on the CC website when the Divestiture Trustee is appointed.

the CC to be wholly unreasonable. This section details how the CC will determine how effectively a particular bidder remedies the SLC and the final section will detail how the CC will determine the reasonableness of a bid.

38. By the time a bid is submitted we would expect a purchaser that did not intend to operate the store (such as a developer, or a retailer that did not wish to operate the store under the fallback option), to have legally binding commitments with a suitable retailer to operate a store on the site). The commitment(s) may only be conditional upon: (a) the developer/retailer being appointed as the purchaser; and (b) the receipt of a satisfactory planning permission. It is possible for a developer to have a legally binding commitment with more than one grocery retailer to allow for the possibility that a particular retailer may only be interested if a scheme of a certain size or character receives planning permission. However, if a developer has legally binding commitments with more than one grocery retailer these agreements must, when considered together, ensure that, regardless of the scheme for which planning permission is eventually received, a grocery retailer would be available to operate a store from the site.

Factors to be taken into account in assessing effectiveness

Size of store

39. The capability of a retailer to operate in competition with the other large grocery stores in the Slough area will depend on the store that is constructed on the site. This will depend in part on the size of the store. In its *Groceries* report the CC defined a large grocery store as being one in excess of 1,000 sq metres net sales area. However, in this case, the CC will take account of the size of any store proposed for the site and the size of the other large grocery stores in the Slough area. The more comparable the proposed grocery store is to the largest of these stores, the more likely that the CC will consider that the proposed grocery store will be able to compete with those stores.

Other aspects of the store

40. The capability of the bidder, or the capability of the grocery retailer from which the bidder has legally binding commitments, to operate a grocery store which competes effectively in the Slough area will also depend on other aspects of the store. These will be taken into account by the CC and may include the nature of the facilities that will be included in the store and the breadth of the retail offer.
41. The planned opening hours of the store may also be taken into account. These may depend on the physical configuration of the delivery arrangements (eg positioning of the delivery access road and the delivery yard, which may affect planning conditions).

Preference for the redevelopment option

42. As discussed in paragraph 4 above, the CC has a strong preference for the Redevelopment Option over the Fallback Option, as it believes that only the Redevelopment Option can fully restore the competition that was lost as a result of Tesco's acquisition of the CGL store. It is likely therefore that the CC will consider a bidder that bids for the redevelopment option to be more likely effectively to remedy the SLC than one that bids for the Fallback Option.

Planning consent

43. The likelihood of a bidder being successful in securing planning permission for its proposed scheme, and the timescale within which the bidder is likely to be successful, will also be important factors in determining the bidder's capability to operate or ensure the operation of a grocery store from the site.¹⁵ The CC will want to be provided with details of any discussions bidders have had with local planners and steps that have been taken to alleviate possible concerns. Evidence of success in addressing similar planning issues would be helpful.

Likely trading success

44. The CC will need to be satisfied that the bidder, or the grocery retailer from which the bidder has legally binding commitments, will be able to trade successfully from the site. It is important to note that the CC will not necessarily consider all suitable grocery retailers to be equally capable of competing effectively in the Slough area. In measuring the effectiveness of a bidder in remedying the SLC the suitability of a bidder is relative rather than absolute. The CC will wish to see the full business plan underlying the proposed acquisition, including trade forecasts for the store based on analysis of the specific details of that store (eg planned configuration of site and size of store, delivery arrangements, local demographics). The CC may also request information on the actual performance at the grocery retailer's other stores, especially those likely to be similar to the store on the site.
45. In the case of the Fallback Option the CC will also wish to consider:
- (a) the likelihood that the operators of the non-grocery stores in the scheme (if known at the time) will facilitate the successful trading of the grocery store (eg the nature of their retail offers, when they expect to begin trading); and
 - (b) the likelihood that the purchaser of the freehold (if known at the time) will facilitate the successful trading of the grocery store. This includes (in no particular order);
 - (i) plans to maintain or improve the site;
 - (ii) record of successful management of similar schemes;
 - (iii) business plan for the purchase; and
 - (iv) financing arrangements.

Process for the assessment of how effectively a particular bidder remedies the SLC

Submission and supporting documentation

46. The CC will require a bidder that has passed the suitability threshold to provide a further submission explaining why it considers its proposals effectively to remedy the SLC by reference to the factors discussed above. The CC will ask it to include any material it has in support of the submission.

¹⁵We recognize that in practice the size of store (together with the CC's preference for the redevelopment option) and therefore the ability of the store to compete will have to be balanced against the likelihood of a larger store gaining planning permission.

47. Grocery retailers or developers (which includes developers that are part of the same corporate group as a grocery retailer) that are interested in purchasing the site will be asked to include the following with their submission, in so far as they are reasonably available:
- full business plans in support of the acquisition, including any investment appraisal (note that grocery retailers that are not large grocery retailers and that the CC has decided are suitable purchasers will have already provided this information);
 - documents demonstrating the ability of the grocery retailer to trade successfully from similar locations (note that grocery retailers that are not large grocery retailers and that the CC has decided are suitable purchasers will have already provided this information);
 - full proposals for the development of the site, including size and location of store, car parking, and delivery arrangements. These may include architectural drawings;
 - records (including letters, notes of meetings) with the local planning authority; and
 - reports from experts advising on planning matters (eg on highways issues).
48. If the bidder is a developer, the CC will also wish to receive from the grocery retailer:
- full business plans in support of the grocery retailer's decision to trade from the site, including any investment appraisal (note that grocery retailers that are not large grocery retailers and that the CC has decided are suitable purchasers will have already provided this information); and
 - documents demonstrating the ability of the grocery retailer to trade successfully from similar locations (note that grocery retailers that are not large grocery retailers and that the CC has decided are suitable purchasers will have already provided this information).
49. The CC would be happy to discuss the sort of material a bidder should include with its submission in advance of the bidder submitting it. If a bidder is unable to support its submission with the sort of material outlined above, this may not be a barrier to its approval, but the bidder may find it helpful to discuss with the CC in advance what material it is able to provide.

Discussions with the CC

50. CC staff are likely to want to meet with bidders to discuss their proposals but will not do this until the CC has received their submissions and supporting documents. CC staff will wish to discuss those factors outlined above.
51. If the bidder is a developer it is also likely that CC staff will want to meet with the grocery retailer or retailers from whom the developer has legally binding commitments to operate from the site.

The CC's decision on how effectively a particular bidder remedies the SLC

52. When it has sufficient material to enable it do so, the CC will take a decision on how effectively each bidder remedies the SLC.

Questions and clarifications

53. If any bidders would like to discuss the factors the CC will take into account in assessing how effectively each bidder remedies the SLC or the process by which it will conduct this assessment, this can be arranged. Please contact the Divestiture Trustee, who will arrange this.

The CC's approach to the assessment of the price and value to Tesco of a bid in determining whether a bid is 'wholly unreasonable'

54. The CC does not usually take account of the costs of a divestiture to the divesting party in a completed merger. However, the CC considered that this case was wholly exceptional in nature. The CC therefore said that it would have regard to the costs to Tesco of its remedy.¹⁶ In line with this, having chosen a divestiture remedy, the CC said that it would not require Tesco to accept a bid that was 'in the CC's view wholly unreasonable'.¹⁷
55. The CC's aim is to achieve an effective remedy to the substantial lessening of competition it established had resulted from the acquisition of the former CGL store on Uxbridge Road, provided that Tesco is not required to accept a bid that is wholly unreasonable. This note explains how the CC will conduct its assessment of whether a bid is, in its view, wholly unreasonable and therefore whether or not Tesco should be required to accept it.

Factors to be taken into account in the assessment of the price and value to Tesco of a bid in determining whether the bid is wholly unreasonable

56. Once the CC has assessed how effectively each bidder remedies the SLC it will determine which bid or bids Tesco should accept. This decision will be taken after consideration of whether the bid is wholly unreasonable. If the bid is considered wholly unreasonable, however, Tesco will not be required to accept the bid and Tesco may be required to accept another bid that less effectively remedies the SLC. In conducting the assessment of whether a bid for the Redevelopment Option is wholly unreasonable the CC will have regard to the price of the bid (basic amount and overage) compared to (in no particular order):
- (i) the market valuations¹⁸ of the site for redevelopment as a large grocery store;
 - (ii) the market valuations of the site for redevelopment as per the Original Proposed Development; and
 - (iii) the bids received under the Fallback Option.
57. The Divestiture Trustee may receive bids for the Fallback Option within the relevant property interests valued on either a freehold or a leasehold basis. To evaluate those bids, the freehold valuation will be based on the price and terms agreed for the lease of a unit for grocery retailing of at least 3,600 sq metres gross internal area and the actual or expected price and terms of the non-grocery units. If the CC is assessing a bid for part of the Fallback Option (eg for the lease of a grocery unit alone, or where

¹⁶Competition Commission final report *Tesco plc and the Co-operative Group (CWS) Limited*, at paragraphs 8.58 and 8.104.

¹⁷Competition Commission final report *Tesco plc and the Co-operative Group (CWS) Limited*, at paragraph 8.105.

¹⁸The market valuation(s) will be based on present trading conditions and will be carried out in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards 6th Edition 2007 by appropriately qualified chartered surveyors acting as independent experts.

bids have been obtained for only some of the non-grocery units), the CC will consider it in relation to the total expected market valuation of the Fallback Option as a whole, including that bid.

58. The CC will also assess the bids received for the Fallback Option (subject to the CC's strong preference for the Redevelopment Option over the Fallback Option, as it believes that only the Redevelopment Option can fully restore the competition that was lost as a result of Tesco's acquisition of the CGL store). In conducting the assessment the CC will have regard to a number of factors, including (in no particular order):
- (i) the price and resulting value to Tesco of the bid (or separate bids for the leases and the freehold) compared to the market valuations¹⁹ of the site for redevelopment as per the Original Proposed Development; and
 - (ii) the bids received under the Redevelopment Option.
59. The factors listed above are those to which the CC expects to have regard in assessing bids. The CC may also have regard to any factors that are not listed above but which have been raised in the bidding process if it considers them to be relevant. The CC will consider the costs to Tesco of the divestiture as represented by the difference between the market valuations of the site and the level of the bids but will not consider any costs to Tesco from loss of business at its Brunel Way store to the new grocery store on Uxbridge Road.
60. The CC will not only consider the relationship of each bid to the market valuations but will also consider the relationship of each bid to the other bids.
61. Where more than one bid is judged not to be wholly unreasonable the CC may require Tesco to accept a bid that is not the highest bid from a suitable purchaser if the CC considers that this bid remedies the SLC more effectively.

Process for the assessment of the price and value to Tesco of a bid in determining whether the bid is wholly unreasonable

62. The CC is likely already to have met with the bidders as part of the assessments detailed previously in this paper. If the CC has met already met a bidder it is unlikely to seek a further meeting as part of the assessment of the reasonableness of their bid. It is possible that in the assessment of the reasonableness of the bids, the CC will wish to discuss with a bidder matters that were not discussed in the assessments detailed previously, or will wish to take aspects of these discussions further. It is likely that such matters can be pursued in writing or by telephone.

Specification of the bid that Tesco should accept

63. Once the CC has performed the final assessment of whether bids are wholly unreasonable it will provisionally decide which bid it will require Tesco to accept. The assessment of how effectively a particular bidder remedies the SLC results in a relative assessment of one bidder against another. Therefore it is unlikely that the CC would consider two (or more) bids would equally effectively remedy the SLC. In this unlikely event the CC would provide Tesco with the choice of which bid to accept.

¹⁹The market valuations will be based on present trading conditions and will be carried out in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Standards 6th Edition 2007 by appropriately qualified chartered surveyors acting as independent experts.

64. Having made its provisional decision on which bid Tesco should accept or which bids Tesco may choose between, the CC will write to Tesco setting out this provisional decision and the reasons for it and will provide Tesco with a period within which to submit comments on this provisional decision. The CC will then, taking Tesco's submission into account, reach a final decision on which bid Tesco is required to accept and Tesco will be directed by the CC to accept this bid (or potentially, in the case of the Fallback Option, these bids).²⁰ If the CC chooses a bid for the Redevelopment Option, the sale will then proceed as set out in the Order. If the CC chooses a bid for the Fallback Option, the sale will also proceed in accordance with the Order and Tesco will sell the freehold of the site as a whole to the CC's chosen purchaser in accordance with the Order.

Questions and clarifications

65. If you would like to discuss the factors the CC will take into account in assessing bids or the process by which it will conduct this assessment, this can be arranged. Please contact the Divestiture Trustee, who will arrange this.

²⁰ie bids for the grocery retail unit plus bids for the other units.

Monitoring Trustee Mandate

1. In this Monitoring Trustee Mandate references to 'the Order' are references to the Order made by the Competition Commission (CC) on []. Terms and expressions defined in the Order shall have the same meaning in this Monitoring Trustee Mandate, save as the context otherwise requires.
2. The functions of the Monitoring Trustee shall be as set out below.
3. The appointment by Tesco of a Monitoring Trustee shall be subject to the approval of the CC as to the identity of the Monitoring Trustee and the terms and conditions of appointment in their entirety. To this end, Tesco shall inform the Competition as soon as is reasonably practicable and in any event within five days of the appointment of the Divestiture Trustee of the identity of the Monitoring Trustee that Tesco proposes to appoint and provide the CC with draft terms and conditions of appointment, and once appointed, Tesco shall provide the CC with a copy of the agreed terms and conditions of appointment.
4. Subject to receiving the CC's prior approval in accordance with paragraph 3 above, the Monitoring Trustee shall be appointed by Tesco as soon as is reasonably practicable and in any event within five days of being Notified of the CC's approval or such longer period as the CC shall agree in writing, and shall continue to act until a grocery retail store has commenced operation on the Site and the freehold interest in the Site and the whole of the share capital of New Clapton Stadium Company Limited has transferred to either the Redevelopment Option Approved Purchaser or the Fallback Option Approved Purchaser.
5. The Monitoring Trustee shall act on behalf of the CC and shall be under an obligation to carry out its functions to the best of its abilities.
6. The Monitoring Trustee shall be remunerated and reimbursed by Tesco for all reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This shall be done in a way that does not impede its independence or its ability effectively to carry out its functions.
7. The function of the Monitoring Trustee shall be to monitor the full and effective compliance by Tesco with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order.
8. The Monitoring Trustee shall take all steps that it reasonably considers to be necessary in order for it effectively to carry out its function. Those steps may include attending any meetings involving Tesco or its subsidiaries and any agents, advisers or contractors involved in construction on the Site.
9. If the Monitoring Trustee has communicated with agents, advisers or contractors of Tesco or its subsidiaries, then it must inform Tesco of the existence of these communications as soon as is reasonably practicable after the communications have concluded, and must provide Tesco with a copy of any correspondence.
10. Notwithstanding paragraph 8 above, for the purpose of promoting occupational health and safety:

- (a) the Monitoring Trustee must provide Tesco with reasonable notice of the date of any visits to the Site;
 - (b) the Monitoring Trustee must observe safety regulations at all times while on the Site; and
 - (c) the Monitoring Trustee must not impede or obstruct the works on the Site, nor issue any directions to any agents, advisers or contractors of Tesco or its subsidiaries.
- 11. The Monitoring Trustee shall comply with any requests made by the CC for the purpose of ensuring the full and effective compliance by Tesco with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order.
- 12. The Monitoring Trustee will report to the CC monthly by means of the Monitoring Trustee Report (or as otherwise agreed with the CC) providing:
 - (a) confirmation of Tesco's compliance with the obligations set out in paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order;
 - (b) the reasons why the Monitoring Trustee has concluded that paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order have or have not been complied with. In particular, the Monitoring Trustee shall set out and explain whether: (i) anything has caused it to be concerned as to whether Tesco has complied with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order and, if so, what steps it has taken so as to satisfy itself as to Tesco's compliance; (ii) it has any remaining doubts or uncertainties as to whether Tesco has complied with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order; and (iii) if anything causes it to be concerned about a possible future breach of paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order (whether deliberate or inadvertent);
 - (c) the extent to which the Monitoring Trustee considers that it is in a good position to monitor the compliance of Tesco with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order. The Monitoring Trustee shall set out and explain if there is anything that it considers would assist in monitoring compliance of Tesco with paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order; and
 - (d) the extent to which Tesco has cooperated with the Monitoring Trustee in its task of monitoring compliance with the paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order. The Monitoring Trustee shall set out and explain if there are any aspects of the cooperation of Tesco that it considers could be improved.
- 13. The Monitoring Trustee shall notify the CC immediately if it forms a reasonable suspicion that paragraphs 3.6, 3.12.1, 3.14.1, 3.14.2, 3.14.3 and 3.14.5 of the Order have been breached, or if it considers that it is not in a position effectively to carry out its functions. In that situation, the Monitoring Trustee shall set out the reasons for its view and attach relevant supporting evidence.
- 14. All communications between the Monitoring Trustee and the CC (including the declarations and reports of the Monitoring Trustee referred to in paragraph 12) shall be confidential and shall not be disclosed to Tesco, save with the express written permission of the CC. In relation to the possibility of disclosure of such communications to third parties, the CC shall act in accordance with the provisions of Part 9 of the Act. The Monitoring Trustee shall not disclose such communications to third parties.

15. The Monitoring Trustee may seek written directions or instructions from the CC in order to assist it in the fulfilment of the Monitoring Trustee Mandate.
16. Nothing in the functions of the Monitoring Trustee shall require the disclosure to the Monitoring Trustee or to the CC by Tesco and its subsidiaries information or documents over which legal privilege may properly be asserted.
17. Where under the provisions of paragraph 4 of the Order a person other than the Monitoring Trustee is appointed to act as Divestiture Trustee, the Monitoring Trustee shall consult and cooperate as necessary with the Divestiture Trustee to facilitate the discharge of the respective functions of the Monitoring Trustee and Divestiture Trustee.