Dear Competition and Markets Authority

Traidcraft Exchange has the following comments in relation to the proposed merger between J Sainsbury PLC and Asda Group Ltd.

Thank you for the opportunity to provide a response to your preliminary invitation to comment. We, along with other organisations (including farmers, environmental groups, international development charities and unions), consider that there is a need to promote measures to stop unfair trading practices in grocery supply chains. We recognise that the CMA does not have the ability to examine unfair trading practices that currently exist. However, the CMA may examine the impact of the merger on grocery market supply chains more broadly, including the effect on competition at a national level and how it will exacerbate already unfair trading practices.

In summary, we anticipate that the proposed merger will exacerbate unfair and anti-competitive practices in the UK’s groceries’ supply chain and jeopardise choice and affordability for consumers in the long term. We would like to see the CMA focus its investigation on these issues and make recommendations that will protect suppliers from unfair trading practices.

We need to encourage a diverse supplier network – from UK food producers to global suppliers – who are able to pay workers fairly and to grow produce safely and sustainably. Ultimately, we are concerned that, in further consolidating the grocery retail sector, this merger will harm consumers and workers, as well as the farmed environment both in the UK and overseas.

These recommendations relate to the remedies that the CMA might propose at the end of its Phase 2 investigation should it find that the merger will lead to a substantial lessening of competition in the UK, as well as the process that the CMA will follow when investigating the proposed merger.

1. **Structural remedy: stop the merger**
   We are not in support of reducing the number of food retailers operating in the UK market. This means fewer buyers into which suppliers and primary producers can sell, increasing the buying power of the retailers and placing suppliers in an even weaker position. Unfettered pressure on the supply chain will mean less choice for consumers.
The Competition Commission’s 2000 report *Supermarkets: a report on the supply of groceries from multiple stores in the United Kingdom* identified that as little as 8% market share provided a food retailer with sufficient market power to engage in abusive trading practices towards their suppliers. Such trading practices include late payments, spurious deductions to invoices and demanding ‘donations’ from suppliers. The Competition Commission’s 2008 *Groceries Market Investigation* report identified that these risks and costs are passed in turn upstream into the groceries supply chain. These practices create an environment where it is almost impossible for smaller suppliers, irrespective of where they are in the supply chain, to supply supermarkets. This means that in the long term only the biggest suppliers will survive. The proposed merger will exacerbate this situation considerably, damaging the sustainability and competitiveness of the supply chain. It is for this reason that we would welcome the CMA preventing this merger from going ahead.

2. **Behavioural remedy: protect suppliers in the supply chains of the UK food retail market**

If the CMA chooses to clear this merger, our strong recommendation is that approval is conditional on the introduction of a behavioural remedy to safeguard fair dealing in the supply chain.

Failure to introduce such safeguards will mean otherwise viable supply businesses are vulnerable to being pushed into bankruptcy. This will reduce consumer choice, as well as having negative effects in relation to labour rights, food waste and food safety.

Sainsbury’s-Asda have already promised that the merged business will reduce prices for customers by up to 10% while not cutting jobs.\(^1\) If these savings are not going to come from reducing shareholder dividends then we assume they will be found by ensuring that cost and risk are transferred onto the supply chain. This causes us a great deal of concern, given that many suppliers are already operating on extremely tight margins. The Competition Commission’s 2008 *Groceries Market Investigation* identified that the transfer of excessive risks and unexpected costs by retailers will lead to long term consumer detriment, most obviously in relation to supplier innovation and the range of products available.

The Competition Commission proposed that, if abusive trading practices continued to feature in supermarket supply chains, the remit of the Groceries Code Adjudicator (GCA) should be extended to cover indirect suppliers to supermarkets, rather than solely direct suppliers. The GCA was established in 2013 but no comprehensive survey has yet been undertaken to assess whether or not abusive practices which transfer excessive risks and unexpected costs continue to be applied to indirect suppliers, and therefore whether or not they need suitably designed regulatory protection.

This behavioural remedy could take one of two forms:

- The CMA could require Sainsbury’s-Asda to abide by a code of fair dealing and pay for the establishment of a regulator that would enforce fair purchasing practices along the length of the supply chains selling into Sainsbury’s-Asda, extending to any trading relationship where one party is based in the UK. This regulator could be established to collaborate with the GCA.
- The CMA could recommend that a regulator is established to enforce a code of fair dealing along the length of the supply chains selling into all retailers with a UK turnover of more than £1 billion, extending to any trading relationship where one party is based in the UK. It could be suitable for this regulator to collaborate with GCA.

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\(^1\) [https://www.theguardian.com/business/2018/apr/30/sainsburys-prices-asda-merger-deal-uk-supermarket](https://www.theguardian.com/business/2018/apr/30/sainsburys-prices-asda-merger-deal-uk-supermarket)
Option b. would be more logical as it might be impractical to regulate supply chains going to one retailer only.

3. **Recommendations regarding the process of investigating the Sainsbury’s-Asda merger**

   a. The CMA should undertake a thorough survey to understand the dynamics of the UK’s grocery supply sector and the likely impact of the proposed merger.

   The survey should look at whether the “excessive risk and unexpected costs” identified in 2008 continue to be transferred onto the supply chain by large manufacturers, other direct suppliers to the retailers, and the retailers themselves.

   The proposed merger will have an impact on competition across the supply base of all food retailers operating in the UK. Therefore, this survey – whether conducted by the CMA or outsourced to external specialists – should actively pursue input from smaller suppliers and indirect suppliers to other retailers (i.e. not just direct suppliers to Asda and Sainsbury’s).

   A wide group of suppliers (and others – see point c below) should be asked about the frequency, severity and financial impact of abusive practices which currently occur and for their views on the likely effect of the proposed merger on the ability of retailers to squeeze their supply chain for savings.

   The Competition Commission’s 2008 *Groceries Market Investigation* provides a model for the type of questions that might be included in such a survey. For example, the below table shows how the Competition Commission, with support from research company GfK, gathered evidence of unfair purchasing practices carried out by grocery retailers. This can be found at Appendix 9.8 of the report (*The categorization of, and evidence on, supply chain practices of grocery retailers*), and in particular at Annex 3 of that appendix which analyses the continued prevalence of the fifty-two abusive practices originally identified in the 2000 report.

   **TABLE 3  Suppliers reporting various practices carried out by grocery retailers in past five years**

<table>
<thead>
<tr>
<th>Practice</th>
<th>All grocery retailers</th>
<th>Four grocery retailers covered by the SCOP</th>
<th>Increased frequency over past 12 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligatory contributions to the marketing costs of grocery retailers</td>
<td>61</td>
<td>38</td>
<td>53</td>
</tr>
<tr>
<td>Delays in receiving payments from a grocery retailer substantially</td>
<td>48</td>
<td>28</td>
<td>37</td>
</tr>
<tr>
<td>beyond the agreed time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required to make excessive payments to grocery retailers for customer</td>
<td>48</td>
<td>36</td>
<td>40</td>
</tr>
<tr>
<td>complaints</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional services required in relation to packaging and distribution</td>
<td>37</td>
<td>29</td>
<td>49</td>
</tr>
<tr>
<td>Requested price reductions for products soon before or after delivery</td>
<td>37</td>
<td>26</td>
<td>58</td>
</tr>
<tr>
<td>Obligatory payments in return for stocking or listing products</td>
<td>35</td>
<td>22</td>
<td>33</td>
</tr>
<tr>
<td>Not provided with standard terms of business when requested</td>
<td>19</td>
<td>12</td>
<td>32</td>
</tr>
</tbody>
</table>

   *Source: GfK, Research on suppliers to the UK grocery market, A report for the Competition Commission, January 2007.*

   b. The CMA should state clearly that any evidence that a business provides will be held confidentially and should consider exercising its powers under Section 109 of the Enterprise Act.

   The groceries supply sector is characterised by a climate of fear, meaning that suppliers are often reluctant to complain of mistreatment from their buyers for fear of gaining a negative reputation and losing future custom. The CMA should therefore ensure that evidence is kept confidential.
Additionally, the CMA should consider using Section 109 to oblige suppliers to submit evidence. Some suppliers have advised that they prefer to be asked for evidence by the GCA, since it makes it less likely that they will be victimised by their buyers as a result (compared to voluntarily contacting the GCA). The same logic is likely to apply when suppliers engage with the CMA, particularly if the suppliers are currently selling to Sainsbury’s or Asda.

c. The CMA should encourage others with close knowledge of the grocery supply chain to contribute submissions to the investigation, such as service providers to the sector offering technical, financial, agricultural, equipment, packaging or other advisory expertise. As these businesses may not be in a direct business relationship with the supermarkets, they are more likely to speak honestly about the reality of supply chain purchasing practices.

d. The CMA should undertake analysis of the impact of price cuts of 10% on the viability of suppliers, and therefore ultimately on consumer choice. As the margins of many farmers and growers are already very tight, further cuts to the prices that their produce commands could be significant. Initial assessments have given an idea of the likely impact, with analysis by the New Economics Foundation conservatively suggesting that the merger would lead to at least 2500 job losses in the supply chain.²

We would want to see some assessment of the impact on the 466,000 workers in the UK agricultural sector, and of the workers in the global supply chains that serve the UK. A combination of anonymised supplier surveys and market analysis will be necessary and would require the resources and investigatory powers that the CMA has at its disposal. A recent report from the Gangmasters and Labour Abuse Authority on slavery and labour exploitation in the UK shows that we are going backwards in terms of worker protection, and that supply chains are a key problem.³ Fewer supplier businesses means a less diverse supply chain with obvious implications for both consumer choice and consumer welfare, as well as for the health of the UK economy.

e. The CMA should consider the impact on upstream suppliers of price cuts and range consolidation and how that would have an effect on choice for customers. This should include a survey of overseas suppliers to Sainsbury’s and Asda.

Anecdotal evidence suggests that the UK is an increasingly unattractive market for overseas suppliers due to the abusive purchasing practices of UK retailers.

One South African supplier found the poor contract and payment terms of a UK retailer so objectionable that when they found a fairer buyer in continental Europe they removed their stock (for which they had still not received payment) from the UK retailer’s depot and transferred the entire stock to their new customer. This was a costly exercise and meant reduced choice for the UK consumer.

UK suppliers, smaller suppliers, or those who have already packed their product with a specific retailer’s branding have less flexibility. The Moore Stephens Food Advisory Group has analysed data from Companies House and found that insolvencies of UK food producers tripled from 45 in 2010 to 162 in 2015. Many of these bankruptcies are linked to abusive purchasing practices by powerful UK retailers and brands. If the CMA fails to act to support greater fairness more insolvencies, and reduced consumer choice, seem inevitable.

We would welcome the opportunity to meet and help the CMA shape the forthcoming investigation. We are also very willing to provide support to this work by promoting investigations and surveys.

Yours sincerely,

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