

Completed acquisition by Capital Shopping Centres of the Trafford Centre

The OFT's decision on reference under section 22(1) given on 21 June 2011.
Full text of decision published 4 July 2011.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

- Capital Shopping Centres ('CSC')**, is a developer, owner and manager of UK regional shopping centres. Prior to the acquisition of Trafford it owned 13 regional shopping centres amounting to 14.1 million square feet of retail space comprising:
 - four out-of-town centres (Lakeside, Thurrock; Metrocentre, Gateshead); the Mall at Cribbs Causeway (through a joint venture with a 33.3 per cent interest); Braehead, Glasgow, and
 - nine in-town centres (The Harlequin, Watford; Chapelfield, Norwich; The Arndale Centre ('Arndale'), Manchester (through a joint venture with a 47.5 per cent interest); Victoria Centre, Nottingham; Eldon Square, Newcastle; St David's, Cardiff; The Chimes, Uxbridge; The Potteries, Stoke-on-Trent; and The Glades, Bromley).
- Trafford Centre Group ('Trafford')** operates an out-of-town shopping centre in the North West of England which includes retail, catering and leisure facilities. It comprises over 230 units including department stores (Selfridges, Debenhams and John Lewis), a large area devoted to catering and leisure, a multiplex cinema, a home-ware and leisure extension, a Premier Inn hotel, a car park, access roads, service areas, a bus station, a petrol station, offices and landscaped areas. Trafford's UK turnover for the year ended 31 December 2009 was £87.8 million.

TRANSACTION

3. On 28 January 2011, CSC acquired the whole of the issued share capital of the Trafford Centre Group from Tokenhouse Holdings (IoM) Limited and Peel Holdings (TTC) Limited both of which are part of the Peel Group.
4. The OFT received a satisfactory submission on 25 February 2011. The OFT's extended administrative deadline is 22 June 2011.

JURISDICTION

5. The OFT believes that the transaction has resulted in two or more enterprises ceasing to be distinct for the purposes of section 23(1) of the Enterprise Act 2002 (the Act).
6. The OFT believes that it is or may be the case that the turnover test in section 23(1)(b) of the Act is met and, therefore, that a relevant merger situation has been created. This is because the turnover of the target business exceeds £70 million.

RATIONALE

7. The parties told the OFT that the acquisition conforms with CSC's strategy of focusing on the UK's largest and most successful shopping centre destinations which are attractive to both retailers and customers.
8. CSC told the OFT that it saw a number of benefits from the transaction:
 - enhancing the attractiveness of its portfolio to retailers across the country
 - increasing its presence across the North West of England which is considered to be a key retail area within the UK
 - providing an opportunity to combine best practices across the Trafford Centre and other areas (for example by adding features from the Trafford Centre's successful leisure and catering offering to the CSC portfolio), and
 - creating additional value from investment in the Trafford Centre.

MARKET DEFINITION

9. The parties are both active in the ownership and management of UK regional shopping centres. The parties submit that shopping centres are purpose-built managed shopping areas of more than 50,000 sq ft of total retail space and leisure floor space in single or joint ownership including in-town and out-of-town centres, factory outlets centres, food store anchored district centres, open precincts and multi-layered covered centres but excluding retail parks/'big box' centres/shopping parks and small arcades. On this basis, the only regional overlap is between the Trafford Centre and the Arndale Centre in the Manchester area.

Product market

10. The OFT considers that shopping centres are two-sided products; that is, they are 'platforms' that intermediate between two distinct and unrelated types of customers: tenants and shoppers.
11. The value of the shopping centre for each set of customers will depend on the volume (and quality) of customers on the other side. The number and quality of customers on each side of the market therefore affects the profitability of the shopping centre. This is an indirect network effect. The particular indirect network effect for a shopping centre is that the better the selection of shops and amenities in a shopping centre, the more attractive the shopping centre will be for shoppers. The more shoppers (or higher spending shoppers) that a shopping centre attracts, the more easily the shopping centre will be able to attract tenants and the more rent will it be able to charge them. Shopping centres typically do not charge shoppers (save for parking), earning their revenue principally from rent instead.
12. As explained in the Merger Assessment Guidelines,¹ market definition can be complicated in mergers involving two-sided products as:

'It may therefore be difficult to conduct a hypothetical monopolist test because: (i) there is no single price to both sets of customers to which to apply a SSNIP; (ii) the effect of a SSNIP on the demand of one set of customers may be exacerbated by indirect network effects; and (iii) the constraints on the merger firms' products may

¹ OFT1254, September 2010.

come not only from other two-sided intermediaries but also from 'one-sided' firms serving one set of customers.'²

13. Consistent with this, CSC told the OFT that attempting to define a specific market for retail space by reference to location or other characteristics is not instructive. CSC said that the OFT should instead focus on the degree to which the Trafford Centre could be seen as a close competitor to the Arndale Centre. Though mindful of the parties' arguments, the OFT discusses below demand-side substitution between different types of retail space from the viewpoints of tenants and shoppers.

Tenants

14. Retail space exists along a spectrum of locations (including city centres, local town centres and out of town centres) and in a range of different formats (including shopping centres, retail parks and high streets). Some of these formats may be two-sided products like shopping centres (retail parks, for example) whereas others may not be (high streets, for instance).
15. Consistent with this, the parties state that different retailers will have different requirements such that the degree of substitutability between types of retail space will vary depending on:
 - i. the density of their store network
 - ii. the size of their store
 - iii. the demographics of customers visiting the shopping destination
 - iv. the number, type and range of other shops and amenities in the wider 'shopping destination'³ and

² See paragraph 5.2.20, second bullet. For a discussion of these issues in practice, see *Completed acquisition by Global Radio UK Limited of GCap Media plc*, ME/3638/08, August 2008.

³ The parties point out that although retail space in a town centre may be under fragmented ownership, it may constitute part of a shopping destination and may be commonly branded or marketed. If so, then it may be appropriate to consider the 'bundle' of shopping centre and city centre as a shopping destination.

- v. the degree to which the tenant is a shopping destination itself or relies on passing trade.
16. Retailers who responded to the OFT broadly corroborated the parties' views on the importance of factors iii. to v. in paragraph 15 above, suggesting that the primary attraction for retail tenants will be the size and affluence of the 'shopping population' which itself will be determined by factors such as the size and affluence of the general population, the accessibility of the shopping location, other retail or leisure activities in the area and the quality of the facilities provided. Retailers did not mention factors i. and ii. in paragraph 15 above to the same extent as the parties, however.
 17. In respect of factors iii. to v., the Trafford Centre (including the neighbouring Barton Square development) consists of 1.94 million sq ft of retail, catering and leisure space. It has over 230 units and receives around 35 million customers per year. The Arndale Centre is a comparable 1.61 million sq ft with around 200 units. That said, the parties' internal documents suggested that the demographics of customers at the Trafford Centre and Arndale Centre were different (with Trafford having a higher proportion of more affluent shoppers). Similarly, the evidence available to the OFT suggests that Arndale Centre (and, presumably, its tenants) relies on passing trade to a greater extent than Trafford Centre (and, presumably, its tenants) given its location in Manchester city centre.
 18. On the basis of the above—and consistent with the parties' views of the utility of market definition in this case—it is hard for the OFT to see where along the spectrum of retail space the Arndale Centre and the Trafford Centre lie from the viewpoint of tenants, and whether there are sufficient differences between them and other retail space in tenants' eyes to justify defining shopping centres as a separate product market on the tenant-side (notwithstanding any indirect constraint from the shopper-side of the market).

Shoppers

19. On the basis of surveys of shoppers supplied by the parties to the OFT, shoppers appear to take into consideration a wide range of factors when choosing where to shop such as:⁴
- i. the purpose of the shopping trip
 - ii. the type and range of shops and amenities available in the retail space
 - iii. the type and range of shops and amenities in the wider 'shopping destination'
 - iv. the presence of specific retailers
 - v. accessibility (for example, parking, transport links, opening hours), and
 - vi. the shopping environment (security, cleanliness, ambiance and so forth).
20. Consistent with the mixed picture that emerges from the evidence on tenants' views, the evidence on shoppers' views of factors i. to vi. in paragraph 19 above is also mixed. In particular, the parties' internal documents on shoppers' views (assessed in further detail in the Unilateral effects section below) indicate that:
- i. the Trafford Centre and Arndale Centre are viewed by shoppers as shopping destinations in their own right, but the Arndale centre is also viewed by some shoppers as part of Manchester city centre⁵
 - ii. the type and range of shops and amenities in both centres are viewed as comparable in some documents. Further, 75 per cent of Trafford

⁴ Market research carried out on behalf of Trafford in 1998, 1999 and 2000 by Research International listed the factors below.

⁵ Survey evidence reveals that only 16-28 per cent of shoppers report Arndale as the reason they visited Manchester city centre yet other survey evidence reveals that 56 per cent of shoppers visiting Manchester city centre visit Arndale on every trip (and 80 per cent on more than half of trips) and Arndale takes a significant proportion of shoppers' overall expenditure on a trip to the city centre.

Centre's retailers are also present in the Arndale Centre. However, in other documents the Trafford Centre is seen as having a wider range of shops than the Arndale Centre

- iii. the type and range of shops and amenities in Manchester city centre is viewed as better than the Trafford Centre (in particular in terms of having both flagship high-street stores and independent retailers, and both designer labels and mainstream brands)
- iv. Evidence on the presence of specific retailers is mixed, in particular the Trafford Centre is seen as having the advantage in flagship stores over the Arndale Centre.⁶ Yet Manchester city centre has the advantage over the Trafford Centre. Further, the Arndale Centre is often seen as part of the city centre⁷ and many retailers have flagship stores in the Arndale Centre and the city centre (as well as further afield)
- v. in some documents, the Trafford Centre is seen as having benefits over Manchester city centre in terms of ease of access and ease of parking but other documents report shoppers using other destinations much further afield, which presumably are less accessible, in preference to the Trafford Centre and
- vi. there is no discernible pattern in shoppers' apparent view of the security, cleanliness and ambiance of the Trafford Centre and the Arndale Centre, Manchester city centre or shopping destinations further afield.

21. On the basis of the above—and consistent with the parties' views of the utility of market definition in this case—it is hard for the OFT to see where along the spectrum of retail space the Arndale Centre and Trafford Centre lie from the viewpoint of shoppers, and whether there are sufficient differences between them and other retail space in shoppers' eyes to justify defining shopping centres as a separate product market on the shopper-side (notwithstanding any indirect constraint from the tenant-side of the market).

⁶ For example, CSC explained to the OFT that Trafford was disappointed when Selfridges opened a department store in Manchester City Centre, already having one in the Trafford, as the Trafford lost an element of uniqueness.

⁷ An Arndale internal document from 2010 describes the relationship as 'symbiotic'.

Geographic market

22. The parties suggest that the catchment area for a particular retail space will depend on the retailer filling that retail space. The OFT considers that the shopping destination may have a catchment area that reflects the overall range of retail, catering and leisure facilities insofar that a customer valuing such a range may travel further than they might if they wished to only visit an individual store.
23. In any case, the parties told the OFT that 80 per cent catchment areas for each of their centres approximately coincide with the 'North West' region which is about a 60-minute drive time.
24. Internal documents suggest that shoppers travelling from further afield tend to visit less frequently but spend more per trip.⁸ One report prepared for Trafford by research International in 2000 states that 'Visitors came from further afield than in May this year. This was also the case when compared to Dec 99 with 40% from Manchester and nearly a quarter from outside the neighbouring boroughs'. Though supportive of 60-minute drive time, this might also suggest that a narrower geographic market—Greater Manchester—is appropriate on a cautious basis.
25. On a cautious basis, the OFT has therefore undertaken its geographic assessment of the merger on a 60-minute drive time, encompassing the North West of England, and within Greater Manchester.

Conclusion on market definition

26. On the basis of the above, the OFT has considered the effects of the merger on a number of putative markets:
 - the supply of large shopping centres to tenants and shoppers in the North West of England and separately (on a very cautious view) in Greater Manchester

⁸ For example, a 2000 report by Research International prepared for the parties states at page 21: 'In comparison with Dec 99, average spend was up to £108 and the average time spent in the centre that day was over three hours. This is consistent with the increase in infrequent visitors who typically spend longer per visit in the Centre'.

- the supply of shopping centres (broadly defined) to tenants and shoppers in the North West of England and in Greater Manchester, and
 - the supply of retail space to tenants and shoppers in the North West of England and in Greater Manchester.
27. Consistent with the parties' view of the limited utility of market definition in this case, however, the OFT has not concluded on the boundaries of the relevant market as this is not necessary for its determination of whether competition concerns arise from this merger.

HORIZONTAL ASSESSMENT

Unilateral effects

Market shares and concentration levels

28. The merger will bring together two of the three large shopping centres within the North West of England (the Liverpool One shopping centre being the other). Further, on the most cautious view, the merger could be seen as a two-to-one in the largest shopping destinations (by retail space) within Greater Manchester. This degree of concentration is at a level that could give the OFT cause for concern over unilateral effects.
29. Set against this, the parties submitted that the Trafford Centre competes with other shopping centres, broadly defined (see paragraph 9). On this basis, the parties estimate that their share of retail space in shopping centres in Greater Manchester is 30 per cent. They submitted that if retail parks and other shopping facilities in the Greater Manchester area were included, their share would be 20 per cent and that their share of all retail space would be six per cent. Further, the parties estimated that their share of shopping centres (broadly defined) in the North West is 14 per cent (or eight per cent if retail parks and other facilities are included) and that their share of total retail space in the North West is two per cent. These shares are not at a level which would typically give the OFT cause for concern over unilateral effects, provided that the market is drawn narrowly.
30. Given the limited utility of examining market shares and concentration measures in this case, the OFT has considered below evidence on the

closeness of competition between the Arndale Centre and the Trafford Centre for tenants and shoppers.

Closeness of competition for tenants

31. The OFT considered the degree to which the merger may result in a lessening of competition between the Arndale Centre and the Trafford Centre to attract tenants. This may hypothetically manifest itself in a lessening of tenant negotiating power insofar that they can no longer play one shopping centre off the other. As well as higher rents, this might result in a deterioration of aspects of the service provision that benefit tenants (maintenance of the centre, extended opening hours and so forth).
32. The key issue the OFT considered was the degree to which tenants see the two shopping centres as substitutable, in terms of choosing between them entirely, switching investment between them or in terms of the initial decision of where to locate.

The parties' arguments

33. The parties do not consider themselves to be close competitors. The parties suggest that each shopping centre has its own characteristics and that retailers will either wish to be in both, or, in some cases, just one. They think that it would be rare for a retailer to consider one centre to be a substitute for the other.
34. They consider that the majority of tenants will have a presence in the wider area that is not restricted to shopping centres alone, many will already be in both the parties' shopping centres⁹ (or if not in the Arndale Centre then in the city centre), and that the centres have different characteristics in various respects including the type of shopper and shopping mission. Further, the parties argue that rents are not negotiated or determined by reference to rents in the other shopping centre.
35. The parties' internal documents were consistent with this view. Many of the Trafford Centre's internal documents refer to competition for tenants with Manchester city centre rather than the Arndale Centre. One Arndale

⁹ The parties submitted evidence showing that 75 per cent of the tenants at Trafford also had stores in the Arndale.

internal document states that 'Trafford is not a major threat'. The internal documents of the Arndale Centre indicate that it also views Manchester city centre as a competitor stating that it 'faces competition [for tenants] from the rest of the city centre'. Other internal documents indicate that both parties also view other regional shopping centres as competitors for tenants. The parties also provided a number of documents demonstrating how rents within each centre were considered and determined, and these did not make reference to the levels of rents being charged in the other shopping centre.

Tenants' views

36. The OFT contacted a significant proportion of each party's tenants, of which 24 responded.
37. A small number of tenants thought that they might consider opening in the other shopping centre if their location in the other closed. However, with respect to negotiations with Peel Group or CSC, the vast majority of tenants who responded did not consider that they used the terms available or offered at the other shopping centre during negotiations with the other. Indeed, one retailer commented that they consider the shopping centres to be 'different entities' and another commented that locating in the Trafford itself was a 'one off'.
38. Only four tenants out of the 24 that responded thought that they did use the other shopping centre during negotiations or might use the threat of switching. However, two of these indicated that this would be a minor consideration, although one of these told the OFT that competition between the centres may be stronger in terms of acquiring flagship stores. They said that after opening a flagship store in the Arndale Centre, the Peel Group told them that they also wanted a flagship store in the Trafford Centre, to compete with the one in the Arndale.
39. Set against this, this retailer felt that—as they have stores in many CSC shopping centres—they still would have the leverage to protect themselves in negotiations. This is unsurprising considering that flagship stores are, by their nature, a characteristic of larger retail chains who are better able to take advantage of buyer power.

40. Another retailer raised the possibility of playing one centre off the other and the fourth complained that there was already a huge imbalance during negotiations and that the merger would remove their ability to switch.
41. One further retailer, who did not use terms at one centre to negotiate with the other, nevertheless considered that the initial decision over which shopping centre to locate in had been based on a consideration of their relative opening hours and costs.
42. Overall the evidence from third parties would suggest that, for the majority of tenants, the parties' shopping centres are not seen as substitutes, or used to any great extent for the purpose of rent reviews. Certainly, only two tenants out of all of those contacted by the OFT during its investigation raised significant concerns regarding a lessening of competition in this regard.

Conclusion on unilateral effects for tenants

43. On the basis of the above, the OFT does not believe that the merger gives rise to a realistic prospect of a substantial lessening of competition (SLC) for tenants on the basis of horizontal unilateral effects.

Closeness of competition for shoppers

44. For shoppers, self-evidently it is impractical to use both the Arndale and Trafford centres for the same shopping trip.¹⁰ Retailers may therefore need to locate in both centres if they want to reach all shoppers. Indeed, the great majority do (75 per cent of the Trafford Centre's tenants are also located in the Arndale Centre).¹¹ This largely eliminates any benefits to shoppers from using both centres for the same shopping trip, since the number of extra retailers in either centre is small. Each shopping centre then effectively acts as a gateway for retailers to shoppers, giving the shopping centre more market power over the retailer than over the shopper.
45. Consistent with this, shopping centres derive their revenue principally from rent and not from charging shoppers. Further, retailers told the OFT that

¹⁰ Both parties' internal documents mention issues regarding public transport, car parking and ease of access for shoppers, for example. In the language of two-sided products, where shoppers use just one shopping centre, this is known as 'single homing'.

¹¹ In the language of two-sided products, this is known as 'multi-homing'.

the rent that the Trafford and Arndale Centres charge is higher in more desirable parts of the centre, where footfall is greater. Shopping centres therefore compete to expand their base of shoppers, effectively transferring the higher rents that they can charge retailers to shoppers in the form of (for example) a better shopping environment, free car parking or longer opening hours. Were the Trafford and the Arndale Centres particularly close competitors for shoppers pre-merger, then internalizing this competition could give the merged firm more leverage over retailers as well as shoppers; notwithstanding retailers' sanguine view of the merger. That said, the fact that retailers do not trade off the Arndale and Trafford Centres against each other should also protect shoppers to a degree, reducing the OFT's concerns about unilateral effects for shoppers a priori.

46. In the light of this, the parties submitted that the characteristics of shoppers visiting each centre are very different and that each centre caters for different shoppers' needs. This is examined below.

Tenants' views of competition for shoppers

47. The great majority of tenants who responded to the OFT could not identify any actions or initiatives taken by either shopping centre to attract shoppers that had occurred in response to an action or initiative taken by the other shopping centre. Nor did most think that the shopping centres competed much for shoppers, with the exception of two retailers who pointed to each centre's large marketing budget and recent extension (Trafford Centre in 2009 and Arndale Centre in 2006) as evidence of competition between them for shoppers.¹²
48. Evidence on the effect of store openings in one centre on store takings for the same retailer in the other centre was similarly mixed. One retailer told the OFT that the takings at its Arndale Centre store fell by 10 per cent when it opened a store in the Trafford Centre. Consistent with this, Trafford's internal documents reveal that another retailer attributed a fall in takings in the first half of 2006 at its Trafford Centre store to the opening of its store in the (then) recently-extended Arndale Centre.

¹² Although both parties' marketing budgets are comparable, no material changes to them have been made over the past few years either as a reaction to some activity of the other merging party or otherwise.

49. Set against this, one other retailer told the OFT that the opening of its store in one centre did not affect takings in its store in the other centre (although it expected to see an impact if there were further major extensions). Another retailer told the OFT that when its store in one centre was refitted, it saw no impact on takings in its store in the other centre. Further, Trafford's internal documents indicate that:
- when one retailer experienced a fall in takings in its Trafford Centre store in late 2004, it considered that the opening of its new store in Manchester city centre (not the Arndale Centre) was a 'contributory factor', and
 - when another retailer experienced a fall in takings in its Trafford Centre store in 2000, it attributed this to the opening of its new stores in Leeds and Manchester city centre (not the Arndale Centre).
50. The OFT considered whether the general absence of retailer concerns could also be said to demonstrate an absence of concerns for shoppers (given that retailers would be keen to maximise footfall in the locations in which they are present by ensuring a positive experience for shoppers). Although the OFT notes that 75 per cent of Trafford Centre's retailers are also present in the Arndale Centre, the OFT did not receive material concerns expressed by the 25 per cent of retailers that are not present in the Arndale Centre. To this extent, the absence of concerns about the merger amongst this particular category of retailer also points towards an absence of competition concerns for shoppers.
51. On balance, then, retailers' views do not suggest much —if any — competition for shoppers between the Trafford and Arndale Centres.

Internal documents regarding competition for shoppers

Arndale documents

52. Evidence from Arndale internal documents suggests that a significant proportion of Arndale Centre shoppers also shop at the Trafford Centre. It is not immediately clear, however, whether this is instead of, or in addition

to, the Arndale Centre.¹³ In particular, in the period following the opening of the Trafford Centre in 1998:

- a 2000 Arndale report says that 51 per cent of Arndale Centre shoppers would do their Sunday Christmas shopping at both the Trafford and Arndale Centres. The report states that the Trafford Centre 'competes directly with the Arndale' but that it 'seems not to be making any further inroads into the popularity of the Arndale Centre'
- a 2000 shopper survey reports that 23 per cent of the Arndale Centre shoppers would go Sunday shopping at the Trafford Centre and 24 per cent would shop late night on Thursdays there, and
- a 2002 shopper survey reports that 71 per cent of the Arndale Centre shoppers 'also' visit the Trafford Centre.¹⁴

53. More recently:

- a 2009 report states that the Trafford Centre is the Arndale Centre's 'key competing destination' with 38 per cent of Arndale Centre shoppers 'regularly' shopping there 'as well'
- in a 2009 shopper survey asking Arndale Centre shoppers which 'alternate' shopping centres they visit, 20 per cent said the Trafford Centre, and
- a 2010 shopper survey reports that 25 per cent of Arndale Centre shoppers use the Trafford Centre 'as an alternative'.

54. Further, a 2009 Arndale report on shopper 'leakage' recommends that management 'consider scale and nature of seasonal advertising to reduce western catchment leakage. Liaise with other city centre stakeholders to strengthen seasonal pull and combat Trafford effect'.

55. Set against this, Arndale internal documents reveal mixed evidence of the opening of the Trafford Centre in 1998 having had any impact on it. In particular:

¹³ So Trafford and Arndale may be substitutes for any given shopping trip but complementary over a longer time horizon. An Arndale shopper survey from 2009 discusses this possibility.

¹⁴ The high percentage here appears to be because the survey question asked 'do you **ever** visit other shopping centres' (emphasis added).

- a 1999 survey of Arndale Centre shoppers reveals 80 per cent thought that the opening would have no impact on their shopping at the Arndale Centre, 11 per cent thought that they would shop more at the Arndale Centre and only nine per cent thought that they would shop less at the Arndale Centre, and
 - a 1997 CSC report notes that the opening of Trafford was 'not considered a major threat' but
 - a 2000 report states that the proportion of Arndale Centre shoppers committed to only using the Arndale Centre for their Christmas shopping fell by 20 per cent from 1999.
56. Further, a 1998 report by consultants PMA for Arndale gives estimates of the expected diversion of trade from Manchester city centre (including the Arndale Centre) to the Trafford Centre following its opening in the range of 10 to 14 per cent. Other estimates of expected shopper diversion ratios from Manchester city centre to the Trafford Centre in Arndale's internal documents are in the range five to 11 per cent. To the extent that these estimates overstate the shopper diversion ratio from the Arndale Centre individually to the Trafford Centre (which is the constraint principally being removed by the merger), they do not indicate diversion at a level that would ordinarily give the OFT cause for concern over unilateral effects (for any plausible level of incremental profit margin), despite the PMA report saying that 'the newly opened Trafford centre presents an even more significant threat'.
57. The PMA report further reveals that almost half of shoppers in the Arndale Centre's 'southern catchment' (the Trafford Centre is to the south-west of the Arndale Centre) name Stockport as their main shopping destination and 18 per cent name Manchester city centre. The report says that the Arndale Centre will face growing competition for shoppers (and retailers) from Manchester city centre, Oldham, Bolton, Stockport, Chester and Cheshire Oaks.
58. Consistent with this, other Arndale internal documents also reveal that it faces competition from Manchester city centre and other shopping destinations to a comparable degree to the competition that it faces from the Trafford Centre. In particular:

- a 2010 shopper survey reveals 'elsewhere in Manchester city centre' as the most popular 'alternative' shopping destination to Arndale. That said, the report also describes the Trafford Centre as the Arndale Centre's 'strongest competitor'
- a 2009 report states that the Arndale Centre's seasonal losses are 'most keenly' felt in its south-west or west catchment to Liverpool One and Chester as well as the Trafford Centre – albeit to 'a more limited extent'
- another 2009 report describes 'elsewhere in Manchester' as the Arndale Centre's 'main competitor' with 27 per cent of responses, exceeding the Trafford Centre's 20 per cent
- internal documents from 2009 and 2010 comment upon customer losses due to the 'Liverpool One effect' (the Liverpool One shopping centre opened in 2008)
- the 1997 CSC report on a potential acquisition of a share in the Arndale Centre notes that 'surrounding town centres have significantly improved their performance and attraction over the last 10 years'
- an undated survey of shoppers in the Arndale Centre's catchment area indicates that only seven per cent view the Trafford Centre as their main location for 'comparison shopping', comparable to the percentage preferring Stockport (six per cent) and Bolton (five per cent), and dwarfed by the 52 per cent preferring 'other' destinations.¹⁵ Again, however, the report describes the Trafford Centre as the Arndale Centre's 'strongest competitor'
- a 2004 report says that, of 'metropolitan regionals', the Arndale Centre's 'main core catchment competition is with: Trafford, Oldham and Stockport', and
- a 2000 report hypothesizes that the reason that shoppers reported giving the Arndale Centre a smaller share of shopping time and money than in 1999 is increased competition from Manchester city centre.

¹⁵ Other named destinations are Bury (four per cent), Oldham (four per cent), Liverpool (two per cent) and Rochdale (two per cent).

59. On balance, then, Arndale's internal documents reveal, at worst, a mixed view of the degree of competition for shoppers between it and the Trafford Centre.

Trafford documents

60. By and large, Trafford's internal documents indicate that Manchester city centre in general (and not the Arndale Centre in particular) is the biggest constraint upon it. This is reflected in the volume of monitoring—since 2005¹⁶—that the Trafford Centre does of its shoppers' opinions and those of shoppers in Manchester city centre. Representative examples of conclusions from these reports include:

- 'the positive perception of Trafford centre in relation to Manchester City Centre has continued to be eroded'
- 'Manchester City Centre has raised its game with recent rejuvenation, new shops and amenities'
- 'recent developments [in Manchester city centre] are starting to change visitor opinions' and that this is 'something that needs to be addressed' (all three examples from a 2005 report)
- 'Manchester City Centre continues to be the main competitor'
- 'MCC [Manchester city centre] is succeeding in attracting [visitors] from a wider area'
- 'improved perception of product offer in MCC' (all three examples from a 2006 report)
- 'Manchester City Centre scores better for aspects of range'

¹⁶ Prior to this, one internal document reports the views of a focus group from 2003, which gives a more mixed view of competition from Manchester city centre. For example, two quotes say 'Manchester can only draw a very small minority of shoppers' and 'Arndale is forgotten' whereas two other quotes say 'perception TTC [the Trafford Centre] no longer has the exclusive offer it started with' and 'we should therefore be wary but not excessively concerned about Manchester's ability to draw shoppers from TTC'.

- 'take steps to raise awareness of retail mix available at TCC [the Trafford Centre] (currently does not rate as highly as MCC', and
 - 'draw attention to features setting TCC apart from MCC' (all three examples from a 2007 report).
61. Consistent with this, a 2007 Trafford survey states that 16 per cent of shoppers use Manchester city centre 'most often', 27 per cent use other named destinations and 23 per cent use other unnamed destinations.
62. In response to these reports, the Trafford Centre's Christmas media campaigns in 2006 and 2007 used around 100 prime-site city centre locations for six-sheet posters to emphasize the advantages of the Trafford Centre over Manchester city centre. That said, the internal documents referring to the 2006 campaign note the influence of the (then) recent Arndale Centre redevelopment (see paragraph 64 below, however).
63. Where Trafford's internal documents differentiate between Manchester city centre and the Arndale Centre, the former appears a stronger constraint. For example a 2000 survey of Trafford Centre shoppers reveals that 59 per cent used Manchester city centre as an 'alternative' for their Christmas shopping but only 29 per cent used the Arndale Centre, with 20 per cent using Bolton and 19 per cent using Altrincham.
64. Further, other Trafford internal documents also reveal that it faces competition from other shopping destinations to a comparable degree to the competition that it faces from the Arndale Centre:
- in response to one retailer not opening its store in the Trafford Centre on Boxing Day, Trafford management wrote to it indicating that Cheshire Oaks and the Lowry Outlet Mall at Salford Quays (where the retailer also had stores) represent 'real competition to Trafford', and
 - the internal documents referring to the Trafford Centre's 2008 Christmas media campaign note the opening of the second phase of Liverpool One and the continued redevelopment of Marketplace Bolton, and Warrington and Wigan town centres.
65. Lastly, Trafford's monthly board reports reporting footfall data do not refer to competing destinations, even when recommending action to address any decline in footfall.

66. Consistent with Arndale's internal documents, on balance Trafford's internal documents reveal, at worst, a mixed view of the degree of competition for shoppers between it and the Arndale Centre.

Conclusion on unilateral effects for shoppers

67. On the basis of the above, the OFT does not believe that the merger give rises to a realistic prospect of an SLC for shoppers on the basis of horizontal unilateral effects.

BUYER POWER

68. Shopping centres serve two distinct and unrelated groups of customers; tenants (retailers) and shoppers. As individual consumers, consistent with previous OFT decisions in retail mergers, shoppers are unlikely to possess buyer power.
69. The OFT market tested the degree of buyer power there might be among retailers. Of the 24 retailers who responded to the OFT, one—a larger tenant with flagship stores, part of a retail chain—expressed the view that it had the 'leverage to get what [it] wants'. That said, it was not clear to the OFT that any countervailing negotiating strength possessed by larger retailers would protect smaller ones. Given that the OFT has ultimately concluded that there are no competition issues raised by the merger, however, it has not been necessary to reach a conclusion on this point.

BARRIERS TO ENTRY

70. Given its conclusions on the absence of competition concerns raised by the merger, the OFT has not needed to consider barriers to entry.

THIRD PARTY VIEWS

71. The OFT consulted a range of third parties and any comments made have been discussed above where they have been relevant.
72. Few third parties expressed concerns about a loss of competition as a result of the transaction. This was particularly striking given the unusually large number of (retailer) customers that were contacted by the OFT during the course of its investigation. The customer views that were expressed have been discussed above.

ASSESSMENT

73. Both CSC and Trafford operate shopping centres in the Greater Manchester area.
74. The OFT considers that shopping centres are two-sided products intermediating between tenants and shoppers. Two-sidedness complicates market definition and, depending on the view taken of the boundaries of any plausible candidate market, the parties' combined shares vary from a level that would not give the OFT cause for concern over unilateral effects (two per cent of all retail space in the North West of England) to a level that would (merger to monopoly in large shopping centres in Greater Manchester). Thus, consistent with the parties' view of the limited utility of market definition and market concentration levels in this case, the OFT has focussed on the degree to which the Trafford Centre could be seen as a close competitor to the Arndale Centre for tenants and shoppers.

Closeness of competition for tenants

75. The OFT considered the degree to which the merger may result in a lessening of competition between the Arndale Centre and the Trafford centre to attract tenants.
76. The OFT notes that, of the tenants who responded to the OFT, the great majority were unconcerned by the merger and did not consider that the parties were strong constraints on one another (or that they competed for tenants at all, in some cases). The vast majority of tenants who responded did not consider that they used the terms available or offered at one shopping centre during negotiations with the other. Nor were there particular competition concerns expressed by those tenants who were present in only one of the two locations (who would be expected to suffer in particular from any reduction in footfall in their location to the extent that the customer experience for shoppers was deteriorated as a result of a loss of competition between the parties).
77. Overall, the evidence from third parties would suggest that for the majority of tenants, the parties' shopping centres are not seen as substitutes or used to any great extent for the purposes of rent reviews.

Closeness of competition for shoppers

78. Shopping centres attempt to expand the base of their shoppers, in order to attract tenants and potentially higher rents. The more attractive a shopping centre is to shoppers, the more likely it is that tenants will wish to locate there in order to access them.
79. The great majority of tenants who responded to the OFT could not identify any actions or initiatives taken by either shopping centre to attract shoppers that had occurred in response to an action or initiative taken by the other shopping centre. Nor did most think that the shopping centres competed much for shoppers.
80. The parties' internal documents reveal a mixed view of the degree of competition between them for shoppers.
81. Overall, the evidence from third parties and the parties' internal documents would suggest that for the majority of shoppers, the parties' shopping centres are not seen as substitutes.
82. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

83. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.