

## Controlled Land Order - Impact on Foodstore Transactions

The Competition Commission (CC) published The Grocery's Market Investigation (Controlled Land) Order 2010 on 30<sup>th</sup> April, which puts into action measures resulting from its ongoing investigation of the grocery market.

The Order affects the large supermarket groups, Asda, Tesco, Sainsbury, Morrisons, Waitrose, Marks & Spencer and Co-operative Group (including Somerfield and other groups within it's control), and seeks to lift restrictions imposed in property transactions where the CC believes the effect is to limit competition.

The Order identifies 28 restrictive covenants, across the country, that must be revoked by the end of October 2010 and prevents the retailers entering into these agreements in the future. In most cases these relate to land sold by a retailer where they have placed a restriction preventing future use as a foodstore. The Order also identifies 29 exclusivity agreements that it believes restrict competition, and states that these cannot exceed five years, either from the date the store in question opened, or from the date of the Order. The retailers are now prohibited from entering into exclusivity agreements for more than five years from the date the store commenced trading where this may restrict food retailing.

The Order also defines the test to be applied when considering whether restrictive covenants or exclusivity agreements limit competition. It also gives land owners and parties bound by restrictive covenants or exclusivity agreements the ability to apply to the Office of Fair Trade to have them lifted.

This is the latest intervention by the CC and follows the introduction of a new Grocery Supply Code of Practice which came into force in February 2010. The Department for Business, Innovation and Skills has accepted the need for a body to enforce the new Code, and is looking at what powers that body might have. The proposal to introduce the OFT as a statutory consultee on major planning applications was dropped as the Government decided that the planning system is not the right legal vehicle with which to control competition, though it will continue to restrict the sector through Local Development Framework policies and more rigorous impact and sequential testing of applications.

The implication of the Controlled Land Order for landlords will be positive and will see land owners asset managing their portfolios to release value from earlier restrictions imposed.

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