

Notice of designation of TJ Morris Limited under the Groceries (Supply Chain Practices) Market Investigation Order 2009

3 September 2019

Introduction and background

1. The Competition Commission (CC) investigated the supply of groceries, following a reference from the Office of Fair Trading (OFT) in May 2006. On 30 April 2008 the final report was published and set out the CC's findings from the investigation (CC Report). The CC found adverse effects on competition arising in several areas including the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers, impairing their willingness to invest or innovate. To address these concerns, the CC made the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order). The Order imposes a series of obligations on 'Designated Retailers', including to comply with the Groceries Supply Code of Practice (GSCOP).
2. The Competition and Markets Authority (CMA) actively monitors and enforces the remedies within its remit, including the Order, and works closely with the Groceries Code Adjudicator (GCA).¹ As part of this role, the CMA has considered the evidence available to it regarding whether there are additional retailers that should be designated under the Order and responded to requests in this area.
3. In October 2016, the Government launched a formal Call for Evidence to explore the case for extending the remit of the GCA. In February 2018, it published the response to the Call for Evidence, in which it made several changes that affect the sector, but did not extend the scope of the GCA. As part of the response, the Government agreed with the CMA that the CMA would:

'[F]ormalise its current activities, by reviewing publicly available information on an annual basis. Where there are reasonable grounds for suspecting that any

¹ The GCA is responsible for monitoring and enforcing compliance with the GSCOP.

*additional retailer may have reached the turnover threshold specified in the Order, the CMA will request further evidence from it. This will allow the CMA to assess whether that retailer should be added to the list of designated retailers.*²

Groceries (Supply Chain Practices) Market Investigation Order 2009

4. From the date of the Order,³ the following 10 retailers were designated, as described in Schedule 2 of the Order:

(a) Asda Stores Limited, a subsidiary of Wal-Mart Stores Inc

(b) Co-operative Group Limited

(c) Marks & Spencer plc

(d) Wm Morrison Supermarkets plc

(e) J Sainsbury plc

(f) Tesco plc

(g) Waitrose Limited, a subsidiary of John Lewis plc

(h) Aldi Stores Limited

(i) Iceland Foods Limited, a subsidiary of the Big Food Group

(j) Lidl UK GmbH (now, Lidl GB Ltd).

5. Article 4(1)(b) of the Order provides that the following will also be Designated Retailers for the purposes of the Order:

‘Any retailer with a turnover exceeding £1 billion with respect to the retail supply of groceries in the United Kingdom, and which is designated in writing as a Designated Retailer by the OFT.’^{4, 5, 6}

² [Groceries Code Adjudicator Review: Part 2: Government response to the Call for Evidence on the case for extending the Groceries Code Adjudicator’s remit in the UK groceries supply chain](#), page 11.

³ 4 February 2010.

⁴ Part 2, Article 4(1)(b) of the Order.

⁵ Groceries is defined in Article 2 of the Order as, ‘Groceries means food (other than that sold for consumption in the store), pet food, drinks (alcoholic and non-alcoholic, other than that sold for consumption in the store), leaning products, toiletries and household goods, but excludes petrol, clothing, DIY products, financial services, pharmaceuticals, newspapers, magazines, greetings cards, CDs, DVDs, videos and audio tapes, toys, plants, flowers, perfumes, cosmetics, electrical appliances, kitchen hardware, gardening equipment, books, tobacco and tobacco products’.

⁶ The CMA has taken on the relevant functions of the OFT as described in this Order.

*'For the purposes of Article 4(1)(b), a Retailer's turnover with respect to the retail supply of Groceries in the United Kingdom, on any particular dates, will be the applicable turnover figure for the financial year preceding that date.'*⁷

6. As described in the Explanatory Note to the Order, the CMA has a discretion over whether or not to designate additional retailers as Designated Retailers under the Order:

*'Article 4 specifies those retailers who will be 'Designated Retailers' for the purposes of the Order. The article lists retailers identified in the report as those who would be covered by the Code, and sets out the criteria which the OFT will consider to determine whether additional retailers will be covered by the Code in the future. As currently drafted, the OFT will designate a grocery retailer as a Designated Retailer as soon as it obtains evidence that it meets the £1 billion turnover threshold. The OFT has a discretion as to whether to appoint a business meeting the turnover threshold as a Designated Retailer, based on the nature of the business meeting the turnover threshold, and the purposes of the Order...'*⁸

7. The purpose of the Order is clear from the CC Report and includes the prevention of the exercise of buyer power over suppliers by large grocery retailers through the adoption of supply chain practices that transferred excessive risks and unexpected costs to those suppliers. This is demonstrated by the following extracts from the CC Report:

*'We found that the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers, was a feature of the markets for the supply of groceries'*⁹

*'The size of a purchaser (here a grocery retailer) in terms of both its size relative to the market and relative to the supplier is a key influence on a grocery retailer's buyer power in relation to a supplier'*¹⁰

'In particular, we set out in Section 9 that the ability to pass excessive risks and unexpected costs to suppliers is a function of buyer power, and that buyer power is, in a large part, a function of the size of the retailer. Given this, we

⁷ Part 2, Article 4(3) of the Order.

⁸ Part 2, Article 18 of the Explanatory Note to the Order.

⁹ From Executive Summary Paragraph 4.1. See also paragraphs 9.41 – 9.49 of the CC Report.

¹⁰ From paragraph 9.7.

decided that a threshold based on UK retail groceries turnover should be set, below which retailers will not be subject to the GSCOP'.¹¹

'We decided that this threshold should be set at £1 billion a year. There is an element of judgement in the setting of this threshold in that it is not possible to calculate precisely the degree of buyer power that any individual retailer will have relative to its suppliers. Nevertheless, in setting this threshold, we took into account the identity of the retailers where particular issues had been brought to our attention during the course of this investigation (see Appendix 9.9). There were very few cases which involved a grocery retailer with an annual turnover of less than £1 billion'.¹²

8. On 1 November 2018, the CMA designated Ocado Group plc and B&M European Value Retail S.A. This was the first time that additional retailers had been designated under the Order since it came into effect.

Representations from TJ Morris

9. TJ Morris Limited (TJ Morris) made detailed representations to the CMA in relation to its turnover of groceries, and whether or not the CMA should exercise its discretion to designate it under the Order. The CMA has considered these representations carefully before making its decision.¹³

Turnover threshold

10. The information provided by TJ Morris showed that it meets the £1 billion turnover threshold set out in Article 4 of the Order, with annual groceries turnover of £1.12 billion.
11. The CMA's assessment is that it is clear that TJ Morris has exceeded the turnover threshold. The CMA has also taken into account that, based on TJ Morris's published financial information and information supplied by TJM, its sales of groceries have been growing for a number of years. Given the significance of groceries sales for the business, it would appear likely that groceries sales may be expected to continue to grow in future years.
12. By allowing the CMA to designate additional retailers the Order recognised that retailers may grow over time and reach the turnover threshold, being the

¹¹ From paragraph 11.410.

¹² From paragraph 11.411.

¹³ In material sent to the CMA on 23 April 2018, 17 July 2018, 23 July 2018, 3 August 2018, 20 September 2018, 16 November 2018, 27 December 2018, 14 February 2019, 5 March 2019, and 27 March 2019.

point at which the CC determined that it would be proportionate to require retailers to comply with the Order, including the GSCOP.

Exercise of discretion

13. Having established that TJ Morris has annual groceries turnover that exceeds the £1 billion threshold specified in the Order, the CMA has then considered whether or not to designate TJ Morris based on the nature of its business and the purposes of the Order.
14. The CMA wrote to TJ Morris indicating that it was minded to designate it, but invited TJ Morris to make any representations in relation to the proposed designation before the CMA reached a final decision. TJ Morris provided representations that it did not agree with the CMA's intention to designate it. In summary, TJ Morris said that it does not trade like the existing designated retailers, particularly those retailers that were the subject of the CC's investigation into groceries which completed in 2008 and does not engage in the behaviour the Order seeks to prevent because of the nature of its business and the way it trades.¹⁴
15. In explaining why it considered it would not be appropriate to be designated, TJ Morris made a number of arguments including in relation to the CC's 2000 Report, the relevant market, the behaviours the Order seeks to address and buyer power. These representations are addressed in detail in the Appendix to this Notice. The CMA has taken account of TJ Morris's representations in its assessment below.
16. The CMA considers that the CC Report is also relevant to the scope of its discretion under Article 4(1)(b) of the Order to designate additional retailers. By way of context, the CC found that all large grocery retailers had buyer power in relation to at least some of their suppliers.¹⁵ The CC's starting point was that, as a matter of principle, the GSCOP should cover all grocery retailers. For reasons of proportionality, however, the CC considered it appropriate to establish a *de minimis* threshold, below which retailers would not be regulated. Accordingly, it decided that the GSCOP should apply to all firms which were active in the retail supply of groceries in the UK and which had an annual UK groceries turnover of £1 billion or more.¹⁶ On that basis, the

¹⁴ TJ Morris letter to the CMA dated 20 September 2018 paragraphs 4.1 and 4.15 and TJ Morris letter to the CMA dated 14 February 2019.

¹⁵ CC Report paragraph 11.280.

¹⁶ CC Report paragraphs 11.280 – 11.282.

CC decided that the 10 retailers listed in paragraph 4 above should be Designated Retailers from the outset.

17. The CC did not, in reaching this decision, assess each of the retailers' business models, or consider whether all of them had engaged, or were likely to engage, in the individual supply chain practices identified in the CC Report. Nor, as noted above, did the CC undertake an assessment of the degree of buyer power of any individual retailer, recognising it is not possible to calculate precisely the degree of buyer power that any individual retailer will have relative to its suppliers.¹⁷ The CC also decided that the GSCOP should apply to the relevant retailers' dealings with all their suppliers.¹⁸ This context indicates that the CMA's discretion under Article 4(1)(b) is a relatively narrow one.
18. TJ Morris is a retailer which operates over 400 stores in the UK under the name Home Bargains, and in these, it sells a range of consumer goods including a range of grocery products.¹⁹ Moreover, the information TJ Morris provided showed that the turnover of groceries from these stores represents around half of the total turnover from these stores. TJ Morris sources its supplies from a wide range of suppliers, dealing directly with these suppliers, often on a one-off contractual basis.
19. Following consideration of the information provided by TJ Morris as well as reviewing publicly available information, it is clear that while TJ Morris may not have a business model as complex as those of some existing Designated Retailers, it still deals direct with a range of grocery suppliers, in relation to a range of different grocery products covered by the Order.²⁰ The CMA therefore considers that the nature of these arrangements, together with the scale of grocery retailing activities undertaken by TJ Morris means it would have the capability to exert buyer power over at least some of its suppliers in ways the Order was designed to prevent.
20. The purpose of the Order is to detail how the larger, designated grocery retailers should manage their relationship with suppliers, so as to prevent the harm identified in the CC Report. Even if TJ Morris is not currently undertaking any of the supply chain practices, its size means it has an increased potential to do so in the future. Designation would ensure that TJ

¹⁷ CC Report paragraph 11.411.

¹⁸ CC Report paragraph 11.290.

¹⁹ <https://corporate.homebargains.co.uk/>

²⁰ See Appendix.

Morris' suppliers would be protected from this possibility, to the ultimate benefit of consumers.

21. The CC estimated the compliance costs that were likely to be incurred by retailers in order to assess whether its proposed remedy was proportionate. In that context it estimated that each designated retailer would incur compliance costs of approximately £135,000 a year, rising to approximately £290,000 a year if the retailer was subject to inquiries by the GCA.²¹ As noted above, the CC concluded that, for any retailer with an annual groceries turnover of over £1 billion, a requirement to comply with the GSCOP and submit to the jurisdiction of the GCA would be proportionate to the adverse effects on competition that it had identified.²²
22. Having regard to publicly available information concerning TJ Morris' turnover and profits after tax for the year ending 30 June 2018, the costs of designation are proportionate to the harm that designation under the Order seeks to prevent.

Decision on designation

23. Having had regard to the size and nature of TJ Morris's business and the purpose of the Order, the CMA considers that it would be appropriate to exercise its discretion to designate TJ Morris.

Timing of designation

24. Article 4(2) of the Order provides that a '*Designated Retailer designated pursuant to Article 4(1)(b) will not be bound by the terms of this Order until such date as is specified by the [CMA] in the notice of designation*'.
25. The CMA has considered the optimal approach to the timing of designation to achieve effective compliance while minimising the costs for TJ Morris Limited. The CMA has discussed this approach with the GCA and communicated this to TJ Morris in advance of its designation. Consequently, TJ Morris Limited will be a designated retailer under the Groceries (Supply Chain Practices) Market Investigation Order 2009 effective from 3 September 2019.

²¹ CC Report paragraphs 11.407 – 11.409. The CC also recognised that there would be (a) upfront costs associated with implementing the GSCOP, such as training and redrafting terms and conditions (paragraph 11.413); and (b) costs associated with the creation and operation of the GCA (paragraph 11.415).

²² CC Report paragraph 11.421.

Appendix – Further representations from T J Morris

26. This appendix provides additional detailed representations and the CMA's response, considered in the following areas.

The turnover threshold

27. TJ Morris considered the turnover threshold to be “somewhat arbitrary” in nature, having been set by the CC at £1 billion.²³ As noted above, the CC identified the turnover threshold as the point at which it was proportionate to take action to constrain large retailers of groceries from exercising buyer power over their suppliers in ways that could contribute to adverse effects on competition. The CC used complaints from suppliers during its market investigation to help determine the size of the retailers which were most likely to contribute materially to the concerns from the exercise of this buyer power and set the turnover threshold as a way to focus the scope of the remedy. In doing so, the CC balanced the risk of harm occurring and the extent of the harm that could result to suppliers and as a result, to consumers, against the costs imposed on retailers to remove this harm. The CC decided that the benefits of requiring retailers with grocery turnover above this threshold to adhere to the GSCOP to remove this harm justified the costs of the remedy.
28. TJ Morris further submitted that *“[b]earing in mind the arbitrary nature of the £1bn threshold, and the passage of time, TJM are of the view that the CMA should have reviewed and considered whether the £1bn threshold remained appropriate in the last ten years. As far as we know, the CMA has not undertaken any such review. On an inflation basis alone, the £1bn threshold should be £1,295,896,000,000.”*²⁴
29. In relation to inflation in the period since the Order was made, the turnover threshold was set on an absolute basis, without provision for inflation-based indexation, although it was open to the CC to have done so where it considered this appropriate.
30. While the CMA has a duty to keep orders and undertakings under review, the CMA needs to obtain or receive evidence that gives us a reasonable prospect of finding a change of circumstance in any review before the CMA would consider launching one. Such a review would also need to be consistent with the CMA's prioritisation principles. No such review of the Order has been

²³ CC report paragraph 11.277.

²⁴ TJ Morris letter to the CMA 20 September 2018 paragraph 3.4.

prioritised by the CMA, nor has the CMA received a reasoned request from a retailer to review the Order.

The exercise of the CMA's discretion

2000 CC Report

31. TJ Morris noted that the CC's 2000 report²⁵ examined competition in the groceries sector, finding a product market for the supply of groceries that was comprised of 24 multiple retailers and that TJ Morris was neither a part of this investigation, nor part of the relevant market defined.
32. TJ Morris also referred to passages from the CC 2000 Report in relation to the exercise of buyer power, including that, *'any main party with more than an 8 per cent share of grocery purchases for resale from its stores, and accordingly all the major buyers (Asda, Sainsbury, Somerfield and Tesco), are, for the most part, able to control their relationships with suppliers to their own advantage, whilst the smaller multiples are not able to do so to anywhere near the same extent'* and *'We believe that the practices have to be judged in the context of the buyer power we have been assessing. Without it, the practices are unlikely to prevent, restrict or distort competition.'*²⁶
33. The CMA considers that the 2000 Report is largely of historical interest, helping to explain the long-running nature of suppliers' concerns about buyer power, rather than being directly relevant to an assessment of whether it is appropriate to designate a retailer under the Order. The Order was put in place following the more recent investigation of competition and buyer power in this sector by the CC in 2006 to 2008. And it is notable that the supplier code of practice put in place as a result of the 2000 Report and investigation was found insufficient to control buyer power in the CC's 2008 Report. We also note that TJ Morris has grown significantly over the intervening years since the 2000 investigation and the nature of the grocery market is one which has been evolving over time. We find arguments that TJ Morris was not a significant retailer at the time of the 2000 investigation do not preclude it from being a large retailer of groceries nearly 19 years later.

The relevant market

34. TJ Morris stated that it does, *'not participate in the market which was subject to the 2008 Report, because it does not operate grocery stores, TJM do not*

²⁵ 'Supermarkets – A report on the supply of groceries from multiple stores in the United Kingdom 2000'.

²⁶ 2000 CC Report on Groceries, paragraph 2.458 and 2.459

*consider that it is open to the CMA to exercise its discretion in order to designate TJM'.²⁷ TJ Morris also said it does not consider itself a limited assortment discounter and instead it sees itself as a, '[G]eneral merchandiser operating in the value sub-market. However, even if [TJ Morris] was considered to be a [limited assortment discounter], the CC confirmed in its 2008 Report that [limited assortment discounters] do not operate in the relevant market because [they] do not offer a complete range of grocery products.'*²⁸

35. The CC's definition of economic markets for the supply of groceries in the UK did not determine the scope of the Order. The CMA notes that the relevant market defined by the CC was essentially a framework for the assessment of competition in that sector and consequently not an end in itself. While the CC established that retailers such as Aldi and Lidl, as limited assortment discounters, were outside the defined market, those retailers were nevertheless included in the GSCOP when this was established under the Order. Furthermore, inclusion in the relevant market as defined in the CC's 2008 Report was not part of the definition of grocery retailers that were eligible for designation under the Order.

The behaviours

36. TJ Morris submitted that it operates in an *'entirely different manner in term of its commercial arrangements with suppliers and its business model. In fact, it can have difficulty obtaining supplies of branded product because it does not operate in the same market as the grocery retailers'*.²⁹ TJ Morris said it is not aware of any complaints from suppliers of TJ Morris in relation to any of the behaviours identified by the CC and there is no evidence that TJ Morris does, or is likely to, engage in such behaviours. TJ Morris submitted that, accordingly, the CMA must proceed on the basis that it does not, and is not likely to do the things about which the CC was concerned to regulate.³⁰
37. TJ Morris listed the behaviours of concern identified by the CC and which the GSCOP seeks to address, highlighting how they consider that in each case TJ Morris does not undertake these behaviours.³¹ On this basis, TJ Morris submitted that it was different from other grocery retailers and did not trade like them.

²⁷ TJ Morris letter to the CMA dated 20 September 2018 paragraphs 2.7 and 5.4.

²⁸ TJ Morris letter to the CMA dated 20 September 2018 paragraph 2.5.

²⁹ TJ Morris letter to the CMA dated 20 September 2018 paragraph 4.1.

³⁰ TJ Morris letter to the CMA dated 20 September 2018 paragraph 4.2.

³¹ TJ Morris letter to the CMA dated 20 September 2018 paragraph 4.3.

38. Specifically in relation to these behaviours, TJ Morris highlighted matters such as it is unlikely that it will seek marketing costs, lump sums, positioning payments from suppliers, or have the ability to de-list suppliers, and that TJ Morris does not run promotions like grocery retailers, nor does it create joint business plans with suppliers.³² TJ Morris also offered the CMA an opportunity to select a number of TJ Morris' suppliers with whom to test its behaviours.
39. In relation to contracts, TJ Morris noted that it does not generally enter into written standard form contracts for the supply of goods and when formal contractual terms are agreed, it is far more likely that TJ Morris will contract on a suppliers' standard terms.
40. TJ Morris also highlighted further differences between it and supermarkets, including that:
- its business is not dependent on private label sales, with this being only around [X]% of its revenues, highlighting the difference to Tesco, Sainsbury and Waitrose where the CC Report found private label sales accounted for around 50% of revenues; and
 - TJ Morris does not stock a full range of groceries in any of its stores. For example, [X] stores do not carry [X] products and [X] stores do not sell any [X] (3) its planned stock amounts to around [X]% of the total with the remaining [X]% being clearing stock from suppliers, while noting that some larger suppliers are creating stock specifically for companies like TJ Morris to differentiate from that sold in other outlets and (4) around [X]% of its floor space is dedicated to food/ drink with the remaining [X]% dedicated to non-food, while supermarkets subject to the 2000 CC Report dedicated over 50% of their retail floor space to food/drink.³³
41. The CMA notes that the nature of the obligations in the GSCOP vary considerably – some constitute prohibitions, some require retailers to take active steps, some limit the extent to which a retailer can do something and set out duties on retailers. There are also two broader fairness obligations. The CMA's review of TJ Morris's representations in relation to the relevance of the GSCOP to its business model shows that, while some obligations in the GSCOP may be less relevant to TJ Morris' existing business model, there are some areas of the GSCOP that are relevant to TJ Morris's business, in that they are things that the CMA considers TJ Morris could start doing relatively easily, while areas such as the over-arching fairness provisions provide a

³² TJ Morris letter to the CMA dated 20 September 2018 paragraphs 4.7 - 4.14.

³³ TJ Morris letter to the CMA dated 20 September 2018 paragraph 4.5 – 4.10.

beneficial overall obligation on designated retailers. However, the process of designating additional retailers is not designed to be an ex-post evaluation of the specific retailers' current and previous business practices in relation to its suppliers, rather the purpose of the Order is to detail how the larger designated grocery retailers should manage their relationships with suppliers for the purposes of preventing the harm identified in the CC Report.

42. In relation to TJ Morris's submissions regarding the other differences between it and grocery retailers, we are aware that the extent of own-brand sales varies among existing designated retailers, and trends between branded and own-brand items vary over time.³⁴ The extent of floor space devoted to food and drink sales is also another factor that already varies between those grocery retailers subject to the GSCOP, and the CMA notes that a number of retailers already mix the sale of groceries in their stores with sales of other consumer products, with both large grocery retailers and limited assortment discounters undertaking a mix of sales in this way. Consequently, the approach of TJ Morris does not appear substantially different or unique in these areas. The low proportion of own-brand sales, and the proportion of floor space allocated to food and drink in TJ Morris' stores are not, on their own, determinative arguments for whether or not TJ Morris should be designated under the Order.

Buyer power

43. TJ Morris submitted that "*there is no evidence whatsoever to suggest [TJ Morris], or other retailers of groceries, are engaging in the types of behaviour the CC determined may have a negative effect on competition if left unchecked*".³⁵
44. T J Morris highlighted that it buys over £[redacted] of stock from large established suppliers of branded products, while £[redacted] - £[redacted] of trade is transacted with smaller suppliers, and gave its average purchase level from smaller suppliers, and stated that TJ Morris' purchases amount to [redacted]% of these suppliers' turnover on average.³⁶ TJ Morris said therefore it does not have excessive buyer power relative to its largest or smallest suppliers.
45. TJ Morris also provided the CMA with details of its suppliers, including their turnover value and annual reports and accounts. TJ Morris told us '*no matter*

³⁴ See for example, <https://www.bbc.co.uk/news/business-44684306> and <https://www.theguardian.com/business/2009/nov/04/marks-and-spencer-food> as examples of changing strategies in relation to own-brand and branded products in designated grocery retailers.

³⁵ TJ Morris letter to the CMA dated 20 September 2018 paragraph 5.4.

³⁶ TJ Morris letter to the CMA dated 20 September 2018 paragraphs 5.7 – 5.10.

what category of supplier you look [at], [TJ Morris] do not represent a large customer to its suppliers. If [TJ Morris] is not a large customer to its suppliers it cannot exercise excessive bargaining power'.³⁷

46. The CMA analysed this information and found this helpful to understand the full range of suppliers of TJ Morris and their respective scale. The CMA notes that there are a mix of large and smaller suppliers. The scale of purchases that TJ Morris makes from them does vary and the CMA considers that TJ Morris is therefore not trivial in scale to the suppliers with which it deals, and in some cases it is larger than those suppliers, (at least one supplier appears to be an SME), and consequently its transactions with TJ Morris may be significant sources of revenue for suppliers.
47. The CMA is fully aware that buyer power is not always a source of concern and can benefit consumers in certain circumstances. In the CC's Report, the CC found particular circumstances in the supply of groceries where buyer power was being exercised to the detriment of competition and consumer interests.³⁸
48. TJ Morris represents a generally small but sometimes significant proportion of the sales of its suppliers, and in some cases, it is purchasing items which may have limited appeal to other grocery retailers. In such cases, suppliers may be expected to have fewer alternatives, and in this area in particular, TJ Morris may be expected to have buyer power over some of its suppliers, and may be able to exercise this to the detriment of competition and consumers.
49. The CMA notes its decision to designate Ocado in November 2018, in which Ocado was designated despite its existing agreement with Waitrose, which was already a Designated Retailer. While Ocado's relationship with Waitrose meant that certain of Ocado's suppliers already benefitted from the provisions of the Order, this would not protect Ocado's other suppliers with whom it held a direct relationship. In this case, TJ Morris may not have or be able to exercise buyer power over some of its suppliers, but this does not mean that there are not some suppliers of groceries over which it could exert buyer power in a way that could damage competition and consumer interests.

³⁷ TJ Morris letter to the CMA dated 14 February 2019, page 2.

³⁸ CC Report, paragraphs 9.5, 9.44 – 9.48 and 10.5.