



Mr George Brenton
Remedies Monitoring Manager
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

20 June 2019

Dear George

Groceries (Supply Chain Practices) Market Investigation Order (the "Order") Request Pursuant to Section 162 of the Enterprise Act 2002

1. Introductions

Definitions from the Order are adopted unless otherwise stated.

This letter is sent on behalf of Ocado Group Plc (**'Ocado Group'**). It is a request for Ocado Group's designation as a Designated Retailer to be revoked and for Ocado Retail Limited (**'Ocado Retail'**) to be designated in its place for the reasons set out below.

2. Background

As you will recall, in 2018 the CMA concluded that Ocado Retail had reached the requisite threshold to be designated under the Order. As a result, Ocado Group was named as the Designated Retailer on the basis that, amongst other things, it controlled the business of Ocado Retail, which was a wholly owned subsidiary at the time of the designation.

Since our designation, we/ Ocado Retail, have taken our GSCOP obligations seriously and undertaken a rigorous exercise to ensure compliance, under the supervision of our Code Compliance Officer, Jo West. We have benefitted from working closely with Christine Tacon and her team to ensure that we have fully understood our obligations.

I am sure you are aware from recent press reports that Ocado Group is going through a period of significant transition following the establishment of a new joint venture with Marks & Spencer Group plc. The joint venture comprises Ocado Group's UK grocery retail business, Ocado Retail, of which 50% of its shares will be sold by Ocado Holdings Ltd (**"OHL"**) to M&S Holdings Ltd (**"MSL"**) in accordance with the terms of a share purchase agreement signed on 27 February 2019. The sale of the shares and establishment of the joint venture is subject to the satisfaction of certain conditions, including shareholder approval, which was obtained on 20 May 2019. The remaining conditions should be discharged by 5 August 2019.

Ocado Group plc

The joint venture (trading as Ocado.com) will combine M&S's highly regarded own label food and beverage range with Ocado's existing range of Ocado own label and third party branded products to offer over 50,000 SKUs to consumers. M&S's product will be available on Ocado.com by September 2020, replacing Ocado's current sourcing arrangement with Waitrose Limited.

Ocado Retail will be a traditional deadlocked joint venture. OHL and MSL will each be permitted to appoint two directors to its board, thereby having equal shareholder representation. The management team of the joint venture will also be appointed by the joint venture board.

In addition, the personnel who work in the retail business (and are currently employed by Ocado Central Services Limited which is an Ocado Group company) will be transferred out of the Ocado Group and will be employed by Ocado Retail, so that the joint venture operates as a stand-alone entity at arms length from its two shareholders.

As a result of the above, Ocado Retail will operate its online grocery business autonomously and independently from the Ocado Group, making its own decisions relating to the range of grocery products it sells and the portfolio of suppliers from whom it purchases. The joint venture is the next step in the evolution of Ocado Group's strategy, allowing it to focus on its rapidly growing business as a global provider of logistical and IT services and the provision of end-to-end ecommerce grocery solutions.

3. Request Pursuant to Section 162 of the Enterprise Act 2002

The Obligation to Review & Party Request

Pursuant to Section 162 (2) of the Enterprise Act 2002 ('EA') you are required to keep enforcement orders under review and consider if any change of circumstances means such orders need to be varied or revoked. As the explanatory note of the Order confirms, de-designating a retailer falls under such a review.

This letter is a request, in accordance with that part of the EA and section 3.2 of the 'Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders' to undertake a review.

Ocado Group requests that its designation as a Designated Retailer under the Order is revoked and Ocado Retail are designated in its place.

The Change in Circumstances

As set out above, from 5 August 2019, Ocado Retail will cease to be a subsidiary, as defined by section 1159 of the Companies Act 2006, of the Ocado Group. In other words, from 5 August 2019,

Ocado Group will no longer be able, or required, to procure that Ocado Retail comply with the terms of the Order in accordance with Part 2, Article 4, section 4.

The effect of Ocado Retail ceasing to be a subsidiary of Ocado Group is that from 5 August 2019 Ocado Retail will not be regulated by the Order, the Groceries Supply Code of Practice nor the Groceries Code Adjudicator. Aside from its indirect 50% shareholding in Ocado Retail, Ocado Group will not from that date operate any business which sells Groceries as defined by the Order.

The Notice of Designation referred to Ocado Group having a turnover of Groceries of over £1bn. From 5 August 2019, it will not. Only Ocado Retail could be considered to meet the £1bn threshold.

Why it is appropriate to vary the order

Ocado Group plc



Given the change of circumstances, Ocado Group will no longer meet the threshold of £1bn in Groceries sales because it will not be able to exercise the required element of control over any company which sells Groceries.

Given the CMA belief to date that Ocado Group should be designated because of its sole control over the operations of Ocado Retail, the logical consequence of the corporate change I have described is that the CMA should revoke Ocado Group's designation and instead seek to designate Ocado Retail as a Designated Retailer. If it does not, Ocado Retail will not be regulated.

Possible Consequences for consumers and businesses

Ocado Group and Ocado Retail do not believe the way it acts in any way harms consumers or businesses. However, to the extent that the designation of Ocado Group was to seek to prevent the implementation of any possible harmful supply chain practices, such preventative steps would be ineffective without the designation being applied to Ocado Retail.

Prioritisation Principles

We are aware that BEIS encouraged the CMA to formalise its review of retailers to determine if any retailers had exceeded the threshold set out in the Order, and if they did, to consider designating such retailers. This is part of the CMA's current strategy and is strategically significant given the recent activity. On that basis, Ocado Group believe the request falls within the scope of the CMA's prioritisation principles.

4. Evidence

For the purposes of confirming the contents of this letter, we enclose the official Circular sent to shareholders in connection with the General Meeting which took place on 20 May 2019. The Circular describes the proposed arrangements with Marks and Spencer Group plc and sought shareholder approval for the establishment of the joint venture.

5. Next Steps

Please:

- a. acknowledge receipt of this letter;
- b. confirm if you require any further information;
- c. confirm the time frame within which you will determine if a review is to be undertaken;
- d. inform us of the timeframe of any review.

For the purposes of any consultation undertaken, Ocado Group do not object to you disclosing that Ocado Retail will be become a company jointly owned by OHL and MSL. Such information is in the public domain.

Please don't hesitate to let me know if you would like any further clarification.

Yours sincerely


Neill Abrams

Director and Group General Counsel

for and on behalf of Ocado Group plc and Ocado Retail Limited

Ocado Group plc
