

Notice of designation of Ocado Retail Ltd under the Groceries (Supply Chain Practices) Market Investigation Order 2009

16/10/19

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. The CC found adverse effects on competition arising in several areas including the potential exercise of buyer power in relation to suppliers of grocery retailers, and concerns regarding the use of restrictive covenants in concentrated local markets. To address these concerns, the CC made two Orders, namely the Groceries Market Investigation (Controlled Land) Order 2010 which limits large grocery retailers' ability to prevent land being used by their competitors for grocery retailing in the future and the Groceries (Supply Chain Practices) Market Investigation Order 2009 which addressed buyer power among grocery retailers.
2. The Competition and Markets Authority (CMA) actively monitors and enforces the remedies within its remit, including the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order), and works closely with the Groceries Code Adjudicator (GCA). As part of this role, the CMA has considered the evidence available to it regarding whether there are additional retailers that should be designated and responded to requests in this area.

Groceries (Supply Chain Practices) Market Investigation Order 2009

3. From the date of the Order, 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
4. Article 4 of the Order also provided for additional retailers to be designated once the Order was in place.
5. The test for designation of additional retailers is described in the Order as follows:

‘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.’^{1, 2, 3}

6. The Order goes on to state that:

‘any person who carries on the whole, or a substantial part, of the business of any of the persons specified in Articles 4(1)(a) and 4(1)(b)’

will also be a Designated Retailer for the purposes of the Order.⁴

Designation of Ocado Retail Ltd

7. Following the designation exercise under Article 4(1)(b) described above, Ocado Group plc was designated on 1 November 2018.⁵ On 20 June 2019 Ocado Group plc, on behalf of itself and Ocado Retail Ltd, (together ‘Ocado’) informed the CMA that, following the creation of a joint venture with M&S Holdings Ltd, from 5 August 2019, Ocado Group plc would no longer be carrying out the retail supply of Groceries in the United Kingdom and that

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

² 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’.

³ The CMA has taken on the relevant functions of the OFT as described in this Order.

⁴ Article 4(1)(c) of the Order

⁵ [See Notice of Designation for Ocado Group plc, 1 November 2018](#)

those activities would be carried out after that date independently of Ocado Group plc by Ocado Retail Ltd. Ocado requested that Ocado Retail Ltd be designated in place of Ocado Group plc.

8. The CMA finds that from 5 August 2019 Ocado Retail Ltd now carries on the whole or a substantial part of the business formerly carried on by Ocado Group plc and therefore, by virtue of Articles 4(1)(b) and 4(1)(c) of the Order, from the date of this notice Ocado Retail Ltd is a designated retailer, as defined in Article 2 of the Order and is required to comply with the Order and the Code.