

Consultation draft of notice of De-designation of Ocado Group plc from the Groceries (Supply Chain Practices) Market Investigation Order 2009

21 November 2019

Introduction and background

1. The Competition Commission (CC) published its final report on the Market Investigation into the supply of groceries in the UK on 30 April 2008.¹ 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 the first of these concerns, the CC implemented the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order). The Order listed, at Schedule 2, the initial ten groceries retailers to whom the Order applied. Subsequently, in November 2018, two further retailers were designated, including Ocado Group plc.²
2. Pursuant to a corporate restructuring, in particular the creation of a joint venture with M&S Holdings Ltd, Ocado Group plc no longer carries out the retail supply of Groceries in the UK such that it no longer meets the £1bn turnover threshold for designation under the Order and nor does it have sole control over the Ocado entity which does meet the threshold. The retail activities are now carried out by Ocado Retail Ltd and on 16 October 2019, the CMA designated Ocado Retail Ltd under the Order.
3. Following that designation, a [review under s162 of the Enterprise Act 2002](#) was launched to determine whether Ocado Group plc should cease to be a designated retailer under the Order.
4. Following consultation on launch and provisional decisions in October-November 2019, the CMA decided that the structural change undergone by Ocado in August 2019, and the subsequent designation of Ocado Retail Ltd,

¹ See [CMA webpage on the CC Market Investigation](#)

² See [Notice of Designation for Ocado Group plc, 1 November 2018](#)

constitutes a change of circumstance and that Ocado Group plc should be de-designated.³ This Notice of De-designation gives effect to that change.

Groceries (Supply Chain Practices) Market Investigation Order 2009

5. The CC published its final report on the Market Investigation into the supply of groceries in the UK on 30 April 2008.⁴ 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 the first of these concerns, the CC made the Order which addressed buyer power among grocery retailers.
6. Schedule 2 of the Order lists the Designated Retailers to whom the Order applied at the time it was created. From 4 August 2009, the following 10 retailers were designated:
 - Asda Stores Limited, a subsidiary of Wal-Mart Stores Inc
 - Co-operative Group Limited
 - Marks & Spencer plc
 - Wm Morrison Supermarkets plc
 - J Sainsbury plc
 - Tesco plc
 - Waitrose Limited, a subsidiary of John Lewis plc
 - Aldi Stores Limited
 - Iceland Foods Limited, a subsidiary of the Big Food Group
 - Lidl UK GmbH
7. Article 4 of the Order also provides for additional retailers to be designated. In November 2018, Ocado Group plc was designated.⁵

De-designation of Ocado Group plc

8. The CMA explored whether the creation of a joint venture with M&S Holdings Ltd and the consequent ceasing of the relevant activities by Ocado Group plc constitutes a change in circumstance for the purposes of s162 of the Act.
9. Ocado Group plc no longer carries out the retail supply of Groceries in the United Kingdom and those activities are now carried out independently of

³ See [CMA case page on review of the Order to determine the de-designation of Ocado Group plc](#).

⁴ See [CMA webpage on the CC Market Investigation](#)

⁵ See [Notice of Designation for Ocado Group plc, 1 November 2018](#). In addition, on the same date B&M European Value S.A was designated and, on 3 September 2019, T J Morris Ltd (Home Bargains) was designated (See [CMA website](#) for details).

Ocado Group plc by Ocado Retail Ltd. As a result of this re-structure, the CMA found that a change in circumstance has occurred for the following reasons:

- Ocado Group plc no longer meets the turnover threshold of £1bn in retail supply of groceries in the UK, as it and its subsidiaries no longer retail groceries in the UK;
- Ocado Retail Ltd has ceased to be a subsidiary, as defined by s1159 of the Companies Act 2006 of Ocado Group plc. Hence Ocado Group plc no longer has sole control over the operations of Ocado Retail Ltd and cannot procure that Ocado Retail Ltd comply with the terms of the Order; and
- Ocado Retail Ltd is now designated in its own right for the purposes of the Order.

10. Consequently, the CMA concluded that none of the designation criteria in Article 4(1) of the Order apply to Ocado Group plc and that Ocado Group plc should therefore be de-designated.
11. Having found a relevant change of circumstance, and found that Ocado Group plc should be de-designated, the CMA hereby de-designates Ocado Group plc for the purposes of the Order. This de-designation takes effect from the date of this Notice.