

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002
COMPLETED ACQUISITION**

Consent under section 72(3C) of the Enterprise Act 2002 (the Act) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 30 January 2020

Completed acquisition by Takeaway.com N.V. of Just Eat plc (the Merger).

We refer to your submissions dated 29 and 30 January 2020 requesting that the CMA consents to derogations to the Initial Enforcement Order of 30 January 2020 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Takeaway.com N.V. (**Takeaway**) and Just Eat plc (**Just Eat**) (together the **Parties**) are required to hold separate the Takeaway business from the Just Eat business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Takeaway and Just Eat may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 5(b) and 6(c) of the Initial Order - increase in authorised share capital of Takeaway

The CMA understands that Takeaway must increase its authorised share capital to allow for the issue of shares to Just Eat shareholders who have accepted Takeaway's all-share offer to acquire all of the issued share capital in Just Eat on 28 November 2019 (the **Offer**).

On this basis, the CMA consents to Takeaway increasing its authorised share capital from 87,500,000 ordinary shares to 400,000,000 ordinary shares.

2. Paragraph 6(c) – de-listing

The CMA understands that Takeaway and Just Eat intend to de-list Just Eat, not earlier than 20 business days after the Merger completes. The CMA understands

that, following the de-listing, it is intended that Just Eat will be re-registered as a private company and will accordingly be renamed as “Just Eat Limited”.

The CMA consents to this derogation on the basis that the de-listing and re-registration will not:

- affect Just Eat’s assets (tangible or intangible);
- result in any changes to staff/management of Just Eat;
- lead to any integration between the Takeaway and Just Eat businesses;
- result in changes to customer and/or supplier contracts;
- affect the viability of Just Eat’s business; and
- result in the sharing of confidential or commercially sensitive information between the Parties.

3. Paragraphs 5(a) and 6(a) of the Initial Order – change of name

During an extraordinary general meeting held on 9 January 2020 (the **EGM**), Takeaway’s shareholders adopted a resolution to amend Takeaway’s articles of association to implement a number of changes, including changing Takeaway’s statutory name to “Just Eat Takeaway.com N.V.”, to take effect upon completion of the Merger. In addition, Takeaway made a “post-offer intention statement” (subject to Clause 19.6 of the Takeover Code) as part of the Offer that it would change its name to “Just Eat Takeaway.com N.V.”

Takeaway submits that the change of name will only apply to the legal holding company of the combined group, which is not a trading entity.

The CMA consents to this change of name, provided that the change in the name of the holding entity has no impact on the Takeaway and Just Eat businesses. In particular:

- Takeaway and Just Eat will retain separate and independent websites (both corporate websites and customer-facing retail websites);
- Back-office support, branding and marketing materials will remain separate;
- The Takeaway and Just Eat businesses will not refer to the holding entity in marketing or customer or supplier-facing materials or communications; and
- The updated name of the holding company will only be used when required by law or regulations, such as when making governmental filings, including tax filings, and in certain of its corporate documentation, including its annual report, formal press releases in its capacity as a regulated listed entity and notices for its general meetings and corporate releases.

4. Paragraphs 6(a), 6(c), 6(i) and 6(j) of the Initial Order - management

The CMA understands that, following completion of the Merger, the composition of the Takeaway management board, which will then continue to manage the day-to-day operation of the merged entity (the **Management Board**), will change. Similarly, the composition of the supervisory board, which will continue to provide oversight of the activities of the Management Board (the **Supervisory Board**) will change. These boards form a two-tier board structure (common in companies incorporated in the Netherlands) that governs the merged entity.

Takeaway submits that at the EGM, Takeaway's shareholders voted to appoint: (i) Paul Harrison (CFO of Just Eat) to the Management Board, and (ii) Mike Evans (Non-Executive Chairman of Just Eat), Gwyn Burr and Jambu Palaniappan (both Non-Executive Directors of Just Eat) to the Supervisory Board.

In addition to Ms Burr and Mr Palaniappan being appointed to the Supervisory Board, the CMA understands that the Management Board and the Supervisory Board following completion will be comprised of the following representatives of Takeaway:

Management Board:

- (i) Jitse Groen (CEO)
- (ii) Brent Wissink (CFO)
- (iii) Jörg Gerbig (COO)

Supervisory Board

- (i) Adriaan Nühn (Chairman)
- (ii) Ronald Teerlink (Supervisory Board member)
- (iii) Corinne Goddijn-Vigreux (Supervisory Board member)
- (iv) Johannes Reck (Supervisory Board member) (together, the **Takeaway Board Members**)

Pursuant to the terms of the resolution approved at the EGM, the appointments of Mr. Harrison, Mr. Evans, Ms. Burr and Mr. Palaniappan will take automatic effect on completion of the amendment of Takeaway's articles of association, unless they decide not to take up their appointments. The CMA understands that Mr. Harrison and Mr. Evans have given notice that they will not take up their appointments.

In order to give effect to the resolution approved at the EGM while ensuring the independent management of the Just Eat business, the CMA hereby consents to:

- (a) the appointment of Ms. Burr and Mr. Palaniappan to the Supervisory Board, strictly on the basis that:

- Takeaway will declare each of Ms. Burr and Mr. Palaniappan and each of them will declare themselves, immediately from the moment of their appointment until such time as the Initial Order is lifted, as being prevented from acting (belet under general Dutch corporate law and article 7.6.10 of Takeaway's articles of association) in their respective roles as members of the Supervisory Board (the **Declaration**). As a result of the Declaration, Ms. Burr and Mr. Palaniappan will be prevented from acting in their capacities as members of the the Supervisory Board;
 - The Declaration will be recorded in writing and include confirmations that Ms Burr and Mr Palaniappan will not (except as expressly permitted by the CMA in any derogation to the Initial Order): (i) perform any duties on the Supervisory Board; (ii) receive by virtue of their positions or any confidential or commercially-sensitive information in respect of the Takeaway business; and (iii) receive any remuneration or other compensation from Takeaway in respect of these positions;
- (b) Each of Mr Brent Wissink (currently CFO of Takeaway) and Mr Nühn (currently Chairman of Takeaway), will take up roles as acting-CFO and acting Chairman on the Management Board and the Supervisory Board respectively, and the Management Board and the Supervisory Board will continue to manage the day-to-day operation of the merged entity, and oversee the activities of the Management Board (respectively) strictly on the basis that:
- The Management Board and Supervisory Board will provide the Just Eat board with all required powers and delegated authority to allow the Just Eat board to take all necessary action in respect of the continued operation of the Just Eat business (except as expressly permitted by the CMA in any derogation to the Initial Order);
 - The Takeaway Board Members will not have any involvement in the day-to-day planning, management, strategic or financial decision-making over the Just Eat business, except as expressly permitted by the CMA in any derogation to the Initial Order; and
 - The Takeaway Board Members will not receive access to any commercially sensitive, confidential or proprietary information of the Just Eat business (except as expressly permitted by the CMA in any derogation to the Initial Order).

5. Paragraph 6(c), (i) and 6(k) of the Initial Order – Non-Executive Directors

As discussed in derogation 4 above, the CMA understands that, following completion of the Merger, changes will be made to Takeaway's Supervisory Board. The Supervisory Board will not oversee the day-to-day operation of Takeaway, but will supervise the activities of the Management Board.

Accordingly: (i) Frederic Coorevits, Alistair Cox, Roisin Donnelly, Diego Oliva, and Helen Weir (Non-Executive Directors of Just Eat) intend to resign on delisting as Just

Eat will no longer be a public limited company and (ii) Ms Burr and Mr Palaniappan will be appointed to the Supervisory Board of the merged entity, subject to the restrictions in derogation 4.

The CMA consents to each of Frederic Coorevits, Alistair Cox, Roisin Donnelly, Diego Oliva, and Helen Weir (Non-Executive Directors of Just Eat) resigning on delisting strictly on the basis that the resignation of these individuals does not impact the viability of the Just Eat business post-completion; and.

- Ms. Burr and Mr. Palaniappan will remain on the board of Just Eat while the Interim Order is in effect (except as expressly permitted by the CMA in any derogation to the Initial Order).

6. Paragraph 6(a), 6(c) and 6(l) of the Initial Order – delegation of authority

In order to ensure the ongoing viability of the Just Eat business, Takeaway has requested that Just Eat be required to seek approval from a designated individual within Just Eat to proceed with certain courses of action. The requirement to seek such approval from Takeaway is strictly limited to the following matters:

- (a) ✂;
- (b) ✂;
- (c) ✂
- (d) ✂

The CMA consents to a derogation from the Initial Order, strictly on the basis that:

- (e) Requests shall only be communicated to ✂ of Takeaway who will have authority to take a decision on each matter and do not hold a commercial or strategic role within Takeaway. No changes to the Takeaway personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- (f) Requests may only be accompanied by information which does not contain any commercially-sensitive information and is no more than strictly necessary to allow Takeaway to take a decision on the request;
- (g) ✂ must not consult with any other individual at Takeaway in taking decisions on the specific matters listed above;
- (h) ✂ will enter into a confidentiality undertaking in a form approved by the CMA;
- (i) The CMA will be notified of any requests made by the Just Eat business to Takeaway and the CMA will be provided with a summary of the Just Eat business information shared with Takeaway in order to allow ✂ to reach a decision on the request at hand;

- (j) The CMA is notified of any proposed veto by Takeaway and the reasons for this in advance of any such veto being exercised;
- (k) Firewalls will be put in place to prevent any unauthorised individuals within Takeaway from accessing the information shared with ☒ for the purposes of this derogation;
- (l) Takeaway will maintain lists of individuals who have been authorised to receive confidential information for a permitted purpose by the CMA and are subject to a non-disclosure agreement (**NDA**) in a form approved by the CMA in advance, including the relevant permitted purpose(s) for which each individual may receive confidential information;
- (m) Should the Merger be prohibited, Takeaway will ensure that any confidential information received from Just Eat for the purposes of this derogation will be returned to the Just Eat business and any copies destroyed, except to the extent that record retention is required by law or regulation; and
- (n) Just Eat will notify the CMA if the limits set out in this derogation do not allow the Just Eat business to carry out its day-to-day functions without the interference of Takeaway; and
- (o) The limits set out in this derogation will be subject to CMA review and the CMA may revise the thresholds in writing (including via email) if it deems necessary for the Just Eat business to conduct its day-to-day business independently of Takeaway. For the avoidance of doubt, the CMA will provide Takeaway with an opportunity to make submissions regarding any proposed change to the limits set out in this derogation prior to any change taking effect.

7. Paragraph 6(l) of the Initial Order – disclosure and financial reporting

The CMA understands that following completion of the Merger, Takeaway will be a public company dual-listed both on the main market of the London Stock Exchange (premium segment) and on Euronext Amsterdam. Takeaway will therefore be subject to various mandatory regulatory requirements imposed through (among others) the Market Abuse Regulation, two sets of listing rules and the Dutch implementation of the Transparency Directive.

In order to comply with its regulatory requirements as a listed company on both the London Stock Exchange and Euronext Amsterdam, Takeaway will require access to certain information with respect to Just Eat's business.

Takeaway is therefore requesting a derogation from the Initial Order in order to receive certain commercially-sensitive/confidential information from Just Eat which is strictly necessary in order for Takeaway to comply with its regulatory requirements.

The CMA consents to a derogation from the Initial Order, strictly on the basis that:

- (a) the Just Eat information shared with Takeaway for these purposes will be in a template (attached as Annex 1) agreed with the CMA or will constitute *ad hoc*

disclosures of ☒, and will be limited to that which is strictly necessary for the purposes of ensuring that Takeaway is able to comply with its ongoing regulatory requirements imposed as a result of its listing on the London Stock Exchange and Euronext Amsterdam. For the avoidance of doubt, the template does not provide for the sharing of any commentary by Just Eat with Takeaway;

- (b) any ad hoc disclosures made pursuant to paragraph (a) above are provided to the CMA;
- (c) The information required from Just Eat for these purposes will be made available to ☒ of Takeaway (together the “**Identified Individuals**”) on the basis that the Identified Individuals do not have a commercial or strategic role within the Takeaway business. No changes to the Takeaway personnel covered by this derogation are permitted without written consent from the CMA (including via email);
- (d) The Identified Individuals will enter into an NDA in a form approved by the CMA;
- (e) Takeaway will adopt physical and IT firewalls to prevent individuals other than the Identified individuals from accessing the information disclosed to Takeaway for the purposes of the derogation.
- (f) Takeaway individuals who will gain access to Just Eat information in accordance with Annex 1 will enter into an NDA in a form approved by the CMA in advance, containing customary protections for Just Eat confidential information; and
- (g) Takeaway will keep detailed records of all information received from Just Eat and, in case the Merger is prohibited by the CMA, save as required by law, any records or copies of information that have passed to Takeaway will be returned to Just Eat and any copies destroyed.

Alexandra Zachmann
Assistant Legal Director, Mergers
31 January 2020

Annex 1

