

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

Dear Ms Lyle-Smythe

**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 4 and 16 March 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 6(a) and 6(l) of the Initial Order – rollover of share options**

The CMA understands that in order to complete Takeaway's offer to acquire all of the issued share capital in Just Eat (the **Offer**), as permitted under paragraph 4 of the Initial Order, it must obtain certain information from Just Eat and/or the Just Eat employee share plan administrator, ☒, namely:

- a) The names of the Just Eat option holders who have elected to rollover their share options ☒; and
- b) The number of Just Eat shares in respect of which each of those option holders has elected (or will be required) to rollover and the corresponding exercise price of the options (☒).

In order to facilitate a consistent process for the option holders who have elected to rollover, Takeaway also intends to ask ☒ and Just Eat for details of ☒.

As part of the rollover process, the Parties may also need to:

- a) Agree joint messaging / communications to provide to Just Eat employees; and
- b) Conduct joint negotiations and discussions with, and pay, ☒.

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

- a) All confidential information shared pursuant to this derogation will be first sent to the Parties' legal advisers: ☒;
- b) At the Takeaway level, any confidential information from Just Eat and ☒ shared pursuant to this derogation will only be shared with ☒, (together, the **Relevant Individuals**), none of whom hold a commercial or strategic role within Takeaway;
- c) No further changes to the Relevant Individuals are permitted without consent from the CMA. Such consent will include written consent (including via email);
- d) All confidential information shared pursuant to this derogation will be sent through a secure Intralinks site and a record will be kept of everything shared;
- e) Confidential information will be shared pursuant to this derogation only to the extent absolutely necessary for Takeaway to perform an action in respect of the options that Just Eat cannot perform in isolation;
- f) Prior to receiving confidential information, the Relevant Individuals (and any other employees that may be subject to this derogation) will sign a suitable confidentiality undertaking in a form to be agreed with the CMA;
- g) The day to day operation of the plan will be carried out at Just Eat level in order to reduce the level of information required to be shared to a minimum; and
- h) Any discussions with ☒ regarding share plan administration services will be limited to discussing purely administrative matters.

## **2. Paragraphs 6(a) and 6(l) of the Initial Order – new awards to incentivise Just Eat staff**

The CMA understands that Takeaway intends to grant ☒ to Just Eat employees to ensure their retention and incentivisation, as required by paragraph 6(k) of the Initial Order. In order to do so, it needs to:

- a) Receive information from Just Eat/☒ about the identities of participants and maximum potential awards; and

- b) Exchange information with Just Eat and ☒ for the purposes of ongoing scheme administration (☒ currently administers Just Eat's plans and Takeaway ☒).

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

- a) Commercially sensitive information or any other information of a confidential or proprietary nature regarding Just Eat employees and their remuneration entitlement (**Just Eat Confidential Information**) will only be shared with the Relevant Individuals, none of whom hold a commercial or strategic role within Takeaway;
- b) No further changes to the Relevant Individuals are permitted without consent from the CMA. Such consent will include written consent (including via email);
- c) Prior to receiving confidential information, the Relevant Individuals (and any other employees that may be subject to this derogation) will sign a suitable confidentiality undertaking in a form to be agreed with the CMA;
- d) Takeaway will ensure that firewall measures are put in place to prevent any other Takeaway representative from accessing Just Eat Confidential Information;
- e) Insofar as any employees form part of a divestment package offered by Takeaway as part of undertakings in lieu or required to be divested by the CMA, ☒; and
- f) Any discussions with ☒ relating to ongoing scheme administration will be limited to discussing purely administrative matters.

### **3. Paragraphs 6(l) of the Initial Order – funding of Just Eat**

The CMA understands that in order for Takeaway to comply with its obligation under the IEO to ensure that Just Eat is adequately funded and has sufficient resources available to it for the development of the Just Eat business, Takeaway and Just Eat require an extension to the disclosure and financial reporting derogations outlined at Section 7 of the Consent Letter of 31 January 2020 to cover the sharing of the following:

- a) ☒;
- b) ☒;
- c) ☒;

d) ✂.

The information provided as part of paragraphs 3(a)-(c) would cover a forward period of no more than 12 months and be at an aggregated Group level.

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

- a) The information in paragraphs 3(a)-(c) will be shared with Takeaway in the form of template at Annex 1;
- b) 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;
- c) No further changes to the Identified Individuals are permitted without consent from the CMA. Such consent will include written consent (including via email);
- d) Prior to receiving any confidential information, the Identified Individuals (and any other employees that may be subject to this derogation) will enter into an NDA in a form approved by the CMA; and
- e) All confidential information shared pursuant to this derogation would be password protected and stored on a secure drive to which only authorised persons would have access.

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