

ACQUISITION BY TAKEAWAY.COM N.V. OF JUST EAT PLC

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Takeaway.com N.V. and Just Eat plc ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Takeaway.com N.V. (**Takeaway**) and Just Eat plc (**Just Eat**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date.
2. This Order applies to Takeaway and Just Eat.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Takeaway or Just Eat to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

4. This Order does not prohibit the completion of the transaction provided that Takeaway and Just Eat observe the restrictions set out below. For the avoidance of doubt, nothing in this Order shall prevent the transfer of beneficial and legal ownership of all Just Eat issued shares to Takeaway including by way of compulsory acquisition.

Management of the Takeaway and Just Eat businesses until determination of proceedings

5. Except with the prior written consent of the CMA, Takeaway and Just Eat shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of Just Eat business with the Takeaway business;
 - (b) transfer the ownership or control of the Takeaway business or the Just Eat business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Just Eat business or the Takeaway business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, Takeaway and Just Eat shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Just Eat business is carried on separately from the Takeaway business and the Just Eat business's separate sales or brand identity is maintained;
 - (b) the Just Eat business and the Takeaway business are maintained as a going concern and sufficient resources are made available for the development of the Just Eat business and the Takeaway business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Just Eat business or the Takeaway business;
 - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;

- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Just Eat business and the Takeaway business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Just Eat business or the Takeaway business are disposed of; and
 - (iii) no interest in the assets of the Just Eat business or the Takeaway business is created or disposed of; and
 - (iv) there is no integration of assets of Just Eat and Takeaway, including facilities and goodwill;
- (f) there is no integration of the information technology of the Just Eat or Takeaway businesses, and the software and hardware platforms of the Just Eat business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Just Eat business will be carried out by the Just Eat business alone and for the avoidance of doubt the Takeaway business will not negotiate on behalf of the Just Eat business (and vice versa) or enter into any joint agreements with the Just Eat business (and vice versa);
- (h) all existing contracts of the Just Eat business and the Takeaway business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Just Eat business or Takeaway business;
- (j) no key staff are transferred between the Just Eat business and the Takeaway business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Just Eat business and the Takeaway business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Just Eat business (or any of its employees, directors, agents or affiliates) to the Takeaway business (or any of its employees, directors, agents or affiliates), or vice versa, except where

strictly necessary in the ordinary course of business (including for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

7. Takeaway and Just Eat shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Takeaway and Just Eat shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Takeaway and Just Eat and their subsidiaries with this Order. In particular, on the date of two weeks from the completion of the transaction and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Takeaway and the Chief Executive Officer of Just Eat or other persons of Takeaway and Just Eat as agreed with the CMA shall, on behalf of each of Takeaway and Just Eat, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
9. At all times, Takeaway and Just Eat shall each actively keep the CMA informed of any material developments relating to the Just Eat business or the Takeaway business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Just Eat business or the Takeaway business;
 - (b) any interruption of the Just Eat or Takeaway business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Just Eat or Takeaway business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Just Eat or Takeaway business's contractual arrangements or relationships with key suppliers.

10. If Takeaway or Just Eat has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Takeaway or Just Eat may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. Takeaway and Just Eat shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

'business' has the meaning given by section 129(1) and (3) of the Act;

'commencement date' means the date on which the transaction comes into effect in accordance with section 27 of the Act (being the date on which Takeaway's public offer becomes wholly unconditional);

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

‘Just Eat’ means Just Eat plc (company number 06947854), with its registered office address at Fleet Place House, 2 Fleet Place, London EC4M 7RF, United Kingdom;

‘the Just Eat business’ means the business of Just Eat and its subsidiaries carried on as at the commencement date;

‘key staff’ means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

‘the ordinary course of business’ means matters connected to the day-to-day supply of services by Just Eat or Takeaway and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Just Eat or Takeaway;

‘specified period’ means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

‘subsidiary’, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

‘Takeaway’ means Takeaway.com N.V., registered at the Commercial Register of the Chamber of Commerce in Amsterdam, the Netherlands under number 08142836, with registered office at Oosterdoksstraat 80, 1011 DK Amsterdam, The Netherlands;

‘the Takeaway business’ means the business of Takeaway and its subsidiaries carried on as at the commencement date but excluding the Just Eat business;

‘the transaction’ means the transaction by which Takeaway and Just Eat will cease to be distinct within the meaning of section 23 of the Act;

‘the two businesses’ means the Takeaway business and the Just Eat business;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Suzanne Van Scheijen
Assistant Director, Mergers

Compliance statement for Takeaway.com N.V.

I [•] confirm on behalf of Takeaway that:

Compliance in the Relevant Period

1. In the period from [•] to [•] (the Relevant Period):
 - (a) Takeaway has complied with the Order made by the CMA in relation to the transaction on 30 January 2020 (the Order).
 - (b) Takeaway's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Takeaway that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Just Eat business with the Takeaway business;
 - (ii) transfer the ownership or control of the Takeaway business or the Just Eat business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Just Eat business or the Takeaway business to compete independently in any of the markets affected by the transaction.
 - (b) The Just Eat's business has been carried on separately from the Takeaway business and the Just Eat business's separate sales or brand identity has been maintained.
 - (c) The Just Eat business and the Takeaway business have been maintained as a going concern and sufficient resources have been made available for the development of the Just Eat business and the Takeaway business, on the basis of their respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Just Eat business or the Takeaway business, except in the ordinary course of business.

- (e) The nature, description, range and quality of services supplied in the UK by the Just Eat business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Just Eat business and the Takeaway business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Just Eat business or the Takeaway business have been disposed of;
 - (iii) no interest in the assets of the Just Eat business or the Takeaway business has been created or disposed of; and
 - (iv) none of the assets of Takeaway have been integrated with the assets of Just Eat, including facilities and goodwill.
- (g) There has been no integration of the information technology of the Just Eat or Takeaway businesses, and the software and hardware platforms of the Just Eat business have remained essentially unchanged, except for routine changes and maintenance.
- (h) The customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Just Eat business have been carried out by the Just Eat business alone and, for the avoidance of doubt, the Takeaway business has not negotiated on behalf of the Just Eat business (and vice versa) or entered into any joint agreements with the Just Eat business (and vice versa).
- (i) All existing contracts of the Just Eat business and the Takeaway business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Just Eat business or the Takeaway business.
- (k) No key staff have been transferred between the Just Eat business and the Takeaway business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Just Eat business and the Takeaway business.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Just Eat business (or any of its employees, directors, agents or affiliates) to the Takeaway business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(i) key staff that have left or joined the Just Eat business or the Takeaway business;

(ii) interruptions of the Just Eat business or the Takeaway business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Just Eat business or the Takeaway business; or

(iv) substantial changes in the Just Eat or Takeaway business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Takeaway and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Just Eat or the Takeaway business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF TAKEAWAY.COM N.V.

Signature

Name

Title

Date

Compliance statement for Just Eat plc

I [insert name] confirm on behalf of Just Eat that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Just Eat has complied with the Order made by the CMA in relation to the transaction on [•] (the Order).
 - (b) Just Eat's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 and 4 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Just Eat that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Just Eat business with the Takeaway business;
 - (ii) transfer the ownership or control of the Takeaway business or the Just Eat business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Just Eat business or the Takeaway business to compete independently in any of the markets affected by the transaction.
 - (b) The Just Eat business has been carried on separately from the Takeaway business and the Just Eat business's separate sales or brand identity has been maintained.
 - (c) The Just Eat business and the Takeaway business have been maintained as a going concern and sufficient resources have been made available for the development of the Just Eat business and the Takeaway business, on the basis of their respective pre-merger business plans.
 - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Just Eat business, except in the ordinary course of business.

- (e) The nature, description, range and quality of good and/or services supplied in the UK by the Just Eat business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Just Eat business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the Just Eat business have been disposed of;
 - (iii) no interest in the assets of the Just Eat business has been created or disposed of; and
 - (iv) none of the assets of Just Eat have been integrated with those of Takeaway, including facilities and goodwill.
- (g) There has been no integration of the information technology of the Just Eat or Takeaway businesses, and the software and hardware platforms of the Just Eat business have remained essentially unchanged, except for routine changes and maintenance.
- (h) The customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Just Eat business have been carried out by the Just Eat business alone and, for the avoidance of doubt, the Takeaway business has not negotiated on behalf of the Just Eat business (and vice versa) or entered into any joint agreements with the Just Eat business (and vice versa).
- (i) All existing contracts of the Just Eat business and the Takeaway business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the JusEat business.
- (k) No key staff have been transferred between the Just Eat business and the Takeaway business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Just Eat business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Just Eat business (or any of its employees, directors, agents or affiliates) to the Takeaway business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(i) key staff that have left or joined the Just Eat business;

(ii) interruptions of the Just Eat business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Just Eat business; or

(iv) substantial changes in the Just Eat business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Just Eat and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Just Eat or the Takeaway business in accordance with paragraph 9 of the Order.

Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finer, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the

person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF JUST EAT PLC

Signature

Name

Title

Date