

Sent on 25 June 2010



When replying to this e-letter please quote the following reference:
CC/RM/Groceries (Remedies)/586-10

Dear Representatives of Parties to the Groceries Market Investigation,

MARKET INVESTIGATION (REMEDIES IMPLEMENTATION PHASE): THE SUPPLY OF GROCERIES BY RETAILERS IN THE UK –THE CONTROLLED LAND ORDER

1. Further to our e-letter of 30 April 2010 (reference CC/RM/Groceries (Remedies)/386-10 – copy attached for ease of reference) you will wish to know that an issue has arisen concerning an inadvertent omission from the Groceries Market Investigation (Controlled Land) Order 2010 which relates to the scope of Article 9. This letter describes the issue that has arisen and acknowledges that the Competition Commission intends to remedy the omission.
2. Part 9 of the draft Controlled Land Order, dated 16 November 2009 (please see our CC/RM/Groceries (Remedies)/870-09 of 16 November 2009) contained a narrow exemption for certain categories of land that are necessary for the operation of a Grocery Store. It provided that the obligation in Article 4 and the prohibitions in Articles 5, 7 and 8 would not apply to an 'Operational Land Restriction'. An 'Operational Land Restriction' is defined as a restriction which prevents a car park, service yard or access road from being used for any purpose other than as a car park, service yard or access roads. The exemption was to apply where the land subject to the Operational Land Restriction is not owned by the Large Grocery Retailer; there is no planning condition or obligation which specifies that the land is to be used as a car park, service yard or access road; the Operational Land Restriction restricts the use of land adjacent to and is necessary for the effective operation of the Grocery Store; and the Operational Land Restriction does not provide for the Large Grocery Retailer to have exclusive use of any car park, service yard or access road which is also necessary for the effective operation of another Grocery Store.
3. In response to the November 2009 consultation the exemption within Article 9 was intended to be extended so that it applied also to Operational Land Restriction restricting the land interest of a lessee of the Large Grocery Retailer where such Operational Land Restriction restricts the use of land adjacent to and is necessary for the effective operation of the Grocery Store and the Operational Land Restriction does not provide for the Large Grocery Retailer to have exclusive use of any car park, service yard or access road which is also necessary for the effective operation of another Grocery Store. A further amendment, as compared to the November 2009 version was to be made by the removal of Article 9 (b) (the "planning condition"). Amendments reflecting this decision were incorporated into the Groceries Market Investigation (Controlled Land) Order 2010, dated 30 April 2010 (sent to you on 30 April 2010) (at article 9). However, the exemption described in paragraph 2 and contained in the November 2009 version was omitted.
4. There has been no change to the CC's decision on the extent of exemptions for Operational Land Restriction but the omission to include fully the exemptions that

were intended means, in our view, that the Groceries Market Investigation (Controlled Land) Order 2010 dated 30 April 2010 does not fully reflect the CC's decision and thus cannot be valid.

5. Recognising that this Order does not fully reflect the CC's decision to exempt certain situations from the provisions of the Controlled Land Order, the CC considers that the Order as a whole cannot be and is not valid and the CC must withdraw it and make a new valid Order that does fully reflect the CC's decisions. The 30 April 2010 Order is hereby withdrawn with immediate effect. A draft Order, which properly and completely implements the CC's decision, will be issued for consultation by **close Wednesday 30 June**.
6. The draft Order will correctly reflect the CC's decision in article 9 and will be subject to the usual 21 day consultation period.

Yours sincerely,

e-signed

T J OYLER

Remedies Manager

Competition Commission

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