17 August 2021

FCA Referral Request

Just Eat Takeaway.com N.V.

CLIENTEARTH.ORG

ClientEarth

Contents

1. Executive Summary

1. Just Eat Takeaway.com N.V. carries on business as a global online food delivery company, operating in the technology (software, computer, and consumer digital services) market. It is listed on the main market of the London Stock Exchange. The purpose of this referral request (“**Referral**”) is to bring a number of breaches of Just Eat Takeaway.com N.V.’s legal duties to the attention of the Financial Conduct Authority (“**FCA**”) and to request that the FCA refer it for investigation and enforcement action.

2. Background

2.1. ClientEarth

2. ClientEarth is a non-profit environmental law organisation headquartered in London. ClientEarth's Climate Finance initiative analyses the legal implications of climate change-related financial risks for a wide spectrum of market participants, including companies, investors, company directors, professional advisers and regulators.

3. In the UK, ClientEarth operates through a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE.

2.2. Just Eat Takeaway.com N.V.

4. Just Eat Takeaway.com N.V. is a public limited liability company listed on the London Stock Exchange. Just Eat is incorporated in the Netherlands with establishment (Netherlands company registration) number 000017872103, and its registered office address is Oosterdoksstraat 80, Amsterdam, 1011 DK, Netherlands (“**Just Eat**”). Just Eat was admitted to trading on the main market of the London Stock Exchange on 3 February 2020 and has a premium listing.

5. Just Eat carries on business as an online food delivery company, operating in the technology (software, computer, and consumer digital services) market. The market capitalisation of the London listed element of Just Eat is approximately £13 billion (as at 17 August 2021).

6. Each of Just Eat’s directors is a person 'discharging managerial responsibilities' within Just Eat for the purposes of Schedule 10A of the Financial Services and Markets Act 2000. We have sent a courtesy copy of this Referral to Just Eat.

2.3. Materiality of climate risk and investor expectations

7. The world’s largest investors are unequivocal that granular and company-specific information about climate change-related risks and impacts is material to their investment and stewardship decision-making. They now expect and seek to compel companies to address it as such, and are demanding that companies provide detailed climate-related disclosures covering climate risk governance,

mitigation, targets, and adaptation strategy[1]. Investors also expect that financial accounts reflect these matters and are aligned with the goals of the Paris Agreement to achieve net-zero emissions by 2050[2].

8. The Financial Reporting Council ("**FRC**") has acknowledged and confirmed these expectations in its recent Climate Thematic Review, which states that investors "*expect to see disclosures regarding the financial implications of climate change*" [3], and reminds directors and auditors of their obligation to consider climate-related issues, and to ensure material climate factors are properly reflected in financial statements and reporting.

9. Similarly, the FCA states, in its recent Technical Note on 'Disclosures in relation to ESG matters, including climate change', that "*climate-related risks and opportunities are widely understood to be financially material to many issuers' assets and therefore may need to be disclosed*", and that "*issuers should assess climate-related risks and opportunities… carefully in informing their disclosures*" [4].

10. Elsewhere, the FCA notes the FRC's findings that "*investors are not yet receiving the information they need to make informed decisions*" and that "*even where climate-related financial risks and opportunities are identified in companies' reports, the financial implications of climate change in their financial statements are often unclear*" [5].

11. Annual reports are a key resource, which enable investors to assess the position and performance of a particular business. Investors are clear that they cannot prepare their portfolios for the global transition to net-zero unless they understand how each, and every, company is prepared both for the physical threats of climate change and the transitional risks involved in any global economic transition[6]. In recent years, ClientEarth has repeatedly brought these matters to the attention of both the FRC and FCA[7].

12. Clear, consistent and ongoing regulatory supervision and, where necessary, robust enforcement on reporting activities is therefore vital to ensure that investors have the material information they need on companies' exposure to climate change-related risks, transition plans and associated financial implications.

13. With the above in mind, the FCA must take action to ensure that information material to Just Eat's climate change-related risks and opportunities is both (i) in the public domain and (ii) is accurate, comprehensive and complies with the law.

2.4. Role of the FCA

[1] See, for example, Climate Action 100+'s 2020 Progress Report on investor-engaged focus companies' growing net-zero commitments, related IIGCC press release, and most recently the Climate Action 100+ Net–Zero Company Benchmark
[2] Investor Expectations for Paris-aligned Accounts (November 2020, IIGCC)
[3] Page 4, Summary Report of the FRC's Climate Thematic Review 2020
[4] See the FCA's Final Technical Note at Appendix 2, page 52, of its Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)
[5] See paragraph 2.8 of the FCA's Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)
[6] See for example, Larry Fink's 2021 Letter to CEOs (2021)
[7] Most recently, see ClientEarth's report, 'Accountability Emergency: A review of UK-listed companies' climate change-related reporting (2019-20)' (4 February 2021)

14. Among other things, the FCA is responsible for enforcing the provisions of the Disclosure Guidance and Transparency Rules ("**DTRs**"), the Listing Rules ("**LRs**"), and the EU Market Abuse Regulation (as amended by the Market Abuse Exit Regulations 2019) ("**UK MAR**"). In discharging its functions, the FCA is required to pursue its statutory objectives to make markets function well, protect consumers, enhance financial market integrity and promote competition[8]. The most recent Recommendations letter from the Treasury also stipulates that the FCA should have regard to the Government's commitment to achieve a net-zero economy by 2050 under the Climate Change Act 2008 (Order 2019) when considering how to advance its objectives and discharge its functions[9].

15. In the circumstances, consistent and correct reporting on global, systemic financial risks such as climate change is critical both to ensuring the smooth operation of financial markets, and to support the Government's commitment to achieve a net-zero economy by 2050.

16. Given the above and the matters giving rise to this Referral, we are concerned that the FCA is not currently taking adequate steps to ensure that regulated entities, including Just Eat, are complying with existing reporting obligations in relation to material climate change-related information. The FCA has openly accepted that the needs of investors and other market participants are still not being adequately met, and that there remains a case for regulatory intervention to accelerate progress towards more complete and higher quality disclosures[10]. While we agree with the overall sentiment of these statements, any such regulatory intervention (including the recently introduced reporting requirement drawing on the Financial Stability Board's Task Force on Climate-related Disclosures' Recommendations and Recommended Disclosures[11]), must incorporate robust and effective enforcement mechanisms.

17. The FCA must now alter its approach to ensure that Just Eat, and other actors, make the appropriate climate change disclosures. All investors, and particularly asset managers, require the disclosure of material information regarding the implications of climate change to meet their own legal duties to consider, manage and disclose climate change-related risks and impacts, and its fulsome and timely disclosure is essential to the efficient operation of well-functioning financial markets.

3. Just Eat's Annual Report

3.1. Just Eat's exposure to climate change risk

"*The carbon footprint of our gadgets, the internet and the systems supporting them account for about* ***3.7%*** *of global greenhouse emissions, according to some estimates. It is similar to the amount* ***produced by the airline industry*** *globally*"[12]

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[8] Section 1B(2), Financial Services and Markets Act 2000 (as amended)
[9] Letter from the Chancellor of the Exchequer to the Chief Executive of the Financial Conduct Authority (FCA) providing recommendations for the FCA (24 March 2021). This is also reflected in the Financial Services Act 2021 and the new section 143G Financial Services and Markets Act 2000 (FSMA) (coming into force from 1 January 2022).
[10] CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets (22 June 2021)
[11] LR9.8.6R and the FCA's Policy Statement PS20/17: Proposals to enhance climate-related disclosures by listed issuers (December 2020)
[12] Why your internet habits are not as clean as you think (BBC, 6 March 2020)

18. As a technology company operating in the online food delivery business, Just Eat's business is materially exposed to the trends and risks associated with climate change and the low carbon transition[13].

19. In particular, Just Eat's business is directly impacted by the transitional risks (and opportunities) associated with (i) accelerating the transformation of the global energy sector (on which Just Eat relies to power its technology) from being fossil fuel-based to zero carbon by 2050, and (ii) mitigating its carbon footprint (including Scope 3 emissions) and other environmental impacts associated with its food production and delivery supply chains[14]. It is also exposed to the physical effects of climate change on its food supply chain and operations, as well as the associated food security, political, and price risks arising from climate change-related resource scarcity and/or changes in the location of food production[15].

20. Just Eat is likely to be further impacted by climate commitments by national governments, such as:

    20.1. the Dutch Government's obligation to reduce the Netherlands' greenhouse gas emissions by 25% (compared to 1990 levels) by the end of 2020[16], and its commitment to reduce its greenhouse gas emissions by 49% by 2030, compared to 1990 levels, and a 95% reduction by 2050[17]; and

    20.2. the UK's commitment to achieve 'net-zero' greenhouse gas emissions by 2050[18], as well as its emissions reduction targets in its nationally determined contribution under the Paris Agreement[19] and its sixth carbon budget[20].

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[13] -LEAN ICT- Towards Digital Sobriety: Working Group Report (The Shift Project, March 2019)

[14] On Just Eat's own initial analysis of its indirect emissions earlier in 2020, the production and delivery of meals sold through the Just Eat platforms resulted in 1.3 million tonnes of CO2 emissions per year (page 48, Just Eat Annual Report)

[15] 'Fast food giants under fire on climate and water usage' (BBC, 29 January 2019): investors are already demanding "*meaningful policies and targets… to reduce the carbon footprint of their meat and dairy supply chains*", for example. See also 'Pandemic prompts rethink of food supply chains' (The Financial Times, 19 November 2020) and 'Vulnerability of the United Kingdom's food supply chains exposed by COVID-19' (NatureFood, 4 June 2020)

[16] *Netherlands v Stichting Urgenda* ECLI:NL:HR:2019:2007; Dutch State to reduce greenhouse gas emissions by 25% by the end of 2020 (20 December 2019)

[17] Dutch Climate Act (May 28, 2019); the Climate Plan, the National Energy and Climate Plan, and the National Climate Agreement

[18] Section 1 Climate Change Act 2008

[19] The Government's 'UK Nationally Determined Contribution' (2020) commits to reduce emissions by 68% (compared to 1990 levels) by 2030.

[20] The draft Carbon Budget Order 2021 (which is to be enacted pursuant to Part 1 of the Climate Change Act 2008) sets emission targets that imply a 78% reduction in emissions (compared to 1990 levels) by 2035.

21. Such trends and risks, including the associated impact on share price performance[21] and the potential for greenwash[22] have now been widely recognised by investors[23], banks[24], government[25], regulators[26] and Just Eat's peers[27].

22. Just Eat can reasonably be expected to be aware that climate change is a priority issue for its own investors, several of which have made public statements on its materiality to their investment decision-making and/or have themselves committed to reach net-zero financed emissions by 2050[28].

3.2. Just Eat's obligations in relation to climate change

23. Just Eat is required to disclose in its annual report and accounts material climate change-related information via:

23.1. its financial accounts, prepared using International Financial Reporting Standards[29];

23.2. the principal risks and uncertainties facing its business, including analysis and information relating to environmental matters[30]; and

23.3. its long-term viability and prospects in light of identified risks and trends[31].

24. Just Eat's directors must ensure that Just Eat's management report contains a "*fair review*" of its business[32], an indication of its future development and, where material for the assessment of its assets, liabilities, financial position and profit or loss, its financial risk management objectives and policies[33].

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[21] Climate change and corporates: Past the tipping point with customers and stockmarkets (Deutsche Bank Data Innovation Group, September 2019)

[22] See for example, paragraph 1.10 of the FCA Feedback Statement FS19/6 "Climate Change and Green Finance: summary of responses and next steps Feedback to DP18/8" (October 2019); UK Government Press Release "CMA to examine if 'eco-friendly' claims are misleading" (2 November 2020)

[23] Ibid. at footnotes 1, 2, and 6

[24] Becoming a net zero bank | HSBC Holdings plc; Our ambition to be a net zero bank by 2050 | Climate | Barclays (home.barclays); Climate Change: Net-Zero Financed Emissions | Morgan Stanley

[25] UK enshrines new target in law to slash emissions by 78% by 2035 (20 April 2021);Government of the Netherlands Climate Policy: To combat climate change, the Dutch government wants to reduce the Netherlands' greenhouse gas emissions by 49% by 2030, compared to 1990 levels, and a 95% reduction by 2050 – Climate Act (June 2019); FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies (22 April 2021)

[26] Climate change and sustainable finance | FCA; Sustainability | Topics AFM | AFM Professionals (The Dutch Authority for the Financial Markets)

[27] Deliveroo looks to deliver emissions savings with electric scooters - Energy Live News (3 April 2019)

[28] BlackRock Inc, for example, expressly requires companies to disclose a business plan aligned with the goal of limiting global warming to well below 2ºC, consistent with achieving net-zero global greenhouse gas emissions by 2050, stating that these disclosures are "*essential to helping investors assess a company's ability to transition its business to a low-carbon world and to capture value-creation opportunities created by the climate transition*". On Just Eat's other investors see for example, Morgan Stanley Commits to Net Zero Financed Emissions (29 October 2020), and Goldman Sachs Update on our 2030 Sustainable Finance Commitment (4 March 2021)

[29] FCA Handbook, DTRs4.1.5R - 4.1.7R and Part 16 (Audit) Companies Act 2006.

[30] FCA Handbook, DTRs 4.1.8R and 4.1.9R, which appear to be synonymous with 414C(2)(b), 414C(7)(a)-(b) Companies Act 2006

[31] Section 4 UK Corporate Governance Code 2018 and LR9.8.6(3)R

[32] FCA Handbook, DTR4.1.8R

[33] FCA Handbook, DTR4.1.11R

25. Just Eat must also take reasonable care to ensure that information notified in its annual report is "*not misleading, false or deceptive and does not omit anything likely to affect the import of the information*", including in relation to environmental, social and governance ("**ESG**") matters[34].

26. In addition to these specific content requirements, Just Eat must also disclose any inside information that relates to climate change[35], and not engage in market manipulation through the omission of material information[36]. Such manipulation or attempted manipulation can include but is not limited to the "*dissemination of information which is likely to give false or misleading signals as to the supply of, demand for, or price of a financial instrument*", and can consist, for example, of "*the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information*"[37].

3.3. Breaches of legal duties

3.3.1. Content of the Annual Report

27. Despite clear evidence of the materiality of detailed climate change-related information from investors, regulators, and industry peers, Just Eat's 2020 Annual Report (the "**Annual Report**") makes no reference to climate change.

28. As alluded to above, given the nature of Just Eat's business we would expect to see, at a minimum, narrative reporting on how its business anticipates being impacted by, contributes to, and plans to adapt and to mitigate:

    28.1. the transitional risks (and opportunities) associated with accelerating the transformation of the global energy sector away from fossil fuels; and

    28.2. the physical effects of climate change on it or its partners' food supply chain and operations, as well as the associated food security, political, and price risks arising from climate change-related resource scarcity and/or changes in the location of food production, storage and supply.

29. However, the information Just Eat provides in relation to its environmental impacts, risk exposure, trends, policies and related business strategy is instead limited, unclear, and potentially misleading:

    A. the Report of the Management Board claims that Just Eat has "*spent some time <u>undertaking a materiality assessment of our business and creating a strategic responsible business and sustainability framework</u> which builds on the existing work done by both legacy businesses. <u>It covers our direct and indirect impacts and highlights key areas of focus, including minimising our environmental footprint, responding to changing customer diets and preferences and building our profile as a responsible employer</u>. // As part of this process, <u>we have established an evidence base for action and set benchmarks against which progress can be measured.</u>*"[38] [emphases added]

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[34] FCA Handbook, DTR1A.3.2R and LR 1.3.3R and comments on consideration of ESG matters by the FCA in <u>CP21/18**: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets</u> (22 June 2021)
[35] Article 17 UK MAR
[36] Articles 12 and 15 UK MAR
[37] Recital 47 UK MAR; and see also the FCA's <u>Primary Technical Note TN/801.1</u> (December 2020)
[38] Page 48, Report of the Management Board, Just Eat 2020 Annual Report (2021)

30. Just Eat's claims that it has (i) undertaken a "*materiality assessment*", (ii) created a "*strategic… sustainability framework*" are not substantiated in the Report of the Management Board. Little to no information is provided on Just Eat's "*direct and indirect impacts*", "*key areas of focus, including minimising* [Just Eat's] *environmental footprint*", or the "*evidence base for action and… benchmarks against which progress can be measured*".

31. To take a specific example – namely, Just Eat's reporting in relation to food packaging and distribution:

31.1. Just Eat acknowledges that food packaging represents "*one of the most important ways*" in which the company negatively affects the environment[39]. This suggests Just Eat is aware of significant impacts such as the carbon emissions associated with (i) manufacturing virgin plastics (a product derived from fossil fuels[40]) to package the food it delivers, and (ii) its end-to-end supply chains, including the distribution and disposal of food packaging[41]. However, Just Eat fails to give any explanation of what negative effects it refers to, or how they manifest. Further, Just Eat fails to provide any data or key performance indicators on either (i) the types and volumes of packaging it sells to partner restaurants through its web shops, or (ii) the packaging footprint associated with orders made through its websites.

31.2. Just Eat states that it has stopped selling single-use plastics to partner restaurants, but fails to acknowledge the far-reaching negative environmental consequences of other types of single-use packaging (or indeed of excess packaging[42]).

31.3. Just Eat refers to "*partnerships with start-ups and innovators*" to develop more sustainable packaging options, as well as planned trials for re-use schemes[43]. However, it fails to disclose any meaningful information that would enable investors to critically assess the extent to which these initiatives mitigate Just Eat's environmental impact or exposure to packaging-related risks (such as the value of Just Eat's investments, timeframes for rolling out such schemes beyond limited pilots, or the potential for each initiative to reduce Just Eat's overall packaging footprint).

31.4. While Just Eat claims to have developed benchmarks against which to measure progress, these have not been disclosed, which means investors cannot compare Just Eat to its competitors, or assess the effectiveness of its policies over time.

32. The above statements and omissions on Just Eat's policies for mitigating the environmental impacts of packaging, including associated GHG emissions, are incomplete, lacking in context, and accordingly are inadequate.

33. This kind of information is material to Just Eat's investors to facilitate an understanding of how Just Eat is preparing its business to transition to a net-zero economy that is resilient to the effects of climate

[39] Page 49, Report of the Management Board, Just Eat 2020 Annual Report (2021)
[40] Over 99% of plastics are made from chemicals sorted from fossil fuels – see 'FOSSIL FUELS AND PLASTIC' here: https://www.ciel.org/issue/fossil-fuels-plastic/ (Centre for International Environmental Law)
[41] Plastic refining is one of the manufacturing sector's most GHG emissions-intensive industries. Once disposed of, plastic packaging is primarily landfilled, recycled, incinerated – each of which generates varying amounts of GHG emissions – or ends up in the environment, where it generates GHG emissions as it degrades. See pages 1 and 2, 'Plastic & Climate: The Hidden Costs of a Plastic Planet' (CIEL, May 2019)
[42] Delivery disaster: the hidden environmental cost of your online shopping (The Guardian, 17 February 2020)
[43] Ibid. Report of the Management Board, Just Eat 2020 Annual Report (2021)

change. It is also necessary for an understanding of the development, performance or position of its business[44].

34. By omitting to provide such information or to substantiate its claims Just Eat has failed to adequately describe the principal risks and uncertainties it faces.

35. Taken as a whole, the Annual Report potentially misleads investors on Just Eat's approach to sustainability, by indiscriminately and disproportionately focussing on certain issues, while ignoring broader impacts and risks such as climate change, which investors want to see addressed now. It also exposes investors to the risk of greenwashing (in other words, they are led to believe that Just Eat's business or product has environmental sustainability characteristics when this may not be the case). In particular, absent disclosure of a Paris-aligned or equivalent transition strategy, we query whether Just Eat can reasonably hold itself out as building, or being, a "*sustainable*" business as its reporting appears to claim.

B. the Report of the Management Board also states that the business's "*overall strategic objective is to build sustainable market leadership*" where it operates, including an express strategic priority to "*take tangible action*" to "*minimise our environmental footprint*"[45]. Just Eat goes on to claim "*we believe in doing business responsibly and in having a positive impact on our communities and the planet. We know that the environmental and social footprint of our business goes far beyond our own operations and that we have an unparalleled opportunity to influence others across the dynamic and diverse takeaway industry.*"[46] [emphasis added]

36. As a technology company whose services include the use of an app and web-based ordering systems, Just Eat will be aware that it directly contributes to the carbon footprint of its customers due to the high energy usage associated with online food delivery. For example, a recent study by *Uswitch* has found that just opening a food delivery app (which requires power) can lead to an average of 0.778kWh of carbon dioxide emitted into the atmosphere[47]. This figure is said to be equivalent to the amount of carbon 4.7 trees absorb in a year[48]. Deliveroo plc was found to be the most energy efficient option, emitting 54.04 kilograms of carbon dioxide annually, based on 10,000 visits per month. For Just Eat, who performed the worst overall, that figure jumps to an estimated 138.76 kilograms of carbon dioxide emitted in the same period.

37. Instead of addressing these kinds of exposure (beyond legally required GHG emissions reporting), the above statements from the Annual Report are vague and offer no analysis of the actual impact of environmental matters (including in relation to climate change) on the future development, performance and position of Just Eat's business. Nor do these disclosures, or Just Eat's limited commentary on single use plastics and electric scooters[49], provide adequate 'decision useful' information on the swathe of environmental risks and uncertainties Just Eat faces, or of the implications

[44] DTR4.1.9(2)R
[45] Page 31, Report of the Management Board, Just Eat 2020 Annual Report (2021)
[46] Page 47, Report of the Management Board, Just Eat 2020 Annual Report (2021)
[47] See '4 Surprising Things To Know About The Carbon Footprint Of Your Online Food Delivery' (Green Queen, 11 March 2021), and the Uswitch study, 'Carbon offsetting by changing your diet - can it be done?' (Uswitch, 1 January 2021)
[48] 'Do takeaways create tasteless emissions?' (Energy Live News, 19 February 2021)
[49] Pages 48 and 49, Report of the Management Board, Just Eat 2020 Annual Report (2021)

for its business model. Put simply, a reasonable investor has no real basis from which to assess what "*tangible*" action, if any, Just Eat is actually taking.

38. Without those specific disclosures, investors also cannot assess what climate change means for Just Eat's longer-term viability and prospects.

39. By failing to disclose in its Annual Report any information in relation to climate change, and by failing to adequately address its broader environmental risk exposure and impacts, Just Eat has:

    39.1. provided information that is potentially or actually misleading in that investors are, or are at risk of, being given a false impression as to how sustainable, or resilient to climate risks, Just Eat's business is;

    39.2. omitted information that is likely to affect the import of the information contained in the Annual Report as a whole; and

    39.3. failed to give a fair review of its business, adequately describe the principal risks and uncertainties it faces, or to report properly on its long term viability and prospects.

40. Accordingly, Just Eat is in breach of DTRs 1A.3.2R, 4.1.8R, LR 1.3.3R and LR9.8.6(3)R of the FCA Handbook.

3.3.2. Financial statements

41. As explained above, Just Eat is also required to disclose material climate change-related information via its financial accounts.

42. However, Just Eat's financial statements do not include any consideration of climate change-related risks and impacts. Deloitte Accountants B.V. ("**Deloitte**"), Just Eat's independent auditors, also appear to have failed to consider these matters in the independent audit of the financial statements. As such, Just Eat's financial statements may not give a true and fair view of, among other things, the state of the company's affairs[50]. Deloitte may also have failed to comply with its associated audit obligations. We have sent a copy of this Referral to Deloitte and to the FRC.

43. Accordingly, Just Eat may also be in breach of DTR4.1.7R.

3.3.3. Inside information in relation to climate change

44. Finally, Just Eat must also disclose any inside information that relates to climate change[51], and not engage in market manipulation through the omission of material information[52].

45. As a company operating in the technology sector and online food delivery market, information in relation to climate change insofar as it affects Just Eat and its sector and market, may amount to inside information for the purposes of the UK MAR.

46. 'Inside information' for these purposes means "*information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial*

[50] DTR4.1.7R and Section 495(3) Companies Act 2006
[51] Article 17 UK MAR
[52] Articles 12 and 15 UK MAR

instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments"[53].

47. 'Financial instruments' includes Just Eat's shares, being shares which are admitted to trading on a UK regulated market[54].

48. To the extent that Just Eat's failure to provide climate-related information is likely to have a significant effect on the price of its shares or on the price of related derivative financial instruments, its failure to provide such information may also constitute market manipulation by the omission of material information under the UK MAR.

49. Accordingly, by failing to provide that information, Just Eat may be in breach of Articles 12, 15 and/or 17 UK MAR.

4. Referral for FCA investigation

50. In view of:

50.1. the FCA's remit as described in paragraph 2.4 above;

50.2. the now widespread market recognition that companies are not disclosing the material climate change-related information that investors expect and are demanding; and

50.3. the nature, seriousness and impact[55] of the legal breaches detailed above;

ClientEarth requests that the FCA investigates Just Eat's reporting failures[56] and:

50.4. imposes a financial penalty on Just Eat in an amount it considers appropriate;

50.5. publishes a statement censuring Just Eat in accordance with section 91(3) of the Financial Services and Markets Act 2000 ("**FSMA**");

50.6. requires Just Eat to publish information so as to rectify the above-referenced deficiencies in the Annual Report;[57] and/or

50.7. takes any other step(s) it deems appropriate in light of the above potential infringements of the UK MAR.

51. Finally, we note that Just Eat is also subject to regulation by the Dutch Authority for the Financial Markets (the "**AMF**"), which is taking its own steps towards heightened climate and sustainability regulation and enforcement, noting that "*Climate change is one of the most urgent issues within this context due to the great risks to society and the economy*"[58]. Given the FCA and AMF's joint

[53] Article 7(1)(a) UK MAR, and see also the FCA's Best practice note - Identifying, controlling and disclosing inside information (9 June 2020)
[54] Article 2(1)(a) UK MAR
[55] DEPP6.2.1(1)R
[56] DEPP6.2R
[57] Sections 89K and 91 FSMA; DTR1A.3.1R(1)
[58] AFM shares its vision on sustainability (Financial Services: Regulation Tomorrow, 29 June 2020); and the AFM's Position Paper on Sustainability, 'AFM en duurzaamheid' (June 2020)

commitment to work closely to protect and enhance the integrity and stability of both countries' financial systems[59], we therefore ask that the FCA liaise with the AMF in relation to Just Eat's misconduct.

5. Conclusion

52. The FCA is required to pursue its statutory objectives to make markets function well, protect consumers, enhance financial market integrity and promote competition. The FCA has been asked to discharge its functions in a manner consistent with delivering a financial system that supports and enables a net-zero economy.

53. In light of consistent and repeated failures by companies to disclose material climate change-related information, the FCA must take a robust approach to the matters raised in this Referral in order to achieve its objectives.

54. Please do not hesitate to contact us if we can be of any further assistance in relation to this Referral.

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[59] The Financial Conduct Authority and the Dutch Authority for the Financial Markets (AFM) agree on closer partnership (FCA, 5 June 2019)