

**ME.6659.16 – ANTICIPATED ACQUISITION BY JUST EAT OF HUNGRYHOUSE
HUNGRYHOUSE'S RESPONSE TO THE CMA'S STATEMENT OF ISSUES DATED
9 JUNE 2017**

1. INTRODUCTION

- 1.1 The anticipated acquisition by Just Eat.co.uk Limited ("**Just Eat**") of Hungryhouse Holdings Limited ("**Hungryhouse**", together the "**Parties**") (the "**Merger**") does not give rise to a substantial lessening of competition ("**SLC**").
- 1.2 In its Statement of Issues dated 9 June 2017 (the "**Statement of Issues**"), the CMA identifies the main issues that it is likely to consider in reaching its decision. The Phase 2 investigation will enable the CMA to gain an in-depth understanding of the underlying dynamics of the rapidly evolving market for the provision of takeaway services as well as the Parties' and other key players' activities within that market. This response sets out key evidence the CMA's group of panel members (the "**Panel**") should consider. It also sets out the economic framework that should form the basis for the Panel's competitive assessment of the Merger and which takes account of the particular dynamics within which the Parties operate.
- 1.3 The relevant counterfactual against which the Merger should be assessed is the "exiting firm scenario". This supported by the evidence and is entirely consistent with the CMA's (and its predecessors') decisional practice. On this basis alone, the Merger cannot give rise to an SLC.
- 1.4 An in-depth understanding of the competitive dynamics of this industry is critical to the assessment of the competitive impact of the Merger. We have outlined in **Schedule 1** how these dynamics affect the CMA's competitive assessment. It follows from these dynamics that:
- 1.4.1 Hungryhouse's much smaller size in comparison with Just Eat [✂];
 - 1.4.2 Hungryhouse [✂];
 - 1.4.3 Hungryhouse [✂]; and
 - 1.4.4 The relative similarity in business model [✂].

2. ABSENT THE MERGER, HUNGRYHOUSE WOULD INEVITABLY HAVE EXITED THE MARKET

[✂]

- 2.1 [✂]¹²³. In recognition of this decision, the prospectus for Delivery Hero's upcoming IPO⁴ contains the statement that Delivery Hero "*may shut down our operations in the United Kingdom*".⁵

¹ [✂]

² Delivery Hero IPO prospectus, Section 1.1.32, provided as Annex 1.

³ [✂]

2.2 [REDACTED].

2.3 [REDACTED]⁶⁷⁸

2.4 [REDACTED]⁹

2.5 [REDACTED]

2.6 [REDACTED]

2.7 [REDACTED]

2.8 [REDACTED]

[REDACTED] ***Hungryhouse's budgets and forecasts*** [REDACTED]

2.9 The CMA has raised questions regarding Delivery Hero's budgeting and forecasting and has noted in its Statement of Issues that it will consider forecasts as part of its assessment of the counterfactual.¹⁰ However, the forecasts and business plans submitted by Delivery Hero must be read in the context in which they were created:

2.9.1 [REDACTED]

2.9.2 [REDACTED]

2.9.3 [REDACTED]

2.10 [REDACTED] business plans are commonly requested by prospective buyers during a due diligence process.

2.11 [REDACTED]¹¹

2.12 [REDACTED]

2.12.1 [REDACTED]¹²

2.12.2 [REDACTED]¹³

2.12.3 [REDACTED]¹⁴

⁴ Annex 1.

⁵ Section 1.1.32.

⁶ [REDACTED]

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

¹⁰ [REDACTED]

¹¹ [REDACTED]

¹² [REDACTED]

¹³ [REDACTED]

2.13 [REDACTED]

2.13.1 [REDACTED]¹⁵

2.13.2 [REDACTED]¹⁶

2.14 [REDACTED]

2.15 [REDACTED]¹⁷¹⁸¹⁹

2.16 [REDACTED]²⁰

2.17 [REDACTED]

2.18 Consequently, [REDACTED], the actual performance of Hungryhouse should be at the heart of the Panel's assessment as to whether it was a sustainable business that would have become a relevant competitor absent the Merger rather than exiting [REDACTED]:

2.18.1 [REDACTED]

2.18.2 [REDACTED]

2.19 [REDACTED]

Hungryhouse's failure has been further accelerated by the constraint imposed by rapidly expanding, innovative players [REDACTED]

2.20 The inevitability of Hungryhouse's exit from the market [REDACTED], has been further underlined by:

2.20.1 [REDACTED] other operators including Just Eat, UberEATS and Deliveroo; and

2.20.2 The threat posed by extremely well resourced companies, such as Amazon, UberEATS and Facebook, who have a record of aggressive growth in adjacent industries.

[REDACTED]

2.21 Hungryhouse considers [REDACTED] other operators, including Just Eat, UberEATS and Deliveroo. Indeed, the business models of Deliveroo, UberEATS and Amazon Restaurants give those companies greater control over the customer experience [REDACTED].

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ [REDACTED]

¹⁷ [REDACTED]

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ [REDACTED]

2.22 [REDACTED]

2.23 As explained at the oral hearing relating to the counterfactual on 9 June (the "**Counterfactual Oral Hearing**"), [REDACTED] key competitive parameters such as speed of delivery. This is also recognised by a third party report, which notes that, "*three-sided marketplaces that include a delivery element – like Deliveroo and UberEATS – represent more compelling solutions for both diners and restaurants, since they have greater control over quality and delivery times, and offer online access to restaurants that do not have delivery capabilities.*"²¹ Moreover, the report goes on to explain that, "*three-sided marketplaces better align with consumer preferences and that their expansion will eat into Just Eat's future market share gains and profitability. We think the delivery logistics are too important to ignore in the food delivery business and that competitors with a better offering here have a significant advantage over Just Eat [...] Newer platforms like UberEATS and Deliveroo are able to better control food quality and delivery speed, factors deemed important by almost all of the consumers we surveyed.*"²²

2.24 [REDACTED]^{23,24}

The competitive threat posed by extremely well-resourced companies such as Amazon, UberEATS and Facebook [REDACTED]

2.25 Innovative providers, such as UberEATS and Amazon Restaurants, have disrupted the takeaway services sector globally and have rapidly expanded and gained share in the UK. These providers compete strongly and aggressively with Just Eat and Hungryhouse for both restaurant customers and consumers. Low barriers to switching on both sides of the market have enabled them to quickly attract large numbers of users.

2.26 As well as having strong, recognisable brands and access to significant funds to invest in the business, these operators have significant logistics expertise. Entry and expansion of these players has also attracted significant media attention, further reinforcing their strong brands. In relation to UberEATS, for instance a recent press article stated that: "*essentially, because of Uber's infrastructure, UberEats can leverage that logistics network to provide fast and efficient delivery service at a lower cost. Uber's brand name and balance sheet also give another advantage in marketing and providing discount coupons to attract more customers.*"²⁵

2.27 In a display of being 'open for business' from any type of restaurant, UberEATS has recently announced that it is now offering delivery of McDonald's, with orders available from 22 locations in London another 10 restaurants in Leeds and Nottingham. Matthieu Proust, the general manager of UberEats, noted: "*We're excited*

²¹ [REDACTED]

²² [REDACTED]

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ The Online Citizen, *Ubereats on its way to become world leader in online food delivery*, 25 May 2017, <https://www.theonlinecitizen.com/2017/05/25/ubereats-on-its-way-to-become-world-leader-in-online-food-delivery/>.

*to be working with McDonald's to begin delivery of their food for the first time in the UK. Our technology means people can get the food they want with the **speed and reliability** they've come to expect from Uber."* (emphasis added)²⁶

- 2.28 As such, these operators have professionalised the provision of food delivery services (resulting in consumer satisfaction and consumers coming back for more, generating valuable repeat business which renders operations sustainable).²⁷ This is in sharp contrast to the own delivery services provided by individual restaurants, which, understandably, are often ad hoc and inconsistent, given that restaurants focus on the main aim of their business: cooking and preparing food, rather than delivering it.

Amazon and Uber – digital giants and disrupters conquering food markets

- 2.29 As explained at the Counterfactual Oral Hearing, [X] the large looming threat of Amazon accelerating its aggressive foray into food, including food delivery.

- 2.30 [X]²⁸

- 2.31 Amazon has a clear record of competing aggressively and dominating in any sector in which it operates, whether that is books, film streaming or, in this case food. Its impact on the market should not therefore be underestimated. Indeed, as noted in the Financial Times the day after the Counterfactual Oral Hearing, "*[Amazon's] wealth and willingness to tolerate losses make it a formidable competitor in any arena it chooses to enter. Antitrust regulators usually focus on immediate consumer detriment. But in this case they should also take heed of the company's long term wider impact on competition and choice.*"²⁹

- 2.32 It has become increasingly apparent, even more so just in the last few days, that Amazon is taking increasingly determined steps to become a powerful force in relation to the sale and delivery of food, both in terms of groceries and restaurant takeaway services. For example, on 16 June 2017, it announced its purchase of the food retailer Whole Foods Market for **USD 13.7 billion (!)**.³⁰ As noted in the Financial Times, despite its current small market share, "*Amazon does not feel like a minnow, not to all the bricks-and-mortar retailers who have been crushed by its fearsome price-cutting and logistics prowess, starting in books and expanding inexorably to other goods and services.*"³¹

²⁶ The Independent, *McDonald's launches long-awaited UK home delivery trial; The fast food giant is offering its 'McDelivery' service through UberEats*, 22 June 2017, <http://www.independent.co.uk/news/business/news/mcdonalds-delivery-uk-mcdelivery-ubereats-london-nottingham-leeds-a7802706.html>.

²⁷ See, for example, <https://www.theonlinecitizen.com/2017/05/25/ubereats-on-its-way-to-become-world-leader-in-online-food-delivery/>.

²⁸ [X]

²⁹ FT Weekend, *Amazon's quiet domination merits greater scrutiny*, 10 June 2017.

³⁰ Financial Times, *Amazon agrees to buy Whole Foods for \$13.7bn*, 16 June 2017, <https://www.ft.com/content/bb5a7dae-5296-11e7-a1f2-db19572361bb>.

³¹ Financial Times, *Amazon: such problems*, 18 June 2017, <https://www.ft.com/content/6db68220-53d9-11e7-9fed-c19e2700005f>.

2.33 Similarly, Amazon's recent entry into the automotive sector³², launch of its "Prime Wardrobe Service"³³ and potential supply agreement with Nike³⁴ have highlighted its ability to combine its deep pockets with its logistics expertise to expand into new markets. The entire food industry is clear that Amazon's entry and expansion in the food sector will bring about a seismic shift in the industry. The Grocer, for instance, noted that: "*Amazon has shown time and time again that it is willing to invest heavily in dominating the categories it decides to compete in, and there is little doubt it has the financial capacity to do so.*"³⁵

2.34 [X] likely future entry of extremely well-known and well-resourced players such as Facebook and Google: Facebook now links food delivery platforms directly to its social network,³⁶ and Google now enables users to place orders directly from the Google search results.³⁷

[X] With the competitive landscape rapidly evolving and strong, well-resourced brands entering and expanding (as shown in the sections above), [X].³⁸

Absent the Merger, Delivery Hero would have taken the only economically rational measure available to it and would have shut down the business

2.35 [X]³⁹

2.36 Delivery Hero's portfolio companies (including Hungryhouse) have to justify further investment by Delivery Hero. [X].

³² The Financial Times, *Amazon deepens push into Europe car sales*, 20 June 2017, <http://www.ft.com/content/34737954-51e6-11e7-a1f2-db19572361bb?mhq5j=e2>

³³ See, for example, The Independent, *Amazon to follow Whole Foods acquisition by building fashion empire as expansion continues*, 22 June 2017, <http://www.independent.co.uk/news/business/news/amazon-retail-expansion-acquisitions-fashion-whole-foods-macys-nordstrom-zalando-boohoo-asos-prime-a7802146.html>.

³⁴ The Financial Times, *Possible Nike-Amazon partnership puts sports retailers on the ropes*, 21 June 2017, <https://www.ft.com/content/184d9be4-fd0d-37d2-9748-f05ae4d489f2?mhq5j=e2>.

³⁵ The Grocer, *Whole Foods takes Amazon grocery from clicks to bricks*, 22 June 2017, <https://www.thegrocer.co.uk/finance/mergers-and-acquisitions/what-the-whole-foods-tie-up-will-mean-for-amazon/554361.article?redirCanon=1>

³⁶ The Drum, *Facebook integrates with Delivery.com and Slice as it hones in on food*, 21 October 2016, available at <http://www.thedrum.com/news/2016/10/21/facebook-integrates-with-deliverycom-and-slice-it-hones-food>; Grub Hub, *You'll soon be able to order food through Facebook*, 19 October 2016, available at <http://qz.com/813700/facebook-fb-now-lets-you-order-meals-right-from-a-restaurants-facebook-page/>.

³⁷ Networkworld, *New Google feature makes ordering food online easier than ever*, 8 May 2015, available at <http://www.networkworld.com/article/2920165/applications/new-google-feature-makes-ordering-food-online-easier-than-ever.html>; Engadget, *Google adds a food delivery shortcut to Maps for iOS*, 25 October 2016, available at <https://www.engadget.com/2016/10/25/google-maps-ios-food-delivery-shortcut/>; Alphr, *Google update makes ordering that guilty takeaway so much easier*, 8 May 2015, available at <http://www.alphr.com/smartphones/1000729/google-update-makes-ordering-that-guilty-takeaway-so-much-easier>.

³⁸ [X]

³⁹ [X]

2.37 [REDACTED] Given the nature of the business models Delivery Hero operates and which are subject to network effects, Delivery Hero aims to be 'number 1' across all markets it operates in, or at least have a credible prospect of becoming number 1. [REDACTED]⁴⁰

2.38 This strategy, and its application to the UK market, is clearly enunciated in the prospectus for Delivery Hero's IPO, which states that the divestment of Hungryhouse was undertaken in order to "*optimise [its] portfolio*"⁴¹ and that:

*"We intend to focus on improving our profitability by divesting our operations in markets without significant potential to increase our margins, such as markets in which we are not the market leader. For example, we entered into an agreement concerning the sale of our operations in the United Kingdom".*⁴²

2.39 [REDACTED].⁴³

2.40 [REDACTED].⁴⁴

2.41 [REDACTED].⁴⁵

2.41.1 [REDACTED]⁴⁶

2.41.2 [REDACTED]⁴⁷

2.41.3 [REDACTED]⁴⁸

2.42 [REDACTED]

2.43 [REDACTED]

2.44 [REDACTED]

2.45 [REDACTED]

2.46 [REDACTED]

2.47 [REDACTED]

2.48 [REDACTED] it is clear that, absent the Merger, Delivery Hero would have pursued the only remaining option available to it based on its group-wide and consistently implemented strategy: to shut down the business, [REDACTED]⁴⁹.

⁴⁰ [REDACTED]

⁴¹ [REDACTED]

⁴² [REDACTED]

⁴³ [REDACTED]

⁴⁴ [REDACTED]

⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

⁴⁸ [REDACTED]

- 2.49 The evidence fully supports a finding to the effect that Hungryhouse would have exited absent the deal, even more so based on the 'balance of probabilities' test which the Panel will apply in examining this question.⁵⁰

A finding of Hungryhouse inevitably exiting is supported by and consistent with the CMA's decisional practice

- 2.50 If the Panel were to reach the view that Hungryhouse would have exited absent the Merger it would be fully supported by the CMA's (and its predecessors) decisional practice.
- 2.51 In other cases, positive financial projections have not prevented the CMA (or its predecessors) from accepting that a firm would have inevitably exited the market.⁵¹ In fact, the UK competition authorities⁵² have previously determined that the finances of a business were unsustainable even in circumstances where the accounts of that business had actually shown a profit in the previous financial year.⁵³ [X].
- 2.52 [X] The CMA and its predecessors have concluded that limb 1 of the exiting firm test was met on the basis of strategic exit on multiple occasions. In several cases, the CMA⁵⁴ found that there was no incentive for a parent or investor to continue to provide funds for a subsidiary given that it will inevitably result in further losses.

⁴⁹ [X]

⁵⁰ Recent cases have shown the difficulties associated with attempts to fully take account of the commercial reality both in Phase 1 and 2, in particular where a strategic exit was examined. For example, in the recent case in relation to Capita's proposed acquisition of the one-way wide-area paging services business of Vodafone, the CMA discounted the parties' arguments in relation to exit and referred the transaction for a Phase II review. On the date of the CMA's reference decision, Vodafone shut down the business. See, for example, BBC News, *Vodafone to close down pager business after CMA shock*, 10 May 2017; The Guardian, *Vodafone axes pager business 'based on ageing technology'*, 10 May 2017; The Telegraph, *Vodafone to shut down pager network after sale trips on competition hurdles*, 10 May 2017; City AM, *Vodafone's Capita pager merger is off as the deal gets sent back to the 1990s*, 10 May 2017; The Financial Times, *Vodafone to turn off pagers due to prolonged antitrust probe*, 10 May 2017. In Poundland/99p, the CMA decided that "the exit of 99p through failure was not a likely counterfactual scenario." However, despite the appointment of new management who had experience running Poundland, sixty 99p stores went into administration less than two years after the transaction. See, for example, The Financial Times, *Poundland places 99p Stores into administration*, 27 March 2017; City AM, *Poundland's 99p stores have gone into administration*, 27 March 2017; The Sun, *CLOSING TIME Poundland-owned 99p Stores has fallen into administration with closure of 60 shops*, 27 March 2017; The Express, *Poundland's 99p Stores fall into administration: 60 shops across the UK SHUT*, 28 March 2017.

⁵¹ See, for instance, the Competition Commission's decision in the acquisition by British Salt Limited of New Cheshire Salt Works Limited, November 2005, paragraph 5.4 and 5.28.

⁵² The CMA and its predecessors, the OFT and the Competition Commission.

⁵³ See, for example, the Competition Commission's decision in the completed acquisition of Ultralase Limited by Optimax Clinics Limited, 20 November 2013, paragraph 5.23; the OFT's decision in the anticipated acquisition by First West Yorkshire Limited of Black Prince Buses Limited, 27 May 2005, paragraph 18; the Competition Commission's decision in the acquisition by British Salt Limited of New Cheshire Salt Works Limited, November 2005, paragraph 5.2; the Competition Commission's decision in the completed acquisition by Sector Treasury Services Limited of ICAP PLC's treasury management advisory services business (Butlers), 31 August 2011, paragraph 5.4.

⁵⁴ And its predecessors.

These cases include *Optimax/Ultralase*,⁵⁵ *First West Yorkshire Ltd/Black Prince Buses*⁵⁶, *Chemring/Wallop Defence Systems*⁵⁷, *BT/ESPN*⁵⁸, *Booker/Makro*⁵⁹, *VTech/Leapfrog*⁶⁰, *Long Clawson/Millway*⁶¹ and *Kingfisher/Focus*.⁶² [✂].

2.53 [✂]⁶³

2.54 [✂]

2.55 In *STS/Butlers*⁶⁴, the CC accepted that closing even a profitable subsidiary or division (which Hungryhouse demonstrably is not) may be rational in circumstances where there are compelling strategic reasons for closure. In that case, while Butlers was not failing in financial terms and closing Butlers entailed foregoing future profits and incurring significant costs, ICAP decided not to retain Butlers as it was a non-strategic and non-material business; its profitability was declining.

2.56 [✂]⁶⁵

2.57 In *Long Clawson/Millway*⁶⁶, Dairy Crest submitted that its subsidiary Millway, which was fully dependent on parental support,⁶⁷ had been a loss-making business for many years and despite Dairy Crest's best efforts to restructure the business, it had failed to make it profitable: "*After many attempts to resolve various production problems at Millway over several years, Dairy Crest had decided that the business should be sold in order to stem Dairy Crest's losses.*"⁶⁸ Furthermore, Millway did not fit with Dairy Crest's strategy of focusing on branded and value-added products, therefore a desire to

⁵⁵ Completed acquisition of Ultralase Limited by Optimax Clinics Limited, 20 November 2013, paragraph 5.24.

⁵⁶ Anticipated acquisition by First West Yorkshire Limited of Black Prince Buses Limited, 27 May 2005, paragraph 18.

⁵⁷ Anticipated acquisition by Chemring Group plc of the air countermeasures and pyrotechnics business and certain assets of Wallop Defence Systems Limited, 29 March 2016, paragraphs 18 to 114.

⁵⁸ Anticipated acquisition by British Telecommunications plc of ESPN Global Limited, 5 July 2013.

⁵⁹ The Competition Commission's decision in the completed acquisition by Booker Group PLC of Makro Holding Limited, 19 April 2013.

⁶⁰ The completed acquisition by VTech Holdings Limited of LeapFrog Enterprises, Inc, 12 January 2017, paragraph 5.17.

⁶¹ The Competition Commission's decision in the completed acquisition by Long Clawson Dairy Limited of the Millway Stilton and speciality cheese business of Dairy Crest Group plc, 14 January 2009.

⁶² Anticipated acquisition by Kingfisher plc of 30 stores from Focus, 7 July 2011, paragraph 6.

⁶³ [✂]

⁶⁴ The Competition Commission's decision in the completed acquisition by Sector Treasury Services Limited of ICAP PLC's treasury management advisory services business (Butlers), 31 August 2011.

⁶⁵ Please see the email from Niklas Östberg to investors dated 18 August 2016 and the email from Oliver Samwer to Niklas Östberg dated 18 August 2016, contained in the email chain provided as Appendix 2.i.ii3a to the response to the s.109 Notice – High Priority Questions.

⁶⁶ The Competition Commission's decision in the completed acquisition by Long Clawson Dairy Limited of the Millway Stilton and speciality cheese business of Dairy Crest Group plc, 14 January 2009.

⁶⁷ Through a Letter of Support from Dairy Crest.

⁶⁸ Paragraph 6.1.

focus resources on Dairy Crest's core business, rather than the sale price which could be achieved, was the primary motivation for the disposal. The UK's Competition Commission concluded on the basis of these arguments that, absent the merger, Dairy Crest would have organized an orderly closure of Millway.

2.58 [✂]

2.59 In *IBA Molecular/Alliance Medical*⁶⁹, the CMA concluded that in the absence of the merger, SK Capital would have chosen to cease operating the Guildford site, due to the poor financial performance of the site (as demonstrated by losses and negative EBITDA) as well as the challenging outlook for the business. The considered it *"unlikely that the financial performance of IBA's PET business could have been improved to the extent that its owners would have been able to earn an acceptable return, particularly in the short term, and would have required significant commitment on the part of its shareholders, potentially to bear several more years of losses."*⁷⁰ As such, SK Capital sought to cut losses wherever it could and identified Guildford as a loss making site: *"For SK Capital, as an exercise in what you might call pure number crunching, it was a very hard-nosed approach ... it was a relatively straightforward economic decision given their own obligations to their investors to essentially make money, and if you cannot make money, make sure that you are not losing money ... So they did a very numerical decision in terms of deciding that they would withdraw from the business"*⁷¹

2.60 [✂]

2.61 In the recent case of *Chemring/Wallop Defence Systems*⁷², the CMA also accepted that the exiting firm scenario was the appropriate counterfactual. The case is instructive and supports a finding of inevitability of exit here too – it should be noted that the assessment was conducted on the basis of the more cautious Phase 1 legal test. The CMA relied on the fact that, [✂] Wallop had been loss making since 2011 and was heavily dependent on financial support from its parent company, Esterline. While the CMA believed that Wallop would have continued to be viable as long as Esterline continued to provide financial support, and therefore that Wallop's exit due to financial failure was not inevitable, it nonetheless concluded that absent the merger, Wallop would inevitably have exited due to strategic reasons;⁷³ Specifically:

2.61.1 The CMA reviewed forecasts prepared by Wallop management to see what they indicated about the future profitability of Wallop, but found that Wallop had failed to match any of its forecasts for several years, such that little weight could be placed on them.⁷⁴ [✂].

⁶⁹ The CMA's decision on the completed acquisition by Alliance Medical Group Limited of the assets of IBA Molecular UK Limited used to manufacture 18F-Fluorodeoxyglucose, 15 August 2014.

⁷⁰ Paragraph 5.33.

⁷¹ Paragraph 5.36.

⁷² Anticipated acquisition by Chemring Group plc of the air countermeasures and pyrotechnics business and certain assets of Wallop Defence Systems Limited, 29 March 2016, paragraphs 18 to 114.

⁷³ Paragraphs 5 and 51.

⁷⁴ Paragraph 36.

- 2.61.2 [REDACTED] Esterline made successive attempts to restructure Wallop, which were unsuccessful in turning the business around. Wallop *"did not demonstrate a potential return to profitability or providing a compelling contribution to the Esterline business relative to its ongoing required investment."*⁷⁵
- 2.61.3 The CMA noted that Wallop belonged to a profitable corporate group; Esterline. Over recent years, Wallop had been sustained financially by its growing inter-company loan from its parent company. Moreover, Esterline had continued to provide Wallop with a Letter of Support, allowing Wallop's auditors to prepare its financial statements on a "going concern" basis. [REDACTED]⁷⁶ The CMA considered that the Letter of Support did not indicate *"any long term intention on Esterline's part to support this business, other than to allow an orderly exit."*⁷⁷ [REDACTED].
- 2.61.4 The CMA recognised that *"the Esterline Board decided that Esterline should shape its portfolio to its core strategic objectives"*⁷⁸ and the *"Wallop was not a strategic fit for Esterline."*⁷⁹ [REDACTED]^{80 81 82}
- 2.61.5 Esterline noted in its submissions to the CMA that it continued to support its subsidiary because *"it would not have wanted Wallop to fail in an unmanaged way given Esterline's corporate responsibilities and reputation"*.⁸³ [REDACTED].
- 2.61.6 The CMA relied on the fact that Esterline had made a public statement in its Q3 SEC filing that it had approved a plan to sell certain non-core business units and designated Wallop as a discontinued business. Similarly, the prospectus for Delivery Hero's upcoming IPO⁸⁴ contained the statement that Delivery Hero *"may shut down our operations in the United Kingdom"*.⁸⁵ [REDACTED].
- 2.62 In Muller/Dairy Crest⁸⁶, the CMA concluded that, with the exception of one dairy, the assets of the target business (Dairy Group) would inevitably have exited the market for strategic reasons.⁸⁷ This decision was based on the fact that [REDACTED] the target business was loss making⁸⁸ and [REDACTED]the target's parent, Dairy Crest, had made

⁷⁵ Paragraph 53.

⁷⁶ [REDACTED]

⁷⁷ Paragraph 43.

⁷⁸ Paragraph 56.

⁷⁹ Paragraph 59.

⁸⁰ [REDACTED]

⁸¹ [REDACTED]

⁸² [REDACTED]

⁸³ Paragraph 43.

⁸⁴ Annex 1.

⁸⁵ Section 1.1.32.

⁸⁶ The CMA's Phase I reference decision on the anticipated acquisition by Muller UK & Ireland Group LLP of the dairies operations of Dairy Crest Group plc, 12 June 2015.

⁸⁷ See paragraphs 4 and 91.

⁸⁸ See paragraphs 35 and 42.

numerous attempts to turn the business round, but had found that "*the underlying causes of trading losses [persisted]*" which made a return to profitability impossible.⁸⁹

3. THERE ARE NO OTHER POTENTIAL ACQUIRERS FOR HUNGRYHOUSE

3.1 [REDACTED]⁹⁰

3.2 [REDACTED]

3.3 [REDACTED]

3.4 [REDACTED]⁹¹⁹²

3.5 [REDACTED]

3.6 [REDACTED]

3.7 [REDACTED]⁹³

3.8 [REDACTED]

3.9 [REDACTED]

3.10 [REDACTED]

3.11 [REDACTED].⁹⁴

3.12 [REDACTED]⁹⁵

3.13 [REDACTED]

3.14 [REDACTED]⁹⁶

3.15 [REDACTED]⁹⁷

3.16 [REDACTED]⁹⁸

⁸⁹ See paragraphs 43 and 46.

⁹⁰ [REDACTED]

⁹¹ [REDACTED]

⁹² [REDACTED]

⁹³ [REDACTED]

⁹⁴ [REDACTED]

⁹⁵ [REDACTED]

⁹⁶ [REDACTED]

⁹⁷ [REDACTED]

⁹⁸ [REDACTED]

Just Eat's rationale for purchasing Hungryhouse

3.17 [REDACTED]

3.18 [REDACTED]⁹⁹¹⁰⁰¹⁰¹

Hungryhouse would not be attractive to a non-industry purchaser

3.19 Delivery Hero firmly believes that the Hungryhouse business could not realistically be attractive to a non-industry (e.g. private equity) buyer. [REDACTED].¹⁰²

3.20 In particular, a non-industry buyer would be unable to realise any synergies with the business and would not have the expertise required to run a food delivery business. As in the Competition Commission's decision in relation to the completed acquisition of Ultralase Limited by Optimax Clinics Limited, it is clear that, contrary to the OFT's conclusion at Phase I of that case, a non-trade buyer would not be able to achieve the return on investment required by a private equity buyer and this would have been evident during any due diligence process.¹⁰³ [REDACTED].

Lack of formal sale and marketing process is consistent with exiting firm scenario being met in this case

3.21 The decisional practice of the CMA and its predecessors makes it clear that a formal sale or marketing process is not a requirement for this limb of the exiting firm scenario to be met. In particular, there are several CMA and OFT cases where the authority concluded that there were no other potential purchasers for the relevant target even though no formal marketing process was carried out.¹⁰⁴ [REDACTED].

3.22 From the CMA's perspective, what matters is that it is not realistic that there would have been another purchaser to acquire Hungryhouse. [REDACTED]

⁹⁹ [REDACTED]

¹⁰⁰ The CMA's Phase I reference decision on the anticipated acquisition by Muller UK & Ireland Group LLP of the dairies operations of Dairy Crest Group plc, 12 June 2015.

¹⁰¹ Paragraph 82.

¹⁰² [REDACTED]

¹⁰³ See, for example, paragraphs 5.34 and 5.41.

¹⁰⁴ See, for example, Anticipated acquisition by HMV of 15 Zavvi stores, 28 April 2009, paragraph 42; Anticipated acquisition by Tesco Stores Limited of five former Kwik Save stores (Handforth, Coventry, Liverpool, Barrow-in-Furness and Nelson), 11 December 2007, paragraph 30; Completed acquisition by East Coast Buses Limited of the east coast operations of First Scotland East Limited, 23 January 2017, paragraphs 44 to 49. ; Completed acquisition by Alliance Medical Group Limited of the assets of IBA Molecular UK Limited used to manufacture 18F-Fluorodeoxyglucose, 15 August 2014, paragraph 12; The Competition Commission's decision in the completed acquisition by Long Clawson Dairy Limited of the Millway Stilton and speciality cheese business of Dairy Crest Group plc, 14 January 2009, paragraph 6.53; Completed acquisition by Booker Group PLC of Makro Holding Limited, 19 April 2013, paragraph 6.10.

4. **THE DISTRIBUTION OF HUNGRYHOUSE'S SALES AFTER THE MERGER WILL NOT HAVE A MORE ANTI-COMPETITIVE EFFECT ON THE MARKET THAN THE DISTRIBUTION OF ITS SALES UPON EXIT**

4.1 The final 'limb' of the exiting firm scenario is also met in this case. The Merger, whereby Just Eat acquires Hungryhouse, does not result in a distribution of Hungryhouse's sales that could be characterised as being 'more anti-competitive' than the distribution of Hungryhouse's sales upon exit.

4.2 In fact, the nature and dynamics of this industry are such that Hungryhouse's sales cannot be distributed in an anti-competitive way at all. It is important to bear in mind that Just Eat is not acquiring market share in the sense that it is not acquiring either restaurant customers or consumers who might be locked into longer term contracts in other industries. As noted and evidenced in prior submissions, both restaurant customers and consumers 'multi-home' by listing with and using multiple takeaway service providers. Following the Merger, both restaurant customers and consumers will remain fully contestable in the sense that they could easily switch all or part of their requirements to several alternative providers who are rapidly expanding.

4.3 [REDACTED]¹⁰⁵ There is absolutely no indication that, upon Hungryhouse's exit, these restaurant customers would remove themselves from the Just Eat site. As such, they would likely remain listed on Just Eat in the event of Hungryhouse's exit. Alternatively, they may switch to other providers such as Deliveroo or UberEATS or list with those alternative providers in addition to Just Eat – in short, they would behave in the same way as they would following the Merger where those options would of course also be available to them.

4.4 [REDACTED]¹⁰⁶ In essence, restaurant customers and consumers are not prevented from switching all or part of their takeaway meals to alternative providers, regardless of whether Hungryhouse exits or is acquired by Just Eat.

4.5 In *Alliance/IBA*,¹⁰⁷ that the CMA considered that, upon exit, some sales would transfer to other providers. However, given that those customers remained free to switch to other providers following the merger, the CMA considered that the exiting firm scenario was met. Similarly, in this case, some orders may be captured by other providers following Hungryhouse's exit. Crucially, however, this counterfactual situation is no different from the situation which would arise as a result of the Merger. As explained in the Merger Notice,¹⁰⁸ the barriers to switching, for both restaurant customers and consumers, are very low. Indeed, neither restaurant customers nor consumers are locked into contracts with Hungryhouse. Therefore, as was the case in *Alliance/IBA*,¹⁰⁹ customers will remain free to switch to other providers after

¹⁰⁵ [REDACTED]

¹⁰⁶ [REDACTED]

¹⁰⁷ The CMA's decision in relation to the completed acquisition by Alliance Medical group Limited of the assets of IBA Molecular UK Limited, 15 August 2014, paragraph 5.83.

¹⁰⁸ See paragraphs 28.1 and 15.3.2.

¹⁰⁹ The CMA's decision in relation to the completed acquisition by Alliance Medical group Limited of the assets of IBA Molecular UK Limited, 15 August 2014, paragraph 6.6 and 6.14.

completion. Given this customer mobility, there will be no material difference in the distribution of Hungryhouse's sales between Hungryhouse's exit and the Merger.

4.6 In light of the above, it is clear that the criteria for the exiting firm scenario are met. On these grounds alone, there can be no realistic prospect of a substantial lessening of competition arising from the Merger.¹¹⁰

5. ENTRY AND EXPANSION IN RAPIDLY EVOLVING MARKETS – RECENT PRECEDENTS

5.1 The transformative impact of Deliveroo's, UberEATS' as well as Amazon's entry and expansion is already re-shaping the competitive landscape for takeaway services. [✂].

5.2 Irrespective of the precise legal categorisation, the CMA and its predecessors have demonstrated in a number of recent cases that it is indeed correct to take account of entry and expansion in reaching a view as to whether a competition concern arises, in particular in fast-moving, innovative markets.

5.3 Specifically, the KPMG Entry and Expansion Report confirms that, "*looking consistently across cases at evidence on factors such as patterns of innovation and product take-up of innovative products in other geographic markets [...] might also help the CMA to assess the likelihood of entry or expansion by innovative providers.*"¹¹¹

5.4 Compelling precedents include:

5.4.1 The OFT's decision in *WRI/Hostelbookers*.¹¹² This merger was cleared at Phase 1, largely on the basis of Booking.com having recently entered the hostel online booking marketplace where the merging parties, the main incumbents, had a very high combined market share. In terms of further entry or expansion, the OFT noted that Expedia had only just added the functionality to offer hostel booking going forward and there were several other players like Airbnb who offered a similar product proposition from a consumer perspective (albeit on the basis of a different business model). At the time, numerous hostels raised concerns about potential increases in commission levels and a perceived lack of choice as the majority of hostels had been used to dealing with the merging parties only. However, the OFT adopted a dynamic (rather than a static) framework of analysis and took account of the rapidly evolving nature of the market as well as the financial strength and the strong brands of the new entrants. The KPMG Entry and Expansion report, commissioned by the CMA, confirmed that the OFT's approach was correct. In essence, the OFT rightly concluded that the expansion of Booking.com, Expedia and a number of other online travel agents would offset any loss of competition and therefore that the merger did not result in a realistic prospect of a substantial lessening of competition.¹¹³ KPMG concluded that, post-merger, these factors had led to "*if*

¹¹⁰ [✂]

¹¹¹ KPMG Entry and Expansion Report, paragraph 21, provided as Annex 2.

¹¹² *Anticipated acquisition by Web Reservations International (through its parent company Hellman & Friedman) of Hostelbookers.com Limited*, ME/6062/13.

¹¹³ KPMG Entry and Expansion Report, paragraph 6.8.2.

anything, the market for online hostel booking services becoming more, rather than less, fragmented."¹¹⁴

- 5.4.2 The CMA's decision in *Sheffield City Taxis/Mercury Taxis*.¹¹⁵ This merger was cleared at Phase I largely on the basis of Uber having just entered the market and posing a strong competitive threat to the merged entity. The CMA recognised that, "*A strong brand increases the competitive constraint of Uber on City Taxis as it allows Uber to overcome the barrier to switching which may arise from uncertainty about the quality and reliability of an unknown brand.*"¹¹⁶ Therefore, even though Uber had entered the market only four days after the merger completed, the relevant counterfactual was "*the pre-Merger conditions of competition with the adjustment to recognise the presence and likely growth of Uber*"¹¹⁷ The KPMG Entry and Expansion report, commissioned by the CMA, confirmed that the CMA's approach was correct. It noted that "*Uber has expanded significantly in the year following the merger in line with the CMA's prediction around the likelihood of this expansion. The evidence points to this expansion having been timely and sufficient to replace any loss of competition that arose from the merger.*"¹¹⁸
- 5.4.3 The CMA's decision in *WGSN Inc/Stylesight*.¹¹⁹ While this merger was cleared based on the *de minimis* exemption, rather than on the basis of entry and expansion, the CMA noted that the strength of the CMA's belief that the merger would have an anti-competitive effect was not at a very high degree of confidence, particularly given the likely and timely entry of Stylus, which benefitted from sector-specific expertise, had significant financial support and which forecasted significant turnover in the UK in the next year.¹²⁰ The CMA therefore concluded that the increasingly dynamic nature of the market meant that any impact of an SLC arising from the merger would be relatively short-lived. Since the decision, Stylus has indeed successfully entered the market.¹²¹

¹¹⁴ Paragraph 6.8.3.

¹¹⁵ ME.6548.15, 13 October 2015.

¹¹⁶ Paragraph 86.

¹¹⁷ Paragraph 27.

¹¹⁸ Paragraph 2.7.2.

¹¹⁹ ME.6409.14, *Completed acquisition by WGSN Inc. of Stylesight Inc.*, CMA decision dated 25 June 2014.

¹²⁰ Paragraph 116.

¹²¹ <http://www.stylusmediagroup.com/styluscore>.

SCHEDULE 1
COMPETITION BETWEEN HUNGRYHOUSE AND JUST EAT - THE
FRAMEWORK OF ECONOMIC ANALYSIS

1. INTRODUCTION

- 1.1 The Statement of Issues sets out the Panel's initial, early-stage considerations in relation to potential theories of harm. The Statement of Issues states that takeaway service platforms "may be" characterised by indirect network effects.¹²² These indirect network effects mean that consumers gain more value from, and will therefore generally prefer using, a platform with a larger selection and greater choice of restaurants. The larger the number of restaurants offered on a platform, the higher 'quality' that platform will be to consumers. Similarly, restaurants gain more value from, and will generally prefer signing up to, platforms with a large number of consumers and orders they can generate through the platform.
- 1.2 The CMA notes that indirect network effects can: (i) lead to demand 'tipping' towards one platform where one platform is able to maintain a particularly high market share¹²³; and, importantly (ii) have implications for the profitability of a platform and specifically, obtaining the scale required to be profitable.¹²⁴
- 1.3 Hungryhouse believes that an in-depth understanding of the competitive dynamics of how the interdependencies between both sides of the platform work is critical to the assessment of the competitive impact of the Merger. We have outlined below how these key factors affect the CMA's competitive assessment. Consequently, we focus here only on constraints within platforms to demonstrate these issues and do not look at the wider constraints from direct ordering, which of course remain pervasive and continually developing and strengthening.

2. HUNGRYHOUSE IS A FRACTION OF THE SIZE OF JUST EAT – [REDACTED]

- 2.1 Hungryhouse is significantly smaller than Just Eat. As a result, the competitive proposition it offers to both consumers and restaurants [REDACTED].
- 2.2 This [REDACTED] results in Hungryhouse [REDACTED].

Consumers

- 2.3 Consumers generally value a large number of different restaurants to choose from if they decide to order food through a platform offering takeaway services. The number and variety of restaurants ranks highly as a parameter of competition on quality.
- 2.4 Hungryhouse [REDACTED] of the number of restaurants on Just Eat. This shows [REDACTED] between Hungryhouse and Just Eat from the perspective of consumers, who are able to choose from a much wider selection of restaurants on Just Eat.¹²⁵

¹²² Statement of Issues, paragraphs 25 to 27.

¹²³ *Idem*, paragraph 31.

¹²⁴ *Idem*, paragraph 32.

¹²⁵ [REDACTED]

- 2.5 Hungryhouse's [redacted] conversion rates. For example, in the first five months of 2017, Hungryhouse had an average web conversation rate of [redacted] compared to [redacted] for Just Eat. These [redacted] conversion rates demonstrate that when consumers visit the Hungryhouse website, they are [redacted] as likely to then place an order as when consumers visit Just Eat. [redacted] conversion rates are driven by the [redacted] proposition offered to consumers (i.e. the choice of restaurants available on the platform). To see this, we present the relationship between restaurants and conversion rates for all towns and cities in the UK. There is a strong relationship between the number of restaurants and conversion rates [redacted].
- 2.6 The two sides of the platform are interdependent. Given the [redacted]. As a result, the quality of Hungryhouse's restaurant proposition (again, measured in terms of number and variety of restaurants) [redacted].

Restaurants

- 2.7 Restaurants value a large number of orders coming from takeaway service providers. Hungryhouse has [redacted] of the number of consumers that are on Just Eat. More importantly, Hungryhouse offers restaurants [redacted] of the number of orders. This is the crucial factor for restaurants in terms of assessing the quality of a platform's proposition: a restaurant is not interested in the number of consumers a platform provides *per se*, but in the number of incremental *orders* it can obtain from listing on the platform. Given Hungryhouse's [redacted] it offers restaurants in terms of this key parameter of competition, [redacted].¹²⁶
- 2.8 [redacted]: Restaurants will aim to maximise profits and will therefore choose the platform that offers the greatest incremental orders at the lowest cost. We can therefore estimate the incremental profit obtained by a restaurant from listing on Just Eat and on Hungryhouse. For the restaurant this profit will be determined by:
- 2.8.1 the incremental orders they received through the platform;
 - 2.8.2 the value of those orders; and
 - 2.8.3 the profit margin the restaurant earns on them (which is reduced by the commission charged by the platform).
- 2.9 The annual profit of continuing to list on either platform (i.e. excluding initial listing fee) can therefore be estimated. Just Eat has [redacted] restaurants while Hungryhouse has [redacted].¹²⁷ Moreover, Just Eat has [redacted] orders per year¹²⁸ while Hungryhouse has [redacted] orders.¹²⁹ This results in average incremental orders received by each restaurant from listing on each platform of: [redacted] for Just Eat and [redacted] for Hungryhouse. Hungryhouse therefore, on average, provides a restaurant with [redacted] of the orders that Just Eat provides. For simplicity we assume that the profit margin of restaurants listed on Just

¹²⁶ [redacted]

¹²⁷ CMA's Phase 1 Decision, paragraph 142.

¹²⁸ CMA's Phase 1 Decision, Table 1.

¹²⁹ Restaurants from paragraph 142 and order volumes from Table 1 of CMA's Phase 1 Decision.

Eat and Hungryhouse are the same [X] and that the average order value on Just Eat and Hungryhouse is [X]. The commission rate of Just Eat and Hungryhouse is [X].

2.10 On that basis, the average incremental profit of listing on Just Eat is [X] and on Hungryhouse [X].¹³⁰ Consequently, the average benefit to a restaurant is [X] listing on Just Eat than on Hungryhouse. As such, Hungryhouse [X] Just Eat.¹³¹ There is therefore [X] While theoretically [X] this is not the case for two reasons:¹³²

2.10.1 [X]

2.10.2 [X]¹³³

2.11 [X]

2.12 Actual behaviour of restaurants confirms [X].^{134 135}

2.13 As a result, [X] new disruptive and well-financed entrants that genuinely threaten its business: Deliveroo and UberEATS, as well as Amazon Restaurants. [X].

3. [X]

3.1 [X]

3.2 [X]¹³⁶

3.3 [X]

3.4 For a platform to become sustainable, the initial investment (in marketing) must generate future revenue from the consumers acquired. [X]

3.5 [X]

130 [X]

131 [X]

132 [X]

133 [X]

134 [X]

135 [X]

136 [X]

- 3.6 This consistent pattern [REDACTED].
- 3.7 [REDACTED]
- 3.8 [REDACTED]
- 3.9 [REDACTED]
- 3.10 A number of further issues [REDACTED]
- 3.10.1 First, [REDACTED].
- 3.10.2 Second, [REDACTED]¹³⁷.
- 3.10.3 One of the types of consumer marketing a platform can engage in (along with TV brand development, search engine marketing, etc.) is to offer consumers vouchers to attract them onto the platform. Below we have analysed the cohort performance (i.e. the re-order rate) of consumers [REDACTED].
- 3.10.4 [REDACTED]¹³⁸
- 3.11 [REDACTED]

4. **HUNGRYHOUSE** [REDACTED]

- 4.1 The CMA has suggested that a high proportion of single-homing customers on one side of the platform may be a source of market power for the platform on the other side, as the platform becomes the only way to access these customers.¹³⁹ On the restaurant side, [REDACTED] single-homing of Hungryhouse restaurants. Of the [REDACTED] restaurants listed on Hungryhouse, [REDACTED] of them are also listed on Just Eat and [REDACTED] are unique to Hungryhouse. [REDACTED] Just Eat, which has [REDACTED] unique restaurants. From the consumer side, Just Eat is therefore [REDACTED].
- 4.2 On the consumer side, of the [REDACTED] consumers that are active on Hungryhouse (i.e. made at least one order in the last six months), [REDACTED] of them are unique to Hungryhouse (i.e. single-home with Hungryhouse) with the remainder being ‘shared’ consumers that are also active on Just Eat. Just Eat has [REDACTED] unique consumers (and the same [REDACTED] that multi-home on both).
- 4.3 On the basis of the CMA’s reasoning in its Statement of Issues, these unique consumers may lead the CMA to be concerned that Hungryhouse and Just Eat therefore have market power over restaurants seeking access to those unique customers. However, this is not the case for the following reasons:

¹³⁷ [REDACTED]

¹³⁸ [REDACTED]

¹³⁹ Statement of Issues, paragraph 29.

- 4.3.1 First, the proportion of 'unique' consumers actually points to Hungryhouse and Just Eat being complementary. Restaurants will be able to sign up with Hungryhouse and obtain access to a largely different source and thus supply of incremental orders to the source and supply of incremental orders from Just Eat. If Just Eat and Hungryhouse were substitutes, restaurants would be able to choose Just Eat and they would not lose any incremental orders.
- 4.3.2 Second, over the six month period used to measure 'active' users on each platform, Hungryhouse had around [X] new consumers. Given Hungryhouse's [X], it is likely that a significant proportion of these single-homing consumers are consumers that were new to Hungryhouse [X]. As outlined previously, [X].
- 4.3.3 Third, if – under the CMA's early stage theory of harm - restaurants were to seek access to the consumers using only Hungryhouse, they would have to [X]. This results in the requirement for a minimum level of consumers and orders to [X].
- 4.3.4 Fourth, these consumers are [X]. As has been outlined above, Hungryhouse's consumers have [X]. This is evident from an assessment of Hungryhouse's [X] Hungryhouse has had those 'unique' consumers [X].
- 4.3.5 Finally, it is even more difficult to become sustainable if the platform is relying solely on these 'loyal' consumers to provide sufficient orders to restaurants. For many restaurants, an approach that consists of ceasing to invest in new consumers will quickly reduce the number of orders to levels that make it no longer worthwhile for restaurants to list [X].
- 4.4 Given the dynamics explained above, many restaurants would leave if orders were to decline [X].
- 4.5 [X]
- 4.6 Relying on this supposedly 'loyal' customer base also takes no account of significantly increased competition from Deliveroo and UberEATS, particularly as they develop and evolve to targeting the core set of restaurants with a current preference for a platform that only provides aggregation services, or 'lower-end' restaurants.¹⁴⁰

5. THE RELATIVE SIMILARITY IN BUSINESS MODEL [X]

- 5.1 The assessment above demonstrates that there is significantly greater complexity to the competitive dynamics of the sector – and to the way in which indirect network effects operate – than simply comparing the business models offered by firms. In the context of the market dynamics the Parties operate in, it would be wrong to conclude that the similarity in business model translates into closeness of competition and a strong competitive constraint.

¹⁴⁰ For example, UberEATS providing online takeaway ordering services to McDonald's and Deliveroo providing services to Burger King.

5.2 [✂]

5.3 [✂] products that can differentiate themselves in terms of the quality of their value proposition to (first) consumers and (second) restaurants, are more likely to be able to compete effectively. Such a differentiation can consist of providing consumers with new and improved or additional services or more restaurant choice or by providing restaurants with access to new high quality consumers who place more frequent high-value orders. This is precisely what Deliveroo and UberEATS and other last-mile delivery providers are doing and it explains their success in terms of rapid entry and expansion:

5.3.1 First, they are able to draw on significant infrastructure and expertise as well as enormous financial resources to offer consumers a high quality alternative: faster, professionalised, reliable delivery of food and a widened set of restaurants to choose from. [✂] This is the case even though these new entrants obviously start from a lower base of restaurants to begin with. The explosive growth of these new, disruptive players clearly demonstrates the trajectory they are on.

5.3.2 Second, providing 'horizontal differentiation' through delivery services also attracts new restaurants which cannot use Just Eat or Hungryhouse currently without investing in their own delivery service. This will, in turn, attract new consumers which will then lead to more restaurants signing up to gain access to these consumers.

5.4 Importantly, restaurants are only seeking order volumes from a platform so they will automatically list on the platforms that provide them with access to the greatest consumers (or orders), which explains why the platforms spend so much on consumer marketing. If consumers are obtaining a significantly better ordering and delivery experience with Deliveroo and start using Deliveroo then restaurants will also move to listing on Deliveroo (rather than Just Eat).

5.5 It is clear from the above that any assumption that platforms with different business models will compete less strongly is deeply flawed. [✂] In the context of the market dynamics that are relevant to the assessment of this transaction, being differentiated allows a competitor to be more effective rather than less.