

ANTICIPATED ACQUISITION BY JUSTEAT.CO.UK OF HUNGRYHOUSE HOLDINGS LIMITED

RESPONSE TO STATEMENT OF ISSUES¹

This is Just Eat's response to the CMA's Phase II statement of issues published on 9 June 2017 (the "Sol"). Just Eat has already commented on many of the potential concerns identified in the Sol in the commentary on the CMA's Phase I reference decision (the "SLC Decision") which it provided to the CMA on 2 June 2017 (the "SLC Decision Response"). This response to the Sol therefore aims to summarise Just Eat's main concerns with the Sol. This response also supplements Just Eat's arguments with new material where this has been possible in the time available.

1 Introduction

1.1 Just Eat believes that there are three main reasons why the transaction will not give rise to a substantial lessening of competition ("SLC").

1.1.1 First, Hungryhouse does not act as a material competitive constraint on Just Eat today.

1.1.2 Second, there [REDACTED].²

1.1.3 Third, Deliveroo and UberEATS (in particular) pose a competitive constraint on Just Eat today and this constraint will only grow in the future. This is in addition to the constraint Just Eat faces from established traditional channels (like leafletting, phone orders and direct ordering from restaurant websites).

1.2 However, Just Eat is concerned that the approach set out in the Sol does not properly capture the nature of competition in these markets at a conceptual level, and as a result does not identify the key empirical evidence that is necessary to identify the strength of the constraint between the merging parties. Moreover, the Sol suggests that the CMA will rely heavily on the results of its consumer and restaurant surveys, even where actual data is available that can test the relevant propositions directly.

1.3 Section 2 sets out Just Eat's views on the relevant product and geographic markets. Sections 3-4 summarise Just Eat's key concerns with the approach set out in the Sol, and set out some comments on particular statements in the Sol that reflect the errors in the CMA's approach.

1.4 In Annex 1, Just Eat sets out a comprehensive theoretical framework which properly takes into account that the market is two-sided and exhibits indirect network effects between the two sides. This framework provides a good model for explaining: (i) why the market has developed as it has; (ii) why Just Eat has grown quickly; (iii) why Hungryhouse has [REDACTED]; and (iv) why Deliveroo and UberEATS have grown [REDACTED]. This framework has solid academic

¹ Capitalised terms have the same meaning as defined in the merger notice submitted to the Competition and Markets Authority ("CMA") on 9 March 2017 (the "Merger Notice"), unless specified otherwise.

² We understand that Hungryhouse is separately presenting evidence to the CMA on whether it is likely to [REDACTED] in the market in the long term, absent the Proposed Transaction.

underpinning and is also supported by past CMA decisional practice and recent BEIS publications.³

1.5 The key points of this framework are that:

- 1.5.1 Just Eat has [redacted] from a consumer perspective (in terms of choice of restaurants) and from a restaurant perspective (in terms of orders).
- 1.5.2 [redacted] Hungryhouse is not therefore a substitute for Just Eat. At best it is an additional route to market for some restaurants.
- 1.5.3 Hungryhouse [redacted] because it does not have an [redacted] restaurant proposition compared to Just Eat (essentially offering a subset of the restaurants on Just Eat), [redacted].
- 1.5.4 These two points reinforce each other due to the two-sided nature of the market. Given this, [redacted].
- 1.5.5 This dynamic effect is also further reinforced by [redacted].
- 1.5.6 It is precisely because Hungryhouse has an [redacted] proposition than Just Eat that means that: (i) it does not constrain Just Eat; and (ii) it [redacted], contrary to the assumptions of the Sol.
- 1.5.7 In contrast, Deliveroo and UberEATS have attracted many different restaurants, and so have a differentiated proposition for consumers. This differentiation has come from them winning the business initially of Branded Restaurant Groups (“BRGs”) new to the takeaway sector through the bundled delivery service offered by them. (That is not to say that their business models rely on them only covering such restaurants. As the theoretical discussion anticipates, they can be expected to seek to add more restaurants in their (expanding) areas of operation to grow their attractiveness to consumers and to [redacted]. That is certainly what is now happening with [redacted]).
- 1.5.8 As noted above, this differentiated proposition in turn attracts consumers and further restaurants, [redacted], particularly given the strength of the [redacted].
- 1.5.9 It is precisely the fact that Deliveroo and UberEATS have a differentiated proposition which means that they can survive and compete aggressively with Just Eat, contrary to the views in the Sol.

1.6 This theoretical framework can then be used to identify the relevant empirical evidence needed to assess whether Hungryhouse is a constraint on Just Eat today (or in the future) – and in particular identifies that the key questions are:

- (i) the size of Just Eat and Hungryhouse’s unique consumer bases;
- (ii) the size of the consumer overlap between Just Eat and Hungryhouse;

³ For example, see David Evans and Richard Schmalensee, “*The Industrial Organization of Markets with Two Sided Platforms*”, Nber Working Paper Series (2005), pp.15-20; *Completed acquisition by Ticketmaster Europe Holdco Limited of Seatwave* (2015), ME/6505-14, in particular footnote 18; *Anticipated acquisition by StepStone UK Holding Limited of Evenbase Recruitment Limited* (2014), ME/6454/14, in particular paragraphs 40-42; *Anticipated merger between The Digital Property Group Limited and Zoopla Limited* (2011), ME/5233/11, in particular paragraph 8; and BEIS report, *Dynamic Competition in Online Platforms: Evidence from five case study markets*, March 2017.

- (iii) the relative size of Just Eat's and Hungryhouse's restaurant bases;
- (iv) the level of overlap between Just Eat and Hungryhouse's restaurant bases; and
- (v) the extent of any other horizontal differentiation between Just Eat and Hungryhouse.

We explore the relevant evidence in Annex 2. This confirms the predictions of the theoretical framework.

2 The markets in which the Parties operate

2.1 Product market

2.1.1 The CMA sets out at paragraphs 14(a)-(c) of the Sol possible substitutes to OTO aggregation platforms that it considers are potentially relevant to the product market definition, and hence its assessment of the impact of the anticipated transaction on competition.

2.1.2 The appropriate frame of reference should include, at a very minimum, the delivery/OTO aggregation platforms identified in paragraph 14(a) since Just Eat faces significant constraints from other delivery/OTO aggregation platforms, such as Deliveroo and UberEATS and disruptive competitors like HeyMenu. These constraints have grown rapidly and [REDACTED]. In addition, online and offline direct ordering (as set out in paragraphs 14(b) and (c)), such as through websites of chains and takeaway restaurants, white-label app building suppliers like Preoday and other forms of direct ordering from takeaway restaurants (e.g. over the telephone), should also be included in the relevant product market, as these ordering methods constrain Just Eat now, and will continue to constrain Just Eat in the future.

2.1.3 This approach is supported by a range of evidence, including:

- (i) the responses to the CMA's market testing in Phase I, which suggests that:
 - (a) both restaurants and consumers see all types of OTO platforms as meeting similar needs and that at least some consumers consider direct ordering through a restaurant's own website or app to be a viable alternative to an OTO aggregator;⁴ and
 - (b) restaurants have an incentive to divert consumers towards their own websites or to phone orders;⁵
- (ii) Just Eat's internal documents and external surveys conducted on its behalf, which consistently identify not only delivery/OTO aggregation platforms but also direct ordering from providers such as Domino's as key competitive constraints on Just Eat's offer;⁶
- (iii) the CMA's acknowledgement in the SLC Decision that phone orders are still the most common way of ordering takeaway food;⁷

⁴ SLC Decision, paragraphs 69, 70 and 72.

⁵ SLC Decision, paragraph 159.

⁶ SLC Decision, paragraphs 93(a)-(b); see also paragraphs 4.5.9 and 4.5.10 of the SLC Decision Response.

⁷ SLC Decision, paragraph 160(d).

- (iv) the various econometric analyses submitted, such as the impact analysis provided in the Merger Notice which shows [REDACTED];⁸ and
- (v) Just Eat's move into delivery, which reflects [REDACTED].⁹

2.1.4 The product market definition therefore needs to acknowledge the competitive threats the Parties face, not only from all other online providers of takeaway services, but also from direct ordering from chain restaurants (e.g. Domino's) and independents. As Just Eat made clear at the CMA site visit, the [REDACTED]. This driver points unambiguously to the relevance of direct orders and players such as [REDACTED], and the constraint they place on Just Eat.

2.2 Geographic market

2.2.1 Just Eat agrees with the conclusion in the SLC Decision that it is appropriate to define the market as UK-wide in scope.¹⁰ Just Eat believes that all the major players in the market operate nationally or have the ability, ambition and intention to operate on a national basis,¹¹ as is evident from the rapid geographic expansion of fast-growing and successful entrants like Deliveroo and UberEATS.

2.2.2 The SLC Decision reached this conclusion on the basis that there are important supply-side factors that suggest a nationwide frame of reference is most appropriate,¹² which include the fact that:

- (i) pricing (namely, commission rates and sign-up fees) is set on a national basis. Whilst there may be some deviations in Just Eat's prices as a result of some clearly identified strategic and localised marketing efforts, in general pricing does not vary by local area;
- (ii) substantial marketing activities to drive brand awareness are also carried out at the national level. Both Parties have, for example, invested significantly in nationwide TV commercials; and
- (iii) OTO platforms are easily scalable and the functionality, user interface and other qualitative features of these platforms do not vary by locality; furthermore, once the investment in them has been made, it makes sense for the owner to seek to operate on a national scale.

2.2.3 In addition to these factors, Just Eat considers that there are other important supply-side factors that reinforce the conclusion that a nationwide frame of reference should be adopted, as set out below.

Nationwide scale is [REDACTED]

2.2.4 For an OTO platform to be commercially successful in the long run, it [REDACTED].

⁸ Merger Notice: Exhibit 21 and paragraph 15.2.3.

⁹ [REDACTED].

¹⁰ SLC Decision, paragraphs 80-81.

¹¹ See 13.2.1 of the Merger Notice.

¹² SLC Decision, paragraph 79.

- 2.2.5 There are several reasons for this. The first is that, [REDACTED].¹³ One major example is the [REDACTED], although as described further in 3.27-3.29 below, the effectiveness (and therefore quantity) of marketing spend will depend on the relative quality of the provider. This, along with the indirect network effects present in the market, contributes to the “winner-takes-all” nature of the market for purely vertically differentiated providers (i.e. those that are identical in all dimensions except for the number of restaurants and consumers on the platform)¹⁴ and therefore [REDACTED]. In practice, this means that providers [REDACTED].
- 2.2.6 The second reason is the importance of marketing (something the SLC Decision recognises)¹⁵, which [REDACTED].¹⁶
- 2.2.7 Finally, given the increasing growth of Deliveroo and UberEATS, who offer a variety of national BRGs,¹⁷ (as well as other restaurants) it has [REDACTED],¹⁸ [REDACTED]. This again suggests that important parameters of competition operate at a national level.

The presence of a national market does not exclude local elements of competition

- 2.2.8 The fact that OTO platforms [REDACTED] does not mean that there are no localised elements of competition. As a practical matter, [REDACTED]. Moreover, as the CMA recognises in the SLC Decision, the local nature of takeaway provision means that the precise competitive dynamic will have local elements¹⁹ (this can be seen in [REDACTED],²⁰ which are targeted at [REDACTED]). However, the constraint will still come from providers who operate on a national level.
- 2.2.9 Just Eat also notes that the CMA has found no evidence of [REDACTED]²¹ [REDACTED]. This emphasises that, whilst the specific providers operating in an area may vary and there may be local specificities to the competitive dynamics, viewed overall, the relevant factors that constrain Just Eat (such as [REDACTED] and direct ordering) are present on a national basis.

3 Concerns with the Sol’s theoretical and analytical approach

- 3.1 Just Eat believes that the treatment of the “Assessment of the competitive effects of the merger” in the Sol, particularly in the discussions of the nature of competition and theories of harm, show an incomplete appreciation of the implications of this transaction occurring in a two-sided market with indirect network effects.

¹³ Just Eat provided a full summary of those costs that it considers to be “fixed” and “variable” in its response to Question 24 of the Market Questionnaire.

¹⁴ See also the response to Question 21 of the Market Questionnaire.

¹⁵ SLC Decision, paragraph 79.

¹⁶ It is important to note that several other factors, and in particular the underlying quality of the relevant provider, affect the efficacy and cost-effectiveness of marketing spend. Further detail on this is set out in paragraphs 21.5 and 24.2 of the response to the Market Questionnaire.

¹⁷ Both Deliveroo and UberEATS have achieved success with mass volume BRGs including KFC, McDonalds and Burger King.

¹⁸ See response to Market Questionnaire, paragraphs 3.1-3.7.

¹⁹ SLC Decision, paragraph 77.

²⁰ For further information, see paragraphs 4.7-4.10 and 6.1-6.7 of the Market Questionnaire.

²¹ “PQRS” means price, quality, range or service.

3.2 In Annexes 1 and 2, Frontier Economics:

- 3.2.1 demonstrate why this is a two-sided market with indirect network effects;
- 3.2.2 show the consequences for the nature of competition arising from this being such a market (and in particular the importance of horizontal and vertical differentiation on one side of the market to the existence of single- and multi-homing on the other side of the market, and so to the survival and competitive success of platforms); and
- 3.2.3 show how the data observed in relation to the behaviour of customers and performances of Hungryhouse, Just Eat and indeed Deliveroo and UberEATS are consistent with the analyses at 3.2.1 and 3.2.2, and show that:
 - (i) Hungryhouse does not provide a competitive constraint on Just Eat today;
 - (ii) there is [redacted]; and
 - (iii) Deliveroo and UberEATS may well [redacted], and their differentiated business model means they are [redacted].

3.3 These observations have the consequences (in terms of the framework set out in the Sol) that:

- 3.3.1 the assessment of the “closeness of competition” between Hungryhouse and Just Eat in the Sol is hugely flawed: the observations that they have asymmetric overlaps in restaurants and customers are not probative that they are close competitors; indeed, given the dynamics of the market Hungryhouse is not a close competitor or constraint on Just Eat precisely because of the limited differentiation of and by Hungryhouse;
- 3.3.2 the [redacted] of Just Eat and Hungryhouse and the impact this has on the orders generated through Hungryhouse to even multi-homing restaurants [redacted];
- 3.3.3 [redacted] are insufficient to constrain Just Eat [redacted]; and
- 3.3.4 horizontal and vertical differentiation between platform populations for both restaurants and consumers is the key driver of competitive dynamics. The lack of differentiation by Hungryhouse compared to Just Eat [redacted] as a competitive constraint. By contrast, the ongoing dynamic of Just Eat, UberEATS and Deliveroo all trying to remain differentiated from each other in the eyes of consumers and restaurants is the heart of the rivalry in the market.

Overview

3.4 The economic literature on platforms commonly observes the presence of indirect network effects in these markets, and the SLC Decision acknowledges that this is a two-sided market with indirect network effects on both sides. The indirect network effects in this case can be defined as:

- 3.4.1 other things equal, consumers prefer a platform with more restaurants to one with fewer; and
- 3.4.2 other things equal, restaurants prefer a platform with more orders to one with fewer.

3.5 However, the Sol identifies that there should be “no presumption that indirect network effects are strong in relation to OTO platforms, nor that the indirect network effects are equally strong in both directions”. Just Eat is surprised at the apparent scepticism that the CMA is

now expressing. Whilst it is understandable that the CMA would wish to test the existence of indirect network effects, Just Eat considers that this statement flies in the face of the evidence and raises real doubts about the approach the CMA is adopting to this case. Given this, we here explore in more detail the implications of the existence of indirect network effects on competition using direct and indirect evidence.

Consumer side of the market

- 3.6** Rationally, other things being equal, consumers will prefer a platform with more restaurants to one with fewer.
- 3.7** Consumers do not incur a cash cost to look at a second platform but do incur an implicit or opportunity cost, namely the time and effort of looking on that additional platform (multi-homing). As a result, consumers will only look on the additional platform if the benefit that they get (in terms of widening their choice of restaurants) outweighs the additional search cost. Given this cost, if two platforms offer exactly the same restaurant base, it is not obvious why customers would look on both platforms (unless they are “horizontally differentiated” on other dimensions) and less so still if one platform has only a subset of the restaurant base of the other (i.e. it is “negatively vertically differentiated”).
- 3.8** If a consumer will only ever look on one platform (single-homing), one would expect the consumer to choose the platform with the greatest choice of restaurants.

Restaurant side of the market

- 3.9** Again, rationally, restaurants prefer a platform with more consumers / orders, to maximise their incremental orders and consequent profits. Restaurants pay to join a platform, so trade off this fee against the incremental profits resulting. A restaurant will multi-home if the incremental profits from the incremental orders through the incremental platform(s) outweigh(s) the joining fee. If it is not attractive to multi-home, a single-homing restaurant would be expected to list on the platform which provides it with the largest profit.
- 3.10** As a result, single-homing (with the cheapest platform) is likely when two platforms offer access to exactly the same consumer base. If one platform has a subset of the consumer base of the other, it is not obvious why a restaurant would choose the platform with the smaller restaurant base at similar prices (negatively vertically differentiated). Multi-homing would be more common if platforms did not charge a joining fee; if they do, restaurants are more likely to multi-home where one platform has a different consumer offering (either by number or order propensity) to another platform.
- 3.11** The evidence is entirely consistent with this framework:

3.11.1 [REDACTED].

3.11.2 Hungryhouse is substantially smaller than Just Eat [REDACTED], Hungryhouse is [REDACTED] the size of Just Eat, making it [REDACTED].

Restaurant offering: Just Eat’s platform is [REDACTED] and Hungryhouse is [REDACTED] as to be inconsistent with the suggestion of it being a constraint

- 3.12** Hungryhouse has only a small number of unique restaurants. In contrast, Just Eat has a very large number, and so is substantially more attractive to consumers. The restaurant propositions of Just Eat and Hungryhouse are therefore primarily vertically differentiated, with limited horizontal differentiation.

- 3.13** This holds true at the local level, as in the majority of postcode districts in which Hungryhouse is present ([X] out of [X], i.e. [X]%) Hungryhouse has [X] unique restaurants (i.e. [X]). In almost [X]% of postcode districts, Just Eat has at least [X] restaurants than Hungryhouse.

Consumer offering

- 3.14** As suggested by Just Eat's restaurant offering, Just Eat is [X] to consumers (and therefore restaurants). Out of the total pool of Just Eat and Hungryhouse consumers who ordered from either platform between November 2016 and April 2017, [X]% were unique to Just Eat, [X]% were unique to Hungryhouse, with [X]% using both platforms.
- 3.15** Moreover, Just Eat's consumers [X]. Just Eat's unique customers place on average [X] than those of Hungryhouse. This [X].

Application to the CMA's analysis

- 3.16** The CMA is exploring whether Hungryhouse currently places a constraint on Just Eat, especially with regard to the contractual terms offered to restaurants. There are two situations to consider.
- 3.16.1** First, whether restaurants would switch from listing on Just Eat-only to Hungryhouse-only in response to a commission increase by Just Eat (the single homing constraint).
- 3.16.2** Second, whether restaurants would switch from listing on Just Eat-only to also listing on Hungryhouse in response to a commission increase by Just Eat (the multi-homing constraint).
- 3.17** The single homing constraint is more important, as restaurants that choose between listing on one platform or the other are treating them as substitutes, while restaurants that choose to list on multiple platforms are treating them primarily as complements, in that they offer different routes to market.

Single-homing constraint

- 3.18** As noted above, if it is single-homing, a restaurant will list on the platform that gives it the most profit. If two platforms have the same joining fee and average order value for a restaurant, there is a trade-off between the number of orders/restaurant and the commission rate it charges. The larger the discrepancy in the number of orders/restaurant between the platforms, the lower the commission rate needs to be on the smaller platform for a restaurant to switch from the larger platform to the smaller platform. If the orders per restaurant difference is sufficiently large, the commission would need to be negative to encourage restaurants to list only on its site and so, because it cannot act as a substitute for the larger platform, cannot effectively constrain its behaviour.
- 3.19** Applying this to the facts of this case, modelling confirms that [X]. Hungryhouse does not currently constrain Just Eat via the single-homing constraint, and [X].

Multi-homing constraint

- 3.20** As noted above, a restaurant would be expected to multi-home if this allows it to access an additional group of customers and the incremental profits from listing on the second platform exceed the joining fee. While, for the reasons discussed in relation to single-homing above,

this primarily reflects complementarity rather than substitution, it may still provide an indirect constraint on the larger platform if there are a significant number of shared customers between those platforms whose existing orders to the restaurant would be diverted from the larger to the smaller platform. The possibility of this diversion will place a limited constraint on the margin of the larger platform.

- 3.21** The extent of this constraint will depend on a range of factors, such as the number of shared customers, proportion of those shared customers that would switch their orders, the commission differential between the two platforms and the joining fee of the smaller platform. At a broader level, it will also be influenced by the number of unique customers on the second platform (which determines the general attractiveness of multi-listing to restaurants) and whether restaurants consider multi-listing a marginal decision, so that the potential for shared customer diversion is of sufficient weight to lead them to multi-list when they would otherwise not.
- 3.22** Again, applying this analysis to the facts of the case, the shared customer diversion effect is [REDACTED] in determining whether a restaurant multi-homes on Hungryhouse, and even if it does multi-home as a result of the shared customer diversion effect, the impact on Just Eat is [REDACTED].

Dynamic competition

- 3.23** The constraints outlined above at the static level are accentuated by the feedback loop resulting from the indirect network effects present in the market. These suggest that a smaller platform with small numbers of unique customers and restaurants, and no other horizontally differentiating features, will find it very difficult to expand to catch up with a larger platform.
- 3.24** This is because, in terms of attracting restaurants:
- 3.24.1** First, it will be difficult to attract single-homing restaurants to switch to the platform, as the number of consumers is small. It would be possible for the smaller platform to encourage switching if it dropped its commissions materially, or even paid restaurants to join, but it is difficult to see how this would be a profitable strategy.
- 3.24.2** Second, it may be able to attract restaurants to multi-list on it as well as on the larger platform, but this would not provide consumers with an incentive to use the smaller platform in addition to or instead of the larger platform, as there is no additional choice being provided.
- 3.25** In terms of attracting consumers:
- 3.25.1** As mentioned above, the low number of unique restaurants means that consumers will be unlikely to single-home or multi-home on the smaller platform.
- 3.25.2** It is possible to attract customers to the platform by providing them with money off vouchers. But if the fundamental restaurant choice proposition is not attractive, once the customer has used the voucher, there is limited reason for them to stay.
- 3.26** There seem to be only two ways to break this vicious cycle. First, a smaller platform could engage in horizontal differentiation, either in terms of the type of restaurants being offered on the platform, or in terms of other additional features ([REDACTED]). Second, it is possible that the platform could engage in a massive and sustained marketing campaign on both sides of the market, e.g. by paying restaurants to multi-list or single list on the platform and very heavily

increasing its consumer marketing. However, such a strategy would seem to be unlikely to be profitable given the marketing challenge discussed in the next section.

The Marketing Challenge

- 3.27** More broadly, platforms must invest in sunk marketing costs to maintain and grow their platform. This is most commonly done through investments in brand awareness and discount vouchers. In both cases, the effectiveness of this type of marketing will likely depend on the quality of the core proposition relative to that of rivals. If a customer tries a new platform, he or she will be more likely to return to that platform if it offers something different or new compared to their existing platforms. A smaller platform without differentiated content would therefore be likely to have to spend relatively more on marketing, and it would also be expected that the effectiveness of this marketing in retaining consumers would be low. This suggests a dynamic financing constraint for a smaller platform as the ability to lower commissions or joining fees to compensate restaurants for lower consumer exposure will limit the funds available for marketing spend to build that consumer exposure (and vice versa).
- 3.28** Over time, therefore, one would expect a smaller platform to stay small and to find it extremely difficult to expand (and in particular, to expand profitably) if it does not offer anything different to the larger platform. [X].
- 3.29** This is in contrast with the differentiated offerings of Deliveroo and UberEATS. The differentiated restaurant offering on these platforms provides consumers with a reason to use these sites in addition to Just Eat, and [X].
- 3.30** Just Eat has developed this analysis further in Annex 1 and Annex 2, but notes that the Annexes should also be read in conjunction with the detailed comments on the Sol provided in Section 4 below.

4 Detailed comments on the Sol

4.1 Economic framework

- 4.1.1 Paragraph 26.** The desire to test the existence of indirect network effects is not accompanied by the consequential need for the CMA to think through the implications if they are present (as per the comments below). There is extensive evidence from the Parties and from economic theory that restaurants like platforms with more consumers and consumers like platforms with more restaurants.
- 4.1.2 Paragraphs 28-31.** The approach to single- and multi-homing seems to assume that whether consumers single- or multi-home is an exogenous feature of the market. This is incorrect. A consumer's decision to single- or multi-home across platforms depends on the extent to which platforms have differentiated restaurant offerings.²² A restaurant's decision to single or multi-home depends on the extent to which it can access additional consumers on the second platform. The discussion does not mention these interaction effects, yet they are critical to understanding the nature of competition, the constraint of Hungryhouse on Just Eat today, and the extent to which Hungryhouse could become a constraint on Just Eat tomorrow.

²² There does not seem to be any other material horizontal differentiation for consumers between Just Eat and Hungryhouse.

- 4.1.3 Paragraphs 25-33.** There is no mention of the key roles of horizontal and vertical differentiation between platforms in determining how competition takes place (in relation to both restaurants and consumers). Annex 1 explores these concepts in detail.
- 4.1.4 Paragraph 34.** The most important empirical evidence is the extent to which Just Eat and Hungryhouse have unique consumers and orders and the extent to which there are shared consumers. It is not clear that the CMA is going to look at this data, and the evidence identified is at best second order. Annex 2 provides the relevant information for Just Eat and Hungryhouse's consumers and orders in this regard.
- 4.1.5 Paragraph 35.** The obvious answer to "what makes an OTO platform attractive to a restaurant?" is that is the number of (incremental) consumers and so orders that it can gain from listing on that platform. However, the CMA appears not to be interested in exploring this data (it is not covered in paragraph 34 of the Sol as set out above), which appears to be a major omission.
- 4.1.6 Paragraph 36.** The approach to assessing feedback loops set out in this paragraph is largely incorrect. The responsiveness of participants on one side of the market to prices on the other side of the market (as discussed in the first and third sentences of paragraph 36 of the Sol) is not relevant. The relevant question is the responsiveness of one side of the market to participation on the other side of the platform (second sentence of paragraph 36). Further to the discussion on paragraph 34, if the CMA does not look at the number of unique and shared consumers on Just Eat and Hungryhouse, it is hard to see how this question can be approached.

4.2 Theories of harm

- 4.2.1 Paragraph 42.** The approach set out in paragraph 42 of the Sol is incorrect and comes to the wrong conclusions, because it fails to recognise the two-sided nature of the market and the importance of vertical and horizontal differentiation on one side of the market to demand on other side of the market. For instance:
- (i) It is true that Just Eat and Hungryhouse have similar business model propositions for restaurants. However, it is precisely this similarity on the restaurant side that means there is no horizontal differentiation for consumers.
 - (ii) Moreover, the CMA does not recognise that Just Eat and Hungryhouse are not close competitors for consumers because they are strongly vertically differentiated (i.e. Just Eat's offer is much better for consumers because it offers many more restaurants, [X]).
 - (iii) The statement in paragraph 42(c) is incorrect and fails to understand the fundamental dynamic of two-sided platforms. When thinking about the demand for restaurants, it is relevant to think about the overlap on the consumer side (and vice versa). The CMA appears to believe that Just Eat and Hungryhouse are close substitutes for restaurants because they attract the same types of restaurants, but in fact whether Just Eat and Hungryhouse are close substitutes for restaurants is determined by the consumer and order base they provide (the number and nature of unique and overlapping consumers). This follows directly from the observation that the market is two-sided.

4.2.2 Paragraph 43. As set out above, from a restaurant perspective it is the number and nature of unique and overlapping consumers on the respective platforms which drives restaurants' choice of which platform or platforms to list on. But it is not clear that the CMA is going to explore this issue based on actual data, and instead it appears (in paragraph 43(b)) to wish to rely on the stated responses to the restaurant survey. If so, this is a material omission.

4.2.3 Paragraphs 44 and 45. The approach to analysing the competitive constraint from Deliveroo and UberEATS in paragraph 44 also fails to take into account the two-sided nature of the market.

- (i) Deliveroo and UberEATS have different restaurant propositions and ranges to Just Eat, (see comments above in 1.5.7) and so they are additionally attractive to consumers – both in attracting new consumers to the market as a whole and in [REDACTED].
- (ii) The attractiveness to consumers is enhanced by the fact that they are able to offer [REDACTED].
- (iii) This has resulted in [REDACTED].
- (iv) These additional consumers provide a reason for [REDACTED].
- (v) And over time, as their consumer base grows, [REDACTED].

The analysis in paragraph 45 of the Sol does not provide any discussion of the consumer side – whether the consumer base or the extent and role of differentiation across platforms. The analysis seems entirely focused on the restaurant side of the market. Again, as with the analysis of Just Eat and Hungryhouse, this misses the fundamental dynamic of a two-sided platform.

4.2.4 Paragraph 49. These theories of harm seem inherently implausible. In general, in two-sided markets, one side of the market is offered the product for free in order to enhance the value to the other side of the platform which is then charged. It is hard [REDACTED].²³ [REDACTED].

4.2.5 Paragraph 50. The CMA draws the wrong conclusions from the data.

- (i) The Parties do not offer access to a similar set of restaurants. Just Eat offers access to many more restaurants, while Hungryhouse offers access essentially to a subset of the restaurants on Just Eat. There is substantial vertical differentiation between the Parties.
- (ii) It is true that there is no material horizontal differentiation on the consumer side.
- (iii) It is precisely for these two reasons that [REDACTED].

4.2.6 Paragraph 51. Again, this approach does not properly capture the dynamics of a two-sided market; whether the Parties are close substitutes for consumers depends on their restaurant proposition.

4.2.7 Paragraph 52. The econometric analysis submitted by the Parties shows that [REDACTED]. We understand that the CMA is re-doing this analysis on a slightly different basis.

²³ Just Eat notes that the future introduction of the second European Union Payment Services Directive [REDACTED].

This suggests that consumers do treat [redacted]. It is not clear what is meant by the last sentence of paragraph 52, but if the CMA were to seek to ignore actual evidence of consumer behaviour with stated preference results from its consumer survey this would be entirely inappropriate.

4.2.8 Paragraph 56. The CMA appears to not be exploring the restaurant propositions of the Parties (and other platforms) when considering the closeness of competition on the consumer side. This is a material omission given the two-sided nature of the market.

4.2.9 Paragraph 57. It is unclear why the CMA seeks to explore feedback loops through internal documents and survey evidence rather than the actual data on consumers/orders and restaurants.

4.3 Entry and expansion

4.3.1 Paragraph 60. The approach to barriers to entry and expansion needs to consider the barriers to expansion from the indirect network effects faced by Hungryhouse as well as by other platforms, and in particular the critical role of horizontal and vertical differentiation across platforms in determining their attractiveness to each side of the market. [redacted].

5 Further implications of the Sol

5.1 The Sol seems to rely solely on outdated and improperly contextualised references²⁴ from a limited number of Just Eat's internal documents to question/negate the material impact that the delivery/OTO aggregation platforms are having (and will continue to have) on Just Eat.²⁵ It is difficult to envisage how these references, which pre-date the aggressive expansion of Deliveroo and UberEATS, would be sufficient to dismiss, on the higher Phase II standard of proof, the material competitive impact that these players are having (and will continue to have) on Just Eat, particularly when all other evidence provided supports Just Eat's assertions.

5.2 It is also difficult to envisage how these shortcomings in the Sol would be alleviated with survey evidence alone, particularly given that survey evidence relates to what consumers/restaurants state that they would do, rather than what consumers/restaurants have actually done – the latter of which should be preferred from an evidential perspective. As such, while Just Eat welcomes the CMA's intention to expand the evidentiary sources beyond selective references from the internal documents, Just Eat considers that it is both appropriate and necessary for the CMA to also make use of its powers under Section 109 of the Enterprise Act 2002 to gather direct and contemporaneous evidence from Deliveroo, UberEATS and Amazon Restaurants. Given the weight that the CMA has attached to such data and documents obtained from Just Eat, it is clear that the CMA regards such data and documents as having a significant probative value, and the extension of the approach adopted towards Just Eat to other key competitive players would therefore be of significant value to the CMA's assessment.

²⁴ See for example, the context provided in respect of the internal documents the SLC Decision quotes at paragraph 4.5.9-10 of Just Eat's response to the SLC Decision.

²⁵ See for example, paragraph 44 of the Sol.

5.3 Given the issues that the CMA has identified in the Sol as relevant to its inquiry, the scope of such requests might cover recent internal documents, data, reports and marketing pitches that consider the following:

5.3.1 Just Eat's impact on Deliveroo, UberEATS and Amazon Restaurants and actions undertaken in response

- (i) the extent to which these providers monitor Just Eat;
- (ii) current and projected impact of Just Eat on these providers (both at a national and local level), including restaurants which have been gained from, or lost to, Just Eat;
- (iii) the extent to which these providers have responded to competition from Just Eat (including any specific initiatives); and
- (vi) the number of unique and shared consumers/orders and the number of unique and shared restaurants between each of these providers and Just Eat (or, alternatively, a comprehensive list of consumers and restaurants from which the CMA might ascertain such information);

5.3.2 Business models and expansion plans

- (i) their planned product expansion, in particular:
 - (a) the extent to which these providers are increasingly targeting Just Eat's core restaurants (i.e. independent restaurants) and chains with similar consumer demographics and mass market appeal;
 - (b) the extent to which sole reliance on branded restaurant groups would be insufficient to ensure profitability; and
 - (c) the extent to which these providers have considered expanding into OTO aggregation;
- (ii) their planned geographic expansion within the UK, in particular:
 - (a) the current and planned geographic coverage of each platform;
 - (b) the expected timeframe for any such expansion;
 - (c) any obstacles to such expansion that these providers have identified (either prior to, or after entering the UK), and how these providers plan to overcome such obstacles;
 - (d) the minimum efficient scale at which it is commercially feasible for these providers to enter a region or locality; and
 - (e) the estimated costs of expanding across the UK, and for UberEATS and Amazon Restaurants, the extent to which economies of scale and synergies derived from their existing resources, networks and infrastructure in adjacent markets would facilitate such expansion;
- (iii) Deliveroo's plans for any additional capital which they may raise in new funding (e.g. would the additional funding be funnelled to international expansion into jurisdictions where they are not currently present, or would it be used to expand into local areas within jurisdictions where they are already active?);

- (iv) the operational model that UberEATS plans to use for its UK expansion, in particular:
 - (a) the extent to which on-boarding scooters and bikers for food deliveries for UberEATS is easier than on-boarding car drivers (for transportation of passengers for Uber); and
 - (b) the extent to which UberEATS will be operationally (in terms of technological infrastructure and systems) and financially distinct from its passenger car transport business, given that while Uber capitalises on the existing technological infrastructure and network it has developed for the Uber app (and the brand recognition that the Uber brand evokes), UberEATS is a separate business from Uber and not a marginal activity (as it requires a different set of delivery personnel (i.e. scooter riders and drivers)).

6 Conclusion

- 6.1** In summary, as explained in this response and the attached Annexes, Just Eat considers that the CMA's analytical framework set out in the Sol has large gaps and that its approach to assessing key elements such as the indirect network effects and the approach to single and multi-homing is either mistaken or does not go deep enough. Further, the evidence on which the CMA proposes to rely in order to develop its understanding of the market and reach its decisions appears to miss the key issues.
- 6.2** Just Eat believes that the CMA's analytical framework is incorrect and the right framework and evidence in fact shows that:
 - 6.2.1** Hungryhouse is not a competitive constraint on Just Eat today;
 - 6.2.2** [REDACTED]; and
 - 6.2.3** Deliveroo and UberEATS provide a greater and growing competitive constraint on Just Eat.
- 6.3** Just Eat further believes that the constraint it faces from direct ordering, including players such as Domino's and orders made with restaurants directly over the telephone is clear and supported by Just Eat's internal documents and the data presented to the CMA. As such, Just Eat considers that the product market for the supply of OTO aggregation platforms is unduly narrow and restrictive, and that the relevant market should encompass all of the substitutes set out in paragraph 14 of the Sol (i.e. delivery/OTO aggregation platforms including [REDACTED] competitors like HeyMenu, direct ordering through websites of chains and takeaway restaurants, white-label app building suppliers like Preoday and other forms of direct ordering from takeaway restaurants (e.g. over the telephone)).
- 6.4** Finally, Just Eat considers that the relevant market should be national in scope but agrees that there are some local elements to competition. However, Just Eat reiterates that irrespective of the local dynamics of competition, the competitive constraint comes from sources other than Hungryhouse and Just Eat is not constrained by Hungryhouse irrespective of whether the market is looked at nationally or on a more localised basis.

RESPONSE TO STATEMENT OF ISSUES

Economic framework and empirical evidence

EXECUTIVE SUMMARY

- 1 The following two Annexes set out:
 - a theoretical framework for exploring competition in two-sided platforms in general, in particular concentrating on the constraints on one platform from the possibility that the paying side of the market will switch entirely to another platform or multi-home on another platform (Annex 1); and
 - an assessment of the relevant empirical evidence that follows from the application of the framework (Annex 2).
- 2 In particular, the theoretical framework identifies that the critical empirical issues are:
 - the total number of consumers (and their orders) on each platform;
 - the number of unique consumers (and their orders) on each platform;
 - the number of shared consumers (and their orders) across platforms (i.e. the level of consumer overlap);
 - the total number of restaurants on each platform;
 - the number of unique restaurants on each platform;
 - the number of shared restaurants across platforms;
 - the existence of any other horizontally differentiating features across platforms;
 - the gross margins made by restaurants; and
 - the price structures and levels of each platform (in particular, the commission rate and joining fee).
- 3 The economic framework also shows that, from the restaurant perspective, there are two relevant competitive constraints from one platform on another.¹
 - First, the most material constraint is whether a restaurant would switch entirely from one platform to another (the “single homing” constraint).
 - Second, whether a restaurant would additionally list on a second platform (the multi-homing constraint) – primarily multi-homing on a second platform is a complementary activity but there is also a limited extent to which it places a competitive constraint on the first platform.

¹ We do not consider the “consumer degradation theory of harm” in this Annex since we believe it to be unrealistic, for the reasons set out in Section 4.2 of the main response.

- 4 Examining the empirical evidence on the strength of these constraints, we find that [X].
- 5 The economic framework also shows that [X].

ANNEX 1: THE APPROPRIATE THEORETICAL FRAMEWORK

- 6 The SLC Decision acknowledges that this is a two-sided market with indirect network effects on both sides. For the purposes of this discussion, we define the indirect network effects to be as follows:
- Other things equal, consumers prefer a platform with more restaurants to one with fewer restaurants.
 - Other things equal, restaurants prefer a platform with more orders to one with fewer orders.
- 7 These observations do not seem to us to be controversial (and indeed are common sense). We note that the Sol states that *“As explained in the phase 1 decision, an OTO platform provider needs to attract two types of consumers: takeaway restaurants and consumers. The nature of such a platform may therefore be characterised by indirect network effects, as the utility (or value) that consumers on one side derive from the platform may depend on the number (and/or variety) of consumers on the other side. This can generate feedback loops between them”*.²
- 8 The economic literature on platforms commonly starts from the observation that there are indirect network effects.³ Popular economics books such as David Evans and Richard Schmalensee’s *“Matchmakers”* similarly take as given the existence of these effects. Just Eat presented its strongly held view that there were indirect network effects at the CMA site visit, supported by extensive evidence.
- 9 However, Just Eat also notes that the Sol identifies that there should be *“no presumption that indirect network effects are strong in relation to OTO platforms, nor that the indirect network effects are equally strong in both directions”*.⁴ Just Eat is surprised at the apparent scepticism that the CMA is now expressing. Whilst it is understandable that the CMA would wish to test the existence of indirect network effects, Just Eat considers that this statement flies in the face of the evidence and raises real doubts about the approach the CMA is adopting to this case. This Annex (Annex 1) sets out the appropriate conceptual approach to the two sided nature of the OTO platform market (“platform” for short). Annex 2 sets out empirical evidence which shows how the behaviour of consumers and restaurants, and the performance of the platform operators, is entirely consistent with the approach set out in Annex 1 (and is hence probative of this approach).
- 10 Just Eat also is concerned that the CMA’s apparent scepticism around this issue has led to its theoretical framework failing to work through the consequences of the existence of indirect network effects in these markets properly (as discussed above in Section 4). Given this, we explore in more detail the implications of the

² Sol, paragraph 25.

³ E.g. *The industrial organisation of markets with two-sided platforms*, Evans and Schmalensee, 2005; *Competition in two-sided markets*, Armstrong, 2005; *Chicken and egg: Competition among intermediation service providers*, Caillaud and Jullien, 2003; *Two Sided Markets and Price Competition with Multi-Homing*, Gabszewicz and Wauthy, 2005; *Platform Competition in Two-Sided Markets*, Rochet and Tirole, 2002.

⁴ Sol, paragraph 26.

existence of indirect network effects on competition in this Annex (taking as given for now that they do exist). We provide direct and indirect evidence on their existence in the following Annex.

The consumer side of the market

- 11 In this section, we explore the implications of different types of consumer preferences for competition in the market. We start by exploring some extreme cases, as these are useful to illustrate the key intuitions. We then analyse some more complex types of consumer preferences to see how the theoretical predictions change. In Annex 2 we consider the empirical evidence on consumer preferences.
- 12 As a starting point, if we assume broad equivalence of the functionality and price of the platforms and reasonable levels of transparency of information about their coverage, we can assume that consumers care about the choice of restaurants that a platform offers, and prefer a platform with more restaurants to one with fewer.⁵ To anticipate the findings of Annex 2, there is strong evidence that consumers care about restaurant choice, although this is not the only aspect of consumer behaviour. We return to the implications of more complex models of consumer choice below.
- 13 Consumers do not pay to use platforms, as recognised in paragraph 6 of the Sol. However, they do incur an implicit or opportunity cost from using an additional platform, namely that there is a time and hassle cost of looking on that additional platform. As a result, consumers will only look on a second platform if the benefit that they get (in terms of widening their choice of restaurants over and above those available on the first platform, i.e. the incremental restaurants) outweighs the incremental search cost. If consumers do search on multiple platforms, this is known as multi-homing.
- 14 Moreover, if a consumer would only search on one platform (known as single homing), because the incremental benefit of searching on a second platform does not outweigh the incremental cost, one would expect the consumer to choose the platform with the greatest choice of restaurants.
- 15 Some simple predictions follow from this framework, assuming for now that consumers only care about the number of restaurants:
 - The platform with the greatest number of restaurants will be most often searched by consumers.
 - Some but not all consumers will search on additional platforms (i.e. those that have low search costs).
 - The more incremental restaurants a platform offers relative to an existing platform, the more consumers will look at that platform in addition to the existing platform.

⁵ There may in principle be other features of a platform that consumers care about, but we simplify for the purposes of this illustration.

- If two platforms offer exactly the same restaurant base, it is not obvious why consumers would look on both platforms (unless they are “horizontally differentiated” on other dimensions).⁶
 - If one platform only has a subset of the restaurant base of the other (i.e. it is “negatively vertically differentiated”)⁷, it is not obvious why any consumer would choose the platform with the smaller restaurant base (unless the platform is “horizontally differentiated” on other dimensions).
 - If one platform has a completely different restaurant offering to other platforms in the market, it is more likely to attract consumers. Some of these consumers will be entirely new consumers who were not attracted by the existing platforms’ offers, and some will be multi-homing consumers who are attracted to the new platform in addition to their existing platforms.
- 16 In contrast, if consumers do not care about the number of restaurants on a platform at all, then they would be expected to split themselves evenly across platforms irrespective of the number of restaurants.

More complex models of consumer choice

- 17 The analysis above has assumed (for illustrative purposes) that consumers care only about the number of restaurants, and that (implicitly) they know the restaurant offers on both platforms. Clearly these may be extreme assumptions. We therefore explore how the conclusions are affected under alternative assumptions.
- 18 For instance, suppose an individual consumer cares about having his or her top N local restaurants on the platform (and about no other restaurants), where N is the number of those restaurants.
- If Just Eat has more of the top N restaurants than Hungryhouse then that consumer would prefer Just Eat over Hungryhouse, and vice versa.
 - If both platforms have all of that consumer’s top N restaurants, or the same number, then that consumer would be indifferent between the platforms. If there are multiple consumers in this position then one would expect some to choose Just Eat and some to choose Hungryhouse.
- 19 As an extreme illustration of this point, suppose that a consumer only cares about one restaurant. That consumer would choose Just Eat over Hungryhouse if that restaurant lists on Just Eat but not Hungryhouse (and vice versa) and if the restaurant lists on both platforms, the consumer is indifferent between them. (Although we note that where a consumer has a relatively small and fixed repertoire of restaurants he or she may simply use direct ordering, as there may be limited additional benefit from using a platform.)

⁶ Two products are horizontally differentiated if, at equal prices, some consumers would choose one product and some the other. For instance, there may be two identical newsagents at opposite ends of a high street (horizontal differentiation by location). Consumers would choose between the newsagents depending on which is the closest to where they live. Two coffee shops may be horizontally differentiated both by location and by aspects of the offer (e.g. the flavour of the coffee beans, type or roast, the range of cakes offered, etc.).

⁷ Two products are vertically differentiated if, at the same prices, all consumers would prefer one product to another. For instance, a four-pack of Stella Artois 330ml bottles and a four-pack of Stella Artois 330ml bottles with free packet of Pringles.

- 20 Given that Just Eat has more restaurants on its platform than Hungryhouse, it would still pick up more consumers under these preferences, but in proportion to the relative number of restaurants on each platform (assuming that each restaurant is equally important)⁸.
- 21 Suppose instead that consumers mostly care about their top N restaurants, but every so often they want to try something else from another restaurant and so they care about the choice of additional restaurants. In this case:
- Consumers would prefer Just Eat over Hungryhouse if it has more of the top N restaurants.
 - Consumers would prefer Just Eat over Hungryhouse even if they both have the top N restaurants, given that Just Eat has a greater choice overall.
 - It is not clear whether a consumer would prefer Hungryhouse over Just Eat if Hungryhouse had more of his or her top N restaurants, as it would depend on how much that consumer cared about the top N restaurants compared to how much he or she cared about the choice of restaurants outside the top N.
- 22 It follows that the more that consumers care about a general choice of restaurants, the more that the larger platform in terms of restaurants will have a competitive advantage. The more that consumers care about only a small number of specific restaurants, the more that a smaller platform in terms of restaurants will be able to attract consumers, as its offer will more often be on a par with that of the larger platform assuming that it has the restaurants that consumers most care about.⁹
- 23 A second reason why a smaller platform might be able to attract some consumers is that consumers may not be aware of all the platforms in the market and/or their offerings.
- So, for instance, if a consumer were made aware of Hungryhouse through marketing, and that consumer did not know the offer of Just Eat, the consumer may use Hungryhouse as it would be better to do so than not to use a platform at all (since they are unaware of Just Eat).
 - However, if the consumer subsequently finds out about Just Eat and searches on it, they may find that they prefer the offer on Just Eat given its larger restaurant portfolio, in which case one would expect that consumer subsequently to switch away from Hungryhouse.¹⁰
- 24 This would suggest that any platform will have a set of consumers that are new consumers to the market as a whole. However, if these consumers care about choice, the smaller platform will find it hard to retain those consumers over time.
- 25 A third (related) reason why a smaller platform might be able to attract some consumers is that consumers might get into the habit of using a particular

⁸ If some restaurants are more important to consumers than others, and Hungryhouse has relatively more important restaurants than Just Eat, it would expect to pick up a greater share of consumers than its restaurant share.

⁹ As mentioned above, direct ordering would be a good substitute for such consumers, as they would not benefit from the primary offering of the platform, i.e. a wide choice of restaurants.

¹⁰ Depending on the definition of an active consumer, e.g. there may be consumers that have ordered in the last 6 months on a particular platform, and so may be captured in the definition of an active consumer on that platform, but which no longer actively use the platform.

platform, and not switch (for instance, because they have high opportunity costs of time, because there are some perceived switching costs of typing in your card details into a new site, or because there was a low perceived benefit of switching to another platform). If this was a material consideration, one would expect that there would be limited relationship between the number of restaurants on a platform and the number of consumers, as even if consumers had chosen the site based on choice of restaurants initially, they would not change their behaviour as the relative propositions of the platform changed.¹¹

- 26 We examine the evidence on whether consumers appear to have a preference for choice of restaurants in Annex 2. To anticipate the answer, and motivate the remaining discussion, the evidence strongly supports that consumers care primarily about choice, but that to a limited extent aspects of these other elements of consumer preference are also likely to be present.

Restaurant side of the market

- 27 As with consumers, we approach the analysis of restaurant preferences by taking a simple example to begin with to illustrate the intuition.
- 28 As a starting point we assume that restaurants seek to maximise profits. We also assume that restaurants make an incremental profit on each order (i.e. their gross margin on an order exceeds the commission rate).¹² Given this, restaurants would be expected to trade off two factors when deciding to list on a platform – the price paid to join the platform and the incremental profits that can be made from the consumers on that platform.¹³
- 29 The concepts of single and multi-homing apply equally on the restaurant side as on the consumer side, and the decision framework is similar – although modified to take account of the fact that restaurants pay platforms.
- First, suppose that a restaurant that is already listing on one platform and is considering listing on a second platform (and there are only two platforms). It will join the second platform if the incremental profits to be made from the incremental orders arising on the second platform outweigh the joining fee. If so, it will multi-home across the two platforms. If not, it will single home.
 - Second, if a restaurant does single home, one would expect it to list on the platform which provides it with the largest absolute profit. This will depend on (inter alia) the number of consumers (and in particular orders) it would expect to gain on that platform.
- 30 Again, some predictions follow from this framework.
- First, if platforms do not charge a joining fee, then one would expect multi-homing to be common, as restaurants would make a profit from joining any platform that offered access to additional consumers.

¹¹ If this is the case, competition for those consumers has essentially ceased, so the maintenance of a small group of habitual consumers on a smaller platform would not demonstrate the existence of a competitive constraint from the smaller platform on a larger platform, but rather the absence of any such constraint (in either direction).

¹² Both these assumptions seem plausible. Profit maximisation is an uncontroversial assumption. Numis identifies that takeaway restaurants make a gross margin of 72%.

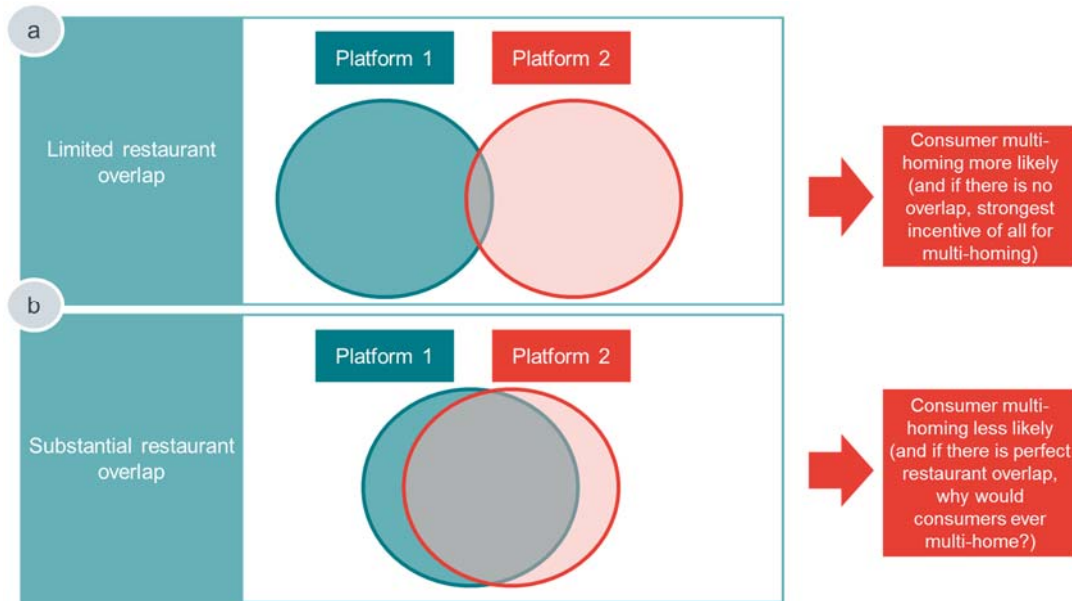
¹³ Net of commissions and any ongoing charges.

- Second, where platforms do offer a joining fee, restaurants are more likely to multi-home where one platform has a different set of consumers, and a large number of such consumers, to those on another platform.
- Third, single homing is likely when two platforms offer access to exactly the same consumer base, because in that situation there is no incremental benefit from listing on a second platform. In this situation, restaurants would be expected to choose the cheapest platform.
- Fourth, suppose one platform has a strict subset of the consumer base of the other. In this case, and assuming equal prices (and a joining fee), one would expect restaurants to list only on the larger platform. This is because there is no incremental benefit to listing on the smaller platform, and so the restaurant would want to avoid paying the additional joining fee from listing on the smaller platform. In this situation the smaller platform would need to discount its commission rate (depending on the size of its disadvantage in terms of its consumer proposition) in order to attract restaurants from the larger platform. If the platform is much smaller, there may be no positive price that it could charge and still attract consumers. We explore this issue further below.

Implications for competition

- 31 The approach above suggests that multi-homing on one side of the market is a function of horizontal differentiation on the other. It is more likely that it is worth consumers/restaurants searching on an additional platform if it provides them with access to more restaurants/consumers (respectively). Moreover, vertical differentiation is an advantage to the larger platform, as consumers/restaurants are more likely to look only on the larger platform (in terms of restaurants/consumers respectively) if they single home.
- 32 The simple conditions that restaurants value the number of consumers (orders) on a platform and consumers value choice of restaurants on a platform can lead to a feedback loop. If one platform has more consumers, it will attract more restaurants. If it has more restaurants, it will attract more consumers, and so on.
 - Where one platform is strictly better than the other, in the sense that it has all the restaurants on the other platform and more besides, and also has all the consumers on the other platform and more besides, this would tend to lead to that platform pulling away from the smaller platform.
 - Where one platform offers access to a completely different proposition on one side of the market, this is more likely to lead to multi-homing on the other side. (For instance, if two platforms have completely different consumer bases, restaurants are likely to want to multi-home). This situation is more likely to lead to multiple platforms coexisting over time.
- 33 Where there is partial overlap between two platforms, which is more likely to be the reality in many circumstances, we are likely to observe an intermediate situation. From the consumer perspective, there will be some single homing (and more on the large platform) and some multi-homing. From the restaurant perspective, there will be some single homing and some multi-homing. Situations of greater or lesser horizontal differentiation between platforms from a restaurant

perspective, and the implications for the level of multi-homing by consumers, are illustrated below.



- 34 If platforms overlap substantially (e.g. in the restaurant proposition) this would lead to their being close substitutes for consumers in the short term. However, it would also lead to limited multi-homing by consumers, and hence it would be difficult for both platforms to survive in the long term. Equally, if platforms have materially different propositions (e.g. on the restaurant side) consumers would not think of them as being close substitutes and so would be more likely to multi-home – which would then make it more likely that both platforms would survive in the long term.

The limited constraint of a smaller platform on a larger platform

- 35 Having illustrated the key ideas using a simple economic framework, we now apply the framework to the current merger.
- 36 The CMA is exploring whether Hungryhouse currently places a constraint on Just Eat, when considering the theory of harm that the merged entity would put up prices to restaurants.¹⁴ There are two situations to consider.
- First, whether restaurants would switch from listing only on Just Eat to only on Hungryhouse in response to a commission increase by Just Eat (the single homing constraint).
 - Second, whether restaurants would switch from listing on Just Eat only to also listing on Hungryhouse in response to a commission increase by Just Eat (the multi-homing constraint).
- 37 The single homing constraint is the most important, as restaurants that choose between listing on one platform or the other are treating them as substitutes, while restaurants that choose to list on multiple platforms are treating them

¹⁴ We note that the CMA is also exploring whether the merged entity would degrade the offer to consumers. As set out in Section 4 of the main response, this is not plausible given that it would involve overturning the existing “consumers for free, restaurants pay” model and would involve damaging the value proposition that the merged entity offers the restaurants, i.e. access to consumers.

primarily as complements, in the sense that they offer different routes to market. However, there is some limited competitive constraint arising from the multi-homing constraint and we explore this below.

38 We explore each of these routes in turn below.

The single homing constraint

39 If it is single homing, a restaurant will list on the platform that gives it the most profit. In other words, a restaurant currently single homing on Platform A will switch to Platform B if it can make higher profits from doing so. The trade-off a restaurant would consider in thinking about whether to switch (single homing) platforms is as follows.

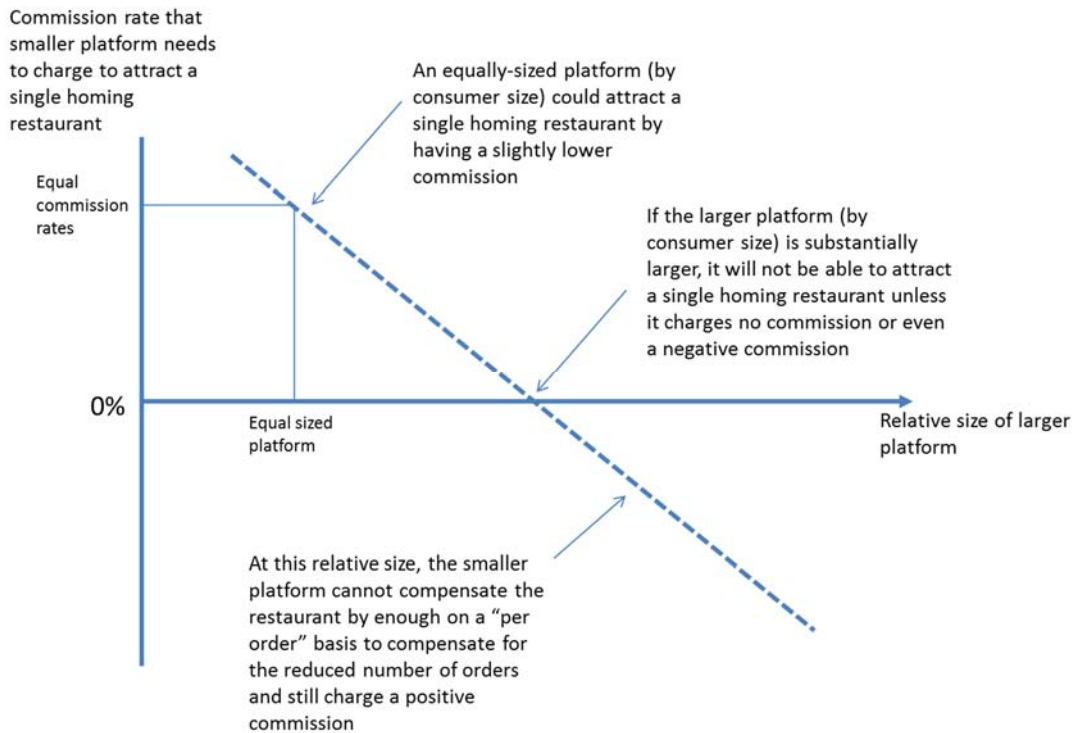
- Profit from Platform A = Number of orders/restaurant on platform A * average order value on platform A * net profit margin per order – joining fee for Platform A.
- Profit from Platform B = Number of orders/restaurant on platform B * average order value on platform B * net profit margin per order – joining fee for Platform B.

40 In each case, net profit margin per order = (gross margin % per order – commission rate per order).

41 For simplicity, suppose that two platforms have the same average order value for a particular restaurant and the same joining fee, and that restaurants make the same gross margin % per order irrespective of which platform they come from. It follows that there is a trade-off between the number of orders/restaurant and the commission rate it charges.

42 Essentially, a smaller platform will only be able to attract restaurants to single home upon it if it charges a lower commission rate. The larger is the discrepancy in the number of orders/restaurant between the two platforms, the lower the commission rate needs to be on the smaller platform for a restaurant to switch from the larger platform to the smaller platform. If the orders/restaurant difference is sufficiently large, the smaller platform would need to offer a negative commission (i.e. it would need to pay the restaurant) in order to encourage restaurants to list only on its site.

43 This is shown in stylised form in the following illustration.



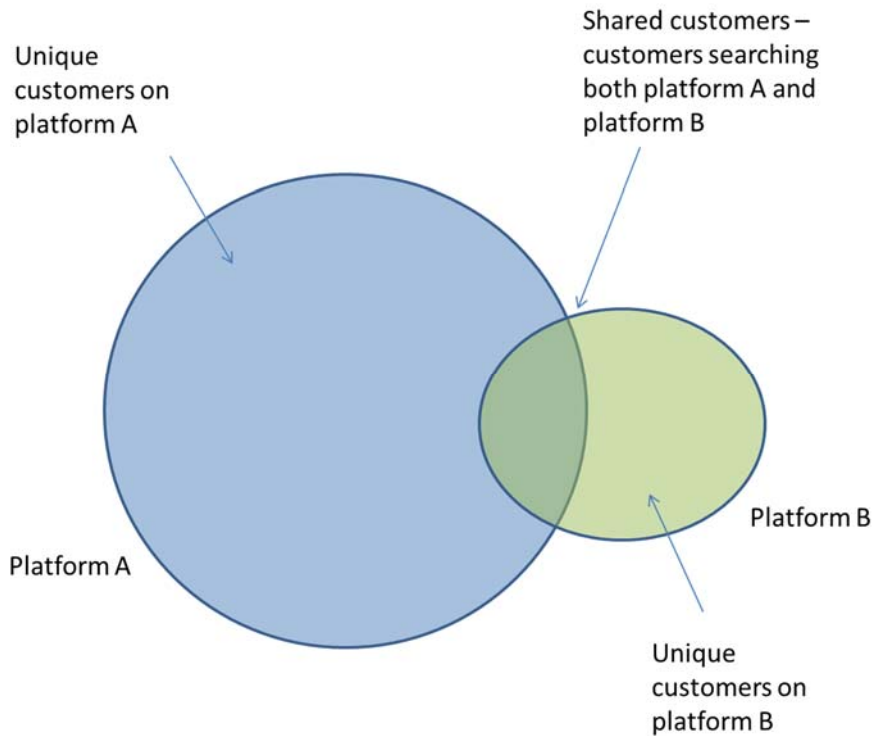
- 44 If a smaller platform cannot charge a positive commission to a single homing restaurant and attract it from the large platform, it is hard to see how it could provide a competitive constraint upon the large platform. Effectively the smaller platform is not a substitute for the larger platform in this situation.
- 45 We provide empirical evidence demonstrating that [§].

The multi-homing constraint

- 46 Restaurants typically multi-home on a second platform because they can access an additional group of consumers (and so it is likely that multi-homing primarily reflects complementarity¹⁵ rather than substitution). However, there is still some constraint on the first platform.
- 47 This constraint can be seen by breaking down the restaurant multi-listing decision. A restaurant will multi-list on Platform B if incremental profits from listing on Platform B exceed the joining fee for Platform B. The incremental profits from listing on Platform B come from two sources.
- The “new consumer” effect: number of unique orders * average order value * net profit margin per order (where the net profit margin is the gross margin % - commission %). In other words, a restaurant is more likely to multi-home on Platform B as well as Platform A if Platform B has lots of unique consumers that the restaurant cannot access on Platform A.
 - The “shared consumer diversion” effect: the number of orders from consumers looking on both platforms * average order value * proportion of shared consumers switching to the new platform * margin differential (= (old platform margin - new platform margin)).

¹⁵ In the lay sense, i.e. as an additional route to market.

48 These effects are illustrated below.



49 The intuition for the “shared consumer diversion” effect is as follows. When a restaurant multi-homes on Platform B as well as Platform A, some of the shared consumers – consumers that use both platforms – that previously chose that restaurant via Platform A might now choose the same restaurant on Platform B instead.

50 Other things equal, if the commission rate is lower on Platform B than Platform A, this will increase the profits of the restaurant from multi-listing.

51 As a result, the possibility of restaurants multi-listing on Platform B provides a limited competitive constraint on Platform A. This is because if Platform A increased its commission rates, it may make it more attractive for restaurants to multi-list on Platform B due to the shared consumer diversion effect, and if so Platform A would expect to lose the profits made on a proportion of the shared consumers.

52 The extent to which such a constraint exists therefore depends on:

- the number of shared consumers (i.e. the level of consumer overlap);
- the proportion of those consumers that would switch their orders to the new platform;
- the commission differential between the platforms;
- the number of unique consumers (as this determines the general attractiveness of multi-listing);
- the number of restaurants that consider multi-homing to be a marginal decision and whose decision may therefore be swayed by the shared consumer diversion effect; and

- the joining fee.

53 We provide empirical evidence demonstrating that [REDACTED].

Marketing costs

54 An additional dynamic is the need to invest in sunk costs to maintain and grow the platform, in particular, through marketing to consumers.¹⁶ There are broadly two types of marketing.

- First, marketing investment in brand awareness and loyalty (e.g. TV, out of home and digital advertising) is required to attract consumers to try the platform and keep the platform front of mind – both by letting the consumer know about the existence of the proposition and through creating actual or perceived horizontal differentiation from other platforms through branding. In both cases, the effectiveness of this type of marketing will likely depend on the quality of the core proposition relative to that of rivals. If a consumer tries a new platform, he or she will be more likely to return to that platform if it offers something different or new compared to the existing platforms that he or she currently uses.
- Second, offering money-off vouchers is a way of attracting consumers to try a platform. Once the voucher has been spent, the platform needs to rely on the attractiveness of its core proposition to retain the consumer – either by offering something new or different.

55 A smaller platform without differentiated content would therefore be likely to have to spend relatively more on marketing, and it would also be expected that the effectiveness of this marketing in retaining consumers would be low.

56 There is also a dynamic financing constraint. The ability of a platform to compensate restaurants for a poor proposition on the consumer side, through offering lower commissions or joining fees, acts to constrain the funds available for reinvestment in marketing to attract those consumers. It would be possible for a platform to offer its services for free to all restaurants. However, this would mean it had no money to spend on marketing and so would struggle to develop the consumer side (and this would be a loss-making strategy because of the on-boarding costs of attracting a new restaurant, in particular the set top box that is provided).

57 We show in Annex 2 below that (as presented at the CMA site visit) [REDACTED].

Dynamic competition

58 The constraints we have identified above are largely “static” constraints. It is also necessary to consider the dynamic constraints that platforms face through the feedback loops created by the indirect network effects. In particular, the key question is whether a smaller platform with small numbers of unique consumers and restaurants, and no other horizontally differentiating features, will be able to expand to catch up with a larger platform.

59 It is clear from the logic above that this would be extremely difficult.

¹⁶ Marketing to restaurants is relatively limited compared to marketing to consumers.

- In terms of attracting restaurants:
 - First, it will be difficult to attract single-homing restaurants to switch to the platform, as the number of consumers is small. It would be possible for the smaller platform to encourage switching if it dropped its commissions materially, or even paid restaurants to join, but it is difficult to see how this would be a profitable strategy.
 - Second, it may be able to attract restaurants to multi-list on it as well as on the larger platform, but this would not provide consumers with an incentive to use the smaller platform in addition to or instead of the larger platform, as there is no additional choice being provided to the consumer.
 - In terms of attracting consumers:
 - As mentioned above, the low number of unique restaurants means that consumers will be unlikely to single home or multi home on the smaller platform.
 - It is possible to attract consumers to the platform by providing them with money off vouchers. But if the fundamental restaurant choice proposition is not attractive, once the consumer has used the voucher, there is limited reason for them to stay, given that there is a more attractive platform available to them in the market.
- 60 There seem to be only two ways to break this vicious cycle. First, a smaller platform could engage in horizontal differentiation, either in terms of the type of restaurants being offered on the platform, or in terms of other additional features. Second, it is possible that the platform could engage in a massive and sustained marketing campaign on both sides of the market, e.g. by paying restaurants to multi-list or single list on the platform and very heavily increasing its consumer marketing. However, such a strategy would seem to be unlikely to be profitable given the marketing costs described above.
- 61 Over time, therefore, one would expect a smaller platform to stay small and to find it extremely difficult to expand if it does not offer anything different to the larger platform.
- 62 We show in Annex 2 below that [X].

ANNEX 2: THE EVIDENCE

[REDACTED].