

ME/6659/16

ANTICIPATED ACQUISITION BY JUST EAT.CO.UK OF HUNGRYHOUSE HOLDINGS LIMITED

RESPONSE TO ISSUES PAPER

1 Introduction

- 1.1** This submission is Just Eat's response to the Competition and Markets Authority's ("CMA's") issues paper of 5 April 2017 (the "**Issues Paper**") and it reflects the discussions between the CMA, the Parties and their advisers which took place at the issues meeting on 7 April 2017 (the "**Issues Meeting**").
- 1.2** The Issues Paper is deeply flawed in key respects and is selective and subjective in the examples it has used from the Parties' internal documents to support its case. The 'worst case scenario' set out in the Issues Paper is only supported, at best, by limited, out of date anecdotal evidence from a small selection of restaurants. By contrast, the Parties have put forward detailed and current evidence to substantiate their views. The Parties therefore consider that the CMA does not have sufficient evidence to conclude, on an objectively justified basis, that there is a realistic prospect that the Proposed Transaction will substantially lessen competition.
- 1.3** The flaws in the Issues Paper can be grouped into the following categories:
- 1.3.1** First, the Issues Paper has failed to appreciate that the key driver in this sector is about meeting the demand of consumers for takeaway food. The model that online takeaway providers use is irrelevant to consumers – what consumers are concerned about is receiving good quality food, which arrives promptly, when they want it – and they have several options available to them to obtain this. This is the reason that the Parties face significant and increasing constraints from a number of alternative players, such as Deliveroo and UberEATS, in addition to other constraints including Domino's and direct ordering – since in all cases consumers think of these as being good alternatives to the services offered by the Parties.
 - 1.3.2** The CMA completely undervalues these alternatives in the Issues Paper as it only looks at one side (the restaurant side) of the market, even though it accepts that this is a two-sided market. In particular, the CMA's approach fails to recognise that what restaurants want is orders from consumers, and it is access to consumers that primarily drives restaurant behaviour.
 - 1.3.3** Second, the Issues Paper fails to appreciate that this dynamic is why the [X]. In light of this dynamic, as a matter of business reality, the Just Eat management team are [X]. The Issues Paper fails to appreciate the speed and dynamism of the changes in this sector, notably the recent exponential growth of Deliveroo and UberEATS, the future plans of both firms to continue to rapidly expand their offering, and the likely expansion of Amazon Restaurants and others, which means that the Issues Paper severely underestimates the competitive threat placed on Just Eat from these sources.

- 1.3.4 Next, but crucially, the Issues Paper's failure to appreciate both the importance of the interconnectedness of the consumer and restaurant sides of the market and the rate of change in this marketplace means that its assessment of the significance of the competitive position of Hungryhouse now and going forward is deeply flawed. Just Eat's management has explained that [REDACTED]. Just Eat's management has explained, and the economic evidence demonstrates, that it is [REDACTED].
- 1.3.5 The CMA has also received direct evidence from Hungryhouse and its parent, Delivery Hero, on these points. The reality is that [REDACTED]. Just Eat has explained the economics of the transaction and transaction price to the CMA and there is no basis for the assertion in paragraph 8(d) of the Issues Paper that [REDACTED].
- 1.3.6 If the CMA in some way thinks that Hungryhouse's position in terms of share or results makes it comparable to Deliveroo or UberEATS, as was implicit in some of the questions at the Issues Meeting, this again reflects a failure to appreciate the dynamics of the sector (and of platform markets in general). In this two-sided market, Hungryhouse is a [REDACTED] second place market operator, with the traditional model, and it is faced with [REDACTED], having innovated in systems and delivery models, Deliveroo and UberEATS are enjoying the benefits of growth in the virtuous part of the cycle. They are easily able to justify investment in further rapid growth, in particular as their customers generate a high degree of repeat business. [REDACTED].
- 1.4 The Parties recognise that the task has not been simple for the CMA. This sector is moving so quickly that Deliveroo and UberEATS have become considerably more significant competitive constraints even during the course of this process. The rate of change also explains why the Parties appear to have focused more on each other in some of their internal documents disclosed to the CMA. Indeed, [REDACTED]. However, the Parties' internal documents also consider a number of other players and the CMA has failed to properly account for this. In addition, the Just Eat documents referred to in the Issues Paper are all at least six months' old which, in such a fast moving market, makes much of their data and content out-dated.
- 1.5 The Parties' views as to how the market in which they operate should be assessed are entirely in line with recent independent and authoritative publications, including the report into dynamism in online markets published by the Department of Business, Energy and Industrial Strategy ("BEIS")¹ and the KPMG ex-post evaluation of entry and expansion in UK merger cases (the "KPMG Entry and Expansion Report").²

2 The constraints faced by Just Eat from Deliveroo and UberEATS

2.1 [REDACTED]

¹ See Department of Business, Energy and Industrial Strategy, *Dynamic Competition in Online Platforms: Evidence from five case study markets*, March 2017, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/602816/Digital_Platforms_report_new_BEIS.pdf.

² See *Entry and expansion in UK merger cases: An ex-post evaluation*, KPMG LLP, April 2017, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606693/entry-and-expansion-in-uk-ex-post-evaluation-kpmg.pdf

- 2.1.1 The Parties consider that the CMA has completely undervalued the significant constraints imposed on them currently, and in the future, by new entrants and fast growing online businesses who have entered the market rapidly and are expanding significantly.
- 2.1.2 Well-resourced players, such as Deliveroo, have extensive networks, innovative technology, and have been able to raise huge amounts of capital successfully in order to fund their growth. In addition, players in adjacent markets, such as Uber and Amazon, are able to leverage their powerful brands and huge resources in order to enter and grow in the market, capitalising on their vast base of loyal consumers to support their growth.
- 2.1.3 These alternative providers are already competing successfully [REDACTED], submitted as part of the Merger Notice. The CMA provided some initial comments on this Impact Analysis, and the Parties responded to these points demonstrating either that the CMA's comments were not supported, and/or that the key results of the Impact Analysis were robust to the CMA's concerns (as demonstrated by numerous additional sensitivities). It is disappointing, given its obvious relevance to the issues and the lack of empirical analysis presented by the CMA elsewhere in the Issues Paper, that the Impact Analysis has been completely overlooked by the CMA in the Issues Paper.³
- 2.1.4 Exhibit 1 below shows the estimated effect of [REDACTED] on Just Eat's order volumes, compared with those areas where either competitor is not present. It demonstrates that, other things equal, Just Eat's orders are affected by [REDACTED]% and generally [REDACTED]% in areas where [REDACTED] is present, and [REDACTED]% and generally [REDACTED]% in areas where [REDACTED] is present. This clearly demonstrates that [REDACTED].

Exhibit 1. [REDACTED]

- 2.1.5 Exhibit 1 also demonstrates [REDACTED], since the analysis covers Just Eat's total order volumes. If it were re-cut so that it related only to the portion of Just Eat's business that related to [REDACTED].
- 2.1.6 It further demonstrates that the presence of Hungryhouse [REDACTED] on the volume of Just Eat's orders in those areas where Hungryhouse is present, showing that Just Eat [REDACTED]. This is the reason that Just Eat [REDACTED].
- 2.1.7 The data presented in Exhibit 2 below further supports the finding [REDACTED]. The chart shows the change in the growth rate of Just Eat's order volumes for the last three years. The red line shows that, up to the beginning of 2016, the rate of growth of Just Eat's orders was [REDACTED].

Exhibit 2. [REDACTED]

2.2 Deliveroo and UberEATS are becoming increasingly significant from the consumers perspective

³ In particular, the CMA has presented no criticisms of the analysis, which suggests that the results should be considered probative.

- 2.2.1 [REDACTED], since the launch of UberEATS in June 2016, more than one million users have downloaded the UberEATS app, despite it currently being present in only three cities. This suggests that Uber's strong existing brand, coupled with the use of Uber's main app to market UberEATS, will allow for rapid growth in UberEATS' customer base when its takeaway delivery service launches in new locations.⁴

Exhibit 3. [REDACTED]

- 2.2.2 [REDACTED]. The CMA has focused its Issues Paper only on the impact of the Proposed Transaction on the restaurant side of the market. However, as a result of the two-sided nature of the market, it is imperative to also consider the consumer-side. In order to successfully compete against Deliveroo and UberEATS, Just Eat must [REDACTED] to increase order volumes from consumers which in turn maximise its appeal to restaurants, and thus gain additional consumers as part of the indirect network effects (i.e. virtuous/vicious circles) that characterise this type of market.

2.3 The CMA has failed to take into account the huge growth of Deliveroo and UberEATS

- 2.3.1 The additional submission submitted by Just Eat on 31 March 2017 (the "Additional Submission") [REDACTED]. Exhibit 4 below [REDACTED].

Exhibit 4. [REDACTED]

- 2.3.2 As noted in the Additional Submission, one of the smallest towns in which Deliveroo is currently present is St Andrews, which has a population of around 17,000 residents. Assuming this is a reasonable benchmark for the minimum efficient scale for Deliveroo to operate (i.e. around 15,000 residents – although this may be conservative), Deliveroo would cover over 90% of the UK population if it were to enter all other towns in the UK with a population above this threshold. Therefore, the CMA's assertion in the Issues Paper that the business model for providers with delivery services is geographically constrained and limited to urban centres at present⁵ does not reflect the current situation, nor does it take into account the rapid growth of players such as Deliveroo and UberEATS, which is consistently evolving.⁶

- 2.3.3 The growth of Deliveroo is further evidenced by the data showing the monthly spend [REDACTED].

Exhibit 5. [REDACTED]

- 2.3.4 [REDACTED].

⁴ Given that Domino's was amongst the first online takeaway service providers to launch an app, one would expect the base of users who have already downloaded their app to be large, therefore the number of new app downloads each month is likely to be correspondingly lower.

⁵ Paragraph 35 Issues Paper.

⁶ [REDACTED].

- 2.3.5 [REDACTED]. This again demonstrates the significant and growing importance of Deliveroo on Just Eat's business (and the limited and stagnant constraint from Hungryhouse).

Exhibit 6. [REDACTED]

- 2.3.6 The constraint imposed by Deliveroo is further supported by the fact that the Issues Paper identifies at paragraph 78 that 60-70% of the value of orders placed on Hungryhouse in 2016 were in areas where Deliveroo is present. [REDACTED].

- 2.3.7 In addition, UberEATS has grown extremely rapidly and by the end of 2017 will be present in over 40 towns and cities, according to its widely publicised plans.⁷ Given the significant financial resources and backing behind it, there is every reason to expect that UberEATS will be able to continue to invest and expand across the country and into less densely populated areas. Moreover, as recognised by the CMA in relation to Uber's taxi service in its Phase 1 decision regarding Sheffield City Taxis Limited's completed acquisition of certain assets and business of Mercury Taxis (Sheffield) Limited, Uber has a *"well-established brand in several countries, and is present in several other cities in the UK, including London, Birmingham, Leeds, Manchester, Bristol, Newcastle and Liverpool/Merseyside. A strong brand increases the competitive constraint of Uber [...] as it allows Uber to overcome the barrier to switching which may arise from uncertainty about the quality and reliability of an unknown brand."*⁸ This conclusion is equally applicable to Uber's UberEATS service.

2.4 The Issues Paper relies on outdated, anecdotal evidence to suggest that Just Eat responds directly to competition from Hungryhouse and has disregarded [REDACTED]

- 2.4.1 The CMA typically expects that, if one firm constrains another, this will be expressed through the second firm responding to the presence of that first firm in one form or another. Therefore, the lack of evidence in the Issues Paper to show that Just Eat responds to Hungryhouse is extremely telling.⁹
- 2.4.2 The Issues Paper cites only two limited examples, based on anecdotal evidence from one restaurant owner, as evidence that Just Eat responds directly to competition from Hungryhouse. This evidence cannot bear any weight and in fact supports the Parties' contention that Just Eat does not constrain Hungryhouse. First, the examples cited at paragraph 68(a) are ten years old, dating from the time that both Just Eat and Hungryhouse entered the UK, which is far too old to be relevant in a fast-moving and dynamic market. Second, even this limited evidence is also inaccurate since Just Eat began paying restaurants weekly because it is more favourable for restaurants, as it enables them to better manage their finances, and Just Eat is constantly trying to improve its service offering to its restaurant partners. Just Eat's changes to the prices charged to amend menus also happened

⁷ *UberEats to expand to 40 UK cities*, Financial Times, 28 March 2017.

⁸ Completed acquisition by Sheffield City Taxis Limited of certain assets and business of Mercury Taxis (Sheffield) Limited, ME/6548-15, in particular paragraph 86.

⁹ The Issues Paper focuses on the speculative and unevicenced views of restaurants as to Just Eat's future conduct.

several years ago and are another reflection of Just Eat trying to offer its restaurant partners a better service, rather than reacting to Hungryhouse. It is also of note that menu typing charges amount to [REDACTED]. Notably, both examples cited are also factually incorrect since Hungryhouse entered the market before Just Eat.

2.4.3 If this is the most compelling evidence the CMA has that Hungryhouse places a constraint on Just Eat, it cannot possibly maintain that there is a realistic prospect of the Proposed Transaction resulting in a substantial lessening of competition.

2.4.4 In fact, rather than being concerned about competition from Hungryhouse, as explained during the Issues Meeting, Just Eat's management is [REDACTED].¹⁰ [REDACTED].¹¹

2.5 ***The CMA has erred in considering that Deliveroo focuses on different restaurants to those of the Parties***

2.5.1 The Issues Paper notes that Deliveroo tends to focus more on expensive restaurants than the Parties,¹² quoting an article from early 2016 that suggests Deliveroo's focus is on "*premium meals*" and "*Michelin-starred restaurants*".¹³ However, to the extent that this view was ever true, it is now entirely out of date. There are many lower-end restaurants that are listed on Deliveroo, including - amongst those the CMA will know well - Burger King, KFC, Roosters Piri and Tops Pizza, [REDACTED]. The graphic below provides examples of both lower-end independent and chain restaurants listed on Deliveroo.

2.5.2 Further, the CMA seeks to support its assertion that Deliveroo focuses on more expensive restaurants or those which do not have their own delivery services by relying on anecdotal evidence that one restaurant "*told the CMA that his restaurant wanted to be listed on Deliveroo's platform, however, Deliveroo turned it down*".¹⁴ However, far from emphasising the "exclusive" nature of Deliveroo's offering, this restaurant could have been turned down for a number of reasons, such as lack of compliance with food safety standards, poor credit history etc.¹⁵ This one, limited example further supports the Parties' views that the CMA does not have sufficient, credible evidence to conclude, on an objectively justified basis, that there is a realistic prospect

¹⁰ Deliveroo and UberEATS are winning consumers' trust and repeat business by offering a positive experience which further strengthens their respective brands and fuels greater expansion. This positive customer experience is offered as a result of their expertise and experience in delivery logistics which translates into much greater speed of delivery - [REDACTED].

¹¹ The campaign covered a broad range of media and included the following initiatives: (i) advertisements on Routemaster buses and on the London underground; (ii) advertising banners in strategic locations such as the City of London or Canary Wharf; (iii) advertisements in print and digital publications targeted at Londoners such as City A.M.; and (iv) advertisements on digital radio (for example, Spotify) and video services – often geo-targeted to reach a London-only audience.

¹² Paragraphs 23 and 80 Issues Paper.

¹³ Paragraphs 81 Issues Paper.

¹⁴ Paragraph 90 Issues Paper.

¹⁵ Just Eat regularly turns down restaurants who seek to join its platform for a variety of reasons, including those mentioned here.

that the Proposed Transaction will result in a substantial lessening of competition.

2.5.3 In addition, paragraph 23(c) of the Issues Paper notes that “[p]latforms that do not provide delivery services typically charge a commission of around 15% of the order value; whereas those operating with the delivery model (such as Deliveroo, UberEATS and Amazon Restaurants) charge commissions of up to 30% of the order value.” The CMA seems to take this as evidence that Deliveroo, UberEATS and Amazon Restaurants are less likely to be considered “affordable” propositions from the perspective of restaurants. However, in reality, the difference in commission rates is simply a reflection of the differences in costs between offering delivery services and not. Naturally, a provider that also arranges delivery incurs higher costs per order than one that leaves delivery to the restaurant itself. However, restaurants still have to incur costs of delivery if they use a provider that does not offer delivery, meaning the cost to restaurants of using a platform that provides delivery services and one that does not is ultimately likely to be very similar.

2.5.4 Further, restaurants that switch from an in-house delivery model to using a platform that provides delivery services are likely to experience an improvement in the quality of the service. Restaurants providing delivery directly generally have a small number of drivers, and food delivery is not at the core of their business. In contrast, providers such as Deliveroo have a larger fleet of drivers and better logistical infrastructure to optimise the delivery process. For example, they have better data on demand levels and the factors affecting demand. This enables them to provide a more reliable service and faster average delivery times; for example, they are better able to absorb fluctuations in order volumes and maintain service standards during peak times. They are also able to exploit economies of density from serving a much larger pool of customers, reducing the marginal cost of delivery. Overall, therefore, compared to self-supply, they will be able to offer higher quality and do this more cost-effectively.

2.5.5 In summary, the higher commission rates on Deliveroo and UberEATS will not deter restaurants from using them if they are justified by the value of the incremental orders resulting from those platforms. This may happen where these platforms are very popular or where the restaurants revisit the relative economics of the costs of carrying or outsourcing their delivery activity.

2.5.6 Moreover, [REDACTED]. Exhibit 7 below shows [REDACTED],¹⁶ [REDACTED].

Exhibit 7. [REDACTED]

2.5.7 As is clear from the chart above, Just Eat is [REDACTED]. For instance, Just Eat’s gross margin was around [REDACTED]% in 2016 and is forecast [REDACTED]. Similarly, Just Eat is forecasting that EBITDA margins [REDACTED]% in 2016 to [REDACTED].

2.5.8 This is primarily due to [REDACTED]. As explained by Just Eat during the Issues Meeting, Just Eat distinguishes between its “core” business, which relates to

¹⁶ This is based on both Just Eat’s “core” and “RDS” businesses, which are explained in further detail at paragraph 2.5.8. [REDACTED].

restaurants with their own delivery services, and its “RDS” (i.e. Restaurant Delivery Services) business, where Just Eat also supplies delivery services to restaurants. The chart below compares [✂].

Exhibit 8. [REDACTED]

2.5.9 [REDACTED].

2.5.10 Moreover, the key “market” issue here is that these services are aimed at the same needs of consumers. [REDACTED].

2.5.11 Just Eat’s delivery capability is [REDACTED] and, at its current scale, is likely to be [REDACTED]. For instance, unlike Deliveroo and UberEATS, those restaurants that [REDACTED].

2.5.12 On a forward-looking basis, [REDACTED]. Therefore, one would expect [REDACTED].

2.5.13 It should be noted that [REDACTED]. In particular, there are only a [REDACTED]. These principally include [REDACTED].

2.6 The CMA has erred in failing to recognise the evolution in (and blurring of) business models from marketplace to delivery

2.6.1 As explained in the Issues Meeting, last mile delivery providers are able to offer a better proposition to consumers and restaurants than aggregators.

2.6.2 While the UK market is only just beginning to move decisively towards last mile delivery, this evolution has already occurred in many Asian markets. While the UK market only relatively recently began to move towards hybrid and delivery-based business models, this evolution has already occurred in many other jurisdictions, including several countries in Asia. For example, when foodpanda entered the market in Singapore in 2012, it did so on the basis of an aggregator only model. In response to lower than expected conversion rates, lower than expected cohorts and based on customer demand for popular restaurants, foodpanda began to offer delivery services to selected restaurant customers; initially through a third party and then, gradually, through its own drivers and proprietary software. This change resulted in a material improvement in conversion rates and cohort behaviour, prompting foodpanda to move decisively from a hybrid to a delivery-based model. As a result, it provides last mile delivery in relation to almost 100% of its orders in Singapore. Other Asian markets have also seen a similar evolution with countries such as India no longer being catered for by aggregator-only providers. Instead, there has been a move towards a hybrid model, with approximately 50-60% of orders being fulfilled on a last mile basis, including outside of major urban areas.

2.6.3 As recognised by KPMG in the KPMG Entry and Expansion Report, *“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.”*¹⁷ In this case, the experience in Asia, and other markets, clearly indicates that last mile delivery providers, who are already rapidly expanding in the UK market, will exercise an even greater competitive constraint in the future.

¹⁷ KPMG Entry and Expansion Report, paragraph 21.

2.7 The Issues Paper's failure to acknowledge the competitive strength and rapid expansion of Deliveroo and UberEATS is inconsistent with highly relevant precedents

- 2.7.1 The Issues Paper's failure to take into account the strong growth and competitive force of Deliveroo and UberEATS is also inconsistent with previous decisions in which a dynamic framework of analysis resulted in Phase 1 clearance decisions.
- 2.7.2 Based on a review of previous CMA, Competition Commission and Office of Fair Trading ("OFT") cases which considered the impact of entry and expansion on the likelihood of a merger leading to a substantial lessening of competition, the KPMG Entry and Expansion Report recommended that *"the CMA continues to seek evidence on the factors – such as costs, demand and entry plans – which make [...] entry or expansion more likely."*¹⁸
- 2.7.3 An assessment of the likely effects of entry and expansion is particularly relevant to the assessment of the Proposed Transaction. The decisional practice of both CMA and OFT demonstrates that evidence of entry and expansion can be critical factors in clearing a merger at Phase 1 to the benefit of consumers, in particular in dynamic, rapidly evolving markets.
- 2.7.4 A particularly compelling precedent is the OFT's decision in WRI/Hostelbookers.¹⁹ This merger was cleared at Phase 1, largely on the basis of Booking.com having had 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. 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 into account the rapidly evolving nature of the market as well as the financial strength and strong brands of the new entrants.
- 2.7.5 The KPMG Entry and Expansion report, commissioned by the CMA, confirmed that the OFT's approach at Phase 1 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.²⁰ KPMG concluded that, post-merger, these factors had led to *"if anything, the market for online hostel booking services becoming more, rather than less, fragmented."*²¹
- 2.7.6 It is clear from the Deliveroo's and UberEATS' strong growth trajectory that the market for the provision of the provision of takeaway services will become

¹⁸ KPMG Entry and Expansion Report, paragraph 21.

¹⁹ *Anticipated acquisition by Web Reservations International (through its parent company Hellman & Friedman) of Hostelbookers.com Limited*, ME/6062/13.

²⁰ KPMG Entry and Expansion Report, paragraph 6.8.2.

²¹ Paragraph 6,8,3,

even more, rather than less, competitive. As set out below, there is [REDACTED]. To put it another way: the case for a Phase 1 clearance of the Proposed Transaction is evidently very compelling and considerably stronger than in WRI/Hostelbookers, where KPMG has just confirmed that a Phase 1 clearance was the right decision.

2.8 *The appropriate frame of reference should include at least online takeaway providers offering delivery services*

2.8.1 For the reasons set out above, the Parties consider that the appropriate frame of reference should, at the very least, include online takeaway providers offering delivery services. The CMA's proposed narrow frame of reference is entirely inconsistent with the market facts.

3 *The Issues Paper fails to give proper weight to competition for the consumer-side of the market*

3.1 *The consumer-side of the market is equally as important as the restaurant-side given the two-sided nature of the market*

3.1.1 The Issues Paper recognises that the market is two-sided²² but then fails to give proper weight to the consumer side of the market in assessing the effects of the Proposed Transaction.

3.1.2 It is crucial that the CMA focuses on the consumer-side of the market because this is fundamental to the way in which the Parties operate their businesses. More specifically, the Parties rely on attracting good restaurants to attract high numbers of consumers, and they rely on high numbers of consumers to attract more restaurants, thereby resulting in a 'virtuous circle'. As has been explained to the CMA, [REDACTED].

3.1.3 The competition Just Eat faces in reality is for consumer spend and it is constantly attempting to improve its offering to restaurants so as to attract more consumers and therefore larger amounts of consumer spending on its site.

3.2 *The Issues Paper has failed to take into account the significant constraint imposed by [REDACTED]*

3.2.1 At the point of selecting who to place an order with, consumers are typically concerned with receiving high quality food, that is delivered warm and on time. These are all features that Domino's is able to offer. The only feature that Domino's offering is lacking is a variety of cuisines; however, [REDACTED].

²² Paragraph 12 Issues Paper.

Exhibit 9. [REDACTED]

- 3.2.2 In addition, this is consistent with evidence based on consumer ordering behaviour. When placing an order, consumers can apply a filter for cuisine type to identify all available restaurants that offer food of that type. Consumers who applied a filter for a cuisine type which was not related to pizza accounted for [REDACTED]% of all orders placed on Just Eat in January 2015. This suggests that [REDACTED] (i.e. [REDACTED]%) of consumers who place an order on Just Eat either: [REDACTED]
- 3.2.3 Domino's therefore imposes a constraint on the Parties', notwithstanding the fact that it does not offer a variety of cuisines. This is consistent with the CMA's Merger Assessment Guidelines which recognise that, in two-sided markets, constraints "*may come not only from other two-sided intermediaries but also from 'one-sided' firms serving only one set of customers*".²³
- 3.2.4 From the perspective of Just Eat's consumers, Domino's is [REDACTED]:

Exhibit 10. [REDACTED]

- 3.2.5 This shows that [REDACTED]²⁴ of Just Eat's orders are for pizza-related items and Just Eat lists many pizza restaurants, including Pizza Gogo, Topps Pizza, Pizza Express and Firezza, on its website. Moreover, a considerable share of consumers [REDACTED], as explained in paragraph 3.2.2 above, and would therefore also be likely to consider [REDACTED].
- 3.2.6 Contrary to the CMA's suggestion in the Issues Paper that Just Eat pays more attention to Hungryhouse in its internal documents than it does [REDACTED],²⁵ Just [REDACTED].
- 3.2.7 In this context, the assertion implicit in paragraph 28 of the Issues Paper, that Just Eat's [REDACTED], is inaccurate. Just Eat monitors and is aware of the [REDACTED]. This goes directly to the competitiveness of Just Eat's offering. The CMA has received direct oral evidence from Just Eat's senior management that [REDACTED].
- 3.2.8 Indeed, Just Eat has [REDACTED].

3.3 The Issues Paper has also failed to take into account the considerable constraint imposed by direct ordering

- 3.3.1 Ordering takeaway food for delivery directly from restaurants remains a common (and frequently preferred) channel for both consumers and restaurants, which the CMA has completely failed to take account of.
- 3.3.2 Exhibit 11 below demonstrates that [REDACTED]% of Just Eat users still order directly with restaurants, over the phone or in person.

²³ CMA's Merger Assessment Guidelines, CC2/OFT 1254, September 2010, paragraph 5.2.20.

²⁴ [REDACTED]

²⁵ Paragraph 59 Issues Paper. Just Eat notes that the document identified in paragraph 59 of the Issues Paper is 18 months' old and, in such a dynamic and fast-moving market, it is therefore too outdated to be considered a reliable indication of who Just Eat considers to be its close competitors. Moreover, [REDACTED].

Exhibit 11. [REDACTED]

- 3.3.3** From the consumers' perspective, they may use online platforms to explore different alternatives when they are unsure about what to order or from where. However, when they have a particular restaurant in mind, they will continue to use the direct-to-restaurant channel (either alone or in combination with online channels), given that it is the quickest (and sometimes cheapest) way of: (a) placing an order; and (b) obtaining additional information or a more personalised service (for example, if they wish to make modifications to the menu options). As the use of online platforms becomes more common, consumers are more likely to develop "favourite restaurants" and order directly from them. Consumers might also use online platforms as a search engine, a form of yellow pages, to select a restaurant to ultimately order directly from it.
- 3.3.4** From the restaurants' perspective, direct ordering is preferable as they save on commission rates they would otherwise pay to the online provider and direct ordering allows restaurants to either offer more competitive prices to consumers and/or obtain higher margins at no added cost to the service they are already providing.
- 3.3.5** The constraint imposed by restaurants is further evidenced by the fact that [REDACTED]²⁶ [REDACTED]²⁷. [REDACTED];²⁸ [REDACTED]

3.4 ***Just Eat's prices are directly constrained by direct ordering and the impact of other players such as Domino's***

- 3.4.1** Table 3 of the Issues Paper indicates that in [20-30]% of postcode areas in which either of the Parties are present, Just Eat does not face any competition from Hungryhouse, Deliveroo, UberEATS or Amazon Restaurants. However, Just Eat's standard terms and conditions (including its commission rates) are set at a national level and [REDACTED].
- 3.4.2** Just Eat is further constrained in its pricing by the requirement to foster and maintain good relations with its restaurant partners; an imperative condition which underpins any prospect of success in a two-sided market. This also illustrates that there is no scope for Just Eat to exercise unilateral market power. If Just Eat were to unjustifiably increase commission rates, without any corresponding enhancement to its value proposition, restaurants would leave its platform and revert to direct ordering (amongst other options), which would make Just Eat a less attractive option for consumers - some of whom may consequently choose to leave the platform. In turn, if the number of Just Eat consumers decreases, the platform is even less attractive for the remaining restaurants on the platform, which would have access to a more limited pool of prospective customers creating a vicious circle. It is for this reason the Just Eat would have neither the ability nor the incentive to increase its commission

²⁶ Annex RF11.5B.1.

²⁷ See <http://hungryhouse.co.uk/blog/hungryhouse-price-guarantee/>

²⁸ See for example, Annex RF11.2B.1, Annex RF11.2B.2 and Annex RF11.2B.3.

rates for restaurants following completion of the Proposed Transaction, without any corresponding enhancement to its value proposition.

3.5 *The appropriate frame of reference should therefore also include other providers of takeaway services including pizza chains and restaurants themselves*

- 3.5.1 The evidence provided illustrates that alternative suppliers are currently imposing sufficient constraints on Just Eat, and they will continue to do so going forward.
- 3.5.2 The 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 with chain restaurants (e.g. Domino's) and independents.

4 Hungryhouse is not an effective competitor to Just Eat and the removal of Hungryhouse removal will not lead to an SLC

4.1 *Hungryhouse is not imposing a significant constraint on Just Eat and it will not impose a constraint going forward*

- 4.1.1 As has been explained in the Merger Notice and additional submissions made to the CMA, Hungryhouse imposes a limited competitive constraint on Just Eat [REDACTED]. Set out in the separate Hungryhouse submission on the counterfactual is further evidence to support the fact that, [REDACTED].
- 4.1.2 Just Eat is a much more attractive proposition for restaurants compared to Hungryhouse, given that it has a much larger number of consumers that cannot be accessed through another platform. In terms of access to consumers, from the perspective of restaurants, Hungryhouse is therefore likely to be considered to be a potential additional route to market rather than a substitute to Just Eat. A restaurant listed on Just Eat might decide to list on Hungryhouse as well in order to access its limited number of users whom it was not able to reach through Just Eat (i.e. complementing its Just Eat listing with one on Hungryhouse). However, it would be less likely to consider switching from Just Eat to Hungryhouse (i.e. substituting its Just Eat listing with one on Hungryhouse). This explains why the number of "unique" restaurants listed on Hungryhouse but not on Just Eat is small and, in fact, the CMA considers the number may be even smaller than the Parties have estimated.²⁹
- 4.1.3 Hungryhouse is [REDACTED] and the fact that many of the restaurants listed on Hungryhouse are also listed on Just Eat, which offers a greater number and variety of restaurants than Hungryhouse. This is demonstrated by the fact that [REDACTED]³⁰:

Exhibit 12. [REDACTED]

²⁹ Paragraph 57 Issues Paper.

³⁰ This was included as Exhibit 18 of the Merger Notice.

- 4.1.4 Looking more closely at the figures in the chart above and focusing on [REDACTED], as shown in Exhibit 13 below, the [REDACTED].

Exhibit 13. [REDACTED]

- 4.1.5 For consumers, Hungryhouse is therefore a subscale version of Just Eat with [REDACTED].³¹ This is further evidenced by the fact that, on the CMA's 'narrow frame of reference', Hungryhouse's share of supply is no more than 10% [REDACTED]³² [REDACTED].

Outages analysis

- 4.1.6 The findings above are further borne out by the quantitative analysis of diversion to Hungryhouse when there are outages to the Just Eat platform which was submitted to the CMA as part of the Additional Submission.
- 4.1.7 The estimation of the diversion ratio between Just Eat and Hungryhouse, provided in the Additional Submission, again supports the view that Hungryhouse is not a strong constraint on Just Eat since [REDACTED]. In a world where the only effective alternative to Just Eat was Hungryhouse, the diversion ratio would be close to 100%. The analysis provided showed that during outages of the Just Eat website, the share of lost sales which were diverted to Hungryhouse was [REDACTED].³³ This is entirely consistent with the other evidence presented.
- 4.1.8 Furthermore, it should be noted that the diversion ratio that was estimated is for outages that took place in [REDACTED]. Given the extremely rapid expansion of both Deliveroo and UberEATS, we would expect current outages to [REDACTED].
- 4.1.9 Finally, the estimate is based on an "extreme" case – a complete outage of the Just Eat website when the service is entirely unavailable to consumers. It may therefore overstate the extent to which consumers are willing to substitute between the two providers. The aim of estimating a diversion ratio is to approximate a SSNIP test and assess to what extent the Parties would be able to raise prices profitably after the merger. On the other hand, the Impact Analysis considers to what extent the presence of Hungryhouse in an area has affected order volumes for Just Eat in its ordinary course of business and [REDACTED]. This suggests that [REDACTED].

4.2 [REDACTED]

- 4.2.1 As explained in the Additional Submission, [REDACTED], however, Just Eat believes that this is [REDACTED] and is simply a [REDACTED].

Exhibit 14. [REDACTED]

³¹ [REDACTED] consumers ([REDACTED]) and restaurants ([REDACTED]).

³² Table 1 Issues Paper.

³³ We note that diversion ratios do not require a determination of what consumers would do if the product was not available. Indeed, their attractiveness is explicitly due to the lack of requirement in defining the relevant market. Any diversion away from the product in question creates a constraint. The key question is what proportion of total lost revenue would be picked up by the rival, as this determines the pricing incentive.

4.3 Hungryhouse is not a significant constraint on Just Eat now, [REDACTED], because [REDACTED] it is facing material constraints from other providers, such as Deliveroo

4.3.1 Paragraph 78 of the Issues Paper notes that the overlap between Deliveroo and UberEATS with Hungryhouse is considerably larger than the overlap between Just Eat with these players because a significant proportion of Hungryhouse's business is in London.³⁴ In particular, the CMA notes that 60-70% of Hungryhouse's orders are in areas currently contested by Deliveroo. [REDACTED], again indicating the fast moving nature of this market and Deliveroo's rapid growth. This indicates that [REDACTED], demonstrating that the Proposed Transaction will not substantially lessen competition.

4.4 The CMA's analysis shows that Hungryhouse is [REDACTED]

4.4.1 The Issues Paper identifies that the Parties operate in a two-sided market with indirect network effects that result in virtuous or vicious circles.³⁵ The Paper goes on to demonstrate at Table 1 that, on the CMA's 'narrow frame of reference', Hungryhouse only has up to a 10% share of supply, [REDACTED]. This indicates that Hungryhouse [REDACTED].

4.4.2 However, the CMA's barriers to entry and expansion analysis considers that, in order to succeed in the market, high sunk costs and marketing and financial investments are required.³⁶ [REDACTED]. On this basis, if the CMA considers that its barriers to entry and expansion analysis is accurate, it [REDACTED].

4.5 The consideration payable by Just Eat [REDACTED]

4.5.1 As explained by Just Eat during the Issues Meeting, the consideration payable by Just Eat for the Hungryhouse business is based on the estimated synergies that Just Eat would be able to achieve through the Proposed Transaction. Just Eat estimates that these synergies would amount to between £12 million and £15 million.

4.5.2 [REDACTED].

4.5.3 [REDACTED].

4.5.4 [REDACTED].

4.5.5 [REDACTED].

4.5.6 [REDACTED].

4.5.7 [REDACTED].

4.5.8 [REDACTED]. Just Eat estimates that that the incremental annual EBITDA post-integration will be between £12 million and £15 million. [REDACTED].

³⁴ Paragraph 78 Issues Paper.

³⁵ Paragraph 12 Issues Paper.

³⁶ Paragraph 101 Issues Paper.

4.5.9 [REDACTED].

4.5.10 [REDACTED].

5 Other comments on the Issues Paper

5.1 Errors in the Issues Paper

5.1.1 At paragraph 23(a) the Issues Paper asserts that market places that do not offer delivery “*are generating impressive profits*”. This is reasonably true of Just Eat [REDACTED]. Indeed, the Macquarie Report, which underpins the assertions in these paragraphs, suggests that the number two market place operator or aggregator like Just Eat and Hungryhouse is not likely to be profitable and that Deliveroo, UberEATS and Amazon Restaurants are likely to be the constraining operators going forward.

5.1.2 At paragraph 23(b) the Issues Paper asserts that the platforms which offer delivery services target higher end consumers and that Deliveroo targets expensive restaurants. This is demonstrably no longer the case as they provide services to the likes of Burger King, KFC and others, plus a number of smaller independents, as discussed in paragraph 2.5.1 above.

5.2 The Issues Paper’s selective use of internal documents in the Issues Paper

5.2.1 At paragraphs 59-66 and 84-88 the Issues Paper quotes from internal documents to suggest that the Parties are close competitors and that Deliveroo and UberEATS are not, or are not treated by the Parties as, competitive constraints. The Issues Paper’s reliance on those quotations is generally flawed because the it fails to take account of one or both of the factors that: (i) the quotations may fail to reflect the discussion of other, countervailing factors in the same documents or other documents of the same period in which the effectiveness or threat of other competitors is considered; and (ii) all of the Just Eat documents in question date from before the rapid growth of Deliveroo and UberEATS. [REDACTED].

5.2.2 Of particular note, at paragraph 59, the Issues Paper comments that Just EAT only considers the [REDACTED]. As to this:

- at paragraph 28 the Issues Paper treats Just Eat’s consideration of [REDACTED] as unimportant. This suggests an inconsistency in the Issues Paper’s approach;
- in the October 2015 paper to which paragraph 59 refers there is significant consideration of [REDACTED], even though at that point [REDACTED];
- [REDACTED].

5.2.3 At paragraph 60, the Issues Paper quotes two documents from 2016 to suggest support for the proposition that Just Eat sees Hungryhouse as a close competitor. However, neither quotation indicates this to be the case. Instead the quotations refer to the fact that [REDACTED].

5.2.4 Putting it as neutrally as possible, it is unfortunate that the Issues Paper has used these documents so selectively when they are, viewed objectively,

consistent with the Parties submissions about the importance of other players [REDACTED].

5.2.5 As for paragraph 84:

- the assertions at (a) and (c) are demonstrably no longer true; see section 2.3 above on the growth of Deliveroo across the country and into smaller population centres;
- the assertion at (b) was in the context of a document considering Just Eat's [REDACTED].

5.2.6 As for paragraph 85, in light of [REDACTED].

5.2.7 With regards to paragraph 86 and the splitting in the budget of the RDS segment, as Just Eat explained at the Issues Meeting, [REDACTED].

6 [REDACTED]

6.1 We understand that the CMA is concerned that, in the geographic areas in which only Just Eat and Hungryhouse are present, there could be a realistic prospect of a substantial lessening of competition following completion of the Proposed Transaction. However, the figures below show that [REDACTED].³⁷ The Parties therefore consider that [REDACTED] if the CMA were to identify residual competition concerns despite the strong and compelling evidence supporting a Phase 1 clearance decision.

6.2 To estimate the Parties' revenue in the areas in which only Just Eat and Hungryhouse are present, we have adopted the following steps.

6.2.1 First, we identify the geographic areas in which the only players present are Just Eat and Hungryhouse. For the purposes of this analysis, we have used towns/cities as the relevant geographic unit, assessed restaurant presence as of December 2016, and included Just Eat, Hungryhouse, Deliveroo, UberEATS and Domino's in the assessment.

6.2.2 Second, we calculate the revenue that Just Eat earns in those areas by assigning each source of Just Eat revenue to the restaurants and consumers in each area, specifically:

- "commission revenue" relates to orders placed on restaurants in those areas;
- "card fee revenue" relates to orders placed on restaurants in those areas;
- "top placement fee and other revenue" relates to services purchased by restaurants in those areas; and
- "connection fee revenue" relates to restaurants that have paid a connection fee (which is smoothed to a monthly fee) in 2016 in those areas.

6.2.3 Third, we estimate the corresponding revenue for Hungryhouse by assuming a ratio of [REDACTED] between Just Eat and Hungryhouse, which is consistent with the 2016 order volumes ratio as presented by the CMA in the Issues Paper.

³⁷ See Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance, OFT 1122, December 2010.

6.3 The table below summarises the steps of the calculations.

Step	Description	Estimate
1	Number of areas in which only Just Eat and Hungryhouse are present (out of total number of areas)	[X] (out of [X])
2	Just Eat's revenue in those areas in 2016, of which:	[X]
	Commission revenue	[X]
	Card fee revenue	[X]
	Top placement fee and other revenue	[X]
	Connection fee revenue	[X]
3	Hungryhouse's revenue in those areas in 2016	[X]
	Total	[X]