

Anticipated acquisition by Just Eat.co.uk Limited of Hungryhouse Holdings Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6659-16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 10 May 2017. Full text of the decision published on 9 June 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality

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SUMMARY

1. Just Eat.co.uk Limited, a wholly owned subsidiary of Just Eat Holding Limited, which is itself wholly owned by Just Eat PLC (together, **Just Eat**), has agreed to acquire the whole of the issued share capital of Hungryhouse Holdings

Limited (**Hungryhouse**) (the **Merger**). Just Eat and Hungryhouse are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The CMA believes the correct counterfactual to assess the Merger against is the prevailing conditions of competition. Furthermore, the CMA has not seen sufficiently compelling evidence to find that Hungryhouse will become a weaker competitive constraint in the future.
4. The Parties overlap in the supply of online takeaway ordering (**OTO**) aggregation platforms and related services to takeaway restaurants and their customers in the UK. OTO aggregation platforms are two-sided in nature; the Parties act as intermediaries between consumers and restaurants offering a takeaway service.
5. The CMA believes that there is a realistic prospect that the Merger will give rise to a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of OTO aggregation platforms in the UK.
6. In this case, the CMA believes that any competition concerns arising from the Merger are more likely to manifest themselves as worse contract terms for restaurants rather than a worsening of the offer to consumers. The CMA therefore focused its analysis of the impact of the Merger on restaurants. The CMA has nonetheless taken into account in its competitive assessment the extent to which competition for consumers acts as a competitive constraint on the Parties with respect to their offering to restaurants.
7. The CMA believes that:
 - (a) Just Eat and Hungryhouse are close competitors and constrain each other, in particular, due to the similarity of their business models and geographic coverage, which is more extensive for each of the Parties than for other competitors;
 - (b) Deliveroo, UberEATS and Amazon Restaurants have different business models as they also offer delivery services. As such, while they are an option for some restaurants, for many others they are not suitable alternatives. In particular, the CMA has seen evidence that indicates these platforms are more limited geographically and primarily target a different profile of restaurants such that they do not constrain Just Eat. The CMA has not seen evidence that the growth of these platforms has

constrained the Parties' charges to their traditional restaurant base or will do so in future;

(c) while the Parties may be subject to some constraint from restaurants using direct ordering channels, the degree of this constraint is uncertain and may in fact be limited; and

(d) the CMA believes that the existence of wider competition on the consumer side of the market places limited constraint on the Parties' charges on the restaurant side.

8. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects. The CMA does not believe the market is of insufficient importance in order for the *de minimis* exception to apply.
9. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Just Eat has until 17 May 2017 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

10. Just Eat.co.uk Limited is a supplier of an OTO aggregation platform¹ and related services² to takeaway restaurants and their customers (**OTO aggregation service provider**).³ It acts as an intermediary between final consumers and restaurants offering home delivery services in the UK. It currently serves over [X] towns in the UK.⁴ The turnover of Just Eat in

¹ An OTO platform is a web-based platform connecting one or several takeaway restaurants and consumers. An OTO platform can be supplied by a third party aggregator, which will provide consumers with access to a selection of takeaway restaurants (hereafter referred to as **OTO aggregation platforms**) or by a restaurant or large chain which will provide consumers with access to their own restaurants only (hereafter referred to as an **OTO restaurant**).

² Other services offered to restaurants may include: portals, driver management solutions, white label websites/services, online store/shop, menu printing services, co-marketing campaigns and delivery services. Some OTO service providers supply OTO aggregation platforms to restaurants without a delivery service or where delivery services are optional/ancillary (hereafter referred to as **pure OTO aggregators**), whereas other OTO aggregation service providers provide delivery services bundled with the OTO aggregation platform (hereafter referred to as the provision of **OTO aggregation and delivery services**).

³ Takeaway meals are meals that are bought hot and delivered to the consumer's door, and can be consumed immediately.

⁴ Merger Notice, paragraph 19.3.

financial year ending 31 December 2015 was around £[x] million worldwide and around £[x] million in the UK.

11. The ultimate parent company of Just Eat.co.uk Limited is Just Eat plc, a UK-based corporate group listed on the London Stock Exchange with operations in 15 countries.
12. Hungryhouse is an OTO aggregation service provider and currently serves over [x] cities in the UK.⁵ The turnover of Hungryhouse in financial year ending 31 December 2015 was around £[x] million in the UK. Hungryhouse did not generate any revenues outside of the UK.
13. The ultimate parent company of Hungryhouse is Delivery Hero Holding GmbH (**Delivery Hero**), a company which has its headquarters in Berlin and operates in the takeaway restaurant sector in 53 countries worldwide.

Transaction

14. The Merger relates to the purchase by Just Eat of the whole of the issued share capital of Hungryhouse.

Jurisdiction

15. As a result of the Merger, the enterprises of Just Eat and Hungryhouse will cease to be distinct.
16. The Parties overlap in the supply of OTO aggregation platforms and related services to takeaway restaurants and their customers in the UK. The Parties submitted that their combined share of supply in relation to OTO⁶ in 2016 is [60-70]% (increment of [5-10]%) by volume of orders. The CMA therefore believes that the share of supply test under section 23 of the Act is met.
17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 March 2017 and the statutory 40 working day deadline for a decision is therefore 10 May 2017. The Merger was considered at a Case Review Meeting.⁷

⁵ Merger Notice, paragraph 19.3.

⁶ OTO includes ordering through restaurants' own websites/apps or through third party platforms.

⁷ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁸
20. Delivery Hero submitted that the correct counterfactual for the assessment of the Merger is that [REDACTED]:
21. [REDACTED]:⁹
22. [REDACTED]¹⁰
23. [REDACTED]¹¹
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]¹²[REDACTED]¹³[REDACTED]¹⁴[REDACTED]¹⁵[REDACTED]¹⁶[REDACTED]¹⁷[REDACTED]¹⁸[REDACTED]¹⁹[REDACTED]²⁰
27. [REDACTED]²¹
28. [REDACTED]

⁸ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁹ [REDACTED]
¹⁰ [REDACTED]
¹¹ [REDACTED]
¹² [REDACTED]
¹³ [REDACTED]
¹⁴ [REDACTED]
¹⁵ [REDACTED]
¹⁶ [REDACTED]
¹⁷ [REDACTED]
¹⁸ [REDACTED]
¹⁹ [REDACTED]
²⁰ [REDACTED]
²¹ [REDACTED]

29. [REDACTED]²²[REDACTED]²³[REDACTED]²⁴

30. [REDACTED]

31. [REDACTED]²⁵

32. [REDACTED]²⁶

33. [REDACTED]²⁷

34. [REDACTED]

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]²⁸

39. [REDACTED]

40. [REDACTED]²⁹

41. [REDACTED]³⁰

42. [REDACTED]³¹[REDACTED]³²[REDACTED]³³

43. [REDACTED]

44. [REDACTED]

Conclusion on counterfactual

45. [REDACTED]

46. The CMA therefore believes the appropriate counterfactual against which to assess the Merger is against the prevailing conditions of competition. The

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]
29 [REDACTED]
30 [REDACTED]
31 [REDACTED]
32 [REDACTED]
33 [REDACTED]

CMA has considered submissions that the competitive constraint imposed by Hungryhouse will become weaker in the competitive assessment.

Background

47. Before discussing the relevant frame of reference and competitive assessment, the CMA has outlined some key features relating to the nature of the Parties' products and other OTO offerings.

The two-sided nature of OTO aggregation platforms

48. The Parties overlap in the supply of OTO aggregation platforms to restaurants and consumers.
49. Through OTO aggregation platforms, consumers have access to a list of restaurants delivering in their chosen location. By listing on the platform, restaurants get access to a pool of consumers.
50. OTO aggregation platforms are therefore two-sided products, serving and bringing together two distinct and unrelated group of customers – restaurants and consumers.³⁴ On one side, they have to attract restaurants onto the platform; on the other side, they have to attract consumers. The value of the platform for consumers depends on the number (and variety) of local restaurants listed on it. Restaurants, on the other hand, are more likely to list on a platform (and to pay the related fees) if they expect a sufficiently high volume of orders (ie if the platform has a large number of customers). To be successful, a platform, therefore, must attract a sufficient number of customers on both sides in a given geographic area.
51. The level of success an OTO aggregation platform has in signing up restaurants will be influenced by the amount of competition it faces in getting consumers to subscribe to the platform. Similarly, the provider of an OTO aggregation platform can influence the volume of transactions placed through it by charging more to one side and reducing the price to the other. The nature of such platforms are therefore characterised by indirect network effects.
52. In this context, the Parties obtain their revenue from restaurants, mainly via commission on orders, and do not levy direct charges on consumers. While the Parties have an incentive to maximise the number of consumers in order to increase the revenues from restaurants, the CMA believes that any competition concerns are more likely to manifest themselves in worse terms

³⁴ See [Merger Assessment Guidelines](#), paragraph 5.2.20.

for restaurants (from which the Parties obtain their revenue) rather than a diminished offering for consumers.

53. However, given the scope for indirect network effects, while any harm relating to an SLC may more likely arise on one side of the platform than the other, it is important to take feedback effects between the two sides into account in any assessment.

Range of OTO services

Other OTO aggregation platforms

54. There are material differences in the business models of providers of OTO services. The Parties have broadly similar business models; an OTO aggregation platform is the core service through which consumers can place orders with restaurants that deliver to their location. Under this model, the restaurants usually take care directly of food delivery.
55. The business model adopted by other providers of OTO aggregation platforms, such as Deliveroo, UberEATS and Amazon Restaurants, is different. In addition to providing the OTO aggregation platform, these firms use a fleet of drivers and deliver the ordered food directly from the restaurant to the final consumer. They are therefore able to serve restaurants which do not have their own delivery service.
56. The different business models have significant implications in terms of fee structures and business scalability.
57. Restaurants listed on OTO aggregators are charged a signup fee and a commission on all the orders received through the platform. Both Parties apply a standard commission of 14% ([~~14%~~]) of the value of the orders placed through their platforms.³⁵ Most of the Parties revenues come from commissions charged to restaurants. Those operating a delivery model (such as Deliveroo, UberEATS and Amazon Restaurants) typically charge commissions of up to 30% of the order value.³⁶
58. OTO aggregation platforms are generally free to use for consumers, but suppliers of OTO aggregation and delivery services may charge a delivery fee to consumers.

³⁵ Hungryhouse also charges a [~~14%~~] if a restaurant receives at least [~~14%~~] orders through its app.

³⁶ Takeaway marketplaces, Macquarie Research, July 2016.

<https://www.macquarieresearch.com/ideas/api/static/file/publications/7296617/TakeawayMarketPlaces040716Re247529.pdf>

59. The Parties [X]. Other OTO aggregator operators ([X]) do not impose these restrictions.
60. In addition, while the Parties can relatively easily expand to any geographic area in the UK by adding restaurants on their platforms, the requirements of a delivery service may slow the expansion of their competitors and limit it to areas with a sufficiently dense population.

Other OTO offerings

61. Restaurants or large chains with in-house delivery capability may also provide consumers with online access to their own restaurants only, either through a website or an app. These OTO restaurants may do so in addition to utilising the services of an OTO aggregation platform (as, for example, does Papa John's) or instead of an OTO aggregation platform (as, for example, does Domino's).
62. Restaurants responding to the CMA's merger investigation told the CMA that OTO aggregators are used mainly by independent and small restaurants who do not have the marketing budget of the larger restaurant chains and that these OTO aggregators have enabled many smaller, non-chain restaurants to attract online customers.
63. All of the above mentioned routes to placing a takeaway order online are available to consumers, such that there is a competitive interaction between all of them. The Parties have submitted that this competition for consumers also acts as a constraint vis-à-vis the service provided to restaurant customers. The CMA has considered in its competitive assessment the extent of competition for consumers and the extent to which this could constrain the Parties when competing for restaurants.

Frame of reference

64. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³⁷

³⁷ [Merger Assessment Guidelines](#), paragraph 5.2.2.

65. In assessing the frame of reference for a two-sided product, the CMA may consider the constraints from demand substitution on either side of the product.³⁸ For the purposes of determining the relevant frame of reference, the CMA has focused its analysis on the relevant demand and supply considerations relating to the supply of OTO aggregation services to restaurants. The CMA has nonetheless taken into account the relevance of any constraint on consumer side in the competitive assessment.
66. In that context, the CMA has taken into account: (i) the different business models of OTO aggregation platform providers; (ii) the role of other OTO services, in determining the relevant frame of reference and in its competitive assessment.

Product scope

OTO aggregation and delivery services

67. The Parties submitted that the appropriate frame of reference should include at least OTO aggregators which offer delivery services, since Just Eat faces significant constraints from these OTO aggregators, including Deliveroo, UberEATS and Amazon Restaurants.³⁹ These OTO aggregators provide both an OTO aggregation platform and a delivery service as a pure bundled service, i.e. the two services cannot be purchased separately.
68. The evidence available to the CMA from third parties responding to its market investigation, internal documents and market reports indicates that there are some demand and supply side differences that imply that the supply of OTO aggregation and delivery services is differentiated from the pure supply of OTO aggregation services. Namely, some restaurants have their own delivery capability and may not be interested in delivery services, e.g. because of the uncertainty associated with making a significant change to their operation. Therefore OTO aggregators offering a platform and delivery services as a pure bundle may not be attractive to certain types of customers. As such, there is evidence from third parties, market reports⁴⁰ and internal documents, that OTO aggregators offering delivery may target different types of customer groups (eg primarily dine-in restaurants).

³⁸ Completed acquisition by Ticketmaster Europe Holdco Limited of Seatwave Limited, Seatwave Deutschland GmbH, Seatwave Nederland B.V. and Timbre Digital Limited, CMA, 26 March 2015, paragraph 28.

³⁹ Additional submission by the Parties dated 31 March 2017, paragraph 1.3.1.

⁴⁰ Takeaway marketplaces, Macquarie Research, July 2016.

<https://www.macquarieresearch.com/ideas/api/static/file/publications/7296617/TakeawayMarketPlaces040716Re247529.pdf>

An analysis of online shopping and home delivery in the UK, University of Westminster, February 2017.

http://www.ftc2050.com/reports/Online_shopping_and_home_delivery_in_the_UK_final_version_Feb_2017.pdf

69. However, the evidence available also indicates that some restaurants may see the two types of platforms as valid alternatives. Responses to the CMA's merger investigation indicated that many restaurants see all types of OTO aggregators as providing access to a potentially greater number of consumers and therefore from that perspective OTO aggregators with and without delivery services appear, at least in principle, to serve similar needs. This may reflect that it is likely that many consumers would also consider the two types of platforms alternatives as, from the consumer side, it does not matter whether the restaurant or the OTO aggregator provides the delivery service.
70. The CMA has therefore included the supply of OTO aggregation services with delivery services in the product frame of reference. However, the CMA also recognises that the service offered by these suppliers can be significantly differentiated from pure OTO aggregators, and the constraint that they impose on pure OTO aggregators will diminish as differentiation increases. Therefore, the CMA has taken any difference between the two types of OTO aggregators into account in its competitive assessment.

All OTO services (ie including OTO restaurants' own website/app)

71. The Parties submitted that the appropriate frame of reference should include OTO through restaurants' own website/apps and should reflect the constraints imposed by other OTO providers (such as Pizza Hut and Domino's) through competition for consumers.
72. Some consumers may consider restaurants' own website/app to be a viable alternative to an OTO aggregator. As explained in paragraph 100 below, this is the view of one large chain takeaway provider, which considers that it competes with the Parties for consumers at all stages of the consumer decision-making process. However, as noted at paragraph 63 above, many smaller restaurants do not have the resources to establish an effective online presence and, in any event, the OTO platform gives restaurants access to a large number of consumers and is particularly important for attracting new consumers.
73. The CMA notes that OTO restaurants do not offer access to their OTO platforms and services to independent restaurants, which account for the majority of the Parties' restaurant customers. In addition, industry research and market reports rarely (if at all) mention these OTO restaurants when analysing the competitive landscape.
74. The CMA believes that, while restaurants' own marketing and websites may be a valid alternative for restaurants transacting with some existing consumers, the evidence suggests it is less effective at attracting new

consumers. As such, there is insufficient evidence to support widening the frame of reference to include all OTO services, at least as far as restaurants are concerned. The CMA has therefore not included own marketing in the product frame of reference but has taken it into account in the competitive assessment.

Conclusion on product scope

75. For the reasons set out above, the CMA has considered the impact of the Merger within the frame of reference for the supply of all OTO aggregation services.

Geographic scope

76. The Parties submitted that it would be appropriate to define the market as UK-wide in scope. The Parties noted that, to the extent that consumers have different choices in different regional areas, these variations should be taken into account in the analysis of competitive effects, rather than in a market definition context.⁴¹
77. Based on the evidence available, the CMA believes that there are demand and supply side factors indicating that there are local elements to competition, namely:
- (a) Takeaway food is delivered locally and in response to local demand from consumers, and so the characteristics of competition as experienced by both restaurants and consumers in respect of the provision of takeaway food by restaurants are local in nature.
 - (b) The strength of an OTO aggregation platform in a local area depends on the number of local restaurants listed on it and on the number of local residents placing orders through the platform.
 - (c) Marketing efforts to drive brand awareness can also occur at the local level⁴² [REDACTED] as seen in Hungryhouse's internal documents.⁴³
 - (d) A business model based on delivering orders is more geographically constrained and typically limited to urban centres. For this reason, the number of competitors varies in different areas. While the Parties tend to be present widely across the UK, Deliveroo operates in 96 towns and

⁴¹ Merger Notice, paragraph 13.2.2.

⁴² [REDACTED].

⁴³ [REDACTED].

cities, UberEATS in London, Manchester and Birmingham and Amazon Restaurants only in London.

78. However, the CMA also observed that OTO aggregation platforms that do not provide delivery services are easily scalable and providers can operate in any local area and further that the functionality, user interface and other qualitative features of OTO aggregation platforms do not vary by locality.
79. The CMA also noted that there are important supply-side factors that suggest a nationwide frame of reference is most appropriate:
- (a) Pricing (such as commission rates) is set on a national basis and, [REDACTED].
 - (b) Substantial marketing activities to drive brand awareness are also carried out at the national level. Both Parties, for example, have invested significantly in TV commercials.⁴⁴
80. The CMA has consequently analysed the effect of the Merger at the national level, taking into account, in its competitive assessment, local variations in the number of relevant suppliers selling OTO aggregation and delivery services. As discussed in further detail below, for the purposes of gauging these local variations, the CMA has not found it necessary in the context of a national assessment to define the precise boundaries of these areas.

Conclusion on geographic scope

81. For the reasons set out above, the CMA has assessed the impact of the merger on competition in the UK as a whole. Differences between local areas with different characteristics (e.g. major urban centres versus other areas) have been considered in the competitive assessment.

Conclusion on frame of reference

82. For the reasons set out above, the CMA has assessed the impact of the merger on the supply of OTO aggregation platforms to restaurants in the UK. The extent to which the impact varies across different areas has been considered in the context of the competitive assessment. Similarly, the implications of the multiplicity of business models adopted by OTO aggregators have been taken into account in the competitive assessment.

⁴⁴ See Just Eat presentation titled [REDACTED].

Competitive assessment: horizontal unilateral effects

83. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.⁴⁵ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply of OTO aggregation platforms to consumers and restaurants in the UK.
84. The concern under this theory of harm is that the Merger reduces the number of competing OTO aggregators. As such, the Merger might lead to an SLC through horizontal unilateral effects in the supply of OTO aggregation platforms.
85. As outlined above, given the two-sided nature of these products, OTO aggregators need to get both consumers and restaurants on board. As noted, above, given that any concern is more likely to arise on the restaurant side, the CMA has focused its assessment on the impact on restaurants, but has also taken into account in its assessment the extent of the constraint from competition for consumers. In this context, the loss of competition might lead to an increase in the fees and commissions charged to restaurants or to a decrease in the quality of the service they receive, such as less innovation in the underlying technology or worse customer service.
86. In order to establish whether there is a realistic prospect of this theory of harm arising, the CMA has considered: (i) the Parties' shares of supply; (ii) evidence on the extent to which they compete closely (taking into account the constraint arising from the need to get both the consumer and the restaurant sides of the product on board); (iii), the constraints imposed by competing firms; (iv) the constraint imposed by a restaurant's own direct ordering initiatives); (iv) the impact of competition on the consumer side on competition on the restaurant side.

Shares of supply

87. The CMA has estimated the Parties' shares of supply on the basis of the volume of orders placed on different OTO aggregation platforms in 2016. Based on data received from the Parties and third parties, the Parties would

⁴⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

have a combined share of supply of around [80-90]%, with an increment of around [0-10]%.

88. The CMA notes that these estimates may to some extent overstate the Parties' shares as:
- (a) Amazon Restaurants was only launched in September 2016.
 - (b) There is evidence to indicate that Deliveroo, UberEATS and Amazon Restaurants have recently experienced a higher rate of growth than the Parties, so that the shares of supply for 2016 may overestimate the Parties' shares of supply at present.
89. These shares may also understate the Parties' relative positions nationally as they do not reflect local variation (as discussed further below).
90. The CMA discusses the relative positions of the other OTO aggregators below at paragraph 129 *et seq.*, including the extent to which their current positioning is indicative of their competitive constraint in the future further below at paragraph 175 *et seq.* The CMA nonetheless believes that these shares are broadly indicative of the Parties' combined position for the foreseeable future. As such, the CMA believes that the Parties' combined shares of supply are sufficiently high to raise *prima facie* competition concerns.

Table 1: Shares of supply for all OTO aggregation platforms

	Orders in 2016	Share
Just Eat	[REDACTED]	[70-80]%
Hungryhouse	[REDACTED]	[0-10]%
<i>Combined</i>	[REDACTED]	[80-90]%
Deliveroo	[REDACTED]	[REDACTED]
UberEATS	[REDACTED]	[REDACTED]
Amazon Restaurants	[REDACTED]	[REDACTED]

Source: the Parties and third parties.

Closeness of competition

91. The CMA has examined the closeness of competition between the Parties for consumers and restaurants and considered the extent to which competition for consumers impacts on competition for restaurants. In carrying out this assessment, the CMA has had regard to evidence from internal documents and third party views on closeness of competition.

Competition for consumers

92. In the context of multi-sided platforms, it may be argued that, in order to remain competitive on the consumers' side, the merged entity will have to continue to provide access to a large and varied range of restaurants. If so, competition for consumers could potentially reduce any post-merger incentive to worsen the conditions offered to restaurants. The CMA has assessed the extent to which the Parties compete for consumers and its impact on competition for restaurants (see paragraphs 162 to 163).
93. The CMA notes that the following evidence is indicative of the Parties competing with a wider set of competitors for consumers than for restaurants:
- (a) Just Eat's internal documents consistently include Deliveroo, UberEATS, Domino's and often Papa John's and Pizza Hut in their analysis of competition for consumers.
 - (b) One Just Eat internal document, which documents the relative spend shift from competitors to Just Eat as a result of a general consumer discount over a trial period, [REDACTED].⁴⁶
 - (c) The Parties have submitted an econometric analysis of the impact, at postcode district level, that the number of restaurants on each of [REDACTED] OTO platforms has on the volume of Just Eat's sales.
 - (d) The Parties submitted that the same econometric analysis demonstrates that the number of restaurants on Hungryhouse's platform in a given postcode district [REDACTED] Just Eat's order volumes.
94. The CMA notes that the Parties do also compete with each other for consumers. The evidence for this is as follows:

Impact of outages

95. Evidence that consumers switch between the Parties can be seen from their observed behaviour when one platform goes offline. This happened to Just Eat on [REDACTED] and resulted in approximately [REDACTED] additional orders on Hungryhouse's platform.⁴⁷ The Parties have submitted a quantitative analysis of diversion to Hungryhouse during outages of the Just Eat platform. The

⁴⁶ Just Eat presentation, [REDACTED].

⁴⁷ Response to question 41 of the 1st RFI dated 18 January 2017, submitted 14 February 2017.

analysis showed an average diversion of [REDACTED]%,⁴⁸ although the CMA notes that the estimates vary significantly across the twelve events considered.

Consumer surveys

96. A consumer survey commissioned by Hungryhouse in September 2016, shows that in over 50% of cases, restaurant choice is made only after accessing the platform. A Hungryhouse presentation observes in this regard that “*the chosen restaurant is still a result of inspiration during the purchase process*”.⁴⁹
97. Results of a different survey commissioned by Just Eat and conducted by [REDACTED]⁵⁰ shows that of the consumers sampled, both Just Eat and Hungryhouse had significantly larger numbers of responses from consumers indicating that they [REDACTED], compared with each of [REDACTED].
98. This is also reflected by actual usage results, as Just Eat and Hungryhouse [REDACTED].⁵¹ In this regard, the survey evidence concludes that, at least with regard to the [REDACTED], suggesting that there is a close similarity in how consumers engage with each of their platforms, as distinct from other alternatives.⁵²

Third party views

99. Responses to the CMA merger investigation received from OTO restaurants indicate mixed views on the extent of competitive interaction between their business’ and the Parties’ aggregator model. One larger takeaway chain told the CMA that it considers the Parties’ OTO aggregators may provide access to additional consumers, who only decide on what they want to eat after opening the app to see the options available. Therefore, if their restaurant is not listed, they will not receive an order. By contrast, another large takeaway chain believes they compete with the Parties’ OTO aggregators at all stages of the consumer decision-making process. A different takeaway chain also told the CMA that they consider half the orders they receive via OTO aggregation platforms are merely cannibalised from orders they would have received in any event.

⁴⁸ Additional submission by the Parties dated 31 March 2017, paragraph 3.9.

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ *Ibid.*, page 20.

⁵² *Ibid.*, page 19.

Impact of number of restaurants on competing platforms

100. The Parties submitted an econometric analysis that assessed the impact that the number of restaurants on competing platforms has on Just Eat's order volumes (at the level of postcode districts). The analysis contained both a cross-section analysis (looking at orders in September 2016) and a panel data analysis (looking at the evolution of order volumes and restaurant numbers across ten months up to and including September 2016) in which fixed effects were used to control for local characteristics.
101. The Parties' analysis suggested that an increase in the number of restaurants listed on [REDACTED] impact on Just Eat's order volumes. [REDACTED].
102. The CMA believes that the analysis provides evidence of competition between Just Eat and each of Deliveroo, UberEATS and Domino's.
103. However, the CMA does not believe that the Parties' econometric analysis provides sufficiently convincing evidence of the absence of a significant competitive interaction between Just Eat and Hungryhouse. In respect of the cross-section analysis, the CMA found that the results are critically dependent on the precise specifications adopted in the model. When reasonable alternative specifications are applied, [REDACTED].
104. In respect of the panel data analysis, the CMA notes that Hungryhouse was already a well-established brand during the 10-month period considered and therefore did not expand as rapidly as the other brands. As a result, [REDACTED]. The CMA believes that these considerations may explain why the Parties' analysis [REDACTED].
105. As a result, the CMA does not consider that the evidence presented to it is sufficiently robust to support a conclusion that the number of restaurants listed on Hungryhouse does not impact on Just Eat's orders, such that Hungryhouse does not operate as a significant competitive constraint in respect of consumers.

Internal documents

106. Customer research commissioned by Just Eat evidences that the overlap between the consumers using the Parties' platforms is significant, and larger than the overlap between each Party and any other competitor.⁵³ The Parties noted that a large group of restaurants are listed on both the Just Eat and the

⁵³ [REDACTED].

Hungryhouse platforms⁵⁴. Around [80-90]% of the [redacted] restaurants listed on Hungryhouse in September 2016 were also listed on Just Eat⁵⁵ and [30-40]% of restaurants signed up to Just Eat are also present on Hungryhouse.⁵⁶ Consistent with the other evidence outlined above, this suggests that many consumers would view the Parties as alternatives.

107. One Just Eat internal document compares the level of audience duplication (or the shared customers and visitors between Just Eat and its competitors) between Just Eat and each of Deliveroo, Hungryhouse and Domino's, based on data from [redacted]. It shows that [redacted].⁵⁷

Conclusion

108. Therefore, the evidence available indicates that on the consumer side the Parties compete both with each other and with other competitors.

Competition for restaurants

109. In assessing competition for restaurants, the CMA has considered:
- (a) the characteristics of the Parties' service propositions;
 - (b) the extent of the restaurant overlap between the Parties; and
 - (c) evidence of the Parties monitoring / targeting each other's restaurant customers and responding to such behaviour.

The Parties' service propositions

110. Both Parties provide a similar service to restaurants based on a similar commission-based model.⁵⁸
111. In this context, the CMA also notes that the majority of restaurant responses to the CMA's merger investigation indicated that Just Eat's and Hungryhouse's service offerings to restaurants are very similar and are

⁵⁴ Section 15.2.2 of the Merger Notice.

⁵⁵ The CMA notes that considering only the postcode districts where both Parties are present gives an almost identical result, as Just Eat is present in almost every postcode district where Hungryhouse is present (while the opposite is not true).

⁵⁶ The CMA notes that the overlap may be larger than the Parties have indicated. When the Parties were asked to identify the restaurants currently on Hungryhouse's platform which are not listed on Just Eat, several of the [redacted] restaurants so identified were found to be listed on Just Eat as well. The CMA has checked a small sample of these restaurants and most of them were present on Just Eat.

⁵⁷ [redacted].

⁵⁸ A large proportion of each of the Parties' revenue comes from commissions charged to restaurants. Both Parties apply a standard commission of 14% ([redacted]) of the value of the orders placed through their platform. Hungryhouse also charges a [redacted] of [redacted] if a restaurant receives at least [redacted] orders through its app.

therefore close substitutes. In particular, over half of the restaurants that responded to the CMA’s merger investigation told the CMA that the Parties were close alternatives for their requirements (in terms of the services and terms that they offer). In this context, a significant number of restaurants expressed concerns on the basis of reduced choice post-Merger, which the CMA believes is further indication of the Parties’ offerings closely competing.

112. The Parties are also pursuing similar strategies with regard to delivery services to restaurants. While both Parties have recently entered into agreements with third party delivery companies in order to also offer a delivery service to those restaurants that need this, both the Parties will retain the “pure” OTO aggregator proposition for their core restaurant customer base that have in-house delivery capability. In this regard, the Parties remain differentiated from Deliveroo, UberEATS and Amazon Restaurants, each of which offers a pure bundle of delivery services and OTO aggregation.

Extent of geographical overlap

113. As consumer demand for takeaway food is local, the overall number of restaurants signed up by an OTO platform does not on its own provide a good indicator of the constraint imposed by this platform on the Parties. The CMA has therefore sought to measure the level of geographic overlap between both the Parties and also each of the alternative OTO aggregator platforms. The CMA thus calculated the number of postcode districts in which each of the Parties and their competitors operate (by reference to having a listed restaurant located in that postcode district) and the extent to which they overlap. The results are summarised in the table below.

Table 2: Analysis of postcode districts where the Parties and competitors operate

Postcode Areas in which...	No of districts	Percentage
Only Just Eat is present	[REDACTED]	[20-30]%
Only Hungryhouse is present	[REDACTED]	[0-5]%
Only Just Eat and Hungryhouse are present	[REDACTED]	[50-60]%
Just Eat, Hungryhouse and Deliveroo are present	[REDACTED]	[10-20]%
Just Eat, Hungryhouse and UberEATS are present	[REDACTED]	[0-5]%
Just Eat, Hungryhouse and Amazon are present	[REDACTED]	[0-5]%
Just Eat, Hungryhouse, Deliveroo and UberEATS are present	[REDACTED]	[0-5]%
Just Eat, Hungryhouse, Deliveroo and Amazon are present	[REDACTED]	[0-5]%
Just Eat, Hungryhouse, UberEATS and Amazon are present	[REDACTED]	[0-5]%
All competitors present	[REDACTED]	[0-5]%

Just Eat or Hungryhouse, and at least one of Deliveroo, UberEATS or Amazon are present	[X]	[0-5]%
OTO aggregation platforms are present	[X]	100%

Source: CMA analysis.

114. The table above demonstrates that the Parties are both present in just under [70-80]% of postcode districts served by any OTO aggregator. The CMA also notes that it is in less than [20-30]% of postcode districts that any other competitor is present, which highlights the extent of the overlap between the Parties and the closeness of competition between them.

Extent of restaurant overlap

115. The evidence available to the CMA indicates that many restaurants list on more than one platform (ie they multi-home) and that the overlap between restaurants present on the Parties' platforms is significant on a national and local basis. As described more specifically in paragraph **Error! Reference source not found.** above, a large group of restaurants are listed on both the Just Eat and the Hungryhouse platforms.
116. The Parties submitted that the extent of overlap between their restaurants was the result of their platforms being used by different groups of consumers, and therefore reflected a complementary offering from the perspective of restaurants. However, the CMA does not believe that the available evidence supports the view that the Parties' platforms are used by different groups of consumers.⁵⁹
117. The CMA also calculated the proportion of each of the Parties' orders (in value terms) that is generated in various postcode districts and compared this to the geographic overlap of the main competitors. The results are shown in Table 3 and Table 4 at paragraphs 148 and 150 below. In particular, Table 3 shows that Hungryhouse is present in postcode districts that account for [90-100]% of the value of Just Eat's orders, emphasising the extent of its competitive constraint on Just Eat.

Evidence of competitive monitoring and reaction

118. The CMA considered evidence from internal documents and initiatives embarked on by the Parties, to determine the extent to which the Parties monitored and reacted to each other.

⁵⁹ See paragraph 107 above.

119. The evidence indicates that the Parties constrain each other significantly, though Just Eat is a stronger competitor to Hungryhouse than Hungryhouse is to Just Eat:

(a) Just Eat submitted 13 competitive reviews of companies operating in the supply of OTO services. [REDACTED]. One of these contained an in-depth assessment of [REDACTED]; however, this analysis was not undertaken for any of the other competitors in any other competitive review.⁶⁰ While the full suite of competitive reviews provided to the CMA indicates that Just Eat closely monitors a number of competitors, the fact that Hungryhouse is consistently featured, and that Just Eat engaged in an in-depth analysis of Hungryhouse's advertising strategy, implies that Just Eat considers Hungryhouse to be a close competitor.

(b) An internal document prepared by Just Eat,⁶¹ [REDACTED].

(c) A number of Hungryhouse documents show that Hungryhouse seeks to aggressively target and compete against Just Eat. [REDACTED].⁶² [REDACTED]⁶³, [REDACTED].⁶⁴

120. The Parties submitted that the evidence of competitive interaction observed by the CMA is not indicative of significant competitive interaction between the Parties and, in particular, of any constraint from Hungryhouse as:

(a) any initiatives implemented by Hungryhouse were not successful and therefore do not constrain Just Eat;⁶⁵

(b) References to Hungryhouse are historic and not accurately reflective of current constraints;

(c) [REDACTED].

121. The CMA has considered each of these points in turn.

122. First, while the Parties noted that the [REDACTED] project only resulted in an increase of overall revenues of [REDACTED], revenues in the relevant areas increased at a much higher rate than Hungryhouse's national average and there is evidence to suggest this increase occurred at a much faster rate than the Parties suggest.⁶⁶ [REDACTED], the CMA is not convinced that the [REDACTED] initiatives were not a

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ Response to question 6 of the 1st RFI dated 18 January 2017, submitted 14 February 2017.

⁶⁶ While Hungryhouse submitted that [REDACTED] started in January 2014, [REDACTED].

success (or could not have had a greater impact if carried out for a longer period).

123. Second, as outlined in the counterfactual section above, while some references to Just Eat considering Hungryhouse date from a year or so ago, the CMA does not believe on the evidence available that Hungryhouse's position is or would have been materially different more recently. As discussed, above, the CMA does not believe that there is sufficient evidence to indicate that Hungryhouse would not continue to seek to compete aggressively against Just Eat absent the Merger. In addition, recent surveys commissioned by Just Eat [REDACTED], demonstrate that Just Eat continues to monitor Hungryhouse, along with other providers of online takeaway services, in terms of attributes such as [REDACTED].⁶⁷ [REDACTED].⁶⁸
124. Third, the CMA notes that even to the extent that the current Hungryhouse strategy is reflective of incentives associated with the Merger, Hungryhouse has independently determined that [REDACTED].

Conclusion

125. The CMA believes that the evidence suggests Just Eat and Hungryhouse are each other's closest competitors both in terms of the type of restaurants they list and the geographical scope of their offering.

Conclusion on closeness of competition

126. The CMA believes that on the restaurant side of the market the Parties are each other's closest competitors, and on the consumers side the Parties compete with each other and with a number of other competitors.

The future competitive constraint of Hungryhouse

127. The CMA has had regard to the evidence described in paragraphs 20 *et seq.* and believes that on balance the evidence is not sufficiently compelling to conclude that Hungryhouse would be a significantly weakened competitive constraint in the foreseeable future. The CMA notes, for example, that while there is evidence that Hungryhouse was struggling financially and performance against certain key performance indicators was declining (see paragraph 26), there is also evidence to suggest that Hungryhouse's performance could improve, for example, based on its own financial projections as well as the results of initiatives designed to increase

⁶⁷ [REDACTED].
⁶⁸ [REDACTED].

competitiveness (see paragraph 29 *et seq.*) The CMA has therefore assessed the Merger by reference to Hungryhouse's current competitive position.

Competitive constraints

128. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has considered whether there are alternative suppliers which would provide a competitive constraint on the combined entity.

Constraint imposed on the Parties by other OTO aggregators

129. The Parties cited Deliveroo, UberEATS and Amazon Restaurants as their main OTO aggregator competitors. Each of these competitors provides a delivery service with its OTO aggregator. Further background regarding the business models of these competitors is contained at paragraph 55 *et seq.* above.

130. Deliveroo was founded in February 2013 and launched its offering in the UK in August 2013. Since then, it has rapidly increased the number of restaurant customers it lists (currently over 8,000) and the volume of orders it delivers. Deliveroo currently operates in 96 towns and cities [REDACTED].⁶⁹

131. Uber launched its UberEATS service in the UK in June 2016 in London. It has since expanded its area of operation to most of Greater London and has recently started to operate in Manchester and Birmingham. It currently has 2,172 restaurants on its platform, with 150 of these in each of Manchester and Birmingham.

132. Amazon Restaurants was launched in the UK in September 2016 and provides an order platform and delivery service to Amazon Prime subscribers. It currently operates only in London, and lists approximately 500 restaurants.

133. As part of its assessment of the closeness of competition between the Parties, the CMA has examined evidence on:

- (a) the characteristics of the Parties' and competitors' service propositions;
- (b) The scale of competitors' geographic footprint and aggregated level of geographic overlap with the Parties;

⁶⁹ [REDACTED].

(c) evidence on direct competition between the Parties and competitors;

(d) evidence of future competitive constraint;

The Parties' and competitors' service proposition

134. The Parties submitted that there are similarities in the offerings of all OTO aggregation service providers.
135. As described in paragraph 54 *et seq.*, the CMA believes that there are significant differences between the offerings of the Parties and those of the OTO aggregation and delivery service providers (ie Deliveroo, UberEATS and Amazon Restaurants).⁷⁰ These differences include: the delivery component of the offering and related costs (commission rates and delivery charges to the consumer); target restaurants; and typical order value. The CMA has considered in greater detail below the implications of these differences.

Provision of delivery services

136. With regard to the delivery service component, which is common to each of the abovementioned competitors, evidence provided to the CMA indicates that it may be an important differentiator for restaurant customers: the CMA's merger investigation indicated that while some of the Parties' restaurant customers may consider listing with an OTO aggregator offering delivery as an alternative to the Parties, this would depend on the level of the commission rates. The Parties submitted that in this context although commission rates are higher, this is because of the additional delivery component and would not change a restaurant's considerations because they would no longer have to pay for a delivery service. However, the evidence available to the CMA indicates that restaurants with their own delivery capability (i.e. the vast majority of the Parties' restaurant customers) may prefer retaining control over delivery services, as this is an important driver of consumer satisfaction⁷¹ and provides them with a direct marketing channel to consumers.
137. Against this background, as noted at paragraph 112 above, although the Parties have started to provide delivery services, they continue to offer the pure OTO model to their core customer base of restaurants, indicating that there is a distinct and differentiated demand for these services. The CMA has

⁷⁰ Takeaway marketplaces, Macquarie Research, July 2016.
<https://www.macquarieresearch.com/ideas/api/static/file/publications/7296617/TakeawayMarketPlaces040716Re247529.pdf>

⁷¹ Just Eat, Response to Issues Paper, submitted 12 April 2017, Annex 9.

not seen any evidence of plans to converge the model into one where the OTO aggregation services are only offered with delivery.

138. The CMA therefore believes that the bundling of delivery services with platform provision (and related higher commission charge) acts as a significant source of differentiation between providers such as Deliveroo, UberEATS and Amazon Restaurants on the one hand, and the Parties on the other.

Target restaurants

139. The evidence available to the CMA indicates that the Parties are differentiated from OTO aggregators with a delivery offering in terms of the types of restaurants they focus on and are much closer competitors to each other than to the Parties. Specifically:

(a) Industry research⁷² and market reports⁷³ indicate that platforms such as Deliveroo⁷⁴ UberEATS and Amazon Restaurants target higher end consumers⁷⁵ and restaurants without in-house delivery capability or with a more significant 'dine-in' proposition. Just Eat and Hungryhouse predominantly target independent restaurants.

(b) With respect to Deliveroo, this is further supported by:

- (i) Third party evidence indicating [REDACTED];⁷⁶
- (ii) The views of the chief executive of Hungryhouse, who stated publicly that *"Deliveroo operates in a "different market" from the aggregators, partly because it focuses on premium meals and even delivers from a Michelin-starred restaurant"*; *"Deliveroo is not competing for the same restaurants and while "There's definitely crossover from a consumer perspective, not so much from a restaurant perspective".⁷⁷*
- (iii) Evidence indicating a notable difference in order value. [REDACTED]

⁷² Takeaway marketplaces, Macquarie Research, July 2016.

<https://www.macquarieresearch.com/ideas/api/static/file/publications/7296617/TakeawayMarketPlaces040716Re247529.pdf>

⁷³ An analysis of online shopping and home delivery in the UK, University of Westminster, February 2017.

http://www.ftc2050.com/reports/Online_shopping_and_home_delivery_in_the_UK_final_version_Feb_2017.pdf

⁷⁴ An analysis of online shopping and home delivery in the UK, University of Westminster, February 2017.

http://www.ftc2050.com/reports/Online_shopping_and_home_delivery_in_the_UK_final_version_Feb_2017.pdf

⁷⁵ Amazon is only offering its delivery service to Amazon Prime subscribers, which the CMA anticipates would represent the higher end of the market.

⁷⁶ [REDACTED].

⁷⁷ http://www.telegraph.co.uk/business/2016/03/05/takeaway-order-firms-defend-their-slice-of-the-market/?_ga=1.32855230.1474893619.1490870574.

(iv) The evidence suggests that, at present, the extent of overlap between Deliveroo and Just Eat (ie the proportion of restaurants on Deliveroo's platform which are also listed on Just Eat) is limited. In London, the overlap is around [10-20]% and the median overlap across the various town and cities in the UK is [10-20]%.

(c) With respect to UberEats this is further supported by evidence from an internal Just Eat document, that UberEATS overlaps more closely in terms of restaurants with Deliveroo than with the Parties. [REDACTED]⁷⁸

(d) With respect to [REDACTED] this is further supported by third party evidence indicating that [REDACTED].⁷⁹

140. Overall, based on the evidence set out in paragraphs 134 to 139 above, the CMA believes that (a) the offerings of Deliveroo, UberEATS and Amazon Restaurants are differentiated from the Parties' offerings; and (b) some restaurant customers do not consider OTO aggregation platforms including delivery services to be substitutable for the Parties' offering of a pure OTO aggregation platform. The CMA considers that consumers will also perceive differences between the Parties and OTO aggregation platforms including delivery services because of the different types of restaurants they attract. This may also manifest itself in terms of the interface that is presented to consumers in terms of functionality concerning delivery options and the ease of tracking orders, etc.

Scale of alternative suppliers' footprint and level of geographic overlap with the Parties

141. The CMA considered whether the main competitors to the Parties (i.e. Deliveroo, UberEATS and Amazon Restaurants) are differentiated in geographic terms. To reach a view, the CMA examined the overall scale of these suppliers' operations and the aggregated overlap of those operations with those of the Parties.

- *Scale of competitors' overall footprint*

142. The CMA notes that out of c.120,000 takeaway restaurants in the UK, c.35,000 have historically provided delivery services.⁸⁰ Of these, over [REDACTED] are already listed on Just Eat, emphasising that Just Eat has extremely widespread coverage of traditional takeaway restaurants. Hungryhouse lists

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ Research report by Morgan Stanley, titled "Food Delivery: Feast or Famine?", March 2017, [REDACTED].

c. [REDACTED] restaurants nationwide, also demonstrating a broad geographic coverage.

143. Of the three main competitors to the Parties, Deliveroo has the broadest geographical footprint, due to it having been in the market for longer and having pursued an aggressive expansion strategy.

(a) Deliveroo launched its offering in the UK in August 2013. Since then, it has rapidly expanded and currently has over 8,000 restaurant customers located in 96 towns and cities nationwide, [REDACTED].⁸¹

(b) Uber launched its UberEATS service in the UK in June 2016 in London. It has now expanded its area of operation to most of Greater London and has recently started to operate in Manchester City centre and Birmingham City centre.⁸² It currently has 2,172 restaurants on its platforms, of which there are approximately 150 in both Manchester and Birmingham.

(c) Amazon Restaurants was launched in the UK in September 2016 and provides an order platform and delivery service to Amazon Prime subscribers. [REDACTED].⁸³

- *Extent of geographical overlap*

144. Table 2 at paragraph 113 above provides an overview of the number of postcode districts where the Parties and their competitors operate and the extent of the overlap. This shows that the Parties have the broadest geographical coverage and that Deliveroo is a distant third largest in terms of geographical coverage.

145. And while, in terms of geographical reach, Deliveroo represents the next largest competitor to the Parties, the internal documents submitted by Just Eat indicate that it considers Deliveroo's offering to be geographically differentiated from its own. Just Eat's internal documents observe that, [REDACTED].⁸⁴

146. Table 2 also shows that:

(a) UberEATS is present in [REDACTED] [5-10]% of the total) postcode districts in which either of the Parties is present.

⁸¹ [REDACTED].

⁸² See https://about.UberEats.com/en_gb/cities/. For the areas served in London, see https://about.UberEats.com/en_gb/london/faq/; for the areas served in Manchester, see https://about.UberEats.com/en_gb/manchester/faq/.

⁸³ [REDACTED].

⁸⁴ [REDACTED].

(b) Amazon Restaurants is [redacted] [0-5]% of the total) postcode districts in which either of the Parties are present.

147. Furthermore, not only are UberEATS and Amazon Restaurants extremely limited in terms of their geographical coverage, but in nearly [70-80]% of the postcode districts, none of Deliveroo, UberEATS or Amazon Restaurants is present.

- *Proportion of Parties' orders*

148. The CMA calculated the proportion of each of the Parties' orders (in value terms) that is generated in postcode districts where each of Deliveroo and UberEATS is present. The table below shows the result of this analysis for Just Eat's orders.

Table 3: Value of the orders placed on Just Eat in 2016

	Value of Orders	
... where Just Eat only is present	[redacted]	[5-10]%
...where Hungryhouse is present	[redacted]	[90-100]%
... where Deliveroo is present	[redacted]	[30-40]%
... where UberEATS is present	[redacted]	[5-10]%
Total orders on Just Eat	[redacted]	100.0%

Source: the Parties and third parties.

149. The table shows that Deliveroo is present in postcode districts that account for only c.[30-40]% of Just Eat's order value (compared with [90-100]% for Hungryhouse). Further, UberEATS is only present in postcode districts that account for under [5-10]% of Just Eat's order value.

150. Table 4 below shows the same analysis for Hungryhouse's orders. The CMA notes that the overlap of each of Deliveroo and UberEATS with Hungryhouse is larger than the overlap of each of Deliveroo and UberEATS with Just Eat. [redacted]. This also implies that Just Eat and Hungryhouse face less of a constraint from Deliveroo and UberEATS outside of London.

Table 4: Value of the orders placed on Hungryhouse in 2016

	Value of Orders	
... where Hungryhouse alone is present	[redacted]	[0-5]%
...where Just Eat is present	[redacted]	[90-100]%
... where Deliveroo is present	[redacted]	[60-70]%
... where UberEATS is present	[redacted]	[30-40]%
Total orders on Hungryhouse	[redacted]	100.0%

Source: the Parties and third parties.

Conclusion on geographic differentiation

151. The CMA therefore believes that, while, following a period of rapid expansion, Deliveroo's overall scale, as measured by the number of restaurants signed up to its platform, is much larger than that of either UberEATS or Amazon Restaurants, there remains a significant level of geographic differentiation between the Parties and all other OTO aggregators (including Deliveroo), as measured by the aggregated level of local overlap between the Parties and the other suppliers.

Evidence on direct competition between the Parties and competitors

- *Deliveroo and UberEATS*

152. Evidence provided to the CMA indicates direct competition between the Parties and competitors Deliveroo and UberEATS. In particular:

(a) Just Eat and Hungryhouse have introduced restaurant delivery services (RDS) [REDACTED].

(b) A business development update shows Just Eat [REDACTED] in the context of the expansion of Just Eat's delivery services. This document notes that Just Eat [REDACTED].⁸⁵ [REDACTED].⁸⁶

(c) The Parties told the CMA that between May and July 2016, Just Eat launched a marketing campaign called [REDACTED].

153. Other internal documents focus more on the competition from Deliveroo:

(a) An internal document prepared by Just Eat,⁸⁷ which sets out messaging regarding a rise in its commission rate notes [REDACTED].

(b) Another internal document states that [REDACTED]. This evidence suggests there is a competitive constraint, although the document notes that there could be other contributing factors such that [REDACTED].⁸⁸ Furthermore, a separate document indicates that the Deliveroo business model has [REDACTED]⁸⁹ [REDACTED].

154. However, the CMA has also obtained evidence indicating that the competitive constraint of Deliveroo on Just Eat is not strong in relation to its established customer base of takeaway restaurants that carry out their own delivery. In particular, internal documents from Just Eat show that, going forward, it has

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

split its projections between its “core” business ([REDACTED]) and the “RDS segment” (where they are offering delivery services).⁹⁰ This shows that while Just Eat is targeting its delivery services on [REDACTED], it is expecting its existing pure OTO aggregation business to be largely unaffected (at least in terms of its commission rate to restaurants) by this development in its strategy (and competition with the OTO aggregators that offer delivery services).

155. Other internal documents submitted by Just Eat indicate that UberEATS is a more direct competitor to Deliveroo than the Parties. [REDACTED].⁹¹
156. The CMA therefore believes that although there is a degree of direct competition between the Parties and each of Deliveroo (which is the more established competitor) and UberEATS, this is largely confined to competition for new types of restaurant customers, rather than the Parties’ existing customer base of takeaway restaurants that carry out their own delivery.

Conclusion

157. The CMA considers that while Deliveroo, UberEATS and Amazon Restaurants may pose some degree of competitive constraint on the Parties, the Parties remain each other’s closest competitor.

Constraint from restaurants’ own marketing and websites

158. The Parties argued that they are constrained by the ability of restaurants to reach consumers directly through their own marketing channels. In particular, they noted that:
- (a) there is evidence that many consumers still rely on direct ordering to some degree. Specifically, [REDACTED]% of Just Eat customers still order directly from the restaurant;
 - (b) it has become increasingly cheaper for restaurants to offer their own online ordering interface and restaurants often seek to steer consumers away from OTO aggregation platforms to direct ordering via their own websites and apps. This has accelerated with the entry and expansion of “white label” app-building suppliers, such as Preoday and Orderlord.
159. The CMA recognises that restaurants have an incentive to divert customers towards their own websites or to phone orders. One restaurant contacted by

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

the CMA stated that it uses the Hungryhouse platform “to acquire new customers and then divert them to our own website and app”.⁹²

160. The CMA believes that, while direct ordering can be a valid alternative for the existing customers of a restaurant, particular those who use the Parties’ platform to transact with a limited range of preferred restaurants on a regular basis, it is likely to be much less effective in attracting new customers for the following reasons:

- (a) Just Eat appears to recognise the limited value of white label websites; in one internal document [REDACTED].⁹³ The CMA notes that this comment referred to [REDACTED]. For the latter, dependence on OTO aggregation platforms may therefore be even higher.
- (b) As described above, the importance of OTO aggregation platforms as a source of new customers for restaurants is also supported by the results of a consumer survey commissioned by Hungryhouse in September 2016, which shows that in over 50% of cases, restaurant choice is made only after accessing the platform. A Hungryhouse presentation observes in this regard that [REDACTED].⁹⁴
- (c) The increasing importance of OTO aggregation platforms for independent restaurants was confirmed by the CMA merger investigation. The CMA was told by one party that being present on an OTO aggregation platform is an increasingly important means in which independent restaurants compete against larger chains.⁹⁵ Several restaurant owners expressed the view that OTO aggregation platforms have become a necessity for small restaurants. According to one restaurant owner: “*Online platforms are a good way of advertising. They are expensive but you can’t run your business without them. Being available online is more effective than dropping leaflets.*”⁹⁶ Another restaurateur suggested that OTO aggregation platforms had cannibalised existing orders, stating that “*regular customers used to order on the phone, but now order through Just Eat.*”⁹⁷
- (d) The increasing importance of OTO aggregation platforms is also illustrated by the rapid growth in the volume of orders placed on these platforms. Moreover, market research shows that, while phone orders are

92 [REDACTED].
93 [REDACTED].
94 [REDACTED].
95 [REDACTED].
96 [REDACTED].
97 [REDACTED].

still the most common way of ordering takeaway food, online orders are the method preferred by younger generations (34 years old or younger).⁹⁸ This suggests that the popularity of online orders will continue to grow in the future, further reducing independent restaurants' bargaining power.

Conclusion

161. While the CMA recognises that there is likely to be some constraint on OTO aggregation platforms from direct ordering, the CMA is unable to conclude on the evidence it has found that the strength of this constraint would be sufficient to prevent a realistic prospect of an SLC. In particular, the evidence indicates that while direct ordering is important for consumers who know which restaurant they want to order from (ie existing customers), from the restaurants' perspective, it is limited as an alternative to OTO aggregator platforms because it does not provide access to large numbers of potential new consumers.

The effect of competition for consumers on competition for restaurants

162. The CMA believes that on the restaurant side of the market the Parties are each other's closest competitors, and on the consumer side the Parties compete with each other and with a number of other competitors.
163. The CMA notes that the Parties obtain [X] their revenue from restaurants and [X].⁹⁹ In this context, the CMA believes that the existence of wider competition on the consumer side of the market places limited constraint on the Parties' charges. This is because, for restaurants to pass on increases in the Parties' charges to consumers, they would have to increase their charges to all their consumers, including those ordering directly, but those charges are constrained by direct competition with other restaurants.¹⁰⁰ Hence the main constraint on the Parties is likely to come not from losing orders due to restaurants increasing their own prices, but from restaurants delisting from the Parties.

⁹⁸ Mintel Report, titled "Attitudes towards home-delivery food and takeaway food, UK April 2016", Annex 3B.2 to the Merger Notice, pages 35-36.

⁹⁹ About [X]% of the Parties' revenue comes from card fees, which in some cases may be passed on via an administration charge for using an OTO aggregator.

¹⁰⁰ Furthermore, the feedback effect on the Parties would be reduced because restaurants experience a loss of both orders from the Party increasing prices and all other orders. For example, if 30% of orders are via the Party increasing its prices, it would only experience 30% of the effect of the restaurant passing on that price increase to its own consumers.

Conclusion on horizontal unilateral effects

164. As set out above, the CMA believes that:

- (a) there is evidence that Just Eat and Hungryhouse are each other's closest competitors and constrain each other. In particular, the Parties have similar service propositions and are the only competitors in many areas of the country (as shown in Table 3). Restaurants identified the Parties as close competitors, with a differentiated product offering to other OTO providers. This is consistent with information in the internal documents which show that Hungryhouse sees Just Eat as a close competitor and reacts to its service offerings;
- (b) while Deliveroo, UberEATS and Amazon Restaurants are an option for some restaurants, they are not suitable alternatives to the Parties for many. In particular, the CMA has seen evidence that indicates these platforms are more limited geographically and primarily target a different profile of restaurants such that they do not constrain Just Eat. The CMA has not seen evidence that the growth of these platforms has constrained the Parties' charges to their traditional restaurant base or will do so in future;
- (c) while the Parties may be subject to some constraint from restaurants using direct ordering channels, the degree of this constraint is uncertain and may in fact be limited; and
- (d) the CMA believes that the existence of wider competition on the consumer side of the market places limited constraint on the Parties' charges on the restaurant side.

165. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of OTO aggregation platforms to restaurants in the UK.

Barriers to entry and expansion

166. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might

prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁰¹

167. The Parties submitted that barriers to entry and expansion in the market for OTO aggregation platforms are extremely low.¹⁰² For pure OTO aggregation platforms, the Parties stated that these have extremely low start-up costs, as all that is required is an online platform for restaurants to sign up to and customers to place orders. In effect, once a good online platform has been set up, a business adopting this model can expand into different cuisines and geographical locations without significant costs.”¹⁰³
168. The CMA notes that, while setting up a pure OTO aggregation platform does not necessarily require high financial investment, creating a sustainable OTO aggregation platform which has a significant share of supply requires significant and on-going investments in marketing. This is evidenced by:
- (a) The Parties’ submissions in relation to the changing competitive position of Hungryhouse, which stress that as Hungryhouse has reduced its marketing spend its ability to improve its brand awareness amongst consumers and hence its commercial performance has been constrained;¹⁰⁴ and
 - (b) The history in the UK of various pure OTO aggregation platforms that have exited the market or been bought over the last five years. In 2012, Just Eat was competing against a range of other pure OTO aggregation platforms in the UK including: Hungryhouse, Eatitnow, Fillmybelly, Meal2go, Nifty Nosh, Nocook and Takeaway.com.¹⁰⁵ Since then, some of these competitors have exited the market while Just Eat has acquired others.
169. The CMA believes that there are significant strategic barriers to entry, in particular the need to develop a reputation in the supply of OTO aggregation services over a number of years,¹⁰⁶ without which customers in the market would be reluctant to join the platform, as well as the need to attract ‘anchor’ customers. Internal documents by the Parties show that, even for well-established brands, there is still a desire for large customers (eg restaurant chains) to act as a catalyst to further encourage other customers (particularly consumers) to join the platform.

¹⁰¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

¹⁰² Merger Notice, paragraph 19.1.

¹⁰³ Merger Notice, paragraph 26.4.2.

¹⁰⁴ Merger Notice, paragraph 11.2.1.

¹⁰⁵ http://go4venture.com/wp-content/uploads/2012_04_Go4Bulletin.pdf

¹⁰⁶ Just Eat and Hungryhouse have both been operating in the UK since 2007.

170. The evidence available also indicates that there is significant first-mover (or incumbency) advantage, which means that entrants could be discouraged from entering the UK market specifically. As indicated by the views of various chief executives of Just Eat and Rocket Internet which show that OTO aggregation platforms are “*eschewing expansion into new markets in favour of seeking dominance within existing countries*” and focussing on enhancing “*market-leading positions in geographies that we understand and where our existing businesses are performing strongly*” as well as highlighting the importance of mergers and acquisition in “*enabling all parties to focus their resources on building bigger and better long term businesses in their key geographies*”.¹⁰⁷
171. The Parties submitted that the recent entry of Deliveroo and the expansion from adjacent markets of Amazon Restaurants and UberEATS indicate that barriers to entry and expansion are low.
172. On the contrary, the CMA believes that the approach taken by Deliveroo illustrates that significant amounts of funds and logistic infrastructure are required to enter and/or expand in this market. As noted by the Parties, “*Deliveroo’s expansion has been funded by several rounds of financing, through which it has raised \$474.6 million (approximately £380 million) from external investors. This funding has allowed Deliveroo to spend heavily on marketing, in order to raise its public profile and increase brand awareness.*”¹⁰⁸ In addition, [✂].¹⁰⁹
173. The CMA also notes that Amazon Restaurants and UberEATS are part of bigger corporate entities, which are leveraging their presence in other markets and their existing customer base to move into the supply of OTO aggregation and delivery services. These organisations also have the financial capabilities to sustain potentially prolonged period of negative profits. Industry and market reports have also reported that Amazon Restaurants and UberEATS, despite their considerable resources, may face significant operational challenges and their future success in the supply of OTO aggregation is not assured.¹¹⁰
174. The CMA notes that UberEATS and Amazon Restaurants have been in the market for less than two years and it is unclear how successful they will be in expanding both in size and geographically across the UK.

¹⁰⁷ Financial Times article, dated February 5, 2016. Just Eat gobbles up international businesses. See <https://www.ft.com/content/c13ef22d-76ca-38e2-b920-b5cb2ca86c62>

¹⁰⁸ Merger Notice, paragraph 26.2.2.

¹⁰⁹ Just Eat, Response to Issues Paper, submitted 12 April 2017, paragraph 2.5.9.

¹¹⁰ Takeaway marketplaces, Macquarie Research, July 2016. See <https://www.macquarieresearch.com/ideas/api/static/file/publications/7296617/TakeawayMarketPlaces040716Re247529.pdf>

Assessment of the future constraint posed by competitors

Deliveroo

175. The evidence indicates that expansion is more difficult for operators with a delivery model than for pure OTO aggregators. When coupled with their current business focus (restaurants with no delivery element) expansion in certain areas where Just Eat and Hungryhouse are already present may not be attractive or commercially viable.
176. The Parties submitted that even if there is a minimum efficient scale at which it is commercially feasible for Deliveroo to enter a region, the evidence suggests this is a low threshold as Deliveroo is now present in over 50 towns with a population below 150,000, including in St Andrews, which has a population of around 17,000. On the assumption that Deliveroo could successfully penetrate all towns with a population of 15,000 residents, the Parties estimate that Deliveroo's coverage could eventually extend to up to 90% of the UK's population.
177. The CMA, however, believes that, given the speed of Deliveroo's expansion, it is not yet possible to determine whether such expansion into smaller localities will be sustainable. The CMA notes that although [REDACTED].¹¹¹ The CMA therefore believes that Deliveroo's future expansion is subject to a significant degree of uncertainty.

UberEATS

178. UberEATS [REDACTED].¹¹²
179. During 2017, as publicly stated¹¹³ UberEATS plans to expand its presence to another 40 towns and cities across the UK and aims to increase the number of listed restaurants to approximately [REDACTED].
180. However, [REDACTED]. In this context, the CMA cannot conclude with any confidence how UberEATS will behave in the future (eg whether it will continue to grow geographically or try to consolidate its position in limited geographies; whether it will reduce spend and focus on profitability, etc.).
181. The CMA therefore has insufficient evidence that the constraint from UberEATS will significantly increase in the near future.

¹¹¹ [REDACTED]

¹¹² [REDACTED]

¹¹³ <https://www.ft.com/content/c59a8866-12ec-11e7-80f4-13e067d5072c>

Amazon Restaurants

182. Despite its relatively small overlap with the Parties, [REDACTED],¹¹⁴[REDACTED].¹¹⁵[REDACTED].¹¹⁶
183. [REDACTED].
184. Again, given the inherent uncertainty in any future projections of a nascent business, the CMA has insufficient evidence on which to conclude on the future constraint of Amazon Restaurants on the Parties by reference to these forward looking projections.

Conclusion

185. The CMA believes that the abovementioned plans for future expansion are not sufficiently certain for the purposes of the CMA's competitive assessment in terms of likelihood, timeliness and sufficiency of potential entry and expansion.
186. Taken together, the CMA believes that the marketing and financial investments required, strategic barriers and strategic plans of the key players in the industry lead individually and jointly to high barriers to entry or expansion such that entry or expansion would not be sufficient, timely or likely to prevent a realistic prospect of a substantial lessening of competition as a result of the Merger.

Third party views

187. The CMA contacted customers and competitors of the Parties. A number of restaurant customers raised concerns regarding the Merger. These comments have been taken into account where appropriate in the competitive assessment above.

Exceptions to the duty to refer

Markets of insufficient importance

188. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the markets concerned is not of sufficient importance to justify the making of a reference (the ***de minimis***

¹¹⁴ [REDACTED]

¹¹⁵ [REDACTED]

¹¹⁶ [REDACTED]

exception). The CMA believes that the market concerned in this case is of sufficient importance to justify the making of a reference. By way of example, the CMA notes that Just Eat has UK revenues of around £[~~8~~] million and, as shown in Table 3 above, Hungryhouse is present as a constraint in postcode districts that account for [90-100]% of the value of Just Eat's orders. The CMA believes that it is not appropriate for it to exercise its discretion to apply the *de minimis* exception.

Decision

189. Consequently, the CMA believes that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
190. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised¹¹⁷ whilst the CMA is considering whether to accept undertakings¹¹⁸ instead of making such a reference. The Parties have until 17 May 2017¹¹⁹ to offer an undertaking to the CMA.¹²⁰ The CMA will refer the Merger for a phase 2 investigation¹²¹ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹²² by 24 May 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Kate Collyer
Deputy Chief Economic Adviser
Competition and Markets Authority
10 May 2017

¹¹⁷ Section 33(3)(b) of the Act.

¹¹⁸ Section 73 of the Act.

¹¹⁹ Section 73A(1) of the Act.

¹²⁰ Section 73(2) of the Act.

¹²¹ Sections 33(1) and 34ZA(2) of the Act.

¹²² Section 73A(2) of the Act.