

Anticipated acquisition by Just Eat of Hungryhouse

Provisional findings report

Notified: 12 October 2017

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

1. On 19 May 2017, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Just Eat plc (Just Eat) of Hungryhouse Holdings Limited (altogether the merger) for further investigation and report by a group of CMA panel members (the inquiry group). Throughout this report, where relevant, we refer to Just Eat and Hungryhouse Holdings Limited and its subsidiaries (Hungryhouse) collectively as the Parties.
2. Just Eat is a UK based corporate group which has been listed on the London Stock Exchange since 2014. In the UK, it provides a food ordering marketplace that facilitates transactions between final consumers and restaurants willing to offer home delivery services. It currently offers such services in 15 countries and in the year ended 31 December 2016, reported a global turnover of £375.7 million. Its UK business contributed 63% of group revenues.
3. Hungryhouse also supplies a food ordering marketplace in the UK and is a wholly owned subsidiary of Delivery Hero AG (Delivery Hero), a company listed on the Frankfurt Stock Exchange since 30 June 2017 and with operations in more than 40 countries. In the year ended 31 December 2016, Hungryhouse reported revenues of £29.1 million in the UK.
4. The Parties operate within the broad restaurant food ordering and delivery industry, comprising suppliers that can be categorised into three main types, depending on the business model they have adopted, namely: food ordering marketplaces, ordering and logistics specialists, and vertically-integrated food chains.
 - (a) Food ordering marketplaces, including Just Eat and Hungryhouse, provide consumers with access to multiple restaurants, and restaurants with access to multiple consumers, on a single online platform.
 - (b) Ordering and logistics specialists are similar to food ordering marketplaces, but in addition, they manage the delivery function on behalf of restaurants (unlike food ordering marketplaces). This category includes suppliers such as Roofoods Limited (known as Deliveroo), Uber London Limited (Uber, via its UberEATS service) and Amazon Online UK Limited (Amazon, via its Amazon Restaurants service).
 - (c) Vertically-integrated food chains are restaurant chains which take ownership of the order management, cooking and delivery of the food. This category includes suppliers such as Domino's Pizza Group plc

(Domino's), Papa John's GB Ltd (Papa John's) and Yum! III (UK) Limited (under the brand Pizza Hut Delivery) (Yum!).

Throughout this report, where relevant, we refer to food ordering marketplaces and ordering and logistics services as online food platforms.

5. The restaurant food ordering and delivery industry is rapidly changing: in the last few years, the supply of food ordering marketplaces has become more concentrated through acquisitions and company closures, while significant investment has been made in ordering and logistics specialists, which have consequently experienced rapid growth first in London and more recently in other parts of the UK. We found that suppliers' planning horizon typically focused on the next 12 months. There is much uncertainty relating to both the business models and growth trajectory of certain suppliers and how the industry will evolve in the longer term.
6. Following a lengthy negotiation process which had taken a number of months, the Parties entered into a share purchase agreement (SPA) on 15 December 2016. Under the SPA, Just Eat will purchase 100% of Hungryhouse's share capital from Delivery Hero for a consideration of £200 million, subject to an adjustment. The Parties' combined share of orders (in volume terms) in the supply of online food platforms in the UK is over 80% (with an increment of less than 10%). We are therefore satisfied that this merger, if completed, will create a relevant merger situation.
7. In order to identify the relevant market within which to examine the competitive effects of the merger, we first defined the product market before examining issues relating to geographic market definition.
 - (a) The assessment of the relevant product market starts with the products of the merging parties: both Just Eat and Hungryhouse supply food ordering marketplaces and related services to two distinct and unrelated groups of customers: restaurants and consumers, where the willingness of restaurants to list on the Parties' platform depends on the participation of consumers on the platform, and vice versa. As such, the Parties' products can be described as two-sided.
 - (b) We sought to identify the most significant alternatives available to the two categories of customers of the Parties (ie restaurants and consumers), using four sources of evidence: a survey of consumers and restaurants which we carried out in June/July 2017, an econometric analysis, a review of internal documents of the Parties and views expressed by third parties (competitors and industry observers). We considered the substitutability between food ordering marketplaces and (i) ordering and logistics

specialists; (ii) direct ordering by consumers from restaurants (through their websites, by telephone or on-site); and (iii) vertically-integrated food chains. The evidence indicated that ordering and logistics specialists were sufficiently close substitutes to the Parties' services to be in the same product market. We did not consider that direct ordering channels or vertically-integrated food chains were sufficiently close substitutes to the Parties' services that they should be considered within the relevant product market, because the services they offered were not sufficiently comparable to those of the Parties, both from a restaurant and from a consumer perspective.

(c) In order to define the geographic market, we considered a number of factors. Looking at the supply side, a number of factors point towards a national market, including pricing and marketing activities (eg TV commercials), which are mainly determined at the national level, as well as the scalability of the Parties' food ordering marketplaces. We have also found evidence indicating that local variations in competitive conditions are important, on both the supply and the demand sides. For instance, demand for the Parties' services is inherently local, with consumers ordering from restaurants that deliver to their address and restaurants listing on the Parties' platforms in order to tap into local consumer demand.

8. We therefore provisionally conclude that the relevant market in which to assess the competitive effects of the merger is the supply of online food platforms in the UK, recognising that there are local aspects to the competitive constraints faced by the Parties in different parts of the country, which are taken into account within the assessment of the competitive effects of the merger.
9. We considered what would have happened to Hungryhouse in the absence of the merger (the counterfactual), and in particular whether Hungryhouse would inevitably have exited from the market. In order to make this assessment, we obtained evidence from Hungryhouse on: its historical financial performance, activities it undertook to restructure the business, financial forecasts and the wider corporate context in which Hungryhouse operated. Based on this evidence, we provisionally conclude that, in a time horizon of 12 months, the most likely counterfactual and therefore the appropriate starting point for our analysis of the competitive effects of the merger is the situation in which Hungryhouse continues to operate in the UK.
10. We next turned to the assessment of the effects of the merger on competition. We first examined the nature of competition before the merger, and in particular the dimensions along which suppliers of online food platforms

compete, namely: the services they offer, pricing, marketing and customer acquisition channels and innovation. We then explored the implications of customer behaviour on each side of the platform for the nature of competition between platforms and assessed the degree of differentiation between the platforms, whether restaurants and consumers display single- or multi-homing behaviour¹ (ie whether they tend to use one or several online food platforms), and the relative sizes of the Parties' platforms.

11. The evidence indicates that Just Eat and Hungryhouse's food ordering marketplaces are not particularly differentiated from a consumer perspective, although the number of restaurants listed on, and the value of orders placed on, Just Eat is many times larger than that on Hungryhouse. The homing behaviour of consumers and restaurants is such that we expect competition between the Parties to be mainly focused on the consumer side, while we would expect there to be stronger competition on the restaurant side between each of the Parties and the other competitors, than between the Parties themselves.
12. Against this background, we considered whether, following the merger, there would be a loss of competition in the supply of online food platforms which could potentially lead to harm on either the consumer or the restaurant side of the market, or both.
13. As part of this assessment, we obtained evidence on the competitive positions of the Parties and other suppliers of online food platforms in the UK. We also sought the views of customers on the overall offerings of suppliers, including the Parties, and examined in more detail evidence relating to the strength of the constraint the Parties impose on each other; the constraint third parties impose on each of the Parties; and the constraint imposed by direct ordering.
14. In reaching a view on the likely effects of the merger, the evidence is far from one-sided. Our main provisional findings are that:
 - (a) While our survey evidence shows that both consumers and restaurants perceive Just Eat and Hungryhouse as close competitors, the documentary evidence we have obtained and econometric analysis we have conducted indicate that in practice Hungryhouse is imposing a limited competitive constraint on Just Eat.
 - (b) Hungryhouse has been loss making for a number of years and there is some uncertainty as to its future profitability and how long Delivery Hero

¹ See paragraph 5.2.20 of the [CMA's Merger Assessment Guidelines](#).

would have continued to support it if its financial performance did not improve.

- (c) Although in the course of 2016, Hungryhouse was developing a number of initiatives to improve its competitiveness and performance, it had only partially implemented some of them by the time the SPA was signed. Based on the evidence that we obtained, we could not satisfy ourselves that any of these initiatives would be successful, if implemented as planned. Although it is conceivable that Hungryhouse would have attempted to compete more aggressively in 2017, we were not convinced that this would have been sufficient to improve Hungryhouse's weak position materially in this increasingly competitive market.
- (d) The restaurant food ordering and delivery industry is dynamic and evolving. While Just Eat is currently in a strong position, it is being challenged by well-funded competitors, with strong brands and technological and logistics experience and expertise. Deliveroo's own projections indicate that by the end of 2017, it will have increased its share of supply from 5-10% to 10-20%, and the ordering and logistics specialists' projections indicate that together they will account for a 20-30% share of supply.
- (e) These ordering and logistics specialists pose a greater competitive constraint on Just Eat than Hungryhouse does in those areas where they are present. This is shown by Just Eat's internal documents and supported by our econometric analysis, which shows that in the areas in which Deliveroo is present, Deliveroo has been exerting a stronger constraint on Just Eat than Hungryhouse in the period since April 2015. This constraint is likely to grow as ordering and logistics specialists expand their geographic reach, their restaurant coverage and their consumer numbers.
- (f) In areas where neither Deliveroo nor UberEATS operates, Hungryhouse is particularly weak, as shown by our analysis of its share of orders made on its and Just Eat's online food platforms. In addition, consumers have the ability to order directly from takeaway restaurants, either on the phone, through their websites or by walking in. Our survey evidence provides evidence of a constraint from direct ordering; while the extent of this constraint may vary across local areas, we did not find any evidence to support the proposition that Hungryhouse currently posed (or was likely to impose in the future) a stronger competitive constraint on Just Eat compared to direct ordering in those local areas.

15. In view of the above, we provisionally conclude that the anticipated acquisition by Just Eat of Hungryhouse may not be expected to result in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.

Provisional findings

1. The reference

- 1.1 On 19 May 2017, the CMA, in exercise of its duty under section 33(1) of the Act, referred the anticipated acquisition by Just Eat of Hungryhouse Holdings Limited for further investigation and report by the inquiry group.
- 1.2 In exercise of its duty under section 36(1) of the Act, the CMA must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.
- 1.3 Our terms of reference are in Appendix A. We are required to publish our final report by 30 November 2017.²
- 1.4 Hungryhouse Holdings Limited is an intermediary holding company which has two wholly owned subsidiaries, Hungryhouse.com Ltd (the UK trading company) and Hungryhouse GmbH (a service company),³ together referred to as Hungryhouse throughout this document. Where relevant, we refer to Just Eat and Hungryhouse collectively as the Parties.
- 1.5 This document, together with its appendices, constitutes our provisional findings, published and notified to Just Eat and Hungryhouse in line with the CMA's rules of procedure.⁴ Further information relevant to this inquiry, including non-confidential versions of the submissions received from Just Eat and Hungryhouse, as well as a summary of oral evidence received in interviews and hearings, can be found on our [webpages](#).

² The inquiry group decided that the reference period should be extended by four weeks, from 2 November 2017, under section 39(3) of the Act because there are special reasons why the report could not be prepared and published within that period.

³ All sales of Hungryhouse GmbH are to Hungryhouse.com Ltd.

⁴ *CMA rules of procedure for merger, market and special reference groups (CMA17)*, Rule 11.

2. The companies and the industry in which they operate

Just Eat

- 2.1 Just Eat is a UK based corporate group which has been listed on the London Stock Exchange since 2014. As of 25 September 2017, it had a market capitalisation of £4.68 billion.
- 2.2 Just Eat describes itself as operating in the takeaway restaurant sector, acting as an intermediary between final consumers and restaurants willing to offer home delivery services.⁵
- 2.3 Just Eat was founded in 2000 and opened its first operation in Denmark in 2001. Since then, Just Eat has grown both organically and through acquisitions. It currently operates in 15 countries and, in the year ended 31 December 2016, it reported a global turnover of £375.7 million and a profit before tax of £91.3 million, as shown in Table 1 below.

Table 1: Just Eat 5 year summary financial performance

£'m	Year ended 31 December				
	2012	2013	2014	2015	2016
Revenues	59.8	96.8	157.0	247.6	375.7
Gross profit	54.7	86.8	140.9	223.4	340.5
Operating (loss)/profit	-9.7	6.8	19.0	35.5	72.5
(Loss)/profit before tax	-2.6	10.2	57.4	34.6	91.3
(Loss)/profit for the year	-0.3	1.4	4.2	6.6	12.2
Orders (million)	25.3	40.2	61.2	96.2	136.4
Active users (millions)	4.1	5.9	8.1	13.4	17.6
Restaurant partners ('000)	29.9	36.4	45.7	61.5	68.5

Source: Annual accounts.

- 2.4 Just Eat moved its headquarters to London and launched its UK operations in 2006.
- 2.5 In the UK, for the year ended 31 December 2016, Just Eat's UK subsidiary, Just Eat.co.uk Limited, reported revenues of £238.3 million and profit before tax of £109.4 million. In the last five years, Just Eat's UK business has seen revenue (and orders) grow by four times with its active users increasing from 3.4 to 9.2 million. In 2016, Just Eat's UK business contributed 63% of group revenues, 65% of orders and 52% of active users. In 2012, it contributed 69%, 68% and 83% respectively, as shown in Table 2 below.

⁵ Merger Notice, paragraph 2.1.1.

Table 2: Just Eat.co.uk Limited 5 year summary financial performance

£'m	Year ended 31 December				
	2012	2013	2014	2015	2016
Revenues	41.5	69.5	115.7	170	238.3
Gross profit	31	52.2	88.6	131.7	170.5
Operating (loss) /profit	9.1	20.4	41.7	71.4	100.0
(Loss)/profit before tax	9.1	21.2	43.6	76.7	109.4
(Loss)/profit for the year	9.1	19.8	41.2	68.6	92.2
Orders (millions)	17.1	29.1	45.5	67.1	88.1
Active users (millions)	3.4	3.9	5.5	7.1	9.2
Restaurant partners ('000)			24.6	26.7	27.6
UK percentage of Just Eat group					
Revenues	69%	72%	74%	69%	63%
Orders	68%	72%	74%	70%	65%
Active users (millions)	83%	66%	68%	53%	52%

Source: Annual accounts.

2.6 In addition to organic growth, Just Eat has made several acquisitions in the UK since 2006, including Fillmybelly Limited in 2012, which was at the time the UK's third largest takeaway ordering service, and Nifty Nosh Limited, a Northern Ireland based business.⁶

2.7 In 2016, Just Eat derived [X]% of its revenues from commissions⁷ and administration fees paid by restaurants. A further [X]% of revenue was generated from restaurants paying for promotional placement on the Just Eat food ordering marketplace (see paragraphs 2.16 and 2.17). The remaining [X]% of revenue arose from one-off fees paid by restaurants to join the Just Eat food ordering marketplace and other services such as branded commodity products.

Hungryhouse

2.8 Hungryhouse Holdings Limited is a wholly owned subsidiary of Delivery Hero, a provider of online food platforms⁸ with operations in more than 40 countries. Delivery Hero floated on the Frankfurt Stock Exchange via an Initial public offering (IPO) on 30 June 2017. Delivery Hero's revenue for the year ended

⁶ In 2016, it also acquired the assets of Take Eat Easy Limited and Takeaway.com BV's UK operations, both of which were closed down (see paragraph 2.19).

⁷ Commission revenues are driven by the number of orders placed, average order value and commission rates.

⁸ Delivery Hero's subsidiaries include both suppliers of food ordering marketplaces (defined in paragraph 2.17) and ordering and delivery specialists (defined in paragraph 2.21), together referred to as online food platforms.

31 December 2016 was €297.0 million with a loss before income tax from continuing operations of €202.3 million.⁹

- 2.9 Delivery Hero was founded in 2011. Prior to its IPO, it raised over €1.2 billion in equity from private equity investors, including Rocket Internet SE (Rocket Internet), its largest shareholder. Delivery Hero grew through a combination of organic growth and acquisitions. It bought a number of businesses worldwide, its largest acquisitions being Foodora GmbH (Foodora) in September 2015 and Emerging Markets Online Food Delivery Holding Sarl (and its subsidiaries, referred to as foodpanda) in December 2016, both from Rocket Internet.
- 2.10 Hungryhouse was founded in 2006 by two British entrepreneurs. Delivery Hero took a 35% share in November 2011. In 2012, it acquired the majority of the remaining shares.¹⁰ In early 2013, it acquired another online food market place operator, Eat It Now Group Limited, and combined the two businesses under the Hungryhouse brand.
- 2.11 Hungryhouse operates primarily as an intermediary between restaurants and consumers. It also offers a limited delivery operation in Central London. It trades in the UK through Hungryhouse.com Ltd, which receives the majority of its administrative services from Hungryhouse GmbH, a company based in Berlin as well as from its ultimate holding company, Delivery Hero (see Appendix B for further details).
- 2.12 Hungryhouse in the year ended 31 December 2016 had revenues of £29.1 million with an operating loss of £7.6 million. In the four years during which it has been owned by Delivery Hero, orders grew from around [X] million in 2013 to around [X] million in 2016 and revenue from £12.1 million to £29.1 million. Its reported operating loss (before exceptional items) increased from £2.0 million to £10.4 million in 2015 before reducing to £7.6 million in 2016, as shown in Table 3, below.

⁹ Hungryhouse was treated as a discontinued operation in Delivery Hero's annual report and as such its results are not included in the reported loss before income taxes from continuing operations. Consolidated loss after taxes from continuing operations was €191.3 million. The consolidated loss including discontinued operations was €194.9 million.

¹⁰ [X].

Table 3: Hungryhouse.com Ltd statutory accounts: summary P&L

£'000	Year ended 31 December			
	2013	2014	2015	2016
<i>Summary P&L</i>				
Revenue	11,990	16,267	24,291	29,129
Cost of sales	-2,684	-3,489	-4,066	-3,644
Gross profit	9,306	12,778	20,225	25,485
	77.6%	78.6%	83.3%	87.5%
Admin expenses	-11,555	-16,966	-31,298	-33,257
Other op. income	184	270	688	156
Op loss before exceptional items	-2,065	-3,918	-10,385	-7,616
Exceptional items*			-2,486	
Operating loss	-2,065	-3,918	-12,871	-7,616
Loss for financial year	-2,094	-3,952	-13,003	-8,018

Source: Statutory accounts.

* Write off of a balance owed by Valk Fleet (UK) Limited following company entering into liquidation.

2.13 Hungryhouse derives around [X]% of its revenues from commissions, card fees and sign-up fees. A further [X]% of revenue was generated from restaurants paying for promotional placement on the Hungryhouse platform. The remaining [X]% of revenues arose from a monthly subscription fee payable by restaurants on the platform.¹¹

The restaurant food ordering and delivery sector

2.14 Just Eat and Hungryhouse provide services within the broad restaurant food ordering and delivery industry, the supply chain of which involves three key activities: order processing, cooking and delivery of the food. Of these activities, order processing and delivery are outsourced by restaurants to various degrees and this is reflected in the different business models that have been developed by restaurants and third party suppliers.

2.15 In this section, we:

- (a) introduce the main business models that have been adopted by suppliers operating within the broad restaurant food ordering and delivery industry and which overlap with the Parties' activities (ie food ordering marketplaces, ordering and logistics specialists, and vertically-integrated food chains);
- (b) set out the evolution of this industry to date, noting that this industry has evolved considerably over the past few years and continues to evolve; and

¹¹ Hungryhouse Accounts.

- (c) summarise the key trends in demand that may impact on competition between the Parties and other key players in this industry.

Business models and suppliers

Food ordering marketplaces

- 2.16 A food ordering marketplace (such as the ones operated by the Parties) provides consumers with access to multiple restaurants, and restaurants with access to multiple consumers, on a single online platform.
- 2.17 Under this business model, takeaway restaurants, contract with the supplier of the platform/marketplace to join the platform and have their menus made accessible to consumers. The supplier's website and mobile app allow consumers to: search for local takeaway restaurants; compare menus, prices and reviews; place orders online and pay online or by cash on delivery. The online orders are transmitted to and accepted by takeaway restaurants via proprietary terminals, which send confirmations to consumers, following which the takeaway restaurants prepare and deliver the food. The operator of the food ordering marketplace typically charges a fee which is a fixed percentage (paid by the restaurant) of the order value and the restaurant handles the actual delivery.
- 2.18 The vast majority of Just Eat and Hungryhouse's sales in the UK are made under this business model.
- 2.19 Until the middle of 2016, there was another significant food ordering marketplace supplier in the UK: Takeaway.com N.V. (Takeaway.com), a Dutch publicly-listed company with operations in nine European countries and Vietnam. It started operations in the UK in 2011 and closed down its UK operation in August 2016, having been unable to reach the scale necessary to break even. Its assets were bought by Just Eat for [REDACTED].¹²
- 2.20 We also understand that there are other small food ordering marketplaces operating in the UK (eg Scoffable, ChefOnline, Kukd.com (also trading as Curries Online), Feed Me Online, BigFoodie, Foodhub and HeyMenu). Because of the small scale of these operations, we consider them unlikely to exert a constraint on the Parties¹³ and have not considered them further.

¹² Merger Notice, paragraph 4.1.

¹³ Most of these companies are never mentioned in the Parties' internal documents. Only the launch of HeyMenu is noted by [REDACTED], while Kukd.com is included in a list of competitors monitored by [REDACTED]. These online food platforms have been mentioned as having been used by very few restaurants and consumers responding to our surveys.

Ordering and logistics specialists

- 2.21 Similar to food ordering marketplaces, ordering and logistics specialists provide access to multiple restaurants and consumers on a single online platform. In addition, the delivery of the food to consumers is integrated into the platform and riders/couriers are able to identify orders that are ready to be collected in their vicinity. Because they manage the delivery function themselves, the ordering and logistics specialists have greater control over the reliability and speed of food delivery than food ordering marketplaces.
- 2.22 In the UK, we are aware of three main firms that have pursued this business model and are expanding: Deliveroo, Uber via its UberEATS service and Amazon via its Amazon Restaurants service.
- 2.23 Deliveroo is a British online food delivery company that launched in February 2013 and has operations in the UK, a number of other European countries, Australia, Singapore, Dubai and Hong Kong.
- (a) Deliveroo had [X] restaurants on its platform as of June 2017. It received [X] orders and achieved £[X] in revenue in the UK in 2016.
- (b) Deliveroo currently [X].
- 2.24 UberEATS is part of Uber, typically known for its ride booking services.¹⁴
- (a) Uber launched its UberEATS service in central London in June 2016 and as at June 2017 operated in 14 cities and towns in the UK.
- (b) The UberEATS service listed [X] restaurants in June 2017 and processed [X] orders in 2016.
- 2.25 Amazon Restaurants was launched in the US in September 2015.
- (a) It was launched in London in September 2016. It now has [X] employees based in the UK, [X].
- (b) As of June 2017, the Amazon Restaurants platform listed [X] restaurants and it received approximately [X] orders in 2016. The service is currently only available to Amazon Prime customers in central London.
- 2.26 The Parties identified another ordering and logistics specialist called Jinn (operated by a company called Ridee Ltd). It was reported in July 2017¹⁵ that some operations had closed down and Jinn was now only operating in

¹⁴ The UberEATS service does not rely on Uber's taxi licence to operate.

¹⁵ <https://techcrunch.com/2017/07/26/jinn-london/>

London. We also understand that there are other niche suppliers (eg Henschman & Co Ltd, One Delivery Limited). Due to the small scale of their operations, we consider them unlikely to exert a constraint on the Parties¹⁶ and have not considered them further.

2.27 As discussed in detail in Section 6, both Just Eat and Hungryhouse started to explore providing delivery services [redacted], focusing on certain restaurants, restaurant chains and/or cities.

2.28 In this report, we refer to food ordering marketplaces and ordering and logistics services as online food platforms.

Vertically-integrated food chains

2.29 Some food ordering restaurant chains have developed the necessary technology to enable their customers to order food online (ie through the restaurant chain's website and/or mobile app) and allow the restaurant chain to deliver the food to the consumer.

2.30 Under this business model, the restaurant chain takes ownership of the order management, cooking and delivery of the food it has prepared. The consumer is able to order food from that restaurant chain only (and not from other restaurants), using its website or mobile app (in addition to being able to order on the phone or on-site).

2.31 In the UK, we are aware of three large branded restaurant chains that have pursued this business model: Domino's Pizza Group plc (Domino's), Papa John's GB Ltd (Papa John's) and Yum! III (UK) Limited (under the brand Pizza Hut Delivery) (Yum!).

2.32 Established in the UK in 1965, Domino's produces, sells and delivers pizzas and other food products to its customers, either through its own corporate stores or through its 72 franchisees. It has close to 1,000 individual stores in the UK, with consumer sales totalling around £1.1 billion. Although nearly all its stores are collection/delivery-only, Domino's has recently launched some dine-in stores as part of its research and development activities. Domino's told us that around [redacted]% of all orders were made online and that this percentage had increased from [redacted]% around four years ago. Approximately [redacted]% of online orders are for delivery with the balance being for collection. The

¹⁶ Based on consumer and restaurant responses to our surveys, Jinn and One Delivery were both mentioned as having been used by respondents, but the numbers involved were very small: under 1% of respondents in all cases. In the preceding 12 months, One Delivery had been used by 43 consumers out of over 12,000 respondents, while Jinn had been used by 19 consumers and by 7 (out of almost 1,000) restaurant respondents.

remaining [X] % of orders were made offline through various methods such as walk-ins or telephone ordering.

- 2.33 Papa John's operates a franchise pizza delivery business model, operating in 44 countries. The UK business is owned and operated as a subsidiary of a US business. It manages all key functions such as purchasing, supply chain, distribution, marketing and operational support, while all delivery units are independently owned by the franchisees. The proportion of orders placed via Papa John's app/website is around [X] %.
- 2.34 Pizza Hut was introduced to the UK in 1973 and the first Delivery unit opened in 1988. In November 2012, Yum! franchised the dine-in side of the UK business to focus on the expansion of the delivery business. Pizza Hut Delivery currently has over 400 Delivery & Express stores in the UK, [X]. Some stores are directly owned by Yum!, while others are operated by franchisees.

Evolution of the restaurant food ordering and delivery industry over time

- 2.35 The first food ordering marketplaces were launched in Europe around 2000. Over the next decade, many companies started such services, and some expanded across geographies. By 2012, food ordering marketplaces in operation in the UK included Just Eat, eatitnow, fillmybelly, Hungryhouse, meal2go, niftynosh, nocook,¹⁷ as well as Takeaway.com. Consolidation in the industry started around 2012, the time when Hungryhouse was acquired by Delivery Hero (which was founded in Germany in 2011). Through a combination of acquisitions and disposals of local operations, Just Eat, Delivery Hero and Takeaway.com grew into the three largest suppliers in Europe. By the end of 2016, Just Eat was the leading supplier in the UK, Italy, Spain, France and Denmark; Delivery Hero was the largest supplier in Germany, Sweden and Finland; and Takeaway.com was particularly strong in the Benelux countries and Poland.
- 2.36 Another significant development in the industry in the UK started in 2013, with the launch by Deliveroo of ordering and logistics services in London. In 2016, Uber and Amazon (known for their rides booking business and e-commerce/delivery business, respectively) respectively introduced their UberEATS and Amazon Restaurants services in the UK. Both Just Eat and Hungryhouse began exploring the provision of delivery services, [X]. These developments and service provisions of the different suppliers are discussed in more detail in Section 6. Outside of the UK, foodpanda (a logistics and

¹⁷ http://go4venture.com/wp-content/uploads/2012_04_Go4Bulletin.pdf

delivery specialist) was launched in Singapore in 2012 and Foodora (another logistics and delivery specialist) was founded in early 2014 in Germany. Both were later bought by Delivery Hero.

2.37 Figure 1, below, shows the significant growth in order volume achieved by the main online food platforms in the UK over the past 5 years.

Figure 1: Number of orders of main online food platforms in the UK

[✂]

Source: CMA analysis of data from the Parties, Deliveroo and UberEATS.

2.38 A report by McKinsey indicates that the ordering and logistics specialists are extending food delivery to a new group of restaurants and customers, with the growth in new delivery driven by two sources of consumer demand. The first source of demand is as a substitute for dining in a restaurant, where consumers can dine at home with the same quality of food they would enjoy at a fine restaurant and the second source of demand is as a substitute for meals prepared and consumed at home.¹⁸

2.39 The industry has benefited from considerable investment. Just Eat, Takeaway.com and Delivery Hero were floated on the stock market in 2014, 2016 (after Takeaway.com had closed its UK operations) and 2017 respectively. Public sources indicate that funding into the industry peaked in 2015. It is expected that it will continue to decline in 2017.¹⁹ [✂].

2.40 Looking forward, key players in the industry told us that it was difficult to predict how the industry would evolve in the near future because it was a fast moving and innovative industry. It is not uncommon for companies in the industry to plan on a short time horizon of no more than 12 months. For instance, [✂] told us that it did not typically make expansion plans beyond a year and [✂] told us that it typically assesses the local areas it wants to expand into on an on-going basis.^{20, 21} Trends that have been identified include the setting up of kitchens by ordering and logistics specialists and the increasing ability of independent takeaway restaurants to set up their own website at low cost: Just Eat told us that it is increasingly easy for

¹⁸ The changing market for food delivery, November 2016. See <http://www.mckinsey.com/industries/high-tech/our-insights/the-changing-market-for-food-delivery>

¹⁹ Dealroom, March 2017. <https://www.cbinsights.com/research/food-delivery-startups-crowded-market/>; <https://www.cbinsights.com/research/food-delivery-startups-funding-trends-2016/>; <http://www.telegraph.co.uk/technology/2017/05/28/delivery-wars-another-start-up-raises-money-investors-next-tech/>

²⁰ "We have our current expansions plans prepared up until the end of Q2 2017."

²¹ "We currently do not have any projections for [✂] (as we would typically start forecasting our [✂] activity at [✂]) but we anticipate that we will continue to grow our activity in the UK."

independent takeaways to set up their own online presence, which they have either developed themselves or sourced from providers of white label services.²² However, we did not receive any evidence on how widespread the use of white label services is among restaurants and how this may evolve in the future. This is discussed further in Section 6.

- 2.41 The evolution and economics of ordering and logistics services in the restaurant food sector are uncertain. As noted by industry commentators, managing ordering and logistics services is more challenging and less scalable than focusing on an online food marketplace:
- (a) Amazon explained that restaurant food delivery involves the delivery of single items rather than the delivery of multiple items as in other Amazon businesses. [✂]
 - (b) Domino's told us that, from an economic perspective, ordering and logistics specialists faced significant challenges as they had "*high variable costs*" (ie including not only a website but also a delivery function). In addition, the high commission rates they were charging restaurants were eroding restaurants' profit margins and forcing them to provide food at marginal cost. The recent Taylor Report also raised the possibility of national insurance charges on the drivers that Uber and Deliveroo used and this was another "*cloud on the horizon*" for these businesses."
 - (c) The Delivery Hero IPO prospectus also notes, in relation to delivery, that despite charging higher fees compared to the online food takeaway model, the "*commission revenues and delivery fees are currently not high enough to cover all costs*" and "*that there can be no assurance that [Delivery Hero] will be able to charge appropriate commission rates and delivery fees in future, due to increasing competition*".²³
 - (d) [✂].
 - (e) Uber told us that the online delivery app business was still young, with multiple players competing to expand faster than the others.

²² White label refers to products or services produced and supplied by one company and then rebranded by another company (the user) to make the product/service appear to be the user's own (eg a white label website will be presented under the brand of a restaurant or restaurant chain, rather than the provider of the service). Providers of white label services include online food platforms and third-party "white label" app-building suppliers, such as Preoday Limited and Orderlord UK. Merger Notice, paragraph 14.2.1.

²³ Delivery Hero IPO Prospectus, page 13.

Demand

2.42 The UK has the highest level of demand for takeaway food in Europe and is characterised by a fragmented takeaway restaurant sector. This makes it a particularly attractive country for food ordering marketplaces, such as Just Eat and Hungryhouse.

Underlying takeaway demand in the UK

- 2.43 In a March 2017 report, Morgan Stanley estimated UK restaurant delivery sales at around £6 billion in 2016, with a forecast of it increasing to around £7.2 billion by 2020.²⁴
- 2.44 UBS estimated traditional takeaway delivery sales for 2016 at £5.8 billion, growing to £6.7 billion by 2020.²⁵ It estimated that, of this traditional takeaway figure, online sales were £2.7 billion (2016), growing to £4.1 billion (2020). It also estimated that takeaway sales delivered through ordering and logistics specialists (eg Deliveroo, UberEATS) were worth £0.3 billion in 2016 and would increase to £1.6 billion by 2020. In total, UBS estimated overall online takeaway sales to be worth £2.9 billion (2016) and £5.7 billion (2020).
- 2.45 The main drivers of online takeaway sales growth are the advent of ordering and logistics services, creating opportunities for dine-in restaurants that currently have no delivery capability, an increase in online penetration including through the growth of takeaway mobile apps, and more restaurant food being consumed at home rather than in restaurant. A survey conducted by Morgan Stanley found that the incremental increase in food delivery spending came from consumers switching away from meals cooked at home, dine-in restaurants and supermarket ready meals.²⁶
- 2.46 Estimates of the online share of takeaway food sales differ between commentators and between them and the Parties, largely depending on how they define the sector. Deutsche Bank's view, for example, is that around 55% of UK takeaway orders are still placed on the telephone.²⁷ The Parties estimated that [X]% of orders by volume and [X]% by value were made by telephone in 2016. The consensus view though is that the online proportion of sales is likely to grow in the future and to become increasingly the preferred

²⁴ Morgan Stanley Food Delivery: Feast of famine 8 March 2017. Estimate includes delivery sales from restaurants that currently do not deliver (eg dine-in restaurants)

²⁵ UBS Online food delivery 24 March 2017. Figures are for Gross Market Value ie the value of products sold by the restaurants.

²⁶ Morgan Stanley, Food delivery: Feast or famine, 8 March 2017.

²⁷ DB Just Eat plc Just Beat 20 July 2016.

choice for consumers. Morgan Stanley estimated online penetration as growing from around 50% in 2016 to 65% by 2020.²⁸ UBS estimated that online penetration (% of Gross Merchandise Value (GMV)²⁹) would grow from around 46% (2016) to around 60% (2020).³⁰

Traditional takeaway restaurants

2.47 The consensus estimate for the number of traditional takeaway restaurants in the UK is around 35,000. This is a highly fragmented sector principally composed of single operator sites. Of the 35,000 restaurants, around [80-90%] are listed on either or both of Just Eat and Hungryhouse's food ordering marketplaces and a third have a website that is capable of processing orders (the impact of which is discussed further in Section 6). Morgan Stanley estimates that there is a theoretical maximum of 90% of restaurants that could be available on these types of platforms, as around 8% of the industry churns (ie restaurants close and new restaurants open) each year.³¹ UBS forecasts that year-on-year growth in GMV for traditional takeaway restaurants will increase from 3.4% to 4.0% between 2016 and 2020.³²

Dine-in restaurants

2.48 Growth in demand for online restaurant food is expected to come from consumer demand for food delivered from 'casual dining' restaurants,³³ which account for around 85,000 restaurants in the UK. This segment is composed of restaurants that offer a dine-in experience and do not historically have their own delivery component. The small number of dine-in restaurants that offer delivery, outsource it to a third party. Dine-in restaurants include single site operations as well as branded chains such as KFC and Burger King. UBS forecasts that the percentage of dine-in restaurants signing up to ordering and delivery services (eg UberEATS or Deliveroo) will increase from 5% of casual dining restaurants in 2016 to 19% in 2020. This is an increase from around 1,900 to 6,900 restaurants with an estimated sales value (GMV) increasing

²⁸ Morgan Stanley, Food delivery: Feast or famine, 8 March 2017.

²⁹ Gross Merchandise Value is the value of the goods sold before any taxes, discounts, refunds or returns.

³⁰ UBS online food delivery 24 March 2017, Euromonitor data. UBS stated that it does not believe it includes 3 sided markets and so probably underestimates the 2020 penetration percentage

³¹ Morgan Stanley Just Eat plc Feeling Full March 11 2016

³² UBS online food delivery 24 March 2017. UBS's forecast shows sales in traditional takeaway restaurants made using restaurants' own websites stable at £1.1 billion per year, sales through food ordering marketplaces increasing from £1.6 billion to £2.6 billion, and sales using ordering and logistics specialists increasing from £0 billion to £0.3 billion.

³³ A restaurant with table service, casual atmosphere and a moderate price point.

from £0.3 billion to 1.6 billion.³⁴ Morgan Stanley estimated that sales value may be £1 billion (GMV) by 2020 or 15% of the total takeaway market by value (22% by volume).

Customer profiles

2.49 We commissioned two surveys from GfK: a telephone survey of restaurant customers of the Parties (restaurant survey) and an online survey of consumers who have used the Parties' food ordering marketplaces (consumer survey). More detail on these surveys is provided in the CMA survey report.³⁵

2.50 Our restaurant survey indicates that:

- (a) Over 90% of the Parties' restaurant customers are independent rather than belonging to a chain.³⁶
- (b) 65% of them have been established for longer than two years and between 40% and 50% have been on the platform for longer than two years.³⁷
- (c) Approximately 60% of restaurants have their own website, of which approximately 60% of these allowed consumers to order online.³⁸
- (d) The vast majority of restaurants on Just Eat (96%) provide their own delivery service. Of these, 32% said they were likely to use an external company to do their deliveries within the next couple of years. The picture is similar for Hungryhouse: 98% of restaurants provide their own delivery service, while 41% of these said that they were likely to use an external company for deliveries within the next couple of years.³⁹

2.51 Our consumer survey indicates that the profiles of consumers using the Just Eat and Hungryhouse platforms are fairly similar. In particular, the consumer survey implies that:

³⁴ UBS online food delivery 24 March 2017. UBS's forecast shows takeaway sales from dine-in restaurants made through food ordering marketplaces increasing from £0.0 billion to £0.2 billion, and sales using ordering and logistics specialists increasing from £0.2 billion to £1.4 billion in the period 2016 to 2020.

³⁵ See <https://www.gov.uk/cma-cases/just-eat-hungryhouse-merger-inquiry>

³⁶ CMA Survey report, Chart 3.

³⁷ CMA Survey report, Charts 2, 9.

³⁸ CMA Survey report, Chart 4.

³⁹ CMA Survey report, Chart 8.

- (a) They tend to be much younger than the UK population as a whole, tend to use the internet much more often than the UK population, and have a somewhat higher household income.⁴⁰
- (b) Around half of respondents order takeaway food at least once a week, while the overall average number of orders per year among the sample is 31.⁴¹
- (c) The average order value is approximately £20, with orders split fairly evenly between the Parties' websites and apps.⁴²

3. Merger and relevant merger situation

The transaction

- 3.1 Just Eat first explored the possibility of acquiring Hungryhouse in [REDACTED]. Just Eat's Board papers show that the company decided that it was [REDACTED]. At the time, Just Eat explored [REDACTED]. Just Eat considered that [REDACTED]. Delivery Hero valued Hungryhouse at around [REDACTED] at that time and Just Eat considered [REDACTED]. [REDACTED]. Both Delivery Hero and Just Eat told us that [REDACTED].
- 3.2 In [REDACTED] Delivery Hero with regard to Hungryhouse, making an initial offer [REDACTED].
- 3.3 Just Eat submitted an indicative proposal in [REDACTED] of £[REDACTED] million, [REDACTED]. [REDACTED]. Subsequently Delivery Hero told Just Eat that [REDACTED]. A revised offer was then made with a base price of £200 million with a price adjustment (see paragraph 3.5).
- 3.4 Heads of terms were signed on [REDACTED]. Just Eat was granted exclusivity at this point until [REDACTED]. The Parties entered into the SPA, reflecting the heads of terms on 15 December 2016. Under the SPA, Just Eat will purchase 100% of Hungryhouse Holdings Limited's share capital from Delivery Hero. [REDACTED].
- 3.5 The consideration payable is £200 million, subject to an [REDACTED] adjustment based on [REDACTED] revenue achieved by Hungryhouse.com Limited in the period January 2017 to the calendar month the CMA publishes its final decision. The price adjustment is calculated on a sliding scale, [REDACTED] the maximum £240 million.

⁴⁰ CMA Survey report, Charts 23 to 25.

⁴¹ CMA Survey report, Table 3.1 and Chart 26.

⁴² CMA Survey report, Table 3.1 and Chart 30.

3.6 Under the terms of the SPA, completion of the merger is conditional upon clearance from the CMA.

The rationale for the transaction

3.7 Just Eat submitted that the merger would allow the merged entity to compete more effectively with well-resourced, fast-growing existing competitors and new entrants with strong brands and significantly deeper pockets than Just Eat.⁴³ It stated the merger would allow Just Eat to add Hungryhouse's customer base (on both sides of the market) to its existing infrastructure and brand, and this would further increase the attractiveness of Just Eat's proposition to restaurants.⁴⁴ The merger would also allow Just Eat to achieve significant synergies, estimated to be approximately £12 million – £15 million by Just Eat.⁴⁵

3.8 The transaction was expected to be earnings-per-share (EPS) accretive in the first full year of ownership.

3.9 From the perspective of Delivery Hero, the merger is one transaction among many others that it has contemplated or implemented in the past few years. It is clear from the internal documents we have seen that the management and shareholders of Delivery Hero have been focused on managing their international portfolio of companies to maximise IPO proceeds by achieving leading positions in its countries of operation, mainly through acquisitions and disposals of local businesses.

Jurisdiction

3.10 Under section 36 of the Act and our terms of reference (see Appendix A), one of the questions we are required to decide is whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

3.11 Section 23 of the Act provides that a relevant merger situation has been created if:

(a) two or more enterprises have ceased to be distinct within the statutory period for a reference;⁴⁶ and

⁴³ Merger Notice, section 2.4. Current competitors such as UberEATS, Amazon Restaurants and HeyMenu Ltd; and prospective (such as the takeaway services to be offered by Facebook and Google).

⁴⁴ Merger Notice, section 2.4.2.

⁴⁵ Merger Notice, section 2.4.3.

⁴⁶ As set out in [section 24](#) of the Act.

(b) the ‘turnover test’ or the ‘share of supply test’ (as specified in that section of the Act) is satisfied, or both are satisfied.

Enterprises ceasing to be distinct

3.12 The Act defines an ‘enterprise’ as ‘the activities, or part of the activities, of a business’. A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.⁴⁷ The CMA’s guidance on jurisdiction and procedure (CMA2) explains the concept of ‘enterprise’ and in particular the considerations the CMA has regard to in deciding what constitutes an ‘enterprise’.⁴⁸

3.13 As described in paragraphs 2.7 and 2.13, each of Just Eat and Hungryhouse supply food ordering marketplaces and related services to restaurants for reward, and we are therefore satisfied that each is an enterprise for the purposes of the Act. We are also satisfied that as a result of the merger described in paragraph 3.4, both enterprises would be brought under the control of Just Eat and accordingly would cease to be distinct, for the purposes of section 26 of the Act.⁴⁹

3.14 The condition set out in paragraph 3.11(a) is therefore satisfied.

Share of supply test

3.15 As the turnover test is not met,⁵⁰ we considered whether the share of supply test was satisfied. This would be the case if the merger created or otherwise increased a share of at least 25% in the supply of goods or services of any description in the UK, or in a substantial part of the UK.⁵¹

3.16 We estimated the shares of the Parties both in the supply of food ordering marketplaces and online food platforms and found that the share of supply test is met under all possible combinations:⁵²

⁴⁷ Sections 129(1) & 129(3) of the Act.

⁴⁸ *Mergers: Guidance on the CMA’s jurisdiction and procedure, January 2014 (CMA2)*, paragraph 4.8.

⁴⁹ Section 26(1) of the Act provides that ‘any two enterprises cease to be distinct enterprises if they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control)’.

⁵⁰ The turnover test is not satisfied on the basis of the turnover data provided for Hungryhouse for the financial year ending 31 December 2016. The turnover of Hungryhouse in that financial year was around £29.13 million in the UK. See Merger Notice, paragraph 6.2.

⁵¹ Section 23(2)(b) of the Act.

⁵² We have not included suppliers of pure delivery services as there is no material overlap between them and the Parties.

- (a) Considering only the suppliers of food ordering marketplaces (see paragraph 2.17), the Parties' combined share of orders (in volume terms) was [90-100]% (with an increment of [5-10]%).
- (b) Considering the suppliers of food ordering marketplaces and ordering and logistics specialists (see paragraph 2.21), the Parties' combined share of orders (in volume terms) was around [80-90]% (with an increment of around [5-10]%).

3.17 The condition set out in paragraph 3.11(b) is therefore satisfied.

Provisional conclusion on jurisdiction

3.18 For the reasons given in paragraphs 3.14 and 3.17, we are satisfied that a relevant merger situation will be created by the acquisition of Hungryhouse by Just Eat, and that we therefore have jurisdiction to decide whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

4. Market definition

4.1 The purpose of market definition is to provide a framework for the analysis of the competitive effects of the merger. The relevant market contains the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are immediate determinants of the effects of the merger. Market definition is a useful tool, but not an end in itself, and an assessment of whether a merger may give rise to an SLC may take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁵³ The CMA Merger Assessment Guidelines (the Guidelines) also note that in practice, the analysis leading to the identification of the market or markets for the goods or services concerned and the assessment of the competitive effects of the merger will overlap, with many of the factors affecting the market definition being relevant to the assessment of competitive effects and vice versa. In this section, we identify the key factors that we have taken into account in reaching our view on market definition, and note where the relevant supporting evidence is set out within our assessment of the competitive effects.

⁵³ [Merger Assessment Guidelines](#), paragraphs 5.2.1 & 5.2.2.

- 4.2 The Parties submitted that they overlapped in the provision of takeaway services in the UK, namely all services that offer a consumer the ability to order a takeaway meal from a restaurant to enjoy at home.⁵⁴
- 4.3 The Parties submitted three possible segments for the purposes of defining the relevant product market:⁵⁵
- (a) The “eat at home” candidate market, which includes all of the methods available to consumers for ordering food to be eaten at home. These include direct visits by consumers to restaurants, telephone orders, orders through the restaurants’ own websites/apps and orders on third-party online food platforms.
 - (b) The “remote ordering” segment, which includes all of the methods available to consumers for ordering food from a remote location for home delivery. These methods include: telephone orders, orders through the restaurants’ own websites/apps and third-party online food platforms.
 - (c) The “online ordering” segment, which includes only online methods of contacting restaurants to obtain home-delivered food. These methods include ordering through the restaurants’ own websites/apps or through third-party online food platforms.
- 4.4 The Parties further submitted that the appropriate product market should, at the very least, include online takeaway providers offering delivery services. They also argued that the market definition needs to acknowledge the competitive threats the Parties face, not only from all other online providers of takeaway services, but also from direct ordering (on the restaurant’s own websites or apps, by telephone, or in-person) from chain restaurants (eg Domino’s) and independents. The Parties submitted that ordering takeaway food for delivery directly from restaurants was a common (and frequently preferred) channel for both consumers and restaurants.
- 4.5 The Parties submitted that the geographic market was the UK, as all of the major suppliers operate nationally or have the capacity to operate on a national basis, while each of the relevant restaurants or online takeaway services could in principle move into other parts of the country if they are not already present in those areas. The Parties argued that, to the extent that consumers have different choices in different regional areas, it would be

⁵⁴ Merger Notice, paragraph 13.1.1.

⁵⁵ Merger Notice, paragraphs 13.1.4 - 13.1.6.

appropriate to take account of these variations in the analysis of competitive effects, rather than in a market definition context.

4.6 We first consider product market definition (at paragraphs 4.8 to 4.28), before turning to geographic market definition (at paragraphs 4.29 to 4.35).

4.7 Our main sources of evidence for this assessment are:

- (a) the Parties' internal documents;
- (b) our surveys of the Parties' restaurants and consumers (see paragraph 2.49 and the CMA survey report);
- (c) our econometric analysis, which used postcode-district-level data on the value of orders received by the Parties' platforms and data on restaurant availability on other platforms to assess the competitive constraints on the Parties (see Appendix F); and
- (d) third party views.

Product market definition

4.8 The relevant product market is identified primarily by considering the degree of demand-side and, to a lesser degree, supply-side substitution. It is usual to define markets using the hypothetical monopolist test. This test delineates a market as a set of substitute products over which a hypothetical monopolist would find it profitable to impose a small but significant non-transitory increase in prices (SSNIP). The test is described in detail in paragraphs 5.2.10 to 5.2.20 of the Guidelines.⁵⁶

4.9 As explained in paragraphs 2.16 to 2.18, the Parties provide their products and services to two distinct and unrelated groups of customers: restaurants and consumers, where the willingness of restaurants to list on the Parties' platform depends on the participation of consumers on the platform, and vice versa. As such, their products can be described as two-sided. As explained in the Guidelines,⁵⁷ the implementation of the hypothetical monopolist test may be more complicated when products are two-sided. The number of customers in each group affects the profitability of the product, because the value that one group of customers realizes from using the intermediary depends on the participation of customers from the other group (indirect network effects or INEs).⁵⁸ Prices charged to each set of customers take account of the need to

⁵⁶ [Merger Assessment Guidelines, paragraphs 5.2.10–5.2.20.](#)

⁵⁷ [Merger Assessment Guidelines, paragraph 5.2.20.](#)

⁵⁸ The strength of indirect network effects in this industry is examined in paragraphs 6.80-6.84, below.

get both sets 'on board'. As set out in the Guidelines, a hypothetical monopolist test may be more difficult to conduct in a two-sided market because:

- (a) there is no single price to both sets of customers to which to apply a SSNIP;
- (b) the effect of a SSNIP on the demand of one set of customers may be exacerbated by indirect network effects; and
- (c) the constraints on the merger firms' products may come not only from other two-sided intermediaries but also from 'one-sided' firms serving one set of customers.⁵⁹

4.10 Furthermore, where products and services on one side of the market are provided 'free' of charge, other dimensions of competition, such as quality, may be a more important measure of substitution than price on that side of the market.

4.11 We first consider whether separate markets should be defined on each side of the platform. For this purpose, a distinction can be made between two-sided markets which facilitate transactions between customers on each side of the platform (such as auction houses or credit card services) and those two-sided platforms which do not facilitate transactions (eg 'media-type' platforms like radio stations and newspapers).⁶⁰ In some two-sided markets, which do not facilitate transactions between each side of the platform, the Parties may face very different competitive constraints on each side of the market. For example, a local radio station may face very different constraints in the market for selling advertising from those it faces in the market for attracting listeners. In those cases, it may be necessary to define two separate markets: one on each side of the platform, with distinct product and geographic scopes and separate sets of competitors and competitive constraints.⁶¹ In the case of a two-sided platform where the platform is 'matching' or facilitating transactions (as is the case for food delivery marketplaces), a single market definition is appropriate, which takes account of the competitive constraints on both sides of the market and assesses the hypothetical monopolist's ability to increase

⁵⁹ [Merger Assessment Guidelines, paragraph 5.2.20.](#)

⁶⁰ See discussion in: Lapo Filistrucchi, Damien Geradin and Eric van Damme, 2012, Identifying Two-Sided Markets, TILEC Discussion Paper DP 2012-008.

⁶¹ [Merger Assessment Guidelines, footnote 60.](#)

the price of concluding a transaction, given the number of close substitutes on each side and the impact of any INEs on the platform.⁶²

4.12 As set out below, in coming to a view on the appropriate scope of the product market within which the Parties operate, we have assessed the extent of substitutability between food ordering marketplaces and:

- (a) services from ordering and logistics specialists, in particular from Deliveroo, Uber and Amazon;
- (b) direct ordering from restaurants, on their own websites or apps, by telephone, or in-person; and
- (c) vertically-integrated food chains, in particular large, national brands, like Domino's, Pizza Hut and Papa John's.

4.13 In coming to a view on the appropriate scope of the product market, we have considered four sources of evidence: a survey of consumers and restaurants which we carried out in June/July 2017;⁶³ an econometric analysis; a review of internal documents of the Parties and views expressed by third parties (competitors and industry observers).

4.14 While the definition of the relevant market necessarily delineates a specific set of competitors, as set out in detail below, our assessment of the competitive effects of the merger takes account of the competitive constraints exerted on the Parties from all relevant sources, whether these are identified as being within or outside the relevant market.

Ordering and logistics specialists

4.15 We first considered whether the products and services of ordering and logistics specialists (such as Deliveroo, Uber and Amazon) should be included in the relevant product market.

4.16 On the restaurant side, ordering and logistics specialists provide a somewhat different offer from a restaurant perspective – offering delivery services and charging much higher commission rates as a result – so may not be

⁶² Filistrucchi et al. suggest that “Whether one should define a single market or two interrelated markets depends on whether we are dealing with a two-sided transaction market or a two-sided non-transaction market...In two-sided non-transaction markets, two (interrelated) markets need to be defined. In two-sided transaction markets, only one market should be defined.” Lapo Filistrucchi, Damien Geradin and Eric van Damme, *Market Definition in Two-Sided Markets: Theory and Practice*, TILBURG LAW SCHOOL LEGAL STUDIES RESEARCH PAPER SERIES.

⁶³ The survey is discussed in more detail at paragraphs 6.53 to 6.55, below. Full details of the methodology, questionnaires used and results are available in the GfK report that we have published alongside these Provisional Findings.

considered as being close substitutes for the Parties' offerings from a restaurant perspective, in particular for restaurants that do not wish to outsource their delivery services. Takeaway.com told us that it considered logistics and ordering services to be an adjacent business to, and not necessarily the same business as, the food ordering marketplace. Takeaway.com explained that this was a new segment which did not exist previously (ie providing delivery for restaurants that did not have their own delivery service). Similarly, forecasts by UBS also project that sales of food by takeaway restaurants through pure food ordering marketplaces in the UK would increase significantly (from £1.6 billion to around £2.6 billion), while sales through ordering and logistics specialists would increase less significantly (from £0 billion to £0.3 billion). Sales of food by dine-in restaurants (ie restaurants that currently do not offer takeaway) are projected to increase significantly from £0 to £0.2 billion for food ordering marketplaces and from £0.2 to £1.4 billion for ordering and logistics services.

4.17 Overall, this could suggest that the food ordering marketplace model will remain differentiated from the ordering and logistics business model. However:

- (a) Were Deliveroo or UberEATS to attract sufficient consumers in the future they may well become closer substitutes to Just Eat and/or Hungryhouse on the restaurant side, as a sufficient number of restaurants may consider delisting from Just Eat and/or Hungryhouse and joining Deliveroo and/or UberEATS instead.
- (b) Our restaurant survey indicates that 30-40% of restaurants are likely to consider using an external company to provide their delivery service within the next couple of years, so for some current restaurant customers of Just Eat and Hungryhouse, services like Deliveroo and UberEATS may be considered to be viable alternatives.⁶⁴
- (c) The Parties' internal documents point towards the existence of a constraint from Deliveroo and UberEATS on both the restaurant and consumer side.

4.18 Our quantitative evidence indicates that there is likely to be a degree of substitutability between UberEATS and Deliveroo, and the Parties' services on the consumer side:

- (a) Our econometric analysis indicates that Deliveroo imposes a broadly similar constraint on the Parties to the constraint that they impose on each

⁶⁴ CMA restaurant survey, Chart 8.

other, while the constraint from UberEATS is generally somewhat weaker (see Appendix F, Figures 9 to 12), indicating that there is a degree of substitutability between these providers from a consumer perspective.

- (b) Our consumer survey points clearly towards a weaker degree of substitutability for other online food platforms, with a very small proportion of consumers considering Deliveroo, UberEATS or Amazon Restaurants as alternatives to the Parties in response to the hypothetical closure of the food ordering marketplace.⁶⁵

4.19 Taking the two sides of the market together, we consider that the services of ordering and logistics specialists are sufficiently close substitutes to the Parties' services to be in the same product market. As set out in paragraph 2.20, above, there are a number of smaller firms offering similar services, mainly food ordering marketplaces similar to the model used by the Parties. We have not considered these in any detail here, given their small size, but, as they provide services of a broadly similar nature, these are likely to be considered to be in the same product market as the Parties and the ordering and logistics specialists.

Direct ordering

4.20 Our consumer and restaurant surveys both point towards direct ordering (either by telephone, through a restaurant's website or by walking in) being a channel that many respondents state that they would consider in response to a hypothetical question on the permanent closure of the Just Eat or Hungryhouse online food platforms.⁶⁶

4.21 As set out at paragraph 6.156, below, we need to exercise a degree of caution in interpreting and weighing responses to hypothetical questions in our surveys in this case, as we consider responses to hypothetical questions to be potentially less reliable than responses to more straightforward questions about what restaurants or consumers currently do or what they actually did in the recent past. This issue is particularly important when, as in this case, there is evidence of actual past behaviour which is not in line with the survey answers to hypothetical questions. In particular, in restaurants' responses to the question on a hypothetical 1 percentage point commission rate increase, responses suggested a high degree of switching away from

⁶⁵ CMA consumer survey, Charts 40, 41, 44.

⁶⁶ CMA restaurant survey, Charts 17, 20, 22, and consumer survey, Charts 40, 42, 44, 47.

Just Eat.⁶⁷ However, this was not consistent with the actual behaviour of restaurants [redacted].⁶⁸

4.22 In addition, on the restaurant side, there were also a number of responses to other survey questions that indicated that using direct ordering may not be viewed as such a close substitute for the Parties' online food platforms:

- (a) While around 60% of restaurants have their own website, only around 60% of those allow consumers to order online, meaning that about a third of restaurants have an online offer that is comparable to the experience that consumers are used to from the online food platforms.⁶⁹
- (b) Online food platforms represent, on average, half of a restaurant's revenues from takeaway orders.⁷⁰
- (c) Gaining more customers was the most frequently mentioned reason for having joined the platform, again suggesting that relying on direct orders could harm restaurants' revenues,⁷¹ at least in the short term.⁷²

4.23 On the consumer side, a majority of respondents stated they tended to order from the same restaurant or set of restaurants on the platform.⁷³ Similarly, when making their last order, more than half either knew in advance which restaurant they would order from or had a set of restaurants in mind, and about three-quarters had ordered from the same restaurant in the past.⁷⁴ However, again, a number of other responses from Just Eat and Hungryhouse consumers pointed towards direct ordering not being such a close substitute for the Parties' services:

- (a) Online food platforms were far more frequently used than any of the direct ordering channels (restaurant's own website or app, telephoning, or going to the restaurant).⁷⁵
- (b) Consumers' reasons for ordering online rather than by phoning or visiting the restaurant and their reasons for ordering from the Parties' platforms both pointed to convenience, speed and past experience, which, given the fact that the majority of restaurants do not have a website through which

⁶⁷ CMA restaurant survey, Charts 13 and 14.

⁶⁸ See paragraph 6.165, below. [redacted].

⁶⁹ CMA restaurant survey, Chart 4.

⁷⁰ CMA restaurant survey, Chart 6.

⁷¹ CMA restaurant survey, Chart 11.

⁷² We note the response from one of the [redacted] that it had tested 'switching off' Just Eat [redacted], and had seen an initial 'dip' in orders but had then seen them recover to their previous level [redacted].

⁷³ CMA consumer survey, Chart 29.

⁷⁴ CMA consumer survey, Charts 33 and 34.

⁷⁵ CMA consumer survey, Chart 27.

consumers can place orders, implies that direct ordering may not be a close substitute in practice.⁷⁶

(c) Very few consumers had used a restaurant's own website or app when searching for their last takeaway order (under 1 in 10).⁷⁷

- 4.24 In addition, both from a restaurant and consumer perspective, the services offered by restaurants through their website or other direct ordering channels are not comparable to those offered by the Parties, in particular they do not provide access to a pool of buyers/sellers.
- 4.25 Finally, some internal documents show that both Just Eat and Hungryhouse pursue initiatives to convert consumers from direct ordering to ordering through their online food platform. However, this is not evidence of direct ordering constraining either party with respect to their existing consumers, which is the focus of market definition, but rather points to the Parties' efforts to expand their consumer base.
- 4.26 Therefore, we do not consider that restaurants' own website or other direct ordering channels are sufficiently close substitutes to the Parties' services to be included in the same product market. Nevertheless, the constraint that direct ordering places on the Parties, from both the consumers' and the restaurants' perspectives, is considered in more detail in paragraphs 6.132-6.141 and 6.159-6.166, below.

Vertically-integrated food chains

- 4.27 Finally, we have considered whether the vertically-integrated food chains with strong brands, such as Domino's, Pizza Hut and Papa John's, should be included in the same product market. Vertically-integrated food chains do not directly constrain the Parties on the restaurant side, as they do not offer services to restaurants. On the consumer side, we note that these chains' services differ fundamentally from the services the Parties offer in that they do not provide consumers a choice of either restaurants or cuisines. We are aware that these chains have a significant share of takeaway restaurant revenue, but our evidence indicates that the Parties' consumers are unlikely to view these as sufficiently close substitutes to the restaurants and services offered by the Parties and the ordering and logistics specialists for them to be included in the same market. While the Parties' internal documents indicate that a number of these chains, Domino's in particular, are monitored and are often considered to be within the 'competitor set', in particular by Just Eat, the

⁷⁶ CMA consumer survey, Charts 31 and 37.

⁷⁷ CMA consumer survey, Chart 36.

other evidence available to us points towards a lower level of substitutability for these chains than for the ordering and logistics specialists. In particular:

- (a) The results of our econometric analysis did not find evidence that Domino's (the largest of these chains by revenue and number of branches) exerted a discernible competitive constraint on the Parties.
- (b) The narrow range of food types available mean that they would be considered close substitutes by consumers only in relation to a subset of consumer orders.
- (c) The responses to our consumer survey did not point towards these chains being close substitutes. While consumer responses to the hypothetical closure of the platform pointed towards a high proportion of consumers being willing to switch to ordering directly from a restaurant,⁷⁸ looking at the breakdown of those responses between consumers who would have chosen to order from the same restaurant versus those who would have ordered directly from a different restaurant suggests that the scale of possible diversion to Domino's and other chains would not be large, with under 10% of consumers indicating that they would switch to another restaurant and order directly.⁷⁹ This latter category, however, could clearly include a very wide range of alternative restaurants.
- (d) Similarly, when asked about their last order, consumers' responses in relation to the hypothetical absence from the platform of the restaurant they had ordered from again pointed to a very small proportion of consumers who would consider ordering from a different restaurant using a different method.⁸⁰ Diversion to Domino's, Pizza Hut, Papa John's and other national chains would represent a subset of these responses. Therefore, our survey implicitly indicates that these are unlikely to impose a material constraint on the Parties.

4.28 We have therefore provisionally concluded that the relevant product market includes food ordering marketplaces (Just Eat and Hungryhouse) and the services of ordering and logistics specialists (principally Deliveroo, UberEATS, and Amazon Restaurants), together referred to as online food platforms.

⁷⁸ CMA consumer survey, Chart 40.

⁷⁹ Consumer survey data tabulations (combined).

⁸⁰ CMA consumer survey, Chart 51.

Geographic market definition

- 4.29 The geographic market is also defined using the framework of the hypothetical monopolist test.
- 4.30 A number of factors point towards a national market. In particular, we note that:
- (a) Pricing is, for the most part, determined at the national level, with commission rates and sign-up fees that the Parties charge to restaurants and the fees (or lack thereof) on the consumer side being set at the national level rather than varying locally in response to competitive constraints or variations in customer demand.
 - (b) The Parties' marketing activities are largely carried out at the national level and aimed at driving brand awareness, eg TV commercials.
 - (c) The scalability of the Parties' food ordering marketplaces – without the need to provide delivery services – means that additional restaurants and consumers in new local areas can be served relatively quickly and economically, with little need for additional investment, while the functionality and user experience of the Parties' online food platforms are uniform across all areas.
- 4.31 Nevertheless, there is evidence indicating that local variations in competitive conditions are important, on both the supply and the demand sides:
- (a) Demand for the Parties' services is inherently local, with consumers ordering from restaurants that deliver to their address and restaurants listing on the Parties' platforms in order to tap into local consumer demand.
 - (b) Our econometric analysis was carried out at the postcode-district level and pointed clearly towards the importance of restaurant availability on the Parties' online food platforms in determining the value of orders received in a local area – both in terms of the online food platform's own restaurant offer and the restaurant offer on competing online food platforms (see Appendix F).
 - (c) Our econometric analysis, consumer and restaurant survey responses, and internal documents from both Parties indicate that the presence of

Deliveroo and UberEATS⁸¹ in a postcode district is an important constraint on the Parties (see paragraphs 6.125-6.131), with these competitors currently operating in far fewer postcode districts than the Parties (see Table 7 below).

4.32 Hungryhouse and Just Eat both take steps to [REDACTED]. For example, Hungryhouse has targeted areas where it considered its order volumes to be [REDACTED] given an area's population and sought to improve its restaurant offers in those areas (eg [REDACTED]).⁸²

4.33 Our provisional conclusion on the relevant geographic market is that this is likely to be national in scope, but with important local elements, which will be taken into consideration in our assessment of the competitive effects of the merger rather than in the context of market definition. This is because:

(a) on the one hand, several of the most important parameters for competition between the Parties and the other online food platforms are, for the most part, set without taking into account local variations in competitive constraints – restaurant commission rates and sign-up fees, consumer charges (where applicable), marketing spend, vouchers and discounts; while

(b) on the other hand:

(i) the presence of competitors and the likely intensity of local competition varies across different local areas;

(ii) the offers of the online food platforms – in terms of restaurant and consumer numbers – vary by local area; and

(iii) even those parameters of competition that are set nationally could potentially be varied at the local level and, to an extent, already are being varied, eg targeting of specific areas with lower restaurant commission rates or local advertising to consumers.

4.34 As set out in our assessment of the competitive effects of the merger, in taking account of the difference in competitive conditions across different local areas, we have categorised local areas into two broad groups: those areas where the Parties are the only major providers of online food platforms currently operating; and those areas where one or both of Deliveroo and

⁸¹ Note that in categorising postcode districts for our econometric analysis and for our analysis of survey responses, we have split areas into those where the Parties are the only major providers of online food platforms present and those where Deliveroo is also present. [REDACTED].

⁸² For a discussion of Just Eat's [REDACTED], see Appendix D, paragraph 48.

UberEATS are also available (see paragraphs 6.169 to 6.183, below). In assessing the likely effect of the merger, we have adopted the pragmatic approach of looking at competition mainly in aggregate at a national level. In addition, where relevant, we have also looked at variations in platform presence within these two broad categories of areas – in particular at the relative strength of Just Eat and Hungryhouse at the postcode-district level (see, for example, Figure 3 and Figure 4 below).

- 4.35 For our analysis of competition at the local level, we have used postcode districts as a proxy for local markets, while recognising that restaurants' delivery areas are likely to be smaller than postcode districts in some areas and cross the boundaries of several postcode districts in others. As such, even within a particular postcode district the availability of different platforms will not be uniform (due to different restaurants' delivery radii), so any more detailed analysis of local effects would likely necessitate a degree of aggregation in any case.

Provisional conclusions on market definition

- 4.36 We have provisionally concluded that the relevant market for the assessment of the merger is the supply of online food platforms in the UK.

5. Counterfactual

- 5.1 Before we turn to the competitive effects of a merger, we need to assess what we expect would have been the competitive situation in the absence of that merger. This is called the 'counterfactual'.⁸³ It provides a benchmark against which the expected effects of the merger can be assessed. The CMA may examine several possible scenarios, one of which may be the continuation of the pre-merger situation; but ultimately only the most likely scenario will be selected as the counterfactual.⁸⁴ The CMA will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments.⁸⁵
- 5.2 Hungryhouse submitted that the correct counterfactual for the assessment of the merger is that Delivery Hero would have taken the decision to withdraw

⁸³ [Merger Assessment Guidelines](#), paragraph 4.3.1.

⁸⁴ [Merger Assessment Guidelines](#), paragraph 4.3.6.

⁸⁵ [Merger Assessment Guidelines](#), paragraph 4.3.6.

financial support from Hungryhouse leading to Hungryhouse's inevitable exit from the UK for the following reasons:⁸⁶

- (a) Hungryhouse had been continuously loss making ever since it was acquired by Delivery Hero in 2013. In each of its annual accounts since then, the business had been described by its auditors, KPMG, as "*entirely reliant on the support of its ultimate parent company*", Delivery Hero.
- (b) Its performance across a number of metrics relevant to its operating model was declining, [REDACTED].
- (c) [REDACTED].
- (d) Delivery Hero's subsidiaries must remain relevant and sustainable to justify continued investment, [REDACTED] and given the entry of better funded and resourced competitors such as Deliveroo, Uber and Amazon. Hungryhouse's performance (both absolute and relative to other Delivery Hero businesses), meant that Hungryhouse was neither relevant nor sustainable.

5.3 Hungryhouse submitted that there was no alternative purchaser of the Hungryhouse business and that, absent the merger, it would have been closed down by Delivery Hero. The distribution of Hungryhouse's sales on exit would be similar to the distribution of sales under the merger, [REDACTED].

5.4 Just Eat submitted that Hungryhouse's position was so weak that it could not be expected to be an effective competitor going forward. Given its continuing poor performance and loss making position, absent the transaction Just Eat believed it was probable that Hungryhouse would exit the market. However, whether it exited or not, its competitive position had become and would continue to be hopeless and, in any event, not a constraint upon Just Eat.⁸⁷

5.5 We therefore considered whether the most likely counterfactual was that, absent the merger, Hungryhouse would have exited the UK market for online food platforms. In forming a view on an 'exiting firm' scenario, the CMA will consider:⁸⁸

- (a) whether the firm would have exited (through failure or otherwise); and, if so

⁸⁶ Hungryhouse's position has been summarised from its submissions at phase 1 and its response to the phase 1 decision.

⁸⁷ Just Eat's response to the CMA's Phase 1 Decision, paragraph 3.2.1 (i)

⁸⁸ CC2 (Revised), paragraph 4.3.8.

- (b) whether there would have been an alternative purchaser for the firm or its assets to the acquirer under consideration; and
 - (c) what would have happened to the sales of the firm in the event of its exit.
- 5.6 In relation to 5.5(a), the CMA will consider:
 - (a) whether the firm is unable to meet its financial obligations in the near future (taking into account whether intra-group charges and transactions are on arm's length terms); and
 - (b) whether the firm is unable to restructure itself successfully.
- 5.7 Having carried out this assessment, where that firm is a subsidiary of a larger corporate group, the CMA will consider whether there may be reasons why a profitable parent company would not close down a subsidiary or division which appears to be loss making.
- 5.8 In line with this framework, we examined:
 - (a) The historical financial performance of Hungryhouse and forecasts;
 - (b) Attempts made by Hungryhouse to restructure its operations; and
 - (c) The wider corporate context within which the decision to sell Hungryhouse was made.

Historical financial performance and forecasts

- 5.9 Our detailed analysis of the financial performance of Hungryhouse (and in particular of Hungryhouse.com Ltd) over the past 4 full financial years is set out in Appendix B.
- 5.10 This analysis shows that Hungryhouse.com Ltd:
 - (a) was a loss making business and had been so since its acquisition by Delivery Hero;
 - (b) was loss making [redacted]; and
 - (c) was reliant on parent company support to remain as a going concern.
- 5.11 Although the company had been loss making, we noted that its revenue was growing and that, until June 2016, no concern was raised by Delivery Hero's Board members about its financial performance. If anything, Delivery Hero's Board presentations and informal business updates (in the form of emails to Delivery Hero Board members) were positive about the company's progress.

By contrast, some other businesses, such as [REDACTED], were identified in various documents as poorly performing and requiring action. The CEO of Delivery Hero identified the performance of the UK as a cause for concern for the first time in June 2016, stating that it would be [REDACTED] and [REDACTED]. This had followed from monthly updates dating back to March 2016 from Hungryhouse's management reporting that the company's performance was declining in the face of a very large main competitor, increasing competition from new entrants and lack of differentiation.

- 5.12 As set out in Appendix B, paragraphs 31 to 48, a set of forecasts was prepared by the Management of Hungryhouse in September/October 2016 (Hungryhouse business plan 2017-19). The final forecast showed [REDACTED] for the year ending 31 December 2017.
- 5.13 Hungryhouse submitted that its forecasts needed to be interpreted with caution for the following reasons:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED].
- 5.14 Hungryhouse further submitted that based on its performance so far in 2017, it was predicting a negative EBITDA of £5.5 million for the current financial year. This, it stated, was 'considerably worse' than its projections even taking into account the actions taken to increase sales to meet the [REDACTED], further demonstrating the consistent underperformance against budget and the limited weight that can be attached to Hungryhouse forecasts.
- 5.15 We noted that as a result of the [REDACTED] Hungryhouse's incentives were significantly different from those it would have if it was operating in the absence of the agreement. As a result its financial performance under the SPA was likely to be materially different to that absent the merger. We therefore placed limited weight on Hungryhouse's current performance under the SPA incentives in our assessment of Hungryhouse's likely financial performance under the counterfactual.
- 5.16 We did not accept that the approach taken by Delivery Hero necessarily meant that the resulting forecasts were a poor indicator of future performance. Furthermore, we believe that, in the run-up to the merger, the final forecasts (see paragraph 5.12) were not prepared in the same context as previously and may not therefore have been affected by [REDACTED]:

- (a) Against the backdrop of the negotiations with Just Eat, and in the knowledge that shareholders had decided to sell Hungryhouse, [REDACTED].
- (b) An alternative forecast for Hungryhouse was requested in December 2016 by the CEO of Delivery Hero, [REDACTED]. This forecast was identical to the forecast included in Hungryhouse's Business plan 2017-19 produced in October 2016.⁸⁹ In our view, under such circumstances, there would be little incentive on the part of the management to [REDACTED].

5.17 We therefore consider that some limited weight could be attached to the final forecast(s) (see paragraph 5.12), while recognising the inherent difficulty of forecasting at a time of considerable change in the competitive landscape. As this forecast shows that Hungryhouse would [REDACTED], we have provisionally not accepted Hungryhouse's position that it would necessarily continue to be loss making.

Attempts at restructuring

- 5.18 Restructuring can happen through simply reducing costs to achieve profitability or through more fundamental changes to the business when cost reduction is insufficient.
- 5.19 Hungryhouse implemented a cost saving initiative [REDACTED].
- 5.20 Separately from this initiative, in June 2016 the management of Hungryhouse set out a plan to increase the differentiation of its offering to consumers through a number of initiatives. These were not however fully implemented. See Appendix C, paragraphs 7 to 11 for more detail.
- 5.21 In addition, having identified the UK as a cause for concern and the "[REDACTED]" in June 2016, the CEO of Delivery Hero stated in an email to shareholders in July 2016 that [REDACTED]. We also noted that on 29 July 2016 one of the shareholders of Delivery Hero commented that [REDACTED].
- 5.22 In an email to shareholders, the CEO of Delivery Hero further indicated that, [REDACTED]. We also noted the comment made by the CEO of Delivery Hero on 5 September 2016 that [REDACTED]. The two comments imply that he expected [REDACTED].
- 5.23 We have therefore provisionally concluded that the profitability of Hungryhouse could potentially have been improved through the initiatives that

⁸⁹ The alternative forecasts also included two scenarios based on the merger happening in 2017. These two scenarios showed Hungryhouse producing either an EBITDA loss of £[REDACTED] million or an EBITDA profit of £[REDACTED] million

were identified by its management, had Delivery Hero been prepared to allocate the resources necessary to implement its restructuring plans.

Wider corporate context

- 5.24 Given Hungryhouse is part of a larger corporate entity, we also considered whether there might be reasons why Delivery Hero would not close down a subsidiary or division that was loss making.
- 5.25 Based on the numerous emails between the CEO of Delivery Hero and its shareholders we have reviewed, Board presentations and records of Board decisions (see paragraphs 28-31 of Appendix C), we consider that the drive behind the decision to look to sell Hungryhouse in 2016 was the [REDACTED], rather than the intrinsic poor performance of Hungryhouse. This was discussed at Delivery Hero Board level in early 2016 and resulted in Delivery Hero looking to [REDACTED], the possible sale of Hungryhouse being one of a number of options pursued.
- 5.26 Our review of internal documents also showed that Delivery Hero [REDACTED]. In addition, several companies which could potentially be interested in buying Hungryhouse were named in email correspondence between the management of Delivery Hero and its shareholders at various points throughout 2016. We have seen no evidence that the closure of the UK was considered as an alternative to selling the business⁹⁰ or that this would have been the rational course of action.
- 5.27 We did not consider that the examples of closures of businesses in other countries provided by Delivery Hero were informative with regard to what it would have done in the UK, as market conditions and circumstances surrounding these closures were likely to be country specific. For example, Delivery Hero's Australian business achieved [REDACTED] than Hungryhouse and, on closure, Delivery Hero was able to transfer a proportion of those sales to its local Foodora business.⁹¹ In any event, we noted that, in all those countries, Delivery Hero had first tried to [REDACTED].
- 5.28 Finally, Hungryhouse argued that, if we did not accept its argument that it would have exited the market for financial reasons, we should accept that

⁹⁰ Hungryhouse put forward four quotes in support of its submission that absent the merger, it would have been closed. We do not consider that these quotes, when read in context, support Hungryhouse's submission. This is discussed in more detail in Appendix C.

⁹¹ Delivery Hero told us that it transferred [REDACTED] orders to its Foodora business, as it had ramped its operation down (from around [REDACTED] orders) in the three months to closure ([REDACTED]). <https://www.deliveryhero.com/delivery-hero-consolidates-its-australian-business-under-the-foodora-brand/>

strategic exit⁹² was the correct counterfactual. However, the reasons that we set out in paragraph 5.25 and 5.27 would apply equally to this counterfactual scenario.

Provisional conclusions

- 5.29 As explained in paragraph 2.40, the industry in which Hungryhouse operates is undergoing significant change and suppliers typically use short planning horizons of up to a year. We are therefore unable to foresee developments beyond a year and, in line with our guidance (see paragraph 5.1), have adopted a similar timeframe for our consideration of the counterfactual.
- 5.30 Hungryhouse has been loss making for a number of years. Nevertheless, this poor performance was not raised as a source of concern by the management of Delivery Hero until June 2016, several weeks after Delivery Hero and Just Eat had [redacted] (see paragraph 5.25).
- 5.31 We saw no evidence supporting the contention that Delivery Hero would have closed Hungryhouse absent the merger. We therefore consider that Delivery Hero was likely to have continued to operate Hungryhouse. The evidence we saw indicates that Hungryhouse was a [redacted] and it was being held with the expectation of [redacted].
- 5.32 We recognise that there is some uncertainty as to the future profitability of the Hungryhouse business; how long Delivery Hero would have continued to support it if its financial performance did not improve; and how attractive the business would have been to alternative purchasers. We however also noted the underlying trend of the restaurant food delivery industry (which is forecast to grow significantly year-on-year as set out in paragraphs 2.44 and 2.47) and the year-on-year growth in order volumes for Hungryhouse, despite its financial difficulties.
- 5.33 We have seen extensive evidence that Hungryhouse was exploring plans for 2017 (further discussed in paragraphs 6.119 to 6.121). This further undermines the position of Hungryhouse that, absent the merger, it would have been closed down. Having regard to this uncertainty, we have provisionally concluded that, in a time horizon of 12 months, the most likely counterfactual and therefore the appropriate starting point for our analysis of the competitive effects of the merger is the situation in which Hungryhouse continues to operate in the UK. Our consideration of how competitive

⁹² [Merger Assessment Guidelines](#), paragraph 4.3.9.

constraints would have evolved absent the merger is set out in Section 6, paragraphs 6.116 to 6.124.

6. Competitive effects

6.1 In this section, we first examine the nature of pre-merger competition, including the behaviour of online food platforms (building on the evidence and analysis set out in Section 4 on market definition) before setting out the theories of harm which we have considered. Finally, we analyse the effects of the merger, focussing in particular on competitive constraints on Just Eat on both the consumer and the restaurant sides and variations in those competitive constraints in different parts of the UK.

Nature of competition

6.2 In this section, we first describe the evidence that we have obtained on how the Parties compete with each other and with other suppliers of online food platforms.

6.3 We first describe the main dimensions along which suppliers compete, including:

(a) the services they offer (paragraphs 6.7 to 6.14);

(b) pricing (paragraphs 6.15 to 6.20); and

(c) marketing and customer acquisition channels (paragraphs 6.21 to 6.41).

6.4 As explained in paragraphs 2.35 to 2.40, the restaurant food ordering and delivery industry has changed considerably in the past few years and continues to evolve. We therefore sought to understand how this translates in the way suppliers competes on the ground, in relation to:

(a) incremental innovation in consumer services (paragraph 6.42); and

(b) the evolution of the business models of the main suppliers (paragraphs 6.43 to 6.50).

6.5 We then explore the implications of customer behaviour on each side of the platforms for the nature of competition between platforms and whether, in the absence of differentiation, the market for online food platforms can be expected to 'tip' towards monopoly supply.

The dimensions of competition

6.6 The following section provides a high-level description of the dimensions of competition. More detail can be found in Appendix D.

Services

6.7 The ranges of products and services offered by the Parties are broadly similar, although there are differences in the quality and value of their offerings to both restaurants and consumers.

6.8 The primary service that food ordering marketplaces, such as Just Eat and Hungryhouse, provide to their restaurant customers is an ordering platform – a hardware terminal and software package that transmits orders placed by consumers on the website or app of the online platform to the relevant restaurants. Both also make a number of services available to all restaurants on their platforms, including:⁹³

- (a) access to an online store (ie a website through which restaurants can purchase products such as boxes or delivery bags);
- (b) premium/top placement (ie paid listings to appear at the top of the search engine results page or at the top of customer search results);
- (c) microsites and white-label websites for each restaurant;
- (d) co-branded menu printing services; and
- (e) restaurant online self-service portals (through which restaurants can access information on their performance, track orders, etc.).

6.9 In addition to this core offering common to both Parties, Just Eat provides all its restaurants with two further services that Hungryhouse does not:

- (a) driver management solutions (eg software to help manage the restaurant's own driver network and order tracking); and
- (b) preferential deals and other cost-saving opportunities for the benefit of the restaurants listed on its platform (eg delivery vehicle insurance, broadband and TV packages, food hygiene training, food standards audits, etc.).

⁹³ See also Merger Notice, paragraph 14.2.4.

- 6.10 Just Eat told us that these additional services were part of its ‘value added product’; and that restaurants benefited from more than just incremental consumer order revenue when partnering with the platform. Just Eat believed this broader proposition provided greater value to current and potential restaurant customers than the services offered by its competitors. An example of these ‘value added’ services is the partnership Just Eat has with Booker (a food services wholesaler), whereby its restaurant partners are offered discounts and rebates on orders placed through Booker’s website.
- 6.11 The ordering and logistics specialists (ie Deliveroo, Uber and Amazon) differ from food ordering marketplaces on one key service offering, which is that their platforms manage the delivery of consumer orders on behalf of all restaurants listed on them.
- 6.12 Table 4 below provides an overview of the key services offered to restaurants by the main relevant suppliers.

Table 4: Overview of key services provided to restaurants

Answer	Just Eat	Hungryhouse	Deliveroo	Uber	Amazon
Ordering platform	Yes	Yes	Yes	Yes	Yes
Co-marketing campaigns	Yes**	Yes	[X]	[X]	[X]
Delivery services	*	*	Yes	Yes†	Yes
Portals‡	Yes	Yes	[X]	[X]	[X]
Restaurant services§	Yes	No	[X]	[X]	[X]
Online store/shop¶	Yes	Yes	[X]	[X]	[X]
Menu printing services	Yes	Yes	[X]	[X]	[X]
Premium/top placement#	Yes	Yes	[X]	[X]	[X]
Driver management solutions~	Yes	No	[X]	[X]	[X]
Microsites/white-label websites/services★	Yes	Yes	[X]	[X]	[X]

Source: Just Eat, Hungryhouse, Deliveroo, Uber and Amazon.

* Just Eat and Hungryhouse have started offering delivery to selected restaurants (see paragraph 2.27).

** Just Eat occasionally undertakes co-branding campaigns with certain restaurants where it displays its logo alongside the restaurant’s signage.

† Uber told us that it “does not provide delivery services directly. Uber provides the app, which provides restaurants seeking to purchase delivery services with access to a network of delivery partners willing to sell their delivery services to the restaurant.”

‡ Through which restaurants can access information on their performance and track orders, etc.

§ For example, special offers and discounts on products and services such as food, drinks, insurance, training, etc.

¶ Online store through which restaurants can purchase products such as boxes or delivery bags.

Paid listings to appear at the top of the search engine results page.

~ Software to help manage the partner restaurant’s own driver network.

★ White-label ordering websites or managed call centre.

- 6.13 On the consumer side, the primary service that suppliers of online food platforms offer to consumers is the ability to order meals from nearby restaurants online (ie using a website or app).
- 6.14 Discussions with suppliers of online food platforms showed that they offer a range of additional services to consumers in order to attract them to their platforms and/or differentiate themselves from other online food platforms. These services include:

- (a) Price-match guarantees: Both Parties ensure that consumers buying meals from their platforms are offered the same menu prices paid by consumers buying directly from the restaurants⁹⁴. These guarantees are put into effect through the Parties' terms and conditions with restaurants and price promises to consumers.
- (b) Payment options: Suppliers of online food platforms offer a range of payment options, including: cash, debit/credit cards and digital wallets (eg Android and Apple Pay). Additionally, Hungryhouse consumers can pay with PayPal, whereas Just Eat consumers are not offered this option.
- (c) Delivery: Suppliers of online food platforms have different offerings from each other in relation to delivery, particularly in relation to the cost of delivery, speed of delivery and delivery tracking. Unlike Deliveroo, UberEATS and Amazon Restaurants, Just Eat and Hungryhouse's food ordering marketplace services do not include delivery, except for selected customers.
- (d) Restaurant Choice: Deliveroo told us that its business model was based on a curated model under which a consumer ordering food through Deliveroo is offered the best selection of good-quality dine-in restaurants (some of which had not been previously listed on online food platforms). Similarly, Amazon Restaurants' primary focus is on dine-in restaurants (even though it also has some takeaway restaurants on its platform) and it focusses on a subset of hand-picked high-quality restaurants.

Pricing

6.15 Online food platform suppliers earn revenue by charging fees to customers for the services provided. In this section, we consider the fees charged to restaurants and consumers, which include:

- (a) sign-up fees charged to restaurants;
- (b) monthly fees charged to restaurants;
- (c) commission on each consumer order charged to restaurants; and
- (d) delivery fees charged to restaurants or paid by consumers.

⁹⁴ Direct Orders are placed by customers on the phone, through a restaurant's website or by walking into the restaurant.

- 6.16 In relation to sign-up fees, restaurants that join the Just Eat platform for the first time pay a standard sign-up fee of £699.⁹⁵ For restaurants joining the Hungryhouse platform before December 2016, [REDACTED].⁹⁶ Uber told us that [REDACTED]. Deliveroo [REDACTED]. We were also told that Amazon [REDACTED].
- 6.17 In relation to monthly fees, the majority of online food platform suppliers ([REDACTED]) do not charge monthly fees to restaurants. Restaurants [REDACTED] are [REDACTED] charged a monthly administration fee of £[REDACTED].
- 6.18 In relation to commission rates, Just Eat told us that it had a [REDACTED] commission rate of 14%. Hungryhouse told us that it charged a standard commission rate of 14% for orders made on its platform.
- 6.19 Ordering and logistics specialists generally charge higher commission rates than the Parties.
- (a) On average, restaurants on the Deliveroo platform pay a commission rate of around [REDACTED]%, although the actual rates paid by restaurants listed on the platform range from [REDACTED]% to [REDACTED]%.
- (b) Uber charges restaurants commission rates which currently range from [REDACTED]% to [REDACTED]%.
- (c) Amazon charges a standard commission rate of [REDACTED]%.
- 6.20 In relation to delivery fees, industry research⁹⁷ and discussions with online food platform suppliers indicate that restaurants and online platforms may charge delivery fees in order to cover the cost of delivering the food from the restaurant to the consumer's location. More details on delivery charges are provided in Appendix D.

Marketing and customer acquisition

- 6.21 Online food platform suppliers spend considerable amounts on marketing and customer acquisition activities to attract both consumers and restaurants.⁹⁸ The marketing channels available to online food platforms for advertising can

⁹⁵ See [Just Eat website](#).

⁹⁶ [REDACTED]

⁹⁷ 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

⁹⁸ This section does not focus on specific marketing activities aimed at couriers (ie the third side of the platform for ordering and logistics suppliers).

be broadly categorised as TV and Radio, newspapers and magazines, outside of home (OOH) (such as billboard advertising), online marketing (such as search engine marketing, search engine optimisation, pay-per-click advertising, mobile app marketing and webpage marketing, etc.), as well as other forms such as consumer vouchers/discounts⁹⁹ or branded restaurant merchandise.

- 6.22 Appendix D sets out and compares the marketing activities of online food platform suppliers in terms of their marketing expenditure and customer acquisition strategies, as well as the use of online advertising and voucher campaigns by the Parties. We provide a high-level overview in paragraphs 6.23 to 6.41.

Marketing Expenditure

- 6.23 We have analysed the monthly marketing expenditure of the online food platform suppliers between June 2014 and March 2017. This is set out in Appendix D. From the data provided by Just Eat, Hungryhouse, Deliveroo and Uber (in relation to its UberEATS service) it can be seen that:

- (a) Just Eat had the [REDACTED] amount of expenditure on marketing in absolute terms over the entire period.
- (b) Hungryhouse's expenditure on marketing was [REDACTED], [REDACTED].
- (c) Deliveroo increased its marketing expenditure from [REDACTED] in early [REDACTED] to £[REDACTED] per month in mid-[REDACTED], [REDACTED].
- (d) [REDACTED].

Marketing and Customer Acquisition Strategies

- 6.24 As noted above, online food platform suppliers spend considerable amounts on marketing and customer acquisition activities to attract both consumers and restaurants to their platforms. This is principally focused on attracting consumers, with restaurant marketing and acquisition costs constituting a much smaller proportion of their overall spend.
- 6.25 In this section, we outline the strategies of online food platform suppliers in this area, including: advertising channels for consumers; branded restaurant

⁹⁹ Consumer vouchers and discounts can be funded by the online food platform supplier or restaurant listing on these platforms as part of their own consumer acquisition activities. Unless described as being offered by restaurants, we refer to consumer vouchers and discounts that are funded by the online food platform supplier in this section.

merchandise (that is seen by consumers on restaurant menus, delivery boxes and other merchandise); sales efforts to acquire new restaurants to their platform; and targeted initiatives that combine all of these marketing and customer acquisition activities

- *Just Eat*

6.26 Just Eat told us that its consumer-focused marketing spend was primarily allocated to [redacted], [redacted] and [redacted] channels and accounted for [redacted]% of marketing expenditure in 2017, with the main components of restaurant marketing being [redacted]. [redacted].

6.27 Although Just Eat's marketing activities have typically been conducted at a national level, it has recently added [redacted]. [redacted].

6.28 To improve its order volumes and revenue [redacted], Just Eat targeted the restaurants that [redacted]. These targeted customer acquisition activities were coupled with Just Eat's use of [redacted]. This [redacted] initiative was adapted in [redacted] by Just Eat in response to [redacted]. However, unlike the [redacted] focused [redacted] projects, this initiative was solely focused on consumer marketing and not on the acquisition of restaurants that [redacted].

- *Hungryhouse*

6.29 Hungryhouse told us that it [redacted]. [redacted]. The overall allocation of Hungryhouse's marketing spend was biased towards the promotion of short-term order volumes, [redacted], rather than using its marketing budget for [redacted].

6.30 Hungryhouse told us that it [redacted] targeted consumers [redacted] accounting for [redacted]% of Hungryhouse's marketing spend between January 2014 and March 2017. In addition to these activities, Hungryhouse invested significantly in [redacted] advertising.

6.31 While Hungryhouse determines its marketing strategy at the national level, it also undertakes specific marketing activities in certain local areas. In 2016, Hungryhouse introduced the '[redacted]' initiative which sought to target customer acquisition resources in local [redacted]. Based on an analysis of restaurant numbers and consumer order volumes, Hungryhouse classified local areas into four categories: [redacted]. [redacted].

6.32 The different types of financial incentives trialled by Hungryhouse as part of the '[redacted]' initiative to encourage restaurants to sign up to its food ordering platforms included [redacted] in underperforming major cities [redacted], as well as offering restaurants [redacted] in smaller regional areas. To receive the financial

benefits of the package, restaurants were required to use Hungryhouse's visual branding [REDACTED].

6.33 Once the agreement between Delivery Hero and Just Eat for the purchase of Hungryhouse had been finalised in December 2016, we observed that the marketing strategy of Hungryhouse changed significantly in response to the 'earn-out' provision of the SPA [REDACTED]. This change in marketing strategy (which included an additional £[REDACTED] million for marketing and customer acquisition activities) in response to the SPA has led to Hungryhouse [REDACTED].

- *Deliveroo*

6.34 Deliveroo told us that it had used various forms of advertising, including national advertising, online social media and local advertising. [REDACTED].

6.35 [REDACTED]

- *UberEATS*

6.36 Uber told us it typically marketed its UberEATS service on channels that were [REDACTED] and [REDACTED] ([REDACTED]). [REDACTED]:

(a) [REDACTED]; and

(b) [REDACTED].

- *Amazon Restaurants*

6.37 Amazon told us that it only marketed its Amazon Restaurants service to Prime members, [REDACTED]. Amazon did not carry out any national brand awareness advertising, [REDACTED], for its Amazon Restaurants service.

Vouchers and discounts

6.38 All the key online food platforms told us they had used vouchers and discounts to attract consumers, although the context in which these had been used varied.

(a) Just Eat told us that it had historically not relied upon providing consumers with vouchers or discounts as part of its marketing strategy.

(b) Hungryhouse [REDACTED] and [REDACTED] growth in order volumes ([REDACTED]).

- (c) Deliveroo may offer discounts to new customers and provides credit to existing customers who refer Deliveroo to friends and relatives who go on to place orders with Deliveroo.¹⁰⁰
- (d) Uber has typically offered special promotions and discounts to first-time and existing consumers, as well as consumers referred by friends.
- (e) Amazon offers [redacted] vouchers as part of its initial offer to consumers.

6.39 Despite the use of vouchers and discounts by the Parties and their competitors, the effectiveness of this form of customer acquisition (as measured by the re-order rates of new customers) has been questioned.

Pay-per-click advertising

6.40 While most consumer marketing costs are fixed in nature (ie the cost of an OOH marketing campaign does not vary directly with consumer order volumes) the spend on pay-per-click (PPC) advertising varies with the number of visits to a firm's website by consumers clicking through their advert. More information on the operation of the PPC customer acquisition channel is provided in Appendix D.

6.41 This marketing channel is relatively more important for the Parties than for the other online food platforms [redacted].

Evolution of competition

Incremental innovation in consumer services

6.42 Evidence we obtained from the Parties and their main competitors indicates that they regularly consider and seek to implement incremental changes to their offering to consumers, for example:

- (a) Just Eat told us that it was exploring improvements in the technical functionality and means of ordering available to consumers, noting that it had evolved from offering consumers desktop ordering, to ordering via smartphone apps and via voice recognition technology.
- (b) In the course of 2016, Hungryhouse was exploring the potential of a number of initiatives to improve its offering to consumers, although whether these initiatives would have been implemented in 2017 as planned, is uncertain. These initiatives included an upgrade to the

¹⁰⁰ [Deliveroo website](#)

underlying technology of Hungryhouse's platform ([redacted]), a 'click-to-call' function that would enable consumers to call restaurants from the Hungryhouse app, and a [redacted] discount of up to [redacted]% on consumer orders (applied at the point of sale like a voucher) which is offered for a limited period.

- (c) Deliveroo told us that it had considered and discussed how to expand its [redacted]. [redacted].
- (d) Uber has considered and discussed whether to [redacted].

Evolution of business models

6.43 We set out below the evidence we have received on the recent (and future plans for) changes to the business models of the online food platforms. These changes are reflected in the services offered to restaurants and consumers, increasing the choices of both types of customers in three areas:

- (a) provision of delivery services by online food marketplaces;
- (b) partnerships with dine-in restaurant chains; and
- (c) expansion into new segments of the restaurant food ordering and delivery industry.

Delivery services

6.44 Online food platforms told us that the immediate future of the online food takeaway market was in delivery services:

- (a) Just Eat told us that it began providing delivery services [redacted]. Just Eat told us that [redacted].
- (b) Hungryhouse noted that one of the shortcomings of a food ordering marketplace business model was the inability to control the reliability and speed of delivery, as well as the inability to list restaurants without their own delivery services on its platform.

(c) [redacted].

(d) [redacted].

6.45 Documentary evidence that we obtained indicates that [redacted].

- 6.46 Just Eat offers a delivery management solution to restaurants which allows them to allocate orders to specific delivery drivers, as well as providing consumers with real-time delivery updates for their orders. [REDACTED].
- 6.47 In early 2015, Hungryhouse began offering delivery services in selected cities in partnership with Valk Fleet.¹⁰¹ Hungryhouse observed that several restaurants were unable to meet consumer order demand at peak times. The provision of delivery services by Hungryhouse, to complement the restaurants' own delivery services, could therefore increase the order capacity of such popular restaurants. Analysis carried out by Hungryhouse indicates that Valk Fleet's services proved successful in the UK [REDACTED].

Restaurant chains

- 6.48 Most online food platforms from which we obtained evidence indicated that they were expanding the choice of cuisine available to consumers on their platforms, [REDACTED].
- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED].
- (d) [REDACTED].
- 6.49 Just Eat and Hungryhouse have launched some delivery services, thus enabling them to serve [REDACTED] restaurants [REDACTED] that do not have their own delivery services:

- (a) [REDACTED].
- (b) [REDACTED].

Expansion into other market segments

- 6.50 Most of the online food platforms that submitted evidence indicated their intentions to expand or further expand into other segments of the restaurant food supply chain.
- (a) Deliveroo recently created the 'Deliveroo Editions' concept, a new service aimed at providing delivery-only kitchens [REDACTED].

¹⁰¹ Valk Fleet was a food delivery service owned by Delivery Hero, the parent company of Hungryhouse.

(b) [REDACTED].

(c) [REDACTED].

Implications of customer behaviour for the nature of competition

6.51 This section sets out:

- (a) Our analytical framework for assessing competition between online food platforms;
- (b) The relevant evidence that we have obtained on the behaviour of the two types of customers of the Parties' platforms, ie restaurants and consumers, with a focus on the prevalence of single- and multi-homing on both sides of the online food platforms;
- (c) Our assessment of the likely presence and strength of INEs and of the importance of any feedback loops between each side of the platforms; and
- (d) Our assessment of the sustainability of competition between food ordering marketplaces.

6.52 In order to understand customer behaviour, we commissioned GfK to conduct two surveys of the Parties' customers:

- (a) An online survey of consumers who had recently placed an order¹⁰² on Just Eat or Hungryhouse; and
- (b) A telephone survey of restaurants listed on the Parties' platforms.

6.53 Both surveys were based on customer lists provided by the Parties. Full details of the methodology, questionnaires used and results are available in the GfK report that we have published alongside these Provisional Findings.

6.54 The restaurant survey achieved a response rate of 21% and a sample of just under 1,000 respondents. We consider this survey to be a good evidence source about restaurants listed on the Parties' platforms, although as noted below we have some concerns about the responses to a number of specific hypothetical questions.¹⁰³

¹⁰² These were consumers who placed an order on the Just Eat or Hungryhouse platform in the period from 15th to 21st May 2017.

¹⁰³ See paragraph 6.156, below.

6.55 The consumer survey achieved a sample of over 12,000 respondents, with a response rate of 4.5% (4.3% for Just Eat and 4.7% for Hungryhouse customers). This response rate is sufficiently low to give rise to a heightened risk of the survey responses not being representative of the wider populations of interest, namely users of the Just Eat/Hungryhouse food ordering platforms. In light of this limitation of the consumer survey, our view is that the survey results should be interpreted with caution. In this report we are careful to avoid reporting specific survey estimates, which may imply a spurious level of accuracy. Instead we look only at broad patterns of responses and, in particular, at the relative proportions of respondents choosing a particular response over another, and we only report large differences.

The analytical framework

6.56 In this section, we explain the analytical framework that we have used to assess how competition works in the online food platform market. More detail can be found in Appendix E.

6.57 An online food platform provider needs to attract two types of customers: restaurants and consumers. Therefore, INEs may be an important characteristic of such a platform, as the utility (or value) that customers on one side derive from the platform may depend on the number (and/or variety) of customers on the other side (as explained in paragraph 4.9). This can generate feedback loops between the two sides, with an increase in the number of customers on one side leading to an increase in the number of customers on the other side and so on.¹⁰⁴

6.58 When more than one online food platform is available, customers can decide either to single-home or to multi-home. Customers (restaurants or consumers) are described as ‘single-homing’ when they only use one platform, whereas ‘multi-homing’ refers to customers using more than one platform. In this context, we consider that restaurants are multi-homing when they are listed on more than one platform. On the consumer side, a consumer may have an account with more than one platform, but this may not necessarily be an example of multi-homing. A consumer may have access to more than one platform, but may use them for different purposes. Strictly speaking, multi-homing on the consumer side only occurs if a consumer uses more than one

¹⁰⁴ See paragraph 5.2.20 of the [CMA's Merger Assessment Guidelines](#).

platform in making a purchasing decision, for example searching for restaurants on two platforms and then deciding which one to order through.¹⁰⁵

6.59 Typically, a high proportion of single-homing customers on one side of the online food platform may mean that the online food platform operator faces little direct competition when offering its services to customers on the other side, as the platform becomes the only way to access those customers. Online food platform operators therefore have an incentive to try to push customers on one side towards single-homing. The single- or multi-homing behaviour of customers on either side of the platform has implications for how competition between platforms takes place, as presented in a simplified way in Table 4, below.

Table 4: Single- and multi-homing and the effect on platform competition

		Restaurants	
		Single-homing	Multi-homing
Consumers	Single-homing	Platforms compete on the consumer side and on the restaurant side	Platforms compete on the consumer side; platforms face little direct competition on the restaurant side, as they provide access to separate sets of consumers
	Multi-homing	Platforms compete on the restaurant side; platforms may face little direct competition on the consumer side, as they provide access to separate sets of restaurants, though this depends on the extent to which consumers consider the different sets of restaurants to be close substitutes ¹⁰⁶	Platforms compete on both sides and may try to push restaurants (or consumers) towards single-homing, eg through exclusivity (restaurant side) or loyalty rewards (consumer side)

Source: CMA analysis.

6.60 The homing behaviour of customers will be determined by a number of factors: (i) the offerings of the suppliers (and in particular how differentiated each offering is from the others both in terms of service and relative size of platform); (ii) the cost of multi-homing; and (iii) whether customers on the

¹⁰⁵ We note that different definitions and measures of multi-homing may be relevant in different contexts. For example, assessing the sustainability of competition between multiple platforms (as we do in paragraphs 6.86 to 6.94, below) a looser definition of multi-homing - where customers are listed on, or use, more than one platform over a period - may be more relevant. In assessing the competitive constraint that one platform imposes on another, however, a stricter definition of multi-homing - where more than one platform is searched in the course of making a purchasing decision - may be more relevant, as this tells us more about a customer's likelihood of switching between platforms for that type of transaction. As set out in detail in Appendix E, Table 4, many of our measures of consumer multi-homing give broadly consistent numbers, so these definitional issues have not impacted on our analyses or our conclusions.

¹⁰⁶ This framework is a simplification of how competition between platforms is likely to work in practice and is most applicable to competition between horizontally undifferentiated platforms. More detail is provided in Appendix E.

other side of the platform single or multi-home (ie whether two competing platforms will give customers on one side access to two different pools of customers on the other side of the platform). These three factors are interlinked.

- 6.61 As explained in paragraphs 6.7 to 6.14, at present the food ordering marketplaces offered by the Parties are largely undifferentiated from each other. Ordering and logistics specialists are differentiated from the Parties on both the consumer and restaurant side. They give consumers access to different types of restaurants from the Parties and provide different services, particularly delivery, to restaurants. Consumers and restaurants may therefore display a different homing behaviour depending on the business models of the online food platform suppliers.
- 6.62 In addition, the relative sizes of two competing platforms will have implications for competition between them. Where the two platforms are undifferentiated in terms of the services they offer and one platform provides access to a far smaller pool of customers,¹⁰⁷ there may be a limit to the competitive constraint that the smaller platform places on the larger one. Restaurants are unlikely to want to single-home on the smaller platform and the constraint arising from those restaurants that multi-home may also be limited where the consumers using the two platforms constitute a small share of the larger platform's orders.¹⁰⁸
- 6.63 Paragraphs 6.64 to 6.76 set out our analysis of the behaviour of customers (both restaurants and consumers) of online food platforms, and in particular the extent to which they single- or multi-home. This analysis relies on four sources of evidence on the restaurant side, and four on the consumer side:
- (a) On the restaurant side:
- (i) An analysis of restaurant homing behaviour, commissioned by the Parties from Frontier Economics (Frontier), which matched customer lists to identify common and unique customers. This analysis relied on the Parties' lists of restaurant customers for the 12-month period up to January 2017 and an approximation of the restaurants listed on the Deliveroo and UberEATS websites in May 2017;
 - (ii) A CMA analysis of restaurant homing behaviour (CMA restaurant matching), similar to the analysis carried out by Frontier. This relied on the same restaurant lists as the Parties' analysis in relation to Just

¹⁰⁷ Platforms are said to be vertically differentiated when they are identical in all dimensions except for the number of restaurants and consumers on the platform.

¹⁰⁸ This is explored in more detail in Appendix E, paragraph 6.

Eat and Hungryhouse restaurants, as well as lists of restaurant customers for Deliveroo and UberEATS for June 2017;

- (iii) The CMA's restaurant survey, which asked restaurants which online ordering platforms they were listed on;¹⁰⁹
- (iv) An analysis submitted by Just Eat in Phase 1 on the extent to which the Parties' restaurant customers were listed on both platforms.

(b) On the consumer side:

- (i) An analysis of consumer homing behaviour, commissioned by the Parties from Frontier, which matched customer lists to identify common and unique customers. It relied on order-level data from the Parties covering a six-month period from November 2016 to April 2017;
- (ii) A CMA analysis of consumer homing behaviour (CMA consumer matching), similar to the analysis carried out by Frontier. This relied on the same data set as the Parties used for Just Eat and Hungryhouse orders, but also on the actual orders received by Deliveroo and UberEATS, for the six-month period from November 2016 to April 2017;
- (iii) The CMA's consumer survey, which asked consumers both about which platform they had used in the preceding 12 months and which other platforms they had searched on before placing their last order;¹¹⁰
- (iv) An analysis submitted by Just Eat of the extent to which visitors to its website and users of its app were also visiting the websites and/or using the apps of other online food platforms and vertically-integrated food chains (Domino's and Pizza Hut) based on data on consumer online behaviour collected by comScore.

Behaviour of restaurants

6.64 In order to assess the extent of the possible competitive constraint from Hungryhouse on Just Eat, we first estimated the proportion of restaurants listed on the Just Eat food ordering marketplace that are also listed on Hungryhouse's marketplace and vice-versa. We also calculated the proportion

¹⁰⁹ Survey report, Chart 1.

¹¹⁰ Survey report, Charts 28 and 36.

of restaurants listed on Just Eat that are also listed on Deliveroo's and/or UberEATS' online food platforms.

- 6.65 We did not carry out this analysis for Amazon Restaurants as it currently operates only in London and provides its services only to Prime customers (as explained in paragraph 2.25(b)).
- 6.66 Starting with Just Eat and Hungryhouse, as set out in detail in Table 2 of Appendix E, the vast majority of restaurants (about 90 per cent by any measure) that are listed on Hungryhouse's food ordering marketplace are also listed on Just Eat's marketplace.¹¹¹ In contrast, Just Eat's marketplace has a large number of restaurants that are listed on it but not on Hungryhouse, with only about [X]% of Just Eat's restaurants also listing on Hungryhouse.
- 6.67 Looking at the extent of multi-homing by restaurants across Just Eat, on one side, and Deliveroo and UberEATS on the other, Frontier estimated that the level of overlap was much lower than between the Parties:
- (a) As of May 2017, there were circa [X] restaurants that were unique to Just Eat, [X] that were unique to Deliveroo and only [X] that were shared, representing [X]% of the restaurants listed on Just Eat.
 - (b) In areas where Deliveroo is present, the level of overlap is, obviously, higher than at the national level, with [X]% of Just Eat restaurants also listing on Deliveroo.
 - (c) The extent of multi-homing across Just Eat and UberEATS follows a similar pattern: as of May 2017, there were circa [X] restaurants that were unique to Just Eat, [X] that were unique to UberEATS and [X] that were shared, representing [X]% of the restaurants on Just Eat.
 - (d) In areas where UberEATS is present, the extent of multi-homing was much higher than at the national level, with [X]% of Just Eat's restaurants also listing on UberEATS.
- 6.68 Our analysis of the Parties' restaurant customer lists and of those of Deliveroo and UberEATS yields broadly consistent results.
- 6.69 While we consider that matching lists of restaurants supplied by the relevant online food platform suppliers themselves is the most accurate way to measure the extent of multi-homing on the restaurant side, our restaurant survey also provides some information on this issue. We note the similarity

¹¹¹ Based on data from Just Eat on the extent of overlap between the Parties' restaurants, on our own analysis of the Parties' restaurant customer lists and consistent with the responses to our restaurant survey.

between the results obtained from both approaches, as set out in Tables 2 and 3 of Appendix E. In particular, our restaurant survey found that:

- (a) There is a higher level of single homing by restaurants listed on Just Eat's food ordering marketplace than by those on Hungryhouse's marketplace: 92% of Hungryhouse restaurants are also on Just Eat, while 46% of Just Eat restaurants are also on Hungryhouse.¹¹²
- (b) Multi-homing between the Parties is much more prevalent than between either of the Parties and Deliveroo or UberEATS.¹¹³
- (c) The main reasons for joining Just Eat's or Hungryhouse's food ordering marketplace among restaurants who were listed on another platform at the time of joining were: to gain access to a larger number of customers; to increase business; and because the restaurant was approached by the online food platform.¹¹⁴
- (d) 22% of those Just Eat restaurants that chose to single-home did so in order to keep costs down, while 16% did so because it was difficult to manage more than one platform, and 15% said they already had enough orders/customers. This indicates that some restaurants find the costs of multi-homing outweigh the benefits of reaching additional consumers in their area.

6.70 In summary, the various sources of evidence indicate that the vast majority of restaurants that are listed on Hungryhouse are also listed on Just Eat but not the other way around. This is to be expected given the much larger number of restaurants listed on Just Eat compared to Hungryhouse.

6.71 The proportion of Just Eat restaurants that are listed on Hungryhouse is more than double the proportion of Just Eat restaurants that list on either Deliveroo or UberEATS. Thus there is significantly more multi-homing by restaurants across the merging Parties than between Just Eat and other online food platforms.

Behaviour of consumers

6.72 In this section, we examine four aspects of consumer behaviour:

¹¹² CMA Survey report, Chart 1.

¹¹³ CMA Survey report, Chart 1.

¹¹⁴ CMA Survey report, Chart 11.

- (a) First, we set out the analysis of the extent of single- and multi-homing by consumers across the Just Eat and Hungryhouse food ordering marketplaces;
- (b) Second, we conduct a similar analysis of the extent of multi-homing between the Parties' online food platforms and those of Deliveroo and UberEATS; and
- (c) Third, we point to consumer survey responses which outline consumers' reasons for ordering through one of the Parties' online food ordering marketplaces the last time they did so.

6.73 On the question of the extent of consumers single- and multi-homing across the Parties, data from the Parties show that:

- (a) Just Eat has a much larger number of 'unique' consumers ([X] million consumers who used Just Eat but not Hungryhouse)¹¹⁵ than Hungryhouse ([X] million consumers who used Hungryhouse and not Just Eat) and there are only [X] million shared consumers (ie those who have made at least one order from both Just Eat and Hungryhouse in the preceding 6 months). This represented [X]% of Just Eat's total consumers.
- (b) Of the total pool of orders made using Just Eat or Hungryhouse's food ordering marketplace in the last 6 months, [X]% were made by consumers who only ordered from Just Eat, [X]% were made by consumers who only ordered from Hungryhouse and [X]% were made by consumers who ordered on both platforms. Among 'shared' consumers, [X]% of their orders were made on Just Eat and [X]% on Hungryhouse.

6.74 Comparing these estimates of the extent of consumer multi-homing with the other evidence sources, as set out in Table 4 of Appendix E, we find that:

- (a) The results of the CMA consumer matching analysis are consistent with those obtained by Frontier;¹¹⁶
- (b) In response to the consumer survey question on which platforms Just Eat and Hungryhouse consumers had ordered from in the previous 12 months, the extent of overlap was significantly higher, with both Just Eat

¹¹⁵ The Frontier analysis defined a consumer, in this context, as anyone who had used either of the Parties' platforms in the 6-month period from November 2016 to April 2017.

¹¹⁶ Obtaining the same, or very similar results was expected, as this matching exercise used the same methodology: comparing the Parties' data on consumers who had ordered from their platforms in the 6-month period from November 2016 to April 2017, and matching on the consumer email addresses.

consumers and Hungryhouse consumers displaying higher rates of multi-homing on the other Party's platforms than the transaction data had indicated, although the contrast between a higher level of Hungryhouse consumer multi-homing on Just Eat than vice versa was still clear;¹¹⁷

- (c) In response to the consumer survey question on which platforms the consumers of Just Eat and Hungryhouse had searched before placing their last order on one of the Parties' platforms, we find a very similar level of multi-homing to the levels found by matching data on consumer transactions, with, again, a clear difference between the Parties' consumers' behaviour;¹¹⁸
- (d) Data submitted by Just Eat on the extent of 'cross-visiting' by its website visitors and app users (collected by comScore)¹¹⁹ indicated a similar pattern of multi-homing, with [X] % of Just Eat visitors also using the Hungryhouse website or app, while the equivalent share of Hungryhouse consumers multi-homing on Just Eat was somewhat higher at [X] %.¹²⁰

6.75 We have also analysed the overlap between consumers using the Just Eat food ordering marketplace and those using Deliveroo and UberEATS ordering and delivery services. We found, as set out in detail in Table 5 of Appendix E, that:

- (a) Based on consumer transaction data submitted by the Parties and third parties, [X] % of Just Eat consumers had also used Deliveroo in the past six months, while the share was [X] % in those areas where Deliveroo was present;
- (b) Based on corresponding data, we found that [X] % of Just Eat consumers had also used UberEATS in the past six months, while the share was [X] % in those areas where UberEATS was present;
- (c) Responses to our survey of Just Eat and Hungryhouse consumers showed a somewhat higher level of multi-homing when consumers were asked which platforms they had used in the previous 12 months, while the

¹¹⁷ CMA Survey report, Chart 28.

¹¹⁸ CMA Survey report, Chart 36.

¹¹⁹ We use comScore's definition of website and app 'cross-visiting' as a proxy for consumer multi-homing in this context.

¹²⁰ As set out in Table 4 of Appendix E, this wide range is due to the very different rates reported for website visitors and for app users, with the latter being less likely to visit other websites or use other apps.

pattern was similar in terms of higher overlap between Just Eat and Deliveroo than between Just Eat and UberEATS;¹²¹ and

- (d) In response to our question on which platforms consumers had searched on before placing their last order on Just Eat, the rates of multi-homing on Deliveroo and UberEATS were very similar to those calculated from transaction data, with, again, Deliveroo being the more common platform used by Just Eat consumers compared to UberEATS.¹²²

6.76 Responses to our consumer survey point towards the following aspects of consumer behaviour as being important to consumers' single- and multi-homing behaviour:

- (a) Ease of ordering, quality of previous experience and having an account/app are among the main reasons for choosing either Party's online food platform.¹²³
- (b) While a large majority of customers are likely to go straight to the Just Eat or Hungryhouse platform to place an order, some may end up there following a search for a type of takeaway food.¹²⁴ It appears, however, that a substantial proportion (about a third) of Hungryhouse customers also visit Just Eat's website before ordering from Hungryhouse.¹²⁵

Provisional conclusions on the nature of competition on each side of the market

6.77 In line with our analytical framework (see paragraphs 6.56 to 6.62) we assessed the degree of differentiation between the platforms, the single- or multi-homing behaviour of restaurants and consumers, and the relative sizes of the Parties' platforms. The evidence indicates that Just Eat and Hungryhouse's food ordering marketplaces are not particularly differentiated from a consumer perspective, as they offer similar services (see paragraphs 6.13 to 6.14) and give access to similar types of restaurants, although the number of restaurants listed on Just Eat is much larger than on Hungryhouse, as seen in paragraph 6.66, above. Single-homing is more common among Just Eat consumers than among restaurants. We therefore expect competition between the Parties to be mainly focused on the consumer side, which is also likely to have an effect on competition on the restaurant side, as the size,

¹²¹ CMA Survey report, Chart 28.

¹²² CMA Survey report, Chart 36.

¹²³ CMA Survey report, Charts 37 and 38.

¹²⁴ CMA Survey report, Chart 35.

¹²⁵ CMA Survey report, Chart 36.

quality and/or variety will be an important factor in attracting consumer orders to the platform.

- 6.78 We note that the business models of Just Eat, Deliveroo, UberEATS and others are evolving and might possibly converge somewhat over time (see paragraphs 6.42 to 6.50). This implies that the nature of competition on each side of the market will also evolve, as Deliveroo and UberEATS grow and the differentiation between the various suppliers' business models change over time. The simple model set out in Table 4, above, best describes competition between undifferentiated platforms competing, primarily, to attract consumer orders on one side (through marketing) and to attract restaurants on the other side of the platform. Where the nature of competition is shifting and innovation changes the ways in which the platforms are differentiated, this makes it more difficult to characterise (and make predictions about) the nature and likely intensity of competitive interactions between platforms.
- 6.79 As set out below (at paragraphs 6.116 to 6.121), our assessment of the competitive effects of the merger includes evidence on a number of initiatives that Hungryhouse was in the process of developing prior to the SPA being signed. Based on this evidence, we have assessed the extent to which Hungryhouse might have differentiated itself from Just Eat in the future, and therefore the extent to which the nature of competition between the Parties was likely to evolve in the future.

INEs and feedback loops

- 6.80 As explained in paragraph 6.57, above, INEs may be an important characteristic of online food platforms. The strength and direction of such INEs can be important when: (a) considering whether two or more food ordering marketplaces may be able to coexist in the UK; and (b) assessing competitive effects in multi-sided markets.
- 6.81 The interaction between INEs and homing behaviour on each side of the market can have implications for whether a platform operates in a 'winner-takes-all' market (ie whether only one platform can survive in the long term):
- (a) where one side single-homes, and there are strong INEs, changes in the relative attractiveness of a platform (due to changes in the number of customers on the other side) could lead to switching and a large loss of customers for the less attractive platform;
 - (b) where, instead, customers on that side of the platform multi-home, even with INEs, changes in the relative attractiveness of the platform may induce some switching of activity (orders or transactions), but the less

attractive platform will not necessarily lose all of those switching customers' business.

- 6.82 Additionally, when there are strong INEs in both directions, the interaction between these INEs on both sides can create a feedback loop.¹²⁶ For instance, the ultimate effect of a price increase on one side of the market could be much greater if it led to further feedback loops with participants increasingly leaving both sides of the market as the platform becomes less valuable to each group of customers. The strength of these feedback loops may constrain the platform's market power, depending on its strength on each side of the platform, and, to the extent possible, should be taken into account in any assessment of competitive effects in multi-sided markets. Finally, we note that INEs will not necessarily remain constant over time: they are likely to decrease at the margin, as the industry matures.¹²⁷
- 6.83 The Parties submitted that the market for online food platforms was characterised by strong INEs. We used four sources of evidence to assess the direction and strength of these INEs. These are discussed in detail in Appendix E, paragraphs 28 to 34.
- 6.84 In summary, while INEs are clearly an important feature of this industry, the evidence paints a somewhat mixed picture of the actual strength of these INEs. Our econometric analysis does not suggest that INEs are very strong. However, we note that the econometric analysis is unlikely to be able to pick up the full extent of INEs, as it looks at the relationship between a platform's restaurant offer and its own value of orders in a given month, whereas any indirect network effects (in terms of consumers reacting to changes in restaurant numbers on a platform) would likely be felt over a longer period, as consumers became aware of changes in the platform's offer. Evidence from internal documents on the importance given by the Parties to the number, variety and quality of the restaurants in a local area paints a mixed picture on the strength of INEs, while oral evidence from other food ordering platforms highlights the importance of INEs. Finally, our consumer survey provides some indication of the importance of INEs, but does not point to them being especially strong.
- 6.85 INEs and feedback loops are taken into consideration below: (a) when considering whether two or more food ordering marketplaces may be able to

¹²⁶ These INEs go in both directions, but are not necessarily equally strong in each direction.

¹²⁷ This is because the incremental value of gaining an additional customer is likely to vary depending on the number of customers already on the platform. Where a platform already has many potential industry participants on board, adding one additional business will not increase the value of the platform to the consumer as much as when the platform had fewer businesses on board.

coexist in the UK; and (b) in the assessment of the loss of competition arising from the merger.

The sustainability of competition between food ordering marketplaces

- 6.86 This section discusses the argument, made by the Parties, that they operate in a ‘winner-takes-all’ market.
- 6.87 Just Eat told us that the fact that “[redacted] [...], along with the INEs present in the market, contributes to the ‘winner-takes-all’ nature of the market for purely vertically differentiated providers (ie those online food platforms that are identical in all dimensions except for the number of restaurants and consumers on the platform)”.
- 6.88 Hungryhouse argued that this market dynamic gave rise to a ‘downward spiral’ if repeat business was low. The sustainability of a platform’s business was measured by the performance of its ‘cohorts’. Each newly acquired consumer formed part of a cohort of new consumers each month. The expected ‘customer lifetime value’ generated, through repeat ordering, from each cohort should be compared with the cost per acquisition (CPA) for that cohort to have a sense of the sustainability of a platform’s business. Hungryhouse’s cohort performance [redacted]. Moreover, Hungryhouse’s [redacted] marketing spend as a percentage of revenue ([redacted]% in 2016, compared with [redacted]% for Just Eat) and its [redacted] conversion rate – only [redacted]% of the visits to Hungryhouse’s website or app converted into a purchase, compared to [redacted]% for Just Eat – indicated that [redacted].¹²⁸
- 6.89 The argument that food ordering marketplaces face a ‘winner-takes-all’ competition is also made in some stockbrokers reports and in Delivery Hero’s IPO Prospectus.¹²⁹
- 6.90 However, the fact that the share of orders of Hungryhouse relative to Just Eat has been fairly stable ([redacted]) over the past three years and, based on the Parties forecasts, is only expected to decline slightly in 2017, is not consistent with a ‘winner-takes-all’ market. Evidence from the Parties’ internal documents and from third parties is also mixed. [redacted] Just Eat’s CEO David Buttress stated that “[redacted]”, and one of the shareholders of Delivery Hero [redacted], Delivery Hero’s CEO Niklas Östberg wrote in an email: “[redacted]” Takeaway.com told us that it could have been possible for it to be profitable as a number two player in the UK market; although this would require a reduction in marketing

¹²⁸ Internal documents suggest that Hungryhouse is focused on the performance of its [redacted], and uses metrics such as CPA and the re-order rate to measure this performance. [redacted].

¹²⁹ Delivery Hero’s IPO prospectus, page 9. Available at <https://ir.deliveryhero.com/websites/delivery/English/1250/prospectus.html>

expenditure which would potentially impact in the long-term on the growth of the business.

- 6.91 In addition, the economic literature on two-sided markets suggests that the likelihood of platform coexistence is influenced by three dimensions: the degree of platform differentiation, the strength of the INEs, and customers' homing behaviour (see Appendix E, paragraphs 36 to 42). While the lack of differentiation between food ordering marketplaces may make coexistence more difficult, the mixed evidence on the strength of INEs (see paragraph 6.84) and the fact that multi-homing among restaurants is common and inexpensive suggests that platform coexistence may be possible even in the long run. Coexisting platforms do not need to be of a similar size: it is possible to have a 'winner-takes-most' scenario, in which one platform is larger and more profitable, without this leading to the other platform's exit. The sizes of the competing platforms can depend on differences in the platforms' level and effectiveness of advertising and differences in the 'quality' of platforms.
- 6.92 Finally, evidence from several countries also indicates that the market is not intrinsically 'winner-takes-all', that smaller competitors can succeed in increasing their market shares and that multiple operators, even if relatively undifferentiated, can coexist while achieving profitability.
- (a) In Denmark, Hungry Group launched a food ordering marketplace in November 2012 in competition against Just Eat, which had operated there since 2001. Hungry Group [REDACTED], achieving profitability in 2015.
- (b) In Germany, Takeaway.com and Delivery Hero are competing strongly and have similar market shares. A report by Morgan Stanley dated 19 January 2017 expects that the German market will always remain more competitive than the UK.
- (c) In Korea, [REDACTED].
- 6.93 We recognise that Hungryhouse has struggled to [REDACTED] consumers (see paragraph 6.88) and has been consistently loss-making, in stark contrast to the large profit margins achieved by Just Eat (see Table 2 and Table 3, above). However, the evidence we have reviewed indicates that [REDACTED] may be at the root of the problem or at least would have significantly exacerbated any intrinsic challenge faced by the smaller of two food ordering marketplaces in the UK.
- (a) [REDACTED] Hungryhouse began charging restaurants [REDACTED] and increased its commission rates to 14%, [REDACTED], despite being the smaller platform in terms of order volumes. This may have made it more difficult for

Hungryhouse to sign up new restaurants, in turn making the platform less attractive to consumers.

- (b) In an email to the CEO of Delivery Hero dated 29 July 2016, a member of Delivery Hero's Supervisory Board [REDACTED] that the [REDACTED]. The CEO of Delivery Hero told us that the management at Delivery Hero had [REDACTED], although we have not seen any documentary evidence supporting this statement. In contrast, the chief marketing officer (CMO) of Delivery Hero told us that that was a time when Delivery Hero focused a lot on a few of the other markets like [REDACTED]. This might have led to the UK being [REDACTED]. The views of the CMO are consistent with the Delivery Hero Board presentations that we have seen.
- (c) The [REDACTED] may also have negatively affected Hungryhouse's performance. In an email dated 31 May 2016, a member of Delivery Hero's Supervisory Board complained: "[REDACTED]" In an email dated 4 September 2016, another member of the Supervisory Board similarly wrote: "[REDACTED]"
- (d) Hungryhouse's marketing spending accounts for [REDACTED]. We note that Hungry Group, [REDACTED] in the Danish market, mainly uses online channels for marketing. In addition, Hungryhouse has made a significant use of [REDACTED] on an ongoing basis (as explained in paragraph 6.38(b)) which, according to Just Eat, [REDACTED].
- (e) There also seems to have been a [REDACTED] in the approach adopted by Delivery Hero to build the Hungryhouse business. For example, marketing spend was [REDACTED].
- (f) [REDACTED].

6.94 In conclusion, whilst the presence of INEs makes it difficult for smaller undifferentiated platforms to compete, as set out above, we have a number of reasons to doubt that this results in the creation of a 'winner-takes-all' market, not least the fact that we have seen Hungryhouse continue to grow at a significant rate.¹³⁰ As such, we are not convinced by the Parties' argument (set out in paragraph 6.87) that the inevitable consequence of the nature of the market is that only one food ordering marketplace can profitably compete in the UK. Nevertheless, Hungryhouse's recent performance is taken into account in the assessment of the loss of competition arising from the merger.

¹³⁰ See Appendix E, Table 6.

Theory of harm

- 6.95 Theories of harm describe the possible ways in which an SLC could arise as a result of the merger and provide the framework for our analysis of the competitive effects of the merger. In this case, we have investigated one theory of harm: the loss of a supplier of food ordering platforms in the UK, in particular one of the only two food ordering marketplaces. As competitors in this market provide products and services to two categories of customers - restaurants and consumers - we have examined competitive constraints and the potential harm that may arise from the merger in relation to both categories of customers.
- 6.96 Loss of competition in the supply of food ordering platforms could potentially lead to harm on either the consumer or the restaurant side of the market, or both. Consumers could be harmed by:
- (a) lower numbers and/or worse range of restaurants being available on the platform, as a result of reduced competition between platforms on the restaurant side;
 - (b) worse platform functionality and user experience, and loss of innovation on services offered to consumers; or
 - (c) higher prices, in the form of a reduction in discounts and vouchers offered to consumers, the introduction of fees on the consumer side, or the pass-through to consumers of commission increases on the restaurant side.
- 6.97 Harm to restaurants could take the form of:
- (a) higher commission rates or sign-up fees, or other forms of degradation of the offer, due to the loss of competition on the restaurant side;
 - (b) loss of innovation in services offered to restaurants, as weaker competition may reduce incentives to innovate; or
 - (c) a reduced rate of new consumers joining and/or lower order volumes from existing consumers as a result of a lower spend on marketing to consumers, due to lower competition on the consumer side.

Analysis of competitive constraints on the consumer side

- 6.98 The analytical framework set out above (see paragraphs 6.56 to 6.62) suggests that the level of competition on each side of the market depends on the single- or multi-homing behaviour of restaurants and consumers, as well as the degree of differentiation between platforms and the relative sizes of

platforms. The evidence indicates that there is little differentiation between Just Eat and Hungryhouse in terms of the types of services they offer, although the number of restaurants listed on, and the value of orders placed on, Just Eat is many times larger than on Hungryhouse. Single-homing is more common among Just Eat consumers than among restaurants. We therefore expect competition between the Parties to be mainly focused on the consumer side.¹³¹ For this reason, we consider that the analysis of competition for consumers is especially important in order to understand:

- (a) The strength of the (potentially asymmetric) constraint the Parties impose on each other;
- (b) The strength of the constraint imposed by third parties on each of the Parties; and
- (c) The strength of the constraint imposed by direct ordering.

6.99 By way of context, Table 5, below, sets out our estimates of order volumes for the five major online food platforms in 2016, as well as each platform operator's own projections for 2017. These data indicate that Just Eat's share of the online food platform market (in order volume terms) in the UK was [80-90]% in 2016. This is expected to decrease to [70-80]% in 2017. In 2016 it was almost [X] the size of the next largest food ordering platform (Deliveroo) and [X] the size of Hungryhouse. We also note the projected rapid growth in the order volumes of the ordering and logistics specialists between 2016 and 2017, with their market share projected to increase from [10-20]% to [20-30]%.

Table 5: Order volumes on food ordering platforms in the UK, 2016 and 2017

	2016		2017 (projected)	
	Order volume (million)	%	Order volume (million)	%
Just Eat	[X]	[80-90]	[X]	[70-80]
Hungryhouse	[X]	[5-10]	[X]	[5-10]
Deliveroo	[X]	[5-10]	[X]	[10-20]
UberEATS	[X]	[0-5]	[X]	[5-10]
Amazon Restaurants	[X]	[0-5]	[X]	[0-5]
<i>Total</i>	[X]	100	[X]	100

Source: CMA analysis based on Parties' and third parties' data.

¹³¹ Although, as noted above, this is a two-sided market and therefore competition on the consumer side will have an effect on competition on the restaurant side.

Evolution of the competitive constraints imposed by the Parties on each other

6.100 This section sets out the evidence on the extent to which the Parties impose a competitive constraint on each other, how this has changed over time (primarily from early 2015 onwards) and our assessment of how this is likely to evolve absent the merger. We first set out the Parties' views on the competitive constraints they impose on each other. We then outline the main pieces of evidence on which we rely, in particular, our econometric analysis, surveys of the Parties' customers and an analysis of a large number of internal documents, including email exchanges [REDACTED]. We then describe the evolution of the Parties' competitive constraint on each other over this period, with a particular focus on:

- (a) the change from a constraint from Hungryhouse that Just Eat appeared to take seriously and respond to in early 2015, to a weak one by the end of 2015;
- (b) Hungryhouse's current weak position;
- (c) the Parties' development of their respective delivery services, especially the impact of Hungryhouse's activities on Just Eat's plans;
- (d) Hungryhouse's plans to improve and differentiate its offering from Just Eat.

Parties' views

6.101 Just Eat told us that "Hungryhouse did not act as a material competitive constraint on Just Eat today" and that "[REDACTED]". In fact, "Hungryhouse [REDACTED] because it does not have an [REDACTED] restaurant proposition compared to Just Eat [REDACTED]." [REDACTED], Hungryhouse argued that its [REDACTED]. Moreover, [REDACTED].

6.102 The Parties have made a number of submissions in relation to the documentary evidence, including emails that we obtained from them. Just Eat argued that its internal documents and email evidence showed that:

- (a) [REDACTED]

6.103 Just Eat also argued that the evidence we collected from Hungryhouse's internal documents and emails, in particular in relation to some initiatives that Hungryhouse was considering over the course of 2016, should not be interpreted as evidence that Hungryhouse could have materially increased its competitive constraint on Just Eat absent the merger. In brief, it argued that:

- (a) these were [REDACTED];

(b) [REDACTED].

6.104 In response to email evidence that related to a number of initiatives that it had been considering in 2016, Hungryhouse argued that these showed that:

- (a) It had “tried everything”, its past initiatives had “failed” and there was “no reason and – crucially – no evidence to suggest that any of the initiatives the CMA is considering ... would have had a different or better outcome to the numerous previous, unsuccessful ones”; and
- (b) Competition concerns based on “hypothetical, speculative theories of harm around potential competition lack evidentiary basis” and there was no “silver bullet” that would have allowed Hungryhouse to “compete effectively and sustainably in the UK market”.

Our analysis of the competitive constraint of the Parties on each other

6.105 The main pieces of evidence on the strength of the constraint that the Parties impose on each other, specifically on the consumer side, are: internal documents from the Parties, our econometric analysis; our consumer survey; an analysis of the effect of an initiative run by Hungryhouse to improve its performance relative to Just Eat; and the Parties’ data on consumer online behaviour.

6.106 As explained in Appendix A, we obtained and analysed a substantial number of internal documents [REDACTED].

6.107 Our econometric analysis seeks to identify whether there is a consumer-side response to changes in local competition between platforms in terms of restaurant availability. It does this by measuring the impact of (i) the change in the number of restaurants listed on the Parties’ and third parties’ platforms available to consumers in a postcode district on (ii) the value of orders placed on the Parties’ platforms from consumers in the same area (for details on the methodology, see Appendix F). The results of the analysis, for the five-year period April 2012 to April 2017, show that an increase in the number of restaurants available on Hungryhouse in a postcode district has a negative impact on Just Eat’s order value and vice versa. However, the impact appears to decrease substantially over time and Hungryhouse’s effect on Just Eat’s order volumes in a postcode district is close to zero¹³² when we focus only on the period from April 2016 to April 2017, as set out in Appendix F, paragraphs 50 to 52.

¹³² The coefficient is small and positive, but statistically significant. See Appendix F, Table 8.

6.108 Further evidence of the limited impact of Hungryhouse on Just Eat in recent times comes from the analysis of the effect of Hungryhouse's [redacted] project. This project, initiated by Hungryhouse in [redacted], was aimed at improving the platform's performance in some severely underperforming areas. It was based on [redacted]. The project, therefore, envisaged increasing the number of listed restaurants in those areas, through [redacted], followed by a local marketing campaign.¹³³

6.109 [redacted].

6.110 Our consumer survey implies that, while Just Eat imposes a significant constraint on Hungryhouse, the constraint from Hungryhouse on Just Eat is at most moderate. A much higher proportion of Hungryhouse's consumers (just under a half) had visited Just Eat's website before placing their last order than the proportion of Just Eat's consumers who had searched for restaurants on Hungryhouse's food ordering marketplace (just under a quarter).¹³⁴ Similarly, when asked what they would have done had the online food platform they had used closed down, a much higher proportion of Hungryhouse's consumers would have switched to Just Eat than vice versa.¹³⁵

6.111 In reaching a view on how the competitive constraint that the Parties could be expected to exert on each other in the future absent the merger, we considered whether the situation that prevailed in 2016 could be expected to continue in 2017. Our main source of evidence for this analysis is email correspondence between various members of the management teams of the two Parties.¹³⁶ The key points which emerge from our review are set out below.

Competitive constraint from Hungryhouse in 2015

6.112 Our analysis of Just Eat's internal documents, [redacted], indicates that, up until [redacted], Hungryhouse imposed a competitive constraint on Just Eat. Hungryhouse's marketing spend, [redacted], was monitored closely, [redacted]. We also note some evidence that Just Eat was concerned about competition from Hungryhouse on the restaurant side in this period: [redacted].

¹³³ See Appendix D, paragraphs 54 to 57.

¹³⁴ CMA Survey report, Chart 36.

¹³⁵ CMA Survey report, Chart 40.

¹³⁶ More information on the number of emails we reviewed is set out in Appendix A.

Weaker constraint from Hungryhouse in 2016

- 6.113 From late 2015 onwards, the picture that emerges from the Parties' internal documents is one of a much weaker competitive constraint from Hungryhouse on Just Eat. On the basis of Just Eat's internal documents, in late 2015 and over the course of 2016, Hungryhouse did not appear to take actions to which Just Eat felt compelled to respond, [REDACTED]. The tone of internal emails between managers at Just Eat appears to change from late 2015 onwards, with Hungryhouse activities no longer appearing to be seen as a threat, [REDACTED] in October 2015. The ineffectiveness of some of its [REDACTED] strategies to promote long-term profitability and the capacity of its delivery partner, Valk Fleet, were also questioned.¹³⁷ [REDACTED]
- 6.114 However, despite the change in tone of the internal emails, Just Eat was still monitoring Hungryhouse in this period, in particular: [REDACTED].¹³⁸
- 6.115 Hungryhouse's internal documents show that it was struggling to compete from March 2016 onwards. The documents indicate that, as set out in more detail below, while management was working on plans to improve performance, Hungryhouse was suffering from a lack of differentiation from Just Eat and from a limited budget made available by its parent company. Some of the main challenges highlighted in internal documents were:
- (a) The presence of a "dominant competitor" with [REDACTED] times more orders, ie Just Eat.
 - (b) The increasingly competitive landscape, in particular the expansion of Deliveroo and the introduction of delivery services by Just Eat.
 - (c) The lack of a clear unique selling proposition (USP) and the fact that Hungryhouse was often confused with Just Eat; in particular, while in a two-player market Hungryhouse could afford to distinguish itself from Just Eat with quality, this was no longer possible after the entry of Deliveroo.
 - (d) Delivery Hero's decision to reduce Hungryhouse's [REDACTED], while, in this same period, [REDACTED] Just Eat [REDACTED] were spending significantly more than Hungryhouse on marketing.

¹³⁷ The previous worried interest in Valk Fleet turned into [REDACTED], as Just Eat realised that [REDACTED].

¹³⁸ For example, in August 2016 when Just Eat's order volumes had fallen by [REDACTED]% when compared to the same week in 2015, Hungryhouse's [REDACTED]% discount voucher campaign was considered as a potential contributing factor [REDACTED].

- (e) Delivery Hero recognised that Hungryhouse had been [redacted] in this period.¹³⁹
- (f) [redacted], with [redacted]% of Hungryhouse customers having only ordered once.

Development of delivery services by Hungryhouse and Just Eat

- 6.116 As set out in more detail at paragraphs 6.45 to 6.49, above, Hungryhouse began working with Valk Fleet on the introduction of delivery services for restaurants in early 2015. This extended to a number of cities and allowed Hungryhouse to list a number of Burger King branches on its platform. Following the closure of Valk Fleet in April 2016, due to Delivery Hero [redacted], Hungryhouse continued to develop its delivery services and saw these as integral to its strategy for winning ‘Key Accounts’¹⁴⁰ – listing large well-known branded chains on its platform. An email from the Hungryhouse chief executive indicated that Delivery Hero management had later seen the damage that this had done to Hungryhouse. In April 2016, Quiq began a delivery services for Hungryhouse restaurants on a trial basis, although this partnership was only finalised in January 2017. [redacted]
- 6.117 The email evidence therefore shows that, contrary to some of the arguments that Hungryhouse has made in its submissions, it had not ‘tried and failed’ in the delivery space. It had begun developing these services in a number of cities from early 2015 and had been forced to close these operations due to a decision by Delivery Hero management rather than due to the failure of its operations. It was still actively pursuing the development of delivery services and their use in gaining business from large restaurant chains by the time the SPA was signed.
- 6.118 The impact of Hungryhouse’s development activities in this area can be seen in Just Eat’s internal documents. [redacted]

Hungryhouse’s differentiation strategies

- 6.119 By middle-late 2016, there was a clear steer from Delivery Hero that Hungryhouse should focus on [redacted]. “Feedback was mainly around focussing our efforts on the initiatives and projects that we can see are really having an immediate impact on growing the business [redacted] or where we can win [redacted].”

¹³⁹ See paragraphs 5.21 and 6.93(b), above.

¹⁴⁰ A ‘Key Account’ in the supply of online food platforms is a restaurant chain that generates a high number of orders and consumer visits to the platform’s website or app.

6.120 As discussed in Appendix D, paragraph 98, in order to respond to these challenges, Hungryhouse's management set out a plan to increase the differentiation of its services from those of Just Eat on the consumer side. [REDACTED] the introduction of a 'click-to-call' functionality, allowing users of Hungryhouse's website/app to browse restaurants online and then order by phone; [REDACTED] on the Hungryhouse platform. Hungryhouse internal documents indicate that 'Click-to-call' and [REDACTED] were discussed by Hungryhouse and Delivery Hero management in [REDACTED]. Hungryhouse had only partially implemented some of the proposed initiatives by the time the SPA was signed.

6.121 [REDACTED]¹⁴¹ [REDACTED]. However, it is not possible to determine whether these would have been effective strategies.

Conclusion on the evolution of competition between the Parties

6.122 In assessing the likely effects of the merger, we have mainly focused on the removal of Hungryhouse as a constraint on Just Eat (and not the other way around). The main reason for this is that, at present, there is very little differentiation between the Parties, other than size. Just Eat is [REDACTED] the size of Hungryhouse.

6.123 In assessing the current and likely future strength of competition between the Parties, we note that, in the course of 2016, Hungryhouse was developing a number of initiatives to improve its competitiveness and performance. However, none of these had been implemented by the time the SPA was signed. Although we consider it likely that Hungryhouse would have attempted to compete more aggressively in 2017, we were not convinced that this would have been sufficient to materially improve Hungryhouse's weak position in this increasingly competitive market.

6.124 We therefore provisionally conclude that, in the year preceding the merger, Hungryhouse was a weak competitor and imposed a limited competitive constraint on Just Eat, and that this position would have been unlikely to change materially absent the merger.

¹⁴¹ For example, Hungryhouse submits that [REDACTED] was not implemented because it was unclear whether the initiative was transferable from other countries to the UK, it was unlikely to be appealing to restaurant customers, it was complicated and may have been difficult to implement or promote, it was only possibly to implement those initiatives which were most likely to improve cohorts. Hungryhouse submits that Click-to-call was not implemented because it was unclear whether the initiative was transferable from other countries to the UK, it had concerns as to whether click-to-call would be attractive to restaurant customers and consumers, and whether it would improve performance across key metrics, it was concerned about possible legal issues and it was only possible to implement those initiatives most likely to improve cohorts.

Other suppliers

6.125 The Parties argued that third-party online food platforms, in particular Deliveroo and UberEATS, imposed a stronger competitive constraint than the Parties did on each other. Just Eat told us that [REDACTED]. It also argued that [REDACTED]. Similarly, Hungryhouse argued that, by “providing consumers with new and improved or additional services or more restaurant choice”, Deliveroo and UberEATS were able to “compete more effectively with Just Eat than Hungryhouse” was. The Parties also argued that a further competitive constraint was imposed by other online food platform suppliers such as Amazon Restaurants and Jinn, and by large, vertically-integrated food chains such as Dominos, Papa John’s and Pizza Hut.

6.126 Our econometric analysis indicates that UberEATS and Deliveroo impose a constraint on both of the Parties. As set out in Table 6, below:

- (a) For Just Eat, the constraint from Hungryhouse appears to fall over time, while Deliveroo appears to impose a stronger constraint than Hungryhouse when we look only at the period from 2015 onwards. Taking the entire five-year period, the effect of a [REDACTED]% increase in the number of restaurants on the Hungryhouse platform in the postcode district reduces the value of Just Eat’s orders in that area by [REDACTED]%, while the equivalent effect from Deliveroo is [REDACTED]%.¹⁴² However, looking at the later period (from April 2015 to April 2017), we see the effect of a [REDACTED]% increase in the number of restaurants on the Hungryhouse platforms in a postcode district is [REDACTED]% while the equivalent effect from Deliveroo is [REDACTED]%.¹⁴³
- (b) For Hungryhouse, we found that the constraints from Just Eat and from Deliveroo were very similar to each other – both over the full five-year period and for the more recent period from 2015 to 2017. Looking at the constraints on Hungryhouse, we found that an additional [REDACTED]% of restaurants on the Just Eat platform reduces the value of Hungryhouse’s orders by [REDACTED]%, while the equivalent effect from Deliveroo was [REDACTED]%.¹⁴⁴ Looking at the later period (from April 2015 to April 2017), we see the effect of a [REDACTED]% increase in the number of restaurants on the Just Eat platform in a postcode district is [REDACTED]%, while the equivalent effect from Deliveroo is [REDACTED]%.¹⁴⁵

¹⁴² Appendix F, Table 5 and Figure 10.

¹⁴³ Appendix F, Table 6 and Figure 12.

¹⁴⁴ Appendix F, Table 5 and Figure 9.

¹⁴⁵ Appendix F, Table 6 and Figure 11.

Table 6: Impact of 10% more restaurants on each platform on the Parties' value of orders

	Average impact on the value of orders of Just Eat (%)		Average impact on the value of orders of Hungryhouse (%)	
	Apr 2012 – Apr 2017	Jan 2015 – Apr 2017	Apr 2012 – Apr 2017	Jan 2015 – Apr 2017
Just Eat	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hungryhouse	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Deliveroo	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
UberEATS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Domino's	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Amazon	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of Parties' and third parties' data. See also Appendix F, Tables 5 and 6, Figures 9 to 12.
 Note: *** indicates that these results are statistically significant at the 99% confidence level.

6.127 On the other hand, our econometric analysis did not find evidence that Domino's exerted a discernible constraint on the Parties' value of orders (consistent with our market definition in Section 4), while the presence of Amazon Restaurants does not currently seem to have an effect on the value of orders achieved by the Parties, which would be consistent with its recent entry, limited geographic coverage, and relatively small number of listed restaurants.

6.128 We also note that the impact on the Parties' value of orders from additional restaurants on UberEATS and Deliveroo seems to be declining, and, [REDACTED], additional restaurants on Deliveroo seem not to have any discernible impact on the value of orders on the Parties' platforms (which may be the result of the greater number of restaurants that are on Deliveroo leading to the impact of each additional restaurant falling over time).¹⁴⁶ The estimated effects on the Parties' order values are [REDACTED].¹⁴⁷

6.129 As seen in paragraph 6.75, above, the proportion of consumers Just Eat shares with Deliveroo in the areas in which the latter operates ([REDACTED]%) is higher than the proportion shared with Hungryhouse ([REDACTED]%). Just Eat's

¹⁴⁶ While it may appear counterintuitive that the coefficient in relation to Deliveroo appears to decline over time, there are two reasons why this needs to be interpreted with caution. First, our analysis measures the effect of an additional restaurant on the relevant platform in a local area, so we may expect the marginal effect of additional restaurants to decline as more are added to the platform. Second, our analysis captures the effect of additional restaurant availability in those local areas where Deliveroo is present. For Deliveroo, our results for the overall period 2012-2017 include a significant period (from 2013 to 2015) when it was present in a relatively small number of areas. This full period analysis may be reporting a relatively large effect due, in part, to Deliveroo's initial impact in those areas. For the later period (2015-2017), our analysis is capturing the average effect over a much larger number of areas as Deliveroo has expanded in this period. In other words, the average impact on the Parties' value of orders in a local area may be smaller when we focus only on the later period, but, given Deliveroo's much greater presence, this does not mean that its impact on the Parties has necessarily weakened over time.

¹⁴⁷ Appendix F, Tables 7 and 8, Figures 15 and 16.

consumers shared with UberEATS are fewer ([REDACTED]%), but this may partly be due to the fact that UberEATS has only recently launched operations in many of the areas currently served. While the number of shared consumers may be indicative of the existence of a competitive constraint, this measure does not distinguish between consumers treating different platforms as substitutes and those using them as complements. A more direct measure of the use of different platforms as substitutes can be derived from our consumer survey. When asked about which websites or apps they had used to search for a takeaway before placing their last order on Just Eat, respondents in areas where Deliveroo operates mentioned Deliveroo and Hungryhouse in similar proportions.¹⁴⁸ This indicates that Deliveroo and Hungryhouse may be imposing a similar constraint on Just Eat. On the other hand, the consumer survey also indicates that, had Just Eat not been available, far fewer Just Eat consumers would have diverted to a third-party online food platform than to Hungryhouse.¹⁴⁹ As noted in paragraph 4.21, above, the latter question refers to a hypothetical situation, whereas the former asks about consumers' actual recent behaviour, so we put more weight on the evidence in relation to the reported actual use of alternative platforms.

6.130 Finally, the Parties' internal documents show that a number of suppliers, particularly Deliveroo, are seen as important competitors.

(a) [REDACTED]¹⁵⁰ [REDACTED].

(b) When looking at the impact of competition on sales, in 2016 Just Eat considered [REDACTED].¹⁵¹ Other documents, however, show that Just Eat's focus has [REDACTED]. While Hungryhouse does not appear to undertake activities to which Just Eat feels compelled to respond, a document from [REDACTED].

(c) Deliveroo's expansion is also a major concern for Hungryhouse, as reported in its internal documents. Hungryhouse, which still generates a large share of its business in London and is more London-focused than Just Eat, considered that its comparatively [REDACTED] were directly attributable to Deliveroo. As such, from June 2016 it focused some of its marketing efforts on London in an attempt to slow this decline.

6.131 We therefore provisionally conclude that both Just Eat and Hungryhouse have been actively monitoring and attempting to respond to the entry of ordering

¹⁴⁸ Consumer survey data tabulations (Just Eat), Responses to question B7.

¹⁴⁹ CMA Survey report, Chart 44.

¹⁵⁰ Brand tracking studies focus on monitoring the health of a brand and provide insights into the effectiveness of marketing programmes.

¹⁵¹ The methodology used to estimate the impact is, however, flawed, so that the documents cannot be used as evidence of the strength of competitive constraints, as recognised by Just Eat itself.

and logistics specialists, particularly Deliveroo. Based on our econometric analysis, in the areas in which Deliveroo is present, it appears to exert a stronger constraint on Just Eat than Hungryhouse does when we look at the period since April 2015, while the constraint on Just Eat from Hungryhouse appears to fall over time.

Direct ordering

- 6.132 Consumers can place takeaway orders directly – over the phone, on the restaurants’ own websites or from walking in. Just Eat told us that “online and offline direct ordering [...], such as through websites of chains and takeaway restaurants, white-label app building suppliers like Preoday and other forms of direct ordering from takeaway restaurants (eg over the telephone) [...] constrain Just Eat now, and will continue to constrain Just Eat in the future.” Similarly, Hungryhouse submitted that “constraints from direct ordering [...] remain pervasive and are continually developing and strengthening”.
- 6.133 Before examining the evidence we have obtained on the strength of the constraint from direct ordering, we note that the Parties’ price guarantees limit the scope for restaurants to incentivise consumers to order directly by offering a lower price.
- 6.134 Just Eat conducted its own research into why its consumers lapsed or churned, which it submitted supported the argument that there was a strong constraint from direct ordering. A survey from January 2017 suggested that the top reason for no longer using Just Eat was that consumers “[X]. We do not know however what value of Just Eat’s orders these consumers account for.
- 6.135 Diversion estimates¹⁵² from our consumer survey also imply that direct ordering may impose a significant competitive constraint on both Parties. Over half of respondents said that they would have ordered directly if Just Eat had closed down permanently. This was more than twice the number who said they would have switched to Hungryhouse if Just Eat had closed down.¹⁵³ The proportion of consumers that would have ordered directly if Just Eat had closed down is, unsurprisingly, larger amongst single-homing consumers than

¹⁵² Consumers were asked whether, if they had known beforehand that Just Eat / Hungryhouse had closed down, they would have: not ordered takeaway, ordered directly (either from the same or a different restaurant), ordered through another party ordering website. Those who said they would have ordered through another party ordering website were then asked, which website they would have ordered from. The diversion estimate is the proportion of respondents that would divert to: merging party, third party, another party (not sure where), ordering directly, not ordering a takeaway.

¹⁵³ CMA Survey report, Chart 40.

it is among those who multi-home across Just Eat and Hungryhouse.¹⁵⁴ Based on the diversion responses, Hungryhouse had a lower share of consumers switching to ordering directly than Just Eat had.¹⁵⁵

6.136 In relation to their last order, the majority of consumers either had a specific restaurant or a set of restaurants in mind, and a large majority had ordered from that restaurant before.¹⁵⁶ As set out above, when asked about diversion, a high share of consumers said they would order directly from the restaurant, with those who had a specific restaurant in mind being much more likely to divert to direct ordering.¹⁵⁷ Again, this implies that direct ordering places some level of constraint on both Parties.

6.137 Finally, our consumer survey indicates that, if their chosen restaurant were unavailable on Just Eat, a substantial proportion of consumers (about a quarter) would order from the same restaurant using an alternative method¹⁵⁸ and the majority of these consumers would have ordered from this restaurant directly (by phoning or visiting the restaurant or through the restaurant's own website).¹⁵⁹ This means that, if their chosen restaurant were unavailable on Just Eat, around a fifth of consumers would order directly from that restaurant. In contrast, Hungryhouse consumers were more likely to have ordered through Just Eat's platform.¹⁶⁰ This difference between the platforms is consistent with the fact that, as noted above in paragraphs 6.66, the majority of restaurants that list on Hungryhouse also list on Just Eat, but not the other way around. This indicates that, while a substantial proportion of Just Eat consumers are likely to consider ordering directly from the same restaurant as a close substitute for the Just Eat platform, the majority of consumers would continue to use Just Eat and order from a different restaurant.¹⁶¹ Moreover, for the consumer's chosen restaurant not to be available on Just Eat, the restaurant would have to have taken the risk of delisting without knowing whether or not its consumers would switch to direct ordering. As explained in paragraph 6.165, very few restaurants have delisted when faced with commission rate increases, suggesting that, in the past, restaurants have not been willing to risk delisting.

6.138 Other results of our consumer survey point towards a more limited constraint from direct ordering on the consumer side. The survey indicates that

¹⁵⁴ CMA Survey report, Chart 42.

¹⁵⁵ CMA Survey report, Chart 40.

¹⁵⁶ CMA Survey report, Charts 33 and 34.

¹⁵⁷ CMA Survey report, Chart 47.

¹⁵⁸ CMA Survey report, Chart 51.

¹⁵⁹ CMA Survey report, Chart 52.

¹⁶⁰ CMA Survey report, Chart 52.

¹⁶¹ CMA Survey report, Chart 51.

consumers tend to use platforms far more often than direct channels: the proportions of consumers using the Just Eat or Hungryhouse online food platforms once a week or more is four to five times the proportions for each of: using the restaurant website; phoning the restaurant; and going to the restaurant. Similarly, we see that large proportions of consumers have ‘never used’ those direct channels.¹⁶²

- 6.139 Furthermore, our consumer survey indicates that the main reason for using a platform is convenience. This implies that consumers are unlikely to switch to direct ordering without a financial incentive, as long as their preferred restaurant is on the platform. There may be limits to such financial incentives. The price-match guarantees,¹⁶³ imposed by both Parties on restaurants, ensure consumers buying takeaway meals from their platforms are offered the same menu prices as are paid by the restaurants’ direct-ordering customers. Just Eat’s price guarantee clause is a key part of its offering to consumers. Its standard terms and conditions in its contracts with restaurants include this clause, which it monitors and enforces compliance against.¹⁶⁴ Such clauses mean that consumers are unlikely to be able to easily obtain better prices through direct ordering. This is consistent with our survey results – around two thirds of consumers that responded to the survey would expect their order to cost the same whether ordering through either of the Parties’ platforms or directly.¹⁶⁵ The price guarantee clauses will therefore place a limit on the constraint from direct ordering as they limit the ability of restaurants to incentivise consumers to order directly by offering lower prices.
- 6.140 Other internal documents suggest that both Just Eat and Hungryhouse have [redacted]. We note that converting consumers from direct ordering is not evidence of direct ordering constraining Just Eat or Hungryhouse with respect to their existing consumers.
- 6.141 We provisionally conclude that, while many elements of our survey evidence and the Parties’ internal documents and research indicate that Just Eat, and Hungryhouse to a lesser degree, are constrained on the consumer side by direct ordering, certain aspects of consumer behaviour (found in our consumer survey) and the price guarantee clauses imposed by the Parties on restaurants, mean that in practice this constraint is limited.

¹⁶² CMA Survey report, Chart 26 and 27.

¹⁶³ These guarantees are akin to most-favoured nation (MFN) clauses.

¹⁶⁴ See [Just Eat website](#).

¹⁶⁵ CMA Survey report, Chart 39

Analysis of competitive constraints on the restaurant side

Parties on each other

6.142 The Parties have argued that there are two possible sources of constraint that one platform may exert on the other when competing on the restaurant side:

- (a) Single-homing or ‘switching’ constraint: One platform could try to convince restaurants to switch to it alone (single-home). However, since the Parties’ platforms are undifferentiated in terms of the services they provide and Hungryhouse provides access to a far smaller pool of consumers, few, if any, restaurants would find it attractive to move to single-homing on Hungryhouse, even for a low commission rate.
- (b) Multi-homing constraint: One platform trying to convince restaurants to list on it in addition to the other platform would impose a competitive constraint if a sufficient proportion of the shared consumers between them would then switch platform when ordering from the restaurant. However, since the Parties’ shared consumers constitute a small share of Just Eats’ orders, this constraint is very weak.¹⁶⁶

6.143 As explained above in the section on the nature of competition (paragraphs 6.56 to 6.62), given the higher level of multihoming across the Parties’ platforms among restaurants than among consumers, economic theory predicts competition between Just Eat and Hungryhouse on the restaurant side to be less intense than on the consumer side. The evidence collected in the course of the investigation is overall consistent with this analysis, although a certain degree of competition for restaurants between the Parties is observed, more evidently until late 2015.

6.144 We have found no evidence in internal documents that the Parties have tried to convince takeaway restaurants not to sign up to each other’s platform. Documents mention the need to sign up a sufficient number of restaurants in an area in order to compete. However, although Hungryhouse has explicitly targeted Just Eat’s restaurants, no document mentions the possibility of inducing restaurants to switch from the rival. This is consistent with the Parties’ argument that Hungryhouse’s share of orders is too small for it to provide a valid alternative to Just Eat for single-homing restaurants. It is also consistent with the [REDACTED] project that Just Eat ran in [REDACTED], offering [REDACTED].¹⁶⁷ [REDACTED].

¹⁶⁶ See Appendix E, paragraphs 6 and 7 for more detail.

¹⁶⁷ See Appendix D, paragraphs 49 for more detail.

- 6.145 Furthermore, as seen in paragraph 6.73(b), above, of the orders placed on the Parties' platforms between November 2016 and April 2017, only [X]% were made by consumers who ordered on both platforms, and of these, only [X]% were made on Hungryhouse. Given the low proportion of orders made on Hungryhouse by consumers shared by the Parties, the competitive constraint that Hungryhouse would impose on Just Eat by inducing Just Eat's restaurants to multi-home is likely to be extremely limited. This is confirmed by the lack of evidence from the Parties' internal documents that improvements to the services offered to restaurants were made in response to competitive pressure from the other Party.
- 6.146 Evidence from our restaurant survey suggests a closer degree of competition between the Parties than indicated by other evidence. If Just Eat's platform had closed down permanently, 43% of single-homing restaurants leaving Just Eat would have switched to Hungryhouse.¹⁶⁸ Similarly, in response to an increase of 1% in the commission rate they pay, 33% of Just Eat's single-homing restaurants leaving Just Eat would switch to Hungryhouse.¹⁶⁹ Survey evidence, however, should be considered together with evidence on the actual behaviour of restaurants. As seen at paragraph 6.66, there are currently very few restaurants single-homing on Hungryhouse. Moreover, Just Eat's April 2016 commission rate increase had an extremely small effect on restaurant churn and no discernible impact on the number of restaurants on Hungryhouse. Finally, internal documents from both Just Eat and Hungryhouse discussing whether to increase commissions and [X] do not mention what competitors charge.
- 6.147 As noted above, in assessing the likely effects of the merger, we have mainly focused on the removal of Hungryhouse as a constraint on Just Eat. In terms of the loss to Hungryhouse restaurants as a result of the merger, the standard commission rates to restaurants both Parties charge are the same, with Hungryhouse's rates having been higher in the recent past. It is thus not clear that Just Eat has constrained Hungryhouse's ability to set commission fees to any great degree. We therefore provisionally conclude that competition between the Parties on the restaurant side is limited and that the Parties exert a very limited competitive constraint on each other.
- 6.148 Competition between the Parties is more intense in relation to key accounts. This is related to the recent evolution of the market, with restaurants which did not traditionally provide delivery being attracted to the industry by the business model of ordering and logistics specialists. These new restaurants,

¹⁶⁸ CMA Survey report, Chart 17.

¹⁶⁹ CMA Survey report, Chart 14.

and in particular [REDACTED]. This, consistent with our analytical framework, results in a more intense competition between platforms for these restaurants, whose presence on a platform is considered an important element of differentiation on the consumer side. The Parties have competed to attract key accounts by partnering with logistics providers (see paragraphs 6.45 to 6.47, above).

- 6.149 Key accounts, however important to attract consumers to the platform, account for a small proportion of Just Eat's order volumes. In May 2017, [REDACTED]% of order volumes placed on Just Eat were made through restaurants on standard commission rates, so that key accounts accounted for [REDACTED]% of order volumes.
- 6.150 Hungryhouse has tried to compete in this segment first by partnership with Valk Fleet and, after its collapse in March 2016, by establishing new partnerships with Quiqup [REDACTED]. Attracting key accounts remained a priority for Hungryhouse's management until mid-2016. Despite these efforts, however, Hungryhouse had not succeeded in developing large-scale delivery and attracting key accounts by the time of the merger. Moreover, the collapse of Valk Fleet had made the relations between Hungryhouse and some large chains more difficult, leaving it in a weak position. Finally, even if Hungryhouse had managed to fully develop its delivery proposition, it would have been a much smaller competitor in the segment than ordering and logistics specialists such as Deliveroo and Uber (see paragraphs 6.158, below) and would have therefore exerted a limited competitive constraint on Just Eat.

Other suppliers

- 6.151 The Parties argued that other suppliers, particularly Deliveroo and UberEATS, exert a significant competitive constraint on the restaurant side. As set out in paragraph 6.125, above, a number of the innovations that Just Eat, in particular, had introduced in response to competition from Deliveroo and UberEATS on the consumer side also involved changes in the services provided to restaurants. Hungryhouse told us that "[REDACTED]".
- 6.152 As seen in paragraph 6.67, relatively few restaurants multi-home between the Parties and other suppliers (Deliveroo and UberEATS). This, on the one hand, reflects the different restaurant types targeted by these competitors, in particular larger chains that do not have in-house delivery capabilities. On the other hand, the possibility of outsourcing delivery services may make restaurants willing to switch away from the Parties to either Deliveroo or UberEATS. In this regard, 41% of Hungryhouse and 32% of Just Eat's restaurants providing in-house delivery that responded to our restaurant survey stated that they would be likely to use an external company for

deliveries in the next two years.¹⁷⁰ As seen in paragraph 6.148, the expansion of the services offered by ordering and logistics specialists has attracted new restaurants, in particular branded chains, into the takeaway industry and has intensified competition for restaurants.

6.153 We would, in principle, expect there to be stronger competition on the restaurant side between each Party and these other competitors than between the Parties themselves,¹⁷¹ given that:

- (a) On the restaurant side, there is a low level of multi-homing between the Parties, on the one hand, and the ordering and logistics specialists on the other; and
- (b) On the consumer side, there is a significant share of consumers multi-homing between the Parties, on the one hand, and the ordering and logistics specialists on the other (see 6.129, above).

6.154 This is because, in these circumstances, the Parties are offering access to separate sets of consumers and as such are not substitutes from a restaurant perspective, in particular given Hungryhouse's smaller size. On the other hand, the delivery and logistics specialists have a material degree of consumer overlap with each of the Parties; by offering access to many of the same consumers they can impose a stronger constraint on the Parties than the Parties would on each other.

6.155 In our analysis, we have distinguished between the constraint imposed on Just Eat in relation to competition (i) for takeaway restaurants and (ii) for large branded chains that have no delivery capability. For takeaway restaurants, evidence from the Parties' internal documents is consistent with the theoretical analysis at paragraphs 6.153 and 6.154. For example, a Hungryhouse document notes that takeaway restaurants in London are reducing the number of deliverymen after the expansion of Deliveroo. Similarly, a Just Eat document dated [REDACTED]. Competition from [REDACTED] was also noted in a document from [REDACTED].

6.156 Diversion estimates from our restaurant survey, however, indicate a limited constraint from third-party platform operators. In response to a 1% rise in commission, a small proportion of those Just Eat's single-homing customers

¹⁷⁰ CMA Survey report, Chart 8.

¹⁷¹ We note that, from a consumer perspective, to the extent that the ordering and logistics specialists provide access to additional restaurants that are not available on the Parties' platforms, we may not expect them to be such close substitutes for the Parties' platforms. Many consumers, while multi-homing, may use them as complementary channels to access different sets of restaurants rather than as close substitutes giving access to the same or a similar set of restaurants.

that would leave (12%) stated that they would switch to a third party other than Hungryhouse.¹⁷² The proportion (12%) is similar in response to the permanent closure of the Just Eat platform.¹⁷³ As set out above (at paragraph 4.21), we have exercised caution in interpreting and weighing responses to these hypothetical questions, in particular, in relation to commission rate increases, as the high level of diversion reported is not consistent with restaurants' actual responses to these changes in the past.¹⁷⁴

6.157 Based on this evidence, we provisionally conclude that currently Deliveroo and UberEATS exert a limited constraint on Just Eat in relation to takeaway restaurants, which account for the vast majority of Just Eat's restaurant customers.

6.158 Finally, in relation to large branded chains that need a delivery solution, ordering and logistics specialists impose a stronger constraint on Just Eat.¹⁷⁵ For example, Deliveroo offered a lower commission rate to [REDACTED], while its exclusivity agreement with [REDACTED]. Based on this evidence, we provisionally conclude that the constraint imposed on Just Eat by ordering and logistic specialists in this segment is stronger than the one imposed by Hungryhouse (see paragraphs 6.148 to 6.150, above).

Direct ordering

6.159 Just Eat told the CMA that the telephone remains its largest competitor and that it competes [REDACTED] to persuade restaurants to move to its online food platform.¹⁷⁶ In addition, some restaurants accept orders through their own website. Although our restaurant survey indicates that only about a third of the Parties' restaurant customers have a website with ordering facilities,¹⁷⁷ Hungryhouse has argued that putting such a website in place is easy and inexpensive and that the reason why many restaurants do not have one is [REDACTED].

6.160 Diversion estimates from our restaurant survey also imply that direct ordering may impose a significant competitive constraint. In response to an increase of 1% in the commission rate they pay, 56% of Just Eat's single-homing restaurants leaving Just Eat would not join another online food platform (implying that they would make greater use of direct ordering);¹⁷⁸ similarly,

¹⁷² CMA Survey report, Chart 14.

¹⁷³ CMA Survey report, Chart 17.

¹⁷⁴ [REDACTED]

¹⁷⁵ As noted at paragraph 6.149, above, branded chains account for [REDACTED] of Just Eat's revenues.

¹⁷⁶ Merger Notice, paragraphs 13.1.5 and 14.2.3

¹⁷⁷ CMA Survey report, Chart 4. [REDACTED]

¹⁷⁸ CMA Survey report, Chart 14.

46% of Just Eat's single-homing restaurants would not replace Just Eat if it were to close permanently (again, implying that these would rely on direct orders instead).¹⁷⁹

- 6.161 As noted above, we do not put much weight on the high level of switching in response to a 1 percentage point commission rate increase that restaurants responding to our survey have indicated, as this is not consistent with the reactions that we have observed in response to actual instances of recent increases by the Parties.¹⁸⁰
- 6.162 [REDACTED].
- 6.163 The significance of the constraint from direct ordering was also indicated by a [REDACTED], which was listed on both Just Eat and Hungryhouse online food platforms. This chain told us that, when it tested switching some restaurants off the Parties' platforms, it noticed a dip in orders for approximately two weeks, after which orders recovered and returned to normal levels. [REDACTED].
- 6.164 Other pieces of evidence, however, point towards a more limited constraint from direct ordering on the restaurant side. Our restaurant survey indicates that online food platforms account for about half of restaurants' takeaway revenues.¹⁸¹ Moreover, our consumer survey suggests that the majority of consumers currently ordering from a restaurant through an online food platform would not switch to direct ordering if that restaurant were no longer listed on the platform.¹⁸² As such, notwithstanding our restaurant survey responses on diversion (see paragraph 6.160, above), switching away from the Just Eat platform and relying on direct ordering is not likely to be an attractive option for many restaurants.
- 6.165 Most importantly, Just Eat's commission increases implemented in the UK since [REDACTED]. In particular, the latest increase in April 2016, when the commission rate for existing restaurants was raised from 12% to 13%,¹⁸³ [REDACTED].
- 6.166 The evidence we have obtained on the constraint that direct ordering places on the Parties on the restaurant side provides a mixed picture. In reaching a view, we have placed relatively more weight on evidence of actual past behaviour than on responses to hypothetical survey questions. Given that so [REDACTED], we provisionally conclude that the constraint from direct ordering on the restaurant side is limited.

¹⁷⁹ CMA Survey report, Chart 17.

¹⁸⁰ See paragraph 6.165, below.

¹⁸¹ CMA Survey report, Chart 6.

¹⁸² CMA Survey report, Chart 51.

¹⁸³ [Financial Times](#) and [Guardian](#) websites.

Provisional conclusions on the effect of the merger on both sides of the market

6.167 The evidence set out in paragraphs 6.98 to 6.124 and 6.142 to 6.150 shows that Hungryhouse places a limited constraint on Just Eat on both the consumer or the restaurant side.

6.168 This implies that competition from Hungryhouse for Just Eat consumers is unlikely to have a significant effect on competition for restaurants. In addition, given the lack of constraint that Hungryhouse poses on Just Eat on the restaurant side, it is unnecessary to conclude whether or not competition for consumers from Deliveroo and/or UberEATS constrains Just Eat on the restaurant side.

Variations in competitive constraints in different parts of the UK

6.169 Deliveroo and UberEATS do not operate in all areas of the UK at present. As of April 2017, the Parties were the only major suppliers of online food platforms¹⁸⁴ in [redacted] postcode districts, as set out in Table 7, below.

Table 7: Presence of major online food platforms – number of postcode district, April 2017

	<i>Number of postcode districts</i>	<i>Share of total postcode districts</i>
Just Eat only	[redacted]	[5-10]%
Hungryhouse only	[redacted]	[0-5]%
Just Eat and Hungryhouse only	[redacted]	[50-60]%
Just Eat, Hungryhouse, Deliveroo, UberEATS	[redacted]	[5-10]%
Just Eat, Hungryhouse, Deliveroo	[redacted]	[10-20]%
Just Eat, Hungryhouse, UberEATS	[redacted]	[0-5]%
Just Eat, Hungryhouse, Deliveroo, UberEATS, Amazon Restaurants	[redacted]	[0-5]%

Source: CMA analysis of Parties' and third parties' data.

6.170 As set out in Table 8, below, [redacted] of Just Eat and Hungryhouse business (in terms of number of orders and value of orders) is generated in postcode districts where these are the only major online food platforms available. Taking the Parties separately, these areas accounted for [50-60]% of Just Eat's value of orders and [30-40]% of Hungryhouse's, which reflects the fact that the Hungryhouse business is more London-focused and so a higher proportion of its orders are generated in areas where Deliveroo and UberEATS are present given their initial focus on London.

¹⁸⁴ For the purposes of this analysis, we have defined five 'major' online food platforms: Just Eat, Hungryhouse, Deliveroo, UberEATS and Amazon Restaurants. As set out in paragraph 2.20, above, there are a number of smaller food ordering platforms – mainly food ordering marketplaces – but, at their current size, we have not considered them as relevant to our assessment of the competitive effects of the merger.

Table 8: Share of combined Just Eat/Hungryhouse business in different types of areas, November 2017 - April 2017

	<i>Share of Just Eat/Hungryhouse orders</i>	<i>Share of Just Eat/Hungryhouse order value</i>
Just Eat only	[0-5]%	[0-5]%
Hungryhouse only	[0-5]%	[0-5]%
Just Eat and Hungryhouse are present	[90-100]%	[90-100]%
Deliveroo is also present	[40-50]%	[40-50]%
UberEATS is also present	[10-20]%	[10-20]%
Just Eat and Hungryhouse only	[50-60]%	[50-60]%

Source: CMA analysis of Parties' and third parties' data.

6.171 Figure 2, below, presents the distribution of those areas where only the Parties are present – together or as the only major online food platform – and those areas where Deliveroo and/or UberEATS are also present across the UK.¹⁸⁵

Figure 2: Distribution of areas with varying levels of online food platform presence across the UK, November 2016 - April 2017

[REDACTED]

Source: CMA analysis of Parties' and third parties' data.

6.172 Deliveroo told us that it planned to expand [REDACTED].¹⁸⁶ UberEATS will also continue its geographic expansion. Having originally planned to launch in 40 cities and towns by the end of 2017, [REDACTED]. Taking into consideration Deliveroo's and UberEATS' expansion plans, however, the number of postcode districts where the Parties will continue to be the only suppliers is not expected to reduce substantially: we estimate that, at the end of 2017, there will still be [REDACTED] such postcode districts, accounting for [50-60]% and [30-40]% of Just Eat's and Hungryhouse's order values respectively. Overall, as set out in Table 9, below, the share of overall Just Eat and Hungryhouse order numbers and value of orders that is expected to be generated in these areas by the end of this year is [REDACTED] ([50-60] and [50-60]%, respectively). The small decrease is due to the fact that, [REDACTED] Uber's expansion plans imply that it will [REDACTED] (the share of the Parties' order value generated in areas where UberEATS is available [REDACTED] and Deliveroo's expansion plans for 2017 [REDACTED]).

Table 9: Share of combined Just Eat/Hungryhouse business in areas where they are the only major online food platforms, projected by end of 2017

	<i>Share of Just Eat/Hungryhouse orders</i>	<i>Share of Just Eat/Hungryhouse order value</i>
Just Eat only	[0-5]%	[0-5]%

¹⁸⁵ Seventy-five postcode districts where order volumes were below 20 per month were dropped from our analysis in producing this map.

¹⁸⁶ [REDACTED]

Hungryhouse only	[0-5]%	[0-5]%
Just Eat and Hungryhouse are present	[90-100]%	[90-100]%
Deliveroo is also present	[40-50]% (+[0-5]%)	[40-50]% (+[0-5]%)
UberEATS is also present	[30-40]% (+[10-20]%)	[30-40]% (+[10-20]%)
Just Eat and Hungryhouse only	[50-60]% (-[0-5]%)	[50-60]% (-[0-5]%)

Source: CMA analysis of Parties' and third parties' data.

6.173 We recognise that both Deliveroo and UberEATS have been expanding rapidly and that they might continue to do so in the foreseeable future. However, as both parties are still [REDACTED], they have not been able to provide us with details of their future expansion beyond 2017. We also noted the scepticism that had been expressed in some stockbrokers reports about the scalability and financial sustainability of their business model, particularly if there were significant changes to legislation relating to self-employed delivery riders. We therefore could not speculate about the extent of their future expansion beyond the plans which they had shared with us.

6.174 Although currently the Parties do not vary their offer locally to either consumers or restaurants (with [REDACTED], discussed in paragraph 6.108, above, being an exception), we believe that there is no technical reason that would preclude them from doing so, and we note that Just Eat has [REDACTED].¹⁸⁷ We therefore considered the strength of the constraint posed by Hungryhouse on Just Eat in areas where Deliveroo and UberEATS are not present.

6.175 In considering whether there was any scope for additional concerns arising in relation to those areas where the Parties are the only online food platforms currently available, we have looked at three types of evidence:

- (a) As set out below, we have sought to compare the expected strength of any constraint that Just Eat might face from Hungryhouse in those areas where only the Parties are present compared to those areas where Deliveroo and/or UberEATS are also available. We have focused on Hungryhouse's presence – in particular its orders and value of orders – relative to Just Eat's in the two different types of areas.
- (b) As set out in detail in Appendix F, our econometric analysis has also looked at whether the constraints that the Parties impose on each other varies depending on the whether other major online food platforms are present. We refer to the relevant results, in brief, below too.
- (c) As set out below, at paragraph 6.182, we have also assessed whether there was any evidence (in particular from our surveys) that direct

¹⁸⁷ [REDACTED].

ordering is likely to be a stronger constraint in these areas than it is in areas where Deliveroo and/or UberEATS are also present.

6.176 Comparing areas where the Parties are the only major online food platforms and those areas where Deliveroo and/or UberEATS are also available, we found that Hungryhouse is in an even weaker position – in terms of its number of order and its value of orders relative to Just Eat’s – in areas where Just Eat is the only other major online food platform than it is in postcode districts where these other competitors are also present. As set out in Table 10, below, in areas where only Just Eat and Hungryhouse are present, the average of Hungryhouse’s value of orders as a proportion of those of Just Eat is [X]%, when measured as the mean, and [X]%, when measured as the median. For those areas where additional platforms are available, the average ratios are somewhat higher – [X]% and [X]%, respectively – meaning that the disparity between the Parties is less extreme in these areas. As set out above (paragraph 6.170), this is to be expected given Hungryhouse’s activities are more focused on London relative to Just Eat’s more national reach.

Table 10: Hungryhouse value of orders as a % of Just Eat’s, November 2016 - April 2017

	<i>Mean</i>	<i>Median</i>	<i>Standard deviation</i>	<i>Minimum</i>	<i>Maximum</i>
Postcode districts where Just Eat is the only other online food platform	[X]%	[X]%	[X]%	[X]%	[X]%
Postcode districts where Deliveroo and/or UberEATS are also available	[X]%	[X]%	[X]%	[X]%	[X]%

Source: CMA analysis of Parties’ and third parties’ data.

6.177 An analysis of the ratios between the value of orders placed on Hungryhouse and Just Eat indicates that the difference in size between the two platforms tends to be larger in areas where no other online food platforms are available compared to areas where Deliveroo or UberEATS operate, as shown in Figure 3, below.

Figure 3: Hungryhouse value of orders as a % of Just Eat value of orders at postcode-district level, April 2017

[X]

Source: CMA analysis of Parties’ and third parties’ data.

6.178 Focussing on those areas where only Just Eat and Hungryhouse are present, Figure 4, below, presents the distribution of those areas – both their geographic distribution across the UK and the distribution in terms of the relative size of Just Eat and Hungryhouse in these areas. As the map demonstrates, there are very few postcode districts where Hungryhouse comes close to matching Just Eat in terms of the monthly value of its orders – in many areas Hungryhouse’s order value represents a very low percentage of Just Eat’s ([X]).

Figure 4: Hungryhouse value of orders as a % of Just Eat value of orders in postcode districts where no other major food ordering platform operates, November 2016 - April 2017

[X]

Source: CMA analysis of Parties' and third parties' data.

6.179 The greater size difference between the Parties, in terms of order values, indicates that, in areas where the Parties are the only available online food platforms, Hungryhouse is likely to impose an even weaker constraint on Just Eat than in those areas where platforms other than the Parties' are available.

6.180 As set out in detail in Appendix F, our econometric analysis has also looked at whether the constraints that the Parties impose on each other varies depending on whether other major online food platforms are present. We find that:

(a) Based on data for the period from January 2015 to April 2017, we find no evidence of a constraint from Hungryhouse in those areas where additional platforms are available, whereas Hungryhouse does appear to impose some constraint on Just Eat in areas where they are the only major online food platforms present.¹⁸⁸

(b) Focussing on the last year of our data set, we find that, in the areas where Just Eat is the only other major online food platform, the constraint from Hungryhouse on Just Eat displays the same decline over time that is evident more generally. The estimated effect of one additional restaurant on the Hungryhouse platform on the value of Just Eat orders in a postcode falls from [X]% when we look at the entire five-year period to just [X]% when looking at the year from April 2016 to April 2017 only.¹⁸⁹ In other words, even in areas where Hungryhouse is the only other platform, the level of constraint that it imposes on Just Eat appears to have declined in recent years and it appears to no longer impose a discernible competitive constraint on Just Eat.

6.181 This evidence is consistent with our more general provisional finding that the constraint from Hungryhouse has been declining over time and with a lack of competitive constraint from Hungryhouse on Just Eat even in those areas where there are no competing platforms to constrain the Parties post merger.

6.182 Finally, as in our main competitive assessment, we note that there is some evidence of direct ordering imposing a constraint on the Parties and this would also be relevant to the likely level of competitive constraint on Just Eat

¹⁸⁸ Appendix F, Figure 14.

¹⁸⁹ Appendix F, Figures 16 and 17.

post merger in those areas where it would be the only major food ordering platform available. Hungryhouse has argued that the constraint from direct ordering is likely to be stronger in more rural areas, where Deliveroo and UberEATS are unlikely to be present, but has not provided any evidence that this is likely to be the case. Our survey results did not indicate any material differences between areas where only the Parties' are present and those areas where Deliveroo (and others) are available with regard to those questions that are relevant to the likely strength of any constraint from direct ordering.

6.183 We therefore provisionally conclude that the merger is unlikely to change the incentives of Just Eat to worsen its offering in the areas in which neither Deliveroo nor UberEATS are currently available nor are expected to be operating by the end of 2017. This is because the existing constraint from Hungryhouse in those areas is already weak.

7. Provisional conclusions

7.1 In reaching a view on the likely effects of the merger, the evidence is far from one-sided. We note that:

- (a) Just Eat is currently in a strong competitive position, with a share of approximately [90-100]% of orders placed on food ordering marketplaces, a type of online food platform which Hungryhouse is its only other company to provide to a material extent in the UK. In the broader market of online food platforms – where Deliveroo and UberEATS are also included – it still retains a share of supply of [80-90]%, while Hungryhouse is number three in that market, with [5-10]% share of supply. Where a firm enjoys a strong position, we would generally be concerned about the loss of even a small and relatively weak competitor.
- (b) As set out above, our econometric analysis detected a decline in the competitive constraint from Hungryhouse on Just Eat as we moved from an analysis based on five years of data to analyses based on more recent periods. In the last year of our data set (April 2016 to April 2017), we do not detect a discernible constraint from Hungryhouse on Just Eat. While, given the dynamic nature of the market, we would tend to put most weight on results for the most recent period, we note that the merger was in contemplation for a considerable time covering the latter half of our period of analysis here. While, as noted above, the SPA gave Hungryhouse incentives to maintain its order levels, it seems reasonable to exercise

some caution in seeking to capture the intensity of competition.¹⁹⁰ This caution is also warranted by Hungryhouse and Delivery Hero internal documents which discuss a number of initiatives that were being considered in late 2016 as ways to increase pressure on Just Eat and to take market share from its larger rival.

- (c) Notwithstanding the caution that must be exercised in interpreting the responses to the hypothetical questions in our surveys, we note that, even if the levels of diversion away from Just Eat may be overstated, the fact that Hungryhouse is seen as the closest substitute among other online food platforms is, to some extent, informative of the relative constraint it is likely to impose relative to Deliveroo and UberEATS.¹⁹¹

7.2 We have nevertheless provisionally concluded that the merger is unlikely to raise competition concerns for the following reasons:

- (a) While our survey evidence shows that both consumers and restaurants perceive Just Eat and Hungryhouse as close competitors, the documentary evidence we have obtained and econometric analysis we have conducted indicate that in practice Hungryhouse is imposing a limited competitive constraint on Just Eat.
- (b) Hungryhouse has been loss making for a number of years and there is some uncertainty as to its future profitability and how long Delivery Hero would have continued to support it if its financial performance did not improve.
- (c) Although in the course of 2016, Hungryhouse was developing a number of initiatives to improve its competitiveness and performance, it had only partially implemented some of them by the time the SPA was signed. Based on the evidence that we obtained, we could not satisfy ourselves that any of these initiatives would be successful, if implemented as planned. Although it is conceivable that Hungryhouse would have attempted to compete more aggressively in 2017, we were not convinced that this would have been sufficient to improve Hungryhouse's weak position materially in this increasingly competitive market.
- (d) The restaurant food ordering and delivery industry is dynamic and evolving. While Just Eat is currently in a strong position, it is being challenged by well-funded competitors, with strong brands and technological and logistics experience and expertise. Deliveroo's own

¹⁹⁰ For example, we note that Hungryhouse's spend on vouchers sent to consumers [§].

¹⁹¹ CMA Survey report, Charts 13-22, 40-44.

projections indicate that by the end of 2017, it will have increased its share of supply from 5-10% to 10-20%, and the ordering and logistics specialists' projections indicate that together they will account for a 20-30% share of supply.

- (e) These ordering and logistics specialists pose a greater competitive constraint on Just Eat than Hungryhouse does in those areas where they are present. This is shown by Just Eat's internal documents and supported by our econometric analysis, which shows that in the areas in which Deliveroo is present, Deliveroo has been exerting a stronger constraint on Just Eat than Hungryhouse in the period since April 2015. This constraint is likely to grow as ordering and logistics specialists expand their geographic reach, their restaurant coverage and their consumer numbers.
- (f) In areas where neither Deliveroo nor UberEATS operates, Hungryhouse is particularly weak, as shown by our analysis of its share of orders made on its and Just Eat's online food platforms. In addition, consumers have the ability to order directly from takeaway restaurants, either on the phone, through their websites or by walking in. Our survey evidence provides evidence of a constraint from direct ordering; while the extent of this constraint may vary across local areas, we did not find any evidence to support the proposition that Hungryhouse currently posed (or was likely to impose in the future) a stronger competitive constraint on Just Eat compared to direct ordering in those local areas.

7.3 We therefore provisionally conclude that the proposed acquisition by Just Eat of Hungryhouse may not be expected to result in an SLC within any market or markets in the UK for goods or services.