

Anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo

Summary of the CMA's decision on relevant merger situation and substantial lessening of competition

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SUMMARY

1. Amazon.com NV Investment Holdings LLC, a wholly-owned subsidiary of Amazon.com, Inc. (**Amazon**) led the \$575 million funding round in May in Roofoods Ltd (**Deliveroo**) in exchange for a minority shareholding and certain other rights (the **Merger**). Amazon and Deliveroo are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Amazon and Deliveroo is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met.
3. The CMA believes that Amazon's minority shareholding in Deliveroo, together with certain other rights, may give Amazon the ability to exercise material influence over Deliveroo. This assessment is based on a combination of factors, in particular because Amazon's substantial expertise in areas such as the operation of online marketplaces, logistics networks and subscription services could allow it to influence other Deliveroo shareholders and board members. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
4. Amazon is one of the world's largest companies. It is a globally-active technology company and reported UK net sales from its online store of almost £11 billion in 2018. Amazon operates across a large number of sectors including as an online retailer and marketplace with its own delivery and logistics network. Amazon's UK business includes a wide range of grocery offerings through Amazon Fresh and Whole Foods Market. Amazon operates a popular subscription service, Amazon Prime, which gives consumers

access to multiple benefits, and includes ultrafast delivery of food and non-food items through Prime Now.

5. Deliveroo is a UK-based online food delivery company. It had global sales of close to £500 million in 2018. Deliveroo has expanded from being an online delivery platform for restaurants to also offering online convenience grocery delivery from suppliers such as Coop.

Online food platforms

6. The CMA considered whether the Merger could reduce competition in the supply of online restaurant delivery platforms in the UK.
7. The CMA found that the online restaurant delivery market is highly concentrated with just three large suppliers operating in the UK: Deliveroo, Just Eat and Uber Eats. Amazon operated a competing online food platform in the UK until November 2018. The CMA looked at whether, absent investing in Deliveroo, Amazon may have re-entered the supply of online restaurant delivery in the UK and the impact its re-entry would have had. To analyse this, the CMA examined large volumes of Amazon's internal documents and conducted interviews with its senior management.
8. Although Amazon closed its restaurant delivery business, evidence examined in the CMA's investigation indicated that Amazon has a strong continued interest in the restaurant delivery sector. The CMA believes that this evidence showed that Amazon may re-enter the supply of online food platforms in the UK, most likely through an alternative investment or acquisition. The CMA believes that Amazon's investment in Deliveroo was strategic and that offering rapid food delivery is important to Amazon, and so it may have looked to invest in an alternative business absent the Merger.
9. The CMA assessed whether the re-entry of Amazon would lead to greater competition. As noted above, the CMA found that the supply of online food platforms is concentrated with just three large suppliers. There appear to be significant barriers to entry including the need to build relationships with restaurants, couriers and consumers, and to develop the necessary technology to power the logistics. Amazon, through investment in an alternative food delivery company in combination with its previous experience, financial resources and customer relationships, may be well-placed to overcome these barriers and provide significant competition. Competition between platforms benefits consumers and restaurants by ensuring lower costs and faster delivery and entry by a new supplier such as Amazon could increase this competition. The CMA therefore believes that the Merger gives

rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal effects in the supply of food platforms in the UK.

Online convenience groceries

10. Online convenience grocery delivery is an emerging market in the UK. Online convenience grocery delivery caters for customers who need items quickly, usually a small basket of groceries, with delivery taking place within a few hours of ordering (“ultrafast”). This service is different from traditional online groceries, where delivery generally takes place the next day or later. The CMA’s review of the Parties’ internal documents showed that the Parties distinguish between ultrafast grocery delivery and slower grocery delivery.
11. The Parties currently overlap in the supply of online convenience groceries in the UK. The market for this type of offering is still developing, but the CMA observed evidence that it is expected to grow significantly. Grocery retailers are keen to be able to offer this service to their customers and several supermarkets and online platforms are experimenting with online convenience grocery delivery. Supermarkets do not have the necessary logistical capabilities, and so are reliant on businesses such as Deliveroo and Uber Eats, or a third party logistics provider to offer an ultrafast delivery service. Available evidence suggests that consumers are willing to pay a premium for fast delivery of convenience groceries, and as such the CMA did not include slower online groceries delivery or bricks and mortar stores in its frame of reference.
12. The CMA believes that the Parties currently compete to offer online convenience groceries and are two of the largest suppliers in this market. There are some differences in the Parties’ current services – with Amazon offering a broader range of products often at a somewhat slower speed. The CMA found, however, that Amazon and Deliveroo are two of the strongest players in this market at present with plans to expand. The CMA also assessed what future competition between the Parties might look like. To do this, the CMA examined the Parties’ internal planning and strategy documents, external analyst reports, and obtained evidence from a wide range of third parties including competitors, supermarkets and logistics providers.
13. The CMA believes that both Parties have major expansion plans in this area which would bring them in closer competition in the future. The Merger would result in the combination of two of the largest and best established suppliers of online convenience groceries. Most competing grocery retailers that are trialling propositions in this market are reliant on a single logistics supplier (Stuart), which does not have the scale of either Deliveroo or Amazon.

14. Therefore, although the Parties will face competition from Uber Eats (and Just Eat, albeit using a much smaller delivery network) and those grocery retailers which rely on Stuart in the supply of online convenience groceries in the UK, the CMA believes the constraint from these third parties would be insufficient to mitigate the lessening of competition between the Parties. The CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of online convenience groceries in the UK.

Other potential impacts of the Merger

15. The CMA also assessed in detail three other potential impacts of the Merger:
 - (a) The CMA considered whether, absent the Merger, Deliveroo may have expanded to start delivering more non-food items in competition with parts of Amazon's broader offering. The CMA found examples in other countries of online restaurant delivery platforms expanding their services to include delivery of merchandise other than food. The CMA reviewed a large volume of Deliveroo's internal documents and found that Deliveroo has a strategic focus on food and that there is limited evidence it would expand into other categories in the foreseeable future. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of logistics-enabled e-commerce marketplaces in the UK.
 - (b) The CMA assessed whether the Parties could choose to bundle their respective subscription services (ie include Deliveroo Plus within Amazon Prime), and if so, whether this could foreclose (or prevent) either other food delivery companies or other suppliers of subscription services from competing with them.

The CMA found that the Parties may have the ability to use this strategy to foreclose Deliveroo's competitors.

However, even though the Parties would have the ability to bundle Deliveroo Plus and Prime, the CMA did not find that they would have the incentive to do so. For a bundle of Deliveroo Plus and Prime to be successful in attracting a large volume of customers, the Parties would need to offer the bundled product to those customers at a substantial discount to the price of Amazon Prime and Deliveroo Plus on a standalone basis. The level of Amazon's shareholding in Deliveroo would reduce its incentive to fund a large discount: at least in the short term, Amazon would only gain a small part of the benefit from each additional customer won by Deliveroo. The CMA concluded, therefore, that the

Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects (ie bundling of Deliveroo Plus and Prime) in the supply of online food delivery platforms in the UK.¹

- (c) Finally, the CMA assessed whether the Merger might lessen competition by increasing the Parties' incentives to share data with each other which they could use to engage in behavioural discrimination. Behavioural discrimination could mean, for example, a supplier tailoring prices to individual consumers based on what the supplier believes that consumer is willing to pay. Taking into consideration Amazon's level of shareholding in Deliveroo, the CMA believes that the Parties would not have the incentive to share customer data with each other. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of behavioural discrimination in the supply of online food platforms in the UK or in the supply of logistics-enabled e-commerce marketplaces in the UK.

Decision

16. As mentioned above, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
17. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 18 December 2019 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

¹ The CMA did not identify competition concerns arising as a result of conglomerate effects in relation to the supply of subscription services either.