

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

Decision on relevant merger situation and substantial lessening of competition

ME/6836/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 11 December 2019. Full text of the decision published on 29 January 2020.

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

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 2019] in Roofoods Ltd (**Deliveroo**) in exchange for a minority shareholding of [X]% 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 Co-op.

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 of 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 [REDACTED]. 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 into 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 also reviewed a large number of Amazon internal documents and did not find evidence that Amazon considered Deliveroo to be a potential competitor for non-food delivery. 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, including evidence in their internal documents [redacted].

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.

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

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.

ASSESSMENT

Parties

18. Amazon operates across a large number of sectors, including as an online retailer and marketplace, delivery and logistics network, host of cloud server space, book publisher and producer of television and films. It is one of the world's largest companies and at the beginning of December 2019 had a market capitalisation in excess of £650 billion. The turnover of Amazon in 2018 was £174.7 billion worldwide, with approximately £[~~8~~] billion generated in the UK.
19. The Amazon business areas most relevant to the Merger are:
- (a) **Amazon.co.uk**, an online retail platform connecting consumers with products from Amazon and third party sellers in the UK (**Amazon Marketplace**).
 - (b) Amazon **Prime**, a subscription service for consumers (£79 per year or £7.99 per month), which includes access to unlimited free delivery, certain deals, film and TV streaming (including Premier League football matches) and more.² Amazon Prime customers are also able to use **Prime Now**, which allows ultrafast delivery on a variety of (food and non-food) items to certain locations. Prime customers in London are also able to use Amazon **Fresh** (additional monthly subscription fee of £3.99) for grocery delivery. [~~8~~].
 - (c) Amazon previously offered restaurant food delivery, through **Amazon Restaurants**, in both the UK and the US. It decided to stop operating Amazon Restaurants in the UK [~~8~~] and exited in November 2018. It stopped operating Amazon Restaurants in the US on 24 June 2019.

² [Amazon website](#) listing the benefits of an Amazon Prime subscription.

- (d) Amazon Web Services (**AWS**),³ which provides cloud storage and other IT infrastructure to businesses and organisations.
- (e) **Amazon Business**, an online retail platform for business accounts, with certain adjustments to cater for business customers. The majority of products sold on Amazon Business are general office supplies, IT peripherals, and maintenance supplies.
- (f) **Amazon Logistics**, a provider of logistics services internally, and to third party sellers through Fulfilment by Amazon (**FBA**) and Amazon Shipping. Third party sellers can have their products stored, distributed and shipped using Amazon's fulfilment network. [§].
- (g) Amazon acquired the US-based supermarket chain Whole Foods Market in 2017, which includes a limited number of UK stores. The UK stores do not offer delivery, but Whole Foods Market products are available on Amazon.co.uk, Prime, Prime Now and Fresh.
20. Deliveroo is a UK-based company founded in 2013 that is primarily active in restaurant food delivery. As well as restaurant food, it offers online convenience grocery delivery from suppliers such as Co-op. The Deliveroo site connects consumers, who use Deliveroo to order delivery food, restaurants, who take orders and prepare the food, and riders, who pick up the food from the restaurants and deliver it to the consumers. Deliveroo charges a commission to the restaurant based on the value of an order, and it also charges the consumer a delivery fee. Deliveroo also offers **Deliveroo Plus**, where a consumer can pay a monthly subscription fee (currently £11.49 per month) for unlimited free delivery.
21. Deliveroo offers **Deliveroo for Business**, an office catering service for corporate customers, similar to its core offering. It also operates **Deliveroo Editions**, which are delivery-only kitchens owned by Deliveroo and occupied by restaurants to cook orders solely for delivery (by Deliveroo riders). Deliveroo also offers other services to its restaurant customers, including food brokerage, a packaging store,⁴ and data insights on performance.

³ For completeness, the CMA notes that AWS provides IT infrastructure services to Deliveroo [§]. The CMA does not believe this vertical relationship raises a realistic prospect of foreclosure concerns because of Deliveroo's [§] size relative to overall demand for cloud computing services, and as such this relationship has not been examined further.

⁴ For completeness, the CMA notes that there may be a small horizontal overlap between Amazon Business and Deliveroo's packaging store for restaurant customers. The CMA does not believe that this overlap raises prima facie competition concerns because of the limited nature of Deliveroo's activities in this market and as such the CMA has not examined the effects of the Merger in the supply of these products.

22. The turnover of Deliveroo in 2018 was £476.1 million worldwide, with approximately £[REDACTED] million generated in the UK. Deliveroo is also active across in Europe, Asia, Australia and the Middle East.

Transaction

23. The transaction comprises [REDACTED]:
- (a) [REDACTED], which gives Amazon certain rights over Deliveroo, including [REDACTED]% shareholding ([REDACTED]);
 - (b) [REDACTED], and which envisages the acquisition by Amazon of a [REDACTED]% shareholding (and certain other rights) in Deliveroo, [REDACTED].⁵
24. The Parties submitted that [REDACTED]. However, the CMA observed evidence indicating that [REDACTED]. In particular, the CMA notes that [REDACTED].⁶ [REDACTED].⁷
25. [REDACTED].⁸ [REDACTED], the CMA has treated the transaction as an anticipated merger.

Rationale

Amazon's rationale

26. Amazon submitted that it believes Deliveroo will be a valuable financial investment for Amazon, given its rapid growth, customer popularity and the strength of its management team. Amazon believes that food delivery is a rapidly growing and valuable sector that offers a large and growing opportunity, [REDACTED].⁹
27. Amazon's internal documents provide further context regarding its rationale. For example, [REDACTED].¹⁰ The CMA observes that Amazon's internal documents discussing the investment in Deliveroo show the Merger is [REDACTED]. Amazon told the CMA that this text had been drafted when [REDACTED]. The document in question was [REDACTED]. Moreover, parts of this text have been updated [REDACTED] (as

⁵ The German authorities cleared this transaction on 11 July 2019.

⁶ In particular, [REDACTED].

⁷ For example Amazon internal document [REDACTED] and Deliveroo internal document [REDACTED].

⁸ [REDACTED]. In giving effect to this provision, the CMA may take into account transactions in contemplation (that is where the last of the events has not yet occurred). (*Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.33).

⁹ [REDACTED].

¹⁰ Amazon's response to section 109 notice [REDACTED].

demonstrated by the specific reference to “[X]” and the related rights in the final sentence).¹¹ The CMA does not therefore accept Amazon’s argument.

28. [X] is further supported by Amazon internal documents where Amazon explored [X].¹² [X].¹³ ¹⁴ Amazon told the CMA it decided [X].¹⁵

Deliveroo’s rationale

29. Deliveroo submitted [X]. It accepted Amazon’s offer because [X].
30. Deliveroo’s internal documents support this rationale, with one stating that Deliveroo was “[X]”,¹⁶ and another stating “[X]”.¹⁷

Procedure

31. The CMA’s mergers intelligence function identified this transaction as warranting an investigation.¹⁸
32. The Merger was considered at a Case Review Meeting.¹⁹
33. As part of its investigation, the CMA issued over ten requests for information from the Parties using the CMA’s statutory information gathering powers, including requesting representatives of Amazon to provide information to the CMA by means of an interview. The CMA reviewed thousands of the Parties’ internal documents and gathered evidence from a wide range of third parties, including customers and competitors in and adjacent to the sectors in which the Parties’ operate, as well as market analysts.

Jurisdiction

34. A relevant merger situation exists where there are arrangements in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct and either the turnover or the share of supply test is met.²⁰

¹¹ One paragraph in Amazon’s response to section 109 notice of [X].

¹² In particular Amazon’s response to section 109 notice of [X].

¹³ [X].

¹⁴ Amazon’s response to section 109 notice of [X].

¹⁵ Amazon’s valuation of Deliveroo forecast [X].

¹⁶ Deliveroo internal document [X].

¹⁷ Deliveroo internal document [X].

¹⁸ See *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

¹⁹ See *Mergers: Guidance on the CMA’s jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

²⁰ See part 4 of *Mergers: Guidance on the CMA’s jurisdiction and procedure*.

Enterprises ceasing to be distinct

35. Each of Amazon and Deliveroo is an enterprise. The CMA considered whether as a result of the Merger, these enterprises will cease to be distinct.
36. Two or more enterprises will cease to be distinct if they are brought under common ownership or control.²¹ The ability to exercise material influence constitutes the lowest level of control that may give rise to two or more enterprises ceasing to be distinct.
37. The [REDACTED], which was executed on [REDACTED] 2019, conferred on Amazon [REDACTED]:
- (a) [REDACTED];²²
 - (b) the right to appoint one director and one board observer to Deliveroo's board;²³
 - (c) [REDACTED];²⁴ and
 - (d) [REDACTED].²⁵
38. In addition [REDACTED] envisages the acquisition by Amazon of a [REDACTED]% shareholding in Deliveroo (the **Minority Shareholding**) and will [REDACTED].

Parties' submission

39. The Parties submitted that [REDACTED], will give Amazon the ability to exercise material influence over Deliveroo. Therefore, the Parties submitted that Amazon and Deliveroo will not cease to be distinct as a result of the Merger.
40. The Parties submitted that there is no realistic prospect for Amazon to acquire material influence over Deliveroo by reference to the following potential sources of material influence:²⁶
- (a) **Shareholding:** [REDACTED] would result in Amazon holding a [REDACTED]% share of Deliveroo on an issued basis.²⁷ This level of shareholding does not give rise to a realistic prospect of material influence. Amazon will not be in a position to block special resolutions. As long as the other eight shareholders holding more than [REDACTED]% of Deliveroo's issued equity attend

²¹ Section 26(1) of The Enterprise Act 2002.

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ The Parties' submissions rely on a number of OFT/CMA precedents.

²⁷ On a fully diluted basis, Amazon would acquire a [REDACTED]% share.

its shareholders meetings, Amazon's share would represent less than [X]% of the votes cast.²⁸ Furthermore, Amazon's shareholding does not enable it to influence either Deliveroo's board in formulating any special resolution and/or other shareholders to vote with it to block any special resolution for two main reasons. First, Amazon does not have greater operational expertise than Deliveroo's other major shareholders or particular status [X]. Second, [X], Amazon would not be the largest shareholder as there will be [X] shareholders with shareholdings over [X]%.²⁹ These shareholders include venture capital investors with significant experience investing in technological companies and similar sectors to restaurant food ordering and delivery services, and a 'hands-on' investment style.

(b) **Board rights:** Amazon is entitled to appoint one (voting) director out of eight (seven voting) to Deliveroo's board. This will not give rise to a realistic prospect of material influence for two main reasons. First, Amazon [X]. Second, there is no reason to expect Amazon to have influence over the board beyond its voting rights, especially when the other board members include Deliveroo's founder, highly experienced representatives of venture and private equity capital funds with a long history with Deliveroo and investments in the same and similar sectors. Amazon's nominated director (ie Doug Gurr), [X], will not be given disproportionate weight in determining Deliveroo's commercial policy. [X].

(c) [X].³⁰

(d) [X].

(e) [X].

(f) [X].

CMA's assessment

41. The CMA's assessment of whether the acquisition of a minority shareholding may give rise to the ability to exercise material influence requires a case-by-

²⁸ The Parties submitted that in the last two years, where shareholders resolutions have been required (in respect of significant events such as funding round), these resolutions were passed with [X]% of shareholders' votes.

²⁹ As of 24 April 2019, the shareholders holding more than [X]% of Deliveroo's issued equity are Will Shu ([X]%), T. Rowe Price Group, Inc. ([X]%), Index Ventures (UK) LLP ([X]%), Greenoaks Capital Partners LLC ([X]%), Fidelity Management and Research Company LLC ([X]%), DST Global LLC ([X]%), Bridgepoint Capital Group Ltd ([X]%) and Accel London Management Limited ([X]%).

³⁰ [X].

case analysis of the overall relationship between the acquirer and the target, and depends on the facts and circumstances of each case.³¹

42. A finding of material influence may be based on the acquirer's ability to influence the target's commercial policy in different ways, including through exercising votes at shareholders' meetings, together with, in some cases, additional supporting factors. Material influence may also arise as a result of the ability to influence the board of the target, and/or through other arrangements.³²
43. In this case, the CMA's assessment of material influence focuses on [REDACTED]³³ and the acquisition of the Minority Shareholding. The CMA currently considers that the Merger may give Amazon the ability to exercise material influence over Deliveroo as a result of a combination of mutually reinforcing factors, namely:
- (a) Amazon's particular industry knowledge and expertise (as a shareholder);
 - (b) Amazon's right to appoint a director with industry knowledge and expertise to Deliveroo's board;
 - (c) Amazon's [REDACTED];
 - (d) Amazon's [REDACTED]; and
 - (e) Amazon's [REDACTED].

Material influence at shareholder level

44. The CMA agrees with the Parties that the Minority Shareholding will not confer on Amazon the right to block special resolutions at shareholders meetings, nor Amazon will be able to do so as a practical matter (eg by virtue of special or veto rights attached to the shareholding or based on historic voting patterns).
45. However, as set out in the CMA's guidance, even when a shareholding is insufficient to defeat a special resolution, it may be sufficient to enable the shareholder materially to influence a policy that would be expected to require a special resolution. One of the factors relevant to this assessment is "*the status and expertise of the acquirer, and its corresponding influence with*

³¹ [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.15.

³² [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.16.

³³ The CMA's material influence assessment includes [REDACTED] but does not treat Amazon's [REDACTED] as having already taken place as [REDACTED] (section 27(3) of the Act).

*other shareholders” and “whether, given the identity and corporate policy of the target company, the acquirer may be able materially to influence policy formulation at an earlier stage through, for example, meetings with other shareholders”.*³⁴

46. The CMA considers that the status, industry knowledge and expertise held by Amazon is an important factor relevant for the CMA’s assessment. Amazon has expertise across a number of sectors and areas that are directly relevant to Deliveroo’s business including:
- (a) Amazon, as one of the world’s largest technology companies, has a wealth of knowledge and expertise in operating online platforms, attracting customers, and using data, algorithms and artificial intelligence/ machine learning to improve its offering, which could be of use to Deliveroo;
 - (b) Amazon has operated a traditional online grocery delivery service for several years and has more recently developed an ultrafast grocery delivery service. Deliveroo has been expanding into ultrafast convenience grocery delivery;
 - (c) Amazon and Deliveroo both operate logistics-enabled marketplaces (although currently with a different focus);
 - (d) Amazon Prime is a large, well-established subscription service; Deliveroo has introduced Plus, a subscription service, in an effort to increase customer loyalty;
 - (e) Both Amazon and Deliveroo are actively developing the services they offer to the business operating on their platforms, such as discounted purchases of business inputs;
 - (f) Amazon may be active in new geographic areas where Deliveroo is expanding, or where Deliveroo may seek to enter; and
 - (g) Although Amazon is no longer active in restaurant delivery, the CMA anticipates it will have acquired and retained some knowledge in this sector.
47. The CMA acknowledges that some of Deliveroo’s shareholders are experienced and sophisticated investors with current or past shareholdings in other food or technology-related companies. However, the CMA notes that Amazon is directly operating in areas that are particularly relevant to the

³⁴ [Mergers: Guidance on the CMA’s jurisdiction and procedure](#), paragraph 4.22.

Deliveroo business and this status translates into a more in-depth knowledge and expertise in such areas than Deliveroo's other capital investors shareholders.³⁵

48. [REDACTED].^{36 37 38 39}

Material influence at board level

49. As explained above, the CMA considers that Amazon's status and expertise may allow it to influence the other shareholders in Deliveroo. The CMA also considers that its status and expertise may allow it to influence the other directors of Deliveroo.
50. The director chosen by Amazon, Mr Gurr, is a senior executive at Amazon, has been the head of Amazon UK since 2016, [REDACTED]. Mr Gurr has previous experience in both groceries and online businesses.⁴⁰ Amazon told the CMA that Mr Gurr was chosen because [REDACTED].⁴¹ [REDACTED].⁴²
51. The CMA notes that some of the other directors on Deliveroo's board (including Deliveroo's CEO and founder) have expertise in restaurant food ordering and delivering services, mostly because of other investments in these industries, not direct operational experience. The CMA considers that most of the other directors would not have the same direct knowledge and experience as someone who is currently active in senior management at Amazon, with knowledge and experience of its ultrafast (and wider) food strategy, and who operates in directly related industries. Indeed, the Deliveroo CEO told the CMA [REDACTED].⁴³ Therefore, the CMA considers that the views of the Amazon director may be given particular weight in determining Deliveroo's

³⁵ The CMA considers that this is consistent with the RWE/E.ON case referred to by the Parties as in that case the other shareholders were institutional investors, as opposed to active players in the sector. The CMA also considers that the assessment of material influence requires a case by case analysis and the facts in this case are different to those at issue in a number of precedents referred to by the Parties (*Breedon Aggregates Limited/Hope Construction Materials Limited, BT/EE, BBC/ITV, Cambridge University Hospitals/NHS Foundation Trust JV*). In particular, the CMA notes that the mutually reinforcing factors set out in paragraph 43 above did not apply to those cases.

³⁶ Deliveroo internal document [REDACTED].

³⁷ Deliveroo internal documents [REDACTED].

³⁸ Deliveroo internal document [REDACTED].

³⁹ *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.22 states a relevant factor in determining material influence is "where a company's appetite for pursuing certain strategies would be reduced because of a perception that these strategies would be likely to cause conflict with the acquirer."

⁴⁰ Mr Gurr was on the board of Asda and was previously the founder and CEO of an internet start-up.

⁴¹ Interview with [REDACTED].

⁴² Amazon internal email [REDACTED].

⁴³ [REDACTED].

commercial strategy and may contribute to Amazon's ability to exercise material influence over Deliveroo.⁴⁴

Material influence through other arrangements

52. The CMA considers that certain [REDACTED] arrangements between Amazon and Deliveroo may contribute to Amazon's ability to exercise material influence over Deliveroo.⁴⁵
53. [REDACTED].⁴⁶
54. [REDACTED].⁴⁷
55. Finally, arrangements in place between [REDACTED]. The CMA acknowledges that [REDACTED].⁴⁸ The CMA also considers that [REDACTED]. Therefore, the CMA considers that Deliveroo's existing [REDACTED] may contribute to Amazon's ability to exercise material influence over Deliveroo.

CMA conclusion

56. The CMA considers that the [REDACTED], through a combination of factors, may give Amazon the ability to exercise material influence over Deliveroo. As a result of the Merger, the enterprises of Amazon and Deliveroo will cease to be distinct.

Turnover test

57. The UK turnover of Deliveroo exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

Conclusion

58. Based on the above, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

⁴⁴ The CMA considers that this is consistent with the OFT's decision in *First Milk/Robert Wiseman Dairies* referred to by the Parties.

⁴⁵ The CMA may consider other factors, such as agreements with the company, that enable the acquirer materially to influence policy ([Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.26).

⁴⁶ [REDACTED].

⁴⁷ The CMA acknowledges that [REDACTED]. However, the CMA again considers that the mutually reinforcing factors present in this case did not apply in that case.

⁴⁸ [REDACTED].

59. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 16 October 2019 and the statutory 40 working day deadline for a decision is therefore 11 December 2019.

Counterfactual

60. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴⁹
61. The Parties submitted that the relevant counterfactual against which to assess the Merger is the pre-existing competitive situation, with Deliveroo continuing to compete as it currently does including it seeking suitable investment to drive its expansion and innovation.
62. Delivery of goods ordered online (in particular the growth in last mile logistics to solve "on-demand" delivery) is evolving and so the CMA carefully considered how the nature of the competitive interaction between the Parties is likely to develop in the future. The CMA aimed to conduct a dynamic review that takes into account future developments in the markets in which the Parties operate. To this end, the CMA reviewed a large volume of internal documents relevant to Amazon's rationale for the Merger, as well as the Parties' commercial strategies absent the Merger. The CMA also gathered evidence from a wide range of third parties, including customers and competitors in and adjacent to the sectors in which the Parties' operate, as well as analysts who focus on food, retail and logistics, in order to fully assess evolving industry trends and competitive dynamics.
63. The CMA, for the purposes of its Phase 1 investigation, considered whether it should assess the competitive effects of the Merger against a counterfactual that is more competitive than the pre-merger conditions (eg a counterfactual where competition between the Parties is increased). In particular, the CMA

⁴⁹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

considered whether, absent the Merger, the Parties would have invested or developed in expanding their businesses such that:

- (a) Amazon re-entered the supply of online food platforms; and/or
- (b) Deliveroo expanded and developed, either alone or in partnership, from a logistics-enabled food marketplace to a logistics-enabled e-commerce marketplace offering a broader range of food and non-food products.

64. The CMA outlines these alternative counterfactuals below, but considers that the re-entry of Amazon and the expansion of Deliveroo are best discussed in the competitive assessment alongside the fuller discussion of other developments and changes in the activities of the Parties' competitors and in the sectors in general.

Amazon re-entry into the supply of online food platforms

65. Amazon submitted that [REDACTED]. It also submitted that it [REDACTED].

66. Amazon's internal documents show [REDACTED]. Amazon's assessment [REDACTED].⁵⁰ Amazon also faced challenges with [REDACTED],⁵¹ and struggled to [REDACTED].⁵² These challenges were reflected in [REDACTED].⁵³

67. As a result, Amazon came to the decision to shut Amazon Restaurants in the UK, noting that [REDACTED].⁵⁴ By [REDACTED], Amazon had therefore decided to close the UK business, and did so in November 2018. Amazon Restaurants closed in the US in June 2019.

68. Despite Amazon's decision to close Amazon Restaurants [REDACTED], the CMA observed evidence that Amazon would likely re-enter the supply of online food platforms in the UK, likely through investing in or acquiring another business. This evidence is discussed in more detail from paragraph 163, but can be summarised as follows:

(a) [REDACTED].

(b) Amazon has experimented with various propositions in different markets before finding the successful option in the past (eg various earlier versions of Amazon Marketplace),⁵⁵ and the closure of Amazon

⁵⁰ Amazon's response to section 109 notice of [REDACTED].

⁵¹ Amazon's response to section 109 notice of [REDACTED].

⁵² Amazon's response to section 109 notice of [REDACTED].

⁵³ Amazon's response to section 109 notice of [REDACTED].

⁵⁴ Amazon's response to section 109 notice of [REDACTED].

⁵⁵ See, for instance, Amazon's 2015 letter to its shareholders.

Restaurants does not mean it would give up on developing a new proposition, but that it has decided to change strategy in how it offers an online food platform.

(c) Amazon has [REDACTED].

(d) Linked to the above, Amazon appears to [REDACTED].⁵⁶ [REDACTED].

69. The CMA considers it likely that, absent the Merger, [REDACTED]. The CMA believes that there is a realistic prospect that Amazon would have re-entered in the supply of online food platforms in the UK in the near future. A fuller discussion of the evidence and the impact of Amazon's re-entry is discussed in the competitive assessment from paragraph 163.

Deliveroo development of logistics-enabled e-commerce marketplace

70. The CMA considered whether Deliveroo would have expanded and developed, either alone or in partnership, from a logistics-enabled food marketplace to a logistics-enabled e-commerce marketplace offering a broader range of food and non-food products absent the Merger. Deliveroo's expanded offering would then compete with elements of Amazon Marketplace in the UK.
71. Last-mile 'on-demand' delivery (including online convenience grocery delivery), is quickly evolving in the UK but is still at a nascent state. The CMA carefully considered the expected future changes in this market and observed the available evidence tells a consistent story: companies that operate online food platforms are expanding into online convenience groceries – an attractive market because of its high frequency use case – and then are expected to continue expanding into wider marketplaces that “deliver everything” (or, more likely, deliver a range of non-food products).⁵⁷
72. Deliveroo submitted that its strategic focus is on food and [REDACTED]. This was supported by its internal documents, [REDACTED].
73. Despite this expected future trend, the CMA observed [REDACTED]. A fuller discussion on the potential entry by Deliveroo into offering a logistics enabled e-commerce marketplace is included in the competitive assessment from

⁵⁶ Some internal documents appear to [REDACTED]. For the purposes of the counterfactual the CMA considers the most competitive counterfactual would be Amazon re-entering organically or investing in a non-UK online food platform and subsequently expanding into the UK.

⁵⁷ This is supported by a range of evidence including the Parties' internal documents, analyst and other specialist reports and international examples. This is discussed further in the competitive assessment.

paragraph 289. Accordingly, the CMA has not adopted a more competitive counterfactual in this regard.

Frame of reference

74. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁵⁸
75. The starting point for the CMA's assessment of the appropriate frame of reference is the overlapping products of the parties, or where non-horizontal effects are relevant, the product(s) of each party where the non-horizontal relationship occurs.⁵⁹ The CMA has therefore considered the following areas:
- (a) Supply of online food platforms in the UK;
 - (b) Supply of online convenience groceries in the UK; and
 - (c) Supply of logistics-enabled e-commerce marketplaces in the UK.
76. The CMA notes that defining a frame of reference is a useful tool, but not an end in itself. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way and the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁶⁰

Online food platforms

77. Online food delivery services have developed rapidly in the UK over the past 10-15 years. Two models for these services emerged: (i) the food ordering marketplace model; and (ii) the logistics-enabled marketplace model. As explained in the CMA's decision in *Just Eat/Hungryhouse*:⁶¹

⁵⁸ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵⁹ [Merger Assessment Guidelines](#), paragraph 5.2.11.

⁶⁰ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁶¹ *Anticipated acquisition by Just Eat plc of Hungryhouse Holdings Limited (Just Eat/Hungryhouse)*, Final Report, November 2017.

- (a) Under the food ordering marketplace model “takeaway restaurants, contract with the supplier of the platform 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.”
- (b) The logistics-enabled marketplace model, referred to as “ordering and logistics specialists” in the *Just Eat/Hungryhouse* decision, also provides access to multiple restaurants and consumers on a single platform but “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 the 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.”⁶²

78. The existence of these two models is also reflected in the Parties’ internal documents. For example, [✂].⁶³
79. In *Just Eat/Hungryhouse*, the CMA found that the main online food platforms have experienced significant growth over the past decade, with the UK representing a major source of demand for food delivery businesses.⁶⁴ UBS predicted in June last year that the global online food delivery market could grow more than tenfold in the next decade – from \$35 billion in 2018 to around £365 billion by 2030. The report said that more home-cooked meals will be replaced by deliveries from restaurants or central kitchens.⁶⁵ Deliveroo, in particular, has grown extremely rapidly since its launch in 2013.⁶⁶

Product scope

80. The Parties overlapped in the supply of online food delivery platforms until November 2018, when Amazon Restaurants exited the UK. The Parties’ operated as ordering and logistics specialists. In July 2018, Deliveroo began

⁶² *Just Eat/Hungryhouse*, Final Report, paragraph 2.21.

⁶³ Amazon’s response to section 109 notice of [✂].

⁶⁴ *Just Eat/Hungryhouse*, Final Report, paragraphs 2.35-2.51.

⁶⁵ <https://www.ubs.com/global/en/investment-bank/in-focus/2018/dead-kitchen.html>.

⁶⁶ Deliveroo 2018 annual report. Deliveroo’s high growth has been publicly recognised eg Deliveroo Winner Profile, Deloitte Technology Fast 50, and top of the Financial Times 1000.

to list restaurants with their own delivery couriers on its platform, thus also operating as a food ordering marketplace.

81. The Parties noted the CMA's definition of the supply of online food platforms as the relevant product market defined in *Just Eat/Hungryhouse*.⁶⁷ They submitted that since this assessment (i) there may be increasing competition between direct ordering from branded food chains and online food services, and (ii) the business models of food ordering marketplaces and logistics-enabled marketplaces have continued to converge.
82. In *Just Eat/Hungryhouse*, the CMA defined a single market for both sides of the food ordering platform, ie including both restaurants and consumers.
83. In the present case, as its starting point the CMA has taken the narrowest frame of reference in which the Parties would overlap (as a result of Amazon's re-entry),⁶⁸ which is as logistics-enabled food marketplaces. The CMA then considered the extent of substitutability between logistics-enabled food marketplaces and the below options, in order to assess whether the frame of reference should be widened to include these:
 - (a) food ordering marketplaces, which do not provide logistics;
 - (b) direct ordering from branded food chains, in particular large, national brands, such as Domino's, Pizza Hut and Papa John's, who provide their own logistics; and
 - (c) direct ordering from other restaurants, on their own websites or apps, by telephone, or in-person, who provide their own logistics.

Food ordering marketplaces

84. As the Parties submitted, the CMA observed the distinction between food ordering marketplaces and logistics-enabled marketplaces has become less relevant, with Just Eat (which previously operated a marketplace-only model) beginning to offer delivery services to restaurants, and Deliveroo and Uber Eats (which previously only listed restaurants for which they also made deliveries) beginning to list restaurants which make their own deliveries on their marketplaces. For example, Deliveroo launched a UK marketplace for restaurants with their own delivery couriers in July 2018.

⁶⁷ *Just Eat/Hungryhouse*, Final Report.

⁶⁸ *Merger Assessment Guidelines*, paragraph 5.2.3.

85. This is consistent with the CMA's inclusion in *Just Eat/Hungryhouse* of both ordering and logistics specialists and food ordering marketplaces in a single frame of reference.⁶⁹
86. In the present case, the majority of the restaurants who responded to the CMA use both Just Eat (primarily a marketplace) as well as Deliveroo and Uber Eats (logistics-enabled marketplaces). Some restaurants noted the importance of the logistics offered by online food platforms, with one noting it only began to use Just Eat once it developed this capability. The CMA also observed evidence provided by Deliveroo that consumers multi-homed between the two types of marketplace.⁷⁰
87. Based on the evidence, the CMA considers that food ordering marketplaces and logistics-enabled marketplaces should be considered part of the same frame of reference, although notes that differentiation between the two business models is relevant for the competitive assessment.

Branded food chains

88. In *Just Eat/Hungryhouse*, the CMA found that branded food chains who offer their own delivery, such as Domino's, Pizza Hut and Papa John's, should not be included in the same market, in part because the narrow range of food types available means that they would be considered close substitutes by consumers only in relation to a subset of consumer orders.⁷¹
89. The Parties submitted that more recent market intelligence reports and articles suggest that there may be increasing competition between vertically-integrated food chains and online food platforms.⁷² The articles cited by the Parties describe increasing competitive pressure on these chains by the growth of online food platforms.
90. The CMA considers that this is consistent with the findings in *Just Eat/Hungryhouse*; given these food chains' narrow range of food types, they may experience an asymmetric constraint from the growth of online food platforms (especially those such as Deliveroo which have provided delivery capabilities to food chains' competitors) without themselves constraining food delivery platforms. The CMA notes that these branded chains may be able to compete, to some extent, with the Parties using national advertising and

⁶⁹ *Just Eat/Hungryhouse*, Final Report, paragraphs 4.16.

⁷⁰ [§<].

⁷¹ *Just Eat/Hungryhouse*, Final Report, paragraphs 4.27.

⁷² Bloomberg, 'Domino's, Atoned For its crimes against Pizza and built a \$9 billion empire', 2017, available at: <https://www.bloomberg.com/features/2017-dominos-pizza-empire/>. Diginomica, 'Why Domino's Pizza keeps on top of what the competition is up to in digital', 1 October 2018, available at: <https://diginomica.com/why-dominos-pizza-keeps-on-top-of-what-the-competition-is-up-to-indigital>.

marketing to acquire customers, but as stated these chains are not able to offer the range of food that online food platforms can. The CMA has therefore excluded branded food chains from the frame of reference.

Other direct ordering

91. In *Just Eat/Hungryhouse*, the CMA found that while consumers tended to order from a small set of restaurants, online food platforms were used far more frequently than direct ordering, and that consumers did so because of the convenience and speed of such platforms.⁷³
92. The CMA found that (i) only around a third of restaurants had a website from which consumers could order food, and therefore a comparable online offer to online food platforms, (ii) online food platforms represented around half of restaurants' revenues from orders, and (iii) restaurants joined platforms to gain more customers.⁷⁴
93. The CMA therefore excluded direct ordering from the market in *Just Eat/Hungryhouse*, while considering its strength as part of the competitive assessment. In the absence of evidence to suggest otherwise, the CMA considers this to be an appropriate approach in the present case and has excluded direct ordering from the product frame of reference.⁷⁵

Conclusion on the product scope

94. For the reasons set out above, the CMA considered the impact of the Merger in the product frame of reference of the supply of online food platforms.

Geographic scope

95. The Parties noted the CMA's finding in *Just Eat/Hungryhouse* that the relevant market for the supply of online food platforms was national in scope, with important local elements needing to be taken into account in the competitive assessment.⁷⁶
96. In line with decisional practice, the CMA considers that the geographic frame of reference for the supply of online food platforms is the UK. The CMA has considered local competitive dynamics as part of its competitive assessment, but has not carried out a detailed local area-based assessment. The CMA

⁷³ *Just Eat/Hungryhouse*, Final Report, paragraphs 4.23.

⁷⁴ *Just Eat/Hungryhouse*, Final Report, paragraphs 4.22.

⁷⁵ Indeed, direct ordering is likely to be a less significant constraint in this case because the majority of Deliveroo's restaurants would not be available for direct ordering as Deliveroo, an ordering and logistics specialist, provides the delivery capability to a large proportion of its restaurant customers.

⁷⁶ *Just Eat/Hungryhouse*, Final Report, paragraph 4.33.

notes that all three online food ordering platforms which are currently active in the UK have ambitions to expand their services nationwide.

Online convenience groceries

97. The Parties overlap in the supply of online convenience or ultrafast groceries. That is, groceries that are delivered within a short period of time after ordering:
- (a) Deliveroo lists a range of stores on its app, including as part of a partnership with Co-op. Each grocer determines the selection available. For example, the Co-op's menu comprises approximately 320 items. Groceries purchased on Deliveroo are typically delivered in under 30 minutes.
 - (b) Amazon supplies groceries (both its own, and from Morrisons) through its Prime Now service, typically in under [redacted] hours (and in as little as an hour).ⁱ It also supplies groceries through Amazon Fresh [redacted]. As described below in paragraph 229, Amazon [redacted].^{77 78 79}
98. The CMA's starting point is the narrowest market in which the Parties overlap.⁸⁰ This is the supply of online groceries delivered within a short period of time (**online convenience groceries**). Such services are defined by the speed of their offering; they are designed to be available within a few hours, to satisfy customers looking to fulfil urgent shopping missions.⁸¹

Product scope

99. The Parties submitted that the CMA's frame of reference is artificial, grouping together propositions which are not substitutes for either consumers or grocery retailers. However, other commentators such as Mintel have considered rapid groceries delivery services as a distinct group of propositions (see paragraph 259), as indeed have Deliveroo (see

⁷⁷ Amazon's response to section 109 notice of [redacted].

⁷⁸ Amazon's submission of [redacted].

⁷⁹ Amazon's response to section 109 notice of [redacted].

⁸⁰ [Merger Assessment Guidelines](#), paragraph 5.2.3.

⁸¹ The Parties and their competitors sometimes use the term 'on-demand' to distinguish online convenience groceries delivery services from 'scheduled' traditional online groceries delivery services. However, the term 'on-demand' is used inconsistently, and online convenience groceries deliveries can be scheduled. For example, Ocado Zoom describes itself as Ocado's on-demand service, in contrast to Ocado's slower traditional online delivery service, but Ocado Zoom offers both immediate delivery and scheduled same day delivery. Similarly, Amazon Fresh markets a same-day on-demand service, despite the fact that this involves scheduling a delivery [redacted], and that Prime Now is Amazon's faster groceries delivery service.

paragraph 249) and Amazon ([~~§~~]). The CMA considers the evidence on substitutability for consumers and grocery retailers below.

100. The supply of online convenience groceries is a nascent market, and suppliers are continuing to experiment to determine the right way of addressing customers' preferences for greater convenience. For example, one grocer told the CMA that it is still evaluating whether it should offer delivery within one hour or within two hours. It is also unclear whether customers have strong preferences for immediate delivery as fast as possible, or whether customers value the certainty of being able to schedule a narrow delivery window in the near future. One competitor told the CMA that it considered the latter a more promising approach.

Distinction between online convenience groceries and online delivered groceries

101. The CMA has considered whether it is appropriate to consider online convenience groceries as a segment that is distinct from the larger segment for online delivered groceries.
102. The CMA recently considered online grocery delivery in its April 2019 decision in *Sainsbury's/Asda*.⁸² In *Sainsbury's/Asda*, the CMA defined a product market for "*online delivered groceries*".⁸³ In that decision, the CMA distinguished between the convenience of in-store and online groceries, noting that in-store provided "*the ability to purchase groceries immediately*" while online avoided "*the need to make a specific trip to a store*".⁸⁴ The CMA excluded services such as Prime Now and the Co-op's trial service, reflecting their more limited range and different shopping missions, relative to the online groceries targeting big basket shops.⁸⁵ Co-op also told the CMA that its concept might "*be more competitive in the fast food sector (Just Eat, Deliveroo, Sainsbury Chop Chop service and Home Run) than a grocery proposition*".⁸⁶
103. The CMA considers a distinction between online delivered groceries and online convenience groceries to be consistent with its decision in *Sainsbury's/Asda*. In particular, as discussed below, the CMA notes the differences in customer shopping missions and delivery speed, and the

⁸² CMA Final Report, anticipated merger between J Sainsbury Plc and Asda Group Ltd, 25 April 2019.

⁸³ *Anticipated merger between J Sainsbury PLC and Asda Group Ltd (Sainsbury's/Asda)*, Final Report, paragraph 10.41.

⁸⁴ *Sainsbury's/Asda*, Final Report, paragraph 10.24.

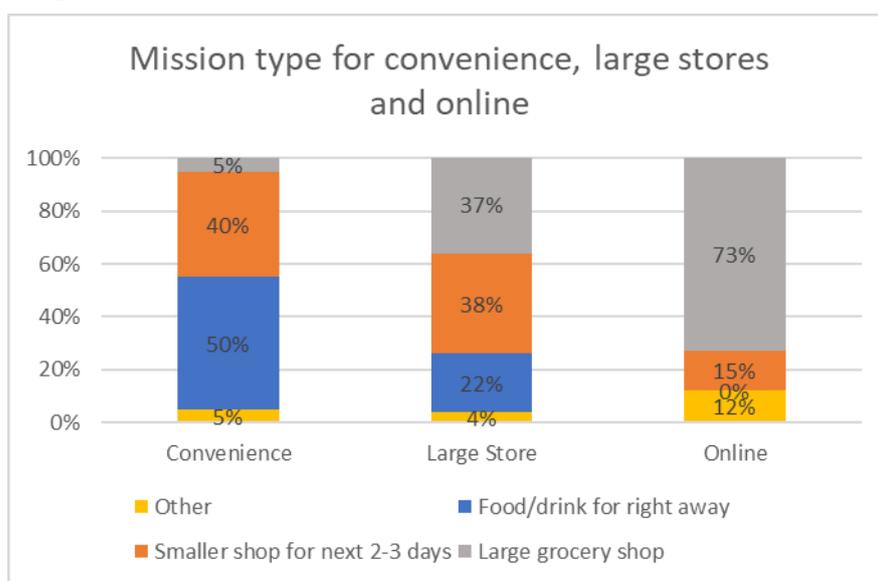
⁸⁵ *Sainsbury's/Asda*, Final Report, footnote 518.

⁸⁶ *Sainsbury's/Asda*, Final Report, Annex H, paragraph 52.

limitations on supply side substitution between online delivered groceries and online convenience groceries.

104. In the past, grocery providers have created online groceries delivery operations in the UK which offer consumers the opportunity to complete a big basket shopping mission, but which are not attractive for small basket urgent grocery missions. This is illustrated below in Figure 1, which was first presented by the CMA in *Sainsbury's/Asda*.⁸⁷

Figure 1



Source: CMA based on Tesco internal document

105. As Figure 1 shows, the category ‘food/drink for right away’ has historically accounted for almost no online shopping missions, and ‘smaller shop for next 2-3 days’ has historically accounted for relatively few online shopping missions. Few grocery retailers offer same-day delivery, and those which do require orders to be placed 7 hours or more in advance.⁸⁸ The CMA therefore found that there is demand-side differentiation between the traditional supply of online groceries and the supply of online convenience groceries.
106. Market commentators have identified a gap between changing consumer behaviour (increasingly shopping “little and often”) and online grocery deliveries designed to serve the traditional big basket shop.⁸⁹

⁸⁷ *Sainsbury's/Asda*, Final Report, Figure 10.1.

⁸⁸ Amazon's submission of [redacted].

⁸⁹ See, for example Online Grocery Retailing UK 2019 Mintel report, pages 20-21. The CMA identified a trend toward shopping “little and often” in its decision in *Sainsbury's/Asda* noting that main-shop missions at supermarkets declined from 49% to 42% between 2010 and 2018, and top-up and convenience store shopping had increased. See, *Sainsbury's/Asda*, Final Report, paragraphs 4.11-4.14.

107. Grocery retailers told the CMA that their existing delivery operations are not suited to fulfilling urgent grocery orders. They told the CMA that to offer this they would need significant upfront capital expenditure, to expand resources and operational and technological capabilities, and risk potential store disruption. Instead, grocery retailers have trialled alternative models of groceries delivery using third party delivery couriers. Examples include Tesco Now, Sainsburys Chop Chop, Waitrose Rapid and Ocado Zoom. [REDACTED].⁹⁰
108. Grocery retailers also told the CMA that a key challenge in offering online convenience groceries is achieving sufficient scale to justify the costs of a courier delivery operation. The Parties (as well as other relevant competitors such as Uber Eats and Just Eat), already offer rapid delivery for other products and so already have a scale of orders to help support the costs of their logistics operations.
109. The CMA therefore found that there is little scope for supply-side substitution between the supply of online large basket groceries and the supply of online convenience groceries.
110. In light of this evidence, the CMA has excluded traditional online groceries from its product frame of reference and has considered a distinct segment for online convenience groceries.

Two-sided market

111. The Parties both provide services to grocery retailers as well as consumers. Therefore, two distinct groups of customers are involved. The CMA considers that indirect network effects may operate in the supply of online convenience groceries, because the willingness of grocery retailers to list on the Parties' platforms depends on the participation of consumers on the platform, and vice versa. The CMA's view is informed by the following evidence:

(a) Amazon's [REDACTED] for the UK, [REDACTED].⁹¹ [REDACTED].⁹²

(b) Amazon's [REDACTED] for the US, [REDACTED].⁹³

(c) Deliveroo's [REDACTED], which involves [REDACTED].⁹⁴ [REDACTED].⁹⁵

⁹⁰ Amazon's submission of [REDACTED].

⁹¹ Amazon's submission of [REDACTED].

⁹² Amazon's response to section 109 notice of [REDACTED].

⁹³ Amazon's response to section 109 notice of [REDACTED].

⁹⁴ Deliveroo's response to section 109 notice of [REDACTED].

⁹⁵ For example Deliveroo's response to section 109 notice of [REDACTED].

- (d) Third party grocery retailers told the CMA that one of the most attractive features of online food platforms as potential partners would be immediate access to a large number of customers and reaching different customers to their in-store ones.
112. All last-mile logistics services require (i) a sufficient number of retailers/products to attract orders; (ii) a sufficient number of orders to use riders cost-effectively; and (iii) a sufficient number of orders to attract retailer.⁹⁶ Online convenience groceries platforms also face this challenge.
113. The CMA also notes that Amazon and Deliveroo (as well as other relevant competitors such as Uber Eats and Just Eat) already operate platforms for consumers to make orders from multiple businesses, and have [✂].
114. While the CMA acknowledges that there is uncertainty in how this market will evolve, the CMA considers (on the basis of the above evidence) that it is appropriate to evaluate the supply of online convenience groceries as a two-sided market.
115. The CMA considered whether the product frame of reference should be widened to include possible substitute products for either group of customers.

Substitutes for supply to consumers

- *Bricks-and-mortar grocery stores*

116. The CMA considered whether offline sales of groceries should be included in its frame of reference.
117. From a demand-side perspective, bricks-and-mortar stores, including convenience stores, are currently the primary way consumers purchase convenience groceries. Consumers' willingness to pay for delivery of groceries will be limited by their willingness to switch to local convenience stores. However, the supply of online convenience groceries is attractive to customers who place a premium on convenience. In this context, the CMA notes that there is a price difference between online convenience groceries and groceries available in bricks-and-mortar stores: in some cases, the products themselves are more expensive, and customers pay a delivery fee (either for the specific delivery or as part of a subscription fee for the delivery service). Some grocery retailers told the CMA that they view the customers

⁹⁶ On the importance of scale, see for example, Gevaers, R., Van de Voorde E. & Vanellander, T. (2011). Characteristics and Typology of Last-mile Logistics from an Innovation Perspective in an Urban Context. In C. Macharis & S. Melo (Eds.), *City Distribution and Urban Freight Transport: Multiple Perspectives*.

from their online convenience offerings as incremental to customers visiting physical stores.

118. The CMA therefore considers that convenience stores will not compete sufficiently closely with online convenience groceries delivery to be included in the same product frame of reference.

- *Personal shoppers*

119. Personal shoppers (for example, Homerun) are services which operate a delivery network through which customers can access groceries (and other goods) at ultrafast speeds, without agreeing to a partnership with grocery retailers. The Parties submitted that these compete in the supply of online convenience groceries.

120. The CMA acknowledges that in principle, personal shoppers have the potential to compete in the supply of online convenience groceries, but in practice has found that in the UK such suppliers are too small to compete effectively with the Parties. In principle, personal shoppers have the potential to offer a wide range of selection from multiple grocery retailers. The CMA was minded to include personal shoppers in its competitive assessment, but found that the activities of such companies in the UK are currently extremely small⁹⁷ and as such did not affect the competitive assessment.

Substitutes for supply to grocery retailers

121. To reach consumers with an online convenience groceries offering, grocery retailers need (i) fulfilment centres, (ii) an e-commerce website or app, and (iii) a delivery network capable of picking and delivering groceries at ultrafast speeds.

122. Grocery retailers' existing stores can act as fulfilment centres, with existing staff picking goods. However, grocery retailers also need the logistics for rapid delivery, which in the case of Morrisons is provided by Amazon.

123. Grocery retailers told the CMA that they can produce an e-commerce website themselves, or they can partner a supplier which already operates an e-commerce website. Several grocery retailers told the CMA that they preferred to use their own e-commerce website, as this gave them greater control over

⁹⁷ The CMA understands that one of the largest of these companies, Homerun, generated revenue of under £1 million in 2018. ([Source](#).) Another of these companies, Beelivery, has expected total revenue in 2019 of only £[redacted]. The CMA also notes that this type of business is also likely to be at a cost disadvantage to providers such as Deliveroo as they do not receive a commission from grocery retailers for providing this service, which could inhibit their ability to expand and provide a competitive offering to the Parties.

the customer relationship, although some grocery retailers noted that customer acquisition costs for propositions on their own websites could be more expensive than customer acquisition for online food platforms, and that using an alternative platform may give them access to customers they would not otherwise reach.

124. Grocery retailers also told the CMA that the most challenging part of offering online convenience groceries is arranging delivery. The CMA has therefore considered whether each of the below methods of arranging groceries delivery should be included in the supply of online convenience groceries.

- *Self-supply*

125. Grocery retailers told the CMA that their existing delivery operations are not suited to fulfilling on-demand grocery orders for delivery within a short time period. Some grocery retailers told the CMA that they are exploring the possibility of self-delivery, but several grocery retailers told the CMA that creating an ultrafast delivery service themselves would be prohibitively expensive. Grocery retailers told the CMA that a key challenge in offering online convenience groceries is achieving sufficient scale to justify the costs of a courier delivery operation; for example, the service would need to generate enough orders per hour to provide couriers with competitive earnings.

126. The CMA considers that, in principle, self-supply could be included in its frame of reference. However, in practice (given grocery retailers' responses to the CMA) the CMA does not consider that grocery retailers are likely to be able to successfully develop their own ultrafast delivery service. This is therefore not considered further in the competitive assessment.

- *Last-mile logistics specialists*

127. A limited number of courier services specialise in last mile delivery to customers, at ultrafast speeds. Several grocery providers continue to trial ultrafast delivery with these last-mile logistics providers. Third parties told the CMA that one last-mile logistics specialist, Stuart, has demonstrated strong ultrafast delivery capabilities, while also mentioning that other last-mile logistics specialists were less capable. Third parties also told the CMA of some last-mile delivery companies that entered the UK (such as Quipup and Jinn) but were not successful and as such were not options.

128. The CMA has therefore included last-mile logistics specialists in its product frame of reference.

- *Traditional delivery providers*

129. The CMA has considered whether traditional delivery providers, such as Royal Mail, UPS and DPD, could provide ultrafast delivery for grocery retailers. Traditional couriers told the CMA that their existing delivery operations are not well placed to offer ultrafast delivery, and that ultrafast delivery is not a priority area for their business. Grocery retailers confirmed that they considered using traditional delivery providers for convenience groceries, however they also told the CMA that they considered traditional couriers inappropriate for offering same day or shorter delivery of food.
130. The CMA has therefore not included traditional delivery providers in its product frame of reference.

CMA's conclusion on the product scope for online convenience groceries

131. In light of the evidence above, the CMA considered the supply of online convenience groceries (ie groceries that are delivered within a short period of time after ordering) to be the appropriate product frame of reference.

Geographic scope

132. The Parties submitted that the CMA assessed the geographic scope of online delivered groceries in *Sainsbury's/Asda* and found this to be less than UK-wide from both the demand and supply side and that the geographic market was the delivery area served by each supply point (eg normal stores with store-pickers, or dedicated online delivery stores).
133. The Parties compete locally to supply online convenience groceries to consumers, and leverage their existing local delivery capabilities to provide ultrafast delivery capabilities to grocery retailers.
134. However, many important parameters of competition are set nationally, for example, [REDACTED].
135. Furthermore, the supply of online convenience groceries is a nascent market, in which providers are still trialling and experimenting with their offering, or are only beginning to roll out their services more broadly. [REDACTED].⁹⁸ Suppliers will compete in scaling their offer geographically across the UK over the next 2 to 3 years.

⁹⁸ Amazon's submission of [REDACTED]. Deliveroo's response to section 109 of [REDACTED].

136. The CMA therefore considers it appropriate to adopt a UK-wide frame of reference as the geographic scope of online convenience groceries. The CMA has taken into account a degree of local variation in competition in its competitive assessment.

Logistics-enabled e-commerce marketplaces

137. Amazon operates an e-commerce marketplace where Amazon and third party sellers supply a wide range of retail products, from apparel to appliances, wine to watches and PCs to pet products. Amazon also provides logistics services to its marketplace using its own logistics network. Amazon discounts the use of its logistics for sellers using Amazon's own marketplace (sellers can also use the program to deliver sales made through other channels, including other e-commerce sites).⁹⁹
138. Deliveroo has a developed logistics-enabled marketplace through which it supplies restaurant food and groceries to consumers, and last-mile logistics (and access to consumers) to business customers. A range of non-food convenience items are available on Deliveroo's platform, although Deliveroo does not market itself as a non-food marketplace. As set out in the Counterfactual section, the CMA considered whether there is a realistic prospect that, absent the Merger, Deliveroo could continue to expand and develop its business, either alone or in partnership, into a logistics enabled e-commerce marketplace, selling a wide selection of products in addition to food. The CMA notes that its range is unlikely to be as wide as Amazon's, but this development could lead to Deliveroo offering a logistics-enabled e-commerce marketplace that competes with parts of Amazon's offering.

Product scope

139. The Parties did not make a submission in regards to the appropriate product frame of reference.
140. The CMA is not aware of any merger-related precedent involving Amazon's (or similar) marketplaces, although notes recent antitrust investigations into Amazon's marketplace in countries including Italy, Germany and Austria. The report issued by the Austrian authority¹⁰⁰ considered a market for online trading platforms that, on the seller-side, did not include bricks-and-mortar

⁹⁹ <https://services.amazon.co.uk/services/fulfilment-by-amazon/pricing.html>.

¹⁰⁰ [Amazon.de Marketplace case report](#) by Austrian Federal Competition Authority, 19 July 2019.

shops or their own websites, but did not conclude. This appears to be supported by current thinking of the Italian competition authority.¹⁰¹

141. As a starting point, the CMA has taken the narrowest frame of reference in which the Parties would overlap (as a result of Deliveroo's potential expansion),¹⁰² which is in the supply of logistics-enabled e-commerce marketplaces. The CMA has included logistics in its frame of reference because, as described below, logistics capability is an important differentiating factor of Amazon's e-commerce marketplace offering (and of Deliveroo's current food marketplace offering).¹⁰³
142. Logistics-enabled e-commerce marketplaces are two-sided platforms, connecting third party sellers and consumers. These two customer groups are discussed below.

Sellers

143. For sellers, Amazon's logistics-enabled e-commerce marketplace offers both (i) access to consumers and (ii) a cost-effective logistics solution.
144. Amazon's customer base includes a very large proportion of the UK population. A Mintel survey found that 86% of consumers in the UK shopped with Amazon in the year to October 2018.¹⁰⁴ The number of consumers shopping with Amazon could be a key differentiator between Amazon and other providers.
145. Amazon's internal documents indicate that [%] are provided through FBA, ie are enabled by Amazon's own logistics services, [%].¹⁰⁵ The CMA understands that sellers may not wish to operate duplicative parallel logistics systems [%]. This is consistent with independent analysts' reports. [%].¹⁰⁶
146. This implies that for many sellers, in order to switch away from Amazon to their next most attractive alternative, they would need to switch to [%]. Switching to separate suppliers [%] could involve inefficiencies (for example, [%]), additional switching costs and other differentiating factors (eg in relation to delivery speed).

¹⁰¹ [Italian FBA Case opening announcement](#), 10 April 2019, which looks to exclude e-commerce platforms that only offer one type of product. Also reported in [Concurrences](#).

¹⁰² [Merger Assessment Guidelines](#), paragraph 5.2.3.

¹⁰³ As noted in paragraph 76, the CMA uses frame of reference as a useful a tool, but this does not determine the outcome of the CMA's analysis in the competitive assessment.

¹⁰⁴ [%].

¹⁰⁵ Amazon's response to section 109 notice of [%].

¹⁰⁶ [%].

147. The CMA has therefore excluded from its frame of reference suppliers without both (i) a marketplace, and (ii) a logistics solution.

Consumers

148. For consumers, Amazon's logistics-enabled e-commerce marketplace provides (i) access to a wide variety of products, and (ii) rapid, convenient and cost-effective delivery.
149. The range of products and sellers available to consumers on Amazon's marketplace is a key differentiating characteristic. Indeed, [70–80%] of Amazon shoppers say that the site fulfils most of their online shopping needs.¹⁰⁷ The CMA notes that consumers could engage in a mix-and-match approach between different suppliers in order to achieve range. However, some customers are likely to value convenience and the one-stop nature of Amazon's offering.¹⁰⁸
150. Effective delivery is also seen as important to consumers.¹⁰⁹ Amazon's Prime subscription service provides unlimited, free, fast shipping to consumers (among other benefits) in return for an up-front fee. Amazon forecasts that there will be [X] million paid Prime subscribers (comprising [X]% of households) in 2019 in the UK, showing it is a very popular product.¹¹⁰ Prime's free (or rather pre-paid) shipping implies that alternative options which do not have free shipping may not be a close alternative for Prime users. One third party told the CMA that, because consumers feel they are already paying for delivery through Prime, they may be deterred from using other services in order to justify the cost of the subscription.¹¹¹ As such, Prime users might not switch away even if prices were to rise, in the absence of a competitor providing a service which could offer a competitive loyalty programme.¹¹²
151. Amazon's own internal documents highlight its range of products and speed of delivery [X]. An Amazon internal document states that "[X]"¹¹³ and another that "[X]".¹¹⁴

¹⁰⁷ [X].

¹⁰⁸ Mintel's market overview sums up the situation, stating "*the fact that 70% of Amazon shoppers say the retailer is the first retailer they head to when shopping online speaks much to its omnipresence in the online market.*" ([X]).

¹⁰⁹ For example, an Amazon internal document [X].

¹¹⁰ In 2018, [X] million customers ([X]% UK households) had a Prime subscription in the UK. Source: Amazon's response to section 109 of [X].

¹¹¹ This is an application of a sunk cost fallacy.

¹¹² The CMA notes that price-elasticity of demand for the Prime subscription price appear to be [X]. (Amazon's response to section 109 notice of [X]).

¹¹³ Amazon internal document [X].

¹¹⁴ Amazon's response to section 109 notice of [X].

152. The CMA has therefore excluded from its frame of reference suppliers without both (i) a broad range of products, and (ii) rapid and cost-effective delivery.

Conclusion on the product scope

153. The CMA considers Amazon's logistics-enabled e-commerce marketplace is materially differentiated from other alternatives. In making this assessment, the CMA has taken into account differentiating features such as the impact of Amazon Prime, its highly scaled logistical network and its size (leading to a broad range of sellers and a large consumer base). Consumers and sellers may have other options, which could be substitutable in some circumstances or for certain customers (eg consumers can purchase most individual products from multiple retailers and sellers may be able to use alternative methods to reach customers), but the CMA does not consider it appropriate to widen its product frame of reference to include other (non-logistics-enabled) e-commerce marketplaces or specialised retail competitors.¹¹⁵
154. For the reasons set out above, on a cautious basis, the CMA considered the impact of the Merger in the product frame of reference of the supply of logistics-enabled e-commerce marketplaces. However, it has not been necessary for the CMA to conclude on the product frame of reference, given the CMA has not found competition concerns arising from the Merger in relation to the supply of logistics-enabled e-commerce marketplaces.

Geographic scope

155. The Parties did not make a submission in regards to the appropriate geographic frame of reference.
156. As mentioned in paragraph 140, the CMA is not aware of any merger-related precedent. In the report issued by the Austrian authority,¹¹⁶ some evidence suggested differences between Austria and Germany, although the report does not conclude on market definition. The current thinking of the Italian authorities also supports a national frame of reference.¹¹⁷
157. Amazon's logistics-enabled e-commerce marketplace allows for delivery throughout the UK. The CMA observed that there is a single UK website for the marketplace, Amazon's distribution model is not highly localised, and

¹¹⁵ These competitors are likely to pose some out-of-market constraint on Amazon, although the CMA has not needed to assess this in this decision given no competitive concerns arise as a result of the Merger in this frame of reference.

¹¹⁶ [Amazon.de Marketplace case report](#) by Austrian Federal Competition Authority, 19 July 2019.

¹¹⁷ In this case because of delivery costs and language barriers. ([Italian FBA Case opening announcement](#), 10 April 2019. Also reported in [Concurrences](#)).

Amazon benchmarks against several [redacted] competitors in its internal documents.¹¹⁸

158. The CMA considered whether the geographic frame of reference could be broader than the UK given that Amazon has a delivery network across the EEA. The CMA observed that [redacted].
159. For the reasons set out above, the CMA has considered the impact of the Merger using the UK as the geographic frame of reference. As with the product frame of referenced, it has not been necessary for the CMA to conclude on the geographic frame of reference, given the CMA has not found competition concerns arising from the Merger in relation to the supply of logistics-enabled e-commerce marketplaces in the UK.

Competitive assessment

160. The CMA has assessed five theories of harm in relation to Amazon's investment in Deliveroo:
 - (a) Horizontal unilateral effects in the supply of online food platforms in the UK;
 - (b) Horizontal unilateral effects in the supply of online convenience groceries in the UK;
 - (c) Horizontal unilateral effects in the supply of logistics-enabled e-commerce marketplaces in the UK;
 - (d) Conglomerate effects through bundling of Prime and Plus; and
 - (e) Behavioural discrimination through the sharing of data.

Horizontal unilateral effects – online food platforms

161. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹¹⁹ The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of online food platforms in the UK.

¹¹⁸ For example, Amazon's response to section 109 notice of [redacted].

¹¹⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

162. Unlike Deliveroo, Amazon does not currently have an online food platform in the UK. The CMA, consistent with its established guidance,¹²⁰ assessed whether the Merger leads to horizontal unilateral effects from a loss of actual potential competition by reference to:

- (a) Whether Amazon would be likely to re-enter and expand in food delivery in the UK absent the Merger; and
- (b) Whether such entry and expansion would lead to greater competition.

Would Amazon re-enter the supply of online food platforms?

163. The Parties submitted that Amazon is not a realistic potential re-entrant because (i) [REDACTED], (ii) [REDACTED], (iii) there are material barriers to entry, and (iv) Amazon's previous exit makes re-entry more difficult and less likely. The CMA addresses the first two points below, and the second two points from paragraph 203.

Importance of online food delivery to Amazon's strategy

164. Amazon submitted that restaurant food delivery [REDACTED] Amazon's decision to close Amazon Restaurants. Amazon also pointed to [REDACTED].¹²¹ ii Amazon also told the CMA that where they [REDACTED] exit a market, they have not [REDACTED].

165. The CMA observed evidence from Amazon's internal documents that operating an online food platform is [REDACTED] of Amazon's strategy and [REDACTED]. For example:

- (a) Amazon's rationale for investment in Deliveroo [REDACTED].
- (b) Several Amazon internal emails refer to [REDACTED].^{122 123 124}

166. The statements in Amazon's documents [REDACTED] when it was operating Amazon Restaurants.

- (a) [REDACTED].^{125 126}

¹²⁰ [Merger Assessment Guidelines](#), paragraph 5.4.15.

¹²¹ [REDACTED].

¹²² Amazon internal email [REDACTED].

¹²³ Amazon internal email [REDACTED].

¹²⁴ Amazon internal email [REDACTED].

¹²⁵ Amazon's response to section 109 notice of [REDACTED].

¹²⁶ Amazon's response to section 109 notice of [REDACTED].

(b) [REDACTED].¹²⁷

167. The CMA considers that the closure of Amazon Restaurants does not mean that offering this service is not important to Amazon's strategy, [REDACTED]. The Parties told the CMA that Amazon [REDACTED], but they did not provide evidence of this approach. The CMA did observe evidence of Amazon having experimented with various propositions in different markets before finding the successful option in the past. For example, Amazon tested different formats before developing Amazon Marketplace successfully,¹²⁸ and took learnings from a failure in phones to improve and develop its Echo and Alexa offerings.¹²⁹ The failure of Amazon Restaurants does not mean it would give up on developing a new proposition, [REDACTED].¹³⁰
168. Overall, the CMA believes that the evidence shows that online food delivery is an important part of Amazon's strategy, including because of its importance in broadening and improving Amazon's grocery offering in the UK.

Amazon plans to enter

169. The Parties submitted that [REDACTED], and that to build an effective restaurant food delivery business would require [REDACTED].
170. As part of its assessment for whether to invest in Deliveroo, Amazon calculated that net present value of [REDACTED] would be -£[REDACTED] million and would take [REDACTED] years.¹³¹ As part of this process, [REDACTED]. The CMA acknowledged that Amazon may not be likely to re-enter this segment by independently developing a full de novo proposition. There are, however, multiple other routes to enter the market, from investing in an online food platform active in another country and expanding into the UK to investing in a business that provides part of the solution (such as a courier business with ultrafast delivery capabilities).
171. The CMA did observe evidence that Amazon may re-enter the supply of online food delivery [REDACTED]. Amazon's internal documents indicate it has a [REDACTED].

¹²⁷ Amazon's response to section 109 notice of [REDACTED].

¹²⁸ Amazon 2015 shareholders letter says "We took two big swings and missed – with Auctions and zShops – before we launched Marketplace over 15 years ago. We learned from our failures and stayed stubborn on the vision, and today close to 50% of units sold on Amazon are sold by third-party sellers."

¹²⁹ Amazon 2018 shareholders letters.

¹³⁰ Amazon internal email [REDACTED].

¹³¹ This is in contrast to a positive net present value of £[REDACTED] million for Deliveroo in this same period.

172. First, the CMA observed internal emails discussing [REDACTED],¹³² whilst another, [REDACTED].¹³³ [REDACTED].¹³⁴
173. Second, the CMA observed internal emails discussing [REDACTED].¹³⁵ In one email the [REDACTED].¹³⁶ In another email [REDACTED].¹³⁷ [REDACTED].
174. Third, the CMA observed multiple internal documents [REDACTED]. Internal emails relating to [REDACTED].¹³⁸ This document goes on to discuss [REDACTED].¹³⁹ Other internal documents suggest [REDACTED],¹⁴⁰ and a [REDACTED].¹⁴¹
175. The Parties submitted that [REDACTED].
176. The CMA considers there are a number of reasons why Amazon would look to re-enter the supply of online food platforms in the UK [REDACTED]. First, the UK is an important market for Amazon ([REDACTED]) and [REDACTED]. Second, the UK is a large and attractive market for offering an online food platform, [REDACTED].¹⁴² Third, although there are clearly differences between operating in different countries, evidence from [REDACTED],¹⁴³ which could be expected to be the same for other businesses who already have experience of operating in one or more other countries.
177. The Parties submitted that Amazon's acquisition of a [REDACTED]% minority shareholding in Deliveroo would not make a difference to its incentives around whether or not to re-enter the supply of online food platforms in the UK. The CMA does not believe this is the case for two main reasons. Firstly, Amazon told the CMA that it considers the size of its investment (\$[REDACTED] million) in Deliveroo to be [REDACTED] and it does not make many investments (or indeed outright acquisitions) [REDACTED]. [REDACTED]. Secondly, Amazon told the CMA that the learning process from investments can [REDACTED].¹⁴⁴

Conclusion on re-entry by Amazon

178. The CMA considers there is a realistic prospect that Amazon, absent its investment in Deliveroo, would re-enter the supply of online food platforms in

¹³² Amazon internal email [REDACTED].

¹³³ Amazon internal email [REDACTED].

¹³⁴ Deliveroo internal email [REDACTED].

¹³⁵ In Amazon internal email [REDACTED], the CMA notes [REDACTED], representing another potential route by which Amazon could re-enter online food delivery.

¹³⁶ Amazon's response to section 109 notice of [REDACTED].

¹³⁷ Amazon's response to section 109 notice of [REDACTED].

¹³⁸ Amazon internal email [REDACTED].

¹³⁹ It further discusses this, noting that [REDACTED].

¹⁴⁰ Amazon internal emails [REDACTED].

¹⁴¹ Amazon internal email [REDACTED].

¹⁴² Amazon's response to Section 109 Notice of [REDACTED].

¹⁴³ Deliveroo's response to Section 109 Notice of [REDACTED].

¹⁴⁴ For example Amazon internal email [REDACTED] (see discussion at paragraph 174).

the UK [REDACTED]. It appears realistic that Amazon would have invested in an alternative online food platform (or similar business) that would enable it or a company it has invested in to re-enter in the UK.

179. In order to assess the impact of Amazon’s re-entry, the CMA first assessed competition in the supply of online food ordering platforms. In doing so, the CMA considered the shares of supply and how the market works, followed by an assessment of Deliveroo’s position in the market, and finally considered the competitive constraints Deliveroo faces.

Competition in the supply of online food platforms

180. The Parties submitted that the UK market is highly competitive and that [REDACTED] and [REDACTED] are formidable, well-capitalised competitors. The Parties also submitted that Amazon’s investment is good for competition because it enables Deliveroo to compete more effectively.

Shares of supply

Table 1: Shares of supply of online food platforms, by number of orders

	2018	2019 (forecast)	2020 (forecast)
Just Eat	[60-70%]	[50-60%]	[REDACTED]
Deliveroo ¹⁴⁵	[10-20%]	[20-30%]	[REDACTED]
Uber Eats	[10-20%]	[20-30%]	[REDACTED]

Source: Parties’ submission and third party responses

181. The shares of supply calculated by the CMA in Table 1 show that there are three online food ordering platforms in the UK, with Just Eat currently being the market leader and Deliveroo the second largest player. [REDACTED].
182. The CMA notes that Deliveroo’s past internal documents often make reference to [REDACTED].¹⁴⁶

- *Dimensions of competition*

183. Restaurants which responded to the CMA’s questionnaire told the CMA that the following factors were important to their decision to use food ordering platforms:
- (a) **Access to customers.** Many restaurants told the CMA that they use food ordering platforms to access customers they would not otherwise be able

¹⁴⁵ Deliveroo’s response to section 109 notice of [REDACTED].

¹⁴⁶ Deliveroo’s response to section 109 notice of [REDACTED].

to reach, due to food ordering platforms' strengths in scale, customer service, marketing and branding.

(b) **Delivery capability.** Many restaurants told the CMA that they use food ordering platforms because of their delivery capabilities, which are strong due to their scale and investments in dispatching technology.

(c) **Price (ie commission).** Restaurants told the CMA that high commission rates are the main drawback of using food ordering platforms; some restaurants commented that they had agreed to exclusively serve one food ordering platform to access lower commissions.

184. The Parties' internal documents [REDACTED]. [REDACTED].^{147 148}

185. The CMA notes that in *Just Eat/Hungry House* it found mixed evidence on the strength of indirect network effects, in particular due to multi-homing by restaurants and noted that "*platform coexistence may be possible even in the long run*".¹⁴⁹ In the present case, although some of the restaurants who responded to the CMA's questionnaire said that they have exclusive arrangements with one online food platform in order to access better commission rates, several restaurants said that they would be happy to add additional platforms. The CMA notes that Deliveroo's internal documents suggest that [REDACTED].¹⁵⁰ [REDACTED], the CMA considers that long run platform coexistence will be even more likely, as it would reduce the strength of indirect network effects.

Deliveroo

186. Deliveroo has grown rapidly in recent years. Its annual accounts show that revenue has increased in 2018 to £476 million, up from £227 million in 2017. Deliveroo's internal strategy documents [REDACTED]. In particular, [REDACTED], and presents a plan to [REDACTED]% market share in the supply of online food platforms.¹⁵¹ Other documents commenting on its strengths mention its restaurant partners and that [REDACTED],¹⁵² as well as its logistics capabilities and how it is [REDACTED].¹⁵³

187. Additionally, in assessing Deliveroo as a potential target, Amazon itself noted Deliveroo's strengths and growth potential:

¹⁴⁷ Amazon's response to section 109 notice of [REDACTED].

¹⁴⁸ Merger Notice, [REDACTED].

¹⁴⁹ Just Eat/Hungry House, Final Report, Appendix E, paragraph 42.

¹⁵⁰ Deliveroo's response to section 109 notice of [REDACTED].

¹⁵¹ Deliveroo's response to section 109 notice of [REDACTED].

¹⁵² Deliveroo's response to section 109 notice of [REDACTED].

¹⁵³ Deliveroo's response to section 109 notice of [REDACTED].

(a) [REDACTED].¹⁵⁴

(b) [REDACTED].^{155 156}

188. Restaurants who responded to the CMA also commented on the strengths of Deliveroo, with some concerned that Deliveroo already held an element of power given its ability to [REDACTED].
189. Restaurants also confirmed that Deliveroo is strong in London in particular, [REDACTED].¹⁵⁷ In certain geographies [REDACTED].¹⁵⁸
190. The CMA notes that Deliveroo and its competitors are spending large amounts in order to attract consumers through marketing, and to fund their expansion. However the CMA notes that Deliveroo [REDACTED].¹⁵⁹
191. The CMA considers that the evidence shows Deliveroo is a strong and expanding business and can be expected to continue growing for the foreseeable future, and expects to continue competing strongly in the supply of online food platforms.

Competitors to Deliveroo

- *Just Eat*

192. Just Eat is the current market leader in the supply of food ordering platforms. Historically in the UK it only acted as a marketplace connecting restaurants to consumers. However, following its late 2016 acquisition of SkipTheDishes, a Canadian food ordering marketplace which had “*developed a technologically-advanced delivery platform*”,¹⁶⁰ Just Eat began to make deliveries for some of the restaurants on its platform in the UK. Although Just Eat has expanded the footprint of its delivery business, it remains at an early stage of development representing only a small proportion of Just Eat’s business.
193. Just Eat benefits from its scale, as the business with the greatest volume of orders in the UK. Just Eat has also had lower operating costs than logistics-enabled food marketplaces as, until recently, it did not operate a logistics

¹⁵⁴ Amazon’s response to section 109 notice of [REDACTED].

¹⁵⁵ Amazon’s response to section 109 notice of [REDACTED].

¹⁵⁶ Amazon document [REDACTED].

¹⁵⁷ Deliveroo’s response to section 109 notice of [REDACTED].

¹⁵⁸ Deliveroo’s response to section 109 notice of [REDACTED].

¹⁵⁹ [REDACTED].

¹⁶⁰ <https://www.justeatplc.com/news-and-media/press-releases/acquisition-skipthedishes>.

network. This has made it very profitable.¹⁶¹ [REDACTED].¹⁶² ¹⁶³ Some third parties told the CMA that Just Eat is particularly strong (relative to Uber Eats and Deliveroo) outside London, [REDACTED].¹⁶⁴

194. However, [REDACTED].¹⁶⁵ ¹⁶⁶ ¹⁶⁷ This was consistent with comments from several third parties that Just Eat's delivery capabilities are inferior to its competitors'.

195. The CMA therefore considers Just Eat to be a reasonably strong competitor to Deliveroo, strengthened by the significant scale of its marketplace, but weakened and differentiated by its relatively underdeveloped courier delivery operations which is reflected in its declining market position.

- *Uber Eats*

196. Uber Eats, like Deliveroo, initially entered the market as a logistics and ordering specialist which only listed restaurants for which it also operated delivery couriers. More recently it has begun to act as a marketplace for restaurants with their own couriers as well.

197. [REDACTED].¹⁶⁸

198. Based on the above, the CMA considers Uber Eats to be a close competitor to Deliveroo, with a similar business model but a smaller scale of operations in the UK.

Other competitive constraints

199. The Parties submitted that Deliveroo faces a competitive constraint from direct ordering, and also from (predominantly pizza) brands on the consumer-side of the frame of reference, which is shown by [REDACTED].

200. In *Just Eat/Hungryhouse*, the CMA found that in practice the constraint from direct ordering was limited despite the fact that in that case most of the restaurants using the platforms had their own delivery capabilities.¹⁶⁹ In the present case, some of Deliveroo's restaurant customers told the CMA that offering delivery would be very difficult, without the scale that aggregators

¹⁶¹ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶² Deliveroo's response to section 109 notice of [REDACTED].

¹⁶³ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶⁶ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶⁷ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶⁸ Deliveroo's response to section 109 notice of [REDACTED].

¹⁶⁹ [Just Eat/Hungryhouse](#), paragraph 6.143.

have. Therefore direct ordering is likely to be a significantly weaker constraint on Deliveroo than it was on Just Eat and Hungry House, given direct ordering from restaurants without their own delivery operations is not an option for consumers.

201. While Deliveroo faces some competition from direct ordering and vertically integrated restaurants, the CMA considers that this may be limited. Online food ordering platforms are a more popular channel than restaurants' websites, and are more convenient for customers.¹⁷⁰ Vertically-integrated food chains provide customers with a more limited selection,¹⁷¹ and is not an alternative for restaurant customers.

Conclusion on competition in the supply of online food platforms

202. The CMA considers that the online food platforms segment is highly concentrated. Deliveroo faces competition from a small number of close competitors (ie Uber Eats and Just Eat), and is overall one of the strongest suppliers in the market and likely to remain so (or if anything, become stronger). The degree of constraint varies geographically and by type of restaurant (with Deliveroo being relatively strong in its selection of restaurant chains).¹⁷²

Impact of Amazon's re-entry

203. The Parties submitted that the UK market for food ordering platforms is highly competitive. The Parties submitted that there are material barriers to entry and [REDACTED].
204. While the CMA accepts that significant effort may be needed to re-enter, the CMA considers that investing \$[REDACTED] million in Deliveroo indicates that Amazon is willing to make the "significant effort" required to re-enter online food platforms, and that by acquiring or investing in an existing online food platform (or specialist logistics provider), Amazon would not need to develop the technology itself.
205. As explained above, although the CMA considers that Deliveroo faces competition from two significant competitors, online food platforms is a concentrated market and there are only three suppliers currently active, one of which, Just Eat, is differentiated by its weakness in providing logistics.

¹⁷⁰ Just Eat/Hungry House paragraphs 4.23.

¹⁷¹ Just Eat/Hungry House paragraphs 4.27.

¹⁷² Deliveroo's response to section 109 notice of [REDACTED].

206. The CMA agrees that there appear to be material barriers to entry in online food platforms in the UK, as discussed further from paragraph 375. In the context of a highly concentrated market with material barriers to entry, entry by a well-positioned new supplier would be expected to substantially increase competition. Amazon (through acquisition or investment of an online food platform or specialist logistics provider) may be particularly well placed to overcome these barriers for a number of reasons:

- (a) **Developing technology for all three sides of the market:** This barrier could be overcome relatively easily, as a non-UK online food platform would already have needed to develop such technology.

Amazon also already operates an online platforms that connect various users, such as Amazon Marketplace, which connects consumers, sellers and logistics in one service. Given its position as one of the largest technology companies (which previously operated in this specific market), it would appear well-placed to use its knowledge and resources to power the development of the necessary technology.

In addition, Amazon has the financial resources to invest in growing its market share and could match (or exceed) the spending of the other players in the market. This was frequently cited by third parties who mentioned the level of capital available to Amazon and how it could use this to invest in branding and advertising. [REDACTED].¹⁷³

- (b) **Developing technology to power an on-demand delivery network:** Again, it would be possible to acquire a company that has already developed this technology, which could then be applied to the UK market (or to the delivery of restaurant food in the case of a specialist logistics provider that may offer on-demand delivery of other products). The Parties have argued that Just Eat is expanding into logistics-enabled services in the UK using technology it acquired when it invested in a Canadian business, Skip the Dishes.

Amazon also already operates a large logistics network, including ultrafast delivery through Amazon Prime Now. As above, Amazon is also likely to have a wealth of knowledge and expertise in delivery, and also has the financial resources to invest in the development of the necessary technology.

- (c) **Attracting customers and restaurants to the platform:** Amazon's knowledge gained from operating Amazon Restaurants could help

¹⁷³ Amazon internal email [REDACTED].

support the development of a new business entering the UK and would benefit from the lessons learned. If Amazon acquired a non-UK online food platform, it would be able to add specific knowledge about the UK conditions to the acquired business's expertise in food delivery (and potential existing relationships with global restaurant businesses);

Amazon has relationships with both sides of the market (ie restaurants and consumers) that it could use to support the growth of an online food platform business. Amazon is popular with consumers and its large existing customer base would also be a benefit given that customer acquisition costs tend to be one of the largest expenditures of online food delivery platforms. Amazon is also increasingly likely to have relationships with restaurants through Amazon Business, which is growing successfully in the UK and is reportedly increasingly selling to food and restaurant companies.¹⁷⁴ These relationships could help Amazon achieve scale and density in the supply of online food platforms.

207. Therefore although Amazon Restaurants failed, the CMA does not consider that this means that Amazon would not be able to re-enter given the advantages available to it and the possibility that it could use these, combined with an acquisition or investment in an existing online food platform or specialist logistics provider, to compete again in the UK. This additional competition would be significant given the limited number of current suppliers.

Conclusion

208. For the reasons set out above, the CMA believes that Amazon may re-enter the supply of online food platforms in the UK and that this re-entry would lead to greater competition, given the current concentration and constraints faced by Deliveroo. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of online food platforms in the UK.

Horizontal unilateral effects – online convenience groceries

209. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹⁷⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA

¹⁷⁴ See article from The Grocer "Is Amazon a threat to the wholesale sector, or does it offer an opportunity" (14 September 2019).

¹⁷⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of online groceries in the UK.

210. The concern under this theory of harm is that Deliveroo and Amazon may become key competitors to each other in the supply of online convenience groceries in the UK. [REDACTED]. A range of other grocery retailers are trialling online convenience groceries propositions (primarily in London) but may not be able to scale their propositions, in particular due to the small number of suppliers of rapid logistics with a wide geographic coverage in the UK. Amazon’s material influence over Deliveroo may allow it to reduce the extent of competition between them, for example by changing their strategies to differentiate their services, relative to what would have happened absent Amazon’s investment.
211. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
- a) Measures of concentration;
 - b) The closeness of competition between the Parties; and
 - c) Competitive constraint from alternative suppliers.

Measures of concentration

Table 2: Forecast shares of supply of online convenience groceries in the UK in 2019, by gross merchandising value

	Shares of supply
Amazon ¹⁷⁶	[50-60]%
Deliveroo ¹⁷⁷	[20-30]%
Combined share of supply	[70-80]%
Just Eat ¹⁷⁸ (partnering with Asda)	[5-10]%
Uber ¹⁷⁹	[0-5]%
Sainsburys	[0-5]%
Waitrose	[0-5]%
Ocado	[0-5]%
Co-op (excluding sales through Deliveroo)	[0-5]%
Beelivery	[0-5]%

Source: Parties’ submission and third party responses

176 [REDACTED].
 177 [REDACTED].
 178 [REDACTED].
 179 [REDACTED].

212. The shares of supply in Table 2 are based on the forecast gross merchandise value of the Parties and their competitors from ultrafast groceries deliveries. These provide an estimate of competition in a market that is still developing, and do not capture the growth and changes in the future. Because of this, the CMA placed limited weight on these static shares of supply. However, these shares of supply appropriately reflect the fact that (i) Amazon's Prime Now is currently the largest UK supplier of online convenience groceries, (ii) Deliveroo has rapidly become a strong competitor in the supply of online convenience groceries in the UK, and (iii) other competitors' propositions are still small.
213. The CMA also considered the number of remaining rivals post-Merger, as a measure of concentration.¹⁸⁰ While many suppliers are trialling online convenience groceries propositions, and will continue to serve consumers in the geographic areas where they are present, to expand they will need to solve the relevant logistics challenges. As described below, all suppliers other than Amazon, Deliveroo and Uber would need to rely on third party last-mile logistics specialists, of which only one (Stuart) is well-placed to support the ultrafast delivery of groceries across substantial parts of the UK.

Closeness of competition

214. In examining the closeness of competition between the Parties, the CMA considered:
- (a) Similarity in the Parties' current service propositions;
 - (b) Similarity in the Parties' future service propositions;
 - (c) Evidence from internal documents; and
 - (d) Third party views.

The Parties' current service propositions

- *Amazon*

215. Amazon currently offers grocery delivery in two ways: Amazon Fresh (which within the UK is only available in London) and Amazon Prime Now.¹⁸¹ These services include products from Amazon (including Whole Foods Market) and from 'Morrisons at Amazon'.

¹⁸⁰ [Merger Assessment Guidelines](#), paragraph 5.3.5.

¹⁸¹ [REDACTED].

216. Amazon Fresh is only available for Prime members. The service provides a big basket shop in scheduled one-hour delivery slots from a range of approximately [redacted] products and requires a minimum order of £40. The average order size for Amazon Fresh is £[redacted], and it is currently only available in Greater London.
217. Prime Now is also only available for Prime members. The service provides delivery within one or two hours (in certain geographic areas), and scheduled delivery in one or two hour windows, with a minimum order of £15 and a delivery fee on orders of under £40. The average order size on Prime Now is approximately £[redacted]. It is available from [redacted] Amazon sites (with a range of approximately 15,000 items) and [redacted] Morrisons stores (with a range of approximately [redacted] items).
218. Amazon's ultrafast delivery capabilities, which underpin the convenience groceries service it can offer its own retail operation and other grocery retailers like Morrisons, [redacted].
- *Deliveroo*
219. Deliveroo offers groceries delivery through a range of partnerships, including [redacted] Co-op stores, [redacted] BP and [redacted] Shell petrol stations and a number of independent convenience stores and off-licences. Deliveroo has an average delivery time of just over [redacted] minutes. Deliveroo submitted that grocery delivery currently accounts for less than [redacted]% of its gross merchandise value through its marketplace, and the service only covers a limited range of stock keeping units.
220. Deliveroo has [redacted]. In the short term, Deliveroo [redacted].
221. Closer to its core food delivery business, [redacted].
222. Deliveroo's delivery capabilities are based on the network of couriers it uses to deliver restaurant food. Deliveroo itself describes this as [redacted].¹⁸²
- *Comparison of the Parties' service propositions*
223. The Parties submitted that the Amazon's grocery delivery service is much slower, uses different delivery vehicles and offers a much larger selection of products such that it is aimed at big basket shopping. The Parties submitted

¹⁸² Deliveroo's response to section 109 of [redacted].

that their current offerings are not meaningful substitutes as they serve different customer needs. This is shown by:

- (a) The average order value for shopping on Deliveroo is £[REDACTED], which is [REDACTED] than the average on Prime Now (£[REDACTED]) or Amazon Fresh (£[REDACTED]);
- (b) Amazon Fresh and Amazon Prime Now offer a wider range of items ([REDACTED] and [REDACTED]-15,000, respectively), compared to Deliveroo which offers a much more limited selection of primarily drinks and snacks (around [REDACTED] items from Co-op), which also tend to be listed for a higher price than you would pay in store;
- (c) The differences in delivery experience, whereby Deliveroo offers an on-demand delivery (unscheduled) that takes on average [REDACTED] minutes to arrive, compared to Prime Now where almost all deliveries are made in scheduled one or two-hour delivery slots, and Amazon Fresh where deliveries are planned well in advance; and
- (d) On the retailer-side, there is limited demand-side substitution as Deliveroo is unable to offer a cold-chain delivery or the ability to deliver larger orders or offer scheduled delivery slots, and acts as a complementary service to their other grocery delivery services, such as that operated by Amazon.

224. Furthermore, the Parties argued that Deliveroo [REDACTED].

225. The CMA considers that Amazon Fresh is significantly differentiated from Deliveroo on the basis of its slower delivery speed, and should be considered to compete in the supply of online groceries, rather than the supply of online convenience groceries.¹⁸³

226. However, the CMA considers that Amazon's Prime Now business competes in the supply of online convenience groceries. While some of its sales are big basket shopping missions, and this is reflected in its [REDACTED] order value relative to Deliveroo, it also makes ultrafast deliveries within [REDACTED] hours (and in as little as one hour) [REDACTED]. Around half of its deliveries are made within around [REDACTED] hours of ordering.¹⁸⁴ Some of these are designed to meet consumers' short term meal needs (such as meal kits or fresh sandwiches), [REDACTED].^{185 186}

227. The CMA therefore considers that Amazon's Prime Now and Deliveroo compete, albeit that Deliveroo offers faster delivery and Prime Now offers a

¹⁸³ This is consistent with the approach taken in [Sainsbury's/Asda](#), which considered Amazon Fresh in the supply of online delivered groceries.

¹⁸⁴ [REDACTED].

¹⁸⁵ Amazon's response to section 109 notice of [REDACTED].

¹⁸⁶ Deliveroo's response to section 109 of [REDACTED].

larger selection of products, and that their propositions are therefore currently differentiated. The CMA has then examined how this competition may be expected to change in the future.

The Parties' future service propositions

228. The Parties [REDACTED]. The Parties' propositions are therefore likely to evolve [REDACTED] over the next few years.

- *Amazon*

229. As described above, Amazon operates two online groceries delivery business models. One of these, Amazon Fresh, [REDACTED]; the other, Prime Now, [REDACTED].¹⁸⁷

230. The Parties submitted that [REDACTED].^{188 189}

231. The CMA accepts that [REDACTED].¹⁹⁰ However, as set out [REDACTED].¹⁹¹ The Parties submitted that this does not reflect how Amazon's thinking has evolved.

232. The CMA notes that Amazon's [REDACTED] plans are still evolving in a number of respects, [REDACTED].¹⁹² [REDACTED].¹⁹³ The Parties subsequently submitted [REDACTED].¹⁹⁴

233. The CMA considers that ([REDACTED]) Amazon has the ability and intention to compete in the supply of online convenience groceries, [REDACTED].

234. [REDACTED].¹⁹⁵

235. Although (unlike Deliveroo's logistics operation) [REDACTED] couriers use cars and vans, [REDACTED].¹⁹⁶ These suggest that Amazon would be capable of adding additional vehicle types such as motorcycles and scooters if it felt this would be advantageous to its supply of online convenience groceries (eg to avoid exposure to congestion charges and to gain more flexibility in traffic).

¹⁸⁷ Amazon's response to section 109 of [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ Amazon's submission of [REDACTED].

¹⁹⁰ Amazon's response to section 109 of [REDACTED].

¹⁹¹ Amazon's response to section 109 of [REDACTED].

¹⁹² Amazon's response to section 109 of [REDACTED].

¹⁹³ Amazon's submission of [REDACTED].

¹⁹⁴ Amazon's response to [REDACTED].

¹⁹⁵ Amazon's submission of [REDACTED].

¹⁹⁶ Amazon's response to Section 109 Notice of [REDACTED].

- *Deliveroo*

236. Deliveroo has recently entered the supply of convenience groceries in the UK through several partnerships, including with Co-op, Shell, BP and local symbol group stores. In a short period it has already built a business area generating over £[redacted] million per year in sales.

237. In May 2019, as part of a strategy review, Deliveroo identified [redacted].¹⁹⁷ The same document proposed an [redacted], identified a range of competitors, [redacted], and [redacted] the future Deliveroo [redacted].

238. Deliveroo developed [redacted].¹⁹⁸

Figure 2

[redacted]

Source: Deliveroo's submission.

239. Through this strategy, Deliveroo plans to [redacted].^{199 200}

240. Deliveroo's [redacted]. Deliveroo forecasted [redacted].²⁰¹ In an appendix to its business case, [redacted].

241. The Parties submitted that Deliveroo [redacted]. However, the documents submitted to the CMA [redacted].²⁰²

242. [redacted], the CMA considers that these documents demonstrate that although Deliveroo is [redacted].

- *Comparison of the Parties' future service propositions*

243. The Parties submitted that Deliveroo's point-to-point delivery prevents it from batching multiple orders, [redacted] relative to Amazon's. Consistent with this, the Parties submitted, Deliveroo's algorithms differ from Amazon's, and are optimised [redacted], whereas Amazon optimises for [redacted]. The Parties also submitted that their different delivery vehicles (Amazon's cars and vans, Deliveroo's bikes) are optimised for each model. Finally, the Parties submitted that they have different picking infrastructures, [redacted], while Deliveroo needs to partner with store partners.

¹⁹⁷ Deliveroo internal document [redacted].

¹⁹⁸ Deliveroo's response to Section 109 of [redacted].

¹⁹⁹ Deliveroo's response to section 109 of [redacted].

²⁰⁰ Deliveroo's response to section 109 of [redacted].

²⁰¹ Deliveroo's response to section 109 of [redacted].

²⁰² Deliveroo internal document [redacted], Deliveroo internal document [redacted], as well as Deliveroo internal document [redacted].

244. The CMA agrees that the Parties currently use different operating models. These reflect the ways each of the Parties have built their logistics platforms from other lines of business (ie Deliveroo’s restaurant food delivery business, and the Amazon.co.uk same-day delivery network, [REDACTED]). The CMA considers that this may result in differentiation in their propositions in future, but does not prevent them from competing in the same market.
245. The Parties submitted that Amazon is focused on delivering a scheduled service for weekly big basket shopping missions, while Deliveroo’s [REDACTED] for missions other than impulse/urgent missions.
246. However, Amazon’s Prime Now service competes to supply groceries rapidly. Furthermore, as described above, [REDACTED].²⁰³ While Deliveroo’s service will focus (at least initially) on supplying convenience groceries on-demand, [REDACTED].²⁰⁴
247. Although Amazon [REDACTED] than Deliveroo, the CMA considers that Deliveroo’s targeting of [REDACTED] demonstrates an intention to acquire a broad selection of products suitable for a range of shopping missions.
248. The Parties both [REDACTED] which will bring them into close competition in the supply of online convenience groceries across a large part of the UK.

Internal documents

249. The Parties submitted that there is no evidence that Deliveroo views Amazon as a potential or actual competitor. [REDACTED]:
- (a) [REDACTED].²⁰⁵
- (b) [REDACTED].²⁰⁶
250. The Parties submitted that these documents merely comprise an early stage scoping attempt, and inconclusive marketing material, and that there are no documents which [REDACTED].
251. The CMA considers that given the nascent nature of the market for online convenience groceries in the UK, and of Deliveroo’s groceries proposition, it is unsurprising that Deliveroo’s internal documents do not do a deep review of Amazon (or any other competitor). However, as described above, [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ Deliveroo’s response to Section 109 Notice of [REDACTED].

²⁰⁵ Deliveroo internal document [REDACTED].

²⁰⁶ [REDACTED].

252. Similarly, while Amazon’s internal documents do not explicitly refer to Deliveroo as a competitor in groceries, [redacted], this is again unsurprising. [redacted] does, however, refer to “[redacted]” from food service companies in ultrafast groceries delivery.²⁰⁷

Third party views

253. The majority of grocery retailers who responded to the CMA’s questionnaire named Amazon as one of their main competitors or potential competitors in the supply of convenience groceries. About half named Deliveroo, with one commenting that “*in the future this could become a greater threat due to large, engaged customer based and operation which is capable of on-demand/ rapid delivery*”. Some grocery retailers were concerned that the Merger could distort the market and have a long term impact on competition, particularly given the formative stage of online convenience groceries.
254. Several grocery retailers told the CMA that they were concerned that using either Amazon or Deliveroo would involve losing control of their branding and customer relationship.²⁰⁸ However, as described below, grocery retailers have few options in terms of logistics partners who would be capable of scaling an on-demand groceries proposition nationally. This lack of options was also raised as a concern, with one grocer concerned that as a result of the Merger, Deliveroo may no longer be available as a potential partner.

Competitive constraints

255. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA considered the competitive constraint provided by alternative suppliers on the Parties for both consumers and grocery retailers.
256. The CMA identified the following online convenience groceries propositions supplied by third parties:
- (a) **Just Eat.** Offers delivery within 1 hour from a small number of Asda stores [redacted].
 - (b) **Uber Eats.** Offers delivery within 1 hour from [redacted] independent and symbol group convenience stores. In October it signed an agreement to add additional stores from Costcutter.

²⁰⁷ Amazon’s submission of [redacted].

²⁰⁸ Some grocery retailers commented that using either Amazon or Deliveroo’s marketplace was an advantage to them as it gives them access to additional customers who they might not otherwise reach.

- (c) **Ocado Zoom.** Offers delivery within an hour (or same day) in West London from a single dedicated warehouse. Deliveries are fulfilled by Stuart.
- (d) **Sainsbury's Chop Chop.** Offers delivery within an hour in London, throughout most of zones 1 and 2. Deliveries are fulfilled by Stuart [REDACTED].
- (e) **Waitrose Rapid.** Offers deliveries within 2 hours or in a same day 1-hour slot from 10 branches in London, Hove and Bath. Deliveries are fulfilled by On the Dot [REDACTED].
- (f) **Co-op.** In addition to its agreement with Deliveroo, Co-op is [REDACTED] offering delivery within 1 hour or 2 hours using several other providers: [REDACTED].
257. The Parties submitted that start-ups such as Homerun (a personal shopper), Beelivery and Grocemanía compete in the supply of online convenience groceries. The CMA has not found evidence that these suppliers operate at scale. Deliveroo's internal documents [REDACTED].²⁰⁹
258. The Parties submitted that Amazon will remain [REDACTED] in the overall online groceries delivery market, and that it will continue to face competition from the incumbent grocery retailers, while Deliveroo will face competition from its food delivery rivals.
259. With the exception of Uber Eats, these competitors' existing propositions in online convenience groceries are trials, with little presence outside London. Several grocery retailers told the CMA that accessing a logistics network capable of cost-effectively scaling their propositions across the UK is a limiting factor in their growth. This issue has been recognised by independent analysts; for example, Mintel notes that existing online convenience grocery propositions have been *"small localised or trial schemes, not on the national level needed to drive a true step change in growth. Indeed even if they were scaled to be national, if that is indeed even possible, the additional costs associated with such services would be unlikely to attract many consumers outside the affluent base who are already most likely to shop online. Partnering with third-party delivery firms, such as Deliveroo, seems a logical solution to expanding instant delivery to a national scale, something we first highlighted as an opportunity back in Mintel's Online Grocery Retailing – UK, March 2017. This is the route the Co-op has taken, again on a small scale, and until its change of direction M&S – and we have seen a host of retailers internationally, particularly in the US, use such businesses to great success. Indeed even Amazon in the UK leverages Prime Now to the benefit of*

²⁰⁹ [REDACTED].

*Morrison's in this way. There are concerns in this area: for one a business must hand over a crucial customer service aspect, the handover, to unknown actors and the impact on stores, where demand would be served, could be difficult to manage. However, the foodservice market has adapted to this, and for many customers there is a clear distinction between the restaurant and the brand of delivery provider.*²¹⁰

260. The CMA therefore considers that the availability of logistics platforms to grocery retailers is likely to be a bottleneck in determining the level of competition in the supply of online convenience groceries in the UK. This is assessed below.
261. The CMA considered evidence on the competitive strength of two categories of providers:
- (a) Logistics-enabled marketplaces, which are capable of providing grocery retailers with access to both a last-mile courier network and a pool of customers (for example, through an e-commerce marketplace). Such suppliers may benefit from indirect network effects, as described above in paragraph 111.
 - (b) Last-mile logistics specialists, which only provide a last-mile courier network.

Logistics-enabled marketplaces

- *Uber Eats*

262. Uber Eats' courier network is similar to Deliveroo's, albeit slightly smaller in scale, as described above in paragraph 196.
263. Several grocery retailers told the CMA that Uber Eats' large customer base in take-away food could make it a credible supplier of on-demand groceries.
264. Uber has already begun to partner with independent and symbol group convenience stores, and in October 2019, Uber announced a partnership with Costcutter. It has plans to continue expanding in the supply of online convenience groceries.
265. The CMA therefore considers that, although its sales are currently low, Uber Eats could be a credible competitor in the supply of online convenience groceries.

²¹⁰ Online Grocery Retailing UK 2019, Mintel, pages 20-21.

- *Just Eat*

266. As described above in paragraphs 192, Just Eat delivers a much smaller proportion of its restaurant food sales than Deliveroo or Uber Eats, as it has a smaller logistics network. Indeed, Just Eat relies on Stuart [REDACTED] of its deliveries. Just Eat told the CMA that [REDACTED].
267. However, several grocery retailers told the CMA that Just Eat's large customer base make it a credible supplier of online convenience groceries.
268. Just Eat has formed a joint venture with Asda, is trialling deliveries from several Asda stores and [REDACTED]. Asda told the CMA that [REDACTED].
269. The CMA believes that Just Eat may grow its logistics network over the next few years. Just Eat may therefore become a credible last-mile logistics provider. However, the CMA believes that (in particular because it relies on a third party supplier) Just Eat is a weaker online convenience groceries platform than Deliveroo, Uber Eats or Amazon.

- *Other logistics-enabled marketplaces*

270. The Parties submitted that they face competition from a range of personal shoppers and other start-ups, such as Homerun, Beelivery and Grocmania. The CMA considers that such businesses are likely to have too little scale to compete effectively with the Parties. The CMA has not identified evidence either in the Parties' internal documents or as part of its market testing that would support a conclusion that these entities could become a material competitive constraint on the Parties in the near future.

Last-mile logistics specialists

- *Stuart*

271. Unlike logistics-enabled marketplaces, Stuart provides businesses with access to its last-mile courier network, therefore enabling grocery retailers to compete in the supply of online convenience groceries themselves. A significant proportion of Stuart's UK income [REDACTED]. Just Eat told the CMA that it uses Stuart [REDACTED], but that it also uses its own delivery network [REDACTED].
272. Several grocery retailers told the CMA that Stuart is the last-mile logistics provider with the greatest scale, geographic reach, cost-effectiveness and service quality. Grocery retailers told the CMA that unlike using a vertically-integrated logistics specialists, Stuart is unable to provide them with access to

a greater pool of customers. However, using Stuart has the advantage of preserving the grocer's control of the customer relationship.

273. The majority of grocery retailers offering online convenience groceries use Stuart to fulfil their deliveries. One of the few grocery retailers which does not currently use Stuart told the CMA that [§].

274. The CMA therefore considers that Stuart's partnerships with grocery retailers will compete with Amazon and Deliveroo in the supply of online convenience grocery delivery, but that it this will be a weaker constraint outside major cities.

- *Other last-mile logistics specialists*

275. Several grocery retailers have trialled other last-mile logistics specialists. However, third parties told the CMA that other providers are significantly inferior to Stuart, for the following reasons:

(a) Other last-mile logistics specialists do not have material scale outside London, and cannot therefore support geographic expansion by grocery retailers' online convenience groceries propositions;

(b) Even within London, other last-mile logistics specialists have worse delivery costs and service levels than Stuart.

(c) Stuart has superior routing and dispatch technology to other last-mile logistics providers.

276. Several former customers of other last-mile logistics specialists told the CMA that they had switched to Stuart.

277. One last-mile logistics specialist itself told the CMA that it did not expect to scale its proposition in convenience groceries.

278. The CMA therefore considers that no other last-mile logistics provider is able to compete closely in the supply of online convenience groceries platforms in the UK to grocery retailers.

Conclusion on competitive constraints

279. The CMA considers that:

(a) Deliveroo and Amazon face competition in the supply of online convenience groceries from Uber Eats, which has a last-mile courier

network similar to Deliveroo's and which can provide grocery retailers with access to customers of Uber's online food platform, across the UK.

- (b) Just Eat is in a weaker position to compete in the supply of online convenience groceries due to its smaller last-mile logistics network.
- (c) Deliveroo and Amazon will face differentiated competition from Stuart (and the online convenience groceries propositions Stuart enables). Grocery retailers using Stuart may be reliant on it as their only credible supplier (other than vertically-integrated logistics providers), this may constrain their ability to scale their propositions geographically. Grocery retailers using Stuart may also find customer acquisition more difficult, given that they will not have access to a customer base equivalent to those of the online food delivery platforms, or Amazon's.
- (d) Other suppliers will not materially constrain Amazon and Deliveroo in the supply of online convenience groceries.

Conclusion on competition in the supply of online convenience groceries platforms

- 280. Many suppliers are trying to react to trends in the groceries sector towards (i) growing demand for convenient online delivery, and (ii) smaller but more frequent shops, replacing weekly big basket shopping. However, grocery retailers are already stretched by their existing efforts to compete in big basket online groceries delivery, and their existing logistics networks cannot support customers' preferences for faster and more frequent online groceries shopping.
- 281. Meanwhile, restaurant food delivery businesses (and Deliveroo and Uber in particular) have rapidly developed significant delivery logistics capabilities in recent years, and are exploring ways in which they can leverage these. These businesses seem to be well-placed to address consumer demand for faster and more frequent online groceries shopping.
- 282. Amazon appears to be one of the few other businesses with the capability to offer rapid delivery of groceries, thanks to its extensive same-day [✂] delivery network.
- 283. The market for the supply of online convenience groceries platforms is nascent, and suppliers are experimenting and innovating with their propositions. Although many grocery retailers are trialling online convenience groceries propositions in London, their ability to scale their propositions to the remainder of the UK is in question. As described below in paragraphs 382 to 384, there are significant barriers to entry (although the CMA considers that

these may be overcome by providers which have scaled logistics offerings in adjacent markets).

284. The Merger would result in the combination of two of the largest and best established suppliers of online convenience groceries. Unlike most of their competitors, each of Amazon and Deliveroo has a well-established platform, and a well-established logistics network. Although there appear to be a number of players active in this segment when the individual grocery retailers are included, most of these have a smaller share of convenience groceries than the Parties and, as explained above, almost all of the Parties' competitors are reliant on a single logistics supplier.
285. The CMA considers that Deliveroo and Amazon, although currently differentiated competitors, have plans to expand their online convenience groceries propositions across the UK, and to develop their propositions further in terms of selection and service, which will bring them into close competition.
286. The Parties submitted that, as Amazon will only own a [X]% stake in Deliveroo, its incentives will be unchanged. However, the CMA considers that there is a realistic prospect that Amazon's investment in Deliveroo ([X]) will incentivise the Parties to compete less closely in the supply of online convenience groceries. For example, Deliveroo and Amazon might change their plans to compete less closely [X].²¹¹
287. Although the Parties will face competition from Uber Eats and Stuart in the supply of online convenience groceries in the UK, other competitors will be limited by their access to scaled last-mile logistics networks and/or their higher customer acquisition costs. The CMA therefore considers that, taken together, the constraint from third parties would be insufficient to mitigate the lessening of competition between the Parties.
288. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of online convenience groceries.

Horizontal unilateral effects – logistics-enabled e-commerce marketplaces

289. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of logistics-enabled e-commerce marketplaces.

²¹¹ The Parties may already have changed their plans to compete less closely. [X].

290. Deliveroo does not currently operate a logistics-enabled e-commerce marketplace but the CMA considered whether its existing courier and food e-commerce assets could make it a strategically important entrant (or partner to a competitor). The CMA, consistent with its established guidance,²¹² assessed whether the Merger leads to horizontal unilateral effects from a loss of actual potential competition by reference to:
- (a) Whether Deliveroo would be likely to expand into a logistics-enabled e-commerce marketplace in the UK absent the Merger; and
 - (b) Whether such expansion would lead to greater competition.
291. The CMA did not consider whether Deliveroo could replicate the full logistics-enabled e-commerce marketplace offered by Amazon. Rather, the concern is whether Deliveroo could provide a logistics-enabled e-commerce marketplace for a selection of non-food products in competition with Amazon. The CMA does not consider it necessary to identify the specific non-food products that might be offered on Deliveroo's marketplace.²¹³
292. The CMA considered whether Amazon could see Deliveroo as a threat and potential competitor (either alone or in partnership) to its logistics-enabled e-commerce marketplace, and that removing this future competitive interaction could be a reason for its investment.²¹⁴

Would Deliveroo become a logistics-enabled e-commerce marketplace?

Online food platforms in general

293. As mentioned in paragraph 71, the CMA observed evidence that suggests food delivery platforms are, in general, well-placed to expand and start offering on-demand delivery of other types of goods, in a way that could lead them to compete with some parts of Amazon's logistics-enabled e-commerce marketplace. This evidence includes:

²¹² [Merger Assessment Guidelines](#), paragraph 5.4.15.

²¹³ It would be possible to hypothesise multiple potential segments where Deliveroo could provide a logistics enabled e-commerce marketplace in competition with Amazon, for example, small electronic equipment, pharmaceutical products, or on an ad hoc basis for high demand new products (e.g. when a new iPhone, new novel by a popular author, or new fashion item is launched). In any of these segments, or indeed many other segments, if Deliveroo were to provide a logistics-enabled e-commerce marketplace, it would compete directly with Amazon's proposition.

²¹⁴ This type of concern is mentioned in the Stigler Committee on Digital Platforms' report, which states that "these companies can then derive superior insights into what firms they should block, which they should buy, and how they should grow strategically." (Market Structure and Antitrust Subcommittee Report, July 2019).

- (a) Online food platforms have a relatively low delivery cost.²¹⁵
- (b) Online food platforms currently support a high frequency of purchases. This means that the platforms have a volume of orders that supports them having a larger and more dense delivery network allowing for a better quality service.
- (c) The views of industry analysts, including a [REDACTED] report that notes “[REDACTED]”,²¹⁶ Citi Bank discussion materials that note “[REDACTED]”,²¹⁷ and a Jefferies Financial Group report that states “[REDACTED]”.²¹⁸ A JP Morgan presentation discusses [REDACTED].²¹⁹
- (d) Amazon internal documents consider [REDACTED].^{220 221 222 223 224}
- (e) International developments show online food platforms moving into adjacent markets. This includes Postmates and DoorDash in the US, Delivery Hero in Europe (which has stated it intends to be “*Amazon but faster*” and that it “*want[s] to become more of a ‘delivery everything’ business*”²²⁵), Swiggy in India,²²⁶ and Glovo in various countries. Glovo in particular already offers fast delivery of many different types of products such as medicines, dry cleaning, flowers and retail goods, as well as grocery items and restaurant food. One Amazon internal email notes that “[REDACTED]”.²²⁷

294. These various sources of evidence show that online food platforms have, and are able to, develop the necessary logistical expertise in order to offer fast delivery of goods in addition to food. As part of their operations, they will also already have a consumer facing marketplace that has third party sellers (restaurants) and high frequency use customer bases, and the data from facilitating these transactions. These features mean that online food platforms already have a number of the features required in order to operate as logistics-enabled e-commerce marketplaces.

²¹⁵ This was discussed in the Parties’ internal documents including in Amazon internal email [REDACTED] and Amazon internal email [REDACTED].

²¹⁶ Amazon’s response to section 109 of [REDACTED].

²¹⁷ Deliveroo internal document [REDACTED].

²¹⁸ Amazon’s response to section 109 of [REDACTED].

²¹⁹ Deliveroo internal document [REDACTED].

²²⁰ For example, Amazon’s response to section 109 notice of [REDACTED].

²²¹ Amazon’s response to section 109 notice of [REDACTED].

²²² Amazon internal document [REDACTED].

²²³ Amazon’s response to section 109 notice of [REDACTED].

²²⁴ Amazon’s response to section 109 notice of [REDACTED].

²²⁵ *‘Delivery Hero pours cold water on talk of counter-bid for rival’* Bloomberg (30 July 2019).

²²⁶ Amazon internal emails discuss [REDACTED].

²²⁷ Amazon internal document [REDACTED].

Deliveroo

295. The Parties submitted that Deliveroo's [REDACTED]. They also submitted that the logistics model Deliveroo [REDACTED].²²⁸
296. The CMA found that Deliveroo's internal documents [REDACTED].²²⁹ ²³⁰ In a further document,²³¹ Deliveroo considers logistics and other delivery [REDACTED]. The CMA also [REDACTED].
297. Given the lack of evidence [REDACTED] and the lack of third party comments in this regard, the CMA does not believe there is a realistic prospect that Deliveroo would become a logistics-enabled e-commerce marketplace and compete closely with parts of Amazon's offering in the foreseeable future. The CMA has therefore not needed to examine the impact of Deliveroo's potential entry.

Conclusion on horizontal unilateral effects

298. For the reasons set out above, the CMA does not believe there is a sufficient likelihood that Deliveroo will expand into offering a logistics-enabled e-commerce marketplace offering a range of food and non-food items in the near future. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of logistics-enabled e-commerce marketplaces in the UK.

Conglomerate effects

299. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, for example because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).²³²
300. Non-horizontal mergers can be considered benign or even efficiency-enhancing (when they involve complementary products), and may not raise competition concerns. However, in certain circumstances, a conglomerate

²²⁸ The CMA notes that international examples and evidence from third parties indicate that there are a range of products aside from hot food where consumers may be willing to pay a premium for fast delivery, and that providing logistics for other products would likely improve the efficiency of Deliveroo's courier network as it would provide further density of orders.

²²⁹ Deliveroo response to section 109 notice of [REDACTED].

²³⁰ Deliveroo internal document [REDACTED].

²³¹ Deliveroo internal document [REDACTED].

²³² [Merger Assessment Guidelines](#), paragraph 5.6.2.

merger can result in the merged entity foreclosing rivals, including through a bundling strategy.

301. In the present case, the CMA has considered whether the Parties could bundle Amazon Prime and Deliveroo Plus by offering Deliveroo Plus to Prime members at a discounted price. Alternatively, the Parties could offer Deliveroo Plus as a free benefit to all Prime customers (likely with a price increase across the Prime subscriber base). The CMA has considered the effect of this strategy on competition in the market for online food platforms.
302. As context, Amazon in the UK currently engages in both pricing strategies. For example, Amazon Music Unlimited is available as a standalone product, and is available at a discount to Prime customers.²³³ This is a mixed bundle. Likewise, Prime Video is available as a standalone product, but is offered free to Prime customers.²³⁴ As such, Prime can be thought of as being tied to Prime Video.
303. Bundled or tied offerings can be beneficial to consumers. If demand is attracted to the combined offering by discounting its price relative to the standalone prices, and the standalone prices are not increased, this means that consumers gain from a joint offering (that is, a mixed bundle or a tied offering). However, a bundled or tied offering could also impede the ability of other firms in the market to compete (eg by foreclosing competitors, and/or raising barriers to entry), and ultimately lead to net price increases.²³⁵
304. The CMA's assessment focuses on a joint offering of Prime and Plus, rather than Prime and Deliveroo's regular non-subscription delivery service (**Deliveroo Core**). The Parties could in theory bundle Prime and Deliveroo Core by offering Prime customers discounted delivery fees each time they order from Deliveroo. The CMA has not focused on this alternative for two reasons. First, [redacted].²³⁶ Second, [redacted]. When customers order using Deliveroo Core, they pay a delivery fee at the point of ordering. Even if this fee was discounted for Prime members, customers would be required to pay a fee each time they ordered, and it would be expected to shift fewer customers away from competing restaurant delivery services than a subscription to Deliveroo Plus (which offers free delivery). Since bundling Prime and Deliveroo Core would be expected to be less effective than bundling Prime

²³³ Amazon Music is distinct from Prime Music, offering a much broader range of songs.

²³⁴ <https://www.amazon.co.uk/gp/help/customer/display.html?nodeId=201994480>.

²³⁵ As set out in Choi, J.P; *Mergers with Bundling in Complementary Markets*, The Journal of Industrial Economics Volume 56 Issue 3, pages 553-577, the discount may only be in relative terms. Here, it is possible that the Parties could theoretically have the incentive to increase Prime prices in order to drive demand to the bundle. This could induce customers who currently use Prime and a rival online food delivery platform to switch to the bundle, and in the extreme, result in the foreclosure of competitors.

²³⁶ Amazon's response to section 109 notice of [redacted].

and Plus, if no competition concerns were found in relation to a Prime/Plus bundle, none would arise in relation to a Prime/Core bundle.

305. The CMA has not assessed the potential for foreclosure of potential competitors to Prime through increased barriers to entry and expansion, because it does not believe online food delivery to be an essential component of any challenger to Prime. Moreover, a potential competitor to Prime could partner with another third party online food delivery supplier (given that no foreclosure concerns arise in relation to these, as assessed below). As such, a competing subscription could include online food delivery through such arrangements, if it were necessary to do so to compete with Prime.
306. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.²³⁷ These are discussed below, beginning with online food platforms.

Ability to foreclose online food delivery platform competitors

307. The assessment of 'ability' tests whether it is *feasible* for the Parties to foreclose competitors by engaging in bundling. That is, is it possible for the Parties to put forward a proposition which would draw sufficient volumes away from competitors in the online food delivery platform market to foreclose them. The discussion is structured by examining:
- (a) First, the degree to which a combined offering (that is, a mixed bundle or a tied Prime and Plus offering) would be feasible and attract demand;
 - (b) Second, the extent to which third party volumes are at risk;
 - (c) Third, the effect of reduced volumes on competitor viability; and
 - (d) Fourth, whether competitors have timely and effective counterstrategies.

Viability of a combined offering

308. Both Parties provided internal documents to the CMA [REDACTED]. These are discussed below.

²³⁷ [Merger Assessment Guidelines](#), paragraph 5.6.6.

309. At the time that Amazon [REDACTED], there is evidence that the Parties considered [REDACTED]:
- (a) Deliveroo [REDACTED].^{238 239}
 - (b) Furthermore, Amazon Restaurants was effectively in a pure bundle with Prime,²⁴⁰ suggesting that Amazon's general strategy in this space involves [REDACTED].
310. After Amazon [REDACTED]:
- (a) Amazon internal emails dated [REDACTED] discuss options to make the company [REDACTED].²⁴¹ [REDACTED].²⁴² Amazon told the CMA [REDACTED].
 - (b) Deliveroo's [REDACTED].²⁴³ An internal email from Deliveroo's CEO dated [REDACTED].²⁴⁴ Deliveroo submitted [REDACTED]. The CMA considers [REDACTED].
311. The Parties submitted that [REDACTED]. The Parties submitted that [REDACTED].
312. As regards transaction specificity, the CMA notes that [REDACTED], no third-party products or services have been added as Amazon Prime benefits since [REDACTED].²⁴⁵
313. However, following Amazon's investment in Deliveroo, which the CMA believes confers on Amazon the ability to exercise material influence over Deliveroo, [REDACTED]. This change in the relationship between the Parties, taken together with the evidence set out above [REDACTED], leads the CMA to consider that there is a realistic prospect that Amazon could combine Prime with Plus or other Deliveroo products.

Potential customer base

314. A common pool of customers is necessary for bundling to be attractive because, if customers only placed positive value on one or other product, the bundle would not attract any demand (unless it were priced at or below the price of the standalone component).

²³⁸ Deliveroo internal document [REDACTED].

²³⁹ Amazon's response to section 109 of [REDACTED].

²⁴⁰ Delivery on larger orders was initially free, although a fee was later introduced.

²⁴¹ Amazon's response to section 109 notice of [REDACTED].

²⁴² [REDACTED].

²⁴³ Deliveroo submitted that [REDACTED].

²⁴⁴ Deliveroo internal document [REDACTED].

²⁴⁵ Amazon's response to the CMA's section 109 notice of [REDACTED]. The CMA notes that Amazon does make third party content available through various of its own benefits, such as Hollywood movies through Prime Video.

315. Deliveroo’s internal documents show that [REDACTED].²⁴⁶ [REDACTED].²⁴⁷ This implies that there is [REDACTED] for Deliveroo Plus to gain [REDACTED] Prime customers, [REDACTED] for Amazon to gain existing Plus customers.
316. Amazon forecasts there to be [REDACTED] million paid Prime subscribers in 2019, and forecasts this to grow [REDACTED].²⁴⁸ Furthermore, Deliveroo expects an increasing percentage of its user base to subscribe to Plus ([REDACTED]% by 2022).²⁴⁹ Amazon’s business case to acquire Deliveroo forecast 2.9 million “*new subscriber additions for Presto*” in 2019 in the UK.²⁵⁰ Thus, the commonality in the user bases will increase in the future.
317. The CMA additionally notes that a discounted Prime/Plus combined offering may attract customers who have a relatively high valuation of one product but low valuation of the other (that is, to the extent that valuations are negatively correlated, the combined offering will be accessed by more customers).²⁵¹
318. The extent to which the combined offering will actually attract demand depends on the extent to which the Parties can profitably offer a deep discount. This is discussed further from paragraph 332.

Depriving competitors of volume

319. The next step is to assess the scale of the demand which the Parties could attract from competitors.
320. Deliveroo’s internal documents demonstrate that [REDACTED]. These documents suggest that [REDACTED]. CMA calculations using the results of a Deliveroo experiment to reveal the level of price sensitivity of its customers suggest [REDACTED].²⁵² ²⁵³ A similar calculation for the addition of a [REDACTED].²⁵⁴ These elasticities

²⁴⁶ Deliveroo’s response to section 109 notice of [REDACTED].

²⁴⁷ [REDACTED].

²⁴⁸ In 2018, [REDACTED] million customers ([REDACTED]% UK households) had a Prime subscription in the UK; Amazon expects its Prime use base to grow to [REDACTED] million in 2022. Source: Amazon’s response to section 109 notice of [REDACTED].

²⁴⁹ Merger Notice, [REDACTED].

²⁵⁰ Amazon’s response to section 109 notice of [REDACTED].

²⁵¹ Further, there may also be potential new customers who value Plus and Prime at less than their current subscription prices, but more than the mixed bundle (or tied offering) price.

²⁵² The experiment tested responses to an increase in delivery fees. The most meaningful elasticity would [REDACTED].

An estimate of the total order price can be obtained by adding [REDACTED], Merger Notice, [REDACTED].

²⁵³ The control group had an estimated average price of [REDACTED]. WASF is a Weighted Average Subtotal Fee added to account for a test conducted in parallel: this was [REDACTED]% of customers and [REDACTED]% (assuming the probabilities of inclusion in either test group were independent), giving a weighted average of £[REDACTED]. The test group had an estimated average price of [REDACTED]. This is a price differential of [REDACTED]%. Normalising the price differential to [REDACTED]% as is conventional for elasticities, and noting a response of [REDACTED]%, we get an estimated elasticity of [REDACTED].

²⁵⁴ The calculation assumes an average order value of [REDACTED], plus a delivery fee of [REDACTED]% of customers and [REDACTED]% of customers as in the variable delivery fee test setup. This yields an average price differential of [REDACTED]%. Normalising this to [REDACTED]%, and noting a responsiveness of [REDACTED]% gives an estimated elasticity of [REDACTED].

relate primarily to [redacted], however Deliveroo's internal documents imply that the elasticities for [redacted].²⁵⁵

321. Increases in Deliveroo's volume of sales may be expected to come partly at the expense of competitors, and partly to represent new volumes as people are attracted into the market. However, evidence suggests that, if Deliveroo were to lower its prices, it would likely attract customers away from its competitors.
- (a) As set out in the assessment of the online food delivery platform market in paragraph 202 above, the CMA considers that customers view Just Eat and Uber Eats to be relatively close alternatives to Deliveroo.
 - (b) Given frequent references in Deliveroo's internal documents about [redacted], it appears that Deliveroo considers that [redacted].²⁵⁶
322. The CMA considered whether any shift of customers away from competitors could be mitigated by customers multi-homing (ie using multiple online food delivery services).²⁵⁷
- (a) If consumers multi-home, a discount may simply incentivise customers to use the Parties' combined offering as well as competitors' offerings. There is evidence that even customers who subscribe to Deliveroo Plus continue to multi-home. Deliveroo's internal documents show that [40–50%] of Plus customers also use Uber Eats, and [40–50%] also use Just Eat.²⁵⁸ However, when we consider volume of orders, Plus customers appear to make [redacted] use of Deliveroo: an Amazon internal document relies on survey results to state that “[redacted]”.²⁵⁹ That is; only [redacted]% of the order volume from customers of Deliveroo Plus goes to competitors.
 - (b) The CMA notes that some of the difference in multi-homing rates between existing Plus and Core subscribers may arise because customers who strongly prefer Deliveroo to competitors are more likely to use Plus, rather than representing a change in behaviour attributable to the subscriber model. However the CMA considers that, intuitively, some of this difference is also likely to represent a change in behaviour attributable to the Plus model because the marginal cost of delivery to Plus customers is

²⁵⁵ Although these elasticities would apply to Deliveroo Core rather than Deliveroo Plus, Deliveroo's response to section 109 notice of [redacted]. This implies that the elasticity for [redacted] customers is sufficiently similar to customers of [redacted] that they can be treated as the same.

²⁵⁶ For example, [redacted].

²⁵⁷ The CMA also considered switching costs and whether these could mitigate any shift of customers.

²⁵⁸ Deliveroo's response to section 109 notice of [redacted].

²⁵⁹ Amazon's response to section 109 notice of [redacted].

zero via Deliveroo but in many cases positive via other online food delivery platforms.

323. Overall, the CMA considers that, while multi-homing may reduce the Parties' ability to attract customers away from competitors, there is some evidence to suggest that the Parties could attract a significant volume of orders away from competing online food delivery platforms.
324. The CMA has previously found that indirect network effects are a relevant consideration in the market for online food platforms.²⁶⁰ These imply that an increase in consumers using the Deliveroo platform via the discounted combined Plus/Prime option would incentivise more restaurants to join the Deliveroo platform, potentially exclusively. This would incentivise even more customers to switch to Deliveroo, and so on. As such, the effect of gaining a small number of customers may be disproportionately large. Ultimately, it is possible that the market could 'tip' towards a single significant platform, which is consistent with Deliveroo stating in its strategy documents that it wants to "[redacted]".^{261 262}
325. There is evidence that economies of density are important in this industry. Deliveroo [redacted].²⁶³ Amazon's [redacted], and Deliveroo [redacted]. Third party views, both competitors and analysts, supported the proposition that if too much volume were lost, competing businesses might become unviable.

Counterstrategies of competitors

326. The CMA notes that even if there is a risk of foreclosure, third parties may be able to execute strategies to protect themselves. The CMA has identified two possible counterstrategies that could be used by competitors unable to cut prices further to remain competitive.
327. First, competitors could produce a competing bundle. The Parties submitted that Uber Eats is part of a broader online offering including ridesharing and other transportation services (including bicycle hire) and can in principle also offer its own bundle with independent services including online food delivery, that Uber's ownership of all services would make a bundle more effective in shifting volumes, and that Uber can share costs between the services.²⁶⁴ This could potentially open the door to a counterstrategy, but this is uncertain.

²⁶⁰ Just Eat Hungry House Merger Decision, paragraphs 6.84-6.85.

²⁶¹ See [redacted].

²⁶² CMA notes low levels of multihoming on the restaurant-side for Deliveroo's platform because of restaurant exclusivity.

²⁶³ For example, Deliveroo's response to section 109 notice of [redacted].

²⁶⁴ [redacted].

328. Second, competitors could partner or merger with a third party. One third party suggested that being given the opportunity for a similar partnership as that between Deliveroo and Amazon would “*maintain healthy competition*”. This suggests that online food delivery platform competitors could seek to partner with firms which have a well-established online e-commerce offering (and vice versa), and that doing so could potentially mitigate any foreclosure risk. However, the CMA considers that it is not clear that there are alternative companies which fit these requirements.²⁶⁵
329. Overall, therefore, the CMA does not believe there is sufficiently strong evidence that such counter-strategies would prevent foreclosure.

Conclusion on ability in relation to online food delivery platform competitors

330. Taking the evidence above in the round, the CMA considers that the Parties would have the ability to bundle the Deliveroo Plus and Prime offering and price it to attract demand, either from existing customers of Deliveroo’s competitors or from new customers of online food platforms. Given the importance of network effects and economies of scale and density, any volume reductions would have the potential to increase competitors’ costs and thereby undermine their ability to price competitively, and potentially to remain viable in the market.
331. As such, the CMA considers that, on a realistic prospect basis, the Parties would have the *ability* to foreclose (potential) competitors to Deliveroo through offering deep discounts on Deliveroo Plus to Amazon Prime customers.

Incentive to foreclose online food delivery platform competitors

332. In this section, the CMA considers whether it would be profitable for the Parties to put forward a tied or bundled offering which could foreclose competitors. This depends on whether the Parties could profitably offer a ‘deep enough’ discount to attract sufficient volumes away from competitors.
333. As Amazon’s investment in Deliveroo does not constitute a full merger of the two businesses, the CMA accepts that it is necessary for Amazon and Deliveroo individually to be at least as well off under the bundling strategy as without it. However, if it were very profitable for one Party, and slightly unprofitable for another, transfers effected through bundling could in principle, make the strategy profitable for both.

²⁶⁵ [X].

334. In the CMA's assessment of incentive, it has focussed on sales volumes and revenues, rather than margins and profits. Using current margin levels may be misleading [REDACTED].²⁶⁶ ²⁶⁷ In addition, considering volumes and revenues is consistent with Amazon's stated strategy of increasing volumes [REDACTED],²⁶⁸ which again may make current margins an unreliable focus.²⁶⁹
335. The CMA has not calibrated a formal model of Amazon's incentive, but instead, has assessed in the round a number of factors which could contribute to an incentive to engage in a bundling strategy. The discussion is structured as follows:
- (a) Marketing synergies arising through the effective promotion of Plus to Prime customers via Amazon's platform;
 - (b) Flywheel effects; and
 - (c) Potential to leverage market power in Prime.
336. Importantly, the CMA notes that it is not necessary for each one of these factors to contribute to a transaction-specific incentive; the Merger only needs to contribute a sufficient change in incentive such that the strategy becomes profitable in the round.

Marketing synergies

337. Acquiring Plus customers through a combined offering with Prime (either as part of a mixed bundle or as a tied product) would imply lower customer acquisition costs for Deliveroo. This is because they benefit from Amazon promoting the combined offering on its platform.
338. Internal documents indicate that marketing costs Deliveroo around £[REDACTED] per new customer per year (£[REDACTED] per month).²⁷⁰ This immediately provides some scope to pass on lower prices to customers of the combined offering with no impact on profitability.
339. The CMA notes that these synergies might be transaction-specific because of Amazon's [REDACTED].²⁷¹ In any event, their presence also reduces the necessary

²⁶⁶ Deliveroo forecasts [REDACTED] "[REDACTED] through 2020". Amazon's response to section 109 notice of [REDACTED]. [REDACTED]. Source: Amazon's response to section 109 notice of [REDACTED].

²⁶⁷ The CMA considers that changes in per-customer profitability as Deliveroo's volumes rise are ambiguous a-priori, but notes Deliveroo's forecast that [REDACTED].

²⁶⁸ Amazon response [REDACTED].

²⁶⁹ The CMA considers that changes in per-customer profitability as Deliveroo's volumes rise are ambiguous a-priori, but notes Deliveroo's forecast that Plus will [REDACTED].

²⁷⁰ The CMA assumes that 100% of this cost is variable; although advertising spending is often bought in blocks, acquiring customers from Amazon may reduce the number of blocks which Deliveroo would have to buy.

²⁷¹ Amazon's response to the CMA's section 109 Notice of [REDACTED].

magnitude of (other) transaction-specific changes in profitability which could ‘tip the balance’ to give the Parties the incentive to bundle.

Flywheel effects

340. The CMA has not seen evidence that, as independently operated products, a change in the price of Deliveroo Plus influences the probability of consumers subscribing to Prime, or vice-versa. However, the CMA notes that Amazon considered that [REDACTED].
341. Amazon’s CEO has described this as follows: “*If you look at Prime Members, they buy more on Amazon than non-Prime members...once they’ve paid their annual fee, they’re looking around to see how can I get more value out of the program? So they look across more categories, they shop more...a lot of their behaviours change...it really is a flywheel.*”²⁷²
342. [REDACTED].²⁷³
343. Amazon used its experience from Amazon Restaurants in the US to infer [REDACTED].²⁷⁴ In particular, they used an estimate that a customer [REDACTED].^{275 276 277}
344. The same document states [REDACTED],²⁷⁸ and over £[REDACTED].²⁷⁹ Thus, a bundled offering appears to allow Amazon to internalise the impact of Plus pricing on the demand for the rest of its services. Indeed, the same document notes that “[REDACTED]”,²⁸⁰ and Amazon’s own figures above are predicated on a forecast of [REDACTED].²⁸¹ The Parties submitted that these figures were prepared in the context of [REDACTED]. The CMA has considered this in paragraphs 355 to 359.
345. Relatedly, a cheaper combined offering could allow Amazon to acquire new customers whose valuations of Prime and Plus are negatively correlated, such that they value the combined offering more than the discounted price, but neither element highly enough at the stand-alone pre-transaction prices.

²⁷² Jeff Bezos in a 2016 Recode interview, as quoted on [Forbes.com](https://www.forbes.com).

²⁷³ Amazon’s response to section 109 notice of [REDACTED].

²⁷⁴ Amazon’s response to section 109 notice of [REDACTED].

²⁷⁵ Using an exchange rate of 0.786130328 for 4 December 2018: <https://www.xe.com/currencytables/?from=USD&date=2018-12-04>.

²⁷⁶ Amazon’s response to section 109 notice of [REDACTED].

²⁷⁷ [REDACTED]. Source: Amazon’s response to section 109 notice of [REDACTED].

²⁷⁸ Amazon’s response to section 109 notice of [REDACTED].

²⁷⁹ The calculation is [REDACTED] customers times [REDACTED].

²⁸⁰ Amazon’s response to section 109 notice of [REDACTED].

²⁸¹ Amazon’s response to section 109 notice of [REDACTED].

346. Overall, the CMA believes Amazon may be able to offset some of the costs of subsidising a discount on Plus via the combined offering through ‘flywheel benefits’.

Leverage of market power in Prime

347. Even were the ‘flywheel benefits’ are not sufficient to cover the discount applied to the combined offering, Amazon could leverage its Prime product in order to fund the discount. In particular:

- (a) Under mixed bundling, Amazon could increase the price of its standalone Prime subscription, and use the additional profit from this to subsidise the price of the bundle.
- (b) In the case where Deliveroo Plus is offered as a free benefit to Prime users, Amazon could increase the price paid by everyone who buys Prime, regardless of whether they actually use the Plus part of the combined offering. If the increase were less than the price of standalone Plus, this would also amount to cross-subsidisation of Plus-Prime user prices at the expense of Prime-only customers.

348. This approach requires Amazon to have market power in Prime. The CMA overall considers that Amazon may have such market power, noting that:

- (a) Its assessment with respect to Amazon’s e-commerce offering reveals that the product currently faces at most diffuse competition from a range of partial alternatives;
- (b) A competitor submitted that bundling together several products has the effect of “*protect[ing] Amazon’s most valuable customers*” from competition and as such “*focusing on a single specific segment misses how Amazon exercises its market power*”;
- (c) Amazon internal documents [REDACTED]; and
- (d) Internal Amazon figures demonstrate that its demand is [REDACTED]: Amazon’s internal analysis implies that [REDACTED]% price rise would induce [REDACTED]% of customers [REDACTED].^{282 283}

349. The CMA therefore believes Amazon could also finance some of the costs of discounting Deliveroo Plus through raising the price of Prime. Doing so could

²⁸² The above [REDACTED].

²⁸³ Amazon also has modelled the impact of increasing UK Prime prices by [REDACTED]%, and forecast a [REDACTED]% membership impact. [REDACTED]. Amazon’s response to section 109 notice of [REDACTED].

impact upon its long run revenue, since higher prices would mean slowing the rate of customer acquisition. This would be offset to the degree that Deliveroo's competitors are foreclosed or significantly weakened, enabling Deliveroo's prices to be increased in future.

350. However, the CMA considers that there is a commitment problem, broadly because if competitors believe Amazon would eventually 'give up' the foreclosure strategy if they remain in the market, then they have an incentive to try to 'ride out' the strategy. This may mean Amazon has no incentive to engage in the strategy unless it can commit to it.
351. Even so, Amazon's business model may have allowed it to develop a reputation as being prepared to sustain such a loss, which might make credible a commitment to the strategy. In particular, [REDACTED].²⁸⁴ Consistent with this, one third party told the CMA that "*in effect, Amazon is subsidising the buyer-side. Although it doesn't fully recoup its costs on the seller side, it is gradually increasing sellers' costs*". Amazon could theoretically engage in other commitment strategies, such as by publicly committing to support low pricing on the combined offering in the knowledge that its customer reputation and profitability in other markets would then be on the line.
352. The CMA notes that particular conditions have to hold for reputational commitment strategies to be credible, and that it has not seen any direct evidence that Amazon is pursuing this approach. On a realistic prospect basis, the CMA has not been able to rule out a credible commitment strategy being available. Overall, the CMA believes that the market power of Amazon Prime may facilitate foreclosure of Deliveroo's rivals.

Contracting difficulties

353. In a full share acquisition, the Parties' post-Merger incentives would be in alignment, as a single merged entity. In the absence of a full merger, the Parties may have differing incentives. Indeed, the Parties submitted that [REDACTED].²⁸⁵ The Parties also submitted that "[REDACTED]".²⁸⁶
354. The Parties accept that [REDACTED].²⁸⁷ Further, the Parties submitted that "[REDACTED]".²⁸⁸ The CMA accepts that there would be difficulties, costs and risks in agreeing

²⁸⁴ Amazon's response to section 109 of [REDACTED].

²⁸⁵ [REDACTED].

²⁸⁶ [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

a suitable set of agreements and that these would likely increase with the extent to which Plus is discounted.

Transaction specificity

355. As discussed above, a bundling strategy could be jointly profitable for the Parties. However, they are not currently engaged in bundling. The CMA has therefore paid careful attention to the effect of the Merger on their incentive to bundle. The Merger could make a difference in that: first, its association with Deliveroo may mitigate [redacted], and second, Amazon would receive a proportion of Deliveroo's profits.
356. On the first point, Amazon did [redacted]. Therefore, the CMA believes the Merger may have removed one of the obstacles to bundling.
357. On the second point, however, Amazon's shareholding in Deliveroo does not increase Deliveroo's incentive to discount Plus through Amazon Prime. The CMA has not seen evidence that [redacted]. Although in principle, it would be possible to devise a compensation structure between the Parties which would make this worthwhile, the CMA has not seen any evidence that [redacted].
358. The Parties submitted a stylised economic model which sought to demonstrate that the impact of mixed bundling on a rival's volumes would be even less than [redacted]% of the impact under a hypothetical 100% acquisition. The CMA considered the model but found that it did not capture key features of the industry and the theory of harm; that a number of untestable assumptions were made; and that the conclusions appeared to hinge on a fragile parameter calibration. The CMA was therefore unable to place any weight on its conclusions.

Conclusion on incentive

359. The CMA has applied its judgement as to whether the Merger-specific change in incentive is sufficiently large to give rise to an overall incentive to engage in the bundling foreclosure strategy. That is, whether the factors above would make it profitable for the Parties to offer a sufficiently deep discount to the combined offering that the scale of volumes denied to competitors would be large enough to foreclose or significantly weaken them.
360. The CMA notes that Amazon's own internal analysis [redacted].
361. Set against this, the CMA considers that:

- (a) Given online food delivery platforms are somewhat differentiated (for example, in key restaurant selection) the discount on Deliveroo Plus would need to be large to foreclose Deliveroo's competitors; and
- (b) The Merger implies Amazon will internalise only a relatively low level (based on its shareholding) of Deliveroo's profit margins, which would be insufficient to make a profit recoupment strategy in the long run profitable, and further insufficient to reduce the difficulties, costs and risks that the Parties face in reaching agreement on a strategy that would provide for the deep discounts needed to foreclose Deliveroo's competitors.

362. In light of these points, the CMA believes that the incentive arising from the Merger to engage in the foreclosure strategy is insufficient to confer a realistic prospect of an SLC.²⁸⁹

Effect on online food delivery platform competition

363. As the CMA has found that the Parties would not have the incentive to engage in these strategies, the CMA has not needed to conclude on their overall effect on competition in the online food delivery platform market.

Conclusion on conglomerate effects

364. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of online food delivery platforms in the UK.²⁹⁰

Behavioural discrimination

365. In simple microeconomic models, where the same set of offers is assumed to be available to all customers, inframarginal customers (customers who would not switch away if prices rose or quality worsened) are protected by competition between suppliers for marginal customers (who are sensitive to price and quality changes). Behavioural discrimination involves suppliers identifying inframarginal customers and tailoring their offers to them by category or by individual, reducing suppliers' exposure to competitive pressure.²⁹¹ At the limit, with perfect information about individuals'

²⁸⁹ Because the CMA found there was no ability to foreclose potential competitors of Prime, it has not needed to conclude on the incentive of this alternative foreclosure strategy on competition.

²⁹⁰ As discussed at paragraph 305, the CMA did not identify competition concerns arising as a result of conglomerate effects in relation to the supply of subscription services either.

²⁹¹ The economic literature typically describes this as 'price discrimination', but the same logic can incentivise suppliers to discriminate by changing other facets of their offering, such as quality, range or service.

preferences, a supplier might in principle charge consumers the maximum that they would be willing to pay, maximising its profits at the expense of consumers.²⁹²

366. Behavioural discrimination is not necessarily anticompetitive or harmful to consumers, and in certain circumstances can be procompetitive (for example, when it supports the existence of markets which would otherwise be unprofitable). Whether behavioural discrimination is anticompetitive depends on the circumstances in which it takes place.
367. The CMA considered whether the Merger might lessen competition between (i) Deliveroo and its competitors in food delivery, and (ii) Amazon and its competitors in logistics-enabled e-commerce marketplaces, by increasing the Parties' incentives to share data which they could use to tailor their competitive offers to customers' individual willingness to pay.²⁹³ In order to assess this, the CMA used the framework of examining the Parties' ability and incentive to engage in behavioural discrimination, and whether this would have an anticompetitive effect.

Parties' submission

368. The Parties submitted that [REDACTED]. The Parties submitted that neither of them has the ability to share customer data [REDACTED].²⁹⁴ Finally, they submitted that neither Party has the incentive as [REDACTED].

CMA assessment

369. Amazon told the CMA that it [REDACTED], however the CMA observes that Amazon [REDACTED].²⁹⁵ The CMA also observed some evidence in Deliveroo's internal documents²⁹⁶ that it [REDACTED]. The CMA believes that although [REDACTED] indicates they may be interested in obtaining further data to improve this.
370. While the CMA acknowledges the Parties' submission [REDACTED], it is not clear that the complexity is such as to remove the ability of the Parties to [REDACTED], provided the Parties had sufficient incentive to do so.

²⁹² This is known as first degree price discrimination.

²⁹³ Illustrative examples of this type of behaviour could include Amazon or Deliveroo adjusting their prices for different consumers, or Deliveroo adjusting the set of restaurants visible to inframarginal consumers to include only more expensive restaurants (from which Deliveroo would receive higher commission revenue per order).

²⁹⁴ General Data Protection Regulation (**GDPR**) regulates the processing (and sharing) of personal data. Personal data can only be processed by a third party under limited circumstances, one such basis being where the data subject has consented to the sharing and processing of their data by a third party.

²⁹⁵ Amazon's response to section 109 notice of [REDACTED].

²⁹⁶ For example Deliveroo's response to Section 109 notice of [REDACTED].

371. With regards to Deliveroo's incentive to share its customer data with Amazon, the CMA considers that the Merger may increase the willingness of Amazon to pay Deliveroo for its data because Amazon would receive a benefit from any payment via its shareholding in Deliveroo. Therefore the Merger may increase Deliveroo's incentive to share its customer data with Amazon. However, the CMA considers that there is little prospect that the benefit to Amazon from Deliveroo's data would be large enough to incentivise such an arrangement.
372. With regards to Amazon's incentive to share its customer data with Deliveroo, the CMA acknowledges that the risk to its reputation and consumer trust (in particular its commitment to a global policy of not selling customer data to third parties) will disincentivise Amazon to share its customer data. The CMA considers that the expected benefit, in the form of Deliveroo increasing its profitability (of which Amazon only holds a minority shareholding), is unlikely to exceed the risk of sharing customer data and the impact this could have on the whole of its business operations. Therefore, the CMA does not believe Amazon would have the incentive to share its customer data with Deliveroo as a result of the Merger.
373. As the CMA has found that the Parties would not have an incentive to share customer data and engage in behavioural discrimination, the CMA has not needed to conclude on the overall effect on this on competition.
374. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of behavioural discrimination in relation to the supply of online food platforms in the UK or in the supply of logistics-enabled e-commerce marketplaces in the UK.

Barriers to entry and expansion

375. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁹⁷ In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years; the CMA has discretion however to consider a longer timeframe, and typically will do so where the theories of harm under consideration are 'dynamic'.²⁹⁸

²⁹⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

²⁹⁸ [Merger Assessment Guidelines](#), paragraph 5.8.11

376. The CMA considers barriers to entry in the supply of online food platforms and online convenience groceries below. The CMA has not needed to consider barriers to entry in the supply of logistics-enabled marketplaces as the merger does not lead to competition concerns in this market.

Online food platforms

377. The Parties submitted there are material barriers to entry and expansion in online food platforms. This includes developing technology for all three sides of the market (riders, restaurants and consumers), developing technology to power an on-demand delivery network and attracting restaurants, consumers and riders to its service, involving significant marketing spend or offering monetary incentives.

378. However, the Parties submitted that there are other potential [redacted] entrants [redacted].²⁹⁹

379. The CMA considers that the need to develop the capability to serve all three sides of the market, including restaurants, consumers and couriers, raises barriers to entry. Relative to incumbents, an entrant would initially have a smaller selection of restaurants to offer to consumers, a smaller consumer base and therefore a lower density of orders through which couriers could be given a sufficient frequency of orders to earn a competitive wage. The CMA considers that, in addition to the factors referred to by the Parties, the indirect network effects and economies of scale and scope present in the market are likely to make it more difficult for entrants to compete effectively with the incumbent players (see also paragraph 324 and 325).

380. The CMA has not observed any evidence that the international food delivery companies mentioned by the Parties intend to enter the UK. Glovo's founder told Sifted last year that he would not enter a market that already has two dominant players: *"If we went to the UK today it would be super tough or impossible to become one of the main food delivery companies. It's a snowball effect; as you don't have the volume, you don't reach the top chains or restaurants, which doesn't give you the growth"*.³⁰⁰ Grab and Swiggy currently operate in Southeast Asia and India respectively, which represent very different jurisdictions to the UK. DoorDash has recently expanded

²⁹⁹ The Parties also [redacted] as potential competitors in online convenience groceries. Both these companies currently have very limited operations and neither were mentioned by any third parties as potential competitors (or as options to provide logistics). Based on the available evidence, the CMA does not believe these companies could provide sufficient entry or expansion to prevent a realistic prospect of an SLC.

³⁰⁰ Sifted article 14 August "overview of Food Delivery Start-ups active in Europe". [redacted].

outside of North America into Australia, and appears to focussing on building up its business there during 2020.³⁰¹

381. For the reasons set out above, the CMA believes that entry or expansion of alternative suppliers would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger in the supply of online food platforms.

Online convenience groceries

382. As described above in paragraphs 259 and 260, the CMA considers that while potential competitors can create local trials of online convenience groceries with relative ease, there are significant barriers to scaling these propositions.

383. This is supported by third party evidence received by the CMA, indicating that barriers to expansion are high. In particular, network effects and economies of scale make operation of delivery services at low volumes unprofitable, and significant investment is required in order to build up a delivery network. Supporting this:

- (a) One grocery retailer told the CMA that an in-house online convenience groceries offering *“wasn’t economically viable to maintain an on-demand delivery fleet at that scale; having dedicated bikes or vans was far too expensive.”* Likewise, the entry and then exit of Tesco indicates the difficulties in achieving a profitable offering.
- (b) Relatedly, another third party told the CMA that *“Finding sufficient scale where order volume solves the challenge of profitability is very hard to do”*, and another competitor told us that *“Traditional couriers such as DPD are not set-up for same-day delivery and the costs are prohibitive”*. This would also apply to a competitor setting up an online food platform.
- (c) A competitor also submitted that developing the technology in-house for an ultrafast food delivery service would be *“very hard”*; likewise that it would be *“very costly”* for a retailer to develop last-mile routing, although this service could be bought in.

384. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger in the supply of online convenience groceries.

³⁰¹ Reuters article [‘DoorDash spreads beyond North America with Australia launch’](#) (4 September 2019).

Third party views

385. The CMA contacted a wide range of customers and competitors of the Parties, as well as companies in adjacent markets, such as logistics and online groceries, and external industry experts, such as market analysts. Third party comments have been taken into account where appropriate in the competitive assessment above.
386. A large number of different third parties raised concerns to the CMA:
- (a) Most of the restaurant customers raised concerns regarding the anticipated strength of Deliveroo following Amazon's investment and the dominant position this could allow Deliveroo to create given the [] they consider they already pay (mentioned at paragraph 188). Competitors of the Parties' online food delivery services also raised concerns regarding the potential competitive advantages Deliveroo would possess if the Parties combined their respective technological and financial capabilities.
 - (b) The majority of the businesses active in online convenience groceries told the CMA that they had concerns regarding the Merger. These centred around the fact that the online convenience grocery market is nascent, and a consequence of Amazon and Deliveroo combining their respective capabilities is that it would distort other parties' ability to compete as the market develops (see paragraph 253).
 - (c) A further concern raised was that Amazon already possess a dominant position in logistics-enabled e-commerce and the Merger could potentially further extend its dominant position, through potential flywheel effect of combining Deliveroo with Amazon's Prime offering, and foreclose e-commerce rivals. This concern is considered at paragraph 305.

Conclusion on substantial lessening of competition

387. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of online food platforms in the UK and in the supply of online convenience groceries in the UK.

Decision

388. Consequently, 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.

389. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.³⁰² The Parties have until 18 December 2019³⁰³ to offer an undertaking to the CMA.³⁰⁴ The CMA will refer the Merger for a phase 2 investigation³⁰⁵ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides³⁰⁶ by 27 December 2019 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Andrea Gomes da Silva
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Competition and Markets Authority
11 December 2019

ⁱ The data provided by Amazon relating to the typical delivery time of Prime Now included both grocery and non-grocery items.

ⁱⁱ [REDACTED].

³⁰² Section 33(3)(b) of the Act.

³⁰³ Section 73A(1) of the Act.

³⁰⁴ Section 73(2) of the Act.

³⁰⁵ Sections 33(1) and 34ZA(2) of the Act.

³⁰⁶ Section 73A(2) of the Act.