

Amazon/Deliveroo: Initial Submission

1. Executive summary

1.1 Amazon intends to make a minority investment in Deliveroo. The Parties activities do not overlap:

(i) Deliveroo is an online restaurant food delivery business. Amazon exited online restaurant delivery in the UK in 2018 and [REDACTED];

(ii) Deliveroo has very small activities in on-demand delivery from convenience stores. This involves a rider delivering a few grocery items for impulse/immediate consumption within 20-30 minutes of an order being placed using Deliveroo's restaurant point-to-point delivery model. Amazon does not provide a competing service. Amazon's grocery delivery is based on cars/vans doing deliveries in one or two hour scheduled windows (not immediately) of a large basket (often full weekly shop based) on a batched point-to-multipoint delivery model.

1.2 The CMA's Phase 1 decision ("Ph1D") does not produce any credible evidence of existing competition between Amazon and Deliveroo. The Ph1D largely focusses on notional loss of potential future competition. But these theories of harm are speculative and not supported by evidence. On the contrary, they are directly undermined by the evidence.

1.3 Amazon is making a minority financial investment which will have a pro-competitive impact on UK online restaurant food delivery. It provides Deliveroo with a fresh source of funding at a level which will allow it to continue to compete with companies such as Just Eat (the leading player in UK online restaurant food delivery) and Uber Eats, both of which have access to significant amounts of capital. (See section 2).

1.4 The investment is a minority investment of only [REDACTED]%, with Amazon entitled to appoint one board director (out of eight). It cannot be expected to result in Amazon exercising control by means of material influence over the shareholders and other highly capable board directors. (See section 3).

1.5 **With respect to online restaurant food delivery**, the Phase 1 theory of harm assumes that Amazon is an important future entrant in the sector in the UK in particular as a result of acquiring a non-UK business or a business which "provides part of the solution". But Amazon [REDACTED] and would [REDACTED]. And in any event, a [REDACTED] % investment would not alter Amazon's incentives [REDACTED]. Key points are as follows (as set out further at Section 4):

(i) Amazon is [REDACTED]

- [REDACTED] The theory of harm is speculative, extrapolating

[REDACTED]

[REDACTED]

Amazon's interest in a minority stake in a restaurant food delivery business

- Even assuming there was a non-UK business with a proposition that could be successful in the UK, it would not need to be acquired by Amazon in order to enter. [REDACTED] demonstrates that it does not bring a "secret sauce" that would ensure the success of a non-UK business entering the UK. [REDACTED]

- Indeed, Amazon exited this service in the UK in November 2018 (and in the US in 2019). Amazon's [REDACTED] provides clear real-world evidence that, while it had an interest in this sector, it [REDACTED] and it came to the view that [REDACTED] – even with all the resources the Ph1D claims put it in a better position than any other potential entrant.¹ It is not [REDACTED] a material competitive threat to Deliveroo.

(ii) **A [REDACTED] % holding has no bearing on [REDACTED]:** The prospect (which [REDACTED]) would not be undermined by a small interest in Deliveroo.

(iii) **In any case, UK online restaurant food delivery is highly competitive.**

1.6 **With respect to groceries**, the Ph1D identifies this as a nascent sector but argues that Amazon and Deliveroo are leading players today and will become important competitors to one another in the future. These conclusions fail to recognise important differences in Amazon's and Deliveroo's respective models and how they can be expected to develop over time. Key points are as follows (**as set out further at Section 5**):

(i) **The Parties are not actual competitors:**

- Their respective offerings to consumers and grocers are fundamentally different and cater for different shopping missions (*i.e.*, on-demand delivery of impulse/immediate consumption items vs full weekly shops delivered in a scheduled window).
- The Ph1D has conflated these offerings and then estimated shares on baseless assumptions.

(ii) **The Parties have fundamentally different operating models, technology and logistics:**

- Critically, serving these different shopping missions requires fundamentally different infrastructure and technology. Each party's infrastructure and

¹ At paragraph 377 to 381 of the Ph1D.

technology is [REDACTED] and each of them would have to make [REDACTED] to move into the other's space. [REDACTED]

(a) Amazon is [REDACTED]

(b) Deliveroo is developing its on-demand delivery network to drive delivery within 20-30 minutes. This uses its point-to-point restaurant network. The on-demand grocery offering for items for impulse/immediate consumption has developed in effect as a "bolt-on" to Deliveroo's restaurant business and only accounts for c. [REDACTED] % of its revenue. Deliveroo's point-to-point network is [REDACTED]

(iii) **A [REDACTED] % holding will have no bearing on this.** Again, the transactions represent a minority investment of [REDACTED] %. Such an investment will not alter Deliveroo's incentives at all [REDACTED] and cannot be anticipated to alter Amazon's incentives and commercial strategy.

(iv) **Each party will continue to face effective competition:** In any case, there would remain strong competition to each party across the spectrum of online grocery as well as from bricks and mortar outlets and click and collect (and similar) developments (see Section 5).

[REDACTED]

2. Rationale

Deliveroo – Amazon is a new funding partner offering

2.1 Deliveroo [REDACTED] to compete with its well-capitalised competitors (i.e. Uber Eats and Just Eat).

2.2 Access to Amazon's [REDACTED] will help Deliveroo compete effectively against well-capitalised Just Eat and Uber Eats (Uber Eats invested close to \$400M in the third quarter of 2019 alone). [REDACTED]

[REDACTED] Deliveroo will benefit from Amazon's general corporate knowledge as Deliveroo grows from a UK start-up to a larger international company, headquartered and founded in the UK.

Amazon – investment opportunity in a fast-growing sector

2.3 Amazon is investing in Deliveroo, because:

(i) Amazon considers that Deliveroo is growing rapidly in an attractive and growing sector; and is led by an exceptional entrepreneur.

(ii) A minority investment [REDACTED]

2.4 The investment is [REDACTED]

[REDACTED] It
[REDACTED] withdrew from the UK in 2018 (and the US in 2019). [REDACTED]

3. Jurisdiction

3.1 Amazon will not be able to exercise material influence over Deliveroo.

3.2 The ability to materially influence the target's policy can arise through: (i) exercising votes at shareholders' meetings, together with, in some cases, additional supporting factors; (ii) influencing the board of the target; and/or (iii) other arrangements.

3.3 Material influence cannot arise simply because Amazon may have a degree of potentially relevant expertise. Rather, the CMA must show that there is an *expectation* that Amazon would be able to influence materially Deliveroo's commercial policy and strategy. There is simply no evidence that Amazon would be able to do this.

No ability to block shareholder or board resolutions

- 3.4 The CMA accepts that Amazon [REDACTED]
[REDACTED]
- 3.5 Instead, the Ph1D considers that Amazon would acquire material influence over Deliveroo as a result of “a combination of mutually reinforcing factors”:
- (i) Amazon’s particular industry knowledge and expertise (as a shareholder);
 - (ii) Amazon’s right to appoint a director with industry knowledge and expertise to Deliveroo’s board;
 - (iii) Amazon’s [REDACTED]
 - (iv) Amazon’s [REDACTED]; and
 - (v) Amazon’s [REDACTED].
- 3.6 Given Amazon’s expected [REDACTED] % shareholding and single director, these factors are insufficient to furnish Amazon with material influence over Deliveroo.³

No material influence at shareholder level

- 3.7 The CMA notes at paragraph 45 of the Ph1D that “*even where 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*”. The CMA then notes a number of factors which it considers provide Amazon with status, industry knowledge and expertise and which are “*relevant for the CMA’s assessment*”. However, the CMA provides no analysis whatsoever as to how or why the factors it identifies can be expected to enable (or even have a realistic prospect of enabling) Amazon to materially influence a policy that would be expected to require a special resolution. This is simply left unaddressed in the Ph1D.
- 3.8 In reality, Amazon would not acquire material influence at the shareholder level. Amazon has a degree of general corporate knowledge regarding running a large company, [REDACTED]
[REDACTED] However:
- (i) Amazon does not have [REDACTED] Deliveroo’s sector (i.e. online restaurant food delivery (the overwhelming focus of Deliveroo’s business) or on-demand delivery of grocery items for impulse/immediate consumption), which would result in it having material influence over Deliveroo’s other shareholders. The knowledge it may have gained via its [REDACTED] Amazon Restaurants business is of limited applicability given that the business [REDACTED]
[REDACTED]. Deliveroo and its competitors have continued to improve their offerings for consumers, couriers and restaurants. Deliveroo and Amazon

³ Were Amazon to acquire control of Deliveroo, Amazon would need to notify the transaction to the CMA and the CMA would have the opportunity to review that transaction then.

operate fundamentally different models and Amazon previously [REDACTED]

- (ii) Deliveroo's other major investors, by contrast, have been shareholders in Deliveroo for a significant length of time and also have relevant expertise gained through their other investments in companies offering similar (or directly comparable) services to Deliveroo (see footnote 13 to the Parties' response to the Issues Letter). These are not institutional investors managing a portfolio of pension fund investments, but are experienced venture capital and private equity investors who take an active approach to managing their investments.
- (iii) Deliveroo's founder and CEO, Will Shu, is also a [REDACTED] shareholder and is recognised as a leader in online restaurant food ordering and the associated on-demand delivery services.

3.9 Although Amazon [REDACTED] is complementary to that of Deliveroo's other shareholders, and has been built in adjacent product segments rather than online restaurant food delivery. As a result, Amazon can be expected to be one voice among many, and it cannot be simply assumed that it will have influence in excess of its level of board representation and voting power, such that it would be able to influence a policy that would require a special resolution. .

No material influence at board level

- 3.10 For the same reasons as set out with respect to Amazon's material influence as relates to shareholders, Amazon, via its board member Doug Gurr, will not be able to exercise material influence as relates to Deliveroo's board.
- 3.11 Amazon will not be in a position to influence either (i) Deliveroo as to the resolutions to be tabled; or (ii) other directors to vote with it to block any resolution. It is simply implausible that Amazon could use its single board vote (out of seven board votes) to dictate the matters to be addressed at a board meeting (or the outcome of board votes). This is especially true when the other board members include: (i) Deliveroo's founder; (ii) highly experienced representatives of venture and private equity capital funds who have a long history both with Deliveroo and with investments in the same and similar sectors; and (iii) an independent director with deep operational experience of running successful online marketplace companies.
- 3.12 Whilst Mr. Gurr has board and operational experience as a general matter, he was [REDACTED]

No material influence through other arrangements

3.13 None of the other arrangements the CMA identifies can be expected to contribute to material influence. [REDACTED]

3.14 Accordingly, the Parties do not consider that Amazon would be expected to exercise material influence over Deliveroo.

4. Online restaurant food delivery services

Overview

4.1 The Ph1D in effect treats Amazon’s minority investment as a *de facto* 4-to-3 merger in online restaurant food delivery, on the basis that Amazon would likely re-enter the UK in the counterfactual. The CMA appears to take the view that the [REDACTED] % investment would preclude what would be otherwise likely re-entry by Amazon in online restaurant food delivery in the UK – in circumstances where it would be the only credible potential entrant. It goes on to characterise online restaurant food delivery as a highly-concentrated oligopoly in which current competition is limited, such that hypothetical re-entry by Amazon (and Amazon alone) would significantly “move the dial”.

4.2 None of these propositions is established. The CMA has not shown that there is an expectation that (i) absent the minority investment Amazon would re-enter (and be the only impactful entrant); (ii) the [REDACTED] % minority investment in Deliveroo means that such re-entry would no longer occur (or would occur on a smaller scale and less aggressively); and (iii) Amazon’s re-entry would have otherwise made online restaurant food delivery substantially more competitive.

4.3 The CMA acknowledges that de novo entry by Amazon would [REDACTED],⁴ and accepts that “*Amazon may not be likely to re-enter this segment by independently developing a full de novo proposition*”, but states “*there are, however, multiple ... routes to enter the market from investing in an online food platform active in another country and expanding...*”. In short, the CMA posits that Amazon would, absent the minority investment in Deliveroo, have acquired a non-UK business and brought it to the UK or that Amazon would enter UK online restaurant delivery by some other (unspecified) means. For this to hold the CMA needs to show that it would be likely that:

- (i) *Amazon would have agreed a transaction with an established player in another jurisdiction or a business which provides “part of the solution”.* However, Amazon [REDACTED] which – like all other operators in the sector – would be likely loss making and

⁴ See paragraph 170 of the Ph1D.

then take on the task and cost of bringing that loss making company to the UK to compete in a highly competitive sector.⁵ There is also no evidence that Amazon

[REDACTED]

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- (ii) *Amazon, with a newly acquired non-UK business (or “part of the solution”), would have the ability and incentive to enter the UK in a substantially more successful way than it had been able to achieve on its previous attempt.* In practice, the Ph1D provides no examples of a business which might be “part of the solution” and concludes that a number of possible targets do not have either the incentive or ability to enter the UK (in large part because of the substantial barriers to entry that the Ph1D identifies). There is also no explanation of how, Amazon’s “expertise” would alter this assessment - its own [REDACTED] clearly shows that it [REDACTED] identified by the CMA in the Ph1D.
- (iii) *The non-UK business that Amazon would acquire would not have entered the UK if it was not acquired by Amazon.* But the Ph1D does not provide any evidence to support the claim that only Amazon could sponsor such entry. In reality, if the UK was attractive and the non-UK business had the core skills to enter successfully – there is no reason to believe that an acquisition by Amazon is the *only* way this entry could occur.
- (iv) *This entry would have resulted in increased competition.* The Ph1D provides no analysis of the likely impact of Amazon’s (hypothetical) entry. Instead simply asserting that it would increase competition. Indeed, the Ph1D’s analysis of the impact of indirect network effects is internally inconsistent.
- (v) *A [REDACTED] % minority investment would have changed Amazon’s incentives. A [REDACTED] % financial investment will not make a material difference to Amazon selecting between multiple different future scenarios,* [REDACTED]

⁵ The CMA suggests that a mere investment in a non-UK business could also have led to entry by that non-UK business into the UK; however, the CMA provides no evidence as to why either: (i) Amazon would, in the context of a mere investment, have been able to influence that non-UK business to do what it would not otherwise do; or (ii) the non-UK business would have provided Amazon with its technology and knowhow so that Amazon could attempt UK entry itself.

[REDACTED]

Amazon is [REDACTED]

Amazon exited online restaurant food delivery in the UK in November 2018 – it has [REDACTED]
in online restaurant food

4.4 It is striking that the Ph1D treats Amazon as a potential entrant even though Amazon [REDACTED] online restaurant delivery service in the UK [REDACTED] for two years, and then choosing to exit. Amazon's [REDACTED] is the clearest possible real-world evidence that it is not easy to "get it right" and execute in this business even with Amazon's resources and recognition. Amazon is just not a potential competitive threat to Deliveroo. There is nothing in [REDACTED] the evidence the CMA purports to rely on in the Ph1D which shows that it would be any more likely to re-enter the UK [REDACTED]. Indeed, since Amazon's [REDACTED], the existing players have developed their propositions and grown their services further (including by offering more services to restaurants). [REDACTED]

4.5 The mere observation that Amazon is an innovator capable of entering new segments is an insufficient basis for an expectation that [REDACTED]. Indeed, the Ph1D notes at paragraph 66 of the Ph1D, that Amazon's internal documents show a [REDACTED]. The Ph1D observes further that Amazon [REDACTED]. The Ph1D in no way explains why it expects that Amazon would now be in a position to address these problems, [REDACTED], or how Amazon could make a meaningful difference to the ability of a new entrant not currently active in the UK to do so.

4.6 Accordingly, as the CMA correctly recognises, Amazon came to the decision to shut Amazon Restaurants, noting that improving its offering would require [REDACTED]

On-demand online restaurant food delivery is [REDACTED]

4.7 A central aspect of the CMA's theory of harm is that on-demand online restaurant food delivery is [REDACTED] important to Amazon. [REDACTED]

██████████ the CMA contends, its re-entry into online restaurant food delivery in the UK is likely.

- 4.8 While the Parties recognise that broader strategic imperatives can justify the CMA drawing inferences about future market behaviour, those strategic imperatives do not support the inferences that the Ph1D seeks to draw. For example, in *PayPal/iZettle* the CMA was able to draw an inference that PayPal would significantly improve its offline payments offering in the counterfactual because it was a strategic priority to provide merchants with “omni-channel” payments solutions (something which the CMA’s decision reports to have been a clear part of the deal rationale). There is no such element in the rationale here.

Amazon is ██████████
██████████

- 4.9 As mentioned above, on-demand online restaurant food delivery ██████████
██████████
██████████
██████████ The CMA’s assertions are entirely speculative with no basis in Amazon’s documents.

Amazon (either organically or in partnership with a hypothetical foreign acquisition or “part of the “solution”) is ██████████

- 4.10 The CMA considers that there are material barriers to entering online restaurant food delivery in the UK, which established restaurant delivery players operating in other countries cannot overcome on their own (even where these have a history of rapid expansion elsewhere). However, the CMA goes on to conclude that Amazon would be “*particularly well placed*” to overcome these barriers. This is ██████████ to develop a successful offering in online restaurant food delivery when, in principle, it had ██████████.

- 4.11 As described in detail in Annex 1, there are significant technological barriers to creating a successful online restaurant food delivery business which a new entrant would need to overcome and which the CMA acknowledges would be “*difficult*” for Amazon to do so. Yet the CMA maintains that Amazon would have, absent a ██████% minority investment in Deliveroo, acquired a non-UK business and then brought it successfully to the UK or otherwise would have acquired a business which was “*part of the solution*” (unspecified) and launched its own business. Each of these scenarios is entirely speculative and unsupported by any evidence.

- 4.12 The Ph1D also identifies multiple commercial barriers related to the three-sided nature of an online restaurant food delivery service. Even if it were to acquire a non-UK business, Amazon ██████████
██████████ The CMA concludes that these barriers are too significant to be overcome by established online restaurant food delivery companies operating outside the UK (e.g., Glovo and DoorDash), but somehow concludes that despite that, and having

██████████, Amazon would nonetheless now be able to overcome those same barriers.

- (i) A new entrant in the UK would need to attract restaurants to its service. This would involve attracting the right type and number of restaurants for a consumer in a given location to have a range of relevant restaurants available to them. This would likely involve charging very low commissions as well as targeting key anchor restaurant chains, all of which is expensive. Without an attractive restaurant selection, a new entrant in the UK could not attract consumers, and without consumers it could not attract restaurants or couriers.
- (ii) A new entrant to the UK would also need to attract consumers to its service to sustain orders in order to retain/attract restaurants and couriers. This would involve significant marketing activity as well as introductory offers, which would likewise need to be funded.
- (iii) Finally, a new entrant to the UK would need to attract couriers to its service. In addition to significant marketing cost, unless/until there are sufficient orders to sustain courier pay at sufficiently attractive levels, the new entrant to the UK would likely need to pay couriers on a less cost efficient basis than incumbent players to ensure they accept and are available for orders. They would then also need to compete with incumbent players in offering other benefits.

4.13 The CMA does not meaningfully address how Amazon, even if it acquired an online restaurant food delivery business active overseas (or “*part of the solution*”), could overcome these commercial barriers when the acquisition target could not. Instead, the Ph1D just asserts that Amazon, through investment in an alternative online restaurant food delivery provider in combination with its previous experience (from its ██████████ Amazon Restaurants operation), financial resources and customer relationships is well placed to overcome these barriers such that it would provide significant competition (i.e., at a level beyond what it was able to previously achieve).

4.14 Moreover, if (as the CMA believes) there are non-UK businesses with core competencies to allow entry to the UK, there is no reason to believe that only acquisition by Amazon can support that entry. Amazon’s ██████████ of its own operations so very recently ██████████

██████████ On the contrary, if the UK is conducive to further entry and a non-UK player has the relevant skills, it ought to be able to find capital from a range of sources. The rapid growth of DoorDash in the US and its entry in Canada and Australia after receiving an influx of capital illustrates the availability of capital. It is fanciful to believe that entry by non-UK players can only occur via an Amazon acquisition.

A [redacted] % holding has no bearing on [redacted]

4.15 Amazon will acquire a [redacted] % stake of Deliveroo. This is insufficient to [redacted]
[redacted]

4.16 Yet the analysis in the Ph1D effectively ignores the central fact that this is a [redacted] % minority investment, and treats the transaction as *de facto* equivalent to a 4-to-3 merger in online restaurant food delivery. The Ph1D in practice adopts a very stark dichotomy, with Amazon’s entry treated as all but certain in the counterfactual (i.e. without the investment) and entirely impossible if the minority investment goes ahead.

4.17 [redacted]
[redacted]
[redacted]

4.18 Instead of engaging on this key issue, the Ph1D very briefly addresses the [redacted] % investment in paragraph 177 of the Ph1D by just stating that a [redacted] million commitment to Deliveroo would be sizeable enough to preclude Amazon from making alternative investments or acquisitions; and that it is a “learning process” such that Amazon “*would therefore not be looking to compete against it*”.⁷ In essence, the Ph1D argues that the minority investment would preclude Amazon both from either buying or investing in an alternative firm that might be used as a vehicle to enter the UK and from entering the UK itself.

4.19 The Ph1D provides no analysis underpinning these conclusions. The logic it puts forward could be applied equally to a 10%, a 20%, a 30%, or a 60% investment in Deliveroo. This cannot be right. There is in practice very significant uncertainty attached to the range of forms of potential future engagement by Amazon. The CMA needs to show how the [redacted] % interest in Deliveroo’s profit materially affect Amazon’s choice between the multiple alternatives open to it, and in particular how it would undermine in its entirety the business case for re-entering UK online restaurant food delivery.

4.20 [redacted]

(i) [redacted]

[redacted]

[REDACTED]

(ii)

[REDACTED]

4.21 At a stretch, the Ph1D theory of harm could perhaps gain some traction in a “state of the world” in which Amazon’s [REDACTED]
[REDACTED]

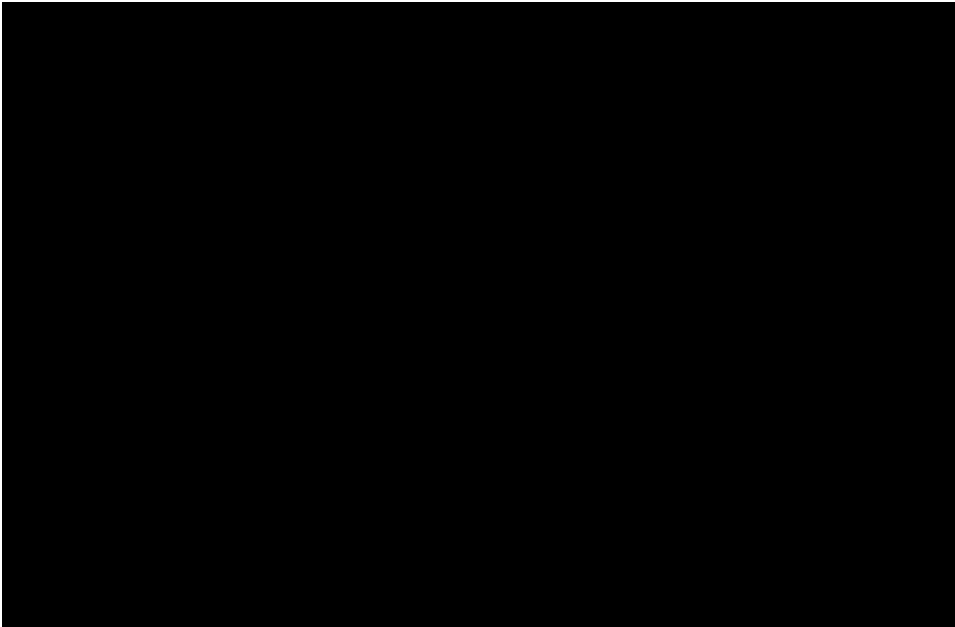
4.22 This proposition is even clearer when it comes to the other aspect of the CMA’s reasoning (that the investment in Deliveroo would preclude Amazon making alternative investments or acquisitions outside the UK that could be used to re-enter the UK). It is not at all clear why a minority investment in a UK-focused business would preclude Amazon from investing in or acquiring an online restaurant food delivery business elsewhere in the world. Such a business would not cannibalise Deliveroo’s sales and the pros and cons of such an acquisition would not be materially changed by the minority investment in Deliveroo. And, after having acquired such a business, the presence of a minority shareholding [REDACTED]
The notion that Amazon would be prevented from such investments because it had already spent [REDACTED] million acquiring a minority investment in Deliveroo does not rest on any commercial or economic logic.

Online restaurant food delivery is already highly competitive and Deliveroo will continue to be disciplined by other at least as well-placed potential entrants

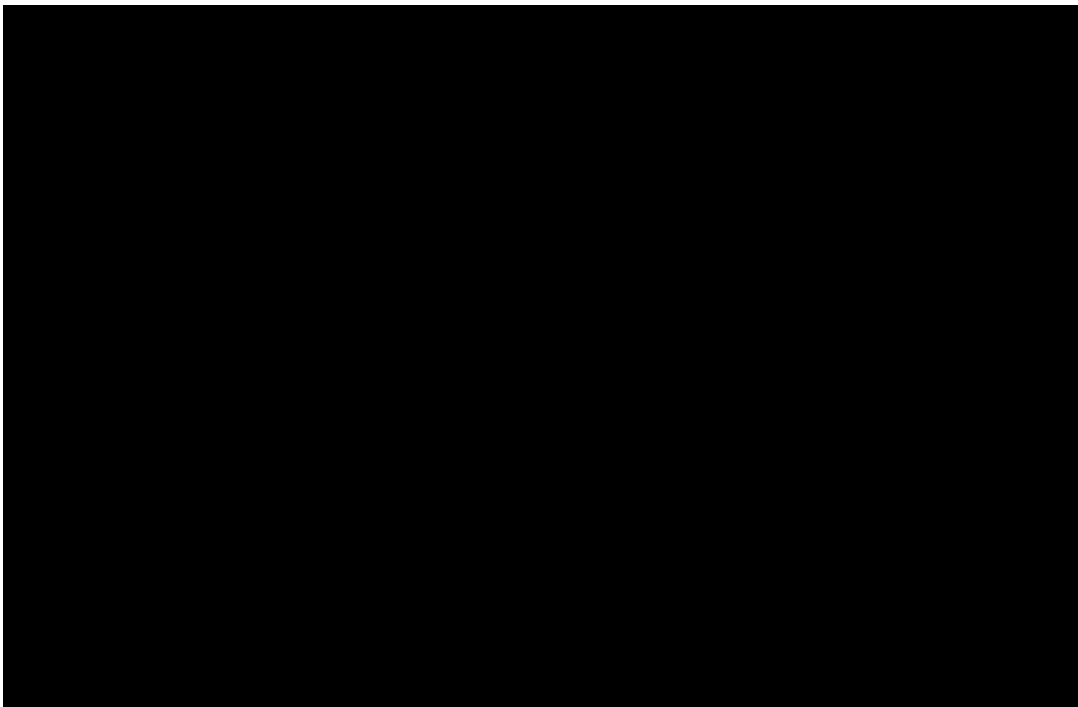
4.23 The CMA characterises UK online restaurant food delivery as a highly-concentrated oligopoly with limited current competition. This is a mischaracterisation of a sector which is growing rapidly as it competes with and displaces incumbent delivery options. The sector is experiencing cut-throat competition (as evidenced by the substantial losses being made by market participants, [REDACTED]).

4.24 An indication of this competition is provided in the chart below which plots the largest app-based players’ volumes as measured by number of monthly active users using App Annie mobile app tracking data. These data illustrate that the sector continues to grow rapidly (implying continued competition to bring in ‘green field’ users and displace incumbent delivery options), and the substantial shifts in share evidence a sustained surge in downloads and usage of [REDACTED] which suggests that Deliveroo, if it is not already, will become the [REDACTED] in the UK.

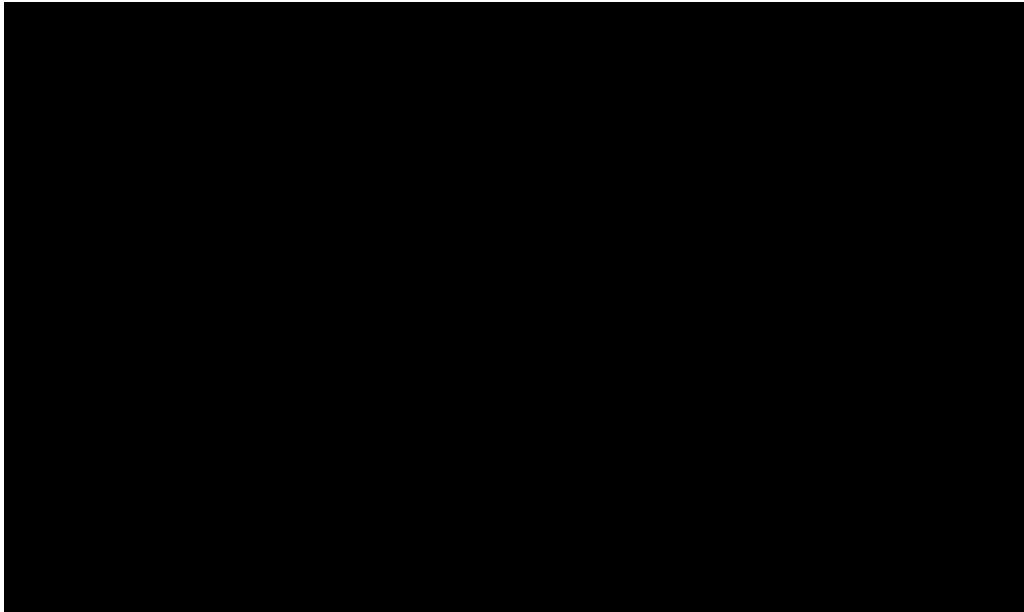
Trends in monthly active users for UK app-based restaurant food delivery services



Trends in monthly downloads for UK app-based restaurant food delivery services



Monthly average share of active users for UK app-based restaurant food delivery services



4.25 Underpinning these trends is a reality of minimal switching costs, and a willingness of consumers to multi-app and switch, between services. The Ph1D acknowledges both that consumer demand is highly price elastic⁸ and that consumers multi-home to a significant extent (something which allows them to easily price compare and switch to whoever offers them a better deal).

4.26 The fact that Deliveroo competes strongly with Uber Eats and Just Eat is evident from the internal documents available to the CMA, with Deliveroo benchmarking against



However, Just Eat is the leader in online restaurant food delivery, and is aggressively growing its logistics capability having acquired the technological capability in the form of the Canadian leader in online restaurant food delivery, Skip-the-Dishes. Combined with its significant capital, existing consumer base, brand awareness, and restaurant relationships, it is quickly building out this capability. Indeed, Just Eat recognises the need to build out its integrated logistic business, stating in its 2018 report that it has “[t]argeted world-class delivery to complement our marketplace. Delivery orders grew 220% year on year to 34.7 million (2017: 10.8 million), achieving revenue of £210.0 million (2017: £68.8 million constant currency)”. These figures imply that its share of in-house delivery has grown from 6% of global order volume in 2017 (10.8m out of 172.4m) to 16% in 2018 (34.7m out of 221m).

⁸ At paragraph 320.

4.27 Whilst the Ph1D acknowledges that the product offerings of the incumbent players have moved closer together (with Uber Eats and Deliveroo offering a marketplace only option, and Just Eat developing logistics capabilities), it is wrong to downplay the competitive constraint of the UK leader in online restaurant food delivery.

The Ph1D does not demonstrate that entry by Amazon [REDACTED] would result in a more competitive outcome

4.28 The Ph1D makes highly speculative forecasts about Amazon's ability and incentives to successfully re-enter online restaurant food delivery in the UK [REDACTED] but dismisses the possibility of entry from other players (e.g., DoorDash, Glovo, Grab and Swiggy) who *have* displayed both a willingness and ability to enter and expand into new geographies.

4.29 The Parties submit that, if it is accepted that Amazon is a potential entrant then there are a range of other credible potential entrants. For example, the US firm DoorDash has grown dramatically to become the leader in the US, displacing incumbents including GrubHub and Uber Eats, and has already entered Canada and Australia (a country competed by Just Eat, Uber Eats and Deliveroo). It is clearly inconsistent for such threats to be dismissed on the basis that "*the CMA has not observed any evidence that the international food delivery parties ...intend to enter the UK*"⁹ when these same factors also apply to Amazon [REDACTED]¹⁰

4.30 Further, the Ph1D does not provide any proper analysis to explain how entry of Amazon would significantly increase competition given the current level of competition and the presence of other potential entrants:

(i) At paragraph 206, the Ph1D simply asserts that entry by a well-positioned new player would be expected to substantially increase competition.

(ii) At paragraph 324, the Ph1D concludes that ultimately, it is possible that the market segment could 'tip' towards a single significant service, which [REDACTED]

4.31 Additionally, the Ph1D does not consider the negative impact on Deliveroo's ability to compete [REDACTED]

[REDACTED] Were Amazon (or a third party acquired by Amazon) to then enter the UK, overcome these barriers to entry, and reach a substantial level of scale and density in online restaurant food delivery (as the CMA theory requires)

⁹ Paragraph 379 and 380.

¹⁰ There are also factual errors in the CMA's reasoning. DoorDash is dismissed on the basis that it has recently entered Australia and is "*focusing on building up its business there*", but the cited article says no such thing. One could equally infer from DoorDash's behaviour (launching in the US before entering first Canada then Australia) that it has a preference for focusing on the Anglosphere which would make the UK a natural next step were an attractive opportunity to present itself.

this would make it even more difficult for Deliveroo to compete against its better capitalised competitors.

The investment is pro-competitive

4.32 As explained in the rationale section, the minority investment is, in fact, pro-competitive. It provides Deliveroo with [REDACTED] from a new investor in order to continue to compete with its well-capitalised rivals.

4.33 Indeed, this seems to be the root of the third-party views identified by the CMA. Far from supporting the CMA’s speculative theory of harm, the third-party views concern “*potential competitive advantages*” that Deliveroo would possess if the Parties combined their respective technological and financial capabilities. Whilst there are [REDACTED]
[REDACTED] it is clear that, far from welcoming the removal of a potential competitor, third parties fear increased competition from Deliveroo as a result of the minority investment.

5. Online convenience groceries

Overview

5.1 The CMA’s theory of harm concerns both existing and potential competition.

5.2 For the CMA’s theory of harm in relation to existing competition to hold it would have to show that there is an expectation that (i) the Parties compete; and (ii) the minority investment means that this competition would be reduced to a substantial extent.

5.3 For the CMA’s theory of harm in relation to actual potential competition to hold it would have to show an expectation that: (i) Amazon and Deliveroo would compete more strongly in the future; (ii) the minority investment means that this would no longer be the case; and (iii) therefore competition would be reduced to a substantial extent.

5.4 None of these propositions holds:

(i) The Parties are not actual competitors. They serve very different shopping missions at very different price points. They also offer grocers very different alternatives as a result of their very different operational models. The ad-hoc shares of supply presented in the Ph1D ignore these differences and result in a flawed picture of the Parties’ positions.

(ii) The Parties’ [REDACTED]
[REDACTED]
[REDACTED] Deliveroo’s operational model is only suitable for on-demand within 20-30 minutes of ordering, [REDACTED]
[REDACTED]

[REDACTED]

- (iii) A [REDACTED] % minority investment would not alter the Parties' incentives. Contrary to a merger, there would be no impact at all on Deliveroo's incentives to compete, while Amazon's incentives [REDACTED], given the extremely limited nature of any arguable overlap with Deliveroo and the small size of Amazon's stake in Deliveroo.
- (iv) The Parties will continue to face effective competition with respect to each of their respective offerings.

The Parties are not actual competitors

The Parties are not actual competitors for consumers – they serve very different shopping missions

5.5 The Parties have fundamentally different offers – not merely “differentiated” as suggested by the CMA. Deliveroo offers an on-demand service optimised for immediate use/impulse missions, while Amazon offers scheduled delivery of weekly shop full baskets. These differences are not simply differences in marketing focus. They stem from the fundamentally different nature of the two Parties' delivery and logistics infrastructures, selections and resulting cost bases.

5.6 Given this, the basis on which the CMA considers Amazon and Deliveroo to compete/overlap is far from clear. The Ph1D takes a highly artificial approach to the market segment definition. Indeed, the CMA previously suggested that Amazon and Deliveroo overlap in “food for now” missions (see Issues Letter) before changing this to “urgent” missions in the Ph1D.

5.7 The differences between Deliveroo and Amazon's (including [REDACTED] offerings are explained in more detail in Annex 2. Deliveroo's service is fundamentally different from Prime Now or Amazon's [REDACTED], contrary to the CMA's position in the Ph1D.

- (i) Deliveroo offers on-demand (i.e., 20-30 minutes from order) delivery of a small order size, from a small selection of items (for immediate use), offered by food providers at a [REDACTED]. The overwhelming majority of orders on Deliveroo are alcohol and snacks: [REDACTED] % of orders are for alcohol¹¹ and [REDACTED] % are non-alcohol. Of the Top 20 non-alcohol items, [REDACTED] are chocolate and snacks, [REDACTED] are soft drinks, [REDACTED] is a toilet roll and [REDACTED] are bakery/milk items.
- (ii) Amazon offers delivery in scheduled windows (i.e., one or two hour slots booked for delivery at a point in the future), of larger orders from a very large range of items, at prices which are competitive with large supermarkets. Amazon's [REDACTED]

¹¹ Alcohol orders includes all age restricted products.

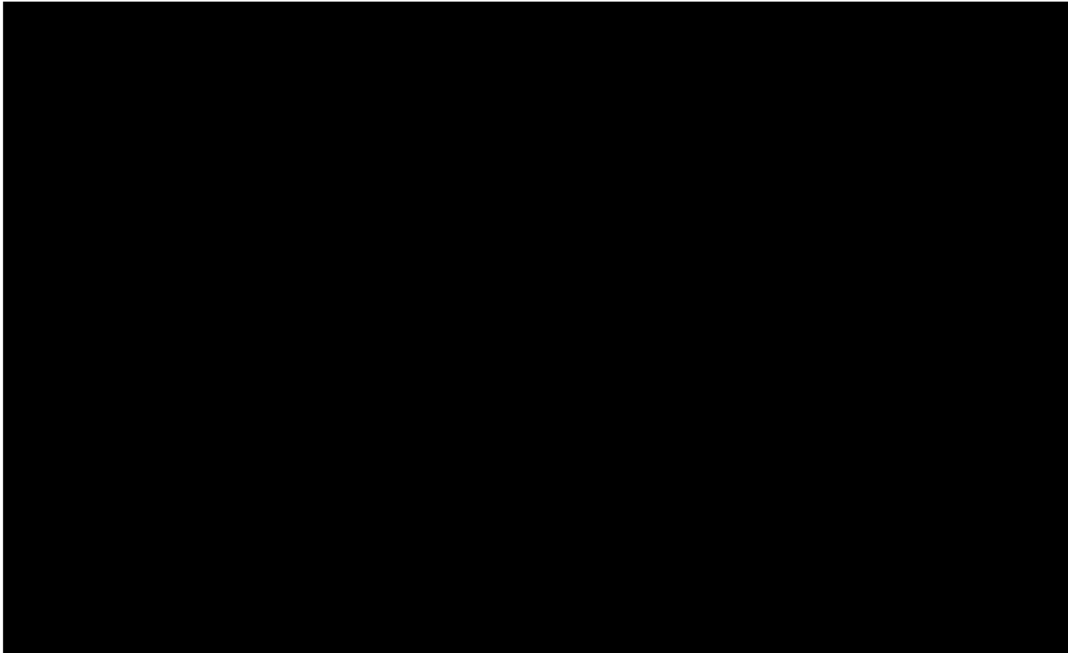
[REDACTED] Amazon is also considering [REDACTED] Only approximately [REDACTED] % of Amazon Prime Now deliveries are currently [REDACTED]

5.8 These differences stem from fundamental differences in delivery models. Deliveroo has essentially used the model it developed for online restaurant food delivery which is optimised for point-to-point delivery of impulse/immediate consumption items [REDACTED]. Amazon's model is fundamentally different, [REDACTED]. The Amazon delivery model requires [REDACTED]

5.9 Illustrating these differences further, Deliveroo delivers very [REDACTED] orders with only [REDACTED] items per order, [REDACTED] % of orders containing one item and [REDACTED] % of orders containing [REDACTED] or fewer items, compared with Amazon's much larger orders.

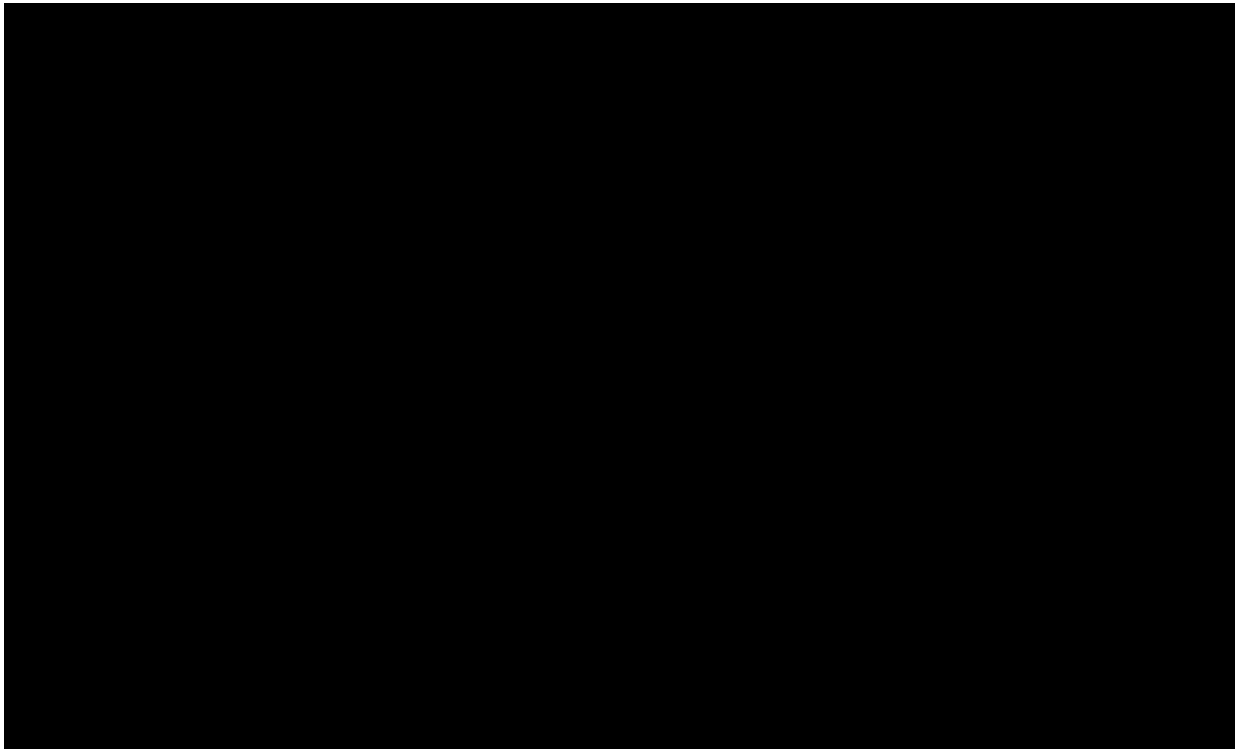
[REDACTED]

Deliveroo delivers very [REDACTED] orders



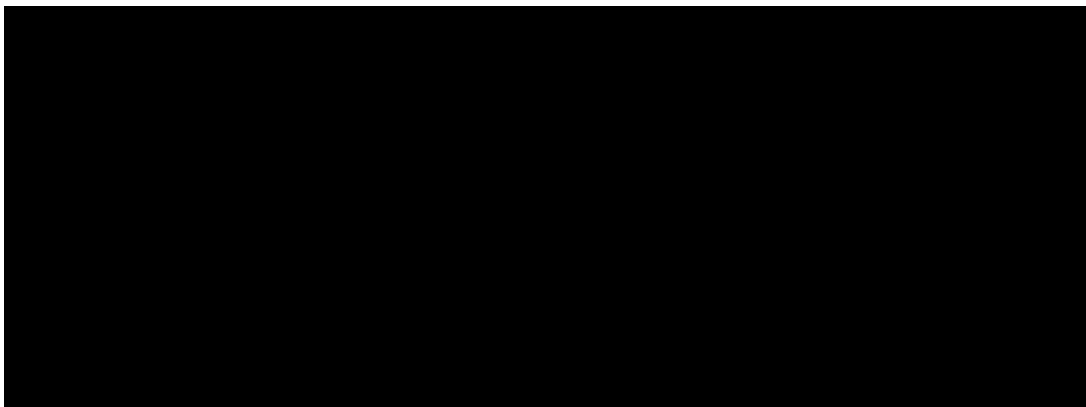
- 5.10 In terms of cash value, [REDACTED] % of Deliveroo orders are below £15 (the Prime Now minimum order value), [REDACTED] % of orders are below £25 and [REDACTED] % are below £40 [REDACTED]
[REDACTED]
- 5.11 In contrast, Amazon Prime Now's average value for orders containing groceries is £ [REDACTED] and its current offer with Morrison's involves average basket sizes of approximately £ [REDACTED]. The current minimum order value for Prime Now is £15.
- 5.12 Because Deliveroo is optimised for providing impulse/immediate consumption items to consumers on demand, [REDACTED]
[REDACTED] This is shown in the charts below which show prices excluding Deliveroo's delivery fee. In contrast, Amazon, which is [REDACTED], offers prices which are competitive with large supermarkets and, [REDACTED], imposes a minimum order size.

Comparison of item prices on Deliveroo (Green) v. Amazon (Orange)



5.13 As the Parties operate very different operational models, the delivery timeframes are, accordingly, very different. Deliveroo optimises to deliver as soon as possible from order, with an average order time of [REDACTED] minutes. Amazon by contrast optimises to [REDACTED] by batching orders and delivering in scheduled slots. [REDACTED]

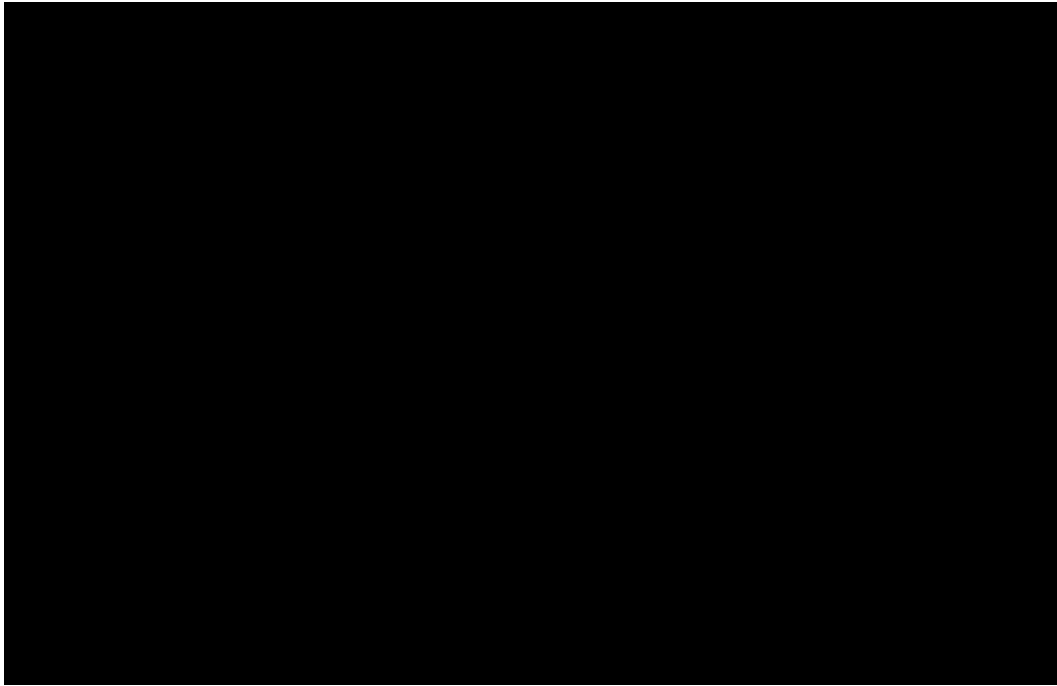
Deliveroo order times



5.14 The [REDACTED] difference in order times is illustrated in the chart below which plots the distribution of Prime Now delivery times and compares them to the absolutely maximum delivery time for Deliveroo of [REDACTED] minutes [REDACTED] and the [REDACTED] minute level below

which almost all Deliveroo orders take place (the green line). █% of Prime Now orders take █ minutes and █% take █ with █% occurring within █ (and those would not typically be delivered in █ minutes). █

Amazon Prime Now order times



5.15 Accordingly, the Parties' offerings are more than simply differentiated. They are fundamentally different and cater for very different shopping missions. Whilst it may be the case (as the CMA suggests) that there is a very small overlap in the types of products listed on Deliveroo and Amazon, these will still be catering for different shopping missions as Deliveroo can get that item to you in 20-30 minutes █, whereas Amazon can get it to you in a 1-2 hour window at comparable prices to the supermarket, provided minimum spend thresholds are met.

The CMA's assumption that 50% of Prime Now sales should be treated as convenience grocery is not evidenced and clearly incorrect.

5.16 The CMA does not provide a definition of what constitutes "convenience grocery" nor does it identify which parts of Amazon's offering it believes compete or overlap with Deliveroo's offering. The framing of the definition has changed over the course of the Phase 1 investigation (from "food for now" in the Issues Letter to "urgent missions" in the Ph1D). What is clear, however, is that even if you accept some narrow frame of reference



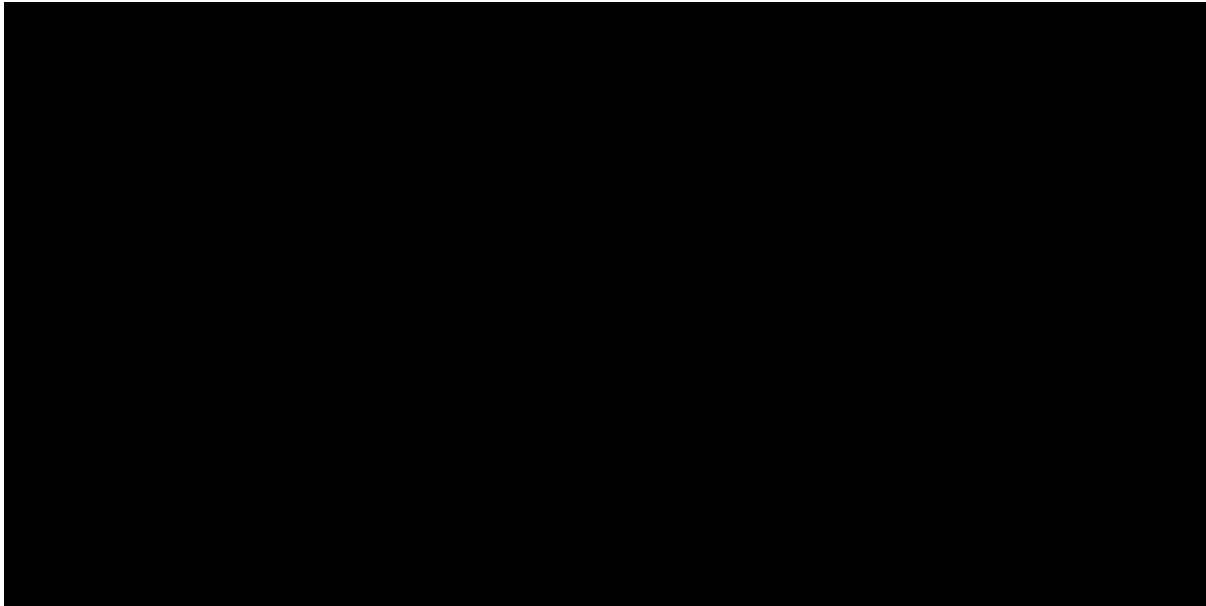
in which the Parties compete (*quod non*) the Ph1D artificially [REDACTED] [REDACTED]
[REDACTED]

- 5.17 When calculating shares of supply, the CMA conflates the two offerings producing wholly unrealistic shares. Stating that “*some Prime Now sales are delivered more slowly than other services and may not constitute convenience groceries deliveries*” the CMA arbitrarily includes 50% of Prime Now sales in its calculation, resulting in an assessment that “*Amazon’s Prime Now is currently the largest UK supplier of online convenience groceries*”.
- 5.18 The 50% assumption is without basis and clearly incorrect. First, approximately [REDACTED]% of Prime Now sales are not groceries at all (such that the CMA is treating approximately [REDACTED]s of Amazon Prime Now grocery sales as “convenience grocery”). Second, this [REDACTED]s figure is completely unsustainable when one considers that only [REDACTED]% of Prime Now orders are [REDACTED]. If one were to include [REDACTED]%, rather than 50%, of Prime Now sales in the calculus conducted by the CMA, there would be a wholly different share of supply picture in which Amazon would be considered at best a peripheral player.
- 5.19 The CMA states that it places limited weight on these concentration measures because this is “*a market that is still developing*”, but the definitional errors which lead to it erroneously identifying Amazon as a market segment leader appear to significantly colour its subsequent assessment and need to be corrected.

Amazon (but not Deliveroo) competes with supermarkets

- 5.20 Amazon sets its prices to be competitive with supermarkets, [REDACTED]
[REDACTED]
[REDACTED] Accordingly, the CMA is wrong to exclude competition from supermarkets from its frame of reference.

[REDACTED]



5.21 The UK supermarkets [redacted] see Amazon as a competitor.

5.22 Supermarkets are willing to work with Deliveroo, as well as Just Eat and Uber Eats, to service shopping missions which they do not otherwise service and which will support [redacted]

Parties are not actual competitors for grocers

5.23 As outlined above, the Parties offer very different propositions, which means they can offer very different services to grocers.

(i) Amazon [redacted] can deliver a full range of goods and offers cold chain capability, a scheduled service and warehousing capabilities.

(ii) Deliveroo's operational model means [redacted]

5.24 Accordingly, the services are viewed as complementary by grocers, exemplified by Morrisons' discussions with Deliveroo and Just Eat, as well as working with Amazon.

Internal papers clearly show neither sees [redacted]

5.25 Deliveroo does not see Amazon as a competitor. [redacted]

[redacted] the grocery landscape is evolving and on-demand delivery is one means by which players can differentiate themselves. Instead, Deliveroo's documents

focus clearly [REDACTED] with Deliveroo benchmarking its activities against these players.

5.26 Similarly, Amazon does not see Deliveroo as a competitor:

- (i) Amazon was not [REDACTED]
- (ii) Deliveroo is [REDACTED]
- (iii) Instead Amazon is [REDACTED] sees its closest competitors in the UK as including [REDACTED]

5.27 At paragraph 252 of the Ph1D, the CMA attempts to explain away the fact that [REDACTED] on the basis that “it has only recently begun to scale its groceries operation” yet the CMA’s theory of harm is based around Deliveroo being one of the largest and most established players in the CMA’s artificial market segment. If Deliveroo were a large and well established player in a market segment which the CMA claims Deliveroo and Amazon have a c.80% share of,

The Parties’ [REDACTED]

The Parties have fundamentally different operating models, technology and logistics

5.28 A key error in the Ph1D is the assumption that one Party could (and would) simply choose to compete more closely with the other Party. This is incorrect because each Party’s operating model, technology and logistics infrastructure is focussed on serving different shopping missions. These fundamental differences mean that the Parties [REDACTED] Competing with the other Party would involve [REDACTED] (which in Deliveroo’s case is [REDACTED], and in Amazon’s case is to focus on a full weekly shop delivered in scheduled delivery windows). The Ph1D provides no credible evidence that [REDACTED].

5.29 In terms of operating models:

- (i) Deliveroo uses [REDACTED]

(ii) Amazon [REDACTED]
[REDACTED]

5.30 In terms of technology:

(i) Each Party [REDACTED] to support their particular model.

(ii) Deliveroo's technology and algorithms [REDACTED]
[REDACTED]

(iii) Amazon's [REDACTED]
[REDACTED]

5.31 In terms of logistics:

(i) Each Party also has [REDACTED]

(ii) Deliveroo uses bikes/scooters to deliver very small orders of impulse/immediate consumption items quickly, taking an order at a time.

(iii) Amazon uses cars/vans to batch orders for [REDACTED] delivery [REDACTED]
[REDACTED]

5.32 In terms of supply chain, Amazon has [REDACTED] warehouses [REDACTED]
[REDACTED] whereas Deliveroo does not.

5.33 Accordingly, it is not the case that either Amazon or Deliveroo could compete more closely with the other simply by [REDACTED]
[REDACTED] The CMA provides no evidence that either party is likely to do so absent the minority investment.

Amazon is [REDACTED]

5.34 [REDACTED]
[REDACTED]

5.35 [REDACTED]

5.36 [REDACTED] Consistent with this, Amazon is considering [REDACTED] The CMA's review in *PayPal/iZettle* can be clearly distinguished: in that review there was a clear commercial necessity to offer an omni-channel service.

5.37 Finally, as developed below, Amazon's incentives are not [REDACTED]

5.38 [REDACTED]

5.39 As explained above, Deliveroo operates [REDACTED]

5.40 [REDACTED]

5.41 Deliveroo has [REDACTED]

[REDACTED]

[REDACTED]

5.42

[REDACTED]

[REDACTED]

5.43

[REDACTED]

[REDACTED]

A [REDACTED] % minority investment will have no bearing on the Parties' activities

Actual competition

5.44 In the online restaurant food delivery context the CMA's discussion of the fact that the transactions will lead to a minority investment (rather than a full merger) was restricted to a single paragraph. In the context of on demand grocery, the issue is not discussed at

all. This is critical, because the CMA's analysis of competitive effects follows a standard horizontal effects analysis which simply cannot be read across to a minority investment.

5.45 Even if you accept that the parties are competitors (which as set out above is clearly not the case), the minority investment would not impact how:

- (i) Deliveroo competes: Unlike a full merger, Deliveroo's incentives will be unchanged. [REDACTED] and will not "internalise" any sales lost to Amazon. As such, its profit maximising incentives will remain identical to the situation prior to the minority investment. Amazon has no ability to impact Deliveroo's pricing or reduce the quality of Deliveroo's service. It is simply unrealistic to assume that other shareholders, including Deliveroo's founder, would accept a sub-optimal competitive strategy that harmed Deliveroo to the benefit of Amazon.
- (ii) Amazon competes: A [REDACTED] % equity stake in Deliveroo does not change Amazon's incentives to compete. In fact, if the Parties' offering were combined (i) Deliveroo is a very different proposition for both consumers and grocers (so diversion ratios would be minimal); and (ii) Amazon could only hope to recapture [REDACTED] % of the value of switches from Amazon to Deliveroo [REDACTED] where Prime Now and Deliveroo arguably overlap. The impact, if any, on Amazon's current competitive incentives would, accordingly, be vanishingly small at most.

Potential competition

5.46 Similarly, even if you accept that Amazon and Deliveroo would move closer together in terms of offerings (*quod non*) the minority investment will not impact how:

- (i) Deliveroo competes: Amazon could not stop Deliveroo developing [REDACTED]
[REDACTED] There is simply no credible basis for assuming that the remaining shareholders would forgo a potential profit opportunity (if one existed) in order to benefit Amazon.¹⁸
- (ii) Amazon competes: As outlined above, Amazon could only hope to recapture [REDACTED] % of the value of switches from Amazon to Deliveroo such that a [REDACTED] % equity stake in Deliveroo does not change Amazon's incentives to compete. Moreover, the CMA is speculating about what may or may not happen in the far future making

¹⁸ In the Ph1D, the CMA refers to [REDACTED]

it impossible to reliably predict a substantial lessening of competition, especially on the basis of a mere [REDACTED] % investment.

Each party will continue to face effective competition

Deliveroo faces strong competition from Uber Eats and Just Eat

5.47 Deliveroo competes with Uber Eats and Just Eat, who employ their restaurant food delivery logistics to offer an on-demand service equivalent to and directly competing with Deliveroo's offering.

(i) Uber Eats is reportedly in discussions with Sainsbury's, BP (whom they partner with in Australia and other geographies) and Shell, and already offers on-demand delivery for Unilever ice creams, certain Nisa locations and other FMCG brands. Uber Eats has considerable experience of partnering with grocery retailers to offer on-demand deliveries through its partnership with Coles in Australia and is likely to further such expertise via its recent acquisition of Cornershop, a grocery delivery service focusing on the Latin American region.¹⁹ Further, Uber Eats has just announced an agreement with Costcutter (CSG) as well as Iceland and Bestway.²⁰ Uber Eats operates in broadly all the same cities as Deliveroo and cannot be considered to somehow have a smaller footprint.

(ii) Just Eat has a partnership with Asda whereby it offers 100 on-demand items, which can cater for impulse/immediate purchases. Just Eat delivers in-store restaurant food (which is being rolled-out to approximately 50 in-store Asda restaurants), as well as a range of drinks/snacks (covering 100 essential lines) from a trial with two Asda stores (Sutton and Fosse Park, Leicester). Just Eat has also had CEO-level meetings with Morrisons.

5.48 The CMA attempts to dismiss the competitive constraint that Just Eat exerts on Deliveroo, in large part by pointing to [REDACTED] Deliveroo internal documents. Since then Just Eat has invested heavily in its own logistics infrastructure, having previously purchased "Skip the Dishes" (a Canadian restaurant food delivery business): it will be able to leverage this company's expertise in logistics/delivery as it continues its rapid build out of its own UK delivery capabilities.

5.49 There is also no basis to portray Deliveroo as one of the "largest and best established players" whilst suggesting other players (Just Eat and Uber Eats, in particular) are engaged in trials. Deliveroo has only recently started listing convenience store partners, in what is a very nascent segment. It has [REDACTED] which is with the Co-Op (which accounted for c. [REDACTED] % of grocery GMV over the last three months. In agreeing this [REDACTED], the Co-op has [REDACTED]

¹⁹ <https://investor.uber.com/news-events/news/press-release-details/2019/Uber-to-Acquire-Majority-Ownership-in-Cornershop/default.aspx>.

²⁰ Article in The Telegraph, 23 October 2019, Uber Eats to 'sell milk, chocolate, butter' with Costcutter tie-up; [https://www.thegrocer.co.uk/online/bestway-teams-up-with-uber-eats-for-delivery-across-81-stores/600411.article?utm_source=Daily%20News%20\(The%20Grocer\)&utm_medium=email&utm_campaign=2019-12-16&c=&adredir=1](https://www.thegrocer.co.uk/online/bestway-teams-up-with-uber-eats-for-delivery-across-81-stores/600411.article?utm_source=Daily%20News%20(The%20Grocer)&utm_medium=email&utm_campaign=2019-12-16&c=&adredir=1); <https://www.ubereats.com/en-GB/london/food-delivery/iceland-express/xTKhcVDIR4uAI9ZuCRzWLQ/>.

[REDACTED]. Uber Eats and Just Eat have the same ability and incentive to grow as Deliveroo and no doubt their internal documents would likewise paint ambitious projections of their activities in this area.

5.50 Deliveroo's internal documents support the fact that it [REDACTED]
[REDACTED]

Amazon faces strong competition from supermarkets

5.51 Amazon is a very small player in online delivery of groceries competing against the major grocery retailers and their online operations, and there is no [REDACTED]
[REDACTED].

A material range of competitors remain

5.52 The Ph1D makes clear that, even on the artificial market segment definition used in the Ph1D, there are a number of providers in addition to the Parties:

5.53 Further, as explained above, there is no basis for considering that Deliveroo, by virtue of [REDACTED] with the Co-Op, is somehow one of the "*largest and best established suppliers*". Additionally, the CMA is wrong to downplay the competitive constraint imposed in particular by Just Eat and the online groceries propositions Stuart enables.

(i) The shortcomings of the CMA's assessment of Just Eat are described above.

(ii) With respect to Stuart (a subsidiary of La Poste) the CMA itself notes that "*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***" (emphasis added). However, the CMA then goes on to conclude a few sentences later that Stuart will be a weaker constraint outside major cities, with no reason given as to why these grocers were incorrect in their assessment of Stuart. This simply does not make sense. Having entered in 2015, Stuart is now active across 34 towns and cities in the UK. By contrast, as the CMA acknowledges, Deliveroo's position in towns and cities outside of London (where Just Eat dominates) [REDACTED].

6. Conclusion

6.1 For the reasons outlined above, the Parties consider that there can be no expectation: (i) that Amazon would acquire material influence over Deliveroo; (ii) or that the [REDACTED] % minority investment could result in a substantial lessening of competition in the UK.