

Completed acquisition by Takeaway.com N.V. of Just Eat plc

Decision on relevant merger situation and substantial lessening of competition

ME/6881/20

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 23 April 2020. Full text of the decision published on 7 May 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. On 31 January 2020, Takeaway.com N.V. (**Takeaway**) acquired Just Eat plc (**Just Eat**) (the **Merger**), when Takeaway's recommended all share offer for the entire issued and to be issued share capital became wholly unconditional. Takeaway and Just Eat are together referred to as the **Parties**.
2. Both Parties are active in the supply of online food platforms. Online food platforms act as marketplaces for takeaway food by connecting participating restaurants with consumers and vice versa. Just Eat operates these services in 13 countries globally including in the UK. Takeaway operates these services in 11 countries globally, but currently does not have a presence in the UK after having ceased providing these services in 2016.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Takeaway and Just Eat is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
4. The CMA has assessed whether the Merger could reduce competition in the supply of online food platforms in the UK. In particular, the CMA considered whether, in the absence of the Merger, Takeaway would have re-entered the supply of online food platforms in the UK; and, if so, whether this would have resulted in a more competitive situation than would exist following the Merger.

5. To this end, the CMA conducted a thorough assessment of the available evidence including, in particular, Takeaway's internal documents relating to its pre-Merger business strategy, financial information, and third party views. Based on the available evidence, the CMA believes that there is no realistic prospect that Takeaway would have re-entered the supply of online food platforms in the UK absent the Merger. On this basis, there is no loss of actual or potential competition between the Parties as a result of the Merger. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**).
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Takeaway is an online food platform based in the Netherlands. It operates in 11 countries globally, but currently does not have any operations in the UK. Takeaway previously operated an online food platform in the UK, but ceased operating this business in August 2016 by selling its local customer and restaurant database to Just Eat. Takeaway's global turnover in 2018 was approximately £212.4 million – none of which was generated in the UK.
8. Just Eat is an online food platform headquartered in the UK, with operations in 13 countries globally. Just Eat's turnover in 2018 was £792 million worldwide and £385.6 million in the UK.

Transaction

9. On 20 November 2019, Takeaway made a recommended all share offer for the entire issued and to be issued share capital of Just Eat. On 20 December 2019, Takeaway revised the terms of the offer. On 31 January 2020, the offer became wholly unconditional in all respects and Takeaway was renamed Just Eat Takeaway.com N.V.
10. The Parties informed the CMA that the Merger was also the subject of review by the Spanish competition authority who cleared the transaction on 19 September 2019.¹

¹ Decision available at https://www.cnmec.es/sites/default/files/2723887_2.pdf. This case was notified as the parties met the threshold of a 30% market share in the relevant geographic market and was cleared as there were no horizontal overlaps or vertical relationships between the Parties.

Rationale

11. The Parties submitted that Takeaway and Just Eat are present in 23 countries around the world, in complementary geographies. They only overlap in one country, which is Switzerland. The Parties further submitted that they aim to ensure that their customers and partner restaurants enjoy the best possible service by sharing their experience and expertise across these different countries.
12. The Parties also submitted that combining their businesses would realise synergies that could not be achieved on a standalone basis. These synergies include operational and technical efficiencies generated by moving to a centralised operating model, marketing efficiencies generated by moving towards a unified brand and procurement benefits in relation to, for example, payment and administrative systems. The Parties have quantified these cost benefits at approximately £18 million per year, four years after completion, with around £9 million expected after the first year.
13. These submissions were supported by the Parties' internal documents.

Procedure

14. The CMA's mergers intelligence function identified this transaction as warranting an investigation. The Parties sent a briefing note to the CMA's mergers intelligence committee on 6 August 2019. While the CMA informed Takeaway.com that it had no further questions on the transaction at that stage, it also noted that the CMA could (in keeping with the position set out in its published guidance) ask further questions or open an investigation at a later stage.² As Just Eat was subsequently subject to a competing offer from Prosus N.V., the CMA did not actively consider further information that came to light about the Takeaway.com/Just Eat transaction until 10 January 2020, when Takeaway.com's offer for Just Eat was declared unconditional as to acceptances. The CMA then called in the case for investigation on 22 January 2020.

Jurisdiction

15. Each of Takeaway and Just Eat is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.

² [Guidance on CMA's Merger Intelligence Function \(CMA56\)](#), updated 5 September 2017, paragraph 16.

16. The UK turnover of Just Eat exceeds £70 million (see paragraph 8), so the turnover test in section 23(1)(b) of the Act is satisfied.
17. The Merger completed on 31 January 2020. The four-month deadline for a decision under section 24 of the Act is 15 June 2020, following extensions under section 25(2) of the Act.
18. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 20 March 2020 and the statutory 40 working day deadline for a decision is therefore 19 May 2020.

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.³
21. Currently, Takeaway has no assets, customer base, relationships with restaurants or courier fleet in the UK. However, 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. In particular, the CMA considered whether, absent the Merger, Takeaway would have re-entered the market for online food platforms in the UK, either organically, or by merging with or acquiring an alternative provider to Just Eat.

Parties' submissions

22. The Parties submitted that the relevant counterfactual against which to assess the Merger is the pre-existing competitive conditions. The Parties further

³ [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).

submitted that, absent the Merger, there was no realistic prospect that Takeaway would have re-entered the market for online food platforms in the UK, either organically, or by merging with or acquiring an alternative provider to Just Eat.⁴

23. In particular, the Parties submitted the following reasons for Takeaway not entering the UK market:

Takeaway had already entered and exited the market in 2016

24. Takeaway began operating an online food platform in the UK in 2008. However, this business was persistently loss-making and never became one of the top three players (according to its own intelligence) in what appeared to be a highly competitive UK market. Therefore, Takeaway closed its UK operations in August 2016.

Takeaway did not intend to enter the market organically

25. Typically, Takeaway does not enter national markets organically. It prefers to launch in new countries through acquisitions. In the last two years, Takeaway has entered Bulgaria, Romania and Israel by purchasing BGMENU.com, Oliveira.ro and 10bis.co.il respectively, all of which are established local players. According to Takeaway, this is mainly because organic growth in this sector is difficult, as was evidenced by its earlier entry in the UK. In Takeaway's view, even early-movers face difficulties in scaling their businesses and in earning profits without large investment.⁵ If a player enters second then costs such as marketing and discounts are higher in order to close the gap. Therefore, organic entry into this market is generally not an attractive option for Takeaway.
26. In this context, Takeaway also submitted that there are high barriers to entry and that it is not particularly well-placed to overcome such barriers. In particular, it cited the following reasons:
- (a) Takeaway does not consider it attractive to enter the UK food delivery market independently as it has no particular technical, reputational or

⁴ The Parties further submitted that the relevant pre-existing conditions of competition are subject to the CMA's final findings in *Amazon/Deliveroo*. [Merger Assessment Guidelines, paragraphs 4.3.25-27](#) set out that the CMA will consider whether a transaction under review creates the realistic prospect of an SLC, and would be likely to consider whether the statutory test would be met whether or not the parallel transaction proceeds. In this case, the CMA has not had to consider whether the Amazon/Deliveroo transaction may proceed because the Merger would not raise competition concerns (for the reasons set out in this decision) on either basis.

⁵ Takeaway submitted that, for instance, Deliveroo made a loss of £232m in 2018 despite a 72% increase in sales and Uber's most recent results show that investments in its food delivery segment had a significant negative effect on its bottom line.

financial advantages. Takeaway noted high required investments and a low probability to build up a scalable and successful operation;

- (b) Takeaway has no brand recognition or customer base in the UK and would incur particularly high costs in developing a user base;
- (c) Takeaway has no existing relationships with UK restaurants and no UK courier fleet; and
- (d) Takeaway's knowledge of the UK market is out-of-date. It has no particular insight into local business conditions.

Takeaway did not intend to acquire another competitor or similar business

27. Takeaway submitted that there was no prospect of Takeaway acquiring another competitor after its exit from the UK in 2016. There was also no prospect of it re-entering the UK market by investing in a business that provides part of an overall solution and then expanding its capabilities to become an online food platform, as the expense required to reach sufficient scale and overcome the other barriers to entry would be prohibitive for a business such as Takeaway.

CMA's assessment

28. The CMA assessed whether there was a realistic prospect of Takeaway re-entering the UK market by considering (i) whether Takeaway had existing plans to enter and (ii) whether Takeaway would be well placed to overcome entry barriers.

Takeaway's plans

29. The CMA notes that the fact of Takeaway's previous exit from the UK and its stated preference (and practice) for entering markets via acquisition would not, by themselves, establish that Takeaway would not have entered the UK organically.
30. The CMA considers that Takeaway's internal documents are liable to provide the best available evidence in relation to Takeaway's plans in relation to the UK food delivery market. The CMA therefore reviewed significant volumes of internal documents, obtained using its statutory information-gathering powers, relevant to Takeaway's rationale for the Merger, as well as the Parties' commercial strategies absent the Merger. The CMA also gathered evidence from various third parties active in the restaurant delivery sector, including customers and competitors.

31. Takeaway's internal documents confirm that it was not actively considering re-entry in the UK market, either organically or by acquiring another market participant. The CMA has found only one document that could conceivably suggest that re-entry was under consideration, stating that: [REDACTED]. However, even that document further states that: [REDACTED].⁶ The CMA also notes that this is not a recent document (from 2016), with there being no suggestion of re-entry in more recent documents, and that the statement is only a high-level comment, and therefore doesn't suggest any detailed consideration of re-entry. The internal documents also indicate that Takeaway saw in Just Eat the ability to continue its global consolidation and enter new markets, including the UK, by acquiring a market participant with an established presence (consistent with Takeaway's explanation of its broader commercial strategy).
32. The CMA also tested with third parties, including competitors and large restaurant chains, whether they were aware of any plans of Takeaway re-entering the UK market. The CMA's third party investigation showed that none of these third parties were aware of any such plans.

Takeaway's market position

33. In its Phase 1 decision in the anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo (**Amazon/Deliveroo**),⁷ the CMA noted that the food delivery market is characterised by material barriers to entry, including the need to build relationships with restaurants, couriers and consumers, and to develop the necessary technology to power the logistics. The CMA has therefore considered whether Takeaway would be well placed to overcome these barriers and enter the UK food delivery market.
34. The CMA is of the view that Takeaway has the necessary technology and logistics expertise, on account of the logistics networks it has in place in 13 countries outside the UK.ⁱ Takeaway could use this base to expand its logistical network in the UK. However, the CMA considers that Takeaway does not appear to currently hold all the necessary capabilities to overcome the entry barriers to the UK food delivery market, in particular for the following reasons:
 - (a) Takeaway does not have any existing relationships with restaurants in the UK. Although Takeaway has existing relationships globally with 15 restaurant chains who are also active in the UK,⁸ [REDACTED]. Furthermore, these 15 chains only represent a limited part of the market, ie these restaurant

⁶ Document titled [REDACTED].

⁷ Amazon/Deliveroo, paragraph 9.

⁸ [REDACTED].

chains account for approximately [X]% of the value of all non-grocery food sales in the UK, and [X]% of the value of restaurant sales in the UK. In addition, [X] of those 15 food chains have partnered with one or more of the current UK market leaders and, even if Takeaway signed a contract with these chains, Takeaway would face material difficulties in capturing all of their online orders; and

(b) Takeaway also does not have an existing consumer-facing business in the UK. Therefore, it also does not benefit from an existing end-customer/user base that it could use to support the growth of an online food platform business. Additionally, for the same reason, it cannot benefit from any increased loyalty of its existing customers that might be associated with starting a food ordering platform.

35. Accordingly, the CMA considers there to be no realistic prospect that Takeaway would have re-entered the market for online food platforms in the UK (either organically or through other means) and believes the pre-Merger conditions of competition to be the relevant counterfactual against which to assess the competitive effects of the Merger.

Frame of reference

36. 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.⁹

37. The Parties overlap in the supply of online food platforms. However, as noted above, only Just Eat currently is active in the UK.

Product scope

38. Online food platforms act as marketplaces connecting participating restaurants and consumers. The CMA has previously considered the relevant frame of reference for online food platforms in *Just Eat/Hungryhouse*¹⁰ and *Amazon/Deliveroo*.¹¹ As submitted by the Parties, the CMA has considered

⁹ *Merger Assessment Guidelines*, paragraph 5.2.2.

¹⁰ *Anticipated acquisition by Just Eat plc of Hungryhouse Holdings Limited*, Final Report, November 2017 (*Just Eat/Hungry House*), paragraph 4.28.

¹¹ *Amazon/Deliveroo*, paragraph 94.

online food platforms to be multi-sided markets that may be further segmented on the basis of their business models, including (i) the food ordering marketplace model; and (ii) the logistics-enabled marketplace model. In particular:

- (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”;¹² and
- (b) The logistics-enabled marketplace model, referred to as “ordering and logistics specialists” in *Just Eat/Hungryhouse*, 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”.¹³

- 39. In *Amazon/Deliveroo*, the CMA found that both food ordering marketplaces and logistics-enabled marketplaces are sufficiently close substitutes that they together comprise a single product market.¹⁴
- 40. The Parties further submitted that other channels exist through which consumers are able to order takeaway meals that compete with online food platforms. These include ordering food directly by calling or visiting a restaurant, by using a restaurant’s own website or mobile app, including those of vertically-integrated branded food chains, or ordering through telephone.
- 41. Both in *Just Eat/Hungryhouse*¹⁵ and *Amazon/Deliveroo*,¹⁶ the CMA has found that it is appropriate to exclude direct ordering and branded chains from the product frame of reference given their limited competitive constraints.

¹² *Just Eat/Hungry House*, paragraph 2.21.

¹³ *Just Eat/Hungry House*, paragraph 2.17.

¹⁴ *Amazon/Deliveroo*, paragraph 87.

¹⁵ *Just Eat/Hungryhouse*, paragraph 4.26.

¹⁶ *Amazon/Deliveroo*, paragraph 93.

42. For the reasons set out above, and consistent with the CMA's recent decisional practice in this industry, the CMA has considered the impact of the Merger in the product frame of reference for the supply of online food platforms.

Geographic scope

43. In *Just Eat/Hungryhouse*, the CMA concluded that the relevant market for the supply of online food platforms was national in scope, but with important local elements that needed to be taken into account in the competitive assessment.¹⁷ In *Amazon/Deliveroo*, the CMA considered that the appropriate geographic frame of reference for supply of online food platforms was the UK.¹⁸ The Parties submitted that the relevant geographic frame of reference to assess the Merger is UK-wide.
44. The CMA has adopted a UK-wide geographic frame of reference for the purposes of assessing the Merger.

Conclusion on frame of reference

45. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of online food platforms in the UK. However, it was not necessary for the CMA to reach a conclusion on the frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

46. 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.¹⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of online food platforms in the UK.

¹⁷ *Just Eat/Hungryhouse*, paragraphs 4.35 and 4.36.

¹⁸ *Amazon/Deliveroo*, paragraph 96.

¹⁹ *Merger Assessment Guidelines*, from paragraph 5.4.1.

47. Given that Takeaway has no assets, customer base, relationships with UK restaurants, or courier fleet in the UK, there is no actual competitive overlap between the Parties in the relevant frame of reference in the UK.
48. According to its established guidance,²⁰ the CMA also considered whether the Merger leads to horizontal unilateral effects through a loss of actual potential competition²¹ by reference to: (a) whether Takeaway would be likely to re-enter and expand in the food delivery market in the UK absent the Merger; and (b) whether such entry and expansion would lead to greater competition.
49. As discussed above (see paragraphs 20-35), the CMA has found that there is no realistic prospect of Takeaway re-entering the UK in absence of the Merger. Therefore, the CMA considers that the Merger will not result in a loss of actual potential competition.²²
50. 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 online food platforms in the UK.

Barriers to entry and expansion

51. 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.²³
52. In *Amazon/Deliveroo*,²⁴ the CMA has noted that the market appears to be characterised by material barriers to entry, including the need to build relationships with restaurants, couriers and consumers, and to develop the necessary technology to power the logistics. These barriers and Takeaway’s capabilities to overcome such barriers are discussed in the counterfactual section (see paragraphs 26 and 34 above).

Third party views

53. The CMA contacted customers and key competitors of the Parties as well as relevant suppliers in the industry. Only one third party expressed a concern

²⁰ [Merger Assessment Guidelines](#), paragraph 5.4.15.

²¹ [Merger Assessment Guidelines](#), paragraph 5.4.14 – ‘Actual potential competition is where the merger involves a potential entrant that could have increased competition’.

²² The CMA therefore did not have to consider whether there are other potential entrants before reaching a conclusion on SLC.

²³ [Merger Assessment Guidelines](#), paragraph 5.8.1.

²⁴ *Amazon/ Deliveroo*, paragraph 9.

about the Merger resulting in a conglomerate theory of harm. In particular, the third party mentioned that Takeaway might try to leverage its relationships with restaurants in various other countries to foreclose the competition in UK by encouraging restaurants with whom it already has relationships, to remove themselves from other online food platforms. However, as mentioned above (see paragraph 34(a)), the CMA notes that [redacted] and the CMA therefore considers that the risk of foreclosure arising from the Merger to be limited. No other third parties raised concerns about the Merger.

Decision

54. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
55. The Merger will therefore **not be referred** under section 22(1) of the Act.

Eleni Gouliou
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Competition and Markets Authority
23 April 2020

ⁱ Takeaway has logistics networks in place in 13 countries outside the UK instead of 11 countries.