



**Computer & Communications
Industry Association**

Tech Advocacy Since 1972

**CCIA's submission to the UK Competition & Markets
Authority on the CMA's provisional findings in
Amazon / Deliveroo**

11 May 2020

1. Introduction

The Computer and Communications Industry Association (“CCIA”) is grateful for this opportunity to share its views on the Competition & Markets Authority (“CMA”) provisional findings regarding Amazon’s acquisition of a minority shareholding in Deliveroo (“the Transaction”).¹

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services.² CCIA is committed to protecting and advancing the interests of our members, the industry as a whole, as well as society’s beneficial interest in open markets, open systems and open networks.³

CCIA agrees with the conclusion of the Provisional Findings that the Transaction would not be expected to result in a substantial lessening of competition.⁴ However, CCIA believes there is significant evidence of competitive constraints faced by both Amazon and Deliveroo (the “Parties”), and the dynamic nature of the markets. Accordingly, CCIA submits that, even in the absence of the current crisis,⁵ the Transaction would not have resulted in a substantial lessening of competition (“SLC”) and would not have harmed customers.⁶

2. Competitive Constraint of Potential Entry and Expansion

In its 11 December 2019 Phase I decision,⁷ the CMA found an SLC to the detriment of customers and referred the case for an in-depth investigation. As the CMA correctly notes in its Provisional Findings, “[a]n SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, *resulting in a worse outcome for customers* (through, for example, higher prices, reduced quality or reduced choice).”⁸ CCIA understands that the market for online food delivery in the UK is highly competitive and likely to become more competitive in the future. Amazon’s acquisition of a minority stake in this market is likely to increase the degree of

¹ Notice of provisional findings and CMA invitation to provide comment available [here](#).

² A complete list of CCIA members (incl. Amazon) is here: <http://www.ccianet.org/about/members/>

³ CCIA’s mission statement can be found here: <https://www.ccianet.org/about/ccias-mission/>

⁴ Summary of the CMA’s provisional findings, available [here](#); CMA’s provisional findings, available [here](#).

⁵ The impact that the current crisis is having on certain market players is itself further evidence of how dynamic and competitive the market is, and exposes flaws in some of the assumptions underlying the CMA’s initial theories of harm.

⁶ CCIA notes that the finding of harm to customers is essential because otherwise any merger where the parties are potential competitors would result in an SLC sufficient to prohibit the transaction.

⁷ CMA Decision on relevant merger situation and substantial lessening of competition (“CMA Phase I Decision”), available [here](#).

⁸ CMA Provisional Findings, para. 1.3 (emphasis added). See also OFT “Merger Assessment Guidelines”, para. 4.1.3, available [here](#) (stating that the reason for prohibiting transactions that give rise to an SLC is that a “merger that gives rise to an SLC will be expected to lead to an adverse effect for customers. Evidence on likely adverse effects will therefore play a key role in assessing mergers.”)

competition by enabling Deliveroo to more vigorously challenge its UK rivals, to the benefit of UK customers (including both consumers and restaurants). The evidence shows that (a) delivery markets are inherently constrained by non-intermediary options, and (b) existing market players would further mitigate any potential adverse effect on customers.

a. Constraints from Non-Intermediary Options

For the vast majority of customers of online food delivery intermediaries, they always have the substitute of direct delivery (via telephone or online options), personal shopper services (like Beelivery), driving to the restaurant or grocery for pick-up (or walking, cycling or taking public transportation), or (in the case of restaurant delivery) cooking at home or heating a ready-made meal. This competitive constraint from outside the narrowly defined “platform market” is ever present, and means there is ultimately a maximum price on the amount that any food delivery intermediary can charge (whether to customers or to restaurants). The service, as such, is convenience,⁹ and faced with an SLC between the parties, customers will likely switch to other non-intermediary options. As the CMA found in 2017, “[d]iversion estimates from our consumer survey also imply that direct ordering may impose a significant competitive constraint ... [o]ver half of respondents said that they would have ordered directly if [merging food delivery company] had closed down permanently.”¹⁰ While the CMA may justifiably exclude these alternatives from its frame of reference, it should still account for them when assessing the likelihood of an SLC and potential adverse effects on customers.¹¹

Furthermore, in this case, had there been any adverse effect on customers, this likely would be limited by counterstrategies of market participants that fall outside the CMA’s frame of reference. From the perspective of food suppliers, online food delivery is essentially the bolt-on of a logistics service to an existing food operation (whether grocery or restaurant). With regards to restaurants, delivery drivers existed long before the internet. For the larger scale delivery operations that a grocery requires, third-party logistics providers are readily available and highly competitive.¹² Entry also happens from existing logistics/transport players. For example, Bolt,¹³ a leading ride sharing intermediary in Europe has recently announced its own entry into grocery delivery,¹⁴ after having launched restaurant delivery last year.¹⁵ Stuart, a leading UK same-day delivery company

⁹ CMA “JustEat/Hungryhouse” (16 November 2017), para. 6.139 (“our consumer survey indicates that the main reason for using a platform is convenience.”)

¹⁰ CMA “JustEat/Hungryhouse” (16 November 2017), para. 6.135.

¹¹ In this respect, the CMA offers only a few sentences which are not linked to the specifics of the finding of an SLC in this case. See CMA Phase I Decision, para. 201.

¹² BIFA “Competition Intensifies in the UK Logistics Sector” (October 2015), available [here](#) (“The intensely competitive nature of the sector continues to put prices under severe pressure suggesting that margins continue to be squeezed as major retailers and manufacturers look to maximise efficiencies before signing up to a new contract.”); Bradley “London-based delivery service Quip expands into Manchester and Dubai” (1 May 2018), available [here](#).

¹³ Flinders “How Bolt plans to be more uber than Uber” (9 April 2020), available [here](#).

¹⁴ Bolt “A supermarket on your phone: Bolt Food delivers groceries to your doorstep” (9 April 2020), available [here](#).

¹⁵ Bolt “Bolt announces plans for food delivery” (28 March 2019), available [here](#).

also offers a delivery service tailor-made for restaurants.¹⁶ As the CMA correctly notes, restaurants regularly use multiple channels for food delivery and can benefit from the intermediaries' aggregation of customers while using their own delivery drivers.¹⁷ This is a highly diverse global market with numerous players already active and expanding.¹⁸ CCIA submits that the large number of potential substitutes and entrants both from the UK and outside the UK suggests that the Transaction is unlikely to cause an SLC or to harm customers.

b. Constraints from Existing Competitors

CCIA submits that evidence of existing competition from those companies within the CMA's frame of reference suggests that there is no likelihood of an SLC nor harm to customers.

i. Intensely Competitive Margins

In 2017 the CMA found evidence that the food delivery market was "*an increasingly competitive landscape*" with Just Eat as a "*dominant competitor*".¹⁹ According to Liberum analysts at the time of the Transaction's announcement, "Just Eat's market leading position will be incredibly difficult to overcome, especially given its strength in smaller towns. ... In the UK, it has an estimated 3-4 times greater share than Uber Eats and Deliveroo combined and, crucially, 60%+ of its customers are in small towns where it is effectively the only option for restaurants and where the Uber Eats/Deliveroo model just doesn't work because of the economics".²⁰

This high degree of competition is acknowledged within the industry itself. In a letter to investors, US based rival GrubHub said it didn't believe "that a company can generate significant profits on just the logistics component of the business", and reported that "new customers tend to order fewer deliveries than earlier users; customers are losing their brand loyalty, and are more willing to switch to rival services".²¹ In other words, food delivery intermediation is a notoriously low-

¹⁶ See Stuart's Restaurant page, available [here](#) ("Stuart is the one platform that will help you power all your food deliveries directly from your websites. Embark on a journey with Stuart's fast & reliable fleet of independent couriers, outsourcing delivery to focus on what you do best. Your game, your rules.")

¹⁷ CMA Phase I Decision, para. 185.

¹⁸ Singh "The Soon To Be \$200B Online Food Delivery Is Rapidly Changing The Global Food Industry" (Forbes 9 September 2019), available [here](#) ("North America is already host to over 10 online food delivery companies with Grubhub, the largest player, accounting for over a one third share of the market. Europe also has over 10 providers, with Dutch company Just Eat having a presence in eight countries in the region, and an over 83% share of the U.K. market. But in terms of sheer numbers, Asia accounts for a massive 55% share of the global online food delivery market, ... China alone registered over \$34 billion in online food delivery revenues in 2018, with two of its biggest players, Ele.me and Meituan Dianping divvying up almost 10 billion deliveries between them last year.")

¹⁹ CMA "JustEat/Hungryhouse" (16 November 2017), para. 6.115.

²⁰ BBC "Amazon invests in Deliveroo food courier" (17 May 2019), available [here](#).

²¹ Sen "Food Delivery Looks Like Another Gig-Economy Dead End" (Bloomberg 31 October 2019), available [here](#).

margin business with little customer loyalty or lock-in effect.²² Further evidence of this intense competition is the decreasing commissions that food delivery intermediaries are able to charge.²³

Indeed, the CMA's mention of potential entry in its Phase I decision supports this. The CMA does not find any evidence that international players intend to enter the UK food delivery market, citing as support a statement from one industry leader that "*it would be super tough or impossible to become one of the main food delivery companies.*"²⁴ This is consistent with other evidence that the market in the UK is highly competitive. This suggests that if the Transaction were to cause an SLC, entry would become attractive, counteracting any effect.

ii. Evidence of Evolving and Dynamic Competition

In 2017, the CMA found that "[t]he restaurant food ordering and delivery industry is dynamic and evolving."²⁵ In its provisional findings, the CMA accepts that "[m]arket shares vary considerably across the country" and that "*Deliveroo has had a substantial and growing market share*",²⁶ both of which indicate that there is movement in market shares and hence dynamic competition at work. As the CMA's Phase I Decision noted, the global online food delivery market is predicted to grow by 10 times in the next 12 years.²⁷ This trend is accelerating due to the COVID-19 crisis.²⁸ Furthermore, as the CMA found in 2017, "*smaller competitors can succeed in increasing their market shares and that multiple operators, even if relatively undifferentiated, can coexist while achieving profitability*".²⁹ This evidence suggests evolving, dynamic competition that incentivizes intense competition between existing intermediaries.

iii. Lack of Closeness of Competition

Amazon is not currently active as a restaurant delivery intermediary, so there is no existing competition between the Parties. With regards to online convenience grocery delivery, the

²² Mola "Grubhub sale rumors highlight the state of the struggling food-delivery industry" (Vox 9 January 2020), available [here](#) ("Food delivery is a low-margin business, which makes money from charging customers delivery and other service fees, and from revenue shares with restaurants. And to sign up some bigger restaurant chains, food delivery services have had to lower their commissions. Those margins are further tightened as food-delivery companies seek to beat out their competition by lowering their fees for customers and offering expensive promotions. These discounts, however, aren't necessarily locking in customers, but rather encouraging customers to shop around. It's a similar situation to ride-hailing, where customers are not loyal."). These low margins have led to the exit of several businesses active in the sector, such as ValkFleet, Jinn, and Amazon itself.

²³ Haddon "Restaurants Are Arm-Twisting Delivery Companies to Lower Fees" (WSJ 23 June 2019), available [here](#).

²⁴ CMA Phase 1 Decision, para. 380.

²⁵ CMA "JustEat/Hungryhouse" (16 November 2017), para. 7.2, available [here](#).

²⁶ CMA's Provisional Findings, para. 35.

²⁷ CMA Phase 1 Decision, para. 79; Williams-Grut "UBS: Online food delivery could be a \$365 billion industry by 2030 — here are the winners and losers from that 'mega trend'" (2 July 2018) (citing UBS study "Is The Kitchen Dead?"), available [here](#).

²⁸ Von Abrams "Coronavirus Catapults Grocery Ecommerce in the UK, but Online Grocers Struggle to Meet Demand" (eMarketer 29 March 2020), available [here](#).

²⁹ CMA "JustEat/Hungryhouse" (16 November 2017), para. 6.92.

economic report commissioned by the CMA found that the Parties are not close competitors.³⁰ This suggests neither an SLC nor an adverse effect on customers.

3. Concluding Remarks

Deliveroo, a UK company, submitted that it needs investment in order to compete against well resourced competitors, such as Uber Eats and Just Eat.³¹ It offered investors a minority stake, while maintaining control over its board and strategic decision making.³² It reached an agreement with investors on 16 May 2019. The German authorities cleared the Transaction on 11 July 2019. The UK approval of this non-controlling minority investment remains outstanding, based on a decision finding a likelihood of substantially lessened competition in circumstances where the Parties only overlap in a broadly defined market (despite significant differences between their offerings), a market experiencing tremendous growth with significant actual and potential competition and limited likelihood of adverse effect on customers. This finding was made despite the fact that, as the Provisional Findings note, in a growing market, the effect of the Transaction on Amazon's incentive to compete would be marginal because Amazon "*may have an incentive to do so, regardless of its holding in Deliveroo.*"³³

Given the limited impact that the minority investment would have on Amazon's incentives, and the competitive dynamics of the markets, CCIA disagrees with the CMA's Phase I Decision on the likelihood of a substantial lessening of competition and adverse effect on customers (including both consumers and restaurants). The CMA's apparent departure from its 2017 analysis in *JustEat/Hungryhouse* reduces legal certainty and incentives for investment in growth and innovation in the UK. Funding that could have already been put to work to develop new innovations, new products and new tools for the benefit of customers, workers and restaurants,³⁴ was instead frozen. Investments could have been made elsewhere. Accordingly, the CMA's decision risks reducing predictability and certainty for industry, ultimately reducing the amount of investment funds available for UK start-ups and scale-ups, and causing welfare losses to UK customers.

Respectfully Submitted,
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³⁰ Accent "Amazon/Deliveroo Merger Inquiry Research" (April 2020), pg. 63, available [here](#) ("The proportion of respondents stating that the merger party would be their next best alternative was low; of those who would divert to another OCG provider, a strong majority would not select the alternative merger party. Just 1.6% of Amazon customers would divert to Deliveroo and 4.9% of Deliveroo customers would divert to Amazon.")

³¹ CMA Provisional Findings, para. 2.41.

³² CMA Provisional Findings, para. 3.27 ("we do not consider that Amazon will have the ability to block special resolutions at a general meeting"), para. 3.56 ("Amazon's board director will be one of seven voting directors").

³³ CMA Provisional Findings, para. 4.88.

³⁴ See Deliveroo's press release describing its intentions for the investment. Deliveroo "Amazon Leads a \$575MM Financing Round in Deliveroo" (17 May 2019), available [here](#).