

Amazon's response to the Revised Provisional Findings

Introduction

Amazon agrees with the conclusion of the CMA's Revised Provisional Findings of 22 June 2020 (the "Revised PFs"), which provisionally approve the Proposed Transactions. As with Amazon's response to the Provisional Findings of 16 April 2020 (the "Initial PFs"),¹ Amazon would like to clarify certain elements of the Revised PFs, which may be instructive for both this matter and potential future transactions. In particular, Amazon reemphasizes its belief that the Proposed Transactions do not result in Amazon acquiring material influence over Deliveroo, and Amazon believes that even if it acquired or made a larger investment in Deliveroo, no SLC would result.

I. The Proposed Transactions do not result in Amazon acquiring material influence over Deliveroo; without material influence, the CMA does not have jurisdiction

For the reasons discussed in its response to the Initial PFs, Amazon believes that the Proposed Transactions do not afford Amazon material influence over Deliveroo, as Amazon's board and other rights are limited and put it in the same position as Deliveroo's other major investors. A finding of material influence in this case goes beyond precedent without justification.

Further, the material influence finding places particular emphasis on Doug Gurr's appointment as Amazon's director on the Deliveroo board.² However, Mr. Gurr's appointment has no impact on Amazon's lack of material influence over Deliveroo.³ The Revised PFs do not fully account for the experience and knowledge of Deliveroo's other directors, which consist of Will Shu, the founder and CEO, appointees of long-standing shareholders, and an independent director with significant operational e-commerce experience. Amazon's appointee to Deliveroo's board does not carry disproportionate weight as a result.

II. Even an acquisition of or larger investment in Deliveroo would not result in an SLC

Amazon agrees with the Revised PFs in that its incentives with respect to the online restaurant food delivery and grocery sectors⁴ are not impacted by its acquisition of a 16% shareholding in Deliveroo. However, Amazon considers that the absence of an SLC is not solely attributable to the 16% stake being acquired. Even if Amazon acquired or made a larger investment in Deliveroo, that would not result in an SLC because it is not more likely than not that Amazon would re-enter online restaurant food delivery in the UK and the Parties' grocery offerings are fundamentally different.

¹ Amazon's response to the Initial PFs, <https://assets.publishing.service.gov.uk/media/5ebbf984d3bf7f5d3c74a31a/Amazon.pdf>.

² Initial PFs, paras. 3.59 to 3.64.

³ In any event, Mr. Gurr is anticipating resigning from Amazon to join the Natural History Museum in London as its new director, and thereafter would not be Amazon's appointee on Deliveroo's board, <https://www.businessleader.co.uk/amazon-uk-boss-doug-gurr-set-to-take-up-new-role-natural-history-museum/92413/>.

⁴ Revised PFs, paras. 5.62 and 6.320.

A. Online restaurant food delivery

Amazon considers that even an acquisition of or a larger investment in Deliveroo would not raise any competition concerns in the online restaurant food delivery space. The standard of proof that the Revised PFs relies on in its counterfactual is unjustifiably low and the evidence cited is sparse. Amazon's general interest in online restaurant food delivery does not support a conclusion that Amazon would have re-entered that space in the UK.

Further, the Initial PFs concede that in any event it would take time for Amazon to re-enter as *"it would be necessary to develop a point-to-point delivery network and establish a base of restaurants, riders and consumers"*.⁵ On the other hand, the Revised PFs baselessly conclude a *"timeframe of within the next five years"*⁶ to be the appropriate window for considering the possibility of re-entering, without assessing the likelihood of Amazon developing a point-to-point delivery network and a base of restaurants, riders, and consumers in that timeframe.

B. Online grocery delivery

Amazon acknowledges the Revised PFs' conclusion that the Parties provide differentiated grocery delivery offerings.⁷ However, the Revised PFs also maintain that Amazon and Deliveroo are large suppliers in a so-called online convenience groceries ("OCG") segment in the UK.⁸ As a result, the Revised PFs do not recognize the Parties' fundamentally different grocery propositions, and instead classify both Parties as suppliers in an entirely artificial segment.

The CMA's own survey results make it clear that Prime Now and Deliveroo are not close substitutes for one another.⁹ Amazon's internal documents also explicitly benchmark against [X]. Finally, there is no evidence to support the conclusion that the Parties' grocery offerings would converge. Rather, their offerings are diverging, as the Parties operate fundamentally different business models.

Conclusion

In summary, for the reasons specified above, Amazon agrees that the Proposed Transactions do not result in an SLC. Amazon considers that the Proposed Transactions do not result in Amazon acquiring material influence over Deliveroo, and that even an acquisition of or a larger investment in Deliveroo would not raise competition concerns in either the online restaurant food delivery or online grocery delivery spaces.

⁵ Initial PFs, para. 4.78.

⁶ Revised PFs, para. 4.194.

⁷ Revised PFs, para. 3.132.

⁸ Revised PFs, Table 6.2. Amazon considers that the data reflected in this Table does not correspond to information provided by Amazon in response to requests for information.

⁹ 'Amazon/Deliveroo Merger Inquiry Research, Final Report of April 2020', p.16.