Amazon/Deliveroo
Deliveroo's Response to the June Provisional Findings

1. Introduction and executive summary

1.1 The CMA's investigation into Amazon's minority investment in Deliveroo (the "**Transaction**") has been ongoing since June 2019. The process has imposed a significant burden on Deliveroo and has prevented it from effectively competing with its much larger and well capitalised competitors during this time, to the detriment of consumers, riders and restaurants in the UK and other markets in which Deliveroo operates. At the outset of its investigation the CMA proposed five theories of harm, none of which have been substantiated to date.

1.2 Deliveroo therefore welcomes the overall conclusion of the CMA's June Provisional Findings (the "**June PFs**") that the Transaction cannot be expected to result in a substantial lessening of competition ("**SLC**"), a position that Deliveroo has maintained since the outset.

1.3 However, Deliveroo has a number of concerns relating to the CMA's procedure and some of its specific findings in the June PFs, including its unjustified departure from its conclusions in the April Provisional Findings (the "**April PFs**"). The most important of these are outlined below.

1.4 **First**, in respect of the supply of online restaurant platforms in the UK, it remains the case that there is no basis for the CMA to conclude that the most likely counterfactual is one where Amazon would have re-entered this segment. The CMA's conclusions in this regard are poorly evidenced and entirely inconsistent with the CMA's own finding that, even amongst the world's most prominent online restaurant food delivery providers (including those that have expanded into multiple new geographies in recent years), none are interested in entering the UK market, on the basis that it is too competitive. See further **Section 2** below.

1.5 **Second**, in respect of online convenience groceries ("**OCG**"), and as explained in **Section 3** below:

(i) The CMA's frame of reference of "*groceries ordered online for delivery within a few hours*" is an entirely artificial construct, which is inconsistent with the CMA's own survey evidence;

(ii) In any event, the Parties are not actual or likely potential competitors in this space (and the CMA accepts that the Parties current offerings are differentiated). In fact, they operate fundamentally different models, infrastructure and technology. Even if the Parties were to hypothetically move closer to one another, they would not become close competitors; and

(iii) In any event, any hypothetical competition between the Parties would take place in a crowded space: the CMA is right to find that several other market participants are well-placed to compete.

1.6 **Third**, whilst for the reasons above Deliveroo is of the strong view that the CMA should be able to find that there is no SLC in relation to the supply of online restaurant platforms or the supply of OCG services in the UK without having to take into account the fact that the Transaction is the acquisition of a 16% shareholding, after extensive investigation the CMA has now accepted that Amazon's 16% minority stake would not have a material impact on either: (i) Amazon's incentive to re-enter UK online restaurant food delivery; or (ii) the Parties' incentives to compete with one another in a (hypothetical) OCG segment. Deliveroo welcomes these findings but considers that the CMA's analysis of the effect of the 16% stake should be more definitive. See **Section 4** below. Deliveroo is also disappointed that these findings were not made at Phase 1: the CMA has been aware of the size of Amazon's stake since the Parties briefed it on the Transaction in May 2019.

1.7 **Fourth**, in respect of the CMA's application of the failing firm defence ("**FFD**"), and as explained in **Section 5** below:

(i) When the COVID-19 crisis hit the UK at the end of March 2020, Deliveroo's business was severely impacted due to the forced closure of restaurants across the UK and other countries in which Deliveroo operates. This prompted emergency discussions between Deliveroo, its advisors and the CMA concerning Deliveroo's financial situation. As part of these discussions, it was agreed with the CMA that Deliveroo would submit evidence to demonstrate that it satisfied the requirements of the FFD. Deliveroo submitted extensive evidence to this effect which was carefully considered by the CMA and, in the April PFs, the CMA provisionally cleared the Transaction on this basis.

(ii) In the June PFs the CMA then reversed these provisional conclusions. Deliveroo considers that the CMA has done so without proper justification, and in doing so it has misapplied the FFD.

(iii) This has resulted in an unnecessary extension to an already prolonged review, further impacting Deliveroo's ability to compete effectively, which is all the more important during the ongoing COVID-19 crisis when it has been heavily relied upon to provide an essential service to customers, in particular the isolated and vulnerable, and to help restaurants to continue to trade during unprecedented economic uncertainty.

1.8 **Finally**, Deliveroo notes that the CMA has mischaracterised the Transaction in some important respects. For example, Amazon has no "option" to acquire Deliveroo, as is suggested by the CMA in the June PFs. See **Section 6** below.

1.9 In light of the ongoing impact of the CMA's investigation on Deliveroo's ability to compete, Deliveroo urges the CMA to issue its final decision as soon as possible.

2. Deliveroo agrees that there is no SLC in online restaurant platforms

2.1 Deliveroo agrees with the overall conclusion of the CMA's competitive assessment for the supply of online restaurant platforms in the UK (i.e. that the Transaction cannot be expected to result in an SLC).

2.2 Deliveroo also agrees with the CMA's finding that there is strong competition between Deliveroo, Just Eat and Uber Eats in the online restaurant platforms market.[1]

2.3 However Deliveroo does not agree with the provisional conclusion that the most likely counterfactual is one in which Amazon re-enters the supply of online restaurant platforms in the UK.[2]

2.4 This point has been addressed extensively in previous submissions,[3] including by reference to evidence gathered by the CMA during this investigation,[4] as well as in parallel investigations,[5] that no other online restaurant platform is interested in entering the UK market due to its competitiveness. Deliveroo does not propose repeating those arguments here.

2.5 In Deliveroo's view, no compelling evidence has been produced by the CMA to substantiate its provisional findings to the contrary in the June PFs.

2.6 Deliveroo considers that the CMA should therefore be able to find that there is no SLC in relation to the supply of online restaurant platforms in the UK without having to take into account the fact that the Transaction is the acquisition of a 16% shareholding, as opposed to a full merger.

3. Deliveroo agrees that there is no SLC in OCG

3.1 Deliveroo agrees with the overall conclusion of the CMA's competitive assessment for the supply of OCG in the UK (i.e. that the Transaction cannot be expected to result in an SLC).

3.2 Deliveroo however makes the following observations.

<u>The CMA's frame of reference is artificial</u>

3.3 As explained previously,[6] Deliveroo considers the CMA's frame of reference for OCG of "*groceries ordered online for delivery within a few hours*" as distinct from "*online delivered groceries*" to be an entirely artificial construct:

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[1] June PFs, 5.59.

[2] June PFs, 4.198.

[3] See further Deliveroo Restaurants Paper dated 3 March 2020; Parties' Response to Will Amazon Re-Enter Working Paper; Parties' Response to Impact of Amazon Entry Working Paper.

[4] See for example, paragraph 13 of the CMA's 'Will Amazon Re-enter?' Working Paper.

[5] In the context of the CMA's review of Takeaway's acquisition of Just Eat, the CMA found that there was no realistic prospect that Takeaway would have re-entered the supply of online restaurant food platforms in the UK absent that transaction. Unlike Amazon, Takeaway is active in the online restaurant food platform sector in a number of markets in Europe and has a track record of international expansion in this space.

[6] See further the Parties' response to the CMA's OCG market definition working paper submitted on 2 April 2020.

(i) It places Deliveroo and Amazon's Prime Now service in the same frame of reference without any evidence of current or future substitutability. The Parties operate fundamentally different services, based on fundamentally different operating models. Deliveroo's point-to-point delivery model caters for immediate/impulse grocery deliveries (within 20-30 minutes of order) for a limited selection of products, at prices materially above supermarket prices. This is entirely different to Amazon's grocery offering. The CMA's own survey evidence implies minimal competitive interaction between the Parties.

(ii) It also omits each of the Parties' actual substitutes: the CMA's own survey indicates that (i) bricks and mortar shops are closer substitutes (with more diversion) for each of Deliveroo and Amazon Prime Now, respectively, than the Parties' delivery options are for each other, and (ii) for Amazon Prime Now, next-day delivery is a closer substitute than same-day delivery.

<u>The Parties are not actual or likely potential competitors</u>

3.4 The CMA accepts that the Parties' offerings are currently differentiated in terms of their delivery speed, pricing strategies and range,[7] but goes on to find that the Parties currently compete "*to a limited extent*".[8]

3.5 The CMA also suggests that the Parties may be able to move closer to each other in the future, in particular in terms of speed: either if Amazon's offering becomes faster[9] or if Deliveroo starts offering scheduled deliveries.[10]

3.6 However, as has been explained extensively in previous submissions, the Parties are not (even to a limited extent) actual or likely potential competitors in online delivered groceries, given their fundamentally different models, infrastructure and technology. These fundamental differences also mean that there can be no expectation the Parties' offerings would move closer in the future.[11]

3.7 More specifically, in relation to the CMA's suggestion that it would be "*relatively easy*" for Deliveroo to offer scheduled deliveries, this is incorrect and demonstrates a misunderstanding of Deliveroo's platform and operational model:[12]

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[7] June PFs, 80 and 6.103.

[8] June PFs, 6.105.

[9] June PFs, 6.3.

[10] June PFs, 6.86.

[11] See further the Parties' response to the CMA's OCG theory of harm working paper submitted on 2 April 2020.

[12] Similarly, Deliveroo notes that the CMA has considered whether Deliveroo's temporary offerings during the COVID-19 crisis (such as Deliveroo's Essentials) could be seen as an extension of Deliveroo's service from "impulse" shopping missions into the "core grocery" mission. The CMA appears to have concluded that, in part due to the limited range on offer, this is unlikely to be the case. Deliveroo agrees with this assessment, noting that Deliveroo Essentials was only offered in response to the COVID-19 crisis. The service is now being retired since with the relaxation of lockdown measures Deliveroo anticipates that it would no longer be viable.

(i) Deliveroo's platform (and all its associated technology and operations) is designed in order to make immediate deliveries of hot restaurant food (and to a much lesser extent impulse groceries). It would require fundamental changes to its platform in order for Deliveroo to be able to offer scheduled grocery deliveries.[13]

(ii) In any event, Deliveroo does not have the right model to cater for missions other than immediate consumption/impulse, in particular since its rider network is unsuitable for carrying larger baskets.

3.8 In light of their fundamentally different operating models, the Parties are unlikely to compete in the future, contrary to the suggestion in the June PFs.[14]

Even in the event of (hypothetical) convergence between their offers, the Parties would not be close competitors

3.9 As above, the CMA considers that the Parties' offerings might converge in the future and that, if this happened, their offerings "*may be in closer competition with one another than with some other market participants*".[15]

3.10 Notwithstanding that the Parties' offerings are unlikely to converge (as to which, see above), for reasons explained previously,[16] the CMA should in any event avoid speculation as to theoretical closeness of future competition between the Parties:

(i) It is exceedingly difficult to reliably make robust conclusions about the closeness of competition at an unspecified point in the future and as between two offers that do not yet exist. Especially in the context of a nascent market with several other market participants who are developing their own offerings.

(ii) Moreover, it is much more likely that Deliveroo's current closest and direct competitors, Just Eat and Uber Eats, would be significantly closer competitors to Deliveroo than Amazon, even if there was (hypothetical) convergence in the future. Indeed the CMA accepts that "*Deliveroo, Uber Eats and Just Eat are becoming more similar*".[17]

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[13] Whilst it is possible for Deliveroo to offer non-immediate deliveries by delaying the point an order enters its system, this is not a solution that would allow Deliveroo to offer scheduled groceries in a scalable way. These delayed orders involve manual workarounds by Deliveroo's operations team which would not be capable of being done in an efficient manner at scale. The customer experience is also often quite poor. For example items might be in stock at the point the order is made but then out of stock at the point the delayed order enters the system. The experience therefore falls far short of that offered by Amazon and other providers of scheduled full basket grocery deliveries.

[14] The June PFs state that "*to the extent that OCG offers converge in this way, those of Amazon and Deliveroo may be in closer competition with one another than with some other market participants*" (June PFs, 6.266).

[15] *Ibid*.

[16] See further the Parties' response to the CMA's OCG theory of harm working paper submitted on 2 April 2020, para 1.8. See also Online Restaurant Platforms: Impact of Amazon re-entry Working Paper (24 March 2020), para 5.4.

[17] June PFs, 71 and 5.48-5.49.

3.11 In light of the above, and in particular the lack of actual or potential competition between the Parties, Deliveroo considers that the CMA should therefore be able to find that there is no SLC in relation to the supply of OCG in the UK without having to take into account the fact that the Transaction is the acquisition of a 16% shareholding, as opposed to a full merger.

4. Deliveroo broadly agrees with the CMA's analysis of the effect of the 16% minority investment, but its analysis should be more definitive

4.1 As above, Deliveroo strongly considers that the CMA should be able to find that there is no SLC in relation to the supply of online restaurant platforms or the supply of OCG services in the UK without having to take into account the fact that the Transaction is the acquisition of a 16% shareholding. Regardless of the percentage of Amazon's shareholding (whether it be 16% or a full acquisition), there would not be an SLC.

4.2 Deliveroo nonetheless welcomes the findings in the June PFs that Amazon's 16% investment is unlikely to (a) deter Amazon from hypothetically re-entering online restaurant food delivery in the UK or (b) reduce (hypothetical) competition between the Parties in OCG.

4.3 However it considers that the CMA's findings in relation to the 16%, in the context of both online restaurant platforms and OCG, should be more definitive in a number of important respects. More specifically:

(i) The June PFs are wrong to suggest that there is "*mixed evidence*"[18] as to whether the minority investment, by virtue of its (purported) "*strategic*" nature, would likely materially alter Amazon's incentives to re-enter UK online restaurant food delivery, should it wish to do so. The evidence is clear that it would not (regardless of whether the minority investment is strategic or purely financial) and the CMA has seemingly accepted this position in respect of OCG;

(ii) In considering whether Amazon would have an incentive to compete less strongly against Deliveroo if it did re-enter, the CMA should avoid making highly speculative comments about the Parties potentially being close competitors in the future. These findings are entirely unsubstantiated;

(iii) In the context of OCG, the CMA appears to suggest that the "nascent" nature of this segment might cause the Transaction to reduce its incentive to compete in this space. However the conclusions of the Parties' economic model still stand: if Amazon had a strong incentive to compete, the Transaction would not materially reduce this incentive; and

(iv) The June PFs express some concerns with the assumptions behind the Parties' economic model, which lead the CMA to conclude that it can only place "*limited weight*" on the results of that model. But these concerns relate to aspects of the model which are largely irrelevant to the question of whether Amazon would still have a strong incentive to re-enter absent the Transaction. The CMA should be

[18] June PFs, 5.41.

clearer that its concerns do not detract from its overall conclusion on the effect of the 16%.

4.4 Each of the above points is dealt with in turn below.

<u>The CMA is wrong to place any reliance on the (purported) "strategic" nature of Amazon's investment</u>

4.5 The CMA correctly accepts that a 16% minority investment would not affect Amazon's financial incentives such that it would deter Amazon from hypothetically re-entering online restaurant food delivery in the UK, if doing so would otherwise be attractive:

(i) The CMA agrees with the logic of the Parties' economic model and considers it is helpful in "*illustrating the mechanisms at work as a result of the Transaction and the difference in incentives resulting from a 16% investment as opposed to a full merger*".[19]

(ii) The CMA rightly concludes that "*if there was a strong financial incentive for Amazon to re-enter, it is unlikely the 16% shareholding in Deliveroo would materially reduce Amazon's incentive to re-enter*".[20]

4.6 However the CMA suggests that the evidence to support this finding is "*mixed*", primarily on the basis that, according to the CMA, the investment by Amazon is "*strategic*". The June PFs consider whether the "*strategic*" nature of the investment (giving Amazon a "*foot-in-the-door*" and "*route to re-entry*") would likely result in Amazon being less willing to invest in an alternative online restaurant food delivery proposition.[21] But:

(i) It is not at all clear that the investment is "*strategic*", and Deliveroo understands that Amazon has previously challenged this finding.

(ii) Moreover the CMA needs to recognise that there can be no expectation by Amazon that it would have an unfettered path to ultimately acquiring Deliveroo (and the Transaction does not provide an option for it to do so, as explained in Section 6 below). For this reason, it would be irrational for Amazon to consider the Transaction to be its "*route to re-entry*". The CMA recognises this in the context of OCG (finding that "*while the Transaction potentially gives Amazon a route to acquire Deliveroo, Amazon would face a significant cost in making such an acquisition"* and that *"it would also face risks e.g. of being outbid by another buyer*"). It also needs to recognise this in the context of online restaurant platforms.

(iii) One would also expect any decision by Amazon to invest in an alternative proposition to be subject to a cost benefit analysis. It follows that the 16% minority

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19 June PFs, 5.27

20 June PFs, 64 and 5.28.

21 June PFs, 66.

investment (strategic or otherwise) would not prevent Amazon from investing in this way if it otherwise had a strong incentive to do so.

4.7 In any event, the CMA finds that there is evidence that Amazon has continued to pursue the development of an online restaurant platform outside the UK (albeit with no evidence that it intends to re-enter the UK).[22]

4.8 There is no basis therefore to suggest that there is "*mixed evidence*"[23] as to whether the minority investment, by virtue of its (purported) "*strategic*" nature, would likely materially alter Amazon's incentives to re-enter, should it wish to do so. The evidence is clear that it would not.

<u>The CMA should avoid speculative comments about future closeness of competition in its analysis of the effect of the 16%</u>

4.9 The CMA is right to conclude that the 16% minority investment would not likely soften Amazon's incentives to compete were it to re-enter online restaurant food delivery in the UK on the basis that: [24]

(i) Amazon would only internalise 16% of any sales diverted to Deliveroo – as opposed to 100% if it were to win customers itself.[25]

(ii) Even if Amazon were a close competitor to Deliveroo (as to which see below), "*Deliveroo, Uber Eats and Just Eat are becoming more similar*" such that "*there would still likely be material diversion to other competitors*".[26]

4.10 However, contrary to the suggestion in the June PFs,[27] there is absolutely no basis for the CMA to expect Amazon (in the event of re-entry) to be a closer competitor to Deliveroo in online restaurant platforms than Uber Eats or Just Eat:

(i) As a general point, it is highly speculative for the CMA to engage on predictions on closeness of competition given (i) any re-entry by Amazon would be at some (undefined) point in the future, and (ii) the route of any re-entry is also unclear/undefined.

(ii) Just Eat and Uber Eats are established players who have competed closely and directly with Deliveroo for a number of years, and will continue to do so. Amazon, as a (hypothetical) new entrant, would be starting from scratch. To suggest that a

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[22] June PFs, 6.314(d) and 5.39.

[23] June PFs, 5.41.

[24] June PFs, 5.51.

[25] June PFs, 70 and 5.47.

[26] June PFs, 71 and 5.48-5.49.

[27] June PFs, 5.50.

new entrant would be a closer competitor to Deliveroo than two well-established incumbents is fanciful.

4.11 More specifically, on the three "factors" cited in the June PFs in support of the CMA's findings:

(i) A "[CONFIDENTIAL]":

(a) Deliveroo Plus only accounts for c. [CONFIDENTIAL]% of Deliveroo customers, and the CMA's finding is based on a survey of only [CONFIDENTIAL] Deliveroo Plus customers (a tiny fraction of Deliveroo's overall customer base).[28]

(b) In any event, Just Eat and Uber Eats customer bases are also likely to largely overlap with the Amazon Prime customer base. The CMA has not gathered any evidence to suggest otherwise.

(ii) "*Any Amazon offering is likely to include a logistics enabled platform*".

(a) This is entirely hypothetical: Amazon's retail business has interoperated with third party logistic operators in the past[29] so it is not at all obvious that Amazon would not offer a marketplace-only option.

(b) Both Uber Eats and Just Eat also provide logistics and, as above, the June PFs acknowledge that "*Deliveroo, Uber Eats and Just Eat are becoming more similar*". They would clearly be significantly closer competitors to Deliveroo.

(iii) "*The objective of Amazon Restaurants was to* [CONFIDENTIAL]*, which have been a key part of Deliveroo's strategy.* [CONFIDENTIAL]*, Just Eat has traditionally targeted* [CONFIDENTIAL] *who have their own delivery capability*".

(a) The CMA cannot draw any inference from Amazon's previous experience in online restaurant food delivery – which it describes elsewhere as "*poorly executed*".[30] In any event, during the operation of Amazon Restaurants, Deliveroo observed that it did not offer any large chains, and instead had a poor selection of (mainly smaller) restaurants.

(b) This statement mischaracterises Deliveroo's restaurants strategy, which is to offer a broad and unique selection of restaurants and cuisines to its customers. Independent restaurants are at the heart of that.

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[28] See Parties' Response to Impact of Amazon Re-Entry Working Paper, 5.4.

[29] See for example: https://www.amazon.co.uk/gp/help/customer/display.html?nodeId=201329340

[30] June PFs, 4.168.

(c) In any event, all three of Just Eat, Uber Eats and Deliveroo have competed for and won large chain contracts in the UK. Just Eat has recently won McDonalds and Greggs.

4.12 Deliveroo therefore urges the CMA to drop these unsubstantiated points from its final decision.

The "nascent" nature of OCG does not impact the CMA's conclusions on the effect of the 16% on Amazon's incentive to compete in this space

4.13 In relation to OCG, Deliveroo agrees that, as with online restaurant food delivery, the 16% minority investment would not likely soften Amazon's incentives to compete in OCG.[31]

4.14 The CMA is also right to conclude that even if it were to find (contrary to the above) that Amazon would have an incentive to compete less aggressively, it is unlikely there would be an SLC – given that the evidence suggests other market participants are well placed to compete in OCG.[32]

4.15 The June PFs go on to consider whether Amazon's 16% minority investment in Deliveroo would nonetheless reduce Amazon's incentive to invest in an OCG proposition (in particular to develop point-to-point delivery) so as to be able to compete in this space.[33]

4.16 The conclusions from the Parties' economic model should apply equally here: if Amazon were presented with a compelling opportunity to develop an OCG offer, then it would do so. It is not at all clear why (as suggested in the June PFs[34]) the "nascent" nature of OCG should affect that. Indeed, for the reasons explained in paragraph 4.6(ii) above, Amazon cannot treat the Transaction as a "*foot-in-the-door*" in this space: there can be no expectation by Amazon that it would have an unfettered path to ultimately acquiring Deliveroo.

The CMA should be clearer that its concerns about the Parties' economic model do not detract from its overall conclusion on the effect of the 16%

4.17 The June PFs express some residual concerns with the assumptions behind the Parties' economic model which lead the CMA to conclude that it can only place "*limited weight*" on the results.

4.18 But the model was never intended to make quantitative predictions of price effects. The CMA should be clearer that this does not detract from the conclusion that a 16% minority investment would not materially affect Amazon's incentives.

[31] June PFs, 94 and 6.303

[32] June PFs, 95 and 6.305.

[33] June PFs, 6.307-6.310

[34] June PFs, 6.317.

4.19 In this regard, provided as Annex 1 to this submission are comments from CRA (the model's author).

5. The CMA has misapplied the failing firm defence ("FFD")

5.1 Whilst Deliveroo agrees with the overall conclusions of the June PFs, Deliveroo nonetheless considers that the CMA has misapplied the FFD, leading to an unjustified departure from its conclusions in the April PFs. These concerns are explained in more detail below.

Approach to the FFD

5.2 The CMA accepts that application of the FFD requires it to compare (i) the likely competitive situation on the relevant market(s) with the Transaction; against (ii) the most likely competitive situation absent the Transaction (the "**Counterfactual**").[35] The CMA must base its views on the Counterfactual on the evidence available to it.

5.3 The CMA also accepts that the FFD therefore requires it to assess whether:

(i) In the Counterfactual, Deliveroo would have exited absent additional funding (Limb 1);

(ii) In the Counterfactual, there would have been alternative sources of funding (to the Transaction) which are substantially less anti-competitive (Limb 2); and

(iii) The effect of the Transaction is likely to be substantially less competitive than Deliveroo's exit (Limb 3).

5.4 As set out below, the CMA correctly identified the Counterfactual in the April PFs. In the June PFs, however, the CMA now identifies an incorrect Counterfactual, which has resulted in it misapplying the FFD.

The Correct Counterfactual – consistent with the April PFs

5.5 Consistent with the April PFs, the Counterfactual in this case is one in which:[36]

(i) In May 2019 Deliveroo would have obtained funding of $[CONFIDENTIAL] to $[CONFIDENTIAL]m (as opposed to $[CONFIDENTIAL]m under the Series G round);[37]

[35] See June PFs, 12 and 4.5.

[36] See further Deliveroo's submission dated 21 May 2020.

[37] April PFs, 2.43-2.50 and 4.46.

(ii) Deliveroo would have needed to raise additional funds in Q1 2020 when the effects of Coronavirus (COVID-19) first appeared (and after the adverse shift in investor sentiment); [38]

(iii) There would have been no likely sources of funding in Q1 2020;[39]

(iv) Deliveroo would therefore likely have exited the market.[40]

The Counterfactual in the June PFs

5.6 In the June PFs, the CMA reverses its position on the Counterfactual and provisionally finds instead that:

(i) In May 2019 Deliveroo would have obtained funding "*of a broadly similar scale*" to the $[CONFIDENTIAL] million Series G funding amount.[41]

(ii) Given Deliveroo's recovery in April 2020, and its ability to "*manage the impact*" of the crisis and avoid a "*cliff edge*", Deliveroo would have had sufficient cash to be able to meet the demands of its creditors until Q4 of 2020.[42] As a result Deliveroo would have had a less urgent funding need.[43]

(iii) Deliveroo would either not have needed to raise funds during the crisis,[44] or if it had needed to raise funds, alternative sources of funding would have been available[45] (in part due to the steps Deliveroo would have been able to take to make itself more attractive to potential investors[46] and also as a result of the "*improved*" funding environment since the April PFs).[47]

(iv) Deliveroo would therefore not have been likely to exit the market.[48]

Errors in the Counterfactual in the June PFs

[38] April PFs, 4.47.

[39] April PFs, 4.64. See also June PFs, 24.

[40] April PFs, 4.65.

[41] June PFs, 4.58(a).

[42] June PFs: 4.28, 4.29, 4.48 and 4.49.

[43] June PFs, 4.56(a).

[44] June PFs, 4.65.

[45] June PFs, 4.68.

[46] June PFs, 4.66.

[47] June PFs, 4.67.

[48] June PFs, 4.56, 4.57 and 4.62.

5.7 The analysis of the Counterfactual in the June PFs contains a number of fundamental errors.

May 2019 Funding

5.8 Having previously concluded in the April PFs that in the Counterfactual Deliveroo would have obtained cash funding in May 2019 of $[CONFIDENTIAL] to $[CONFIDENTIAL]m ("*materially below*" the amount received from its Series G funding round),[49] the CMA now finds that the funding offers were of a "*broadly similar*" scale to the $[CONFIDENTIAL] million Series G funding amount such that "*there is no reasonable basis to conclude that Deliveroo would have been in a materially worse financial position in the counterfactual than it is currently*".[50]

5.9 However the evidence provided by Deliveroo clearly demonstrates that the funding offers were not of a broadly similar scale to the Series G funding amount.[51] The evidence clearly shows that the only alternative funding options were those of [CONFIDENTIAL] and [CONFIDENTIAL] (offering $[CONFIDENTIAL] to $[CONFIDENTIAL]m). The CMA has cited absolutely no evidence to substantiate its claim that Deliveroo would have been able to raise funding of a broadly similar scale (i.e. $[CONFIDENTIAL] to $[CONFIDENTIAL]m more than the offers on the table at the time of the Transaction).

5.10 The CMA does not explain on what basis it has changed its position. There is therefore no reason to have departed from the April PFs (and if the CMA had doubts as to the validity of its findings in the April PFs, it should have sought to gather additional evidence from Deliveroo or third parties before reversing its findings, which it chose not to do).

Timing of 2020 Funding Round

5.11 The CMA has also departed from its previous finding in the April PFs that Deliveroo would have needed to raise additional funds in Q1 2020 when the effects of Coronavirus (COVID-19) first appeared. This is a consequence of the CMA's unjustified revised finding on the level of funding Deliveroo would have raised in May 2019; and also the CMA's view that it "*cannot speculate on how precisely Deliveroo would have operated the business following [its May 2019] fundraising*".[52]

5.12 However the CMA does not need to speculate: it has gathered extensive evidence on this point from Deliveroo.[53] The departure from its findings in the April PFs has not been supported by any evidence (and again to the extent the CMA had doubts as to the validity

[49] April PFs, 4.31: "*Based on the evidence we have seen, the level of committed funding available through any of the alternative investment options in May 2019 was materially below the amount Deliveroo has so far received from its Series G investors (totalling $*[CONFIDENTIAL] *million).*"

[50] June PFs, 4.58(a).

[51] [CONFIDENTIAL].

[52] June PFs, 4.58(b).

[53] [CONFIDENTIAL].

of its findings in the April PFs, it should have sought to gather additional evidence from Deliveroo or third parties before reversing its findings, which it chose not to do).

Deliveroo's current financial position

5.13 In circumstances where Deliveroo would have exited the market when the effects of COVID-19 first appeared (consistent with the April PFs), Deliveroo's subsequent improved trading performance is irrelevant to the Counterfactual. In the most likely competitive situation absent the Transaction, Deliveroo would have run out of money in Q1 2020 and the company's directors would have been forced to initiate insolvency proceedings. The directors would not have been able to trade the company for long enough to see any recovery in trading.

5.14 In any event, in the 'factual', Deliveroo's improved trading performance in Q2 2020 did not alter the fact that, absent positive PFs (and the associated assurance that the Amazon funding would likely follow), it faced [CONFIDENTIAL] insolvency. This position was confirmed by Deliveroo's insolvency advisors, yet in the June PFs the CMA has chosen to ignore this expert advice, without any justification.[54]

5.15 In doing so, the CMA is arbitrarily ignoring expert professional advice presented to them by independent, regulated third parties, and drawing speculative conclusions based on no evidence.

Availability of Alternative Funding

5.16 The CMA claims to have observed evidence that funding markets "*started to recover*" in April and May 2020 such that Deliveroo would, in the Counterfactual, be more likely to be able to raise funds. Notwithstanding that this conclusion is irrelevant in circumstances where Deliveroo would have exited the market before April/May 2020, as explained in response to the CMA's 13 May RFI,[55] the evidence cited to support this conclusion focusses on companies operating in entirely different funding environments and jurisdictions to Deliveroo.

5.17 These and other errors are addressed in more detail in Annex 2.

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[54] June PFs, 4.49: "*We note the advice that Deliveroo has received from its insolvency advisers on 21 May 2020 regarding the need to declare insolvency if it does not have a reasonable expectation of receiving funds to ensure it minimises the loss to creditors. However, in light of the updated forecasts we now have available, we consider that Deliveroo appears to have sufficient cash to be able to meet the demands of its creditors until* [CONFIDENTIAL] *(excluding the* [CONFIDENTIAL]".

[55] [CONFIDENTIAL].

6. The CMA has mischaracterised the Transaction in important respects

6.1 Finally, Deliveroo notes that the CMA's findings on the Parties, the Transaction and the Parties' rationale have not changed materially since the April PFs and as such are not repeated in the June PFs.[56]

6.2 However there are two important points that warrant clarification.

6.3 First, the CMA continues to maintain that the Transaction secures Amazon an option to acquire Deliveroo.[57] The CMA appears to arrive at this conclusion by virtue of its finding that some Deliveroo shareholders see the Transaction as a first step by Amazon towards acquiring Deliveroo.[58] However as previously explained,[59] Amazon has no "option" to acquire Deliveroo. It has a right [CONFIDENTIAL] ([CONFIDENTIAL]). Quite clearly that is very different from an option to acquire Deliveroo (regardless of whether some see the Transaction as a first step by Amazon towards acquiring Deliveroo).

6.4 Second, for similar reasons, the CMA is wrong to find that the [CONFIDENTIAL] provides Amazon with some influence over a sale of Deliveroo.[60] As explained previously, it is not a right of first refusal, last offer, veto or similar right which could lead to Amazon preventing an acquisition by a third party.[61] And a [CONFIDENTIAL].[62]

6.5 Deliveroo urges the CMA to clarify these points in its final decision.

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[56] June PFs, 1.8.

[57] June PFs, 5.28, 6.307 and 6.311-6.312 .

[58] June PFs, 5.32(e).

[59] Parties' response to the CMA's Rationale Working Paper (submitted 2 April 2020), pages 2-3.

[60] June PFs, 5.32(g).

[61] See further the Parties' response to the CMA Working Paper on Jurisdiction dated 19 March 2020, paragraph 3.7(iii).

[62] *Ibid*, paragraph 3.7(v).

Annex 1 – CRA comments on CMA's 16% analysis

COMMENTS ON THE CMA'S ASSESSMENT OF 16%

In this note we comment on the analysis of the incentive effects of Amazon's 16% investment in the CMA's Revised Provisional Findings (RPFs).[1] *We welcome the RPFs' agreement with the logical framework of our model and the ultimate conclusion that the 16% investment is unlikely to deter Amazon from competing with Deliveroo if (hypothetically) doing so was otherwise an attractive commercial opportunity. Nevertheless, there are areas which we urge the CMA to consider further:*

- *The concerns expressed about the modelling assumptions have no impact on the propositions relied upon in the RPFs and do not alter the models' key conclusions.*
- *While we welcome the CMA's conclusion that the 16% investment is not likely to deter Amazon from re-entry notwithstanding the alleged strategic nature of the investment, we continue to think that the distinction between financial and strategic decision making is artificial and irrelevant: even "strategic" decisions are subject to cost benefit analysis and, regardless of whether one applies this label, the key finding is that the 16% investment could not meaningfully alter Amazon's incentives to enter via another channel.*
- *The arguments suggesting Amazon would be a particularly close competitor to Deliveroo were it to re-enter online restaurant delivery appear to us to be strained and, in some cases, contradicted by the CMA's (correct) conclusions elsewhere in the RPFs.*
- *The CMA should consider giving more emphasis to the fact that minority shareholdings are less likely to have negative effects in industries which already contain multiple competing firms. This is consistent with the existing conclusions in the RPFs and would better distinguish the present case from past instances where minority shareholdings have been deemed problematic.*

The CRA model and its assumptions

The CMA agrees with the proposition we illustrated with the model: a 16% investment will have limited effects on entry incentives (just as it will have limited effects on pricing incentives) compared to a full acquisition. Therefore, it is inappropriate to consider the investment as loss of a (actual or potential) competitor.

In the context of online restaurant delivery, the CMA ultimately agrees that "*if Amazon was presented with a compelling opportunity to re-enter…then having a 16% investment in Deliveroo may not materially affect Amazon's incentives to undertake such a strategy*".[2] In reaching this conclusion the RPFs note that the internal documents are consistent with Amazon experimenting with multiple strategies with potential to lead to re-entry and that the investment would not close off entry into the UK.[3] Indeed, the

1 We focus squarely on this issue and do not address other conclusions made by the CMA in the RPFs.

2 Paragraph 5.37.

3 Paragraph 5.39.

CMA accepts that the developments in India is evidence that Amazon is innovating globally and would not plausibly be deterred from doing so if the 16% was in place in a single country.

The CMA agrees that whilst the illustrative model had a narrative relating to online restaurant delivery, the proposition it illustrates is also valid in the context of online convenience grocery (OCG) provision.[4] The RPFs correctly note that the potential for any limited change in Amazon's incentives to lead to a significant lessening of competition is further weakened by the presence of multiple other market participants being well-placed to compete in OCG provision, as we argued in the modelling submission.[5]

We agree with the essence of the CMA's analysis summarised above, but we are concerned that the RPFs' current discussion about the model's assumptions are open to misinterpretation and could be misread as implying that there is uncertainty around the key predictions of the model. The assumptions discussed in the RPFs relate to the model's ability to explain current market outcomes and therefore its ability to make specific quantitative predictions about future price effects. *None of these concerns have any implications for the logical conclusions of the model upon which the CMA relies*.

The model was not intended to provide absolute point estimates of the price effects of the investment. Rather, it provided an illustration of how the impact of a 16% investment would be smaller than a "full" merger between existing competitors and how one could not logically conclude that a 16% investment would deter effective entry by Amazon while having a limited impact on post-entry competition. Further, it explained that the size of any incentive effect post entry was linked to the incentives to enter in the first place. Put differently, the model crystalized the economic logic (ultimately accepted in the RPFs) that a 16% investment could not deter Amazon from re-entering restaurant delivery in the UK if it otherwise considered that doing so represented an attractive commercial opportunity.

As such, when the CMA discusses the modelling assumptions, it should draw a clearer distinction between those assumptions which have implications for these central economic insights and those which relate to the less relevant question of how the point estimates compare to actual market outcomes. The assumptions listed by the CMA are all in the latter category and do not have any bearing on the key findings of the model or on the CMA's ultimate conclusions.

As observed in the RPFs, the model treats restaurant platforms as symmetric, assumes that all existing players are active in all localities, uses a wide range of parameters, and (consequently) does not explain current market outcomes.[6] However, it is far from certain that a model calibrated on current outcomes would lead to more reliable point estimates of absolute impact on future market outcomes from an entry decision that would take place in some undefined timeframe. There is no evidence that an alternative replicating currently observed metrics would be more appropriate to understand the impact on a decision in the future when the metrics will likely be different than today. In any event, as noted above, this issue is moot because the point estimates are not being relied on by the CMA. Given the uncertainty involved not relying on them is the correct approach.

Further, we note that there are other aspects of the model which will act towards it *overstating* the relative impact of a 16% investment vs. a full merger. Most notably, the model considers that the only potential entrant is Amazon and uses only parameter combinations where there would be some Amazon entry in the counterfactual. If the CMA is to discuss the assumptions of the model, we would suggest

4 Paragraph 6.303.

5 Paragraph 6.306.

6 Paragraph 5.27.

that it also considers those assumptions which act to reinforce the key conclusions of the model. Not discussing these aspects of the assumptions could result in the RPFs being misinterpreted.

The investment as a strategic decision

In previous submissions we explained why we did not agree with the CMA's distinction between financial and strategic incentives: even "strategic" decisions are subject to cost benefit analysis and will depend on the relative profitability of different courses of action.[7] The RPFs ultimately appear to agree with this logic given that they conclude the 16% would not deter Amazon from entering via another route were it otherwise attractive to do so.[8] We welcome this conclusion but note that the RPFs still contain a section discussing whether or not the investment should be considered "strategic", without defining what this means.[9] In light of this we make the following observations.

First, we would urge the CMA to clarify that the fact that an investment is considered "strategic" by nature does not in itself imply a moratorium on alternative entry routes, and that "strategic" decisions (however defined) will be subject to cost benefit analysis. As a result, the 16% investment could not prevent Amazon from entering if it had a strong incentive to do so and would not curtail Amazon from exploring other options. This is correctly acknowledged by the RPFs at paragraph 5.37.

Second, paragraph 5.41 of the RPFs note that *"there is evidence indicating that Amazon has an interest in pursuing multiple routes into the market and that the minority investment in Deliveroo is unlikely to be sufficient to prevent further investment by Amazon where a material opportunity arose is the right one".* This underlines that, as a rational agent, Amazon would value every opportunity on its overall costs and benefits and that the question of whether the investment was "strategic" does not have any real bearing on the analysis of incentives.

Third, it is unlikely that Amazon would give up on other attractive opportunities on the expectation that its investment in Deliveroo is a "foot in the door" that can easily be turned into a full acquisition. It would not be rational for Amazon to assume that a future acquisition is guaranteed: a full acquisition does not depend on just Amazon's will but requires a commercial agreement with Deliveroo and its other investors, and could lead to further regulatory review. In the context of OCG provision the RPFs recognise that Amazon would be facing the risk of being outbid by another bidder if it relied on increasing its shareholding in Deliveroo and stopped pursuing other opportunities.[10] The CMA should acknowledge this point in the context of online restaurant delivery too. Indeed, the recent Just Eat takeover of GrubHub ahead of Uber Eats illustrates that "there is many a slip between the cup and the lip".[11]

Finally, we note that there are aspects of the RPFs' reasoning in respect of the 16% which seem inconsistent with the notion that Amazon would be likely to enter in the counterfactual. For example, if Amazon did not consider it could achieve a [CONFIDENTIAL] (as in paragraph 5.32 (b)) this would be

7 [CONFIDENTIAL].

8 The CMA also suggests at paragraph 5.41 that there is "mixed evidence" as to whether Amazon's strategic investment is likely to materially alter its re-entry incentives, but ultimately reasons that there is insufficient evidence to show that the 16% investment would be likely to deter re-entry by Amazon in the counterfactual.

9 Subsection *Amazon's status as a strategic investor,* paragraphs 5.29-5.35.

10 Paragraph 6.317.

11 theguardian.com/business/2020/jun/11/just-eat-uber-grubhub-takeover-food-delivery-service#:~:text=European%20food%20delivery%20service%20Just,food%20delivery%20service%20outside%20China.

inconsistent with any organic Amazon entry in the counterfactual having a significant impact on competition.

Closeness of competition

The RPFs' discussion of how Amazon's incentives in setting competitive parameters in the event of organic Amazon entry would be affected by the 16% investment is consistent with our submission and the model. The RPFs agree that it is unlikely there would be material change towards less aggressive Amazon behaviour.[12] This conclusion is based on both Amazon's limited internalisation of any sales diverted to Deliveroo due to this only being a 16% shareholding and the likelihood of Deliveroo's current rivals (in particular Just Eat, recognised as the leading player) receiving most of the benefit if Amazon were to hypothetically compete less aggressively having entered restaurant delivery.

Whilst this is a robust conclusion, we note that the RPFs list three factors as indicating Amazon's potential to be a closer competitor to Deliveroo than Uber Eats and Just Eat were it to re-enter. This is despite the RPFs observing elsewhere "limited evidence" of closer competition.[13] We find all three of these factors to be strained, speculative and unconvincing; and particularly so in the context of (hypothetical) entry at some undefined point in the future. As such, discussing these factors in the final decision would unreasonably cast doubt on the conclusion that there is no reason for Amazon and Deliveroo to be considered potential close competitors.

- The first alleged factor is that there is [CONFIDENTIAL]. Just Eat and Uber Eats customer bases may also [CONFIDENTIAL] with the Amazon Prime customer base. It is therefore impossible to draw conclusions as to potential closeness of competition between Amazon and Deliveroo [CONFIDENTIAL], as (on its own) it cannot indicate Deliveroo as being likely to receive a [CONFIDENTIAL] of customers Amazon loses compared to remaining competitors (as would be required for it to be considered a close competitor).[14]
- The second alleged factor is that Amazon would be a logistics operator as well as just a marketplace operator (i.e. it would be offering restaurants delivery services as well as acting as their "digital front door"). The CMA argues "*offering logistics would make Amazon a closer competitor to Deliveroo and give it the ability to target the large restaurant chains who work with Deliveroo*". But this point is both entirely hypothetical and, in any event, of very little value as both Uber Eats and Just Eat also provide logistics. Uber Eats in particular already has a comparable "3P" model to Deliveroo and Just Eat is expanding its logistics capabilities (as the RPFs recognise, online restaurant platforms are converging and restaurants are increasingly multi-homing).[15] As such this observation does not imply any appreciable additional closeness with Deliveroo vs. other players.

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12 Paragraph 5.51.

13 Paragraph 5.50.

14 We note also that this data point is based on weak evidence: a survey of just 178 Deliveroo customers. See [CONFIDENTIAL].

15 Paragraph 5.49.

- The third alleged factor is summarised as "*The objective of Amazon Restaurants was to* [CONFIDENTIAL]*, which have been a key part of Deliveroo's strategy.* [CONFIDENTIAL]*, Just Eat has traditionally targeted* [CONFIDENTIAL] *who have their own delivery capability. This would make the choice of restaurants available for consumers on the Amazon and Deliveroo platform more similar.*" This is misleading: each of Uber Eats and Just Eat has a strong national chain offering (with Just Eat having recently won some key national accounts such as McDonalds). In any event, it seems to us unreasonable to make inferences based on Amazon's past forays into restaurant delivery when these past efforts are elsewhere dismissed as poorly executed and irrelevant.

The CMA should emphasise that minority shareholdings are less likely to have anticompetitive effects in industries with multiple competing players

The RPFs correctly note that Amazon could not use its shareholding to discourage Deliveroo from competing against Amazon's (hypothetical) organic offer. Not only would Amazon's influence be limited, but competition from Just Eat and Uber Eats would mean that they were likely to be the primary beneficiaries of such a move.[16] The CMA elsewhere acknowledges that there is strong competition in online restaurant delivery[17] and that other market participants are well-placed to compete in OCG provision.[18]

Existence of strong competitive constraints from third parties is an important difference from previous minority shareholding assessments conducted by the CMA and we consider that this point could be emphasised more specifically. For example, the assessment of Ryanair's minority shareholding in Aer Lingus (where competition concerns *were* identified) was strongly influenced by the fact that the two airlines did not face competition from a third-party in the majority of the overlap routes involving the UK as well as Ryanair's larger shareholding in that case giving it material influence due to specific rules in Aer Lingus' Articles of Association.

16 Similarly, in OCG provision multiple rivals would be well-placed to benefit from any reduction in competitiveness of Deliveroo's offer.

17 Paragraph 5.59.

18 Paragraph 6.305.

Annex 2 – Material errors and factual inaccuracies

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
4.17	Deliveroo made several submissions in relation to how this position should be taken into account within the CMA's investigation: (a) On 20 March 2020, Deliveroo submitted a letter from its board of directors explaining that, as a result of the Coronavirus (COVID-19) crisis they were likely to need to start insolvency proceedings [CONFIDENTIAL]. Deliveroo's letter stated that it was 'critical' for Deliveroo that the CMA delivered its Provisional Findings as soon as possible, and that it indicated in those findings it was minded to clear the Transaction. (b) On 26 March 2020, Deliveroo submitted that the impact of the crisis meant that the relevant counterfactual was one in which Deliveroo would exit the market. This was supported by various trading and financial updates, including professional advice from third-party legal, financial and insolvency advisers. (c) Deliveroo provided updates from Deliveroo and its advisors and responses to queries on these submissions. Shortly before publication of our April Provisional Findings, we also received updated information from Deliveroo and confirmation that at that date there had been no material recovery in the business.	Paragraph 4.17(c) wholly misrepresents Deliveroo's submission in response to the s109 request received from the CMA on 9 April 2020. The key point being made in that submission was that Deliveroo still faced the prospect of imminent insolvency, regardless of trading fluctuations seen during the beginning of April 2020. In fact the executive summary of that submission from Deliveroo concluded with the clear statement that "*The position remains that, without positive PFs, Deliveroo will need to declare insolvency* [CONFIDENTIAL]." This was the confirmation being provided by Deliveroo in mid-April 2020. Paragraph 4.17(c) is therefore factually inaccurate and shows that the CMA has misunderstood (or simply chosen to ignore) the submissions made by Deliveroo in mid-April 2020. It also demonstrates the CMA's misplaced focus on fluctuations in Deliveroo's trading performance which, as described at paragraph 5.16 above, is not relevant for the FFD analysis.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
4.25	Since the April Provisional Findings, the situation has continued to evolve and there have been a number of key developments including: (a) There has been a partial recovery in order volumes in the online restaurant platforms market, with orders for independent restaurants, many of which have recently been added to these platforms, replacing some of those for the chain restaurants that closed at the beginning of the crisis (as noted below, these chain restaurants have also recently started to re-open as lockdown rules have eased). In addition, demand for takeaway food has continued to increase as customers switched to dining in (from dining out). (b) The mix of restaurants on these platforms has become [CONFIDENTIAL], as [CONFIDENTIAL] independent restaurants have replaced [CONFIDENTIAL] quick service restaurant chains. This impact may be temporary as quick service restaurant chains re-open as set in out in bullet point (d) below. (c) There has been sustained demand for online grocery delivery services, with online restaurant delivery platforms expanding their operations in this area. (d) In the UK, lockdown measures have gradually eased with the UK government announcing an initial easing of measures on 13 May 2020 with devolved administrations announcing easing of restrictions in the following weeks. This has led to the recent re-opening of some restaurants, including larger chains such as McDonalds and Pret A Manger.	Deliveroo submits that the increase in profitability observed <u>was</u> temporary. With QSRs reopening, Deliveroo's profitability per order is now returning to pre-crisis levels. Similarly, the "sustained demand" for online grocery delivery services (of the type offered by Deliveroo) is also likely to be a temporary phenomenon as lockdown and social distancing measures are further relaxed and customers are able to shop at bricks and mortar stores with less prospect of queuing. The CMA fails to acknowledge this.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
4.26	The CMA has also received some evidence that funding markets (which were severely impacted by the crisis) have started to recover. For example, third parties highlighted to the CMA that online restaurant platforms such as Just Eat Takeaway.com and Wolt Group, (a Finnish restaurant delivery platform) have announced significant external equity and debt funding (on 23 April 2020 and 15 May 2020) since the announcement of the provisional findings on 17 April. Doordash also recently announced (on 18 June 2020) significant external equity funding. A recovery in the share prices of most listed online delivery platforms in the period from the middle of March 2020 to the middle of June 2020 in excess of the performance of the relevant market averages further supports the position that the businesses in this sector are now in a stronger position to secure additional funding where necessary.	The conclusion drawn in paragraph 4.26 is not substantiated by robust evidence. Firstly, Deliveroo needed to obtain funding in Q1 of 2020 when the funding markets were severely depressed (as supported by extensive evidence provided by Deliveroo and as the CMA itself recognises). Hence, any potential recovery of the funding markets in April and May 2020 would have made no difference to Deliveroo's overall financial position at the relevant point in time. Secondly, in any event, the examples the CMA gives provide no evidence that the funding markets have indeed recovered. As noted in the main body above: (i) Takeaway.com (now Just Eat Takeaway) is a listed company and therefore has access to the public capital markets, unlike Deliveroo. It is also profitable, operates in a number of different markets to Deliveroo and has just benefited from recently closing its acquisition of Just Eat (following the CMA's clearance decision). It is in no way a meaningful comparator. (ii) Doordash operates in the US. Unlike in the UK, restaurants in the US have largely remained open during the crisis. Again it is not a meaningful comparator. (iii) Moreover, the various fundraisings the CMA refers to in this paragraph might have been committed prior to the onset of the COVID-19 crisis. Moreover, the CMA fails to weigh this evidence against the evidence from Deliveroo's financial advisors and its investors in a fair manner. Please see, for example, the letter from [CONFIDENTIAL], dated 22 May 2020, which confirms that it would have been "highly challenging" for Deliveroo to obtain financing in the first quarter of 2020. This evidence has largely been disregarded by the CMA without solid evidence suggesting the contrary.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
4.27	Since the publication of the April Provisional Findings, we requested, and have been provided with updated financial information from Deliveroo. This shows that Deliveroo's actual performance in April 2020 was significantly better than had been forecast. In addition, Deliveroo is now forecasting significantly improved performance in May and June 2020. This is driven by both a continued recovery in orders (order volumes for April to June 2020, while still below Deliveroo's initial budget, are substantially higher than had been forecast in March, with April's actual order volumes [CONFIDENTIAL]% higher and May and June order volumes now forecast to be [CONFIDENTIAL]% and [CONFIDENTIAL]% higher respectively) and a [CONFIDENTIAL]. Deliveroo has told us that the [CONFIDENTIAL] is due to a shift in mix of orders to [CONFIDENTIAL] and an increase in average order size due to more families and whole households ordering. Online convenience grocery deliveries have also increased significantly but remain a relatively small part of Deliveroo's business overall.	Regardless of whether Deliveroo's performance in April 2020 was better than had been forecast, this had <u>no</u> bearing on the relevant question here, which is whether Deliveroo would have failed in the counterfactual. In any event, short term fluctuations in Deliveroo's trading performance had no impact on its overall financial position, i.e. that absent positive PFs it would have been required to declare insolvency [CONFIDENTIAL]. This was repeatedly made clear to the CMA, yet the CMA fully ignores the crucial point throughout the June PFs.
4.29	Deliveroo's revised forecast for the year to 31 December 2020 now shows an EBITDA-capex [CONFIDENTIAL] compared to a EBITDA-capex [CONFIDENTIAL] in the budget targets prepared in December 2019 and an EBITDA-capex [CONFIDENTIAL] predicted in the updated budget prepared in February 2020. This has been achieved due to a combination of improved performance since the end of March 2020, which accelerated through April, and cost savings compared to both budgets. Deliveroo's current cashflow forecasts show it now has a [CONFIDENTIAL] prior to the Coronavirus (COVID-19)	The CMA is wrong to rely on figures from Deliveroo's <u>draft</u> budget in December 2019. Deliveroo on numerous occasions made clear that the budget in December 2019 was in draft form and subject to change. In the June PFs the CMA nevertheless incorrectly places undue weight on the December 2019 draft budget. The only relevant figures in this context are those from the February 2020 budget.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	crisis, albeit that, as Deliveroo has noted, the current crisis also results in a higher degree of uncertainty compared to pre-Coronavirus (COVID-19) forecasts.	
4.30	We note that, given this longer cash runway, restructuring options that were previously not feasible to Deliveroo, as they would be cash negative in the short-term, such as rationalisation of its international operations, may now be possible and could extend this runway further.	The CMA does not provide any details as to what it means when it makes reference to "rationalisation". Assuming this refers to [CONFIDENTIAL], as explained in Deliveroo's response to the CMA's 13 May RFI, this is not a viable option: (i) In light of the crisis, [CONFIDENTIAL]. (ii) When a company is in the "zone of insolvency", the directors are obliged to protect the value of the company's assets for the benefit of the company's creditors. In these circumstances, it is highly unlikely that the directors would agree to [CONFIDENTIAL] (and incurring personal liability as a result and risking their reputation in the market as they sit as directors on the board of other portfolio companies). (iii) In the context of [CONFIDENTIAL], Deliveroo's modelling demonstrated that the exit would save Deliveroo only c. £[CONFIDENTIAL] (and would have an upfront cost of c. £[CONFIDENTIAL]).
4.33	We note, however, that the expected net impact of these changes has already been taken into account within Deliveroo's own forecasts, which ultimately set out: (a) A considerable improvement in Deliveroo's cash position (ie a forecast increase in its cash position, excluding	The CMA's reliance on the December 2019 "budget" is misplaced. As already explained by Deliveroo, this was a draft budget. The relevant (actual) budget was produced in February 2020.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	deferred liabilities, in June 2020 from £[CONFIDENTIAL] to £[CONFIDENTIAL]). (b) A substantial reduction in forecast losses (ie with forecast losses for April, May and June 2020 now being £[CONFIDENTIAL] less than previously forecasted). (c) A full year EBITDA-capex [CONFIDENTIAL] – which is better than the £[CONFIDENTIAL] forecast in its original December 2019 budget target and only slightly behind the February 2020 forecast [CONFIDENTIAL]. (d) A positive forecast cash balance of £[CONFIDENTIAL] in December 2020, excluding [CONFIDENTIAL], exceeding both the December 2019 and February 2020 budget forecasts.	
4.34	Deliveroo did not respond to the April Provisional Findings.	As explained in paragraph 2.3 in the main body above, Deliveroo did not submit a response to the April PFs because it agreed with those findings, and none of the fluctuations in Deliveroo's trading performance during April and May 2020 called the Provisional Findings' validity into question. Further, Deliveroo was under no obligation to respond to the April PFs.
4.48	We note, in particular, that Deliveroo's updated forecasts indicate that it now expects to have improved cashflows and profitability through 2020 and a positive cash balance until at least [CONFIDENTIAL] (when it expects to have £[CONFIDENTIAL] remaining cash according to the latest forecast). It would therefore now need to raise additional funding in [CONFIDENTIAL] at the latest assuming it takes no	In this paragraph the CMA fails to acknowledge the inherent uncertainty in trying to forecast anything to [CONFIDENTIAL] 2020, given the ongoing COVID-19 crisis (and in particular the risk of a second wave of COVID-19 and reinstatement of lockdown measures). This uncertainty is acknowledged in other parts of the June PFs, but primarily when it supports the CMA's line of argument.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	further cost reduction measures (for example by restructuring its operations), which could extend this further.	
4.49	We note the advice that Deliveroo has received from its insolvency advisers on 21 May 2020 regarding the need to declare insolvency if it does not have a reasonable expectation of receiving funds to ensure it minimises the loss to creditors. However, in light of the updated forecasts we now have available, we consider that Deliveroo appears to have sufficient cash to be able to meet the demands of its creditors until [CONFIDENTIAL] (excluding the [CONFIDENTIAL]). This is a similar position to the one it predicted prior to the Coronavirus (COVID-19) crisis. As such, it appears that the specific impact of this crisis on Deliveroo's liquidity has been significantly less severe than was forecasted at the time of the April Provisional Findings. This is due to combination of factors. (a) Part of the cash increase is driven by a partial recovery in orders and increase in commission per order which were not anticipated (and, given the uncertainty, could not, in our view, reasonably have been predicted) at the time of the April Provisional Findings. (b) In addition to the significant cost savings undertaken by Deliveroo at the time of the April Provisional Findings, the longer cash runway now available has allowed it to implement further cost savings such as redundancies that would not previously have been feasible.	Again, the CMA fails to acknowledge the inherent uncertainty in trying to forecast anything to [CONFIDENTIAL] 2020, given the ongoing COVID-19 crisis. Deliveroo is also very surprised that the CMA has also essentially disregarded the expert advice from Deliveroo's legal and insolvency advisors that it would need to declare insolvency [CONFIDENTIAL] absent positive PFs, substituting this advice for its own views, without any evidentiary basis. Finally, the available evidence clearly demonstrates that the increase in commission per order referred to in sub-paragraph (a) is <u>temporary</u>, and it should be acknowledged as such by the CMA.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	(c) Furthermore, Deliveroo has been able to defer further payments to creditors and tax authorities.	
4.52	However, as explained in detail above, the updated financial information we have received from Deliveroo indicates that, although the Coronavirus (COVID-19) crisis had an initial severe impact on Deliveroo, the overall impact has not been as severe as anticipated at the time of the April Provisional Findings (and is now not forecast to be as severe in future). This recovery in Deliveroo's performance, combined with an increase in deferred liabilities and cashflow improvements, has significantly improved Deliveroo's forecast cashflows to June. As set out in detail above, Deliveroo now has an additional £[CONFIDENTIAL] in cash excluding deferred liabilities and an additional £[CONFIDENTIAL] when such liabilities are included. This improvement provides it with more time to seek additional funding. Furthermore, this would also allow it more time to rationalise its business operations, potentially extending this cash runway further.	Please see the row addressing paragraph 4.30 above.
4.56	The current evidence shows that Deliveroo has been able to manage the specific impact of Coronavirus (COVID-19), through a combination of deferring liabilities, saving costs and improving profitability, in order to leave it in a similar cash position to the one it forecast in its December 2019 and February 2020 budgets. This improved position and longer cash runway means that: (a) Deliveroo now has a less urgent funding need than it would have based on the forecast position at the time of the April Provisional findings.	Deliveroo has not been able to "manage" the impact of the COVID-19 crisis – much of what has happened has been as a result of exogenous factors outside of its control. (i) As above, there was no budget in December 2019: this was a draft and subject to change (as made clear to the CMA). (ii) Moreover, the CMA must acknowledge the inherent uncertainty that exists in relation to Deliveroo's forecasts carried out during the COVID-19 crisis, but fails to do so. (iii) As described above, Deliveroo's "longer cash runway" has no bearing on its insolvency position.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	(b) This would also provide it with more scope to restructure its operations in order to increase its cash runway further.	(iv) In relation to the purported "scope to restructure its operations", please see the row addressing paragraph 4.30 above.
4.58	Deliveroo's submission in respect of Limb 1 now appears to rest on the submission that its 'ordinary course' funding need would have arisen in March 2020 in the counterfactual (and alternative funding would not have been available). We consider Deliveroo's submissions on the amount of alternative funding it would have raised and the amendments to its budget as a result of this too speculative to form the basis for a conclusion that the most likely counterfactual involves Deliveroo's exit: (a) Firstly, the evidence does not reveal the precise amount that would have been raised by Deliveroo in the counterfactual, although we consider that the available evidence shows that alternative funding offers were of a broadly similar scale to the $[CONFIDENTIAL] million Series G funding amount. We therefore consider that there is no reasonable basis to conclude that Deliveroo would have been in a materially worse financial position in the counterfactual than it is currently. (b) We also cannot speculate on how precisely Deliveroo would have then operated the business following this fundraising.	In this paragraph the CMA has departed from its April PFs in a number of important respects, without justification. See further paragraph 5.6 *et seq* above.
4.59	Accordingly, we do not have sufficient evidence to conclude that the nature and timing of Deliveroo's funding needs in the counterfactual would mean that the most likely counterfactual	The evidence provided by Deliveroo clearly demonstrates that the funding offers were <u>not</u> of a broadly similar scale to the Series G funding amount, such that Deliveroo would have needed to raise funds in Q1 2020. The CMA has

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	involves its exit from the market in the way suggested by the Parties.	cited no evidence to the contrary. The lack of evidence referred to here could have been easily rectified by the CMA using its information gathering powers to gather additional evidence from Deliveroo or third parties, but it chose not to do so.
4.61	Whilst we acknowledge that, in the counterfactual, Deliveroo would have continued to operate in a way that was reliant on external fundraising, the available evidence does not support Deliveroo's submission that its exit would have been imminent, absent the Transaction, in March 2020.	The available evidence was sufficient to support this conclusion in the April PFs and the CMA (a) has not cited any evidence to the contrary and (b) failed to gather further evidence on this point, to the extent it began to have doubts.
4.65	In light of the evidence we now have, we consider that Deliveroo's cashflow position (in both the factual and the counterfactual) has improved significantly albeit with a short-lived deterioration at the start of the crisis from which it has since recovered. Therefore, there is no basis, on the evidence available to us, to suggest that its funding needs in the counterfactual would have been materially different in nature and urgency from that envisaged prior to the crisis.	This finding does not stand in circumstances where Deliveroo would have needed to raise funds at the point the COVID-19 crisis struck.
4.66	Whilst we have received evidence from Deliveroo's professional advisors that a company in Deliveroo's position would find it 'highly challenging' to raise funding in March 2020 our view is that in the relevant counterfactual Deliveroo would likely have taken action to ensure that it was both more attractive to potential investors and to seek to avoid a 'cliff edge' in which it must secure funding very urgently. Deliveroo could for example have rationalised some of its operations to provide a longer cash runway and reduced its losses making it more attractive to some investors. In addition, it would no longer have had the urgent	As above, in the Counterfactual Deliveroo would not have had the time to engage in these measures (it would have needed to raise funds in Q1 2020). The CMA fails to abstract elements of the Transaction (i.e. the materially higher funding received from the Series G funding round) from its analysis here. As explained above, "rationalisation" of operations is not a viable option for the purposes of avoiding a liquidity crisis.

Para.	Text from Chapter 4 of the Revised Provisional Findings	Deliveroo's response
	funding need previously envisaged in the April Provisional findings due to Coronavirus (COVID-19).	
4.67	There are also a number of factors that suggest that the funding environment for Deliveroo has improved since the April Provisional Findings, all of which would be equally applicable in the counterfactual. These include: (a) the recent successful fund raising by Just Eat Takeaway.com, Wolt Group and DoorDash; (b) the improvement in Deliveroo's cash position compared to that originally forecast at the start of the crisis; and (c) the improved investor sentiment to this sector, as shown by the recovery in share price of listed companies in this sector.	Please see the row addressing paragraph 4.26 above.
4.68	On this basis, while we have not been required to consider whether Deliveroo would have been able to raise additional funds specifically to survive the Coronavirus (COVID-19) crisis absent the Transaction, we note that the available evidence indicates that there is now a materially greater likelihood that alternative sources of funding would have been available to Deliveroo. In addition, Deliveroo no longer faces (and would not in the counterfactual have faced) such an urgent deterioration in its cash position as a result of Coronavirus (COVID-19), providing more scope to manage its funding needs through rationalising its operations.	As regards "rationalising its operations", please see the row addressing paragraph 4.30 above.