

Anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo

Summary of final report

Notified: 4 August 2020

Overview

1. The Competition and Markets Authority (CMA) has found that the anticipated acquisition by Amazon.com NV Investment Holdings LLC, a wholly-owned subsidiary of Amazon.com, Inc (Amazon) of certain rights and a 16% minority shareholding in Roofoods Ltd (Deliveroo) (the Transaction) has not resulted, and may not be expected to result, in a substantial lessening of competition (SLC) within a market or markets in the United Kingdom (UK) for goods and services.
2. On 27 December 2019, the CMA referred the Transaction for further investigation and report by a group of CMA panel members (the Inquiry Group) following a phase 1 review. The terms of reference said that the Inquiry Group must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.¹
3. In its phase 1 investigation, based on the information available at that time, the CMA found that it is or may be the case that the Transaction may be expected to result in an SLC in (a) the supply of online restaurant platforms in the UK; and (b) the supply of online convenience grocery platforms in the UK. We therefore focussed on these areas in our inquiry.

¹ See [Terms of reference](#), 27 December 2019.

4. We also considered whether we should further investigate any of the theories of harm that were dismissed following the phase 1 investigation, in particular, the possibility that the Parties² could choose to bundle their respective services, potentially foreclosing other companies from competing with them. We found no additional evidence suggesting that these theories of harm should be re-investigated at phase 2.

Background

5. We published two sets of provisional findings in the course of the phase 2 investigation of the Transaction (the April Provisional Findings and Revised Provisional Findings).³ We received detailed and considered responses to those provisional findings from many stakeholders, and those responses have been helpful to the Inquiry Group in considering the issues presented by the Transaction and reaching our final decision.
6. In late-March 2020, Deliveroo advised the CMA that, if the company's directors did not have a reasonable expectation of receiving additional funds before Deliveroo ran out of cash in early Q3 2020, they would shortly be required to initiate insolvency proceedings. The evidence gathered by the CMA at the time, in particular Deliveroo's financial data provided in early-April 2020 (ie actual data up to the beginning of April and forecast data based on the situation at that time), showed that Coronavirus (COVID-19) was having a severe impact on Deliveroo's business. We understood that the situation was urgent and, therefore, sought to publish provisional findings as quickly as possible.⁴ Given the conclusion at that time, that Deliveroo was likely to exit the market unless it received the additional funding available through the Transaction, and that the situation would have been the same in the counterfactual, it was not necessary to set out our full analysis of the effect of the Transaction on competition in the supply of goods and services in the UK.
7. Beginning in April 2020, and accelerating through that month, market conditions and Deliveroo's financial situation changed materially leading us to conclude Deliveroo was no longer likely to exit the market as a result of the Coronavirus (COVID-19) pandemic. In light of this finding, we published our full provisional findings setting out our analysis of the effects of the Transaction on competition against a counterfactual where Deliveroo remains in the market (the Revised Provisional Findings).⁵ It was our view that the Transaction would not be expected to result in an SLC in either the market for

² Throughout this document we refer to Amazon and Deliveroo collectively as 'the Parties'.

³ See [April Provisional Findings](#), 16 April 2020 and [Revised Provisional Findings](#), 22 June 2020.

⁴ See [April Provisional Findings](#), 16 April 2020.

⁵ See [Revised Provisional Findings](#), 22 June 2020.

online restaurant platforms or the market for online convenience groceries (OCG) in the UK.

8. Following a review of the responses to the Revised Provisional Findings, and further information provided by the Parties, we have reached our final decision, which is set out in detail below.

The Parties

9. Founded in 1994 by current CEO Jeff Bezos, Amazon has grown rapidly to become one of the world's largest companies with a market capitalisation of c.\$1.52 trillion.⁶ In 2019, Amazon had over \$280 billion⁷ in net sales (up 20% year on year), over \$14 billion in operating income⁸ and approximately 800,000 employees.⁹ 'Amazon.com, Inc.', the parent company of the group, is publicly listed on the US Nasdaq Global Select Market (NASDAQ) and incorporated in Delaware in the United States (US).
10. The UK is Amazon's third largest market in terms of net sales (behind the US and Germany) with approximately 6% of net sales generated from the UK (approximately \$17.5 billion in 2019).¹⁰ Amazon's activities include operating as an online retailer and third-party marketplace provider, a delivery and logistics network operator, a host of cloud server space, a book publisher, a producer and online broadcaster of television and films and a manufacturer of electrical devices such as Amazon Kindle e-readers and Echo devices.
11. Deliveroo is a UK-based company founded in 2013 whose main activity is restaurant delivery. In addition to restaurant delivery, the company operates cloud kitchens through Deliveroo Editions, delivers convenience groceries through a partnership with Co-op and certain other retailers, and provides wholesale and data services to restaurants. Deliveroo's primary market is the UK, where it operates in over 200 towns and cities, working with over 30,000 partner restaurants and 25,000 riders and employs over 1,000 people directly.

⁶ As at 28 July 2020.

⁷ [Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides](#), slide 8. In Q1 2020, Amazon had over \$75 billion in net sales ([Amazon.com, Inc Q1 2020 Financial Results Conference Call Slides](#), slide 7).

⁸ [Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides](#), slide 10. In Q1 2020, Amazon had around \$4 billion in operating income ([Amazon.com, Inc Q1 2020 Financial Results Conference Call Slides](#), slide 9).

⁹ [Amazon.com, Inc FORM 10-K](#), filed on 31 January 2020, page 4.

¹⁰ [Amazon.com, Inc FORM 10-K](#), filed on 31 January 2020, page 68.

The Transaction

12. The Transaction comprises [redacted] which Amazon entered into with Deliveroo on 16 May 2019.¹¹
- (a) [redacted], which gives Amazon certain rights over Deliveroo, including board representation, a [redacted]% shareholding ([redacted]); and
 - (b) [redacted], which envisages the acquisition by Amazon of a [redacted]% shareholding (and certain other rights) in Deliveroo, [redacted].¹²

Jurisdiction

13. We have found that the Transaction has resulted in the creation of a relevant merger situation within the meaning of the Act on the basis that, as a result of the Transaction, Amazon will have the ability to exercise material influence over Deliveroo and Deliveroo has revenues in the UK in excess of £70 million.
14. An assessment of material influence requires a case by case analysis of the overall relationship between the acquirer and the target. When assessing material influence, the CMA will consider the significance of the rights conferred by formal agreements and structures, as well as the commercial realities of the relationship between an acquirer and the target.
15. Our view is that the following factors, taken together, demonstrate that Amazon will acquire material influence over Deliveroo:
- (a) the size of Amazon's investment (in both absolute terms and relative to other shareholders) and its associated rights;
 - (b) a strong body of evidence that Deliveroo's management, its other shareholders and its commercial/operations teams perceive that Amazon:
 - (i) has a special status as a significant 'strategic' investor, with various additional rights, and is a credible potential future acquirer of Deliveroo (or source of funding);
 - (ii) has commercial and operational expertise from running an online business in directly relevant sectors to Deliveroo; and

¹¹ [redacted].

¹² The German authorities cleared this Transaction on 11 July 2019.

(iii) is a current and potential future strategic/commercial partner of Deliveroo.

16. Together, we consider these factors will mean Amazon's views are likely to be given material weight by both management and other shareholders (and their appointed directors), such that we conclude that the Transaction will give Amazon the ability materially to influence decisions related to the policy of Deliveroo, including the management of its business, the strategic direction of the company and/or its ability to define and achieve its commercial objectives.

Market definition

17. Market definition provides a framework for assessing the competitive effects of a merger for a relevant product and geographic market. We have considered the impact of the Transaction on the supply of:
- (a) online restaurant platforms in the UK; and
 - (b) online convenience grocery delivery in the UK, that is, groceries that are delivered within a short period of time after ordering.

Counterfactual

18. The counterfactual is an analytical tool used to help answer the question of whether a merger has or may be expected to result in an SLC. It does this by providing the basis for a comparison of the competitive situation on the market with the merger against the most likely future competitive situation on the market absent the merger.¹³ The latter is the counterfactual.
19. Where there is more than one possible alternative scenario, during a phase 2 review the CMA will select the counterfactual it considers would be the most likely scenario to have arisen absent the merger.
20. Against this framework and in light of the Parties' submissions and the evidence we observed, we considered the likely future situations of both Amazon and Deliveroo in the absence of the Transaction. Our focus was on two key questions: (a) whether Deliveroo would exit the market in the absence of the Transaction, as Deliveroo argued prior to the April Provisional Findings; and (b) whether Amazon would re-enter the market for online restaurant platforms. We have also considered the relevant counterfactual in the market for OCG.

¹³ [Merger Assessment Guidelines \(CC2 Revised\) \(MAGs\)](#), paragraphs 4.3.1 and 4.3.6.

Exiting Firm Counterfactual

21. When considering an ‘exiting firm’ scenario, the CMA examines whether the firm would have left the market and whether the transaction at issue is the best available outcome for consumers.¹⁴ The CMA applies a three-limb test when making this assessment, considering:
- (a) Whether the firm would have exited (through failure or otherwise) absent the transaction.
 - (b) Whether there would have been an alternative purchaser for the firm or its assets.
 - (c) What the impact of exit would be, and how this would compare to the impact of the transaction.
22. As a loss-making business, Deliveroo has historically been reliant on external funding in order to continue trading. We do not, however, consider that Deliveroo would be a failing firm in the counterfactual on this basis. This is consistent with the Parties’ submission in the Merger Notice that, absent the Transaction, Deliveroo ‘would have continued to compete as it currently does, including by seeking suitable investment to drive its expansion and innovation’.
23. In the April Provisional Findings, we provisionally concluded that Deliveroo would have been likely to exit the market as a result of the Coronavirus (COVID-19) crisis without additional funds and that, as a result of Deliveroo’s urgent need for alternative investment and the effect of the crisis on funding markets, Deliveroo was unlikely to be able to raise the funding required in the time it had available. We also provisionally concluded that Deliveroo exiting the market would have had a greater negative effect on competition and consumers than any effect from allowing the Transaction to proceed.¹⁵
24. Following publication of the April Provisional Findings, we found evidence that market conditions and Deliveroo’s financial position had changed. As a result, we no longer considered that Deliveroo should be considered an exiting firm.

Limb 1: whether Deliveroo would exit absent the Transaction

25. Updated financial information provided by Deliveroo in response to requests for information from the CMA after publication of the April Provisional Findings shows that Deliveroo’s actual performance in April, May and June was

¹⁴ See [April Provisional Findings](#), 16 April 2020.

¹⁵ See [April Provisional Findings](#), 16 April 2020.

significantly better than Deliveroo had forecast at the beginning of April. The recovery appears to have begun slowly in early-April 2020 and accelerated later in the month.

26. Although the Coronavirus (COVID-19) crisis initially had a severe impact on Deliveroo's order volumes, restaurant availability and, in turn, cash flow, this impact was short-lived. Deliveroo's actual performance in April, May and June 2020 was significantly better than had been forecast and indeed Deliveroo was both profitable and had a positive cashflow in May and June as opposed to the negative cashflow it had forecast.¹⁶ This improved cashflow provides Deliveroo with more time to seek additional funding and to rationalise its business operations, potentially extending this cash runway further. The CMA considers that the improvement in Deliveroo's performance is primarily a result of changing market conditions, and would also have occurred in the counterfactual.
27. We do not agree with Deliveroo's submission that the evidence that Coronavirus (COVID-19) has had a less severe impact on its business than originally forecast is irrelevant to our consideration of the counterfactual. In the absence of evidence of a severe and ongoing financial decline in Deliveroo's actual business as a result of the impact of Coronavirus (COVID-19), we have no basis for finding that such a decline would have occurred in the counterfactual (ie had Deliveroo accepted an alternative investment to Amazon).
28. Based on the evidence we have gathered that Coronavirus (COVID-19) has had a more limited impact than expected on Deliveroo's business, and notwithstanding the company's historic reliance on external funding, our view is that the most likely counterfactual is the one proposed by the Parties in the Merger Notice: that, absent the Transaction, Deliveroo 'would have continued to compete as it currently does, including by seeking suitable investment to drive its expansion and innovation'. On that basis, we no longer consider that Deliveroo would be likely to exit the market absent the Transaction.

Limb 2: whether there would be alternative investors in Deliveroo

29. On the basis of the evidence we had at the time of the April Provisional Findings, we believed that Deliveroo was facing a financial 'cliff-edge' as a result of the significant impact of Coronavirus (COVID 19) with no evidence of a likely improvement in the near future. That situation would have required

¹⁶ Deliveroo was profitable excluding [X] which do not affect net assets.

funds to be raised in a very short period of time, during the period that investment sentiment was weakest.

30. While we have received evidence that it would have been challenging for Deliveroo to raise funds 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 would have needed to secure funding very urgently, for example by raising funds prior to March 2020. In addition, for the reasons set out above, the urgent funding need due to Coronavirus (COVID-19) envisaged in the April Provisional Findings no longer appears likely to have arisen.
31. We consider that the evidence that the impact of Coronavirus (COVID-19) on both Deliveroo and the funding markets has been more muted than expected at the date of the April Provisional Findings means that the most likely counterfactual absent the Transaction is that Deliveroo would have continued to compete in the market, and to raise funds to do so, in the same way as it anticipated prior to the crisis.

Restaurants counterfactual

32. We have examined whether the most likely scenario, absent the Transaction, is that Amazon would choose to re-enter the supply of online restaurant platforms in the UK. Amazon previously had a limited presence in this market and exited in 2018. In order to assess the likelihood of Amazon re-entering the supply of online restaurant platforms in the UK, we have assessed Amazon's incentives and intention to re-enter, primarily by examining evidence from Amazon's internal documents. We then assessed Amazon's ability to re-enter, again by examining Amazon's internal documents and looking at evidence from third parties.
33. When considering whether a business has the incentive, intention and ability to enter a market, it is not necessary to identify a single specific route by which that business would be more likely than not to enter the market. Nor do we consider it necessary to have internal documentary evidence setting out an explicit, concrete intention to enter within a defined timeframe. Rather, we must undertake an in-the-round assessment that reflects all of the available evidence with respect to a party's intention, incentive and ability to enter.
34. We have taken into account a range of evidence, including evidence of the way that Amazon operates its business in practice (and in particular its so-called 'test and learn' approach to innovating and expanding its product offerings). We have carefully considered evidence relating to the broader commercial strategy of the Amazon business, and the perceived potential

importance of the online restaurant platform market within this strategy. Our assessment was also informed by Amazon's current strategies for Prime, and its assessment of the role that food offerings play within these strategies, evidence relating to Amazon's previous attempt at supplying a restaurant platform (Amazon Restaurants), and evidence relating to its interest and subsequent investment in Deliveroo.

Amazon Prime

35. Promoting and growing Prime is very important to Amazon, and it has successfully continued to grow Prime membership globally in recent years. After the US, the UK is Amazon's [redacted] largest territory in terms of Prime subscription revenue and Prime household penetration. The number of Amazon Prime customers in the UK has grown rapidly in recent years. Amazon has invested heavily in its Prime proposition in the UK, and part of its [redacted].

Offering restaurant delivery as part of Amazon Prime

36. Food, in general, appears to be an area which Amazon sees as high-use and of value to its Prime customers,¹⁷ and [redacted]. Restaurant delivery is seen as a useful benefit for Prime. First, this was shown by Amazon's expectations of Amazon Restaurants. Second, the attraction and benefit of restaurant delivery [redacted] for discussion with Jeff Bezos (CEO) and other members of Amazon's senior leadership team.
37. The UK is one of the largest markets for restaurant delivery in the world and is the largest in Europe. Amazon would have a significant advantage over other operators seeking to enter the UK as it can benefit from its existing relationships with millions of customers in the UK, including engaged Prime customers. We also consider that Amazon may have a different time horizon for profitability compared to other potential entrants and the financial resources to support this.
38. There is evidence that Amazon sees offering fast delivery of a range of products as a way to enhance the value of Prime, which the evidence shows is important to Amazon's overall global corporate strategy. Amazon has considered restaurant delivery on a global level in the context of its desire to attract and retain the customers of its Prime subscription service and to be known for fast delivery. Amazon has a global strategy, as explained below, of

¹⁷ For instance, Amazon announced in July 2020 that its Amazon Fresh grocery delivery service would now be available for free for Prime members. See: [Amazon Fresh Homepage](#).

expanding its grocery offering and increasing the speed of delivery. Restaurant delivery through Amazon Restaurants was expected to play an important role in this. The benefits Amazon has identified from restaurant delivery in internal documents include: [REDACTED].

Amazon's food strategy

39. F3 is an Amazon business area which used to also include Amazon restaurants. F3 operates internationally and is focused on developing Amazon's online grocery offering including through the roll-out of its ultra-fast grocery (UFG) plan.
40. Several internal emails from within F3 refer to the importance of offering restaurant delivery as part of Amazon's food strategy, and in particular using the assets or expertise of Deliveroo in other parts of Amazon's food businesses. In addition, emails from the corporate development team show consideration of wider benefits to Amazon from acquiring Deliveroo including [REDACTED].
41. Evidence shows the current priority for F3 is to expand Amazon's position in online groceries globally, with a strong focus on [REDACTED], and it is investing heavily in its delivery and distribution capabilities in the US and UK. Alongside this, Amazon's interest in restaurant delivery has continued for the past five years, is international, and extends across the F3 team, as well as to senior executives at the highest level within Amazon, including Jeff Bezos. There is no evidence to suggest that Amazon is no longer interested in restaurant delivery or that it no longer expects it to be an important area providing benefits such as differentiation in its offering, flywheel¹⁸ effects for Prime, and enhanced logistical capabilities.
42. While Amazon is currently focused on its groceries business, capabilities it is developing in this context would also support restaurant food delivery. For example, as part of its US grocery offering, [REDACTED], and has further plans to increase the speed of its grocery offering. Delivery speed and [REDACTED] were among the main challenges Amazon faced when operating Amazon Restaurants.
43. We have considered whether the effect of the Coronavirus (COVID-19) pandemic would change this assessment. Although the longer term effects of Coronavirus (COVID-19) are not clear, based on the data available at this

¹⁸ The term 'flywheel' is used at Amazon to describe something similar to a virtuous cycle, which powers the business. For example, lower prices lead to more customer visits, more customer visits increase the volume of sales, and that results in more commission-paying third-party sellers to the site. [REDACTED].

time, we have no evidence to suggest that the pandemic will make the UK a less attractive country for Amazon to operate an online restaurant platform, or that Amazon's incentive or ability to enter this segment will be significantly negatively affected. Therefore, we do not consider that the effect of the pandemic changes our assessment of Amazon's food strategy or its incentives to re-enter restaurant delivery.

Amazon Restaurants

44. Amazon Restaurants was trialled in Seattle, and then launched more widely in 2015, when Amazon started building its own delivery service for restaurants and added Amazon Restaurants to its Prime Now offering. Amazon Restaurants was launched in the UK in 2016. Amazon Restaurants closed in the UK in 2018 and in the US in 2019.
45. Evidence of Amazon's expectations for its restaurant delivery business shows that Amazon considered the online restaurant platform business to have strategic value for the wider Amazon business. Amazon's expectations included that restaurant delivery would be an important part of a wider food offering for consumers, it would be an [REDACTED], and that the technology used for the fast delivery of restaurant food would benefit the wider Amazon business as it could be rolled out to other areas, including grocery and retail goods, in the UK, US and elsewhere.
46. The evidence shows that Amazon appears to have made some operational errors and strategic misjudgements in the way it implemented Amazon Restaurants in the UK. [REDACTED]. Although it took some remedial action, [REDACTED], it was not sufficient to turn the struggling business around to the satisfaction of Amazon's senior executives. Amazon Restaurants also struggled in the US and Amazon did not appear to be willing to invest significantly more in order to achieve scale in the market, given the preference ultimately expressed by Jeff Bezos [REDACTED].
47. Internal documents prepared by Amazon when it closed the restaurants business indicate the potential for Amazon to re-enter this area [REDACTED] gained from Amazon Restaurants across different countries. Evidence from internal documents also shows [REDACTED].
48. We do not consider that Amazon's decision to exit the UK means that it was no longer interested in this market – indeed, just months after the closure of the UK business Amazon began due diligence on a potential transaction with Deliveroo, suggesting a continuing interest in the UK restaurant platform market.

49. Furthermore, the decision to close the Amazon Restaurants business in the US and the decision to invest in Deliveroo were taken almost simultaneously, and both decisions were taken by the CEO, Jeff Bezos. [REDACTED]. Even though [REDACTED], evidence indicates that it sees restaurant delivery as 'strategically aligned' with its business overall.
50. Although Amazon has submitted that the decisions to invest in Deliveroo and to close Amazon Restaurants were taken separately, the CMA considers that there is evidence suggesting these decisions were linked. Given the appearance that these two decisions were linked, the CMA has repeatedly provided Amazon with opportunities to clarify the rationale for these decisions, but Amazon failed to do so. We consider that the evidence indicates that the decision to close Amazon Restaurants US was influenced by Amazon having an alternative route to enter restaurant delivery internationally.

Conclusion on Amazon's incentives and intention

51. We believe that Amazon has a strong and continued interest in online restaurant platforms and an incentive to offer this service to Prime customers in order to differentiate its offering, realise flywheel benefits, and develop useful logistical capabilities that would be deployed elsewhere in its business. Evidence shows that the UK is a large and growing market for online restaurant platforms, and the UK is an important and attractive market to Amazon as a result of high levels of Prime membership. Since the closure of Amazon Restaurants, we have observed in Amazon's internal documents continued global interest in online restaurant food delivery.

Amazon's ability to re-enter

52. There are a number of possible routes that Amazon could take to re-enter the supply of online restaurant platforms. We believe there are three main ones: (i) building its own offering; (ii) acquiring or investing in an existing restaurant platform or adjacent business; and (iii) partnering with an existing restaurant platform or adjacent business. For the purposes of establishing the counterfactual in this case, we need only consider the viability of these options with a view to determining whether the most likely scenario is that Amazon would enter via one or other of these routes. We do not need to determine which of these routes would be most likely.
53. As explained above, Amazon has rolled out some of the technology that was used in Amazon Restaurants to support its F3 business, and has continued to develop this technology. Amazon is also using technology from Amazon Restaurants in other areas such as the Amazon India restaurant delivery business. The continued use of this technology indicates that Amazon

Restaurants allowed Amazon to learn and develop technology that is useful in operating this type of business, and that the technology is transferrable. Third parties active in online restaurant delivery have told us that the technology powering their platform and delivery network is generally transferable between countries.

54. Amazon could also acquire an overseas online restaurant platform. As described above, we believe that the evidence shows Amazon has an incentive to offer this service in the UK based on the attractiveness of the UK restaurant delivery market and Amazon's broader presence in the UK. We believe that if Amazon looked to enter through acquisition, it could offer this service in the UK in the short to medium-term (ie within five years).
55. A further option would be for Amazon to re-enter the supply of online restaurant platforms through contractual arrangements with a business that either offers an online restaurant platform already, or that would enable Amazon to offer an online restaurant platform by addressing one or more of the barriers to entry that Amazon faces. Evidence shows that companies are interested in working with Amazon in this market.
56. We consider that the benefit to Amazon of acquiring, investing in, or partnering with a third party is that one or other of these approaches would allow it to more easily overcome the barriers to entry in the supply of online restaurant platforms in the UK. An internal email shows [REDACTED].
57. In pursuing any route to entry, Amazon would need to attract customers, restaurants and couriers to its platform. Amazon has access to [REDACTED] Prime subscription customers in the UK, a number which has [REDACTED] compared to when it launched Amazon Restaurants in the UK. As this is a subscription service offering a wide range of benefits to subscribers, these customers are likely to regularly engage with Amazon products. This gives Amazon multiple avenues for engaging with customers and marketing a new service to them, thus saving significant amounts on marketing and advertising compared to other players.
58. Overall, there are multiple possible routes to entry for Amazon and there is evidence of interest in alternative providers as targets or partners. There exist a number of potential partners and/or targets, including non-UK restaurant platforms as well as UK-based logistics specialists, that could help Amazon overcome the barriers to entry in supplying a restaurant platform in the UK, including those that hampered its previous attempt in this market. Amazon could use the learning from Amazon Restaurants to avoid repeating the same strategic mistakes, or could invest in or partner with an alternative provider to gain additional expertise in this market.

Conclusion on re-entry by Amazon in the counterfactual

59. On the basis of the evidence set out above, we believe that Amazon has a continued interest in online restaurant platforms and an incentive to offer this service to Prime customers in order to differentiate and add to its offering and develop useful logistics capabilities that would be deployed elsewhere in its business. Although much of the evidence considered relates to international markets, we consider that the UK is an attractive market for restaurant delivery and is an important market for Amazon. We consider the evidence shows there are multiple possible routes for entry for Amazon absent the Transaction. While entry into the UK market by Amazon may not occur imminently, we consider that, absent the investment in Deliveroo, the most likely scenario would involve Amazon choosing to re-enter in the short to medium term (ie within five years). We therefore conclude that, in the counterfactual, Amazon is likely to re-enter the supply of online restaurant platforms in the UK.

Groceries counterfactual

60. With respect to the market for OCG, we considered whether the development and expansion plans of the Parties should be taken into account in the counterfactual. The online convenience grocery market is nascent, and many market participants are at an early stage of trialling their offerings, or gradually rolling them out across geographical areas. Views vary considerably as to how the market will develop. In our view, future OCG market developments are not sufficiently foreseeable to include in a counterfactual. We have, however, taken account of possible changes in the market, including the expansion plans of the Parties and their competitors, in our competitive assessment. We have therefore adopted a counterfactual in which the Parties would have continued to develop and strengthen their OCG propositions independently of one another absent the Transaction.

Supply of online restaurants platforms in the UK

61. The CMA's Merger Assessment Guidelines provide a framework for the assessment of unilateral effects arising from the loss of potential competition as a result of a merger. The guidance sets out two questions to be addressed when considering 'actual potential competition':¹⁹

¹⁹ MAGs, paragraph 5.4.15.

- (a) would the potential entrant be likely to enter in the absence of the merger; and
- (b) would such entry lead to greater competition?
62. The guidance also states that the CMA will consider whether there are other potential entrants before reaching a conclusion on the SLC test.
63. In line with the CMA's guidance on assessing the loss of potential competition, we considered (a) whether Amazon is likely to enter, and (b) would this entry lead to greater competition.
64. In order to assess whether Amazon would re-enter the supply of online restaurant platforms in the UK, we have considered evidence around its intention, incentives and ability to re-enter. As set out above, we believe that in the counterfactual Amazon would be likely to re-enter the supply of online restaurant platforms in the UK in the absence of the Transaction.
65. For the purposes of our competitive assessment, we must compare the situation arising in the counterfactual to the situation arising as a result of the Transaction and consider what impact the Transaction has on the potential future competition between Amazon and Deliveroo. This assessment must take into account the fact that the Transaction is the acquisition of a 16% shareholding as opposed to an acquisition of a larger stake, which (together with other rights) might give rise *de facto* control or a full merger.
66. If Amazon had acquired 100% of Deliveroo, the acquisition would result in alignment of incentives between Amazon and Deliveroo and we would not expect there to be any future competition between them because their incentives were aligned. We would not expect Amazon still to enter independently as well as to acquire Deliveroo outright.
67. It is possible that a 16% shareholding could change Amazon's incentives such that it would no longer enter independently. It is also possible that Amazon could enter the market independently while retaining a minority shareholding in Deliveroo, leading to Amazon having two competing investments in the same market. The effect of a 16% shareholding could vary depending on the circumstances of the case, for example the rights that accompany the shareholding, the strategies of the businesses involved, the nature of the markets at issue and the constraints from other competitors in those markets.
68. We have considered two scenarios through which harm could arise as a result of the Transaction:

- (a) unilateral effects on the entry decision (meaning the 16% shareholding is Amazon's route to entering, and therefore it would not enter via another route); and
- (b) post-entry unilateral effects, where Amazon re-enters the market notwithstanding its investment in Deliveroo, but it either (i) competes less strongly to internalise 16% of Deliveroo's profits; or (ii) influences Deliveroo to compete less strongly against it.

Amazon relying on Deliveroo for its presence in online restaurant platforms

- 69. We have considered first the effect that a 16% shareholding would be expected to have on Amazon's incentive to enter the market. The effect of a 16% shareholding is limited in comparison with the effect of a full merger: with a 16% shareholding, if Amazon enters the market then, for every sale Amazon wins from Deliveroo, it loses only the 16% share in the profit Deliveroo would have gained from that sale. If Amazon wholly owned Deliveroo, for every sale it won from Deliveroo, it would lose the full benefit that Deliveroo would have gained from that sale. In our view, 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 the supply of online restaurant platforms in the UK.
- 70. As described above, we believe the evidence shows that Amazon views restaurant delivery as part of an international wider food strategy, [REDACTED]. Amazon is already developing certain logistics technology in its [REDACTED] business similar to that used in restaurant delivery and developing an [REDACTED]. Therefore, any business decision Amazon takes as to whether to re-enter restaurants is unlikely to be substantially changed by the financial return of the 16% investment.
- 71. There is evidence suggesting Deliveroo could be considered Amazon's 'foot in the door' and route to re-entry in online restaurant platforms. This evidence may suggest that Amazon would have less incentive and/or intention to invest in either acquiring or building an alternative online restaurant platform business following the investment in Deliveroo.
- 72. Amazon has submitted that its development of restaurant food delivery in India shows that Amazon is innovating globally and that 'it is fanciful that a 16% minority investment in a single service in a single country would prevent this deeply held commitment to innovation' and application of this innovation to the UK. We consider that Amazon's investment in India supports our conclusion that Amazon may have an interest in pursuing multiple entry routes into supplying online restaurant platforms.

73. We consider there is mixed evidence on what impact the Transaction has on whether Amazon would re-enter the supply of online restaurant platforms in the UK. Based on this evidence, we do not believe it is sufficiently likely that the investment in Deliveroo would deter re-entry by Amazon if there was a strong financial incentive for Amazon to re-enter.

Amazon competing less aggressively in online restaurant platforms

74. We also assessed whether the Transaction could lead to a lessening of competition as a result of Amazon choosing to enter (despite having invested in Deliveroo) but having less incentive to compete strongly against Deliveroo because of the Transaction, giving rise to horizontal unilateral effects.
75. If Amazon were to enter the market and then choose to compete less strongly against Deliveroo, we would expect Amazon to win fewer customers from Deliveroo than if it competed strongly. Amazon would also be likely to win fewer customers from the other incumbents (unless it could avoid competing strongly against Deliveroo while competing strongly against the other incumbents). Amazon would miss out on 100% of the profits from any customer it failed to win from any of the incumbents by not competing strongly. In contrast, Amazon would gain only 16% of the profits from any of those customers, retained by Deliveroo, who would have switched to Amazon if Amazon had competed strongly for them. It is possible that these customers would be more profitable overall if retained by Deliveroo than if acquired by Amazon, eg if Deliveroo has lower marginal costs or if the cost to Amazon of acquiring customers is high. However, we have no evidence to suggest this would be the case and on balance we would expect Amazon to have a strong preference for acquiring a customer (and receiving 100% of the profits from that customer) over allowing Deliveroo to retain that customer (with Amazon receiving 16% of profits), especially if by competing less strongly Amazon would also forego winning customers from the other incumbents in which it does not have an interest.
76. Even if Amazon was a close competitor to Deliveroo, evidence shows that Deliveroo, Uber Eats and Just Eat are becoming more similar, both in terms of the business models (with all three platforms offering marketplace and logistics-enabled platforms) and the restaurants they target. Therefore, even if competition was particularly strong between Amazon and Deliveroo, there would still likely be material diversion to the other players as a result of Amazon worsening its offer.
77. We are of the view that it is unlikely the 16% investment in Deliveroo would cause Amazon to compete materially less aggressively if it did re-enter. We

note that this assessment could be different should Amazon acquire a materially larger shareholding in Deliveroo in future.

Amazon discouraging Deliveroo from competing against Amazon in online restaurant platforms

78. Finally, we considered whether Amazon could use its material influence to worsen Deliveroo's offer and lessen competition in this way. Under this scenario, Amazon would recoup 100% of any profit that arises from sales that are diverted from Deliveroo to Amazon as a result of this strategy. This means Amazon may have a greater incentive to engage in this behaviour as opposed to worsening its own offering (where it would only recoup 16% of any extra profit).
79. While we believe the Transaction will confer on Amazon the ability to exert material influence over Deliveroo, this influence is less than would arise in an acquisition of a controlling interest. This could make it harder for Amazon to drive Deliveroo to worsen or reduce its offering if Deliveroo saw this as commercially damaging or preventing it from engaging in strong growth opportunities.
80. In addition, we saw consistent evidence of strong competition between Deliveroo and Uber Eats and Just Eat, which would limit the scope for Deliveroo to worsen its offer to accommodate Amazon.
81. Having considered the level of Amazon's influence and the incentives of Deliveroo's management and shareholders (aside from Amazon), as well as the specific market conditions, and taking these factors in the round, we are not satisfied that the Transaction would lead to an SLC as a result of Deliveroo competing less strongly against Amazon in the supply of online restaurant platforms in the UK.

Conclusion on supply of online restaurant platforms in the UK

82. We conclude that in the counterfactual Amazon is likely to re-enter the supply of online restaurant platforms in the UK. We do not, however, find it sufficiently likely that the Transaction will have such a material impact on Amazon's incentives to re-enter, or its approach following re-entry, to result in a substantial reduction in potential competition on the balance of probabilities. Therefore, we have concluded that the Transaction may not be expected to result in an SLC in the market for the supply of online restaurant platforms in the UK.

Supply of OCG in the UK

83. We have considered whether the Transaction will lead to horizontal unilateral effects in the supply of OCG in the UK. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that provides and/or is expected to provide a competitive constraint. Unilateral effects are more likely where the merger eliminates a significant competitive force or where customers have little choice of alternative suppliers.²⁰
84. We have assessed whether the Transaction would result in an SLC in the supply of OCG services due to one or more of the following:
- (a) Amazon using its influence over Deliveroo to discourage Deliveroo from competing against Amazon in OCG;
 - (b) Amazon avoiding competing directly against Deliveroo in OCG, to protect the value of its investment in Deliveroo; and/or
 - (c) Amazon relying on Deliveroo to give Amazon a presence in OCG, rather than developing its own service to compete effectively in OCG.
85. Amazon's and Deliveroo's current OCG offerings are differentiated. Amazon offers a wider selection of products than Deliveroo, supports larger basket sizes, has prices comparable to those offered in-store by supermarkets, and offers relatively slower delivery times. Deliveroo provides delivery of OCG within 30-minutes, but offers a smaller range of products, smaller basket sizes, and typically has prices that are higher than those offered in-store by supermarkets.
86. Both Amazon and Deliveroo have incentives to improve their OCG offers as the market evolves. Amazon has consistently differentiated itself on speed of delivery. [REDACTED]. Amazon [REDACTED]. Amazon announced in July 2020 that its Amazon Fresh same day grocery delivery service would be offered to all Prime members in the UK at no additional charge.²¹ In addition, Amazon is rolling out [REDACTED], in the US. Deliveroo has set out ambitious plans for OCG delivery.
87. Competitors in OCG include online restaurant delivery providers such as Just Eat and Uber Eats, traditional grocers and convenience stores such as Waitrose, Sainsbury's and Co-op (which has an OCG offering separate from its partnership with Deliveroo), and grocery delivery specialists such as Ocado. Almost all larger players in the categories of online delivered

²⁰ MAGs, paragraph 5.4.12.

²¹ For instance, Amazon announced in July 2020 that its Amazon Fresh grocery delivery service would now be available for free for Prime members. See: [Amazon Fresh Homepage](#).

groceries, online restaurant delivery, convenience stores and traditional groceries are currently active in trialling or offering OCG services with on-demand delivery of between 30-minutes and two-hours. Most market participants share an intention to expand their existing offers and address their specific limitations. In addition, some services already offer a relatively large range, fast delivery and prices which are competitive with in-store offers. While the future development of the market remains uncertain, we consider that on the basis of the evidence other market participants may be well-placed to compete in OCG provision.

88. The Coronavirus (COVID-19) pandemic has had a profound effect on grocery delivery in the UK, as well as on the grocery sector generally and the wider economy. Most OCG providers, including Deliveroo, have expanded their grocery offers in recent months. It remains to be seen how Coronavirus (COVID-19) will affect the OCG market in the medium- or longer-term. Although Deliveroo has expanded its OCG services during the pandemic, these changes have not brought it into substantially closer competition with Amazon: Deliveroo continues to deliver smaller baskets with a smaller average order value.

Amazon discouraging Deliveroo from competing against Amazon in OCG

89. Turning to our first theory of harm, if Amazon decided to expand its presence in OCG (including on-demand delivery), or if it was concerned about Deliveroo's expansion, it could potentially seek to use its material influence over Deliveroo to discourage Deliveroo from also expanding its own OCG offer (which would otherwise be in competition with Amazon).
90. While our view is that the Transaction would provide Amazon with the ability to exercise material influence over the commercial policy of Deliveroo, this is not the same as an ability to control that policy. In particular, it does not amount to an ability to drive policy in a direction that other shareholders, management or the board object to.
91. As such, we cannot assume that Amazon will be able to drive policy in a direction that would lead to an SLC if that would lead to Deliveroo foregoing a compelling commercial opportunity. This could make it more difficult for Amazon to prevent Deliveroo from expanding its OCG business, especially if Deliveroo saw a strong growth opportunity for OCG.
92. To the extent that Amazon may be able to influence aspects of Deliveroo's strategy in ways that would reduce competitive pressure on Amazon, we would also need to assess whether this would result in an SLC.

93. While Deliveroo is likely to expand its OCG offering, it is not clear whether this expansion will bring it into closer competition with Amazon. As noted above, Deliveroo has recently expanded its services during the Coronavirus (COVID-19) pandemic, launching partnerships with a number of additional grocery providers, although we understand these to be similar in nature to its existing grocery partnerships, ie with a limited range of items.
94. Further, as noted in paragraph 87, we consider that on the basis of the evidence other market participants appear well-placed to compete in OCG provision.
95. Considering these issues in the round, our view is that the Transaction is unlikely to lead to an SLC through Amazon discouraging Deliveroo from competing in online convenience grocery services.

Amazon competing less aggressively in OCG services

96. We have considered whether Amazon may compete less aggressively against Deliveroo in the supply of OCG services because of its minority (16%) shareholding in Deliveroo. Following the Transaction, if Amazon increased its prices and some customers responded by switching to Deliveroo, Amazon would have a 16% share of any increase in Deliveroo's profits from these customers. As a result, Amazon may have an incentive to set higher prices following the Transaction than in the counterfactual. Conversely, if Deliveroo faced aggressive competition from Amazon this could reduce its profitability, which would in turn reduce the profitability of Amazon's 16% shareholding in Deliveroo. This possibility could lead Amazon to avoid competing directly against Deliveroo.
97. The question for us is whether a 16% shareholding reduces Amazon's incentive sufficiently that it would prevent Amazon from making investments it otherwise would have made to improve its OCG offering.
98. The magnitude of these effects depends on the future closeness of competition between the two Parties (in the counterfactual), their respective profit margins, and competition from other OCG providers (ie the effect would be weaker if most customers who switched from Amazon switched to other providers rather than Deliveroo).
99. As explained above with respect to online restaurant platforms, in broad terms we would expect the 16% holding arising from the Transaction to produce a weaker price effect on OCG services than might be expected from a full acquisition.

100. Furthermore, while the future development of the market remains uncertain, we consider that on the basis of the evidence other market participants appear well-placed to compete in OCG provision. We consider that this will further weaken any price effect arising from the Transaction because (a) if Amazon increase its prices, customers may switch to providers other than Deliveroo, and (b) even if Amazon were to compete less aggressively against Deliveroo, Deliveroo would still face competition from these other providers.
101. Considering these issues in the round, our view is that the Transaction is unlikely to lead to an SLC arising from Amazon avoiding direct competition against Deliveroo in the provision of OCG.

Amazon relying on Deliveroo for its presence in OCG

102. Finally, we consider whether the Transaction would harm competition by reducing the incentive for Amazon to invest in competing more effectively as an OCG provider, because the proposed acquisition either secures Amazon an option to acquire Deliveroo or is a first step towards a full acquisition.
103. If the market evolved towards faster delivery and Amazon did not have a widely available one-hour or two-hour service, Amazon could miss out on a significant opportunity for growth and profits (including flywheel benefits). Absent the proposed Transaction, Amazon may therefore have a strong incentive to invest in developing point-to-point logistics capabilities or by otherwise improving the delivery speeds it can offer or other aspects of its service to ensure that it can remain competitive if faster delivery increases in importance.
104. Internal documents from Amazon and other Deliveroo shareholders indicate that they see the Transaction as a potential first step toward a full acquisition of Deliveroo, rather than a purely financial investment. If Amazon sees the Transaction as giving it a plan or a way to achieve a stronger presence in OCG provision (ie doing so via Deliveroo), it may be less likely to have an incentive to improve its own OCG service.
105. In considering whether the Transaction may reduce Amazon's incentives to improve its own OCG services, we note that:
- (a) In our assessment, the counterfactual is Amazon's likely re-entry into the online restaurants platform market in future (and the Transaction would not significantly affect its incentives to do so). Amazon's likely re-entry into this market would provide a potential route for Amazon to improve its OCG services, namely by using the same logistics network for its online restaurant delivery service and for some or all of its OCG services. We

note that both logistics-enabled online restaurants platforms (Deliveroo and Uber Eats) offer OCG services.

- (b) Amazon may in any case prefer to develop its own OCG service given that in doing so it could potentially build on its experience in developing such a service in the US, and [X].
- (c) While the Transaction potentially gives Amazon a route to acquire Deliveroo, Amazon would face a significant cost in making such an acquisition – particularly if Deliveroo’s OCG business increases in value. It would also face risks eg of being outbid by another buyer.

- 106. This issue needs to be assessed in the context of wider competition in the OCG services market, and while the future development of the market remains uncertain, we consider that, on the basis of the evidence, other market participants appear well-placed to compete in OCG provision.
- 107. In this context, if the Transaction were to reduce Amazon’s incentives to improve its own OCG services, improvements by its competitors of their OCG services could nevertheless lead to effective competition. In addition, we note that if the market grows substantially this makes it more likely that it will be seen as a compelling commercial opportunity, both by Amazon and its competitors.
- 108. Considering these issues in the round, our view is that the Transaction is not likely to lead to an SLC by removing the strategic benefit to Amazon of developing its own OCG service.

Additional theories of harm

- 109. Third parties have raised additional concerns with respect to the Transaction, including the following:²²
 - (a) First, that post-Transaction Amazon would have an incentive to promote its own groceries business using the combination of Deliveroo’s existing and established network, and Amazon’s ecosystem, in particular its Amazon Prime customer base. It was suggested that Amazon could offer its Prime customers cheap or free delivery, or preferential delivery timings on Deliveroo, to drive additional traffic to Amazon and/or Deliveroo and foreclose competitors.

²² See [Amazon/Deliveroo merger inquiry webpage](#).

(b) Second, that post-Transaction Amazon could prevent rival grocery suppliers from accessing Deliveroo's logistics network at competitive prices.

110. In its Phase 1 Decision, the CMA considered whether the Parties could bundle Amazon Prime and Deliveroo Plus (Deliveroo's subscription service, which offers customers free delivery) by offering Prime members a discount on, or free access to, Deliveroo's services.²³ The CMA found, on a realistic prospect basis, that the Parties would have the ability to bundle Deliveroo Plus and Amazon Prime, and could use this strategy to foreclose Deliveroo's competitors. The CMA also found, however, that any incentive to engage in a foreclosure strategy arising from the Transaction would be insufficient to result in a realistic prospect of an SLC. We have not seen any additional evidence on this point in the course of our phase 2 investigation that would change this conclusion and, therefore, did not re-open this issue.
111. The concern that Amazon could limit the access of other grocery suppliers to Deliveroo's platform is in some respects related to our horizontal unilateral effects theory of harm with respect to OCG. As set out with respect to the OCG theory of harm, while we consider that the Transaction is more likely than not to provide Amazon with the ability to exercise material influence over the policy of Deliveroo, this is not the same as an ability to control that policy. In particular, it does not amount to an ability to drive policy in a specific direction against the objections of other shareholders, management or the board. Furthermore, any attempt by Amazon to restrict third party access to Deliveroo's network would likely be to the advantage of Uber Eats and Just Eat, and as such, if Deliveroo were to engage in such a strategy, it would risk strengthening its two key competitors in its core market of online restaurant platforms (as well as other last-mile delivery providers). We consider that this effect could weaken Deliveroo's incentives to engage in foreclosure. In addition, and as previously noted, while the future development of the market remains uncertain, we consider that on the basis of the evidence, other market participants appear well-placed to compete in OCG provision.

²³ See [Phase 1 Decision](#), 27 December 2019.