CMA
Competition & Markets Authority

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

Provisional findings report

Notified: 16 April 2020

The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

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Summary

Overview

1. The Competition and Markets Authority (CMA) has provisionally 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 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 or services.

2. We have provisionally concluded that the Transaction would not be expected to result in an SLC in either the market for online restaurant platforms or the market for online convenience groceries (OCG) on the basis that, as a result of the Coronavirus (COVID-19) crisis, Deliveroo is likely to exit the market unless it receives the additional funding available through the Transaction. We have provisionally found that no less anti-competitive investor was available. Finally, we have provisionally concluded that the loss of Deliveroo as a competitor would be more detrimental to competition and to consumers than permitting the Amazon investment to proceed and, therefore, the Transaction would not be expected to result in an SLC.

3. We invite any interested parties to make representations to us on these provisional findings by no later than **5pm on Monday 11 May 2020**. Parties should refer to the notice of provisional findings for details of how to do this.

Background

4. The CMA is required to answer the following questions:

   (a) Whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation for the purposes of the Enterprise Act 2002 (the Act).

   (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.

5. If one or more SLCs are found, the CMA must decide what action it might take for the purpose of remedying them.

The Parties

6. 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.$1.15 trillion.[1] In 2019, Amazon had over $280 billion[2] in net sales (up 20% year on year), over $14 billion in operating income[3] and approximately 800,000 employees.[4] '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).

7. 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).[5] 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.

8. 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 1000 people directly.

The Transaction

9. The Transaction comprises [✂] which Amazon entered into with Deliveroo on 16 May 2019:[6]

   (a) [✂], which gives Amazon certain rights over Deliveroo, including board representation, a [✂]% shareholding ([✂]); and

   (b) [✂], which envisages the acquisition by Amazon of a [✂]% shareholding (and certain other rights) in Deliveroo, [✂].[7]

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[1] As at 15 April 2020.
[2] *Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides*, slide 8.
[3] *Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides*, slide 10.
[4] *Amazon.com, Inc FORM 10-K*, page 4.
[5] *Amazon.com, Inc FORM 10-K*, page 68.
[6] [✂].
[7] The German authorities cleared this Transaction on 11 July 2019.

Provisional findings

Jurisdiction

10. We have provisionally 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.

11. 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.

12. Our provisional 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

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

13. 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 provisionally 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.

Counterfactual

14. 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.[8] 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.[9] The latter is the counterfactual.[10]

15. We may examine several possible scenarios to determine the appropriate counterfactual, one of which may be the continuation of the pre-merger situation (ie, the prevailing conditions of competition). One situation where the CMA may select a counterfactual different from the prevailing conditions of competition is where the target is likely to exit the market absent the transaction under review.

16. 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. 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 acquisition.

17. There are a number of specific features of this case which have been central to our consideration of the exiting firm scenario. Principal among these has been the impact of the Coronavirus (COVID-19) pandemic and the financial consequences that this has brought about for Deliveroo in light of the specific features of Deliveroo's financial position.

18. It is important, when considering the impact of Coronavirus (COVID-19) in the counterfactual, to abstract from any elements of Deliveroo's current financial situation that result from the current merger under review. This approach reflects the fundamental purpose of the exiting firm assessment in the CMA's counterfactual guidance, which is to understand whether Deliveroo would have exited the market in the absence of the Transaction. Any execution

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[8] Merger Assessment Guidelines (CC2 Revised) (MAGs), paragraph 4.3.1.
[9] MAGs, paragraphs 4.3.1 and 4.3.6.
[10] MAGs, paragraph 4.3.1.

risks, including those relating to merger control proceedings, that are borne by either merging party should not be taken into account in considering whether the exiting firm test is met.

Limb 1: Would Deliveroo have exited the market absent the merger?

19. In assessing Limb 1, we have not only considered whether the impact of the Coronavirus (COVID-19) crisis on Deliveroo's business made exit inevitable, but also carefully assessed (in light of Deliveroo's previous submissions), whether the Transaction itself could be a contributing factor to Deliveroo's exit.

20. At the time that Deliveroo pursued the Series G funding round (which Amazon ultimately led), it was, in many respects a highly successful company that has grown strongly and now has a significant share of the online restaurant platform market in the UK. Although it had achieved significant share in the UK, and especially in London, as an early stage business with an aggressive growth strategy Deliveroo was, at that time, also a loss-making business at UK and global level, heavily reliant on continued rounds of external fundraising to be able to meet its financial commitments.

21. At the time of the Series G fundraising, Deliveroo had alternative potential funding options available to it. In the absence of the Amazon investment, we consider that Deliveroo would have succeeded in raising some alternative funds, given the interest that potential investors had shown in Deliveroo as an investment opportunity at that time, although alternative funds would likely not have exceeded the funds received from the Series G funding round to date ([✂]). The fact that alternative funding would have been available at the time the Transaction was agreed means that, absent the Coronavirus (COVID-19) crisis, Deliveroo would not have been an exiting firm.

22. The Coronavirus (COVID-19) crisis has substantially affected the market and Deliveroo's financial position. On the supply side Deliveroo has experienced a significant reduction in the number of restaurants operating during the crisis, and the restaurants that have closed or reduced their offering include major brands that account for a significant proportion of Deliveroo's orders. Deliveroo has also experienced a significant decline in revenue: [✂].

23. Deliveroo has taken steps to supply additional OCG services during the Coronavirus (COVID-19) crisis. However, OCG is a bolt-on to Deliveroo's restaurant business and an increase in these sales has not offset (and is not, based on current forecasts, expected to materially offset) any significant proportion of the decline in restaurant sales.

24. We have considered whether Deliveroo could restructure its operations (eg further cut costs) to support its liquidity and to avoid insolvency. We have examined the cashflow forecasts and financial information provided by Deliveroo, and the advice received by its directors [✂]. We are persuaded that, without an assurance that it will receive additional funds in the immediate future, [✂].

25. Finally, we have assessed the alternative investments that were available to Deliveroo at the time the Transaction was agreed in order to test where Deliveroo's current financial constraints should be attributed to the Coronavirus (COVID-19) crisis or to the current Transaction. We have concluded that none of the alternative investments to the Amazon investment available at that time would have put Deliveroo in a viable position to survive the Coronavirus (COVID-19) disruption. It appears, therefore, that Deliveroo's current financial constraints cannot be attributed to its decision to accept investment from Amazon rather than from an alternative investor that might have been less likely to raise competition concerns.

26. We therefore provisionally conclude that Deliveroo would be likely to exit the market as a result of the onset of Coronavirus (COVID-19) without additional funds.

Limb 2: Is there a substantially less anti-competitive investor or purchaser for Deliveroo's assets

27. When considering the exiting firm scenario, the CMA will look at available evidence supporting any claims that the transaction under consideration was the only possible transaction (ie that there was genuinely only one possible purchaser for the firm or its assets). The purpose of this limb of the test is to determine whether the transaction under review is the only option that would enable the target firm to continue to exist.

28. Currently, Deliveroo's three main options for raising additional funds (aside from the Amazon investment) are:

    (a) **Additional funding from existing shareholders:** [✂]. We do not consider Deliveroo's existing shareholders to be a viable source of additional funding.

    (b) **External funding from potential new shareholders:** [✂] given the current context of the Coronavirus (COVID-19) crisis, third party funding is very unlikely. Furthermore, Deliveroo's previous funding rounds have taken between [✂] months to complete. Based on Deliveroo's current financial position, Deliveroo will need additional funding significantly

sooner than [✂] months. In light of these factors, we consider that funding from new shareholders is unlikely to be available within the timeframe required.

(c) **Some form of debt funding:** [✂] the material decline in economic outlook, challenging financial markets, unprecedented volatility and uncertainty, and Deliveroo's current financial challenges mean that it is unlikely Deliveroo could quickly secure debt financing arrangements within the timeframe required.

29. We therefore consider that, [✂], Deliveroo has no alternative options available to it to preserve its business. We do not consider that the issues outlined above would differ materially if, in the counterfactual, Deliveroo had pursued one of the alternative funding options available in 2019.

30. We therefore provisionally conclude that the most likely counterfactual for Deliveroo absent the Transaction would have been Deliveroo's exit from the market. This provisional conclusion is based on the particular structure of Deliveroo's business and its need for continuing external funding, the effects of Coronavirus (COVID-19) and the particular point in Deliveroo's funding cycle that Coronavirus (COVID-19) occurred – when, even if Deliveroo had accepted an alternative funding option in May 2019, Deliveroo would have required further funds.

Limb 3: What would happen in the event that Deliveroo exited the market?

31. In the event of exit, the CMA typically considers what would happen to the sales of the exiting firm and how this would affect competition as compared to a scenario where those sales are transferred to the acquiring firm by allowing the transaction to proceed.

32. The present case does not involve a full acquisition of Deliveroo by Amazon, but, applying the general principle underlying this test, we have assessed whether the effect of the Transaction is substantially less competitive than Deliveroo's exit.

33. We have considered this question in relation to two possible markets:

(a) Online restaurant platforms in the UK; and

(b) Online convenience grocery delivery in the UK.

34. In both cases, we have outlined the likely (negative) impact on competition we expect to arise from Deliveroo's exit and sought to assess whether this would

be worse than the impact of the Transaction on competition (in which case the Transaction would not result in an SLC).

Online restaurants

35. The market is highly concentrated, with only three significant players (Deliveroo, Just Eat and Uber Eats). Market shares vary considerably across the country, with Deliveroo having a particularly strong position in London. Deliveroo has had a substantial and growing market share in recent years and the available evidence shows that it has been a major driver of innovation and competition for new customers as well as an important competitive constraint on the largest existing supplier, Just Eat.

36. Therefore, we would expect Deliveroo's exit to have an immediate and substantial adverse impact on competition. In particular, we would expect the remaining online restaurant platforms – Just Eat and Uber Eats – to weaken their offers to consumers and restaurants in terms of price (commission and delivery charges) and service, as they experience a reduction in competitive pressure due to Deliveroo's exit. It would also mean that these suppliers would be under less competitive pressure to expand or develop their networks and to innovate their offerings.

37. We received substantial evidence regarding Amazon's ongoing interest in the online restaurant platform market globally. We do not, however, need to reach a provisional view on the likelihood of Amazon re-entering this market in the UK for the purpose of the current decision as it would not affect our conclusion in this case.

38. Assuming Amazon were to re-enter the market, either by building its own business, or acquiring or partnering with an existing business, this would take time as it would be necessary to develop a point-to-point delivery network and establish a base of restaurants, riders and consumers. During the time before Amazon could re-enter the market, competition would likely be weaker compared to a scenario where Deliveroo remained in the market as an ongoing competitor.

39. On the basis of this assessment, and compared to the Transaction proceeding (and even if that would reduce Amazon's incentive to re-enter the market), we consider that exit by Deliveroo would result in significantly weaker competition over an extended period of time, and this would be the case even if Amazon ultimately re-entered the market successfully. This view reflects the loss of competition we would expect to see as a result of Deliveroo's exit in the counterfactual, even if that counterfactual also includes some increase in competition from Amazon's re-entry.

Online convenience groceries

40. At phase 1, the CMA found that Deliveroo and Amazon are two of the largest suppliers of OCG in the UK, and that although the market is nascent, both Parties have ambitious plans and are developing their offers which is likely to make them closer competitors.

41. The risk of exit by Deliveroo is that it removes a firm which would otherwise have competed in the nascent OCG market. The risk of the Transaction is that it weakens Amazon's incentive to improve its groceries offer, particularly by developing a point-to-point delivery network.

    (a) Deliveroo's emerging OCG offer is supported by a well-established logistics network and has been rolled out across much of the UK. Exit by Deliveroo would remove a competitor in the supply of OCG and could potentially also remove one of three existing national point-to-point networks (the others being Uber Eats and Stuart). This would have an immediate adverse impact on competition irrespective of how the market develops. The longer-term effect of Deliveroo exiting the market could therefore be substantial, depending both on how Deliveroo would develop its service and how the market would evolve generally.

    (b) If Amazon were to develop point-to-point delivery, it could potentially be well placed to compete in the market, particularly given the advantages of its Amazon Prime customer base, and its existing presence and experience in the groceries sector, in the UK and elsewhere. A weakening of Amazon's incentives to develop a point-to-point delivery network could potentially be a worse outcome than exit by Deliveroo if Amazon could become a stronger competitor than Deliveroo in this segment.

42. The loss of Deliveroo from the market, however, would likely reduce competition in the market immediately and would reduce pressure on all suppliers to introduce or enhance point-to-point delivery networks in future. Furthermore, any weakening of Amazon's incentives to compete with Deliveroo is, in any case, likely to be more limited as a result of the acquisition of a [✂]% shareholding than in the case of a full acquisition. If the market were to grow substantially, and if Amazon had the opportunity to compete by developing its own point-to-point network, it may have an incentive to do so, regardless of its holding in Deliveroo.

43. On the basis of this assessment, we consider that Deliveroo exiting the market would have a greater negative effect on competition in the supply of OCG than the Transaction proceeding.

Provisional conclusions

44. As a result of our inquiry and our assessment, we have provisionally concluded that the anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo would result in the creation of a relevant merger situation.

45. We have provisionally concluded that the Transaction would not be expected to result in an SLC in either the market for online restaurant platforms or the market for online convenience groceries (OCG) on the basis that, as a result of the Coronavirus (COVID-19) crisis, Deliveroo is likely to exit the market unless it receives the additional funding available through the Transaction. We have provisionally found that no less anti-competitive investor was available. Finally, we have provisionally concluded that the loss of Deliveroo as a competitor would be more detrimental to competition and to consumers than permitting the Amazon investment to proceed and therefore, the Transaction would not be expected to result in an SLC.

Provisional findings

1. The reference

1.1 On 27 December 2019, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the anticipated acquisition by Amazon.com NV Investment Holdings LLC, a wholly-owned subsidiary of Amazon.com, Inc. (Amazon) of certain rights and a minority shareholding in Roofoods Ltd (Deliveroo) (the Transaction) for further investigation and report by a group of independent panel members (the Inquiry Group).[11] The terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. The Inquiry Group is required to publish its final report by 11 June 2020.

1.2 In exercise of its duty under section 36(1) of the Act, 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 a substantial lessening of competition (SLC) within any market or markets in the United Kingdom (UK) for goods or services.

1.3 This requires that the CMA assesses what effect the merger will have on competition, which is the process of rivalry over time between businesses seeking to win customers' business by offering them a better deal. An SLC occurs when rivalry is substantially less intense after a merger than would otherwise have been the case, resulting in a worse outcome for customers (through, for example, higher prices, reduced quality or reduced choice).[12]

1.4 During our review of the Transaction, cases of Coronavirus (COVID-19) began to appear in the UK and across the world. The situation was declared a pandemic by the World Health Organisation on 11 March 2020.

1.5 The human and economic consequences of Coronavirus (COVID-19) are already being felt, but the situation is evolving rapidly and there remains considerable uncertainty about the extent and duration of this impact.

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[11] Under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
[12] *Quick guide to UK merger assessment (CMA18)*, paragraph 3.1.

1.6 Governments around the world have introduced a range of measures to prevent the transmission of Coronavirus (COVID-19). On 23 March 2020, the UK government introduced measures requiring people to remain at home, other than for certain limited reasons, and requested that retail stores selling non-essential goods close for a period of three weeks. Following the introduction of these measures, large numbers of restaurants, including national chains, took the decision to close during this period. These measures (which, at the time of publication, have been extended for at least a further three weeks), as well as the wider economic shock resulting from Coronavirus (COVID-19), have had a substantial impact on the activities of Deliveroo and the markets in which it operates, both in the UK and abroad.

1.7 The CMA has received submissions from Deliveroo on the specific and immediate impact of Coronavirus (COVID-19) on its business and the relevance of this impact to the CMA's consideration of the statutory questions set out in section 36(1) of the Act. The CMA has considered this as part of its provisional findings.

1.8 This document, together with its appendix, constitutes the Inquiry Group's provisional findings, published and notified to Amazon and Deliveroo in line with the CMA's rules of procedure.[13] Further information relevant to this inquiry can be found on the CMA's website.[14]

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

2. The Parties, the Transaction and the rationale

2.1 This chapter examines each of the Parties on a pre-Transaction basis (paragraphs 2.2 to 2.25), the Transaction itself (paragraphs 2.26 to 2.30) and its rationale (paragraphs 2.31 to 2.55).

The Parties

Amazon

Description and ownership

2.2 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

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[13] *Rules of procedure for merger, market and special reference groups (CMA17)*, paragraphs 11.1–11.7.
[14] See Amazon/Deliveroo merger inquiry webpage.

c.$1.15 trillion.[15] In 2019, Amazon had over $280 billion[16] in net sales (up 20% year on year), over $14 billion in operating income[17] and approximately 800,000 employees.[18] '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).

2.3 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).[19] Amazon employs approximately 30,000 people in the UK across its Head Office in London, development centres in Edinburgh, London and Cambridge, its customer services centre in Edinburgh, fulfilment and delivery sites across the UK and at its Amazon Web Services (AWS) UK Data Centre.[20] Amazon operates across a large number of sectors. Its 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.

Overview of main activities

2.4 The Amazon business areas most relevant to the Transaction are described below.

2.5 **Online marketplace.** Amazon operates an online retail marketplace connecting consumers with products from Amazon and third-party sellers. The majority of physical gross merchandise sales on Amazon (58%) are sold by third parties.[21] Amazon's UK-based marketplace is available at Amazon.co.uk.

2.6 **Amazon Logistics.** Amazon Logistics is a provider of logistics services internally, and to third party sellers through Fulfilment by Amazon (FBA) and Amazon Shipping. Amazon Logistics delivers for Amazon.co.uk, [✂].

2.7 **Amazon Web Services (AWS).** AWS is a cloud computing platform offering a range of ancillary services including infrastructure technologies such as compute, storage and database services.[22] Globally AWS accounts for

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[15] As at 15 April 2020.
[16] *Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides*, slide 8.
[17] *Amazon.com, Inc Q4 2019 Financial Results Conference Call Slides*, slide 10.
[18] *Amazon.com, Inc FORM 10-K*, page 4.
[19] *Amazon.com, Inc FORM 10-K*, page 68.
[20] See Amazon.co.uk website.
[21] *Amazon.com, Inc 2018 Annual Report*, page 2 (58% represents gross physical merchandising on the marketplace from third parties).
[22] *Amazon.com, Inc FORM 10-K*, page 20.

approximately 12.5%[23] of Amazon's net sales and was the fastest growing part of the business in 2019 with net sales up 37% year on year.[24]

2.8 **Physical Stores.** In August 2017, Amazon acquired the Whole Foods Market business for $13.2 billion.[25] Whole Foods Market is a leading natural and organic supermarket business with approximately 450 stores across the US and Canada. It also has a small number of stores in the UK (seven). Whole Foods Market's UK subsidiary, Fresh and Wild Ltd, had turnover of £107 million in 2018 and recorded an operating loss of £5 million.[26] Amazon also operates Amazon Go, a small number of convenience stores in the US selling a range of snacks, ready to eat meals and groceries. In March 2020 it was reported that Amazon would open its first Amazon Go store in the UK later in the year.[27] Overall, physical stores account for approximately 6% of total net sales. The bulk of the physical stores net sales is from Whole Foods Market.[28,29]

2.9 **Consumer subscription services.** Amazon also offers consumer subscription services; the most significant being Amazon Prime. For an annual or monthly subscription, customers receive free delivery, early access to discounts and offers and access to and unlimited streaming of thousands of movies, TV shows and Amazon original content, digital music and e-books. In the UK, Amazon Prime is available for £7.99 per month or £79 annually.[30] Globally, Amazon now has over 150 million Amazon Prime members.[31] Amazon had [✂] million paid Prime subscribers in the UK in 2019,[32] and forecasts this to [✂].[33]

2.10 Amazon Prime customers are able to use Prime Now, which allows ultrafast delivery on a variety of (food and non-food) items to certain locations. Amazon Prime customers in London can also use AmazonFresh (additional monthly subscription fee of £3.99) for grocery delivery. [✂]. Amazon views Prime Now, in part, as a marketing tool encouraging loyal customers to continue

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[23] *Amazon.com, Inc FORM 10-K*, pages 24 and 68.
[24] *Amazon.com, Inc FORM 10-K*, pages 24 and 68.
[25] *Amazon.com, Inc FORM 10-K*, page 54.
[26] *Fresh and Wild Limited Report and Accounts 2018*, page 8.
[27] See, for example, The Guardian (14 March 2020), *Amazon to open store without checkouts in UK*.
[28] *Amazon.com, Inc FORM 10-K*, page 68.
[29] *Whole Foods Market, Inc, FORM 10-K*, page 16, in year to September 2017 (last year prior to Amazon acquisition stated that it had total sales of $16 billion).
[30] See Amazon.co.uk website listing the benefits of an Amazon Prime subscription.
[31] *Amazon.com, Inc Q4 results 2019, Earnings Release*.
[32] Mintel Group (7 March 2019), *The Amazon Effect – Nine in ten Brits shop on Amazon* ('…four in ten (39%) consumers have access to Amazon Prime, with just over a quarter (26%) personally being members and a further 13% sharing access through someone else's account. Scaled to a national level, this places Amazon Prime membership in the UK at around the 15 million mark.').
[33] In 2018, [✂] million customers ([✂]% UK households) had an Amazon Prime subscription in the UK; Amazon expects its Prime use base to [✂] to [✂] million in 2022.

shopping with them, particularly through the free delivery offered.[34] Overall consumer subscription services account for approximately 7% of total global revenue.[35]

2.11 **Amazon Restaurants.** Amazon previously offered restaurant food delivery in both the UK and the US through Amazon Restaurants. It launched in the UK in September 2016. Amazon decided to stop operating Amazon Restaurants in the UK in [✂] and exited in November 2018. In the US, it stopped operating in June 2019. In 2018, the combined US/UK net revenue of the business was $[✂] million.

Investments and acquisitions

Minority investments

2.12 As of 31 December 2019, Amazon had $3.3 billion invested in minority stakes in public and private companies, of which $679 million related to publicly listed companies.[36]

2.13 Amazon identified to the CMA [✂] companies in which its initial investment provided it with an equity stake between 5% and 50% at any point in the last five years. In several cases, Amazon went on to make further investments subsequent to its initial investment, although only one of these (Ring Inc) has led to a full acquisition. Amazon's proposed investment in Deliveroo is [✂].[37]

Majority shareholdings

2.14 Amazon has previously acquired companies operating in both its own and adjacent markets. These include: Audible.com (digital audiobooks), Goodreads and Shelfari ('social cataloguing' online books databases), Twitch (live video gaming streaming) and Annapurna Labs (microelectronics provider). Some of Amazon's most recent acquisitions include: Health Navigator (2019, symptom checking and triage services), eero Inc (2019, home wifi), PillPack Inc (2018, online pharmacy), Ring Inc (2018, home

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[34] *Amazon.com, Inc FORM 10-K*, page 27.
[35] *Amazon.com, Inc FORM 10-K*, page 68.
[36] *Amazon.com, Inc FORM 10-K*, page 33.
[37] The investments identified by Amazon were (i) Hungry Machine, Inc d/b/a LivingSocial, a $[✂] million investment for a [✂]% ownership interest in 2010; (ii) Rivian Automotive, Inc, a $[✂] million investment for a [✂]% ownership interest in 2019; (iii) Aurora Innovation, Inc., a $[✂] million investment for a [✂]% ownership interest in 2019; (iv) Witzig Advisory Services Private Limited, a $[✂] million investment for a [✂]% ownership interest in 2019; (v) Red Seam Holdings LLC, a $[✂] million investment for a [✂]% ownership interest in 2019; and (vi) Future Coupons Private Limited, a $[✂] million investment for a 49% ownership interest in 2019.

security), Whole Foods Market (2017, groceries) and Souq Group Limited (2018, online marketplace).[38]

Deliveroo

Description and ownership

2.15 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 100 towns and cities, working with over 8,000 partner restaurants and 15,000 riders and employs 600 people directly.[39] Deliveroo generated approximately [✂]% (£[✂] million) of its £476 million turnover in the UK in 2018.[40]

2.16 Deliveroo is also active in Australia, Belgium, France, Hong Kong, Ireland, Italy, Kuwait, Netherlands, Singapore, Spain and the United Arab Emirates.[41] Whilst the company currently generates a significant amount of revenue, the costs of growing the business and developing new technology mean that it currently makes a significant loss (£232 million[42] in 2018 after tax), has negative operating cashflow (£139 million in 2018[43]) and its continued operation is dependent on periodically raising capital from investors.

2.17 Deliveroo's ultimate parent company is Roofoods Ltd, a UK registered Private Limited Company. The main shareholders are outlined in Table 1 below.

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[38] *Amazon.com, Inc FORM 10-K*, page 54.
[39] See Deliveroo.co.uk website, 'FAQs' webpage.
[40] *Roofoods Ltd Annual Report and Financial Statements* for the year ended 31 December 2018, page 13.
[41] See Deliveroo.co.uk website, 'About Deliveroo' webpage.
[42] *Roofoods Ltd Annual Report and Financial Statements* for the year ended 31 December 2018, pages 7, 13 and 22.
[43] *Roofoods Ltd Annual Report and Financial Statements* for the year ended 31 December 2018, page 55.

Table 1: Deliveroo's major shareholders

Shareholder	*Current shareholding*	*Shareholding post transaction*	*Description*
DST Global V, L.P. (DST Global)*	[✂]%	[✂]%	Large tech Venture Capitalist Fund, headquartered in Hong Kong, focused on making late stage investments in the fastest growing tech companies. Portfolio has included: Facebook, Twitter, Airbnb, Spotify, WhatsApp, Alibaba and others including nine European unicorns.
Index Ventures (UK) LLP (Index Ventures)†	[✂]%	[✂]%	Dual London/San Francisco-based Tech Venture Capitalist Fund. Significant experience in funding European tech unicorns with eight in its portfolio. Also states it provides support and experience to management. Investments include Dropbox, Ayden, Robinhood.
Greenoaks Capital Partners LLC (Greenoaks)	[✂]%	[✂]%	US-based global internet investment firm focused on 'concentrated long-term investments in technology-enabled business globally'.
T. Rowe Price Group, Inc (T. Rowe Price)‡	[✂]%	[✂]%	US-based Global Asset Manager with $1.2 trillion AUM.
Will Shu (founder)	[✂]%	[✂]%	Founder and CEO.
Fidelity Management and Research Company LLC (Fidelity)§	[✂]%	[✂]%	US-based global Asset Manager with AUM of $3.2 trillion. Equities division has $1.7 trillion AUM. Adopts active management strategy with 180+ equity research professionals picking stocks considering industry, competitors and macro- economics.
Accel London Management Limited (Accel)#	[✂]%	[✂]%	US-based Tech Venture Capitalist fund that partners with tech founders from inception through all stages of growth. Other investments: Facebook, Dropbox, Blablacar, Vinted, Docolib. Most active European unicorn investor by portfolio count (eleven).
Bridgepoint Capital Group Ltd (Bridgepoint)¶	[✂]%	[✂]%	Private equity group with €20 billion AUM. Focus is investing in established market-leading companies valued at up to €1 billion, with investments typically ranging from €75–400 million across six sectors. States that it serves on boards and seeks to add value by contributing to strategic development.
General Catalyst Group (General Catalyst)^	[✂]%	[✂]%	US-based Venture Capitalist fund that makes early stage and growth investments. Portfolio includes Airbnb, Oscar, Stripe and Gusto.

Source: CMA analysis of data from Deliveroo.
Notes: A 'unicorn' is a tech start-up company that reaches a valuation of $1 billion or more. AUM = assets under management.
*See Crunchbase website: DST Global.
†See Index Ventures website and Wired (15 October 2018), *How Index Ventures became Europe's start-up success factory*.
‡See T. Rowe Price website.
§See Fidelity Investments (31 December 2019), *Equity Factsheet*.
#See Accel website and Crunchbase (27 January 2020), *European Unicorns Break Out In 2019*.
¶See Bridgepoint website.
^ See General Catalyst website.

Overview of main activities

2.18 Deliveroo's main activities are described below.

2.19 **Online restaurant platform.** Deliveroo operates both an online food ordering marketplace and an online logistics-enabled food marketplace. Approximately [✂]% of orders are delivered by Deliveroo, with [✂]% being 'marketplace only' orders where delivery is carried out by the restaurant. Restaurants are

charged a delivery fee by Deliveroo based on the order value; this fee is typically [✂] where restaurants use the online logistics-enabled marketplace.

2.20 Consumers, using either Deliveroo's website or app, can select from a wide range of restaurants in their area. In addition to criteria such as price and food type, customers are shown a restaurant rating based on previous customer reviews, and an estimated delivery time (in ten-minute ranges). Consumers are charged for the food ordered and are also charged a delivery fee. Deliveroo offers a similar service for corporate customers, Deliveroo for Business, that allows corporate customers to order in catering or to pay for this service for employees.

2.21 Delivery is carried out by self-employed bicycle, scooter and car riders/drivers with an average delivery time of 32 minutes from order.[44] [✂]% of deliveries are carried out on either scooters or bikes. Riders/drivers are paid on a per-delivery basis.[45]

2.22 Deliveroo's systems rely on its logistics platform, 'Frank'.[46] Frank uses AI, Deliveroo's historic data, and external data to allocate riders efficiently to each delivery, with the aim of minimising the average delivery time. When a customer is browsing for food, Frank calculates an estimated time for delivery.

2.23 **Deliveroo Editions.** Deliveroo Editions are delivery-only kitchens owned by Deliveroo and occupied by restaurants to cook orders solely for delivery (by Deliveroo riders). There are approximately 16 Deliveroo Editions sites across the UK and approximately 100 restaurants are set up across these sites. Each restaurant has its own staff, but shares communal facilities such as food storage. Deliveroo pays for the build and upkeep of the facilities and provides all kitchen equipment. Restaurants do not pay a rent to occupy the Editions kitchens and instead are charged commission on orders generated.[47]

2.24 **Restaurant Services.** Deliveroo provides wholesale and data analytics services to restaurants. Deliveroo will negotiate bulk discounts for food and packaging which it will then pass onto restaurants, estimating small restaurants can save c. [✂]% costs from these services. Deliveroo also offers access to its data and analytics tools as a performance management tool for restaurants. Restaurants can, for example, track their most popular items on Deliveroo, access online marketing tools and keep track of their invoices.[48]

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[44] See Deliveroo.co.uk website, 'FAQs' webpage.
[45] See Roocommunity.com website, 'Applicant FAQs' webpage.
[46] See: Deliveroo.co.uk website, 'About us' webpage and Roocommunity.com website, 'How and why am I offered specific orders?' webpage.
[47] See: BBC (23 April 2019), *Does your dinner come from a 'dark kitchen'?*.
[48] Deliveroo Foodscene UK (3 October 2018), *See how you're performing with us anytime, anywhere*.

2.25 **Online Convenience Groceries (OCG).** Deliveroo delivers convenience groceries through partnerships with grocers such as the Co-op. This works in the same way as restaurant delivery, with customers ordering online or on the app, the grocer packaging the goods and then the rider delivering them. As with restaurant food delivery, customers are given an estimated delivery time within a ten-minute window prior to ordering and the food will be delivered in an average of 32 minutes.[49] Through the partnership with Co-op, Deliveroo offers a range of approximately [✂] different products.

The Transaction

2.26 The Transaction comprises [✂] which Amazon entered into with Deliveroo on 16 May 2019:[50]

(a) [✂]; and

(b) [✂].

2.27 [✂] conferred on Amazon the following rights over Deliveroo:

(a) [✂]% shareholding in Deliveroo;[51]

(b) the right to appoint one director and one board observer to Deliveroo's board;[52]

(c) [✂];[53] and

(d) [✂].[54,55]

2.28 [✂] envisages the acquisition by Amazon of a [✂]% shareholding in Deliveroo (and will confer on Amazon certain minority shareholder rights),[56] [✂].[57]

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[49] See Deliveroo.co.uk website, 'FAQs' webpage.
[50] [✂].
[51] [✂].
[52] [✂].
[53] [✂].
[54] [✂].
[55] [✂].
[56] The Parties provided an updated estimate of Amazon's shareholding post-transaction of [✂]%. This includes vesting of options and assumes a further allotment of shares in Deliveroo to an individual, [✂]. The Parties did not provide supporting evidence for this revised figure, details of how it would affect other shareholders' stakes or evidence to support the assumption that these shares would be allotted and issued to [✂]. In any event, we do not consider that this minor change in shareholding would affect our assessment of the Transaction.
[57] The German authorities cleared this Transaction on 11 July 2019.

2.29 The Parties submitted that [✂].[58] However, we observed evidence indicating that [✂]. In particular, we note that [✂]. The Parties' internal documents also indicated that [✂].[59]

2.30 We therefore consider that [✂].[60] [✂], we have treated the Transaction as an anticipated merger.

The rationale

Amazon's rationale

2.31 Amazon submitted that it believes Deliveroo will be a valuable financial investment for Amazon, given its rapid growth, customer popularity and the strength of its management team. Amazon believes that food delivery is a rapidly growing and valuable sector that offers a large and growing opportunity, and [✂].

2.32 Amazon's internal documents provide further context regarding its rationale, and indicate that [✂]. For example, [✂], states:

> '[✂]'

2.33 Amazon told the CMA that this text had been drafted when Amazon was considering [✂] and had been copied into a subsequent email relating to the investment decision, without amendment. Amazon said it was not, however, relevant to the investment decision. We do not consider that this explanation is credible. The document in question was a short email sent to the CEO and CFO of Amazon seeking approval for a significant investment (and may therefore reasonably be assumed to have been carefully drafted and reviewed). Moreover, parts of this text have been updated [✂].[61] We do not therefore accept Amazon's argument that these statements should be disregarded as 'cut and paste' errors.

2.34 Amazon also contended that there is a distinction between something being [✂] to its commercial strategy. Amazon submitted that '[✂]'. It further stated

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[58] [✂].
[59] For example, in a briefing note to Mr Bezos on the proposed investment, Amazon stated '[✂]'.
[60] [✂], the CMA would treat them as successive events within a two-year period having occurred or occurring simultaneously on the date of the last transaction under section 29 of the Act. In giving effect to this provision, the CMA may take into account transactions in contemplation (that is where the last of the events has not yet occurred). (*Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, paragraph 4.33).
[61] [✂].

that '[✂]'. Amazon submitted that although it has '[✂]', the Transaction is not [✂], and [✂].

2.35 Amazon has also submitted that the statements in the email sent to its CEO and CFO seeking approval for the investment in Deliveroo are contradicted by statements in earlier emails from [✂] who indicated that they did not support investing in a restaurants business.

2.36 Although [✂] indicated that they do not support the investment in Deliveroo, the documents cited by Amazon suggest that [✂], had a different view.[62] In addition, [✂]. Amazon submitted that [✂], and that this decision [✂] Deliveroo demonstrates that [✂] decided that Deliveroo [✂]. However, following Amazon's decision [✂] Deliveroo, and the recommendations of [✂], Amazon articulated the rationale discussed in paragraph 2.32 and decided to close the Amazon Restaurants business [✂] it decided to invest in Deliveroo.

2.37 The potential strategic value of Deliveroo to Amazon is further supported by Amazon internal documents where Amazon explored [✂] before it decided to invest instead. In one document, Amazon discusses [✂]. [✂].[63]

2.38 Amazon further submitted that its decision [✂] is the best evidence that Amazon believes Deliveroo is not strategically important to Amazon. We consider, however, that this position is not fully consistent with all of the evidence we have reviewed, some of which suggests that [✂]. In particular:

(a) An email exchange involving Amazon's corporate development team discussing whether Amazon would be interested in a minority investment in Deliveroo on [✂].

(b) [✂] told us that making an investment in Deliveroo was not a '[✂]'.

2.39 The potential strategic value of Deliveroo to Amazon is consistent with Amazon's broader commercial strategy, as evidenced by Amazon [✂]'s launch of [✂] pilot project. [✂].[64]

2.40 We consider the evidence (in particular, Amazon's internal documents discussing the Transaction and the restaurant food delivery industry) demonstrates that Amazon considers Deliveroo to be of potential strategic value to it in future ([✂]), and that Amazon's investment in Deliveroo was strategic, [✂].

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[62] [✂].
[63] Amazon's valuation of Deliveroo forecast [✂].
[64] [✂].

Deliveroo's rationale

2.41 Deliveroo submitted that it needs investment in order to compete against well-resourced competitors, such as Uber Eats and Just Eat.

2.42 In addition to the Series G funding round led by Amazon, Deliveroo discussed [✂] proposed alternative funding structures led by [✂].

Funding option led by [✂]

2.43 The [✂] funding led by [✂] envisaged [✂] of $[✂] million. Discussions on this were held in early 2019 leading to a term sheet being circulated in early 2019. However, Deliveroo has stated that negotiations were broken off when it became clear that the Amazon investment was highly likely to progress in April 2019. Deliveroo told us that it received oral commitments for the [✂] $[✂] million [✂]. It has also submitted that the terms of the investment were [✂].

2.44 This funding round valued Deliveroo at $[✂] billion. Deliveroo has stated that the benefits of this transaction were that:

(a) [✂] than that under the Amazon investment; and

(b) [✂] would be acceptable to the board.

2.45 However, compared to the Transaction, Deliveroo stated it was less attractive because:

(a) the lower amount available would [✂];

(b) [✂];and

(c) the advantages of Amazon as an investor would be lost.

Funding option led by [✂]

2.46 [✂] aimed to include over $[✂] million in funding, [✂].Negotiations between Deliveroo and [✂] took place between March and April 2019 with a heads of terms document in circulation that remained subject to negotiation. As with the [✂] funding, negotiations were broken off in late April 2019 with the execution of the letter of intent with Amazon. Deliveroo has stated that [✂] had only committed $[✂] million at this point [✂].

2.47 [✂], through which [✂] was intending to invest in Deliveroo, is a private fund [✂], with capital commitments of approximately $[✂] million. The fund is not

able to invest more than [✂]% of committed capital in a single portfolio company. [✂].

2.48 Whilst [✂] anticipated that it would have been able to complete the investment at the time, this was not certain and [✂] might only have been in a position to complete a portion of the funding.

2.49 [✂].

2.50 Deliveroo considered that this funding option was unattractive as:

(a) there was considerable execution risk as [✂] had only committed $[✂] million of funding. [✂];

(b) [✂];

(c) [✂];and

(d) [✂].

Series G funding option led by Amazon

2.51 Deliveroo contacted Amazon in [✂] ([✂]) to determine Amazon's interest in Deliveroo. From December 2018 to March 2019 Amazon and Deliveroo held preliminary discussions [✂]. This involved Amazon and Deliveroo entering into [✂] and Amazon requesting information from Deliveroo. Amazon subsequently informed Deliveroo in [✂] that it was interested in a minority investment in Deliveroo, leading a Series G funding round. Investment agreements were subsequently signed on 16 May 2019.

2.52 The Series G funding provided Deliveroo with:

(a) [✂]; and

(b) [✂].

2.53 This funding round valued Deliveroo at $[✂] million.

2.54 Deliveroo told us that it accepted Amazon's offer because:

(a) it offered a higher level of funding [✂];

(b) Amazon is known as a patient investor and shares a similar consumer focus to Deliveroo;

(c) [✂];

(d) it involved a smaller number of investors than other available offers; and

(e) [✂].

2.55 Deliveroo's internal documents support this rationale, with one stating that Deliveroo was '[✂]', and another stating '[✂]'.

3. Jurisdiction

3.1 An anticipated merger must meet the following two criteria to constitute a 'relevant merger situation' for the purposes of the Act:[65]

(a) First, the arrangements in progress or in contemplation will, if carried into effect, lead to enterprises ceasing to be distinct.

(b) Second, either:

(i) the UK turnover associated with the enterprise which is being acquired exceeds £70 million (known as 'the turnover test'); or

(ii) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, will together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition ('the share of supply test').

3.2 The turnover of Deliveroo in the UK in the financial year preceding the date of the reference to phase 2 exceeded £70 million (approximately £[✂] million) for the purposes of section 23(1)(b) of the Act. The remainder of this chapter therefore, focuses on the first limb of the relevant merger situation test from section 23(1)(a) of the Act, namely the concept of enterprises ceasing to be distinct.

Enterprises ceasing to be distinct

Arrangements are in progress or in contemplation

3.3 As discussed in paragraph 2.26, on 16 May 2019, Amazon entered into [✂][66] with Deliveroo:

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[65] The Act, section 23. See also *CMA2*, paragraph 4.3.
[66] [✂].

(a) [✂], which gives Amazon certain rights over Deliveroo, including board representation, a [✂]% shareholding ([✂]); and

(b) [✂], through which Amazon will acquire a [✂]% shareholding (and certain other rights) in Deliveroo, [✂].[67]

3.4 Accordingly, we consider that arrangements are in progress or contemplation within the meaning of section 36(1)(a) of the Act.

3.5 We note the Parties' view that [✂]. The Parties have not substantiated this view either in phase 1 or as part of their submissions at phase 2. As discussed in paragraph 2.29, in our provisional view, there is sufficient evidence to conclude that [✂].

Enterprises

3.6 Section 129(1) of the Act defines an 'enterprise' as 'the activities or part of the activities of a business'. A 'business' 'includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.

3.7 A company that owns a business operating as a going concern with the necessary assets, employees and customer contracts would satisfy the factual requirements of 'an enterprise' for the purposes of the Act.

3.8 We are satisfied that each of the Parties is a 'business' within the meaning of the Act and that, accordingly, the activities of each of the Parties are 'enterprises' for the purposes of the Act.

Ceasing to be distinct

3.9 Section 26 of the Act provides that any two enterprises cease to be distinct if they are brought under common ownership or common control. 'Control' may include situations falling short of outright voting control. Section 26 of the Act distinguishes three levels of interest that can constitute control: (i) material influence, (ii) de facto control, and (iii) a controlling interest (also known as 'de jure', or 'legal control').

3.10 De Jure control generally means a shareholding of greater than 50%, ie a majority of the voting rights. De facto control refers to situations where an entity controls a company's policy, notwithstanding that it does not hold a

[67] The German authorities cleared this transaction on 11 July 2019.

majority of voting rights (eg situations where an entity has, in practice, control over more than half of the votes actually cast at a shareholder meeting). We do not consider that the Transaction would give rise to either de jure or de facto control. We have accordingly focused our assessment on whether the Transaction would give rise to Amazon acquiring the ability to exercise material influence over Deliveroo.

3.11 Material influence is described in the Act as being able 'directly or indirectly … materially to influence the policy of a body corporate … without having a controlling interest in that body corporate…'.[68] The CMA's Jurisdictional Guidance explains that 'the policy of the target in this context means the management of its business, and thus includes the strategic direction of a company and its ability to define and achieve its commercial objectives'.[69]

3.12 The ability materially to influence a target's policy is not an ability to control it. In particular, it does not amount to an ability to drive policy in a direction that other shareholders, management or the board object to. Rather, it is the ability materially to influence relevant strategic or commercial matters, either *positively* (ie by persuading the company to pursue particular courses of action) or *negatively* (ie by dissuading the company or its management from pursuing particular courses of action).[70]

3.13 The CMA's assessment of whether a transaction is likely to result in the ability to exercise material influence requires a broad, case-by-case analysis of the overall relationship between the acquirer and a target, and will depend on the facts and circumstances of each case.[71]

3.14 The Parties submitted that the CMA does not have jurisdiction to review the Transaction because Amazon would not be capable of exercising material influence over Deliveroo.[72]

3.15 The remainder of this chapter describes our application of the test for material influence in the present case. Applying the framework set out in the CMA's Jurisdictional Guidance, this chapter presents the evidence as follows:

(a) Influence through Amazon's shareholding in Deliveroo.

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[68] The Act, section 26(3).
[69] *CMA2*, paragraph 4.14: The CMA need not demonstrate that the acquirer has the ability to influence all elements of the target's commercial policy; the ability to influence need arise only in relation to certain strategic matters (such as a potential sale of the target, new product development, key funding decision etc), and/or over issues going to the business' ability to define and/or achieve its commercial objectives.
[70] *CMA2*, paragraph 4.22.
[71] *CMA2*, paragraph 4.15.
[72] *Parties Initial Submission*, 24 December 2019, section 3.

(b) Influence through Amazon's right to representation on Deliveroo's Board.

(c) Other sources of influence.

3.16 In keeping with the general principle that the purpose of UK merger control is to enable the CMA to consider the commercial realities of transactions,[73] we have then considered the overall effect of the influence Amazon would acquire via each of these channels. We have had regard to the cumulative influence afforded by factors that may not necessarily, in themselves, be sufficient to give rise to material influence to determine whether, when considered together, they mean Amazon will be more likely than not to be able to exercise material influence over Deliveroo. In this respect, we disagree with the Parties' submission that each potential source of influence must be considered in isolation and is relevant to the assessment only if it is individually sufficient to confer material influence.[74]

3.17 Consistent with the CMA's Jurisdictional Guidance,[75] we note the importance of a case-by-case analysis of the overall relationship between the acquirer and the target. As such, we have conducted a careful review of the facts and circumstances of this case without assuming that factors considered relevant in previous cases are either necessary or sufficient for a finding of material influence in this case.

3.18 After reviewing all of the evidence, the Parties' representations, and considering the commercial reality arising from the structure of the Transaction and other links between the Parties, we provisionally conclude that this Transaction is more likely than not to confer on Amazon the ability to exercise material influence over Deliveroo due to the cumulative impact of several avenues of influence.

Influence through Amazon's shareholding in Deliveroo

3.19 On completion of [✂] of the Transaction, Amazon will acquire [✂]%[76] of Deliveroo's issued share capital and voting rights ([✂]).

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[73] See for example, *Stagecoach/Mainline* (1995), CC Final Report, paragraph 2.34.
[74] The Parties' position on this matter underpins many of the arguments advanced in their response to the Jurisdiction working paper.
[75] *CMA2*, paragraph 4.15.
[76] The Parties provided an updated estimate of Amazon's shareholding post-transaction of [✂]%. This includes vesting of options and assumes a further allotment of shares in Deliveroo to [✂]. The Parties did not provide supporting evidence for this revised figure, details of how it would affect other shareholders' stakes or evidence to support the assumption that these shares would be allotted and issued to [✂]. In any event, we do not consider that this minor change in shareholding would affect our assessment of material influence.

3.20 Deliveroo's other major shareholders, and their shareholdings post-Transaction, are set out in Table 1 above.

3.21 At phase 1, the CMA considered only the shareholding to be acquired [✂].[77] Following the Parties' submissions to the CMA at phase 2, we consider it appropriate to consider the impact of the shareholding to be acquired [✂], on the basis that:

(a) [✂].[78]

(b) It is the Parties' intention to [✂].[79]

(c) [✂].

3.22 Accordingly, the [✂] forms part of the arrangements in progress or contemplation that constitute the anticipated merger referred to phase 2.[80]

Amazon's voting rights

3.23 The CMA's Jurisdictional Guidance highlights that, where an acquirer controls sufficient votes to block a special resolution (generally, more than 25%), this will typically give rise to the ability materially to influence a target's policy.[81]

3.24 The [✂]% shareholding to be acquired by Amazon is below the level that would enable it to block a special resolution.

3.25 In some cases, the distribution of shares among other shareholders and patterns of attendance at shareholder meetings may mean that shareholdings of less than 25% confer sufficient voting rights to enable the acquirer to block a special resolution in practice.[82]

3.26 The Parties have submitted that Amazon is not expected to be able to exercise substantially more than [✂]% of voting rights in practice:

(a) Provided that each of the other eight shareholders holding more than [✂]% of Deliveroo's issued share capital (which would represent more than [✂]% of voting rights in total) attend Deliveroo's shareholder

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[77] Phase 1 Decision, paragraph 43 and footnote 33.
[78] [✂].
[79] The Parties' submissions are all premised on the acquisition by Amazon of a [✂]% shareholding in Deliveroo. [✂].
[80] Although we are not required to determine whether material influence is conferred in the context of the [✂], we do not consider that our assessment would vary materially, as this would include the right to [✂].
[81] *CMA2*, paragraph 4.19.
[82] *CMA2*, paragraph 4.21.

meetings, Amazon would not be able to exercise more than [✂]% of voting rights.

(b) In the last three years, shareholder resolutions required for significant events were passed with at least [✂]% of shareholder votes.

3.27 On this basis, we do not consider that Amazon will have the ability to block special resolutions at a general meeting simply by exercising the voting rights attached to its shares.

3.28 However, this does not preclude a finding of material influence. In accordance with the CMA's Jurisdictional Guidance, we have also had regard to a number of other factors that may mean that a shareholding of below 25% will contribute to an acquirer's ability to exercise material influence including, in particular:

(a) The existence of veto and other rights enjoyed by Amazon or other special provisions in Deliveroo's constitution; and

(b) The ability to influence other shareholders in matters of policy owing to Amazon's particular status and expertise.

Amazon's rights as a shareholder

3.29 Post-Transaction, Amazon, as [✂] and holder of a majority of Deliveroo's Series G shares,[83] will benefit from certain other rights not enjoyed by Deliveroo's other major shareholders. These include:

(a) As a Series G shareholder, Amazon will have a higher liquidation preference and ranking for the two years following adoption of Deliveroo's new Articles of Association. Whilst all holders of Preferred Shares have a superior ranking to holders of all other classes of shares, for this two year period, the Series G shareholders additionally and uniquely are entitled, upon liquidation, to a multiple of 1.5x the Series G cost basis.[84] The Parties have submitted that this is a 'standard [protection] [✂]'. We consider, however, that this explanation fails to reflect the fact that the multiple is higher than enjoyed by holders of any other series of Preferred Shares, a fact which was [✂]. In addition, [✂].

[83] Deliveroo Foodscene UK (17 May 2019), *Amazon leads a $575MM financing round in Deliveroo*.
[84] New Articles of Association, adopted 16 May 2019, Article 5.1.1 (see *Resolution of adoption of Articles of Association* (published on Companies House website on 11 July 2019)).

(b) [✂].[85] The Parties have submitted that [✂], and therefore is not relevant to the material influence assessment. However, as discussed below, we consider Deliveroo's investors will consider it important to keep their exit options open and that this right contributes to Amazon's ability to exert influence over how a sale might be achieved.

(c) [✂].[86] The Parties have submitted that this is 'also a normal minority protection' but do not dispute that Amazon would be able to exercise this [✂] unilaterally, as holder of the majority of the Series G preferred shares. Whilst a majority of the holders of each other series of preferred shares must also agree to these matters, we consider it relevant that Amazon, alone, will control the majority of Series G shares.

3.30 The Parties have submitted that veto rights are relevant to the assessment of material influence only where they are equivalent to an ability to block a special resolution or would enable Amazon to persuade other shareholders that a particular course of action was in their own best interests, and thereby block a special resolution in combination with these other shareholders. We consider that this reflects the Parties' unduly narrow approach to the analysis of material influence, which assumes that any individual factor is relevant only to the extent that it confers material influence in itself.

3.31 As discussed at paragraph 3.16 above, we consider that the Parties' approach is not correct, because it fails properly to take into account the requirement to consider the cumulative impact of all sources of influence. In addition, we consider the Parties' focus on the ability to block special resolutions as 'the key consideration in the material influence analysis' is misplaced. The CMA's Jurisdictional Guidance states that this is an *example* of a situation where it is likely that material influence will be conferred through a shareholding. However, this was not intended to be (and is not) an exhaustive definition of material influence: the test is a purposive one, intended to determine whether an acquirer can influence the target's commercial policy. Blocking special resolutions is just one possible means of obtaining that influence.

3.32 We note that [✂].[87] We consider that this is a matter that is relevant to the strategic direction of Deliveroo and that the rights described above are likely to place Amazon in a position to have an influence on how this strategy might be achieved, whether directly – by leading management or other shareholders

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[85] [✂].
[86] New Articles of Association, adopted 16 May 2019, Article 6.7 (see *Resolution of adoption of Articles of Association* (published on Companies House website on 11 July 2019)).
[87] [✂] and see also the evidence from Deliveroo's Investors referred to in paragraph 3.40 and footnote 90.

to give greater weight to Amazon's position – or indirectly – [✂] by an alternative acquiror.

Amazon's status and expertise

3.33 In addition to the rights described above, we have considered whether the specific status or expertise of Amazon, and its corresponding influence with other shareholders, may contribute to or give it an ability to influence Deliveroo's policy formation.[88]

3.34 Status, in this regard, refers to the perception among other Deliveroo investors of Amazon's position as an investor. Expertise refers to Amazon's knowledge and experience that is relevant to Deliveroo's business.

3.35 The Parties have submitted that, for status and expertise to be relevant to the analysis of material influence, these factors must be:

(a) 'virtually unrivalled'; and

(b) 'sufficient to lead to an expectation that Amazon could persuade Deliveroo's other shareholders that a particular course of action was in their own best interests in order for Amazon to use their votes to block a special resolution, or could influence materially policy that would otherwise be expected to require a special resolution.'

3.36 As noted at paragraphs 3.16 and 3.17 above, we consider the Parties' position in paragraph 3.35(b) relies on the mistaken premise that a factor is relevant only where it is sufficient to give rise to material influence itself and overstates the importance of decisions requiring special resolution. In addition, we consider that the reference to 'virtually unrivalled' expertise is not a reference to a generally accepted principle or requirement for that particular degree of status or expertise to be present.[89] That said, as set out below, we consider there is evidence that Deliveroo and its investors did consider Amazon's expertise and status to be particularly significant.

Status

3.37 We consider that Amazon's status as a strategic investor [✂] is likely to increase the weight its views will carry with Deliveroo's management and

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[88] *CMA2*, paragraph 4.22.
[89] Instead it reflects the terminology used to reflect the facts in that case and (*BSkyB v CC* (Cases 1095/4/8/08 and 1096/4/8/08) [2008] CAT 25, paragraph 138). The CC's emphasis was on the expectation that BSkyB's views were likely 'to be of particular interest to other shareholders' (*BSkyB/ITV* (2007), CC Final Report, paragraph 3.59).

other investors and, as such, contribute to its ability materially to influence Deliveroo's policy.

3.38 The available evidence demonstrates that Amazon was considered to represent a possible ([✂]) route to exit [✂]. For example, following a meeting with [✂], [✂] flagged that certain intelligence should be shared with '[✂] and, separately, with like-minded investors who you know are supportive of an Uber (or Amazon) exit'.

3.39 Similarly, [✂] commented on Amazon's intentions regarding its investment in Deliveroo: [✂]. [✂] noted, [✂]. [✂] also commented that '[✂]'. The Parties have submitted that these emails are not evidence of Amazon's intent, but this misunderstands how we consider this evidence to be relevant to our assessment of Amazon's likely influence over Deliveroo's commercial policy. The emails are evidence of the impression Deliveroo's investors had of Amazon and, in turn, of the weight those investors would be likely to place on Amazon's point of view in relation to strategic matters.

3.40 More generally, Deliveroo's existing shareholders are venture capital firms and [✂].[90] This adds further weight to Amazon's status as a strategic investor in Deliveroo[91,92] and we consider it is likely to enhance Amazon's ability to influence strategic matters, including how a sale might be effected.[93]

3.41 The Parties have submitted that, [✂]. We consider that the shareholders would wish to keep their exit options open to optimise timing and financial return on exit, and would therefore continue to attach importance to Amazon as a potential exit strategy [✂]. Contrary to the argument advanced by the Parties, we consider that the fact that there may be another option will not necessarily [✂].[94] [✂].[95]

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[90] [✂] described itself as having a typical time to exit of [✂] years (we note that [✂] original investment in Deliveroo was in [✂]); [✂] told us that its 'typical investment period is [✂] years' which would mean an exit in [✂] from Deliveroo; [✂] told us that it hoped to exit its investment in Deliveroo after an initial public offering (IPO) in [✂] years; and [✂] told us that it was assuming a [✂] IPO as a first potential exit option. [✂] indicated it was expecting an IPO in [✂]; [✂] also indicated it was expecting an IPO in [✂]; a [✂] document considers possible IPO [✂]; and a [✂] email notes, in relation to interest received from [✂] in buying Deliveroo shares, 'I trust the fundraise discussions that are being run in parallel will access the relevant names in that context, particularly given previous fundraising round and investor access …Of course, should a corporate deal not materialise or any fundraise/secondary sale process be short on demand, we could contact them then'.
[91] [✂] commented on Amazon's strategic interest in Deliveroo: 'Amazon is pushing harder into food delivery globally (announced investment in India and Indonesia) and their ultimate intentions for Deliveroo clearly go in that direction'.
[92] *Breedon Aggregates/Hope Construction Materials* (2016), CMA Phase 1 Decision, paragraphs 40 and 44.
[93] (*BSkyB/ITV* (2007), CC Final Report, paragraph 3.59.
[94] Nor do we agree with the [✂].
[95] See also [✂]: 'Investor sentiment towards heavily loss-making technology companies has substantially deteriorated since Deliveroo and Amazon signed the deal given high-profile failed technology investments (eg WeWork)'; [✂]: '[✂]'; and [✂]: '[✂]'.

3.42 [✂]. We disagree with the Parties that these concerns about the [✂] were expressed only in relation to the near term.[96]

3.43 In light of the preferred [✂], we consider that Amazon's position as a [✂] of Deliveroo is likely to increase the weight its views would have with both management and the other investors and, in turn, increase its ability to influence Deliveroo's commercial strategy.

3.44 Separately, Amazon's status may also create a perception, among Deliveroo's management, of the need to act with caution to avoid conflict with Amazon's offering. This is indicated in a [✂]. The Parties submitted that Amazon is cited in this document because it is a strong competitor, not in the context of its investment. However, we note that no other competitor is mentioned despite supermarkets such as Tesco, Ocado and Sainsbury's all having well-developed offerings in this sector. The Parties also submitted that the document '[✂]'. We note that it is not necessary to find that Deliveroo would be influenced by Amazon not to consider a given strategy; rather, it is sufficient that Deliveroo's appetite for pursuing certain strategies might be reduced.[97]

Expertise

3.45 We consider that Amazon's knowledge and expertise relevant to the areas in which Deliveroo operates, relative to that of other investors, is also likely to contribute to its influence with Deliveroo's management and other shareholders.

3.46 The Parties recognise that '[✂]'.[98] They submitted that Amazon [✂]. The Parties have also submitted that the other shareholders, in particular Will Shu, but also some of the other investors, who have 'been shareholders in Deliveroo for a significant length of time', have relevant expertise.

3.47 We consider that Amazon has significant direct operational experience in areas that are highly likely to be relevant to Deliveroo's business, including those described in the phase 1 decision.[99]

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[96] Whilst Deliveroo's existing shareholders [✂], evidence from these shareholders indicates that [✂] is uncertain and dependent on multiple factors, including investor sentiment towards 'loss-making technology companies' such as Deliveroo.
[97] (*BSkyB/ITV* (2007), CC Final Report, paragraph 3.46.
[98] Parties Initial Submission.
[99] As set out in paragraph 46 of the Phase 1 Decision, Amazon has expertise in operating online platforms (including logistics-enabled marketplaces), an ultrafast grocery delivery service, a well-established subscription service, business-to-business offerings, and has experience in new geographic areas for Deliveroo.

3.48 We consider that this experience is likely to give Amazon more in-depth knowledge and relevant expertise than Deliveroo's other shareholders, notwithstanding their experience as investment managers. We note, also, that a finding that an acquirer's specific expertise may affect the weight its views are given by other shareholders or management does not depend on finding that the other shareholders have no relevant expertise.[100]

3.49 The relevance of Amazon's knowledge is supported by statements made by both Deliveroo management and its shareholders, as well as other Deliveroo internal documents. In particular:

(a) Deliveroo's management expressed [✂].[101,102] [✂].[103] We do not agree with the Parties' submission that these requests cannot be evidence that Amazon has relevant expertise because they were compiled by junior employees. The Parties have not substantiated their position that the staff in question were junior (or that these staff had limited insight into or influence over Deliveroo's commercial policy). Moreover, while the CMA will carefully consider the author of an internal document and the purpose for which it was prepared in considering how much weight to give such evidence, we consider that even junior employees of Deliveroo would be aware of the insights that would be valuable to Deliveroo's business.

(b) [✂] emails [✂] also highlight a number of areas he anticipates Amazon's investment will assist – including [✂] and [✂].[104]

(c) In addition, [✂].

(d) Numerous internal documents distinguish the role that Amazon will play as a [✂], distinct from the other shareholders and highlight the importance of having this type of investor. For instance, one email from [✂] comments as follows: 'We are excited about the Amzn financing. [✂].[105]

(e) [✂] analyst recommendation flags Amazon's expertise in 'logistics and tech' as a key positive for the investment.

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[100] *British Sky Broadcasting Group plc v Competition Commission (CC)* (Cases 1095/4/8/08 and 1096/4/8/08) [2008] CAT 25, paragraph 138, referencing *BSkyB/ITV* (2007, CC Final Report, paragraph 3.59.
[101] The Parties have asserted [✂].
[102] [✂].
[103] Deliveroo's submitted the following points: [✂]. The CMA does not consider these factors to alter the conclusion that [✂] reflect a widely held view within Deliveroo that Amazon's commercial and operational expertise is likely to be helpful to Deliveroo's business.
[104] Deliveroo has described this email as '[✂]'. Even if this were the case, it demonstrates the value that [✂] – considered Amazon would have for Deliveroo.
[105] Email from [✂]. Also, an email dated [✂] from [✂]: '[✂]'. Further, an internal email sent on [✂] by [✂], comments: '[✂]'.

(f) [✂] internal notes state that Deliveroo '[✂]'.

(g) A [✂] email notes, '[✂]'.

(h) [✂] also commented, [✂].

3.50 The Parties have submitted that [✂]. In this regard, we note that Mr Shu was deeply involved in negotiating the Transaction, so we do not consider that his comments can be cast aside as mere [✂]. Moreover, Mr Shu reiterated his enthusiasm during the phase 1 Issues Meeting, several months after the Transaction was announced.[106] Similarly, the comments made by Deliveroo's other investors are part of an informed analysis of the Transaction, and there is no reason to believe that these are not considered comments.

3.51 The discussion of possible future partnerships between Amazon and Deliveroo (discussed further below) also reflects the direct relevance of Amazon's operational expertise to the Deliveroo business.

3.52 Moreover, we note that the Parties' own submissions recognise '[✂]'.[107]

3.53 Overall, we consider that there is a strong body of evidence that Deliveroo's management, its other shareholders and its commercial/operations teams perceive that Amazon is a significant 'strategic' investor, as well as a potential future acquirer (or source of funding). Similarly, we consider there is evidence Deliveroo and its shareholders perceive that Amazon has directly relevant expertise, which is pertinent to the weight its views are likely to be given regarding decisions relating to Deliveroo's commercial policy and strategy, further contributing to Amazon's ability materially to influence Deliveroo's strategy.

Influence through Amazon's right to representation on Deliveroo's Board

3.54 Board representation may give an acquirer the ability to exercise material influence over a target either alone or in combination with other factors.[108] Influence may arise as a result of the particular status of the board

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[106] See footnote 113.
[107] Parties Initial Submission, paragraph 2.2. The desire to retain this investment which, the Parties have said, '[✂]' may also affect those investors' perception of Amazon.
[108] *CMA2*, paragraph 4.23, states that material influence may be found where 'the acquirer is able materially to influence the policy of the target entity through board representation. Indeed, board representation alone may confer material influence'. See also *Daily Mail General Holdings Limited/ the trustees of the Iliffe Settlement/Trinity Mirror plc joint venture* (2013), OFT Decision document, paragraph 17: 'The OFT has previously placed weight on board representation when deciding on the question of material influence'.

appointee(s) and their ability to shape decision-making through participation in and shaping of board discussions.[109]

3.55 When assessing the impact of board representation, whether as a free-standing basis for material influence or as a supporting factor in the context of a broader relationship including a shareholding, the CMA will review a range of factors and consider how they contribute to the overall material influence assessment. These factors might include, for example, the corporate/industry expertise, experience or incentives of the various members of the board.[110] Board representation need not involve board 'control' or even confer specific veto rights at board level in order to be relevant to the CMA's material influence assessment.

3.56 In this case, we have considered whether Amazon's representation on Deliveroo's board is a relevant factor in the material influence assessment. Under the [✂] ([✂]) Amazon will have the right to appoint one board director and one board observer. Amazon's board director will be one of seven voting directors. [✂].[111]

3.57 Deliveroo's board directors and their rights post-Transaction are set out in Table 2 below:

Table 2: Deliveroo's board directors and their rights post-Transaction

Name of director	*Company affiliation*	*Rights*
Will Shu (founder)	Deliveroo	[✂]
Martin Mignot	Index Ventures (UK) LLP	[✂]
Benjamin Peretz	Greenoaks Capital Partners LLC	[✂]
Luciana Lixandru	Accel London Management Limited	[✂]
Antoine Froger	Bridgepoint Capital Group Ltd	[✂]
Doug Gurr	Amazon	[✂]
Darrell Cavens	N/A (independent)	[✂]
Adam Valkin	General Catalyst Group	[✂]

Source: Deliveroo.

3.58 As noted in Table 2 above, Amazon's nominated board director is Doug Gurr, who is a senior executive at Amazon and has been head of Amazon UK since 2016.[112]

3.59 The Parties have submitted that Amazon's board representation is insufficient to confer material influence because of the size of its representation and the

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[109] *Daily Mail General Holdings Limited/ the trustees of the Iliffe Settlement/Trinity Mirror plc joint venture* (2013), OFT Decision document, paragraphs 19–20.
[110] *CMA2*, paragraph 4.24.
[111] For completeness, the CMA notes that any voting director will have a veto over written resolutions since they require unanimous approval. Board resolutions which are passed in person require approval by a majority of voting directors present at the meeting, which is quorate with four voting directors.
[112] Mr Gurr's experience in groceries retail includes nearly five years as development director at Asda, co-founder and CEO of an online grocery wholesaler, and head of the retail practice at McKinsey.

relative experience of Deliveroo's other board members. The Parties submitted that Mr Gurr will not be able to override the views of other directors or influence the board to act in a way that is not in Deliveroo's best interests.

3.60 First, we note that the test for material influence does not require Mr Gurr to be able to override the views of other directors or influence them to act in a way that is contrary to Deliveroo's best interests. It is not necessary to demonstrate that Mr Gurr is able to drive policy in a direction that other shareholders, management or the board object to. Rather, it is sufficient for the CMA to demonstrate that Mr Gurr's views are likely to be influential in relation to relevant strategic or commercial matters.

3.61 Second, we note the Parties' submission that Mr Gurr's knowledge and experience is at least comparable to that of the other directors, in particular Mr Shu and Mr Cavens. It is not necessary to find that Mr Gurr's knowledge is greater than all other members of Deliveroo's board for it to be relevant to Amazon's ability materially to influence Deliveroo and we do not dispute that, as founder and CEO of Deliveroo, Mr Shu has very significant knowledge in restaurant food ordering and delivery services. It is clear, however, that Mr Shu will attach significant weight to Mr Gurr's advice and other investors have recognised the value of Amazon's expertise on the board.[113]

3.62 We consider that there is ample scope for Mr Gurr's knowledge and experience to be applicable to Deliveroo's commercial policy and that, as Amazon's appointed representative, Mr Gurr would be able to obtain and relay the knowledge Amazon accrued through its experience in restaurant delivery.[114]

3.63 Moreover, it is clear that, in nominating Mr Gurr, Amazon was conscious of Mr Gurr's general experience and seniority, as evidenced by Amazon's stated '[✂]'. The CMA considers the decision to appoint the head of Amazon UK as Amazon's nominated board representative is indicative of the importance that Amazon attaches to its investment in Deliveroo.

3.64 We expect that the combination of Mr Gurr's knowledge (including Amazon's broader relevant knowledge), his role as a voting director, and the fact that he is Amazon's representative on the board, will mean that his contributions will carry weight among Deliveroo's voting directors, in terms of influencing the

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[113] [✂]; in a [✂] internal email dated 4 May 2019, [✂] stated that '[✂]'.
[114] As recognised in *RWE AG/E.ON SE* (2019), CMA Phase 1 Decision, paragraph 38, exiting a market does not mean that the company 'will lose all of its expertise and operational knowledge acquired over time'. We note that the Parties' submissions on the relevant knowledge of other directors stems in part from the experience of the others within their organisation, and that this knowledge may be transmitted through the relevant affiliated director.

outcome of board resolutions and earlier stage discussions relating to the policy of Deliveroo. As a result, we consider that Amazon's board representation is a relevant contributing factor to our overall assessment of material influence (see paragraph 3.16 above).

Other sources of influence

3.65 The CMA may also take into account any other factors that may result in, or contribute to, an acquirer being able to exercise material influence over a target's policy. There is no defined list of factors to which the CMA may, or may not, have regard.[115] Evidence that a transaction is 'strategic' rather than a mere financial investment may be a relevant factor.[116]

3.66 We have considered whether other sources of possible influence might result in, or contribute to, an ability by Amazon to exercise material influence over Deliveroo. The following sources have been considered:

(a) current and possible future commercial relationships or partnerships between Deliveroo and Amazon Web Services (AWS);

(b) the possibility of future commercial arrangements or other partnerships between Deliveroo and Amazon; and

(c) other commercial/operational discussions between Amazon and Deliveroo.

The AWS agreement

3.67 In previous cases before the CMA and its predecessor authorities, important commercial relationships – such as supply agreements – have been considered relevant to the question of material influence, whether by themselves or because they signal the potential for deeper collaboration in the future.[117]

3.68 Deliveroo currently has an agreement in place with AWS [✂]. The evidence the CMA has seen also envisages [✂].[118]

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[115] *CMA2*, paragraphs 4.26–4.27.
[116] *Daily Mail General Holdings Limited/ the trustees of the Iliffe Settlement/Trinity Mirror plc joint venture* (2013), OFT Decision document, paragraph 24.
[117] See *First Milk Ltd/Robert Wiseman Dairies plc* (2005), OFT Decision document, paragraphs 5–6: Wiseman accounted for 10–20% of First Milk's total raw milk sales and the OFT took account of the fact that the transaction led to 'a degree of vertical integration'. The OFT found that it was appropriate to have due regard to the possibility of potential deeper involvement in future.
[118] See footnote 121.

3.69 The Parties have expressed the view that the AWS agreement is an [✂] agreement [✂], and that there are a number of alternative suppliers available to Deliveroo. The Parties have also highlighted that Deliveroo [✂]. Finally, the Parties have stressed that the AWS agreement was negotiated entirely [✂].

3.70 We consider the following factors to be relevant to whether the AWS agreement, or factors surrounding it, might contribute to an ability for Amazon to exercise material influence.

(a) Amazon's internal documents suggest that [✂]. Evidence of such an intention in relation to Deliveroo is reflected in [✂].[119,120]

(b) Since the Parties entered into the Transaction, [✂] AWS and Deliveroo [✂] the terms of their agreement [✂] and its increased reliance on AWS' services.[121]

(c) The terms of the [✂]. The Parties have not substantiated their argument that 'engaging multiple providers or switching provider is readily achievable', for example by reference to the time and cost implications of switching supplier. We consider that the '[✂]' spend commitment indicates that it would not be realistic for Deliveroo to engage with other potential suppliers during the term of the current agreement, as suggested by the Parties.

3.71 Whilst we note the existence of alternative suppliers, we consider that AWS' relationship with Deliveroo, as well as the potential for the continued development of this relationship ([✂]) may nonetheless provide Amazon with an additional avenue of influence relating to matters relevant to how Deliveroo defines and achieves its commercial objectives.

Future commercial arrangements/partnerships

3.72 Deliveroo's internal documents contain a number of references to the possibility of future partnerships and collaboration between Amazon and Deliveroo (in addition to the services provided by AWS).

3.73 For example, one document [✂].

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[119] [✂].
[120] [✂].
[121] One internal Deliveroo document notes that [✂].

3.74 Other internal documents created after the Transaction signed refer to furthering cooperation in other areas, as well as a [✂] and '[✂]' with the teams at Amazon.

3.75 One of Deliveroo's other principal investors also recognised the possibility of future partnerships between Amazon and Deliveroo, commenting that '[✂]'.

3.76 We consider that a perception of Amazon as a strategic/commercial partner for Deliveroo, both amongst Deliveroo's management and commercial teams, as well as amongst Deliveroo's other shareholders, is relevant to the weight that Amazon's views might be afforded in matters relating to Deliveroo's policy – in particular its ability to define and achieve its commercial objectives.

Other commercial/operational discussions

3.77 Where an acquirer is likely to be able to exert influence over a target's commercial policy outside of formal board and shareholder meetings, the CMA can take this into account for the purposes of its assessment of material influence.

3.78 In addition to the possibility of future commercial arrangements being entered into between Amazon and Deliveroo, there is also evidence (described in paragraphs 3.49(a) and (c) above in the context of Amazon's applicable expertise) that Deliveroo might seek Amazon's input on a more informal basis on commercial and operational matters other than at board/shareholder level. The CMA understands that, in one of the various product areas covered by the Deliveroo internal log entitled '[✂]' (described in paragraph 3.49(a)), [✂].

3.79 We consider that such [✂] might provide another avenue for Amazon to exert influence over decisions relevant to the behaviour of Deliveroo in the marketplace.

Overall assessment of material influence

3.80 As explained above, 'an assessment of material influence requires a case-by-case analysis of the overall relationship between the acquirer and the target'.[122] The CMA will consider the significance of rights conferred by formal agreements and structures, as well as the commercial realities of the relationship between an acquirer and the target.[123]

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[122] *CMA2*, paragraph 4.15. See also *RWE AG/E.ON SE* (2019), CMA Phase 1 Decision, paragraph 33.
[123] See, for example, *Stagecoach Holdings PLC/Mainline Partnership Limited* (1995), CC Final Report, paragraph 2.34.

3.81 It is important to consider all of the factors outlined above in the context of the Transaction, and to consider whether cumulatively they give Amazon the ability to exercise material influence over Deliveroo's commercial policy. We note the Parties' submission that, in circumstances where each individual factor may not independently confer material influence, the CMA must show how the factors combine to collectively establish material influence. We have shown above and conclude below how the various factors combine to collectively confer material influence.

3.82 Our provisional view is that the factors set out in the foregoing discussion, taken together, demonstrate that Amazon will acquire material influence over Deliveroo.[124]

3.83 This stems from:

(a) the size of Amazon's investment (in both absolute terms and relative to other shareholders)[125] 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

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

3.84 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 provisionally 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.

3.85 There is also clear evidence that, in practice, there will be ample opportunities and avenues through which Amazon might actually exert material influence

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[124] It has not been necessary to conclude as to whether any individual factor would confer material influence on Amazon given that the combination of factors in the round results in material influence.
[125] [✂].

over Deliveroo's commercial strategy – including through its participation in shareholder and board meetings, regular catch-ups with Deliveroo senior management (between shareholder/board meetings), as well as additional contacts between senior members of Amazon and Deliveroo's commercial/operational teams.

Provisional conclusion on relevant merger situation

3.86 In light of the above assessment, our provisional view is that, on the balance of probabilities, the Transaction will result in the creation of a relevant merger situation under the Act.

4. Counterfactual

Legal framework

4.1 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.[126] The latter is the counterfactual.[127]

4.2 We may examine several possible scenarios to determine the appropriate counterfactual, one of which may be the continuation of the pre-merger situation (ie the prevailing conditions of competition). An example of a situation where the CMA may select a counterfactual different from the prevailing conditions of competition is where the target is likely to exit the market absent the transaction under review. Another scenario in which the CMA may consider an alternative counterfactual to the prevailing conditions of competition is where one of the merging parties would have entered or materially expanded its presence in a market absent the transaction.

4.3 We seek to avoid importing into the assessment of the appropriate counterfactual any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.[128] In reaching a view on the appropriate counterfactual, we must determine what

[126] MAGs, paragraphs 4.3.1 and 4.3.6.
[127] MAGs, paragraph 4.3.1.
[128] MAGs, paragraphs 4.3.2 and 4.3.6.

future developments we foresee arising absent the merger based on the evidence available to us.

4.4 Events which occur during the CMA's review of a transaction, but which are not a result of the merger, can be incorporated into the counterfactual.[129] Where future events or circumstances are not certain or foreseeable enough to include in the counterfactual, the analysis of such events can take place in the assessment of competitive effects.[130]

4.5 The CMA will ultimately select the counterfactual it considers would be the most likely scenario to have arisen absent the merger.[131]

4.6 As noted above, one situation where the CMA may consider a counterfactual that is different from the prevailing conditions of competition (the pre-merger situation) is the 'exiting firm scenario'. This scenario, which is most commonly considered where one of the businesses involved in a merger is said to be failing financially, examines whether that company would have left the market and whether the transaction at issue is the best available outcome for consumers. The MAGs set out a three-limb framework for assessing the exiting firm scenario, requiring the CMA to consider:

(a) **Limb 1:** Whether the firm would have exited (through failure or otherwise) absent the transaction;

(b) **Limb 2:** Whether there would have been an alternative purchaser for the firm or its assets; and

(c) **Limb 3:** What the impact on competition of exit would be and how this would compare to the impact of the acquisition.

4.7 The CMA's assessment of the relevant counterfactual, and its application of the three limbs of the exiting firm test described above, are determined by the specific facts of each case.

4.8 During the course of our phase 2 investigation, Deliveroo made submissions that its financial situation had been so severely affected by the impact of the Coronavirus (COVID-19) crisis that it would exit the market if the Transaction did not proceed. In our assessment of the counterfactual in this case, therefore, we have considered whether or not Deliveroo should be considered an exiting firm in light of the impact of Coronavirus (COVID-19). As part of our

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[129] See, in this regard, *BSkyB v CC* (Cases 1095/4/8/08 and 1096/4/8/08) [2008] CAT 25, paragraph 138.
[130] MAGs, paragraph 4.3.2.
[131] MAGs, paragraph 4.3.6.

phase 2 investigation, we also considered whether Amazon would be likely to re-enter the market for online restaurant platforms absent the Transaction.

Parties' views on the counterfactual – Deliveroo

4.9 At phase 1, the Parties submitted that the relevant counterfactual against which to assess the Transaction was the pre-existing competitive situation, with Deliveroo continuing to compete as it currently does, including it seeking suitable investment to drive its expansion and innovation.

4.10 During and immediately following the CMA's phase 1 review of the Transaction, Deliveroo submitted that the CMA's ongoing investigation meant that [✂]. In December 2019, prior to the Coronavirus (COVID-19) crisis, Deliveroo also submitted that [✂]. During its hearing with us in March 2020, Deliveroo again repeated the difficulties of gaining access to finance because of the CMA investigation and the detrimental effect this was having [✂].

4.11 As the CMA explained to Deliveroo, it is ultimately the responsibility of the businesses involved to consider how to balance any execution risks relating to merger control that are borne by either merging party, against other commercial priorities, such as the need for timely financing. It was for Deliveroo, in this case, to consider the incremental risks that might be raised by an investment from one of the few other industry players active (or potentially active) in the same space in the UK, and the reduction in competition that the Transaction could therefore bring about, as compared to other prospective investors. It would not have been appropriate, given the nature of the CMA's statutory responsibilities and its duty to protect consumers, for the CMA to downplay or dismiss the competition concerns identified in its phase 1 investigation because of constraints subsequently faced by Deliveroo in securing alternative funding as a result of the CMA's investigation. Similarly, funding constraints that arise because of a merger (as would be the case if funding could not be obtained because of an ongoing CMA merger control investigation) should not be incorporated into the counterfactual and therefore cannot be considered to give rise to an exiting firm scenario.

4.12 The Parties' initial submission of 24 December 2019[132] and supplementary initial submission of 17 January 2020 focused on rebutting the CMA's position on the counterfactual in the 'Phase 1 Decision',[133] particularly the CMA's consideration of a more competitive counterfactual in the online restaurant

[132] See Parties Initial Submission.
[133] See Phase 1 Decision.

platforms market (ie a counterfactual in which Amazon would re-enter this market). Deliveroo's submissions in respect of its position in the counterfactual changed as the Coronavirus (COVID-19) crisis escalated in Europe. 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 in the [✂]. On 26 March 2020, Deliveroo submitted that the impact of this crisis means that the relevant counterfactual is one in which Deliveroo would exit the market. Deliveroo made the following points:

(a) that as a result of the Coronavirus (COVID-19) crisis, Deliveroo faces the [✂] prospect of insolvency;

(b) that there are no alternative funding options currently available to Deliveroo to address its liquidity issues;

(c) that in any plausible situation absent the Transaction, the impact of Coronavirus (COVID-19) on Deliveroo's business would be similar; and

(d) that Deliveroo's exit from the market cannot be considered to be a better outcome for competition than allowing the Transaction to proceed.

4.13 In support of its submissions, Deliveroo has provided various trading and financial updates, including professional advice from third-party [✂] advisers. These submissions are described briefly below.

Deliveroo's current financial position

4.14 In its submission of 26 March 2020, Deliveroo stated that its financial position as a result of Coronavirus (COVID-19) means that it would exit the market [✂]. Deliveroo has told us that, as a result of Coronavirus (COVID-19), its revenues are [✂]. Without receiving the [✂] of the Amazon investment, Deliveroo has told us that its directors, having received written advice from [✂] advisers and [✂] experts, will be forced to initiate insolvency proceedings to comply with their statutory and fiduciary duties. On this basis, Deliveroo stated that it would therefore be likely to exit the market.

Alternative funding options

4.15 Deliveroo has told us that no other funding options are currently available to it to tackle the immediate cash flow issues it is facing. It submits that given the current state of the economy and financial markets, there is no alternative third party who would be able to invest in Deliveroo. It has also argued that its

other existing investors are [✂] to provide additional finance. Its other investors have also submitted evidence on this issue.

Deliveroo's financial position had it sourced alternative funding

4.16 As described further below, Deliveroo had alternative sources of funding potentially available to it at the time that it accepted the Amazon investment.

4.17 Deliveroo submitted that each of these alternative options involved committed funds below the amount it has so far received from its Series G investors (totalling $[✂] million). This view was corroborated by the lead investors for the potential alternative funding options. Therefore, Deliveroo's view is that it would be in no better position today if it had accepted one of these potentially available alternative sources of funding, given the impact of Coronavirus (COVID-19).

No more competitive outcome

4.18 Deliveroo submitted that if it were to exit the market, this would not lead to a more competitive distribution of sales, [✂].

Counterfactual scenarios considered by the CMA

4.19 At phase 1, the CMA considered whether to adopt a more competitive counterfactual in which Deliveroo would be a stronger competitor than it was prior to the Transaction (given its ongoing development in the market). Ultimately, the CMA did not adopt a more competitive counterfactual but considered Deliveroo's potential expansion and development in the phase 1 competitive assessment.

4.20 Since phase 1, the Coronavirus (COVID-19) crisis has had a significant effect on Deliveroo, and on the market generally, which is discussed in more detail below. In reaching our provisional view at phase 2, we have considered whether the most likely counterfactual absent the Transaction would be Deliveroo's exit from the market following Deliveroo's submissions on this point.

4.21 We have assessed whether Deliveroo should be considered to be an exiting firm by applying the principles set out in the MAGs. In doing this, we recognise that there are a number of specific features of this case that mean that the wording set out in the MAGs is not always directly applicable to the facts of the present case. In applying the MAGs to the specific features of this case, we have sought to apply the principles that underpin the Act and those tests.

4.22 In particular, whilst we acknowledge that Coronavirus (COVID-19) has had significant and wide-ranging impacts on businesses, including Deliveroo, it is important, when considering the impact of this event in the counterfactual, to abstract from any elements of Deliveroo's current financial situation that result from the Transaction. This is to ensure that we are considering what the situation would have been absent the Transaction rather that any risks arising from the Transaction. We have been mindful of this principle in considering the exiting firm scenario in this case.

4.23 In order to assess whether the exiting firm scenario applies in this case, we have applied the three-limb test set out in the MAGs. In assessing Limb 1 (ie whether Deliveroo would have exited absent the Merger), we have not only considered whether the impact of Coronavirus (COVID-19) on Deliveroo's business made exit inevitable, but have also carefully assessed (in light of Deliveroo's previous submissions, as noted in paragraph 4.10 above), whether the Transaction itself could be a contributing factor to Deliveroo's exit. To this end, we considered what alternative funding was available to Deliveroo at the time it agreed the Transaction and what position it would likely be in now had it accepted that alternative funding.

Limb 1: Would Deliveroo have exited absent the Transaction?

4.24 Our assessment of the first of the three steps set out in paragraph 4.6 above, is structured as follows:

(a) Our assessment of whether Deliveroo would have exited absent the Transaction. We consider this in two stages:

(i) Deliveroo's financial position at the time it agreed the Transaction with Amazon; and

(ii) the alternative funding available to Deliveroo at that point;

(b) Whether the effect of Coronavirus (COVID-19) means that Deliveroo is now likely to exit (excluding the merger-specific effects of the Transaction); and

(c) Whether Deliveroo would still have exited if one of the other available sources of funding had proceeded.

Deliveroo's financial situation at the time it agreed the Transaction with Amazon

4.25 At the time that Deliveroo pursued the Series G funding round (which Amazon ultimately led), Deliveroo was in many respects a highly successful company that had grown strongly and had a significant share of the online restaurant

platform market in the UK. Although Deliveroo had achieved a strong market position in the UK, and especially in London, as an early stage business with an aggressive growth strategy Deliveroo was, at that time, also a loss-making business, heavily reliant on continued rounds of external fundraising to be able to meet its financial commitments.

4.26 The Series G funding was pursued with a view to obtaining sufficient funding to enable the business to establish itself on a profitable footing in [✂]. At that time, Deliveroo required significant investment in order to continue operating its business: it forecast [✂] (when it was forecast to make a [✂] of £[✂] million) and also considered that [✂]. This assessment reflects the fact that the business was in an aggressive expansion phase, aiming to win customers and establish its position for the longer term against rivals who, in Deliveroo's submission, were also able and willing to invest heavily in building up a competitive position.

4.27 Deliveroo's business model, in particular as an early stage business with an aggressive growth strategy, led it to [✂]. Since then it has continued to build a successful position in the market and profitability in some key areas but, as it forecast, Deliveroo has continued to [✂]. Up until the COVID-19 crisis, the [✂]. We describe Deliveroo's current financial position and the steps it has taken to reduce its losses in light of the Coronavirus (COVID-19) crisis below.

Alternative funding available to Deliveroo at the time it agreed the Transaction

4.28 Despite its ongoing funding requirements, prior to the Coronavirus (COVID-19) crisis, Deliveroo advised the CMA that, absent the Transaction, it 'would have continued to compete as it currently does, including by seeking suitable investment to drive its expansion and innovation'. This submission suggests that Deliveroo would not have exited absent the Transaction.

4.29 At the time of the Series G fundraising,[134] Deliveroo had alternative potential funding options available to it. Deliveroo had explored a number of options and was in discussions regarding a funding round led by [✂] and a [✂] led by [✂]. Further details of these options is provided at Chapter 2. The following is a brief summary of the key features of each:

(a) The [✂]-led funding round would have been for a similar amount to the Amazon-led investment round and on similar terms. However only [✂] $[✂] million [✂] had been committed with any certainty, [✂].

[134] That is, at the point in time that Deliveroo was negotiating with Amazon.

(b) The other option – [✂] – was for an amount of up to $[✂] million, but [✂] had only committed a total of $[✂] million at the point discussions with Deliveroo broke off. Whilst additional funding may have been available, we consider that this is too speculative to form part of the relevant counterfactual.

4.30 In the absence of the Amazon investment, we consider that Deliveroo would have succeeded in raising some alternative funds, given the interest that investors had shown in the opportunity and the attractiveness of Deliveroo as an investment opportunity at that time. The most likely source of these funds would be one of the alternative investors described above.

4.31 As Deliveroo did not progress either of the options described above far enough to understand the precise quantity or terms of the investment we are unable to state with precision how much Deliveroo would have succeeded in raising. Based on the evidence we have seen, the level of committed funding available through any of the alternative investment options in May 2019 was [✂] below the amount Deliveroo has so far received from its Series G investors (totalling $[✂] million). Although it is possible that either of these options could have been extended to include additional funding, any assessment of such an extension would be speculative. At the time of the fundraising Deliveroo was seeking sufficient funds to [✂]. Both alternative fundraising options were likely to have enabled Deliveroo to continue operating until some point in 2020 depending on the amount of the investment, but unlike the full Amazon investment, Deliveroo might have [✂].

4.32 Given the available options, we consider that Deliveroo would likely have continued to operate a similar business plan to the one it has adopted in the current circumstances, on the expectation that it would have been able to secure additional funding, [✂], during the course of 2020.

4.33 The facts that additional funding would have been available at the time the Transaction was agreed and that Deliveroo expected to continue to be able to raise funds mean that, absent the Coronavirus (COVID-19) crisis, Deliveroo would not have been an exiting firm.

4.34 We now consider whether the impact of Coronavirus (COVID-19) has changed this position. The CMA has received evidence from Deliveroo on the financial impact of Coronavirus (COVID-19) on its business as it stands currently, which is considered below. For the purposes of assessing the exiting firm scenario, the CMA must focus on harm resulting from Coronavirus (COVID-19) (which is not Transaction-specific).

4.35 Prior to the current crisis and following the Series G funding, Deliveroo had sufficient funds to [✂], regardless of the outcome of that investigation. In April 2019, prior to receiving the Series G funding, Deliveroo had a free cash balance of £[✂] million with £[✂] million subsequently received as a result of the funding (comprising [✂]). In December 2019 Deliveroo forecast that it would exhaust this [✂] of the Series G investment by [✂]. An updated forecast in February 2020 similarly projected that Deliveroo would exhaust these funds by [✂]. If the CMA cleared the Transaction, Deliveroo expected to receive an [✂] $[✂] million from Amazon pursuant to the [✂].

4.36 The Coronavirus (COVID-19) crisis has substantially affected the market and Deliveroo's financial position in the UK and in the other countries in which it operates. This is largely due to the following:

(a) On the supply side, Deliveroo has experienced a significant reduction in the number of restaurants operating during the crisis, and the restaurants that have closed or reduced operations have included major brands (eg [✂]). In the week ending 24 March 2020 (the UK officially entered 'lockdown' on the 23 March 2020) restaurant availability was [✂]% of that available in the week ending 7 March 2020. Deliveroo advised the CMA at the main party hearing on 31 March 2020 that it has continued to see additional restaurant closures with [✂]% of total restaurants on its platform closed. At the time of the main party hearing, [✂]% of UK restaurants were closed. Deliveroo is experiencing a [✂] decline in availability in its other major markets which entered lockdown ahead of the UK; this is further reducing the business' revenues and also suggests that the current issues in the UK are unlikely to improve, and may in fact be exacerbated, in the near future. Current information suggests the UK lockdown will continue at least until early-May 2020. For example, in Deliveroo's [✂], France, which had entered 'lockdown' on 17 March 2020, availability in the week ending 24 March 2020 was [✂]% of that available in the week ending 7 March 2020.

(b) On the demand side, Deliveroo stated it had experienced a significant decline in customer orders, [✂].

4.37 Deliveroo has taken steps to supply additional OCG services during the Coronavirus (COVID-19) crisis, including through partnering with additional stores, existing store partners offering extended product ranges, and operating 'Essentials by Deliveroo' selling grocery items from certain of its Editions Kitchens sites. However, OCG is a bolt-on to Deliveroo's restaurant business and an increase in these sales has not offset (and is not, based on current forecasts, expected to materially offset) any significant proportion of the decline in restaurant sales.

4.38 We have considered whether Deliveroo could restructure its operations (for example, by further cutting costs) to support its liquidity to avoid insolvency. Deliveroo has explained that, in order to offset the impact of its current cash position, it is implementing cost savings of £[✂] million ([✂]%) of its original fixed costs budget of £[✂] million for Q2 2020. Deliveroo and [✂] (its [✂]) have expressed concerns that these could be [✂]. In our view, while further cuts may also be possible in marketing spend and by furloughing staff they would also risk being counter-productive by harming Deliveroo's ability to compete. Deliveroo has informed us that the measures it has taken have not proved adequate to address its liquidity concerns [✂]. The main steps taken by Deliveroo are:

(a) [✂];

(b) [✂]; and

(c) [✂].

4.39 In addition, Deliveroo has also [✂] of UK [✂] and [✂] payable from Q2 2020 to Q3 2020. In our view whilst there are potentially more [✂] (Deliveroo has identified a potential further £[✂] million) this will only serve at best to [✂], rather than provide a solution to Deliveroo's liquidity issues.

4.40 As a result of the current situation, Deliveroo and its [✂] advisor ([✂]) have re-forecast its financial position. Given the uncertainty of the situation, [✂]:

(a) [✂].

(b) [✂].

4.41 Deliveroo's directors have been advised by [✂] advisers [✂] that if they do not have a reasonable expectation of receiving additional funds before Deliveroo runs out of cash [✂] then they will shortly be required to declare Deliveroo insolvent as a result of its cash flow problems. Once a company is at risk of insolvency, the directors have a duty to minimise the loss to creditors. Although [✂], the CMA understands this is not sufficient to remove the obligation on the directors to pursue insolvency proceedings given that Deliveroo's liabilities [✂] could not be met.

4.42 In terms of government support, whilst Deliveroo has managed to defer some [✂] as above, Deliveroo is not, at the time of these provisional findings, eligible for any form of financial support from UK public sources. In particular:

(a) Deliveroo is not eligible for the government's Coronavirus (COVID-19) Corporate Finance Facility because it would not have been considered as 'investment grade' prior to the Coronavirus (COVID-19) crisis.

(b) Deliveroo's turnover is too large for the company to benefit from the government's small and medium-sized enterprise (SME) scheme.

(c) [✂]. As it does not qualify as an SME, Deliveroo is not eligible to reclaim any sick pay.

4.43 Whilst the situation is inherently uncertain, it is clear that the current Coronavirus (COVID-19) crisis is having a significant impact on Deliveroo's business and cashflows. In order to try and offset this, Deliveroo is taking action that [✂]. Deliveroo has stated that [✂].

4.44 In light of the cashflow forecasts and financial information provided by Deliveroo, and the advice received by its directors, we are therefore persuaded that, without an assurance that it will receive additional funds in the immediate future, Deliveroo's directors would be obliged to declare it insolvent.

Would Deliveroo have exited if one of the other available sources of funding had proceeded?

4.45 In order to assess the impact of the Coronavirus (COVID-19) crisis in the counterfactual, abstracting from any Transaction-specific factors, the CMA has considered whether Deliveroo would have exited as a result of the current crisis if it had proceeded with one of the alternative investments available in May 2019.

4.46 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 $[✂] million). Although it is possible that either of these options could have been extended to include additional funding, any assessment of such an extension would be speculative. It appears, therefore, that Deliveroo's current financial constraints cannot be attributed to its decision to accept investment from Amazon, rather than from an alternative investor that might have been less likely to raise competition concerns.

4.47 We therefore provisionally conclude that, absent the Transaction, Deliveroo would have received funding in around April 2019 and would be likely to have continued its pre-merger plans. The result would have been that at the start of 2020 when the effects of Coronavirus (COVID-19) first appeared, Deliveroo

would already have been close to a position where it would need to raise additional funds, reflecting its early and loss-making stage of development.

4.48 At this point, it would have been unlikely to be able to cut costs sufficiently without risking its demise by precipitating the loss of restaurants and customers.

4.49 We therefore provisionally conclude that Deliveroo would have been likely to exit the market as a result of the Coronavirus (COVID-19) crisis without additional funds.

Limb 2: Is there a substantially less anti-competitive investor or purchaser for Deliveroo's assets?

4.50 The MAGs provide that, when considering the exiting firm scenario, the CMA will look at available evidence supporting any claims that the transaction under consideration was the only possible transaction (ie that there was genuinely only one possible purchaser for the firm or its assets).[135] The purpose of this limb of the test is to determine whether the transaction under review is the only option that would enable the target firm to continue to exist.[136]

4.51 Deliveroo has submitted that the [✂] funding is the only route available to it to avoid insolvency.[137]

4.52 In order to take account of the impact of Coronavirus (COVID-19), however, we must examine whether the fact of the Transaction, as opposed to the current crisis, has impacted Deliveroo's ability to obtain alternative finance.

4.53 Deliveroo has provided evidence regarding the efforts it has made to rescue its business following the onset of the Coronavirus (COVID-19) crisis. We consider these efforts to be relevant to determining whether Deliveroo would have been able to survive the Coronavirus (COVID-19) crisis absent the Transaction, provided any difficulties experienced in raising additional funds are not a result of the Transaction.

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[135] MAGs, paragraph 4.3.17.
[136] If there are alternative purchasers, at phase 2, the CMA may consider what impact an acquisition by one of these would have on competition compared to the Transaction as part of the SLC analysis (MAGs, paragraph 4.3.11).
[137] We note that this [✂] funding from Amazon was committed prior to the Coronavirus (COVID-19) crisis and therefore we do not consider whether the availability of this funding is informative as to whether other funding would be available now.

4.54 The three main options explored by Deliveroo for raising additional funds ([✂]) are:

(a) Additional funding from existing shareholders.

(b) External funding from potential new shareholders.

(c) Some form of debt funding.

Funding from existing shareholders

4.55 Deliveroo has submitted that it is not able to source additional financing from its existing shareholders.

4.56 The CMA asked Deliveroo's shareholders about the prospect of further investment in Deliveroo. None of these shareholders said that further investment was likely. The responses the CMA received from Deliveroo's existing major venture capital shareholders pointed to a number of factors which, even prior to the onset of Coronavirus (COVID-19), restricted [✂] to make further funds available to Deliveroo. These factors included internal limits on the level of shareholding a fund could hold or capital it could invest in an individual company, internal rules relating to common investments across separate funds and the fact that many of the funds that invested in Deliveroo were closed and did not have access to additional funds to invest in the company. The onset of Coronavirus (COVID-19) has placed further limitations on their ability to provide additional funding to Deliveroo, as well as [✂] reduced any willingness to make [✂] funding available where this might in principle be possible. For example:

(a) [✂] told the CMA that it sees no realistic basis on which it would provide further funding to Deliveroo and that 'in the current financial climate raising additional third-party financing is simply not possible'.

(b) [✂] told the CMA that, it is very unlikely that it would be able to provide additional capital to Deliveroo. The [✂] fund invested in Deliveroo is now fully committed and [✂] would prevent meaningful investment by another [✂] fund. Whilst [✂] would typically be able to provide some limited funding to facilitate a fundraise of third-party capital, the impact of Coronavirus (COVID-19) makes even a small capital commitment highly unlikely.

(c) [✂] told the CMA that it [✂]. It also submitted that, in the current financial climate, even if Deliveroo had more time to raise capital, it would be very difficult to raise the funds necessary to secure its financial position.

(d) [✂] told the CMA that the fund invested in Deliveroo has now closed and essentially has no further capital to invest. Whilst some capital remains unallocated, this would, in any event, only be enough to cover Deliveroo's operating expenses for [✂]. Its view is that, in the timeframe required, additional funding is highly unlikely to be available, either from third parties or another [✂] fund.

(e) [✂] told the CMA that its ability to provide any further funding to Deliveroo 'is constrained by capacity within its funds [✂], and the great degree of uncertainty in the market both in aggregate and specifically related to Deliveroo in this Coronavirus (COVID-19) environment'.

(f) [✂] told the CMA that its investment in Deliveroo is complete and it is not able to inject any further financing. It also told the CMA that, in the current operating environment, there are no alternative funding options available to the funding previously agreed with Amazon.

(g) [✂] told the CMA that there was now limited or no appetite for it to provide additional funding to Deliveroo.[138]

4.57 We consider that, even absent the Coronavirus (COVID-19) crisis, there were a number of factors limiting the ability and willingness of Deliveroo's existing shareholders to invest further funds in Deliveroo. Even where small amounts of funding may previously have remained available for investment, the impact of Coronavirus (COVID-19) on Deliveroo's financial position and on these shareholders is likely to have exacerbated the constraints on further investment by Deliveroo's shareholders. This is consistent with submissions the CMA has received from a number of these shareholders.

4.58 We do not, therefore, consider Deliveroo's existing shareholders to be a viable source of additional funding following the onset of Coronavirus (COVID-19).

Funding from potential new shareholders

4.59 According to [✂], who assisted Deliveroo in seeking investors for the Series G funding round, most investors approached 'were concerned about either or both of Deliveroo's operating losses and/or the challenging competitive pressures that would follow the incredible sums of capital that had already flowed into the delivery industry worldwide'. Even prior to the onset of

[138] According to [✂].

Coronavirus (COVID-19), [✂] expressed the opinion that finding equity investment to replace that offered by Amazon would be challenging.

4.60 A number of Deliveroo's existing shareholders have also expressed the view (see paragraph 4.56 above) that the specific impact of the Coronavirus (COVID-19) crisis on Deliveroo's financial position is likely to make third party funding very unlikely.

4.61 Furthermore, Deliveroo's previous funding rounds have taken between [✂] months to complete. Based on Deliveroo's current financial position, Deliveroo will need additional funding significantly sooner than in [✂] months. Even prior to the onset of Coronavirus (COVID-19), Deliveroo submitted that it would be unlikely to be able to arrange alternative equity financing to the Amazon investment before [✂], given the complexity of such transactions.[139]

4.62 In light of these factors, we consider that funding from new shareholders is unlikely to be available within the timeframe required.

Debt funding

4.63 We have also reviewed the opinion provided by [✂] to Deliveroo on [✂] on whether Deliveroo would be able to secure new funding [✂]. The opinion from [✂] sets out its view that, 'in light of (i) the material decline in economic outlook, (ii) challenging financial markets, (iii) unprecedented volatility and uncertainty, and (iv) company specific distress', it does not believe that Deliveroo could quickly secure debt financing arrangements [✂]. This opinion is consistent with the CMA's understanding of the current state of the market.

4.64 We therefore consider that, without receiving [✂] the Amazon investment, Deliveroo has no alternative options available to it to preserve its business. We do not consider that the issues outlined above would differ materially if, in the counterfactual, Deliveroo had pursued one of the alternative funding options available in 2019.

4.65 We therefore provisionally conclude that the most likely counterfactual for Deliveroo absent the Transaction would have been its exit from the market driven primarily by the following combination of exceptional factors:

(a) the particular structure of Deliveroo's business and its need for regular external funding to continue to grow its business and compete;

[139] This view is supported by an opinion that Deliveroo received from [✂] (discussed at paragraph 4.63), which indicated that [✂] did not believe that Deliveroo could quickly secure equity financing arrangements [✂].

(b) the effects of the Coronavirus (COVID-19) crisis on both Deliveroo's financial performance and its ability to raise additional funds; and

(c) the particular point in Deliveroo's funding cycle that Coronavirus (COVID-19) occurred when, regardless of the transaction pursued in May 2019, it would have had limited remaining funds available.

Limb 3: What would happen in the event that Deliveroo exited the market?

4.66 In the event of exit, the CMA typically considers what would happen to the sales of the exiting firm and how this would affect competition as compared to a scenario where those sales are transferred to the acquiring firm by allowing the transaction to proceed.

4.67 The present case does not involve a full acquisition of Deliveroo by Amazon, but, applying the general principle underlying this test, we have assessed whether the effect of the Transaction is substantially less competitive than Deliveroo's exit.

4.68 We have considered this question in relation to two markets:

(a) Online restaurant platforms in the UK; and

(b) Online convenience grocery delivery in the UK.

4.69 In both cases, we have outlined the likely (negative) impact on competition we expect to arise from Deliveroo's exit and sought to compare this to the impact of the Transaction on competition. At phase 2, this analysis would ordinarily be conducted in our analysis of the competitive effects of the merger, to address whether the transaction would give rise to an SLC compared to the counterfactual.[140] In light of the specific circumstances of this case, we have analysed whether Deliveroo's exit would lead to a less competitive outcome than the Transaction in this chapter. Where this is the case, it would necessarily mean that the Transaction would not give rise to an SLC.

Online restaurant platforms

4.70 At phase 1, the CMA considered that there was a realistic prospect that Amazon would have re-entered the market for the supply of online restaurant platforms in the UK in the near future and that this would have led to increased competition (a more competitive counterfactual). The Parties have consistently submitted that the counterfactual should not include Amazon's re-

[140] MAGs, paragraph 4.3.11.

entry into the market for online restaurant platforms. We have been examining the evidence on this issue as part of our phase 2 investigation.

4.71 For the purpose of assessing the impact of Deliveroo's exit, we have assumed that Amazon would have re-entered the market absent the Transaction and considered whether this would offset the loss of competition that would arise as a result of Deliveroo's exit.

4.72 Therefore, the comparison is between:

(a) In the event of Deliveroo exiting: an immediate loss of competition from three to two main competitors, with the possibility of Amazon re-entering at some stage and increasing competition.

(b) In the event of the Transaction proceeding: retaining the three current main competitors in the market, which is similar to the pre-acquisition market structure (with a reduced incentive for Amazon to re-enter in future).

Impact of exit by Deliveroo

4.73 The market is highly concentrated, with only three significant players. Deliveroo is the second-largest provider, after Just Eat. We estimated that Deliveroo had [20–30%] market share in 2019,[141] behind Just Eat with [50–60%] but significantly ahead of Uber Eats with [10–20%]. Market shares vary considerably across the country, with Deliveroo having a larger share in London.

4.74 Deliveroo has had a substantial and growing market share in recent years and the available evidence shows that it has been a major driver of competition for new customers, as well as an important competitive constraint on the largest existing supplier, Just Eat.

4.75 Therefore, we would expect Deliveroo's exit to have an immediate and substantial adverse impact on competition. In particular, we would expect the remaining online restaurant platforms (Just Eat and Uber Eats) to weaken their offers to consumers and restaurants in terms of price (commission and delivery charges) and service, as they experience a reduction in competitive pressure due to Deliveroo's exit.

4.76 The remaining restaurant platforms would also be under less competitive pressure to expand their networks or, in the case of Just Eat, to develop its

[141] Based on order volumes that have been weighted to account for differences in average order value (ie for each competitor, total number of orders multiplied by average order value).

own logistics network. In addition, the remaining platforms would face less pressure to innovate their offerings (such as by providing additional services to their restaurant customers, or expanding initiatives such as cloud kitchens, which are both areas in which Deliveroo is currently innovating).

Impact of re-entry by Amazon

4.77 We received substantial evidence regarding Amazon's ongoing interest in the online restaurant platform market globally. Amazon is a well-financed company, it has an established online consumer brand in the UK, and its [✂] Amazon Prime subscriber base could help it to win a large customer base for an online restaurant platform business. Opportunities for cross-selling between an online restaurant platform business and its other services could be a source of competitive advantage for Amazon. We do not, however, need to reach a provisional view on the likelihood of Amazon re-entering for the purpose of the current decision.

4.78 Assuming Amazon were to re-enter the market, either by building its own business, or acquiring or partnering with an existing business, this would take time as it would be necessary to develop a point-to-point delivery network and establish a base of restaurants, riders and consumers. During the time before Amazon re-entered the market, competition would likely be weaker compared to a scenario where Deliveroo remained in the market, as an ongoing competitor.

4.79 On the basis of this assessment, we consider that exit by Deliveroo would result in significantly weaker competition over an extended period of time, even if Amazon ultimately re-entered the market successfully.

Our provisional view

4.80 On the basis of this assessment, we consider that exit by Deliveroo would result in significantly weaker competition over an extended period of time, even if Amazon subsequently re-entered the market successfully, than if the Transaction were to proceed. This reflects the loss of competition we would expect to see as a result of Deliveroo's exit in the counterfactual, even where that counterfactual also includes some increase in competition from Amazon's re-entry.[142]

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[142] The analysis above is based on the market definition adopted during the phase 1 Investigation, but we do not consider that any reasonable alternative market definition would change the assessment:

- On a narrower market definition, such as logistics-enabled online restaurant platforms, Deliveroo's exit would have a more pronounced effect on competition, given Just Eat has a limited logistics capability.

Online convenience groceries

4.81 At Phase 1, we found that Deliveroo and Amazon are two of the largest suppliers of online convenience groceries (OCG) in the UK, although the market is nascent. We also found that both Parties have ambitious plans and are developing their offers which is likely to make them closer competitors.

4.82 As part of our assessment, we have considered whether Deliveroo's exit from the market would be less harmful to competition than the Transaction. The risk of exit by Deliveroo is that it removes a firm which would otherwise have competed in the nascent OCG market. The risk of the Transaction is that it weakens Amazon's incentive to improve its groceries offer, particularly by developing a point-to-point delivery network, or allow Amazon to influence Deliveroo in a way that weakens Deliveroo's offer.

4.83 Because the market is at an early stage of development, an assessment of the impact of Deliveroo's exit from the market, as well as the impact of the Transaction, is subject to considerable uncertainty.

Impact of exit by Deliveroo

4.84 Deliveroo's emerging OCG offer is supported by a well-established logistics network and has been rolled out across much of the UK. Exit by Deliveroo would remove a competitor in the supply of OCG. This would have an immediate adverse impact on competition irrespective of how the market develops. Exit by Deliveroo could also potentially remove one of the three existing point-to-point delivery networks from the market (the others being Uber Eats and Stuart). This would have an immediate adverse impact on competition irrespective of how the market develops.

4.85 Furthermore, internal documents from Deliveroo suggest that [✂].

4.86 The longer term effect of Deliveroo exiting the market could therefore be substantial, depending both on how Deliveroo would develop its service and how the market would evolve generally, including whether Deliveroo would expand its range or reduce its costs to consumers, and whether delivery in under one hour would become the norm more broadly.

Consistent with the analysis set out above we consider that this would lead to a less competitive outcome than the Transaction over an extended period of time even if Amazon subsequently re-entered.

- Deliveroo's exit would lead to a smaller increase in concentration on a wider market definition, such as one including vertically integrated food chains. However, we consider that Deliveroo's exit would still lead to a material increase in concentration for an extended period of time on any reasonable wider market definition.

Impact of the Transaction

4.87 If Amazon were to develop point-to-point delivery, it could potentially be well placed to compete in the market, particularly given the advantages of its Amazon Prime customer base, and its existing presence and experience in the groceries sector, in the UK and elsewhere. Given that a variety of businesses are continuing to compete through a variety of business models within this market, a weakening of Amazon's incentives to develop a point-to-point delivery network could potentially be a worse outcome than exit by Deliveroo if Amazon could become a stronger competitor than Deliveroo in this segment.

4.88 We note that the loss of Deliveroo from the market would likely reduce the pressure on all suppliers (and not just Amazon, as would be the case in the event of the Transaction proceeding) to introduce or enhance point-to-point delivery networks. Any weakening of Amazon's incentives to compete with Deliveroo is, in any case, likely to be more limited as a result of the acquisition of a [✂]% shareholding than in the case of a full acquisition. If the market were to grow substantially, and if Amazon had the opportunity to be a strong competitor by developing its own point-to-point network, it may have an incentive to do so, regardless of its holding in Deliveroo.

Our provisional view

4.89 On the basis of this assessment, we consider that Deliveroo exiting the market would have a greater negative effect on competition in the supply of OCG than the Transaction proceeding.[143]

5. Provisional conclusions

5.1 As a result of our inquiry and our assessment, we have provisionally concluded that the anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo would result in the creation of a relevant merger situation.

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[143] We consider that our provisional view on this point would be substantively the same were we to define the market differently. For example:

- If we were to define the market as the provision of point-to-point logistics for the delivery of online groceries within 30-minutes, only three operators would currently be present (Deliveroo, Uber Eats and Stuart) and Deliveroo's exit would increase concentration from three players to two. In this case, the impact on competition could be characterised as a weakening of Amazon's incentives to enter the market. For similar reasons to those set out in our analysis of online restaurant platforms, we would expect the immediate exit of Deliveroo to have a greater impact than prospective entry by Amazon.
- Alternatively, if we defined the market as the provision of online groceries within 30-minutes, only Deliveroo, Uber Eats and Just Eat would be present. In this case we would again be comparing an increase in concentration from three players to two players against the prospect of entry by Amazon.

5.2 We have provisionally concluded that the Transaction would not be expected to result in an SLC in either the market for online restaurant platforms or the market for online convenience groceries (OCG) on the basis that, as a result of the Coronavirus (COVID-19) crisis, Deliveroo is likely to exit the market unless it receives the additional funding available through the Transaction. We have provisionally found that no less anti-competitive investor was available. Finally, we have provisionally concluded that the loss of Deliveroo as a competitor would be more detrimental to competition and to consumers than permitting the Amazon investment to proceed and therefore, the Transaction would not be expected to result in an SLC.