

ANTICIPATED ACQUISITION BY AMAZON OF A MINORITY SHAREHOLDING AND CERTAIN RIGHTS IN DELIVEROO

Issues Statement

28 January 2020

The reference

1. On 27 December 2019, the Competition and Markets Authority (CMA), in exercise of its duty under [section 33](#) 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 Merger) for further investigation and report by a group of CMA panel members (the Group).
2. In exercise of its duty under [section 36\(1\)](#) of the Act, the CMA 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 UK for goods or services.
3. In answering these two questions we are required to apply a ‘balance of probabilities’ threshold to our analysis.¹
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC in question (paragraph 2 above), having regard to the evidence available to us to date, including the evidence referred to in the CMA’s Phase 1 decision on SLC (the Phase 1 Decision).²
5. We are publishing this issues statement to assist parties submitting evidence to our investigation. The issues statement sets out the issues we currently

¹ [Merger Assessment Guidelines](#) (CC2/OF1254), paragraph 2.12. The Merger Assessment Guidelines have been adopted by the CMA board (see [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), Annex D).

² The Phase 1 Decision will be published on the [CMA inquiry webpage](#).

envisage being relevant to our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

6. Throughout this document we refer to Amazon and Deliveroo collectively as 'the Parties'.
7. We intend to continue from the CMA's Phase 1 investigation. The Phase 1 Decision contains much of the detail underpinning this issues statement and parties are encouraged to read this document in conjunction with the Phase 1 Decision, which will be published on the [CMA inquiry webpage](#). We intend to focus our inquiry on the areas in which the CMA found that the Merger gives rise to a realistic prospect of an SLC. That is in the supply of:
 - (a) online restaurant platforms in the UK;³ and
 - (b) online convenience grocery delivery services in the UK.
8. We explain these services later in this document. Although we are not precluded from considering any other issues which may be identified during our investigation, we are only likely to consider such issues in light of new evidence being brought to our attention by third parties. We consider this to be a proportionate way in which to conduct our inquiry.

The Parties

The Parties

9. Amazon, which is headquartered in the USA, operates across a large number of sectors, including as an online retailer and marketplace, delivery and logistics network, host of cloud server space, book publisher and producer of television and films. It is one of the world's largest companies. Amazon previously provided an online restaurant platform in the UK, and currently provides online convenience grocery delivery services in the UK. In 2018, Amazon's global turnover was £174.7 billion with approximately £[§] billion generated in the UK.
10. Deliveroo, which is based in the UK, is primarily active in online restaurant delivery. As well as restaurant delivery, Deliveroo offers online convenience grocery delivery from suppliers such as Co-op Food. The Deliveroo system connects consumers, who use Deliveroo to order delivery food, restaurants

³ The Phase 1 decision referred to a frame of reference form 'online food platforms'; the term 'online restaurant platforms' is used in this issues statement to clarify that the first theory of harm related specifically to online platforms supporting the delivery of restaurant food. The change in terminology does not indicate a change in the segment that is under consideration.

(or grocery stores), who take orders and prepare them, and riders who pick up the food from the restaurant (or store) and deliver it to the consumers. In 2018, Deliveroo's global turnover was £476.1 million, with approximately £[§] million generated in the UK.

Our intended inquiry

11. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also look at the rationale for the Merger.

Jurisdiction

12. In the context of an anticipated transaction, a relevant merger situation exists where the following conditions are satisfied:⁴
- (a) two or more enterprises will cease to be distinct; and
 - (b) either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the turnover test); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the share of supply test).
13. Two or more enterprises will 'cease to be distinct' for these purposes if they are brought under common ownership or control. The ability to exercise material influence constitutes the lowest level of control that may be considered to give rise to two or more enterprises ceasing to be distinct.⁵
14. The CMA's Phase 1 Decision found that Amazon's acquisition of certain rights and a minority shareholding in Deliveroo, together with, amongst other things, Amazon's industry knowledge and expertise, may give Amazon the ability to exercise material influence over Deliveroo.
15. The CMA's Phase 1 Decision found that the CMA had jurisdiction to review the Merger on the basis that it is or may be the case that two or more enterprises (ie Amazon and Deliveroo) will cease to be distinct as a result of

⁴ Section 23 of the Act.

⁵ The use of the term 'cease to be distinct' in this context should therefore not be understood to suggest that the CMA is considering whether a full merger of Amazon and Deliveroo is contemplated by the Parties.

Amazon acquiring the ability to exercise material influence over Deliveroo, and that the £70 million turnover test is met.

16. We shall consider the question of jurisdiction in our inquiry, including considering the extent to which Amazon's minority shareholding, board representation and other sources of influence, such as its industry expertise, may allow it to exercise material influence over Deliveroo.

The counterfactual

17. The application of an SLC test involves a comparison of the prospects for competition with a merger against the competitive situation without a merger. The latter is called the 'counterfactual'. We shall, therefore, assess the possible effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would have been most likely to have arisen absent the Merger) including how Amazon, Deliveroo and other providers would have competed in the absence of the Merger.
18. At Phase 1, with regard to the counterfactual for online restaurant platforms, the CMA found that absent the Merger there was a realistic prospect that Amazon would have re-entered the supply of online restaurant platforms in the UK in the near future. The CMA assessed the Merger with respect to this counterfactual, which would be more competitive than the pre-merger situation. With regard to the counterfactual for online convenience groceries, the CMA reviewed the Merger against the pre-merger competitive conditions, taking account of the dynamic nature of the market and the potential expansion of the Parties' and their rivals' businesses in its competitive assessment.
19. We shall consider the appropriate counterfactual in our inquiry. In making our assessment, we shall consider possible alternative scenarios and decide upon the appropriate counterfactual situation based on the facts available to us. The description of the counterfactual is affected by the extent to which events or circumstances and their consequences are foreseeable. The CMA may still consider the effects of the merger in the context of an event or circumstance occurring even if that event or circumstance is not sufficiently certain to include in the counterfactual.⁶ A number of issues are referred to within the Phase 1 Decision which could be considered as part of the counterfactual, or within the competitive assessment, as they refer to possible aspects of how competition may develop in the future.

⁶ [Merger Assessment Guidelines](#), paragraph 4.3.2.

Market definition

20. Market definition provides a framework for assessing the competitive effects of a merger for a relevant product and geographic market. It involves an element of judgement. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.⁷
21. The CMA's Phase 1 Decision considered the impact of the Merger on the supply of:
- (a) online restaurant platforms in the UK; and
 - (b) online convenience grocery delivery in the UK, that is, ultrafast groceries or groceries that are delivered within a short period of time after ordering.
22. We shall consider market definition with respect to each of restaurants/grocers and consumers for both online restaurant platforms and online convenience grocery delivery as part of our inquiry.

Assessment of the competitive effects of the Merger

Theories of harm

23. The term 'theory of harm' describes the possible ways in which an SLC could arise as a result of a merger. The theories of harm provide the framework for our analysis of the competitive effects of a merger. Identifying theories of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence. We welcome views on the theories of harm described below.
24. In this case we shall assess whether the Merger gives rise to an SLC in the supply of:
- (a) online restaurant platforms in the UK; and
 - (b) online convenience grocery delivery in the UK.
25. These are our two theories of harm and are categorised as horizontal unilateral effects.

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Online restaurant platforms in the UK

26. Unilateral effects may arise from the elimination of a potential competitor where that potential competitor could have increased competition if it entered the market. In assessing whether a merger leads to unilateral effects from a loss of potential competition, the CMA will consider:
 - (a) whether the potential entrant would be likely to enter in the absence of the merger; and
 - (b) whether such entry would lead to greater competition.
27. The CMA will also consider whether there are other potential entrants to the market.⁸
28. The CMA's Phase 1 Decision found:
 - (a) While Amazon exited the UK online restaurant platforms business in 2018 (and closed its equivalent US business in 2019) there was a reasonable prospect that it would re-enter the UK [X]. The CMA considered that there were multiple means by which Amazon could potentially enter the UK market, including acquiring a foreign supplier and bringing the service into the UK, or acquiring a partial solution (eg a technology platform) and using it to build a UK business.
 - (b) The online restaurant platform segment in the UK is highly concentrated, with only a small number of close competitors (Deliveroo, Uber Eats and Just Eat). Deliveroo is one of the strongest suppliers in the market and likely to remain so.
 - (c) The re-entry of Amazon would significantly increase competition in the highly concentrated online restaurant platform segment in the UK.
29. To assess this theory of harm, we shall consider evidence from the Parties' internal documents on the nature and extent of competition between Deliveroo and its rivals, and on Amazon's potential re-entry. Similarly, we shall take into account views of, and evidence from, third parties. We intend also to consider evidence on:
 - (a) Market structure and dynamics;
 - (b) Closeness of competition between the existing providers of online food delivery platforms for both restaurants and consumers;

⁸ [Merger Assessment Guidelines](#), paragraph 5.4.15.

- (c) Role of logistics capabilities in competition for restaurants and consumers;
- (d) Anticipated market developments;
- (e) Deliveroo's growth strategy and the relevance of restaurant delivery to Amazon's wider strategy; and
- (f) Barriers to entry or expansion.

Online convenience grocery delivery

30. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that provides and/or is expected to provide a competitive constraint. Unilateral effects resulting from a merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.⁹
31. The CMA's Phase 1 Decision found:
 - (a) Deliveroo's current offer is for quick delivery of a limited range of groceries, working with Co-op Food, BP, Shell and other convenience stores and off-licences. Amazon's current groceries offer includes a wide range of products (from Amazon and Morrisons) with both standard scheduled delivery and ultrafast delivery options.
 - (b) Deliveroo and Amazon are two of the largest suppliers of online convenience grocery delivery, although the market is nascent. Both Parties have ambitious plans and are developing their offers. The future development of the Parties' offers is likely to make them closer competitors.
 - (c) There are limited competitive constraints on the Parties as grocers appear to rely on a limited number of third-party logistics specialists to enable them to offer ultrafast or convenience grocery delivery.
32. To assess this theory of harm, we shall consider evidence from the Parties' internal documents on the nature and extent of competition between Deliveroo and Amazon, and the future development of the Parties' businesses. Similarly, we shall take into account views of, and evidence from, third parties. We intend also to consider evidence on:
 - (a) Market structure and dynamics;

⁹ [Merger Assessment Guidelines](#), paragraph 5.4.12.

- (b) Closeness of competition between the existing providers of online convenience grocery delivery for both grocers and consumers;
- (c) Role of logistics capabilities in competition for grocers and consumers;
- (d) Anticipated market developments;
- (e) Amazon and Deliveroo's growth strategies; and
- (f) Barriers to entry or expansion.

Countervailing factors

33. We will consider whether there are any countervailing factors which are likely to prevent or mitigate any SLC that we may find.

Entry and expansion

34. We will consider evidence on entry and/or expansion by third parties and whether such entry or expansion would be timely, likely and sufficient to prevent any SLC arising as a result of the Merger.¹⁰ To do this, the CMA will examine the plans of third parties including their internal documents, consider the costs and time necessary for competitors to develop and launch competing products and services and the expected effects, and examine other factors that might inhibit entry or expansion of competitors.

Efficiencies

35. We will consider whether the Merger is likely to give rise to efficiencies that will enhance rivalry in each of online restaurant platforms and online convenience grocery delivery.¹¹

Possible remedies and relevant customer benefits

36. Should we conclude that the Merger is expected to result in an SLC in one or more markets, we shall consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
37. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

¹⁰ [Merger Assessment Guidelines](#), Section 5.8.

¹¹ [Merger Assessment Guidelines](#), paragraph 5.7.12.

Responses to the issues statement

38. Any party wishing to respond to this issues statement should do so in writing, by **no later than 4pm on Tuesday 11 February 2020**. Please email Amazon.Deliveroo@cma.gov.uk or write to:

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