

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

Summary of provisional findings

Notified: 16 April 2020

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 billion² in net sales (up 20% year on year), over \$14 billion in operating income³ 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.

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.

The Transaction

9. The Transaction comprises [REDACTED] which Amazon entered into with Deliveroo on 16 May 2019.⁶
- (a) [REDACTED], which gives Amazon certain rights over Deliveroo, including board representation, a [REDACTED]% shareholding ([REDACTED]); and
 - (b) [REDACTED], which envisages the acquisition by Amazon of a [REDACTED]% shareholding (and certain other rights) in Deliveroo, [REDACTED].⁷

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);

⁶ [REDACTED].

⁷ The German authorities cleared this Transaction on 11 July 2019.

- (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.

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.

- (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 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 ([REDACTED]). 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:** [REDACTED]. We do not consider Deliveroo's existing shareholders to be a viable source of additional funding.
 - (b) **External funding from potential new shareholders:** [REDACTED] 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 [REDACTED] months to complete. Based on Deliveroo's current financial position, Deliveroo will need additional funding significantly sooner than [REDACTED] 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:** [REDACTED] 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, [REDACTED], 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 [X]% 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 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.