Competition & Markets Authority

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

Representations on the CMA's Provisional Findings of 17 April 2020

Submitted by

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on

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PREFACE

This document and its appendices comprise the written substantive representations (the "**Submission**") by Domino's Pizza Group PLC ("**Domino's**") to the CMA in respect of its provisional findings related to the anticipated acquisition by Amazon.com NV Investment Holdings LLC ("**Amazon**") of a minority shareholding and certain rights into Roofoods Ltd ("**Deliveroo**", together with Amazon, the "**Parties**") (the "**Transaction**").

1 INTRODUCTION

(1) In the summer of 2019, the CMA decided to initiate merger control proceedings into the acquisition by Amazon of a minority shareholding and certain rights in Deliveroo. Domino's welcomed that decision and actively contributed[1] to the CMA's investigation setting out the reasons why it considers the Transaction, if allowed to proceed, would lead to a substantial lessening of competition ("**SLC**").

(2) On 27 December 2019 the CMA referred the Transaction to an in-depth investigation as it considered, rightly in Domino's view, that there was a realistic prospect of an SLC in two markets, the supply of online restaurant platforms and of online convenience groceries.

(3) On 17 April 2020, the CMA issued a notice of provisional findings unconditionally clearing the Transaction (the "**PFs**"). The CMA provisionally found that the Transaction would not be expected to result in an SLC on the basis that the criteria of the 'failing firm test' as defined in the Merger Assessment Guidelines[2] ("**MAGs**") were satisfied; namely that:

(i) absent the Transaction, Deliveroo is likely to exit the market;

(ii) no less anti-competitive investor is available; and

(iii) the counterfactual where Deliveroo exits the market is more detrimental to competition and to consumers than the counterfactual where the Transaction proceeds.

(4) As the CMA will be familiar, of the 1,188 Domino's Pizza stores in the UK and Ireland[3], all bar 36 are owned and operated by franchisees, the majority of which are small businesses: [redacted]. Domino's and its franchisees have serious concerns about the negative impact on competition, and ultimately on consumers, of Amazon's investment in Deliveroo. A number of testimonials from various franchisees that have been collated underline the serious concerns they have on the Transaction completing (**Annex 1**).

(5) **First,** the CMA's finding that the failing firm defence applies is flawed: it falls far short of meeting the high evidentiary burden that has previously been applied in consistent UK decisional practice to failing firm claims; and departs in material respects from the CMA's guidance.

(6) Domino's methodological and evidential concerns are set out in **Section 3** below.

(7) Given these errors, Domino's respectfully urges the CMA to (i) reconsider its provisional conclusions and (ii) continue its investigation into whether the Transaction is likely to result in an SLC and if so, how best to remedy, prevent or mitigate the SLC as the CMA's statutory duties require.

(8) **Secondly**, Domino's and its franchisees continue to have significant concerns in relation to the adverse effects on competition the Amazon investment in Deliveroo will create. By accepting the Parties' failing firm claim without applying the CMA's own guidance and without "compelling" evidence, the PFs avoid an adequate assessment of the Transaction's effects on competition (a conventional "SLC assessment"). If the PFs were to become final the CMA would, in Domino's view, have failed in its statutory duty to protect competition and consumers in the UK.

[1] Submissions of 15 November 2019 and 7 February 2020.

[2] CMA Merger Assessment Guidelines (2010) CC2/OFT1254 paragraphs 4.3.8 to 4.3.18.

[3] As at 7 May 2020.

(9) Should the CMA's provisional conclusions with respect to some limbs (e.g. the first limb of inevitable exit) of the Parties' failing firm defence become final, Domino's submits that an SLC finding remains appropriate as the Transaction remains a substantially less competitive outcome than if alternative investment possibilities had properly been scrutinised. However, it does not follow that an SLC finding necessarily requires that for remedial purposes the CMA block any investment or injection of funds outright. Rather, there is available to the CMA effective and proportionate remedial action as described in **Section 4** which could, whilst allowing the Transaction to proceed, also mitigate the serious competition concerns that arise from the Transaction.

2 EXECUTIVE SUMMARY

(10) Dominos' and its franchisees' views on the PFs are, in summary, that:

2.1 The CMA's application of limbs 1 and 2 of the Parties' failing firm defence is flawed in that it has failed to follow its own guidance and has not obtained the required "compelling" evidence

(11) With respect to Deliveroo's inevitable exit (Limb 1) and no less anti-competitive purchaser (Limb 2), it is common ground that Deliveroo:

- is a strong brand with good medium to long-term prospects but for COVID-19 – in other words, it may lack short-term liquidity, but its business model is not at issue[4];
- would have obtained alternate funding absent the Amazon-led Series G round[5] albeit this would not have been as much as Series G – a fact the CMA verifies with investors[6]; and
- needed an extra injection of funds (a "top-up" investment) due to COVID-19[7].

(12) However, on the critical question of top-up funding in the counterfactual, the CMA abdicates its proper role.

- In the counterfactual, the only logical conclusion is that the alternate funding would have completed because absent an investment by Just Eat, Uber Eats or Amazon, there would have been no prolonged merger review process let alone a Phase 2. This means that the alternate investor would now, in May 2020, face the prospect of losing the entire investment if they permitted Deliveroo to become insolvent. The CMA does not recognise these facts and grapple with their implications for its assessment.
- The CMA then reasons that it is "speculative" to consider whether the alternate investors (alone or with others) would have engaged in top-up funding if they had injected the funds/held equity back in 2019, now faced with the loss of their investment[8]. The CMA states that because funding from Amazon was committed

4 PFs, paragraph 4.28.

5 PFs, paragraph 4.33.

6 PFs, paragraph 4.46.

7 PFs, paragraph 4.44.

8 PFs, paragraph 4.31.

prior to the COVID-19 crisis, it has not considered whether the availability of this funding is "*informative*" as to whether other funding would be available now[9].

– That approach abdicates the CMA's role in relation to a pivotal question in the counterfactual analysis, which, as is explained above has major implications for the SLC assessment: i.e. that the assessment is not done. Establishing the likely counterfactual is a forward-looking analysis that must grapple with uncertainty, but the CMA's prediction has to be as evidence-led as possible. This requires obtaining evidence from market participants, including via compulsory Section 109 requests, which the CMA appears not to have done.

– Tellingly, on the issue of the size of the alternate investment, and on the injection of more cash from current shareholders now, during COVID-19, the CMA interrogates all current shareholders, as is normal given the high evidentiary bar and exhaustive approach consistently taken by the CMA and peer agencies in such cases.

– However, on the critical question of the alternate, non-Amazon investors in the counterfactual – for example: *if you had invested [$200m] in 2019 would you now provide more funds to protect your [$200m] investment and get Deliveroo past COVID-19* – the CMA remains silent. The extra injection of funds could be associated with control or control rights not associated with the initial alternate investment. Faced with Deliveroo's insolvency in the counterfactual, Deliveroo's existing investors (who cannot themselves fund more, as per the CMA's finding) may well have preferred a dilution of their equity position and ceding of control relative to insolvency and losing their investment.

– The fact that this gaping hole in the CMA's logic has not been investigated is a dereliction of its duties. In the circumstances of the Phase 2 Interim Enforcement Order ("**IEO**"), the CMA could also have permitted Amazon to inject capital into Deliveroo or offer financial guarantees in a way that was "reversible" and did not therefore prejudice its SLC and remedial inquiries, as appears to have happened with the PFs. To the extent the CMA did not want to be "blamed" for creating an insolvent Deliveroo, this issue was avoidable without sacrificing the integrity of its statutory duties on SLC and remedial action.

2.2 The CMA's approach on Limb 3 of the Parties' failing firm defence proceeds on an unsafe premise

(13) The CMA has, as a result, not properly investigated matters so as to conclude that Limbs 1 and 2 are satisfied. Therefore, the CMA's approach on Limb 3 – a comparison of Deliveroo exiting the market vs. the Transaction – proceeds on an unsafe premise.

(14) Even if that premise were supportable, the CMA swiftly assumes that the exit means an anticompetitive "3 to 2" merger situation such that Just Eat and Uber Eats would compete less in the face of Deliveroo's exit, rather than more, pending Amazon entry. While prima facie "3 to 2" concerns are understandable at Phase 1, at Phase 2 the CMA needed to consider this issue properly and not simply jump to the conclusions. Relevant factors include that, in a market with network effects, if Uber or Just Eat worsened their delivery offer because of Deliveroo's exit, they still risk strengthening the other platform to the point of "tipping" the market to that platform. On the restaurant side, there may be cross-over between (still trading) restaurants on Deliveroo and on one or both remaining platforms, such

[9] PFs, footnote 137.

that consumers can still buy from their favourite restaurants with no switching costs, while restaurants exclusive to Deliveroo can be expected to switch (prior to Deliveroo exit) to a remaining platform given their strong incentives during Covid-19 to maintain home delivery sales, and Just Eat and Uber Eats can be expected to make commensurate strong efforts to attract them to their own platform, not the rival one.

2.3 The effect of the Transaction is to reinforce the dominance of the Amazon ecosystem and opens up the real possibility of this dominance being leveraged into restaurant home delivery to the detriment of consumers

(15) The CMA focuses solely on horizontal unilateral (potential competition) theories of harm in relation to Amazon's entry into online restaurant platforms and Deliveroo's expansion in ultra-fast grocery delivery without taking into account concerns highlighted in a number of recent reports into Big Tech dominance.

(16) As Cremer et al (*Competition Policy for the Digital Era*) put it, a merger (even absent potential entry by one merging party into the other's market) can

> *"… strengthen […] … the platform's (or ecosystem's) dominance, because the acquisition can: (i)* ***intensify the loyalty of those users that consider the new services as complements to services already offered by the platform/ecosystem****…."* (p. 11) (emphasis added)
>
> and
>
> *"[Acquirer may] "appropriate […]" the network effects that the target has managed to establish to the benefit of its own customers in such a way that, after the merger, they further strengthen the ecosystem as a whole.* ***Customers of the dominant ecosystem can be "leveraged" to the newly integrated service; customers of the target are integrated into the ecosystem;*** *and due to the stronger network externalities, all customers are less likely to leave the ecosystem afterwards.*" (p. 122) (emphasis added).

(17) With respect to Amazon in particular, the Furman Report (*Unlocking Digital Competition*) notes:

> "*A third (33.5%) of all UK e-commerce transactions went through Amazon in 2018. The Panel has not seen evidence of Amazon's share of transactions made through online marketplaces, but it is likely to be considerably higher than this. There is some evidence that it is has become the default online option for many shoppers,* ***with 59% of 16 to 36-year olds in the UK 'always' or 'often' starting their online shopping journeys on Amazon***".
>
> *"… in the view of the Panel it is likely* ***Amazon is dominant in a meaningfully distinct sector of online retail, for example as an online marketplace,*** *particularly for relatively low-value and/or homogenous products. To illustrate, the total value of sales processed globally in 2017 through eBay's marketplace, arguably Amazon's largest and closest competitor outside of China, was $84 billion. Over the same period, the value of sales processed through Amazon's UK marketplace alone was reportedly around $60 billion. In the e-book market, Amazon was reported in February 2017 to account for around 88% of total annual unit sales*".
>
> "*Regardless of the view on dominance over a particular defined market, it is* ***clear that for thousands of smaller independent online sellers in particular, Amazon's marketplace is a strategically important gateway to consumers***". (paras. 1.56-58)
>
> (emphasis added)

(18) On theories other than the CMA's chosen horizontal unilateral effects based on potential entry, at Phase 1 the CMA found that Amazon would not have the incentive to share data

with Deliveroo and had no incentive to foreclose rivals via bundling Amazon Prime with Deliveroo Plus subscriptions. These theories were not further explored at Phase 2, but the CMA should not have rejected these out of hand.

(19) The CMA has not considered conglomerate theories that do not depend on either party entering each other's markets, but on the ecosystem dominance being more than the sum of its parts. Just as Amazon marketplace has become an essential route to market for e-commerce retailers, the same could become true of restaurant/grocery home delivery. While Amazon does not control Deliveroo, it benefits from its success and has no interest in the success of integrated delivery firms such as Domino's, independent restaurants, or the other platforms, Just Eat or Uber Eats. Given its investment, Amazon could easily advertise Deliveroo to its large online user base in a targeted fashion (based on user location or history with Amazon) at no or low cost in a way that rivals such as Domino's and others could not compete with. It would not need to share this with Deliveroo, and it could benefit from Deliveroo data. On these issues, even without Deliveroo data, Amazon has the ability and the Transaction gives it the incentive to also drive restaurant traffic to Deliveroo and away from independent restaurants and rival platforms. Beyond advertising, its material influence may create incentives to offer free delivery with Deliveroo orders for Amazon Prime or Amazon Fresh members and with increased traffic build up a "last mile" delivery proposition that smaller players could not replicate even if they are highly efficient (it could also in due course integrate the Whole Foods supermarket range into such a proposition as it has already done with Amazon Fresh). In this way, as implied by the Cremer and Furman reports, "*customers of the dominant ecosystem [Amazon] can be leveraged to the newly-integrated service".*

(20) Ultimately, like Amazon marketplace for online e-commerce, if by leveraging its e-commerce advertising and customer data reach, Amazon were to succeed in tipping the logistics and delivery supply markets to restaurants to a partnered operation with Deliveroo, restaurants would face the same issue facing e-commerce merchants: if one cannot beat Amazon/Deliveroo one must join them (i.e. list on Deliveroo). Even established platforms such as Just Eat and Uber Eats could struggle with the tipping effect of such a market to Amazon/Deliveroo.

2.4 Conclusion

(21) By taking a short-term view unduly influenced by COVID-19 and without proper interrogation of the counterfactual, the CMA provisionally intends to permit Amazon to extend its ecosystem dominance into food delivery, quite apart from foreclosing its own incentives to enter Deliveroo's market. These issues deeply concern Domino's and its franchisees, even if there were no theory of Amazon entering UK restaurant platforms itself via a route other than materially influencing an incumbent platform, Deliveroo. Moreover, even if some of these issues were to arise with Amazon's own entry, the competition concerns of ecosystem dominance remain, whether achieved organically or by acquisition (and had Amazon entered the market in the future but for the Deliveroo investment, the CMA has not shown that it would not have been competing with Deliveroo given the weaknesses in the CMA's treatment of Limbs 1 and 2 of the failing firm defence set out above).

(22) Domino's respectfully requests that the CMA, given the serious flaws described above and its failure to investigate relevant considerations in the PFs:

(i) rejects the Parties' failing firm claim;

(ii) resumes its investigation into the competition concerns which this Transaction raises, and

(iii) re-issues its PFs for comment by third-parties before reaching a final decision.

(23) As described above, a proper merger review should not have been truncated in the way the CMA has done: it was always open to the CMA to lift restrictions under the IEO to enable Amazon to inject funding into Deliveroo given its apparent short-term cash shortfall, but in a reversible way. In any case, the funding need not be reversible as such: a permanent or irrevocable funds injection by Amazon to solve Deliveroo's short term liquidity issues would not prejudice the CMA's ability subsequently, once markets normalise, to order a divestment down of its stake (as in *Sky/ITV* and *Ryanair/Aer Lingus*) to remove material influence and the associated SLC concerns.

(24) Domino's and its franchisees' concerns in relation to the PFs are explained in more detail below.

3 THE CMA's FLAWED APPLICATION OF THE FAILING FIRM DEFENCE

(25) The CMA's MAGs and previous cases make clear that the evidentiary burden necessary to enable an otherwise anti-competitive merger to be cleared on the basis of the failing firm "defence" is very high. The CMA's MAGs stress the need for "*compelling evidence*"[10] and the conditions for satisfying a failing firm claim are described as "*stringent*"[11] by the CMA. The CMA's newly-issued COVID-19 Failing Firm Guidance ("**COVID-19 FFG**") states:

> "'*Failing firm' claims are only likely to be accepted, whether at Phase 1 or Phase 2, where supported by a* ***material body of probative evidence****, which the merging parties can expect the CMA to* ***test thoroughly*** *with both the merging parties and their advisers,* ***as well as third parties****. Unsupported assertions in relation to the financial health of a business or the absence of alternative purchasers are highly unlikely to be sufficient to establish a failing firm scenario*" (emphasis added).

(26) This high evidentiary burden is reflected in the limited number of precedents at UK (and also EU) level. The stringent conditions applicable to a failing firm counterfactual, have been recently repeated by the CMA in the context of the current COVID-19 pandemic:

> "*The Coronavirus (COVID-19) pandemic has not brought about any relaxation of the standards by which mergers are assessed or the CMA's investigational standards. It remains critical to preserve competition in markets through rigorous merger investigations in order to protect the interests of consumers in the longer term.*
>
> *The CMA needs to ensure its decisions are based on evidence and not speculation, and will carefully consider the available evidence in relation to the possible impacts of Coronavirus (COVID-19) on competition in each case*."[12]

(27) In the PFs, however, the CMA appears to have departed from the conventional approach to failing firm claims in several key aspects. Domino's considers that the Parties' failing firm defence lacks a sound evidential basis, falling far short of satisfying the high evidentiary burden that has previously applied to failing firm claims and departs in material respects from the CMA's published guidance.

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[10] MAGs, paragraph 4.3.10.

[11] Annex A to the CMA's guidance on merger assessments during the Coronavirus (COVID-19) pandemic: "*Summary of CMA's position on mergers involving 'failing firms'*" of 22 April 2020 ("**COVID-19 FFG**").

[12] COVID-19 FFG.

(28) Each of the three limbs of the failing firm test are taken in turn below.

3.1 Limb 1: The CMA's provisional finding that, as a result of COVID-19, Deliveroo is likely to exit the market unless the Transaction proceeds

(29) The first limb of the failing firm test requires the Parties to demonstrate that Deliveroo would have exited the market (through failure or otherwise) absent the Transaction.

(30) In its assessment of the first limb, the CMA makes three provisional findings:

(i) First, that absent the Transaction and absent the COVID-19 crisis, Deliveroo would not have been an exiting firm. The CMA states:

"*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*.[13]"

"*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*."[14]

(ii) Secondly, that the COVID-19 crisis has put Deliveroo's business in imminent jeopardy of collapse, and that, without receiving additional funds in the near future, Deliveroo will likely exit the market. The CMA states:

"*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*."[15]

(iii) Thirdly, that Deliveroo would still have exited as a result of the COVID-19 crisis even if it had proceeded with an alternative investor in May 2019.

"*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*."[16]

"*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*."[17]

(31) Put differently, the CMA finds that COVID-19 was both:

- a necessary condition to Deliveroo's current financial distress, in that, absent COVID-19, Deliveroo would not have been at risk of exiting the market; as well as

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[13] PFs, paragraph 4.28.

[14] PFs, paragraph 4.33.

[15] PFs, paragraph 4.44.

[16] PFs, paragraph 4.47.

[17] PFs, paragraph 4.49.

- a determining factor, in that, even if Deliveroo had proceeded with an alternative investor in May 2019, the effects of COVID-19 would also have likely led Deliveroo to exit the market.

(32) In doing so, the CMA states that, consistently with existing guidance[18], it has excluded the merger-specific effects of the Transaction that may have contributed to Deliveroo's distressed financial position. The CMA states in its PFs:

> "*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*."[19]

(33) However, the CMA's assessment of Limb 1 does not in fact rigorously exclude all merger-specific effects of the Transaction as the CMA says is required. In total, the PFs dedicate three short paragraphs[20] to this analysis.

(34) The CMA finds that if Deliveroo had decided not to proceed with Amazon as an investor, it would have received funding from an alternative (possibly less anti-competitive) investor, as there was at least one alternative funding source that would have likely yielded a similar amount and on similar terms. Yet, the CMA concludes that such investment would have been insufficient to put Deliveroo "*in a viable position to support the COVID-19 disruption*"[21] such that Deliveroo would also have been in a position of financial distress should it have decided to proceed with another investor.

(35) The CMA reaches this conclusion on the basis that a lower amount than that proposed by Amazon was committed with certainty – and although the CMA acknowledges it is possible the alternative funding options could have been extended to include additional funding, it has declined to engage further with this line of inquiry, on the basis that any assessment of such an extension "*would be speculative*"[22]. With respect, this is an abdication of the CMA's statutory duties on a pivotal issue – and given the remainder of the CMA's logic – *the* pivotal issue. It is only speculative because the CMA declined to investigate and gather evidence. The CMA gives no reason for its apparent failure to interrogate the alternative investor on what they would have done had they made their investment in lieu of the Amazon announcement.

(36) The CMA therefore concludes that Deliveroo would ultimately have needed to raise even more funding to survive the COVID-19 crisis, which it would have been unable to do (for reasons examined in the second limb of the failing firm test), leading to Deliveroo's exit from the market[23].

(37) Domino's cannot of course comment on the CMA's conclusion that the funding provided by an alternative investor would have been insufficient to support Deliveroo during the COVID-19 crisis, as it does not have access to the underlying evidence. However, it can clearly

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[18] The COVID-19 FFG states: "*only events that are not a result of the merger under review can be incorporated into the counterfactual. Accordingly, a 'failing firm' scenario is unlikely to exist where the merger under review is a contributing factor to the target firm's exit*".

[19] PFs, paragraph 19.

[20] PFs, paragraphs 4.46 to 4.48.

[21] PFs, paragraph 25.

[22] PFs, paragraph 4.31.

[23] It is far from clear that, even if Deliveroo became insolvent, it would exit the market: as the CMA finds, Deliveroo is a strong brand with good medium-term prospects and could be expected if it had gone into administration, to find a purchaser. The CMA's approach rules this out.

observe that the CMA's assumption that an alternative investor, who would have completed its investment in 2019, would have denied Deliveroo a 'top-up' investment to help Deliveroo survive the COVID-19 crisis is entirely unsupported by any reasoning or evidence. It cannot be papered over with an assertion that an interrogation of the critical issue would be 'speculative'. Nor should this inquiry have been limited to the position of the alternate investor. In a counterfactual where Deliveroo would have already had access to funds from an investor other than Amazon in 2019, it is equally unfounded to assert that no other third-party investor or lender would have been able and willing to provide a 'top-up' investment in order for Deliveroo to survive the COVID-19 disruption.

(38) In other words, the CMA has not properly considered the merger-specific effects of the Transaction on:

(i) **Deliveroo's financial situation and resilience amidst the COVID-19 crisis**.

Domino's notes that a differential analysis comparing Deliveroo's financial situation and resilience to the COVID-19 pandemic (a) with the funds from an alternative investor, and (b) without the funds altogether (as is currently the case), is absent from the PFs. It cannot be the case that Deliveroo's decision to proceed with Amazon as an investor, with the important uncertainty and execution risk that it entailed and resulting delay in obtaining funding, had *no* impact on Deliveroo's financial situation and resilience to the COVID-19 pandemic. Even if the funds secured from the alternative investor would have been lower than those offered by Amazon, it cannot be the case that these funds would have had no impact at all on Deliveroo's financial health and resilience.

(ii) Deliveroo's ability to secure additional top-up funds.

The CMA has not even purported to provide sufficient reasons, let alone explain with rigorous consideration of evidence what would have been Deliveroo's ability to raise additional top-up funds if it had accepted funding from an alternative investor in 2019. Instead, this is dismissed in one sentence in the PFs[24]. An obvious consideration which is ignored by the CMA is the fact that, as mentioned above, Deliveroo's current liquidity issues would have been of a much lesser degree in a counterfactual where it would have secured funding from another investor in 2019, such that its ability to secure additional top-up funding surely would have been greater. There is also no discussion of a point of common sense: the likely disincentive effect of the pending Amazon investment and CMA merger review on the appetite of third-party investors. This disincentive would not exist in the counterfactual, where the alternate investor's own financial risk was at stake, and where a top-up investment, or bringing in third party investors, would have been of critical financial interest to that alternate investor to avoid crystallising the losses that it would suffer with Deliveroo's market exit. With Amazon's pending investment, it would not be surprising if some investors would have told the CMA that they were (no longer) interested as, by that stage, the counterfactual would have been very hypothetical from their point of view. There is however no evidence cited by the CMA that it even asked any third party any questions on this point.

As a result, the merger-specific effects of the Transaction on Deliveroo's ability to access finance and therefore, crucially, its resilience to the current liquidity issue

[24] PFs, paragraph 29: "*We do not consider that the issues outlined above* [options for additional funding] *would differ materially if, in the counterfactual, Deliveroo had pursued one of the alternative funding options available in 2019*".

stemming from the COVID-19 crisis have not been carved out from the CMA's assessment. The unavoidable consequence is that this failure contaminates the rigour of the CMA's counterfactual and the conclusion that the additional funding options would not differ materially compared to the post-merger (Amazon investment) scenario.

(39) The CMA's approach is, accordingly, manifestly inadequate to assess all the merger-specific effects of the Transaction on Deliveroo's current financial situation and resilience to the COVID-19 crisis.

(40) On this basis, Domino's disagrees with the CMA's preliminary conclusion that Deliveroo's current financial constraints cannot be attributed, at least in part, to its decision to accept investment from Amazon. The decision to proceed with Amazon as an investor carried a certain execution risk (notably risk of non-execution and risk of material delay) that is likely to have played a role in Deliveroo's current distress, as is acknowledged by Deliveroo itself.

> "*During and immediately following the CMA's phase 1 review of the Transaction, Deliveroo submitted that the CMA's ongoing investigation meant that [redacted]. In December 2019, prior to the Coronavirus (COVID-19) crisis, Deliveroo also submitted that [redacted]*.
>
> *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 [redacted].*"[25]

(41) Domino's notes that the CMA's own guidance requires that merger-specific contributing factors are identified and excluded from the counterfactual assessment:

> "*Only events that are not a result of the merger under review can be incorporated into the counterfactual. Accordingly, a 'failing firm' scenario is unlikely to exist where the merger under review is a **contributing** factor to the target firm's exit.*"[26] (emphasis added)

(42) The CMA's guidance also stresses that the merger-specific execution risk linked to a transaction being delayed or not completing should be borne entirely by the parties and should not be factored in the assessment of the counterfactual:

> "*As the Guidance on the CMA's jurisdiction and procedure makes clear, merging parties that choose to complete a merger without prior CMA approval necessarily accept certain costs and risks*."[27]

(43) Therefore, the fact that Deliveroo may still have been in a difficult financial position following the COVID-19 crisis should it have chosen an alternative investor does not justify the CMA's decision not to interrogate the counterfactual properly by first identifying and then excluding merger-specific contributing factors that contaminate its assessment.

(44) In conclusion, the CMA's assessment of Limb 1 is flawed insofar as it:

- fails to interrogate the position of the alternate investor to Amazon properly, including by asking basic questions to third parties; and
- does not rigorously exclude all merger-specific effects of the Transaction, namely the disincentive of third parties to engage in investment analysis now with the Amazon investment and CMA Phase 2 inquiry pending.

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[25] PFs, paragraph 4.10.

[26] COVID-19 FFG.

[27] COVID-19 FFG.

3.2 Limb 2: The CMA's provisional finding that no less anti-competitive investor was available

(45) The second question the CMA will consider is whether there was any substantially less anti-competitive purchaser, or as is the case here, investor, for the business or its assets.

(46) The CMA provisionally finds that there were indeed alternative sources of funding available at the time of the original fundraising, including at least one alternative that "*would have been for a similar amount to the Amazon-led investment round and on similar terms*"[28]. Ordinarily this would be enough to conclude the second limb is not satisfied and dismiss a failing firm claim as the CMA itself notes[29].

(47) In the present case, however, the CMA chose to focus on the *current* availability of alternative investors. This is consistent with the CMA's new COVID-19 FFG (issued 5 days after the PFs) which states that, although the CMA typically looks at whether there were alternative purchasers (or in this case, investors) "*around the time*" of the original agreement, events which occur during the review of a Transaction (such as the business impact of a macroeconomic shock like COVID-19), but which are not merger-specific, can be incorporated into the counterfactual.

(48) In assessing the likelihood of Deliveroo successfully raising additional funds during the COVID-19 crisis, the PFs discuss three options explored by Deliveroo: additional funding from existing shareholders, external funding from new shareholders and debt funding.

(49) The CMA provisionally concludes that:

(i) Deliveroo's existing shareholders would not be a viable source of additional funding following the onset of Coronavirus (COVID-19);

(ii) funding from new shareholders would be unlikely to be available within the timeframe required; and that

(iii) on the basis of expert opinion submitted to the CMA, Deliveroo would not be able to quickly secure debt financing arrangements.

(50) The CMA therefore concludes that "*without receiving the Amazon investment, Deliveroo has no alternative options available to it to preserve its business*"[30] and that therefore, the second limb of the failing firm test is satisfied. The tense used by the CMA is telling. It should have said: "without receiving the Amazon investment, Deliveroo *would have had* the following alternative options…".

3.2.1 The CMA has failed to assess whether an alternative investor was available in the appropriate counterfactual

(51) As is the case for Limb 1, the CMA is required to carve out any merger-specific effects of the Transaction on Deliveroo's arguably reduced ability to raise funding. However, the CMA's consideration of whether any merger-specific effects of the Transaction would have impacted Deliveroo's existing funding constraints is dismissed in one sentence in the PFs:

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[28] PFs, paragraph 4.29.

[29] PFs, paragraphs 4.28 and 4.33.

[30] PFs, paragraph 4.64.

"*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*.[31]"

(52) Domino's is very concerned that the PFs fall far short of the high standard of proof that would be required in this instance: particularly when the consequences of accepting a failing firm defence are that no SLC analysis is undertaken. As is the case for the first limb, the PFs do not assess whether the funding difficulties experienced by Deliveroo could be at least in part explained by its decision to choose Amazon as an investor.

(53) **First**, as regards funding from existing shareholders, the CMA has not assessed Deliveroo's ability to access funding from existing shareholders in a counterfactual where it would already have received some initial funding from an alternative investor in May 2019. Whilst many existing shareholders cited "the current financial climate" referring to COVID-19 as one of the main reasons for not being able to inject any further funding, some existing shareholders also referred to Deliveroo's existing financial position as a factor:

> *"[redacted] told the CMA that it [redacted]. 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*."[32]
>
> "*Whilst some capital remains unallocated, this would, in any event, only be enough to cover Deliveroo's operating expenses* […]"[33]

(54) The question of extra investment by existing shareholders *now* (with neither Amazon's nor the alternate investor's investment) is entirely different from a counterfactual analysis in which an alternate investor's investment "*would have been for a similar amount to the Amazon-led investment round and on similar terms*"[34]. Even if the level was below Amazon's, the issue is whether with that investment on board, the existing shareholders' appetite to inject additional funding would be materially different than the current position. This is not contemplated by the CMA.

(55) Furthermore, the CMA does not envisage the fact that Amazon's presence as the original funder must surely have had some influence on existing shareholders' risk appetite. It is plausible, if not likely, that they may be incentivised to downplay their ability and/or appetite to inject further funding into Deliveroo in order to portray Amazon as the only possible investor. The CMA does not explicitly address this perspective in its decision, despite explicitly pointing out the possibility:

> *"**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 [redacted]"* (emphasis added)[35].

(56) **Secondly**, as regards funding from new shareholders, the same observations hold. Amazon's presence as the original funder must surely have some influence – a deterrent effect – on other potential investors. For instance, some third parties who might otherwise be interested in funding Deliveroo may be wary of volunteering this information to the CMA

[31] PFs, paragraph 28.

[32] PFs, paragraph 4.56 c).

[33] PFs, paragraph 4.56 d).

[34] PFs, paragraph 4.29.

[35] PFs, paragraph 3.44.

for fear of damaging their own relationships with Amazon or simply be disengaged due to Amazon's pending investment and the fact that it has caused a prolonged Phase 2 process.

(57) However, Domino's notes that here again the CMA fails to extract the merger-specific effects of the Transaction on Deliveroo's current financial situation. The CMA says:

> *"[…] Deliveroo's previous funding rounds have taken between [redacted] months to complete. **Based on Deliveroo's current financial position** [*emphasis added*], Deliveroo will need additional funding significantly sooner than in [redacted] months."*[36]

(58) It is apparent therefore that the timing needed to secure additional funding is a function of Deliveroo's current financial position, in which the absence of any funding while the Transaction was being investigated, most likely played a role. This has not been addressed by the CMA.

(59) **Thirdly**, as regards Deliveroo's ability to access debt funding, the CMA does not consider that in times of crisis, investment in distressed businesses may be even more appealing, as described in the *Financial Times* article referred to above. Domino's notes Amazon's view that "*Deliveroo will be a valuable financial investment for Amazon, given its rapid growth, customer popularity and the strength of its management team*" and that "*food delivery is a rapidly growing and valuable sector that offers a large and growing opportunity*"[37].

(60) Finally, the PFs do not consider the clear incentive for Deliveroo (and its advisers) to present Amazon as the only viable option. Since the assessment is conducted by the CMA at the time of the review, rather than at the time of the original investment, this may influence Deliveroo's approach to preparing evidence on the availability of alternative funders or purchasers at the time the Transaction is being reviewed.

(61) By attempting to assess alternative sources of funding or purchasers at the time of review, rather than at the time the funding was entered into as the COVID-19 FFG specifies[38], the CMA is allowing itself to engage in a considerably more speculative and unsubstantiated exercise. As outlined in the COVID-19 FFG, the exercise would normally involve "*a stringent assessment of the marketing process*" for the original transaction and whether there were other realistic prospective purchasers at that time. In other words, the CMA would have a deep contemporaneous evidence base to evaluate, including internal documents and correspondence with potential bidders.

3.2.2 Even assuming the CMA's counterfactual were appropriate, it has not properly assessed whether an alternative investor was available

(62) As mentioned above, Domino's has not had access to the evidence at hand and is therefore unable to substantively comment on the likelihood of the three options explored above succeeding. That being said, Domino's notes there are many different sources of investment funding available even in times of economic crisis. For instance, as the *Financial Times* recently observed[39], private equity funds have "*a record $2.5tn in dry powder that is waiting to be deployed*". Despite its immediate struggles, Deliveroo is a well-established brand with a significant share of the UK's online restaurant platform market, and there is a reasonable chance it may have been considered a sound long-term investment by a third party that was

[36] PFs, paragraph 4.61.

[37] PFs, paragraph 2.31.

[38] The CMA "*will typically look at whether there were alternative purchasers for the business **around the time that the merger agreement was entered into***. [emphasis added]".

[39] https://www.ft.com/content/f7cc82d7-70b9-40c3-b4a0-815ebc5d99d5 - 24 April 2020.

not contacted by the CMA. In this context, thousands of chains and local restaurants are reported to have joined marketplace aggregators (such as Deliveroo and Just Eat) to replace lost dine-in or pickup trade, with deliveries.[40] Deliveroo has itself announced that it registered around 3,000 new UK restaurants on its platform during the month of March 2020[41].

(63) In addition, as per the last financial crisis of 2008, where there is a shock to the market, there are several opportunities for distressed and/or accelerated M&A and/or funding. Specialised press have also commented that the COVID-19 crisis is expected to give rise to a number of opportunistic acquisitions[42]. In the case of Deliveroo, there is in addition no evidence to show that trade buyers would be the only viable option. Private equity and finance companies could well be considered viable investors.

(64) The CMA has crucially not sought to survey potential investors on whether they would have the ability and incentive to invest in Deliveroo at this time, nor assess whether Deliveroo may have initiated marketing efforts to attract potential new investors, thereby materially departing from established precedent. Indeed, in assessing whether to accept a failing firm claim, the CMA and European Commission have typically given consideration to the scope of the marketing process launched by the target firm to find an alternative purchaser, including contemporaneous marketing materials and media reports, and whether this might have had any impact on offers received. It is unclear whether Deliveroo initiated *any* marketing efforts at all to seek a potential new investor at this time and the PFs make no reference to any assessment of any efforts made by Deliveroo to seek additional funding or to any potential investor having been contacted by the CMA. Rather, the CMA dedicates four paragraphs[43] to this assessment and only relies on declarations from Deliveroo's existing shareholders and Deliveroo's previous adviser who assisted in seeking investors for the Series G funding round in 2019.

(65) In *Aer Lingus / CityJet*, the CMA noted that:

> *"**in circumstances where exiting businesses fail to run a meaningful sale process, the CMA would typically be unlikely to be able to reach the conclusion that there was no realistic prospect of a less anti-competitive purchaser** (and therefore to adopt an exiting firm counterfactual)"*[44] (emphasis added).

(66) Sometimes, the CMA more "generously" conducts its own equivalent exhaustive market testing process to flush out buyer interest comparable to that which the seller is normally supposed to have run in order for the merger parties to benefit from the failing firm defence. In the *Alliance Medical / IBA Molecular* case[45], the parties completed the merger without having run any auction process or sought an alternative purchaser. The CMA nevertheless examined various categories of potential purchasers and contacted a number of them in order to gather evidence, dedicating 19 paragraphs to this analysis in its final report. The

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[40] Article available here: https://www.foodnavigator.com/Article/2020/03/19/Online-food-delivery-one-of-the-only-winners-in-coronavirus-outbreak

[41] Article available here: https://london.eater.com/2020/3/23/21190601/coronavirus-uk-restaurant-delivery-deliveroo-gordon-ramsay-dishoom-michelin-star.

[42] See:

https://www.freeths.co.uk/2020/04/21/coronavirus-accelerated-distressed-m-a-and-opportunistic-acquisitions/

https://www.cityam.com/deal-or-no-deal-how-will-coronavirus-affect-ma/

[43] PFs, paragraphs 4.59 to 4.62.

[44] Completed agreement between Aer Lingus Limited and CityJet designated Activity Company, ME/6782/18 21 December 2018, paragraph 73.

[45] Completed acquisition by Alliance Medical Group Limited of the assets of IBA Molecular UK Limited used to manufacture 18F-Fluorodeoxyglucose, 15 August 2014.

CMA then concluded in light of the evidence that it was unlikely that other investors would have purchased the failing firm. Similarly in *East Coast Buses / First Scotland East*[1], the CMA acknowledged that there had been a lack of a formal marketing process and therefore explored whether other operators would have made a potential offer, had it been specifically marketed to them, by contacting other bus and coach operators in the area.[46] Finally in *Aegean/Olympic II*[47], the European Commission sent out 24 requests for information to possible airline bidders for Olympic Airlines in the course of its review of the merger:

> "*To verify Marfin's statements regarding the lack of alternative interest in the acquisition of Olympic, the Commission* ***examined a large number of internal emails*** *which it had requested from Marfin. This exercise did not result in the identification of any credible alternative purchaser. Moreover, on 9 August 2013, the Commission* ***sent out questionnaires to 24 European airlines*** *in order to establish whether there is any interest in acquiring Olympic*."[48]

(67) The need to carry out a comprehensive survey of potential investors seems to have been dismissed altogether in the PFs, given that, according to the CMA, Deliveroo would likely run out of time to raise additional funding before its financial difficulties would become irreversible.

3.2.3 Conclusion on Limb 2

(68) In conclusion, the CMA has failed to assess whether an alternative investor was available in the appropriate counterfactual i.e. by failing to remove merger-specific effects of the Transaction. Even assuming that the CMA's counterfactual (i.e. the *current* situation, without any investment from an alternative investor) were the correct counterfactual, the CMA has failed to properly assess whether there would be an alternative investor.

(69) The issue for the CMA was whether funds were available *on any terms* to head off insolvency, no matter how dilutive (not on terms comparable to Amazon) and it is doubtful in principle that nobody would be willing to take control over Deliveroo (heavily diluting the other shareholders) in return for providing the delta between Amazon's investment and the amount raised in April 2019. The evidence provided to the CMA by other investors is at high risk of being self-serving in that they would avoid dilution if Amazon were held to the terms of its proposed pre-COVID-19 investment.

(70) Domino's is very concerned by the lowering of the standard of proof and flawed reasoning adopted in the PFs which does not rigorously abstract the merger-specific factors from the assessment of the effects of COVID-19 crisis on the counterfactual, as the CMA purports to do. Domino's is concerned about the precedent this provisional decision may set if it becomes final, with trade buyers with the deepest pockets encouraged to attempt acquisitions of struggling rivals.

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[46] Completed acquisition by East Coast Buses Limited of the east coast operations of First Scotland East Limited, ME/6642-16, 23 January 2017.

[47] Case No COMP/M.6796 – Aegean/Olympic II, European Commission decision of 9 October 2013.

[48] Case No COMP/M.6796 – Aegean/Olympic II, European Commission decision of 9 October 2013, paragraphs 810 and 811.

3.3 Limb 3: The CMA's provisional finding that the loss of Deliveroo as a competitor would be more detrimental to competition and consumers than permitting the Transaction to proceed

3.3.1 Preliminary remarks

(71) The third limb of the failing firm test, as set out in the MAGs, typically involves assessing what would happen to the sales of the exiting firm, i.e. whether they would be transferred to the acquirer or redistributed across the market (if at all)[49]. This would then typically be followed by an SLC analysis which would assess the competitive impact of the transaction and compare it to the exiting firm counterfactual.

> "*[…] how the merger compares to the effect of exit of the firm and the dispersal of its sales is treated as part of the consideration of the effects of the merger on competition*.[50]"

(72) As the Transaction does not involve a full acquisition, but a minority investment, Deliveroo's sales will not transfer to Amazon upon completion of the investment. The CMA has sought to adapt to the "*specific circumstances of this case*" by taking a wider approach and assessing more generally "*whether the effect of the Transaction is substantially less competitive than Deliveroo's exit*" and has done so in limb 3 of the failing firm test.

(73) This approach is, in Domino's view, flawed.

(74) **First**, the CMA's assessment of the third limb of the failing firm test omits any analysis of what would happen to Deliveroo's sales upon exit and is as a result critically truncated. The fact that Deliveroo's sales would not transfer to Amazon should the Transaction proceed does not prevent the CMA from assessing what would happen to the sales of a hypothetically exiting Deliveroo. In fact, this is a key element of the analysis which enables the CMA to meaningfully compare the effects on competition of the Transaction proceeding with the effects of an exit by Deliveroo. While an exiting player can be a disruptive event, the competitive and consumer impact must be assessed on the facts. A normal starting point would be to consider whether other players in the market such as Uber Eats and Just Eat would compete more fiercely for the Deliveroo customer base, such as offering free delivery or other incentives. In past cases, the Competition Commission for example considered the gains by remaining rivals in proportion to their market shares but recognised these were contestable.

(75) In this respect, the CMA should have given consideration to the switching cost imposed on customers. It is not that without Deliveroo, consumers are without food but simply the preferred restaurant delivery provider; the same food from the same restaurant via Uber Eats or Just Eat (or via the restaurant's own delivery or collection system) is no different. Moreover, switching costs from Deliveroo to the websites of these other players would effectively be non-existent. For restaurants on Deliveroo that were also on Uber Eats and/or Just Eat, there would also be no incremental costs of such a switch, while there may be costs for those only on Deliveroo, but these might be offset by no longer having to pay commissions to Deliveroo.

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[49] Domino's notes that a thorough assessment of what would happen to the sales of the exiting firm was carried out in previous cases where a failing firm claim was made, notably in *Aer Lingus/CityJet*, *East Coast Buses/First Scotland East*, *Alliance/IBA*, *Muller/Dairy Crest*.

[50] MAGs, paragraph 4.3.11.

(76) All these questions would normally be the subject of consideration. In *Alliance Medical / IBA Molecular*[51] for example, the CMA found that upon exit, the sales of the failing firm would be competed for by two competitors, such that the counterfactual was different from a situation where the merger would proceed. The CMA then considered customers' ability to switch suppliers both in the post-merger situation and under the counterfactual scenario in order to reach a view on an SLC.

(77) Domino's notes the CMA's COVID-19 FFG which stresses the "*undue emphasis […] on the redistribution of sales for the purposes of competitive assessment"* and states that "*in practice, the CMA has applied this test less mechanistically than is suggested in the wording of the Merger Assessment Guidelines*".

(78) The guidelines nevertheless continue: "*Depending on the nature of the markets at issue, the CMA will* ***not only consider what might happen to the sales of the merging party*** *but will also consider the impact that the merger is likely to have on competition more broadly".* (emphasis added).

(79) Domino's notes that the PFs do not include *any* analysis of what would happen to the sales of Deliveroo upon exit from the market.

(80) **Secondly**, the CMA's PFs omit the traditional SLC analysis that would seek to assess whether, absent any failing firm considerations, the Transaction would have been more likely than not to lead to an SLC.

(81) It is unclear what the specific circumstances of this case would be that would justify the absence altogether of any SLC analysis. It is equally unclear how the CMA can reach a view on whether exit by Deliveroo is a more anti-competitive counterfactual than the Transaction proceeding, if no SLC analysis has been undertaken in respect of the Transaction. The CMA does not conclude whether the Transaction would be more likely than not to result in an SLC nor the degree of such SLC, nor whether it could be remedied. It is therefore unclear how the CMA has been able to reach a robust view to the balance of probabilities standard on whether the Transaction proceeding unconditionally would be a better outcome for consumers, than not.

(82) All in all, the PFs dedicate only five paragraphs of a 65-page provisional decision to the assessment of the effects on competition of the Transaction[52].

3.3.2 The CMA's assessment

(83) Turning to the CMA's assessment, the CMA compared the impact of Deliveroo's exit with the impact of the Transaction proceeding unconditionally in the two markets identified at Phase 2 where the CMA found there was a realistic prospect of an SLC, namely:

- The market for online restaurant platforms in the UK; and
- The market for online convenience grocery delivery in the UK.

(84) In both cases, the CMA provisionally found that exit by Deliveroo would have a greater negative effect on competition than the Transaction proceeding – again, without any sales redistribution analysis nor any Transaction-specific stand-alone SLC analysis.

[51] Completed acquisition by Alliance Medical Group Limited of the assets of IBA Molecular UK Limited used to manufacture 18F-Fluorodeoxyglucose, 15 August 2014.

[52] Paragraphs 4.77, 4.78 and 4.79 of the PFs on the impact of the Transaction on online restaurant platforms in the UK, and paragraphs 4.87 and 4.88 of the PFs on the impact of the Transaction on online convenience grocery delivery in the UK.

(85) In respect of the market for online restaurant platforms in the UK, the CMA's PFs place particular focus on timing considerations and expected duration of the likely effects on competition. The PFs stress that exit by Deliveroo would have an "*immediate and substantial*"[53] negative impact on competition, whereas in a scenario where the Transaction was allowed to proceed, even if Amazon did decide to re-enter the market for online restaurant platforms in the UK, this would "*take time*":

> "*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.*"[54]

(86) Domino's is concerned that the CMA's assessment hinges on short-term considerations. The PFs do not assess:

(i) the **likelihood of Amazon re-entering the market** for online restaurant platforms in the UK absent the Transaction.

Domino's does not have access to the evidence that was made available to the CMA during its investigation. Nevertheless, Domino's notes that Amazon's internal documents, although heavily redacted in the PFs, suggest that Amazon's decision to close its restaurants business was linked to its decision to invest in Deliveroo:

> "*Although [redacted] indicated that they do not support the investment in Deliveroo, the documents cited by Amazon suggest that [redacted], had a different view. In addition, [redacted]. Amazon submitted that [redacted], and that this decision [redacted] Deliveroo demonstrates that [redacted] decided that Deliveroo [redacted]. However, following Amazon's decision [redacted] Deliveroo, and the recommendations of [redacted],* ***Amazon articulated the rationale discussed in paragraph 2.32 and decided to close the Amazon Restaurants business*** *[redacted]* ***it decided to invest in Deliveroo****.*
>
> *The potential strategic value of Deliveroo to Amazon is further supported by Amazon internal documents* ***where Amazon explored [redacted] before it decided to invest instead****. In one document, Amazon discusses [redacted]*"[55] (emphasis added).

As a result, it is at least plausible, if not likely, that Amazon would re-enter the market for online restaurant platforms in the UK should the Transaction not proceed.

(ii) the **timing for such re-entry**, beyond stating that it would "*take time*", nor

(iii) the likely **impact on competition** of such-re-entry.

(87) The CMA's approach in this respect appears contrary to the CMA's own guidelines on evidentiary standards relating to failing firm claims amidst COVID-19 which state that:

> "*It remains critical to preserve competition in markets through rigorous merger investigations in order to protect the interests of consumers* ***in the longer term****"*[56] (emphasis added).

[53] PFs, paragraph 4.75.

[54] PFs, paragraph 4.78.

[55] PFs, paragraphs 2.36 to 2.37.

[56] COVID-19 FFG.

(88) Furthermore, Domino's is concerned that the CMA's assessment of the impact that an exit by Deliveroo would have on competition is based on the speculative and unsubstantiated claim that Uber Eats and Just Eat would necessarily downgrade their offer. It is plausible that existing suppliers such as Uber Eats and Just Eat would likely be incentivised to maintain their offer at a competitive level to attract customers, rather than downgrading their offer. There is no evidence in the PFs to support the CMA's provisional finding in this respect.

(89) Domino's would therefore urge the CMA to look beyond the short-term and consider what lasting structural impacts the Transaction might have. In Domino's view, these medium to long-term impacts are substantial and detrimental to competition and consumers. They are summarised below.

3.3.3 Summary of Domino's competition concerns on the Transaction

(90) Domino's competition concerns on the Transaction can be summarised as follows:

- The Transaction will create strong ties between a big tech company and an early stage but important, aggressive, expanding and locally dominant player in the online food delivery market.
- The Transaction will allow the Parties to leverage Amazon's dominant ecosystem, by engaging in cross-selling and data collection/use/sharing. This would provide them with an unfair advantage against which small and independent businesses would struggle to compete.
- The Transaction will enable Deliveroo to continue its loss-making expansion strategy supported by Amazon's substantial financial reserves. In particular, the Transaction creates a material risk of Amazon and Deliveroo combining their last mile delivery infrastructure through the scale and geographical spread of their dominant delivery infrastructure, giving Amazon/Deliveroo an unfair cost per mile advantage. In the mid-term, this will result in driving small and independent food businesses out of the market – unless they agree to become captive members of the Deliveroo platform, thereby squeezing already thin profit margins.

(91) If allowed to proceed, the Transaction will have irreversible and damaging effects on competition. This cannot be a good outcome for UK businesses and consumers. These concerns are further detailed below.

(i) Preliminary remarks

(92) The Transaction is likely to have an adverse impact on competition for the reasons set out below.

(93) As the CMA has found, the Transaction presents a strategic opportunity for Amazon. This is reflected in the Parties' internal documents and acknowledged in the PFs' assessment of material influence:

- Amazon has deep knowledge and expertise in areas that are relevant to Deliveroo's operations. Amazon is described in the PFs as an expert in tech and logistics. It operates online platforms including logistic-enabled marketplaces, ultra-fast grocery delivery services, has well-established subscription services, business-to-business offerings, and has experience in geographic areas where Deliveroo is not present.
- Given its status and expertise, the PFs find that Amazon's position in Deliveroo is likely to increase the weight its views would have with both management and other

investors which is likely to give it the ability to materially influence Deliveroo's commercial strategy[57].

– It is clear that Amazon's special status, knowledge and expertise played a key role in the Parties' rationale for the Transaction which is not, unlike how it is portrayed by the Parties, only a question of funding. The PFs note:

> "*Numerous internal documents distinguish the role that Amazon will play as a [redacted],* ***distinct from the other shareholders*** *and highlight* ***the importance of having this type of investor****. For instance, one email from [redacted] comments as follows: 'We are excited about the Amzn financing. [redacted].*"[58]
>
> "*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).*"[59]
>
> "*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****.*"[60]
>
> (emphasis added)

(94) The exercise by Amazon of material influence over Deliveroo as a result of the Transaction will have significant adverse effects on competition and consumers, as Amazon's business model, considered predatory in many respects by some academics, will inevitably expand into the online food delivery sector. This has been left unaddressed by the CMA's PFs.

(ii) Strengthening of Amazon's ecosystem via leveraging strategies

(95) As Cremer et al (*Competition Policy for the Digital Era*) put it, a merger (even absent potential entry by one merging party into the other's market) can:

> *"… strengthen […] … the platform's (or ecosystem's) dominance, because the acquisition can: (i)* ***intensify the loyalty of those users that consider the new services as complements to services already offered by the platform/ecosystem****….*" (p. 11) (emphasis added)
>
> *and*
>
> *"[Acquirer may] "appropriate […]" the network effects that the target has managed to establish to the benefit of its own customers in such a way that, after the merger, they further strengthen the ecosystem as a whole.* ***Customers of the dominant ecosystem can be "leveraged" to the newly integrated service; customers of the target are integrated into the ecosystem;*** *and due to the stronger network externalities, all customers are less likely to leave the ecosystem afterwards.*" (p. 122) (emphasis added).

(96) These concerns were also relayed by the CMA itself in the terms of reference of its Digital Markets Taskforce:

> *"The unique characteristics of the technologies and processes that underpin these* [digital platform] *markets means* ***they can rapidly 'tip'*** *to become dominated by one or a small number of players.* ***Incumbents benefit from strong network effects***

[57] PFs, paragraph 3.43.

[58] PFs, paragraph 3.49 d).

[59] PFs, paragraph 3.72.

[60] PFs, paragraph 3.62.

which make ***users reluctant to switch****, and* ***strong economies of scale and scope*** *make it harder for disruptors to challenge incumbents*.

These characteristics have led to some digital platforms occupying a ***critical 'bottleneck' position****. This may inhibit innovation and the development of new services for consumers and businesses, result in higher prices, and make it harder for disruptors to challenge incumbents*."[61]

(97) This was also echoed by the CMA's CEO Andrea Coscelli:

"*SMS* [strategic market status] *companies may use acquisitions to eliminate potential competition or to* ***leverage their position into adjacent markets in an anti-competitive manner****. Small, nascent or potential competitors to particularly powerful companies (in both their own and adjacent markets) could be important sources of competition worth protecting*.[62]"

(98) As suggested by Cremer et al above, and by the CMA's own digital taskforce terms of reference, a merger such as the Transaction may result in Amazon appropriating the network effects that Deliveroo has managed to establish to the benefit of its own customers, thereby strengthening Amazon's already dominant ecosystem. Amazon customers would then be "leveraged" and Deliveroo's customers integrated into the ecosystem. The stronger network externalities would also further strengthen customers' loyalty to the ecosystem, rendering Amazon and Deliveroo unavoidable trading partners.

(99) In practical terms, Domino's is very concerned about any cross-selling opportunity between Amazon and Deliveroo that may arise following the Transaction. As the CMA notes in its PFs:

"*Amazon is a well-financed company, it has an established online consumer brand in the UK, and its [redacted] 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****.*"[63]

"*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).*"[64]

(emphasis added)

(100) For instance, each of Amazon and Deliveroo collect, process and use significant amounts of valuable customer information (e.g. customers' addresses, restaurant preferences, groceries preferences, other customer purchases on Amazon, etc.). There are numerous opportunities for cross-selling and/or data sharing that would result in an unfair competitive advantage:

– ***targeted advertising***: Amazon could advertise Deliveroo to its large online user base in a targeted fashion (based on user location or history with Amazon, and/or based on Deliveroo data) at no or low cost in a way that rivals such as Domino's and others could not compete. Even without Deliveroo data, Amazon has the ability to do

[61] Terms of reference of CMA's Digital Markets Taskforce, 1 March 2020.

[62] Speech by CMA CEO Andrea Coscelli at GCR Live: Telecoms, Media and Technology, 2 March 2020.

[63] PFs, paragraph 4.77.

[64] PFs, paragraph 3.72.

so and the Transaction gives it the incentive to also drive restaurant traffic to Deliveroo and away from independent restaurants and rival platforms.

– ***tying/bundling***: Beyond advertising, its material influence may create incentives to offer free delivery with Deliveroo orders for Amazon Prime or Amazon Fresh members, and/or tie and/or bundle Amazon Prime and Deliveroo Plus subscriptions. In time, Amazon could also offer online delivery of Whole Foods groceries at a preferred tariff via Deliveroo.

Domino's notes that the CMA concluded in Phase 1 that that there was insufficient incentive for the Parties to offer bundled products since the bundle would need to be offered at 'a deep discount' compared to the standalone subscriptions. However, Domino's considers that the long-term benefit derived by Amazon would likely be worth an initial deep discount.

(iii) A predatory strategy that leads to Amazon/Deliveroo becoming unavoidable trading partners

(101) Amazon is a deep pocket[65], big tech player: there are only a handful of companies in the world that have more cash on hand than Amazon's recently reported $49 billion[66]. Its business model has been to use its profitable businesses to prop up loss making international retail businesses and investments[67]. A number of academics have written on this topic and urged competition agencies to take action given that what may appear to be short-term competitive intensity is in fact a predation strategy which will hollow out existing competition leaving higher prices and poorer choice and quality as a result[68].

(102) Just as Amazon marketplace has become an essential route to market for e-commerce retailers, the same could become true of restaurant/grocery home delivery, with Amazon/Deliveroo controlling the gateway to consumers in the online food delivery sector.

(103) This concern, in relation to Amazon's marketplace, was already identified in the Furman report (*Unlocking Digital Competition*):

> "*Regardless of the view on dominance over a particular defined market, it is* ***clear that for thousands of smaller independent online sellers in particular, Amazon's marketplace is a strategically important gateway to consumers***". (paragraph 1.58)
>
> (emphasis added)

(104) In the context of UK online restaurant delivery these predation strategies could manifest in the following ways in practice.

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65 Domino's would stress that Amazon (as well as Deliveroo) does not pay UK tax in the way bricks and mortar businesses like Domino's do, nor do they face the same business rates nor do all of the restaurants they serve face the same licensing requirements as Domino's and its large base of small franchisees do. This results in a lack of level-playing field to the detriment of many UK businesses.

66 See https://ir.aboutamazon.com/news-release/news-release-details/2020/Amazoncom-Announces-First-Quarter/default.aspx, 30 April 2020.

67 See https://uk.reuters.com/article/uk-amazon-com-results/amazon-sees-possible-second-quarter-loss-as-it-forecasts-4-billion-in-covid-19-related-costs-idUKKBN22C3O4, 30 April 2020.

68 Lina Khan, Amazon's Antitrust Paradox, The Yale Law Journal, 2017. "Prime Predator: Amazon and the Rationale of Below Average Variable Cost Pricing Strategies Among Negative Cash Flow Firms", Shaoul Sussman, Journal of Antitrust Enforcement, Volume 7, July 2019.

Predatory strategy in delivery services logistics and fleet

(105) An Amazon-backed Deliveroo could subsidise the losses and/or high expense base of Deliveroo's logistics delivery service, forcing other market participants to compete in a way that drains their resources.

(106) With the increased traffic resulting from Amazon advertisement, customer data leveraging, and cross-selling strategy described above, Deliveroo/Amazon would be able to build a "last mile" delivery proposition that smaller players could not replicate even if they are highly efficient.

(107) In particular, Deliveroo's cloud kitchens, which currently tend to be located in industrial parks, could easily be relocated in Amazon's numerous local distribution centres spread across the country, from which Amazon (and/or Deliveroo) delivery drivers would deliver meals along with Amazon parcels. The expansion of Deliveroo's cloud kitchens model using Amazon's ultra-fast delivery infrastructure and delivery fleet would ultimately result in driving-out many small high street and/or secondary street operators in a post-COVID-19 world.

(108) Furthermore, Domino's and its franchisees are very concerned by the possibility that Amazon and Deliveroo may start combining their delivery fleets, or otherwise enter into a partnership to use each other's delivery fleet. As a result, competitors may find themselves having to rely on the Amazon/Deliveroo delivery fleet given its scale, with Amazon/Deliveroo seeking to exploit this competitive advantage by charging significant fees for the use of their fleet[69].

Predatory strategy with respect to local marketing and advertising costs

(109) Domino's franchisees typically contribute a material proportion of their sales ([redacted]) to support local store marketing efforts. This is in addition to a minimum fixed sum contribution that is spent upon opening of a new store.

(110) An Amazon-backed[70] Deliveroo entering parts of the UK where Deliveroo is not yet present[71] and injecting substantial funds in national and local marketing efforts would severely threaten the viability of these small businesses who will inevitably need to increase their local marketing spend beyond a level that may be sustainable for small UK businesses. The stronger the ties between the two online delivery giants, the more front-of-mind these brands become, and the more cash needs to be injected in local and national marketing efforts. Any operator not on the Amazon/Deliveroo platform will simply be unable to compete without greatly increasing its advertising spend.

(iv) Conclusion

(111) Domino's is very concerned that the predatory strategy described above, which seeks to leverage Amazon's dominant ecosystem mainly via its advertising, logistics infrastructure, and customer data reach, will succeed in tipping the logistics and delivery supply markets to restaurants to a partnered operation with Deliveroo.

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[69] From a labour market perspective, Domino's and its franchisees who own and operate their own delivery fleet (who benefit from full employment rights), may find themselves with no other choice than to use the Amazon/Deliveroo self-employed delivery fleet given its considerable scale. This could result in laying off employees who will progressively be replaced by 'gig economy' self-employed workers of the Amazon/Deliveroo network.

[70] In 2019, Amazon had over $280 billion in net sales (up 20% year on year) and over $14 billion in operating income.

[71] Deliveroo is currently mostly present in the London area, and therefore with Amazon's financial backing and expertise it is likely to obtain national coverage soon.

(112) As the CMA will be aware, the European Commission (and other competition agencies globally) is working on proposals to address competition authorities' ability to intervene before markets tip. Margrethe Vestager recently stated:

> "*in a **digital world, where size is often the key to success**, growing companies can quickly reach the point where the **market simply tips in their favour** – and **competition is lost forever***"[72].

(113) If the Transaction proceeds, restaurants are highly likely to face the same issue currently facing e-commerce merchants: as competing on the merits with Amazon/Deliveroo becomes unstainable, restaurants have no other choice than to become captive members of the Deliveroo platform. Established competitors such as Just Eat and Uber Eats would also likely struggle with the tipping effect of such a market to Amazon/Deliveroo.

(114) The cost[73] of participating in an Amazon/Deliveroo dominant platform is likely to substantially decimate the margins of QSR[74] businesses[75], potentially restricting their ability to market themselves. This applies to a large proportion of the QSR industry, including independents and QSR franchisees.

(115) Once the dominant Amazon ecosystem expands into the online food delivery sector, and once it controls, together with Deliveroo, an essential route to market, as is the case for online retail, nothing would prevent the Parties from raising commissions for partners and deteriorating quality to customers in the future.

(116) This is not a good outcome for UK consumers. Domino's urges the CMA to take account of the likely longer-term effects of allowing this Transaction to proceed. In a digital merger investigation such as this one, the importance of considering a dynamic counterfactual, as CMA CEO Andrea Coscelli put it, "*considering not only what would have happened absent the merger occurring based on the current state of competition, but also based on how the market is likely to evolve*"[76], cannot be overstated.

3.4 Overall conclusion on the CMA's provisional assessment of the Parties' failing firm claim

(117) Domino's respectfully requests the CMA to reconsider its PFs given the flaws and failings identified above. Domino's would also respectfully request that the CMA resume its substantive assessment of the prospects of the Transaction giving rise to an SLC, and if so, whether it can be remedied, prevented or mitigated. Domino's view and that of its franchisees, a great many of which are very small businesses, is that the Transaction is likely to result in an SLC and sets out possible remedial action for the CMA to consider.

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72 *Keeping the EU competitive in a green and digital world*, speech by Margrethe Vestager, College of Europe, Bruges, 2 March 2020.

73 [redacted].

74 Quick service restaurants.

75 See: https://www.bristolpost.co.uk/whats-on/food-drink/restaurants-stop-deliveroo-cut-takeaway-4031306 - 9 April 2020; https://www.theguardian.com/world/2020/apr/03/delivery-app-restaurants-coronavirus-california - 3 April 2020.

76 *Competition in the digital age: reflecting on digital merger investigations*, speech by CMA CEO Andrea Coscelli to the OECD/G7 conference on competition and the digital economy, 3 June 2019.

4 REMEDIAL ACTION TO REMEDY, MITIGATE OR PREVENT LIKELY (CURRENT OR FUTURE) SLC

(118) As set out above, the CMA's provisional assessment of the Parties' failing firm claim fails to meet the tests it has set itself, lacks a sound evidential basis and falls far short of satisfying the high evidentiary burden that has previously applied to failing firm claims. Furthermore, Domino's and its franchisees' serious concerns on the Transaction remain unaddressed.

(119) Domino's urges the CMA to:

(i) reconsider the Parties' failing firm claim and find that the conditions for satisfying this test are not met.

The appropriate counterfactual against which the Transaction should be assessed is a situation where Deliveroo is in financial difficulty but nevertheless manages to secure other sources of funding, or alternatively, where Deliveroo is indeed failing, but that is at least in part due to the merger-specific effects of it deciding to proceed with the Transaction in May 2019, for which the CMA, nor consumers, can be held responsible.

Should the CMA find that limb 1 of the failing firm test is met, and that there is an imminent insolvency risk of Deliveroo, Domino's suggests the CMA permit a reversible injection of funds by Amazon via a derogation to the IEO so as not to prejudice its SLC and remedial inquiries.

and

(ii) resume its assessment of whether the Transaction is likely to give rise to an SLC. In Domino's view, the Transaction should not be allowed to proceed for the reasons set out above and in its previous submissions.

(120) <u>In the alternative</u>, Domino's respectfully requests that the CMA:

(i) reconsider the Parties' failing firm claim and find that the conditions for satisfying this test are not met (as above)

but that

(ii) the Transaction may be allowed to proceed if it is made conditional on certain robust remedies being implemented in order to remedy, mitigate or mitigate the likely substantial lessening of competition that would arise from the Transaction.

(121) Such remedies would envisage commitments from the Parties (or assurances given to the CMA) that Amazon / Deliveroo may not, without prior notification to and clearance by the CMA:

– Directly or indirectly increase Amazon's equity stake in Deliveroo[77];

– Directly or indirectly provide any additional funding (whether debt or otherwise) to Deliveroo;

[77] See *BskyB/ITV* of November 2006 where BSkyB was not only required to divest its shares to below 7.5% (from the original 17.9% stake), but was also barred from directly or indirectly, holding, acquiring or re-acquiring any interest in the shares of ITV plc, other than a holding of less than 7.5%. See also *Ryanair / Aer Lingus* where the Competition Commission ordered that Ryanair reduced its shareholding in Aer Lingus to 5% (from 29.82%) of Aer Lingus's issued ordinary shares and not to acquire further shares in Aer Lingus.

- Provide Amazon with further shareholder rights in Deliveroo;
- Seek or accept appointment of additional Amazon directors to the Board of Deliveroo[78];
- Enter into any future commercial partnerships other than on arm's length terms including any relating to the Parties' logistics capability and infrastructure, including driver fleet;
- Collect, use or share data (either in raw or processed form) collected from the other party's customers and/or B2B partners; or
- Engage in cross-selling of Amazon / Deliveroo products (including tying and/or bundling).

(122) Finally, should the CMA's PFs become final and, despite Domino's submissions, the Transaction be cleared on failing firm grounds, Domino's expects the CMA to be alive to the real prospect of Amazon increasing its stake and/or its rights in Deliveroo, entering into tying and/or bundling arrangements with Deliveroo, or new arrangements described above. Accordingly, Domino's assumes the CMA is alive to the need to closely monitor the position both from a Chapter 1 CA 98 perspective and from the point of view of a new reviewable relevant merger situation being created.

[78] See *Ryanair / Aer Lingus* where the Competition Commission imposed an obligation on Ryanair not to seek or accept board representation in Aer Lingus.

Annex 1: Testimonials from Domino's Franchisees

This annex contains a number of testimonials obtained from Domino's franchisees on 6 May 2020 expressing the serious concerns they have on the Transaction. Testimonials were received from over half of the Domino's franchisees and below is an extract of the key concerns expressed by them:

No.	Testimonial	Franchisee No. of stores operated
1.	"***Amazon is already so big*** *that even the other aggregators are struggling to compete*" "*They are* ***not dependent on the success of their business to grow****. They will* ***pay as much as is necessary*** *to their drivers and the principal objective is to monopolise the entire delivery business and put it under the Amazon umbrella. Their* ***unlimited financial resources*** *will determine the market place not the quality of the service provided*."	[redacted]
2.	"*They have* ***big budget****. They* ***can spend billions before breaking even****.*"	[redacted]
3.	"*It is a great concern that a* ***large organization might subsidise a smaller loss-making business****. This does not allow for a level playing field*."	[redacted]
4.	"*I'm sure* ***Amazon can afford to support loss making businesses*** *if it strategically helps them overall. This would prove disastrous to all SME's in the food delivery sector*"	[redacted]
5.	"*New food operating businesses will find it harder to go beyond the concept stage as the* ***Deliveroo model will become a necessary evil*** *in order to compete in the market resulting in less innovation, reduced entrepreneurial creation, investment in the industry and overall above living wage job creation.*" "*Deliveroo will have the ability to* ***continue running a loss-making enterprise in order to drive out competing businesses giving Amazon further scope to monopolise the industry****. This would corner the food delivery industry meaning* ***they become part of the Amazon/Deliveroo model or die****.*"	[redacted]
6.	"***Unfair advantage when a global giant comes in and subsidises a loss-making model***"	[redacted]

No.	Testimonial	Franchisee No. of stores operated
7.	"*Amazon have a* ***huge delivery network****, which* ***combined with Deliveroo's****, could lead to a significant* ***unfair advantage*** *on delivering food in the UK. Smaller operators will not stand a chance and could be forced to close down, leading ultimately to a monopoly for Amazon.*"	[redacted]
8.	"*I certainly do not have anyone providing me with any subsidies to keep me operating, I have to find the reserves and innovation within my own company. This gives businesses with less ability an unfair advantage. In a normal environment they would not be able to survive.*"	[redacted]
9.	"***Below cost selling and dominant advertising spend*** *from future revenues or parent co. loans [would lead to a]* ***squeeze on smaller operators***".	[redacted]
10.	"*No chances for existing small companies to continue or start trading for new*" "*This means that every single small or medium size business should obey or join the amzon [sic] […] join them or end up competing with them which is impossible*"	[redacted]
11.	"*By* ***combining customer data*** *across its entire home delivery platform and relaying this data to Deliveroo,* ***Amazon create one-company-that-delivers-you-everything model*** *and* ***combined logistics, technology and market spend*** *will drive independent singular offering brands such as Domino's out of the market. As a limited company operating as a Domino's Pizza in a handful of UK towns and cities how can we possibly compete against "the largest company in the world"? Which if Deliveroo are backed by Amazon is what we will be facing which offers a serious and worrying threat to our business and workforce."*	[redacted]
12.	"*One of the biggest concerns we've got is* ***Amazon's unparalleled customer database and behaviour analysis****. They will undoubtedly use that data to target consumers via Deliveroo. With Amazon's unlimited resources and smart technology increasing day by day, their marketing will become a whole different ball game and Deliveroo will gain an unfair advantage in the market*." "*Furthermore, we are* ***extremely concerned*** *about* ***Amazon's financial resources****, as we believe this transaction opens up the pathway for further cash injections, and* ***they will end up buying in even more shares****. Access to Amazon's unique kind of resources will further uneven the playing field, monopolising the takeaway and food delivery business*."	[redacted]

No.	Testimonial	Franchisee No. of stores operated
13.	"*They will be able to **run the business at a loss** due to Amazon's reserves and **wait for the competition to fold**. From that point **prices will go up for their customers** as they will have full control of the market*"	[redacted]
14.	"*This will mean that two of the largest on-line platforms for home delivery food will be under common control and that **Amazon's vast data pool and financial resources will be deployed** to create a situation in which **all operators in the sector will ultimately be forced to use that platform**.*" "*The combined infrastructure and delivery capability/capacity of Amazon/Deliveroo will provide it with a huge competitive advantage over other operators (especially in the last mile) which, again, will compel operators to use Amazon/Deliveroo. This will erode profit margins to such an extent that many operators will cease to be viable and will damage competition in the long run.*"	[redacted]
15.	"*Amazon's strategy is to **crush competition by extremely aggressive tactics and predatory pricing**. They can – and do - afford to run businesses at a loss until there is no competition left. They will do the same in an attempt to make them the only online food / grocery delivery business in the market. Putting aside what this could do to our business, if there is no competition then **every other restaurant / fast food operator / small grocery store etc will have no option but to use Amazo**n who will be able to charge their "customers" whatever they like as they will be dependent on them with no other supplier to turn to. At this stage either the retailers will have to increase charges to the end customers or Amazon can if they wish. The costs for an alternative supplier would be prohibitive to even contemplate going up against Amazon who at this stage would own the monopoly on this service.*" "*Additionally **I'm sure Amazon will use their warehouses as "dark kitchens" as Deliveroo does just now**".*	[redacted]
16.	"*They are using predatory pricing to rapidly conquer a market by supplying services below cost, thereby rapidly conquering a commanding position, to the long-term detriment of consumers and restaurants alike. As a result they rack up large losses, and need the Amazon investment. That investment – rather than keeping choice, as the ruling suggests – in fact facilitates predatory pricing to not only continue, but to be enhanced. The fact that they obtain everyone's data this way will cement their position against future market entries.*"	[redacted]
17.	"***Global behemoth with practically unlimited reserves prepared to operate at a loss for years whilst subsidising its unprofitable business at the expense of local businesses**. In the long run it **will erode competitio**n and **local enterprises will close**.*"	[redacted]