Deliveroo's response to the New Competition Tool consultation

Summary

1. We welcome the opportunity to respond to the EU's consultation on the New Competition Tool. It is important that technology and the regulatory landscape within the European Union continue to drive innovation and improved outcomes for consumers, businesses and citizens alike. We agree it is important to ensure "fair and undistorted competition in the internal market," as the NCT Roadmap sets out.

2. However, the online food delivery market is highly competitive and the risks to competition the European Commission (EC) are concerned with do not arise in this sector. Increased regulation of this sector would make it less dynamic because players are likely to refrain from competing and innovating if new regulation makes it too difficult to do so. This would result in a negative impact on competition.

3. Any legislative changes the EC chooses to implement need to protect the high levels of competition and innovation that exist in the online food delivery sector.

4. It is essential the EC develops clear standards setting out when it will launch an NCT study and detailing when intervention would be justified.

5. We have serious concerns around the NCT proposal where it would enable the EC to be able to intervene and impose remedies before any infringement of competition rules actually occurs. If the EC is intent on pursuing the introduction of an NCT there are some key considerations we would highlight. These include the need for clear criteria around what would be required to trigger an investigation under the NCT and a set of guidelines for any application of remedies or enforcement action.

6. This paper will cover the following:
    *   an introduction to Deliveroo;
    *   an overview of the online food delivery sector;
    *   challenges faced during COVID-19;
    *   limited network effects in online food delivery sector;
    *   economies of scale;
    *   deliveroo's inability to leverage data to scale;
    *   multihoming; and
    *   proposed approaches and key considerations when determining remedies and defining 'gatekeepers'.

Introduction to Deliveroo

7. Deliveroo was founded in 2013 in London and today works with thousands of restaurants and riders across the world to deliver millions of meals. Deliveroo employs over 2,000 people across the world. We work with over 60,000

self-employed riders and 100,000 restaurants across over 500 towns and cities globally. As of 2019, 59,000 additional jobs have been created by Deliveroo in the restaurant sectors in the markets in which we operate. We operate across 12 markets globally, of which 6 are in the EU: France, Spain, Italy, Belgium, the Netherlands and Ireland.

8.   We work with independent, self-employed riders who have the freedom to choose if, when, where and for how long they work, who are free to reject deliveries offered to them, work with several businesses at once, and appoint substitutes to conduct services on their behalf.

9.   Having the freedom to choose when and where you work, cancel or finish at any point is ideally suited to people who have other commitments; for example a student who wants to change their plans on a weekly basis depending on their coursework, or someone who wants to make some top-up income for a few weeks to save up for a special occasion.

10. For our restaurant partners, we provide an opportunity to reach new customers, increase revenues and improve profitability. A major study by Capital Economics, an independent economic consultancy, revealed in 2019 the significant benefits Deliveroo brings to the restaurant industry in Europe. The study shows that, as of 2019, Deliveroo supported the generation of €2.25bn in revenue in the European economy, which has helped to create over 46,000 additional jobs in the European restaurant sector.

Recent challenges faced through COVID-19 outbreak.

11. The restaurant sector has been one of the hardest hit during the recent outbreak of COVID-19. While Deliveroo has been a valuable service for the restaurant sector in normal times, it has become an even more important service for restaurants and customers alike in recent months.

12. During the COVID-19 crisis, platforms like Deliveroo have been a lifeline for restaurants in Europe, with delivery becoming the only source of income for the industry during the national lockdowns. Thanks to Deliveroo, restaurants have reached customers they would not otherwise have reached and as a result, our partners have been able to keep a certain degree of economic activity to maintain jobs and to avoid closure.

13. The crisis has also highlighted the symbiotic relationship between Deliveroo and the restaurants on our platform. At the height of the crisis, many restaurants chose to close entirely, which had a significant negative impact on the selection of restaurants available to customers and, as a direct consequence, saw a reduction in the sales made over our platform. We want our restaurant partners to succeed, which was underlined by the actions we took during the outbreak and associated lockdowns.

14. To help restaurants struggling with cash flow, we brought forward the normal payment cycle so that restaurants could receive their payments on a daily/weekly basis. To ensure restaurant staff were protected during the crisis, and to give consumers confidence that delivery is safe, we initiated contactless delivery handovers with riders to minimise the risk of contagion. We invested in marketing campaigns, aimed at boosting customer sales for local, independent restaurants and we introduced a new feature in our app allowing consumers to round up their order and provide tips which go directly to restaurants. We also invested in new tools to enable customers to return to restaurants for dine-in, when regulations allowed.

15. Just as we take our responsibilities to restaurant partners seriously, so we take our responsibilities to the self-employed riders who work with us seriously as well. All our riders are covered by accident and injury insurance. We also took steps to protect riders during the COVID-19 outbreak. As mentioned above, we quickly initiated a new contactless delivery process to minimise interaction between riders, restaurant staff and customers. We set up a Rider Hardship Fund, ensuring riders had access to financial support if they were ill through Covid or were forced to self-isolate by a medical authority. We have also sent regular communications to riders, advising them on the latest government information and advice to keep safe, and distributed masks and sanitiser.

16. For consumers too, Deliveroo has played an important social role since its creation, which has been strengthened during the crisis, bringing food to vulnerable and isolated people in their homes, initiating campaigns and donations to hospital staff and those in need. Deliveroo has also adapted its offer and its operations to cater for changing consumer needs during the crisis, making sure the highest levels of safety were adhered to and by ensuring essential foods were available, for example by starting to work with supermarkets to ensure food could be delivered to those who were self-isolating.

The online food delivery sector

17. The online food delivery sector is highly competitive. As a result it does not give rise to the risks to competition the EC is concerned with.

<u>Limited economies of scale advantages</u>

18. There are inherent limitations in the food delivery logistics model which significantly inhibits Deliveroo from scaling quickly at low cost. This means that scaling up involves taking on more costs - and so there are limited scale efficiencies that could disadvantage smaller players. These limitations can be summarised as follows:
    ● **Inherent Costs:** Deliveroo scales by increasing orders, increasing restaurant selection and having a rider network that can fulfil all orders, whilst taking into account the nuances of each geographical location. Deliveroo has to spend money to achieve scale in each of the markets in which it operates. This is in contrast to other online market players where there are zero marginal costs to scaling (e.g. Facebook acquiring new users).

- **Efficiencies are Capped:** There is a ceiling as to how efficient Deliveroo's rider network can become through scale.This is because Deliveroo delivers highly perishable food meaning it must be delivered to customers quickly (i.e. under 30 minutes) to retain its quality. Further, there are only so many orders a rider can physically deliver within any given hour. This feature of Deliveroo's point to point logistics model prevents Deliveroo from (for example) holding back cooked orders to collate them for delivery in either a single bulk drop or multiple drops via a more efficient route. This is in contrast to the efficiencies that can be achieved through scale by other online market players who operate a travelling salesman model.

Limited network effects

19. Unlike some other online platforms, food delivery platforms' ability to benefit from network effects are limited by the physical nature of the service we offer. The distinction between different platforms' business models needs to be considered when determining policy in this area. At Deliveroo, we aim to deliver food within 30 minutes of ordering. This means our operation is necessarily local - we will only ever display a limited number of restaurants to a limited number of customers within an approximate 30 minute delivery time radius. This means any potential benefit from network effects will always be capped.

20. Having lots of restaurants in Paris, for example, will not attract a customer in Madrid to place a purchase over our platform. Even within a country, the same holds true. The availability of riders in Milan will not help to deliver a customer's order on time in Rome. Similarly, riders will not be incentivised to log into the app in Rome if there is a surge in orders and higher delivery fees offered in Milan.

21. We cannot benefit from large network effects in the way platforms will be able to when the service is not physical (e.g. services provided solely over the internet, like Facebook and Google), or where the delivery of an item sold over a platform is not time sensitive (e.g. Amazon, where goods can be shipped over a much longer delivery time than 30 minutes).

Limited ability to scale data advantages

22. Deliveroo's business is to deliver food from point A to point B quickly, while giving customers accurate estimates of delivery times upon which they can rely when determining the restaurant from which they wish to order. We must dispatch riders to deliver orders in the most efficient manner possible, factoring in:

    A. How long the food will take to be prepared by the restaurant;
    B. The rider's location (which is constantly changing) and mode of transport;
    C. The rider's likelihood of accepting an order (self employed riders are free to accept/reject orders when they like);

D. The distance and likely route between the rider and the restaurant, and therefore the likely travel time;[1]

E. The likely wait time at the restaurant (which will vary by restaurant, time of day, day of the week, etc.);

F. The distance and likely route between the restaurant and the customer (and also whether the customer is in a house or a block of flats, which will affect delivery times); and

G. All the other live and predicted orders in the system, i.e. what might be most efficient for one order will not be most efficient when all orders are considered together. Solving the operational challenge of delivering food from one point to another is hard enough for one order, but determining what is best for all orders introduces a <u>high</u> degree of complexity.

23. Our algorithm will calculate all the above, but will produce varying estimations which will differ from country to country depending on (for example); the infrastructure of a city (roads, buildings), weather, preferred vehicle types and traffic; local laws and the prevalence of multi-apping amongst riders; the relative split between take-away and dine-in orders for restaurants; and the prevalent cuisine types and associated food preparation time in different markets. Usable insights from the data are not easily transferable between countries and it is therefore difficult for Deliveroo to leverage such data to launch, scale and improve its operations in other countries.

<u>Several strong players in each market</u>

24. As we strive to provide a better service we innovate on all three sides of the marketplace to compete against other companies in our sector. This competition ensures that all sides of the marketplace are provided with an ever improving service level. In all the European markets in which we operate, we face fierce competition from at least 2 other players:

UK: Just Eat, Uber Eats
IE: Just Eat, Uber Eats
FR: Just Eat, Uber Eats
ES: Just Eat, Uber Eats, Glovo
IT: Just Eat, Uber Eats, Glovo
BE: Takeaway.com, Uber Eats
NL: Takeaway.com, Uber Eats

25. There are also smaller players in each of the European markets in which we operate, eg. Foodhub, Easyfood and Tastecard (launching in September 2020) in the UK.

<u>Widespread multihoming</u>

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[1] Deliveroo even factors in the length of the street when determining the likely travel time between the rider and the restaurant and between the restaurant and customer (with bikes being quicker than scooters where the streets are shorter in length).

26. The barriers to switching service provider in the food delivery industry are very low. This encourages multi-homing amongst all three sides of our marketplace; customers, restaurants and riders.

27. **Customers** will use multiple apps simultaneously, typically driven by which app has a customer's favourite restaurant In 2019, 47% of consumers on Deliveroo also used UberEats, and 42% also used Just Eat[2]. The effort required to download a new app is minimal, there are no costs associated with downloading an additional food delivery app, and the benefits of customer loyalty (i.e. ordering from the same app repeatedly) are minimal too. This demonstrates the absence of any consumer lock-in effects which when present, as the NCT Roadmap suggests, are often associated with a gatekeeper position and are a typical characteristic of structural competition problems. But because customers can easily switch between service providers, all food delivery platforms are forced to constantly compete on price, service levels (i.e. providing accurate delivery times, ensuring food is delivered as quickly as possible and arrives hot), and selection of restaurants.

28. **Restaurants** often work with multiple online food delivery players and many refuse to list exclusively with one platform[3]. This preference to multi-home demonstrates the absence of any lock-in effect which, as cited in the NCT Roadmap, when present is often associated with structural competition problems.

29. While restaurants have always listed on multiple platforms, we saw an increase in this trend during the COVID-19, with restaurants ending exclusivity arrangements and choosing instead to maximise the number of platforms on which they listed in order to increase the number of customers they were able to reach. This trend is likely to increase as the sector continues to recover from the recent difficulties faced during the pandemic.

30. **Riders** who work with Deliveroo are all self-employed contractors. The same is true of those who work with most online delivery platforms within the EU. Because they are self-employed, riders are free to work with multiple businesses at the same time. This could be different types of courier service companies as well as other online food delivery companies. As the contract makes clear, 'throughout the term of [the] Agreement [riders] are free to work for any other party including competitors of Deliveroo'. Riders are also entirely free to reject deliveries which are offered to them. Many riders will be logged into multiple platforms simultaneously, meaning we must ensure we offer an attractive fee to riders. If we do not, they are likely to accept a more attractive offer from one of our competitors. Again, barriers to multi-homing for this side of the marketplace are incredibly low.

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[2] Source: AppAnnie

[3] Third party reports, like "The Sift Report 2020" largely corroborate these figures. On Page 18, for example, it states of "More brands are increasing the number of platforms they use also, with two fifths that offer delivery now partnering with more than one third-party delivery operator".

31.   Deliveroo not only competes with other online food delivery platforms, but also vertically integrated chains, who take orders directly from customers, and directly over a restaurant's own website (often for collection as opposed to delivery). Because of multi-homing, and the fact that many restaurants can sell directly to customers who live locally themselves, Deliveroo and others in the area have to compete vigorously to offer the best proposition. We do not have gatekeeper power because these restaurants and take-away outlets have always traditionally served customers who live locally and can continue to do so and forego online sales if they believe the benefits are insufficient and they are not being offered competitive and fair commercial terms.

32.   Multi-homing is common, easy and there are no barriers whatsoever preventing customers, restaurants or riders switching between platforms. This means Deliveroo must compete vigorously to offer the best proposition to customers, restaurants and riders.

<u>Highly competitive sector</u>

33.   The EC is concerned with tackling structural competition problems which, as it sets out, can result in inefficient market outcomes like higher prices, lower quality, less choice and innovation. However, not every platform market is susceptible to the kind of competition concerns the EC is focused on. As demonstrated above, the online food delivery sector is highly competitive and these characteristics do not arise.

34.   Online food delivery platforms have:
        (i) limited economies of scale advantages;
        (ii) limited network effects;
        (iii) limited ability to scale data advantages;
        (iv) several strong players in each market and
        (v) widespread multihoming.

35.   The COVID-19 crisis has emphasised how important each side of our three-sided marketplace is to the success of the other, and ultimately to Deliveroo. But this is a reality which has always been self-evident to us. For Deliveroo to succeed, we need to attract and retain customers, restaurants and riders. We face significant competition on each side of our marketplace, which forces us to constantly innovate and improve our offering to each group. We know each side of the marketplace cares about different things:

      ● **Customers** care about price, service and selection.
      ● **Restaurants** care about sales, margins and forming a partnership with Deliveroo via B2B tools.
      ● **Riders** care about pay, flexibility and benefits.

36.   As a result of all of the above, the online food delivery sector does not suffer from the types of anti-competitive behaviour and/or unfair trading practises which may exist in

other digital sectors. The variation in levels of competition between different industries and sectors demonstrates that not all digital markets require additional regulation.

37.   The EC proposes to use the NCT to address a) structural risks for competition and b) a structural lack of competition. The characteristics associated with a) structural risks for competition such as extreme economies of scale, strong network effects and data dependency do not apply to the online restaurant food delivery sector. In addition, the characteristics associated with b) a structural lack of competition such as high concentration and entry barriers, consumer lock in and data accumulation do not apply to our sector.

Key considerations for the European Commission

<u>Any intervention and possible remedies must be proportionate, targeted and precise</u>

38.   Regulation should be applied where necessary to solve a problem, but should not be used where there is no problem to solve. The NCT would allow the EC to intervene and impose remedies before any infringement of competition rules actually occurs. This raises serious concern. The need for proportional action cannot be overstated. We believe proposed intervention and remedies should focus on addressing actual distortion of competition based on evidence rather than theoretical and speculative risks to competition. Intervening in already competitive markets like the online food delivery sector would risk dampening competition and slowing innovation, to the detriment of consumers, restaurants and riders. We strongly believe intervention must protect and strengthen competition and that enforcement action should be limited to businesses which are clearly undermining competition and unfairly treating users of their platform.

39.   In order for the NCT to be a legitimate and effective mechanism it will be necessary to outline when the use of the tool would be appropriate and why the application of existing competition law or an inquiry would not be sufficient. It is important that if new powers are taken, these are well-targeted and used proportionately, only where there are genuinely new problems which cannot be fixed through existing provisions. We believe the rules need to be as tightly defined as possible to prevent an overreach of intervention in instances where there are either no harms which need addressing or where existing powers could be used instead.

40.   Enforcement powers that regulatory agencies have should be accompanied by a set of criteria and guidelines required to trigger an investigation under the NCT and any application of remedies or enforcement action. In addition, the EC will need to define who may trigger intervention under the NCT. These guidelines should outline how the EC will decide which remedies are appropriate and proportionate in different scenarios.

41.   In addition, there should be clear and transparent safeguarding measures in place to protect stakeholders, maintain and ensure due process is followed through appropriate checks and balances, and to ensure the rights of defence. The NCT should facilitate companies to submit voluntary commitments at an early stage if they desire. Given the potential powers to impose remedies and restructure markets, it is important to have strong Court oversight for this process, enabled via swift access to the European Courts.

42.   The EC's NCT Roadmap states that the NCT proposal is complementary to the EC's new initiative on platform-specific ex-ante regulation. Given the significant chance of overlap between these two mechanisms it is essential that the EC explains how both tools will operate alongside each other.

Gatekeepers

43.   The EC's NCT Roadmap sets out the framework of the structural competition problems it is seeking to tackle in the context of the development of "gatekeepers." The Roadmap says, "The ensuing risks for competition can arise through the creation of powerful market players with an entrenched market and/or gatekeeper position, the emergence of which could be prevented by early intervention." We note that the EC's parallel piece of work, on ex ante regulations, directly addresses the development of so called "gatekeepers" and sets out a range of possible options to regulate large online platforms benefitting from significant network effects and acting as gate-keepers.

44.   Deliveroo is focused on being a specialist food company. We believe businesses which focus on specific markets, and which do not leverage data from one market to develop business in other markets, and which do not in turn bundle these services together to form a proposition which customers or businesses would then find it difficult to disentangle themselves, should not be considered 'gatekeepers' for the purposes of the NCT and ex ante regulations. This is particularly true where the market in which they operate is so competitive that no single business would be able to dictate the commercial terms offered to businesses, nor institute unfair or damaging practices without businesses choosing to take their services elsewhere.

45.   The data we hold cannot be leveraged easily in different countries as it is very specific to the locality. It would be even more difficult for us to leverage this data to develop activity in an adjacent market.

46.   Deliveroo clearly does not have a dominant position in the markets in which it operates given the highly competitive nature of the sector. Our concern, therefore, is that in looking to extend its definition of dominance to a looser 'gatekeeper' definition, the EC may inadvertently capture platforms which are not dominant and which operate in highly competitive markets. The work to encompass a definition of gatekeeper is centered on the ex ante proposals. But inevitably the impact of any ex

ante regulations will have a direct impact on the application of any potential NCT regulations, hence our desire to reiterate here that Deliveroo is not a gatekeeper.

47. We believe the EC needs to carefully assess whether consumer and business choice is limited in a market, either because one single business is significantly larger than all others, or because the barriers to switching services and/or multi-homing are high. Again, this is clearly not a situation which users of Deliveroo's service find.

48. We believe in defining the characteristics of a gatekeeper, the EC should consider whether the business:
   ○ Has a dominant position in at least one sector
   ○ Is able to maintain its dominant position because barriers to multi-homing and switching service provider are high
   ○ Utilises its dominant position in one market, and the data gathered in the process of establishing its dominance, to move into adjacent markets.

Conclusion

49. The online food delivery market is highly competitive and the risks to competition the EC are concerned with do not arise in this sector. Increased regulation of this sector would make it less dynamic because players are likely to refrain from competing and innovating if new regulation makes it too difficult to do so. This would result in a negative impact on competition.

50. The example of the online food delivery sector demonstrates that not all online markets are likely to need the type of intervention being proposed through the NCT.

51. It is essential the EC develops clear standards setting out when it will launch an NCT study and detailing when intervention would be justified.

[ENDS]