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# Merger control in the food industry: what will e-commerce change?

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EUI Florence Competition Programme  
and Assonime

Roundtable Discussion on Innovation  
and Market Power in the Food Supply  
Chain: Challenges for Competition  
Policy and Regulation

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# Overview

## Introduction

- different business models in the retail food industry: new challenges in merger assessment
- recent cases in the groceries and food delivery sectors

## Part I Market definition

- geographic considerations
- interaction between e-commerce and brick-and-mortar
- increased relevance of two-sided platforms and their impact

## Part II Assessment of market power

- future-proof methods
- coordinated effects

## Part III Remedies

## Conclusions

## Further reading



# Introduction

## Different business models in the retail food industry: new challenges in merger assessment

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**Growth of  
convenience  
stores**



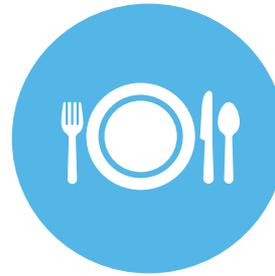
importance of  
geographic  
location  
(catchment area  
analysis)

**Online channels  
and hybrids**



unclear degree of  
substitutability  
between online and  
brick-and-mortar

**Pre-prepared**



relevance of  
two-sided markets.  
Competition with  
brick-and-mortar  
supermarkets for  
ready meals?

**Hyper-fast  
deliveries**



closer competition  
between online  
players and  
convenience stores?

**These considerations will be discussed in more detail in the rest of the presentation**

# Recent cases in the grocery and food delivery sectors

Amazon/  
Wholefoods  
Cleared  
USA, FTC  
June–August  
2017

Amazon/  
Deliveroo  
Ongoing  
UK, CMA  
July 2019–

Just Eat/  
takeaway.com  
Ongoing  
August 2019–

Just Eat/  
Hungryhouse  
Cleared  
UK, CMA  
March–December  
2017

ASDA/  
Sainsbury's  
Blocked  
UK, CMA  
May 2018–  
April 2019

- relevant market included food ordering marketplaces (e.g. the Parties) and services of ordering and logistics (e.g. Deliveroo, UberEATS, Amazon Restaurants) specialists
- vertically integrated food chains do not directly constrain the Parties

- online delivered groceries excluded from product market definition (only 0–5% of survey respondents would divert online)
- however, constraint considered within the competitive assessment

**Other merger cases that have been reviewed:**  
NBTY/Julian Graves 2009  
Tesco/Booker, 2017  
Coop/Nisa, 2018  
Henderson/McColl 2018

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# **Part I**

## **Market definition**

# Geographic considerations

## The case of grocery stores

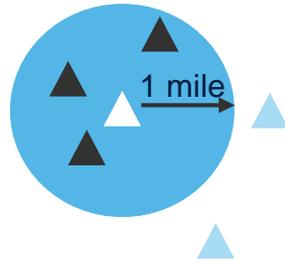
### Brick-and-mortar



Dimensions of variation:

- prices, quality, range, services
- by: geography, store type, consumer, shopping mission

Competition at the local level, as consumers prefer closer stores



e.g. ASDA/Sainsbury's: catchment areas of 1 mile for convenience stores

### Online channel / hybrids

One would expect markets to be less localised. However:

- potential local variation in:
  - delivery fees and speed
  - length and availability of delivery slots
- some areas may not be covered:
  - e.g. ASDA/Sainsbury's—Ocado does not deliver to some areas
- potential personalised pricing

# Interaction between e-commerce and brick-and-mortar

## Supermarkets example

### In the food industry

- online and offline have not yet been considered close enough substitutes to be defined in the same market
- is this still appropriate?



would some mergers that were blocked (or required divestments) have been cleared (cleared with fewer remedies) if growth by online players had been considered?

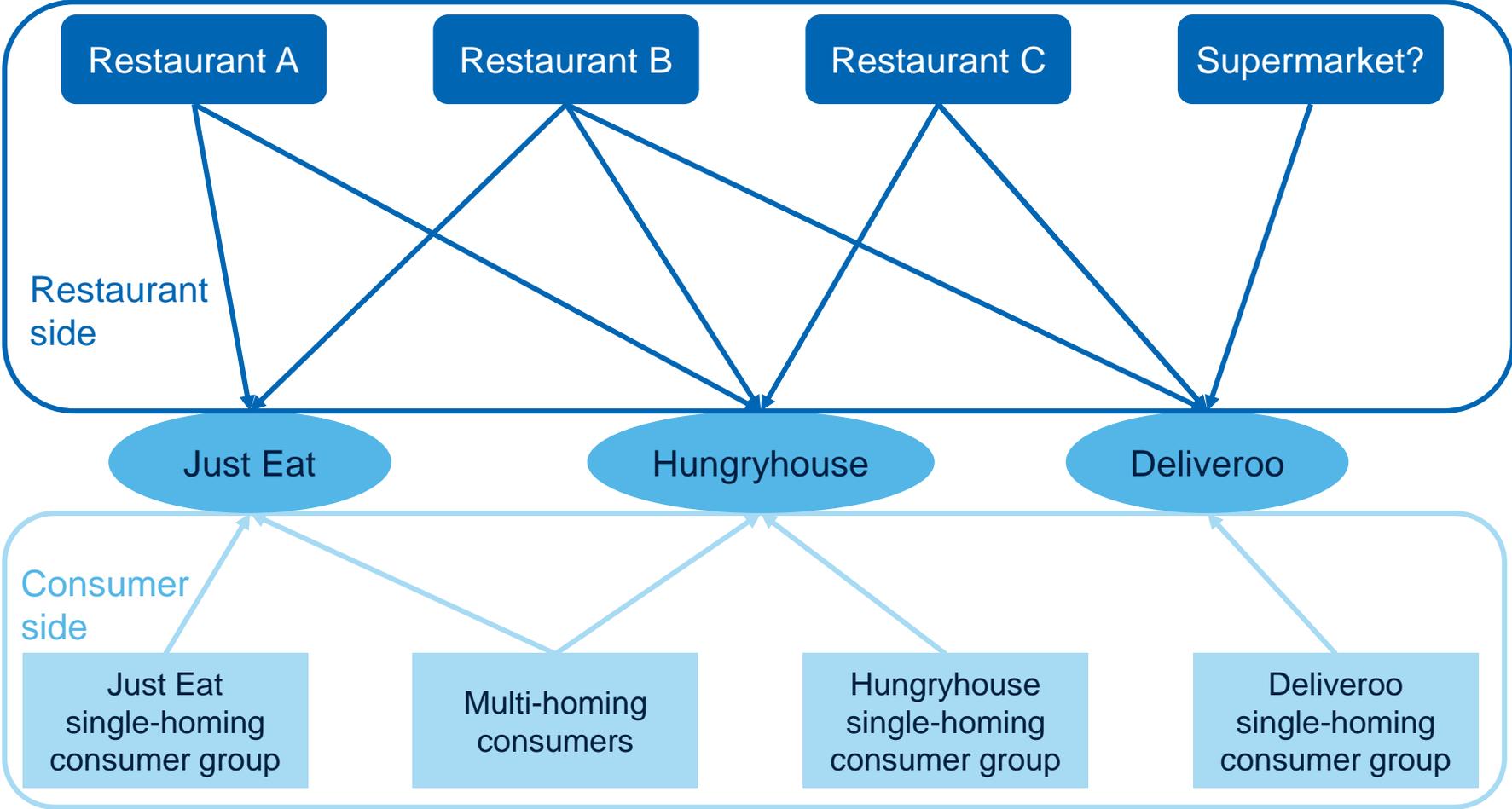
### Lessons from other industries

#### **Fnac/Darty, 2016, 'brown' and 'grey' goods**

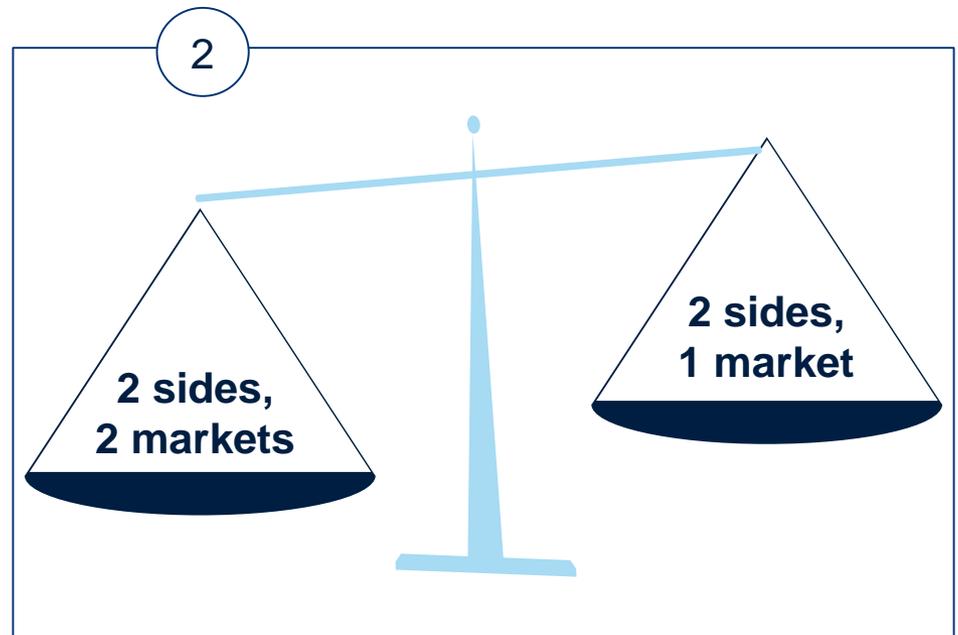
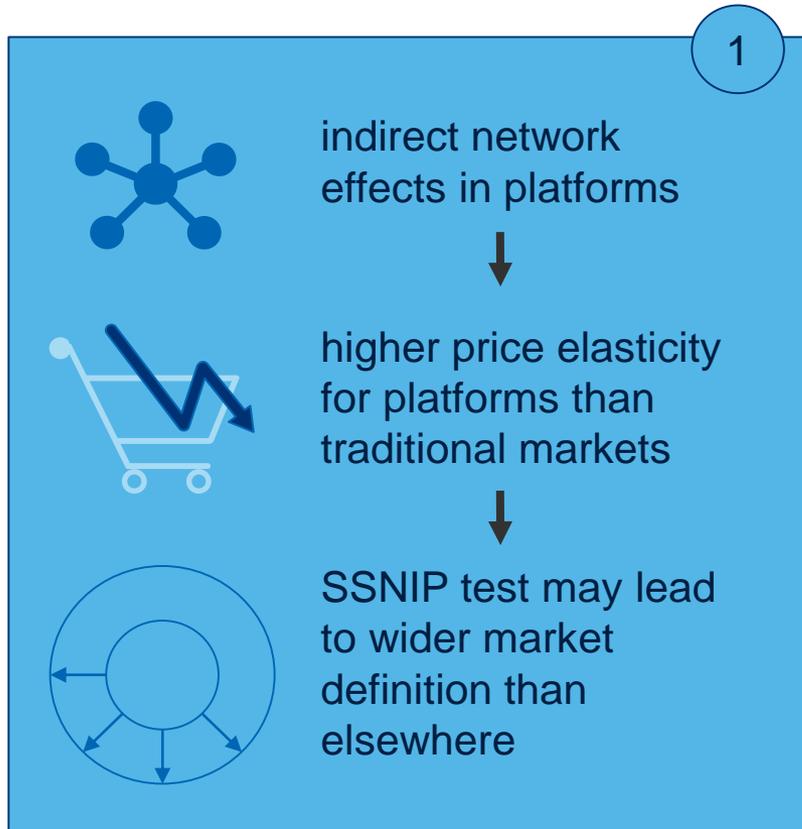
Authorité de la concurrence considered brick-and-mortar and online to be in the same market because...

- quick and low-cost delivery
- consumers considering both channels equally
- merging parties considered online competitors in their commercial and pricing strategies

# Increased relevance of two-sided platforms for ready-made food delivery



# Two potential implications of platforms



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# **Part II**

## **Assessment of market power**

# A richer methodological toolbox?

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consumer surveys are the traditional source of data (e.g. Just Eat/Hungryhouse; ASDA/Sainsbury's)



online experiments (using lessons from behavioural economics) may also be relevant



online players may hold more consumer data, which could be used for econometric analysis



# Increased assessment of coordinated effects

- mergers are assessed for two types of anticompetitive effects:



**Unilateral  
effects**



**Coordinated  
effects**

- mergers resulting in possible coordinated effects are more likely in online markets?



greater ease of tracking  
competitor prices



ability to offer best  
price guarantees

e.g. ASDA/Sainsbury's found concerns on coordinated effects for online, but not offline, markets

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# **Part III**

## **Remedies and conclusions**

# Remedies

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- remedies typically comprise:
  - structural remedies, e.g. divestiture
  - access remedies, e.g. infrastructure, IP
  - ‘firewall’ measures, e.g. data sharing
  - controlling outcomes, e.g. price caps
- mergers where brick-and-mortar retailers have a geographic overlap are often cleared with divestments



## What might remedies look like for online players?

- might divestments become less relevant?
- other remedies or new remedies might be used more often

Broader market definition?

## Conclusions

Coordinated effects becoming more relevant to merger assessment?

Might divestitures become less relevant?  
Different remedies?

# Further reading

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- Algorithmic pricing
  - Oxera (2017), 'When Algorithms Set Prices: Winners and Losers', June, prepared for Oxford Economics Council
  - Oxera (2018), 'Increasing market power? Causes and policy responses', November, prepared for Oxford Economics Council
  - Oxera (2019), 'Increased market power: a global problem that needs solving?', *Agenda*, January
- Two-sided markets
  - Kate, A.T. and Niels, G. (2019), 'Consumer Demand in Two-Sided Markets and the Platform-Specific Nature of Externalities', working paper
  - Niels, G. (2019), 'Transaction versus non-transaction platforms: a false dichotomy in two-sided market definition', working paper
  - Oxera (2019), 'Competition in the presence of network effects: when fewer is more', *Agenda*, March
  - Oxera (2018), 'It's what you know about who you know: market power in digital platforms', *Agenda*, December
- E-commerce and vertical mergers
  - Oxera (2019), 'New kid (needed) on the block? Vertical Block Exemption Regulation in the digital age', *Agenda*, August.

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