

Completed acquisition by Didix International B.V. of Taste Marketing Limited

ME/6491-14

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 28 January 2015. Full text of the decision published on 12 February 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. On 29 August 2014, Didix International B.V. (**Didix**) acquired Taste Marketing Limited (**Taste**) (the **Merger**). Didix and Taste are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore considers that a relevant merger situation has been created.
3. The Parties overlap in the supply of subscription-based memberships for discounted restaurant dining to consumers and to business customers in the UK. The CMA considers that, although the Parties' business models and product characteristics are relatively similar to each other, the most reliable evidence is strongly suggestive that other sources of restaurant discount are at least as likely to be regarded by consumers as competitive constraints. For business customers, which purchase these subscription-based memberships for discounted restaurant dining as a means of providing extra benefits to their employees or customers, the CMA considers that there is a range of alternatives to the Parties' products in providing such extra benefits.
4. On a cautious basis the CMA has used the following narrow frames of reference as starting points to consider the impact of the Merger:
 - The provision of subscription-based memberships for discounted restaurant dining to consumers in the UK.

- The provision of subscription-based memberships for discounted restaurant dining to business customers in the UK.
5. However, the CMA considers that it is not necessary to reach a final view on the appropriate frame of reference or the relevant market definition because, even if one takes as a starting point the narrow frames of reference set out above, it is clear from the competitive assessment that there are sufficient competitive constraints on the Parties from outside these frames of reference, as described further below, to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition.
 6. With regard to the supply of the Parties' overlapping products to consumers (**B2C**) in the UK, the CMA has concluded, after giving due consideration to the evidence available, that, although the Parties' products appear to be more similar to each other than to the products of other discount providers, the customer survey, in combination with the high churn rates and evidence from the pricing experiment, indicate that there are sufficient other constraints to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition.
 7. With regard to the supply of the Parties' overlapping products to business customers (**B2B**) in the UK, the CMA has concluded that the presence of a wide range of alternative products available to business customers, and the absence of substantial third party concerns, indicate that there is no realistic prospect that the Merger will result in a substantial lessening of competition.
 8. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

9. Didix is a wholly-owned subsidiary of Didix Topholding B.V., which is active in the provision of gift cards, leisure promotions and discounts in the Netherlands, Belgium and the UK. Didix's UK business, Gourmet Society, is a subscription-based club for discounted restaurant dining. The turnover of Didix in the year ending 31 October 2013 was around £[REDACTED] in the UK.
10. Taste provides discounts for a range of leisure activities in the UK. Its principal product is Tastecard which is also a subscription-based club for discounted restaurant dining. The turnover of Taste in 2013 was around £[REDACTED] in the UK.

Transaction

11. Didix acquired the entire issued share capital of Taste on 29 August 2014 through a sale and purchase agreement.

Jurisdiction

12. As a result of the Merger, the enterprises of Didix and Taste have ceased to be distinct.

The Parties' submissions

13. Didix submitted that the CMA does not have jurisdiction in this case as a result of the fact that 'restaurant discount dining cards' are not a product and that this definition does not describe the Parties' product offering.
14. In addition, Didix submitted that promotions via a subscription-based club should not be treated separately from promotions offered via other platforms, and that 'restaurant discounts' should not be considered separately from 'leisure discounts'.

CMA assessment

15. The Act provides that one of the conditions for a 'relevant merger situation' (giving rise to CMA jurisdiction) is met where, as a result of the merger concerned, the merged businesses supply (or acquire) at least one-quarter of goods or services 'of any description' in the UK or a substantial part of the UK.¹ Under the Act, the CMA has a wide discretion in describing the relevant goods or services for the purposes of the share of supply test, requiring only that, in relation to goods or services of that description, the parties' share of supply (or acquisition) is 25% or more.²
16. In applying this 'share of supply' test, the CMA will, among other matters, have regard to the following:³
 - The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and the group of goods or services to which the jurisdictional test is applied need not be the relevant economic market.

¹ Sections 23(3) and (4) of the Act.

² See sections 23(6), (7) and (8) of the Act and *CMA2 Mergers: Guidance on the CMA's Jurisdiction and Procedure*, from paragraph 4.53.

³ *Ibid.*

- The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.
17. Didix's submission described Gourmet Society and Tastecard as 'subscription-based club(s) that offer(s) restaurant and leisure discounts' active in the UK. Didix also submitted that its primary focus is on restaurants and that both Parties primarily operate in the dining sector, indicating that the Parties have similar propositions.
 18. Respondents to the CMA's market testing indicated that they recognised the description of 'restaurant membership discount cards', and specifically named Tastecard, Gourmet Society and Hi-Life as offering these products.
 19. For these reasons, the CMA considers the provision of subscription-based memberships for discounted restaurant dining in the UK to be a relevant good or service within the meaning of sections 23(3) and 23(4) of the Act.
 20. Didix estimated that the Parties' combined share of supply of subscription-based memberships for discounted restaurant dining in the UK is approximately [90–100]%, with an increment of [20–30]% (see section on share of supply below).⁴
 21. Accordingly, the CMA considers that the share of supply test in section 23 of the Act is met in this case.
 22. The Merger was completed on 29 August 2014 and was first made public on 1 September 2014. The four-month deadline for a decision under section 24 of the Act is 29 January 2015, following an extension under section 25(2) of the Act.
 23. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
 24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 December 2014 and the statutory 40-working-day deadline for a decision is therefore 6 February 2015. However, as the four-month period under section 24 of the Act ends before this date, the deadline for the CMA to announce its decision whether to refer the Merger for a phase 2 investigation is 29 January 2015.

⁴ Didix submitted the Parties' share of supply of the provision of restaurant discount dining cards. The CMA considers that the share of supply is the same for memberships for discounted restaurant dining. Third party evidence suggested that the share of supply is actually somewhat lower in the range of 80 to 90%.

25. The Parties did not notify the Merger to the CMA. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to Didix on 23 October 2014.⁵

Counterfactual

26. The CMA assesses a merger's likely effects having regard to the situation that would prevail in the absence of the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁶
27. In this case, there is no evidence supporting a different counterfactual, and Didix has not put forward arguments in this respect. Therefore, the CMA considers the pre-Merger conditions of competition to be the relevant counterfactual in this case.⁷

Frame of reference

28. The CMA considers that market definition provides a framework for assessing the likely effects of a merger on competition. Market definition involves an element of judgement. The boundaries of the market are not in themselves determinative of the outcome of the analysis of the competitive effects of the merger, as the CMA recognises that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁷
29. The Parties are active in a two-sided market in that they compete both for consumers and business customers, and for restaurants. To one side of the market the Parties offer subscription-based memberships for discounted restaurant dining to both individuals and businesses. In order to be successful in selling their product to potential subscribers, the Parties need to create a

⁵ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9 to 6.19 and 6.59 to 6.60.

⁶ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The *Merger Assessment Guidelines* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).

⁷ *Merger Assessment Guidelines*, paragraph 5.2.2.

sizeable network of restaurants. Therefore, on the other side of the market, the Parties are active in the provision of promotion services for discounted dining to restaurants in the UK.

30. In assessing the frame of reference in a two-sided market the CMA may consider the constraints on a hypothetical monopolist from profitably raising prices from demand substitution on either side of the market. There may be feedback effects as switching by one side of the market may make the product or service less valuable to the other side of the market. This may affect the frame of reference.⁸
31. However, while the CMA has been mindful of these possible feedback effects in its analysis, as in this case the Parties earn revenue primarily on the consumer side of the market from fixed subscription fees rather than on the restaurant side of the market (or from commission fees relating to transactions between consumers and restaurants), the CMA considers it appropriate to focus on the constraint from switching on the consumer side of the market.

Product scope

32. The CMA's approach to assessing the product frame of reference is to begin with the overlapping products of the Parties in the narrowest plausible candidate product frame of reference and then to see if this can be widened on the basis, primarily, of demand-side considerations.⁹
33. The CMA considers that the Parties provide subscription-based memberships for discounted restaurant dining to consumers directly via online sales and indirectly via salary sacrifice programs through their employers. The Parties also provide subscription-based memberships for discounted restaurant dining to business customers.
34. The CMA has therefore assessed whether the frames of reference should be wider than, first, the provision of subscription-based memberships for discounted restaurant dining to consumers, and, secondly, the provision of subscription-based memberships for discounted restaurant dining to business customers.

⁸ See also *Merger Assessment Guidelines*, paragraph 5.2.20 (second bullet point).

⁹ *Merger Assessment Guidelines*, paragraph 5.2.17.

B2C: Subscription-based memberships for discounted restaurant dining vs. all discounts for restaurant dining to consumers

Demand-side substitution

- *The Parties' submissions*

35. Didix submitted that, in addition to subscription-based clubs for discounted restaurant dining, there is a wide range of businesses that enable consumers to access restaurant and leisure discounts. Didix noted that the characteristics of each of the Parties' products are also shared by many other providers of discounts, and that the Parties' products are substitutable with:
- 'deal-of-the-day' coupons – the consumer subscribes to the provider before purchasing a deal, downloads the coupon and redeems it at the restaurant;
 - 'on-the-go' vouchers – the consumer downloads a voucher onto their phone and presents it at the restaurant;
 - many other local and regional schemes – the consumer shows their membership or presents a voucher in person at the restaurant; or
 - cards issued by financial services providers or other organisations – the consumer presents a card to obtain discounts at restaurants.
36. Didix noted that many other discount providers offer comparable discounts to those offered by each of the Parties. In addition, Didix indicated that even though many discount providers will vary in the discounts that they offer, there is always a wide selection of restaurant discounts to choose from, spanning different styles of cuisine and including many of the main high street chains.
37. Didix supported this statement with an overview of the total number of daily discounted dining offers for London restaurants provided by other discount providers for the week of Monday 5 to Friday 9 January 2015. This included a further break-down showing the number of 2-for-1 deals or deals offering 50% off or more. In addition, Didix provided a list of ten of the top chain restaurants in London and nine of the chain restaurants identified by the Parties as top partners.
38. Didix submitted that consumers seek discounts and not a membership per se, and that alternative providers of discounts form the Parties' key competitors. Consumers may be willing to pay a membership fee because these consumers value certain characteristics sufficiently such that the membership

offers value for money compared to the free alternatives. Didix noted that such characteristics are not a barrier to switching to alternative means of discounts.

- *Third party submissions*

39. The CMA's market testing indicated mixed responses in relation to alternatives to Gourmet Society and Tastecard for consumers, with some naming several alternatives:

- Two restaurants mentioned that consumers would go directly to restaurants for discounts or join restaurant discount schemes.
- Two restaurants mentioned that consumers might switch to another provider of subscription-based memberships for discounted restaurant dining.
- Four restaurants mentioned the possibility of consumers using online discounts.
- One restaurant considered it unlikely that Gourmet Society members would search online for vouchers.

40. Some respondents considered that certain aspects of the Parties' products may be difficult to obtain elsewhere, for example the relatively high level of discount.

41. In addition, one third party mentioned that there are specific product features that customers are willing to pay for, such as better customer service back-up, continuity, strength, coverage, quality of offers, presentation and ease of use, and extra add-ons like cinema or other entertainment discounts.

- *Internal documents*

42. The Parties were unable to provide many internal documents in which they have considered competitors and conditions of competition in this market. However, one such document provided by Taste was a marketing document including a slide entitled 'competitive analysis'. This slide only included Gourmet Society and Hi-Life, another subscription-based membership scheme, and did not indicate any of the alternatives mentioned by Didix above. However, the CMA notes that the document was not generated in the ordinary course of business, as it was particularly prepared for the marketing of Taste, and did not appear to give a comprehensive view of the market with only a limited listing of product features.

- *Survey evidence*

43. At the CMA's request, the Parties undertook an online survey of their members who had just renewed their membership.¹⁰ The surveys solicited a sufficient number of responses from each of Tastecard's and Gourmet Society's customers to be statistically informative.
44. The Gourmet Society survey indicated that, if respondents had not renewed their Gourmet Society membership, [30–40]% of the respondents would have obtained a discount directly from a restaurant, [5–10]% of respondents would have used websites combining offers from several suppliers, and [5–10]% would have used a similar discount card to Gourmet Society.
45. The Tastecard survey indicated that, if respondents had not renewed their Tastecard membership,¹¹ [40–50]% would have used websites combining offers from several suppliers, [20–30]% would have used a similar discount card to Tastecard, [20–30]% would have obtained a discount directly from the restaurant and [20–30]% would have used general promotions by card or points schemes, local schemes or other sources.
46. The results of both surveys indicated that the majority of those customers who currently pay for these memberships would, in the event of not renewing their subscription to Taste or Gourmet Society, be prepared to use alternative sources of discount, and indeed that other sources of discounts were viewed as more likely alternatives. The CMA also notes that [40–50]% of the respondents to the Gourmet Society survey and [30–40]% of the respondents to the Tastecard survey would have eaten out without using any discount at all.

- *CMA assessment*

47. The CMA has examined the evidence available from the Parties' submissions, third party submissions, internal documents and the survey evidence.
48. The CMA considers that the Parties' product offerings are similar to each other in terms of the physical product, the number of restaurants at which customers can obtain discounts (circa 7,000), the convenience and

¹⁰ Amongst other things, the survey asked customers about the factors that were important when renewing membership (eg price, number of restaurants included, convenience), which provider of restaurant/leisure discounts members had used in the last two years, and if the membership with Tastecard/Gourmet Society had not been renewed, what the member would have been most likely to do instead (ie stop eating out, eat out without a discount, or find another means of obtaining a discount). If customers indicated that they would have found another means of obtaining a discount, they were asked to indicate where they would have obtained such a discount.

¹¹ In this survey, respondents were allowed to select more than one option.

predictability of discounts at a wide range of restaurants, and the level of discounts available.¹²

49. A key differentiating feature of the Parties' products from other discount providers is that the Parties both charge an annual membership fee¹³ and the average membership fee of both Parties is around £[~~8~~]. Other discount providers do not typically have a membership fee and offer discounts free of charge.
50. Although one third party considered it unlikely that Gourmet Society members would search online for vouchers, the majority of third parties mentioned other means for consumers to obtain discounts.
51. The CMA considers that the internal document from Taste indicates that Taste considers Gourmet Society and Hi-Life to be competitors. However, given the circumstances in which this document was produced and the limited analysis, it does not provide any evidence that other discount providers do not impose a competitive constraint on the Parties.
52. Both the Gourmet Society and Tastecard survey indicated that respondents would consider other means of obtaining discounts for restaurant dining, for example obtaining discounts directly from the restaurant, besides using a similar discount card to one of the Parties' products.
53. The CMA considers that, although the Parties' business models and characteristics are similar to each other, the most reliable evidence (the survey) is strongly suggestive that other sources of restaurant discount are at least as likely to be regarded by consumers as competitive constraints.

Supply-side substitution

54. The boundaries of the product frame of reference are generally determined by demand-side substitution. However, there are circumstances where the CMA may aggregate several narrow markets into one broader one on the basis of considerations about the response of suppliers to changes in prices.¹⁴
55. The Parties have not suggested that any of the wider group of discount providers (such as voucher websites, loyalty cards, or daily deal sites) are planning or likely to launch a discount membership scheme. Given this lack of evidence, these firms do not appear to pose a greater threat of entry to the

¹² The main discounts (in terms of the proportion of restaurants offering these) with Gourmet Society are 25% off food and drink and 2-for-1 main courses, and Tastecard's discount offers are 2-for-1 across all courses and 50% off food.

¹³ Advertised as Gourmet Society £69.95 and Tastecard £79.95.

¹⁴ *Merger Assessment Guidelines*, from paragraph 5.2.17.

Parties in this narrow respect than the existing smaller discount membership schemes.

56. Therefore, the CMA does not have sufficient evidence to aggregate all discounts for restaurant dining based on supply-side considerations.

Conclusion – B2C product frame of reference

57. Based on the evidence set out above, the CMA considers that there are significant grounds to believe that the product frame of reference for consumers may be wider than merely the provision of subscription-based memberships for discounted restaurant dining, and that it includes other discounts for restaurant dining. However, it is not necessary for the CMA to reach a conclusion on the product frame of reference in this respect as, in any event, it is clear from the competitive assessment (set out below) that, even if a narrow frame of reference were to be adopted, there are sufficient competitive constraints on the Parties from outside such a frame of reference to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition to consumers.

B2C: Subscription-based memberships for discounted restaurant dining vs. all promotions to consumers

58. The CMA has considered whether the product frame of reference should be widened to include all promotions to consumers.
59. Didix suggested a range of other discounts that the Parties provide on their cards, such as hotels, days out and entertainment, and other providers of these discounts, for example hotel-booking websites and local schemes.
60. However, the Parties' activities in these areas will not allow consumers to meet the primary need of discounted restaurant dining. Providers of alternative services have not been considered further and the CMA considers that they are no more likely to enter into dining discount membership services than the firms discussed above.

B2B: Subscription-based memberships for discounted restaurant dining vs. other valuable benefits to business customers

The Parties' submissions

61. Didix submitted that business customers provide memberships for free as an incentive or corporate reward to their employees or customers. The price per

membership, which is negotiated on an individual basis, is usually [✂] per membership for individual consumers.

62. Didix submitted that business customers that consider a broad range of benefits and discounts for dining constitute a small part of this range. Corporate customers offer their customers or employees, besides memberships for discounted restaurant dining, benefits such as gift cards, gifts, pre-paid vouchers, memberships (for example to Netflix or LoveFilm), subscriptions for magazines and insurance. In addition, Didix submitted that for example NatWest/RBS switched from offering LoveFilm and a music download service to Tastecard, and Carphone Warehouse previously offered free gifts such as iTunes gift vouchers, six free cinema tickets and mobile phone accessories.

Third party submissions

63. Business customers generally responded that they considered a large range of promotions and offers as benefits to their employees and customers. Some business customers considered certain non-dining offers to be the closest alternatives to the Parties. Other business customers noted that they did not take account of competition between the Parties in agreeing the price.

CMA assessment

64. The CMA is therefore of the view that business customers consider a range of alternatives to the Parties' products in providing extra benefits to their employees or customers, and pay significantly lower prices compared to individual consumers. These alternatives are other valuable benefits such as film subscriptions and gift cards, and are therefore considerably different from the free-to-charge restaurant discounts schemes which are considered as alternative by consumers.

Conclusion – B2B product frame of reference

65. Based on the evidence set out above, the CMA considers there are significant grounds to believe that the product frame of reference for business customers may be wider than the provision of subscription-based memberships for discounted restaurant dining and includes a range of benefits to business customers. However, it is not necessary for the CMA to reach a conclusion on the product frame of reference in this respect as, in any event, it is clear from the competitive assessment (see below) and the evidence set out above that, even if a narrow frame of reference was adopted, there are sufficient competitive constraints on the Parties from outside such a frame of reference

to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition to business customers.

Geographic scope

66. Didix submitted that the geographic area in which Didix and Taste provide subscription-based memberships for discounted restaurant dining is the whole of the UK. The CMA has received no evidence to suggest that the geographic frame of reference should not be the UK in this case.
67. The CMA has considered whether the geographic scope should be narrower than the UK but has found that the competitive conditions do not warrant such an approach with most significant features of the market being set on a national basis.
68. For the reasons set out above, the CMA has considered the impact of the Merger on the basis of UK-wide geographic frames of reference.

Conclusion on frame of reference

69. For the reasons set out above, the CMA considers that, for both B2B and B2C, there are significant grounds to believe that the product frame of reference may be wider than the provision of subscription-based memberships for discounted restaurant dining.
70. Nevertheless, in conducting its competitive assessment, the CMA has, on a cautious basis, used the following narrow frames of reference as starting points to consider the likely effects of the Merger:
 - For B2C, the provision of subscription-based memberships for discounted restaurant dining to consumers in the UK.
 - For B2B, the provision of subscription-based memberships for discounted restaurant dining to business customers in the UK.

The CMA considers that it is not necessary to reach a final view on the appropriate frame of reference, or the relevant market definition, because, even if one takes as a starting point the narrow frames of reference set out above, it is clear from the competitive assessment that there are sufficient competitive constraints on the Parties from outside these frames of reference as described further below, to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition.

Competitive assessment

Horizontal unilateral effects

71. Horizontal unilateral effects may arise when one firm merges with a competitor which previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.¹⁵
72. The CMA has assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to horizontal unilateral effects.

B2C: Subscription-based memberships for discounted restaurant dining to consumers in the UK

73. When assessing unilateral effects, as a starting point, the CMA will consider the Parties' combined share of supply and the increment arising from the merger in question.

B2C: Shares of supply

74. Taking as a starting point the narrow frame of reference referred to in paragraph 70 above, the Parties' and their competitors' estimated shares of supply of subscription-based memberships for discounted restaurant dining for consumers based on the estimated turnover and number of members are set out below.

TABLE 1 Share of supply of subscription-based memberships for discounted restaurant dining in 2014

	<i>Number of members</i>		<i>Turnover (£)</i>	
		<i>%</i>		<i>%</i>
Tastecard	[X]	[70–80]	[X]	[60–70]
Gourmet Society	[X]	[20–30]	[X]	[30–40]
Combined	[X]	[90–100]	[X]	[90–100]
Hi-Life	[X]	[0–5]	[X]	[0–5]
Phantom	[X]	[0–5]	[X]	[0–5]
Other	[X]	[0–5]	[X]	[0–5]
Total	[X]	100	[X]	100

Source: Parties' estimates.

75. Table 1 shows that the Parties have a very high combined share of supply of subscription-based memberships for discounted restaurant dining and that the

¹⁵ *Merger Assessment Guidelines*, from paragraph 5.4.1.

Merger results in an increment of approximately [20–30]%. Evidence from third parties suggested that some competitors (in particular Hi-Life) had been underestimated. However, in any event, the Parties still have a very high share of supply (80 to 90%) on this narrow frame of reference.

76. The CMA's market testing supported the view that the Parties were the most significant providers of subscription-based memberships for discounted restaurant dining with a significant combined share of supply.
77. As mentioned above, the CMA considers that there are sufficient grounds to believe that the frame of reference is wider than merely the provision of subscription-based memberships for discounted restaurant dining and therefore, the CMA considers the share of supply to be a substantial overestimation of the Parties' market power.

B2C: Closeness of competition

- *Product characteristics*

78. The Parties acknowledge that they compete with each other for the provision of subscription-based memberships for discounted restaurant dining to consumers. However, as also set out above, Didix submitted that the Parties compete with many other providers of discounted dining.
79. Didix further submitted that the Parties' products differ considerably in two key aspects: the level and predictability of discounts, and the range of restaurants available. Whereas Taste only offers 50% off food and 2-for-1 across all courses, Gourmet Society offers five different discount options, with the available options differing by restaurant.¹⁶ Also, Taste only restricts the use of discounts on Friday and Saturday, while Gourmet Society may additionally exclude discounts for Sunday lunch, and lunches in general.¹⁷ In addition, Didix noted that Taste offers a clearer and simpler product.
80. Didix told the CMA that both Parties have approximately 7,000 restaurants in their schemes of which each has approximately 5,000 unique restaurants. Further, Gourmet Society has 20 large restaurant chain partners, Taste has nine large restaurant chain partners, of which the Parties have three chains in common.¹⁸

¹⁶ 50% off food, 2-for-1 across all courses, 2-for-1 across 2 courses, 2-for-1 on main courses only, 25% off food and drink.

¹⁷ Gourmet Society also restricts the use of discounts on Thursday evening for a very small number of restaurants.

¹⁸ The Parties both partner with Prezzo, Strada and La Tasca.

81. The CMA considers that the Parties have a relatively similar product offering. The Parties both provide subscription-based schemes to obtain significant discounts for restaurant dining, with the convenience of predictable discounts at a wide range of restaurants. In addition, the Parties operate similar business models and strategies, such as offering a free month trial membership and an average membership fee of around £[redacted], while both advertise a [redacted] annual membership fee on their websites (Tastecard £79.95 and Gourmet Society £69.95).
82. On the other hand, the customer surveys conducted by Gourmet Society and by Taste both indicated that Gourmet Society's and Tastecard's customers significantly differ in the importance they attribute to the various characteristics of the Parties' products. Tastecard's customers attributed more importance to the price and level of discount, the number of restaurants, the predictability of discounts, and simplicity and convenience. In particular, Gourmet Society's customers value the possibility of obtaining non-restaurant discounts more.
83. Nevertheless, as explained below, the CMA considers that there are significant competitive constraints from other suppliers of discount restaurant dining products.

B2C: Competitive constraints

- *Internal documents*

84. As mentioned above (see paragraph 42) Taste provided a marketing document including a slide entitled 'competitive analysis' in which the only other competitors named were Gourmet Society and Hi-Life, but which (for the reasons set out in paragraph 42) the CMA considers not to give a comprehensive view of the market.

- *Survey evidence*

85. The survey of Gourmet Society customers indicated that customers were willing to switch to a number of alternative sources of discounts for dining, with [40–50]% indicating that they would have either stopped eating out or would have eaten out without using a discount if they had not renewed their Gourmet Society subscription. In addition, of the customers who indicated that they would switch to another means of obtaining restaurant discounts only [5–10]% indicated that they would switch to a discount card similar to Gourmet Society, with a very small number of customers specifically naming Tastecard.

86. The survey of Tastecard customers indicated a higher, but still relatively low, diversion ratio between the Parties of approximately [10–20]%, with [40–50]% indicating that they would have either stopped eating out or would have eaten out without using a discount if they had not renewed their Tastecard.
87. The CMA considers that the diversion ratios indicate that only a relatively small number of customers are willing to switch to the product of the other Party, and a larger number are willing to switch to alternative sources of supply. The diversion ratio from the Taste survey is subject to a significant level of uncertainty; however, the CMA considers [10–20]% to be the upper bound of the diversion ratio between the Parties¹⁹ and that diversion ratio is relatively low in this specific case.
88. The surveys also suggest that the customer groups may be differentiated as they significantly differ in the importance they attribute to the various characteristics of the products.

- *Other evidence*

89. Didix submitted that the Parties have no ability to raise prices. Over the last five years, the Parties have not increased their respective de facto consumer sale prices despite a rise in VAT of 5%, inflation of 14% and increased costs of paper, plastic and postage.
90. In 2013, Taste tested whether it would be profitable to raise the key price of £[X] above £[X], to £[X].²⁰ The results showed that the [X]% price increase was associated with a decline in Tastecard new membership volumes of [X]%.
91. The CMA has considered whether this response to a price rise was a result of the competitive constraint which Gourmet Society has until now exerted on Taste (and which will no longer exist following the Merger). The CMA considers, given the survey evidence, that it is likely that potential Tastecard members switched to other alternatives (or to no discounts) rather than to Gourmet Society.

¹⁹ The ability of respondents to the Tastecard survey to mark several options may mean that respondent had a tendency to mark any answer that seemed plausible. Also the question asked which alternative to Tastecard customers would use, a reference to using Gourmet Society may not mean that a new card will be taken out (diversion at the membership level) but merely that the customer already had a Gourmet Society card (merely diversion at the use of discounts that does not generate any additional revenue for the Parties).

²⁰ The product was marketed evenly to 38,000 people who were trialling Tastecard for free for a month; ie 19,000 people were offered to purchase the membership for £[X], whereas 19,000 people were offered to purchase the membership for £[X]. The sample was split equally by sales sources.

92. Further, Dixie submitted churn rates for Gourmet Society of [X] % and for Tastecard of [X] %.²¹ The CMA considers that these churn rates suggest that a substantial group of customers does not value the specific products very highly, and are likely to try out a range of alternatives or stop using discounts at all. Particularly given the evidence from the consumer survey, the CMA does not consider that these high churn rates could be explained by switching between the Parties' products.
93. Based on the above, the CMA considers that the Parties faced constraints from other products than the Parties' products on raising prices to its customers.

B2C: Conclusion on horizontal unilateral effects

94. Based on all the evidence set out above, the CMA considers, on balance, that although the Parties' products appear to be more similar to each other than to other discount providers, the customer survey, in combination with the high churn rates and evidence from the pricing experiment, indicates that there are sufficient other constraints to ensure that there is no realistic prospect that the Merger will result in a substantial lessening of competition to consumers in the UK.

B2B: Subscription-based memberships for discounted restaurant dining to business customers in the UK

95. There is a wide range of products, including memberships for discounted restaurant dining, available for business customers to offer extra benefits to their employees and customers. As mentioned above (see paragraph 62), some examples are gift cards, gifts, pre-paid vouchers, memberships (for example to Netflix or Lovefilm), subscriptions for magazines and insurance.
96. Business customers generally indicated that they considered a wide range of promotions and offers as benefits to their employees and customers. Some business customers considered the Parties to be close competitors. Some other business customers considered certain non-dining offers to be the closest alternatives to the Parties. Other business customers noted that they did not take account of competition between the Parties in agreeing the price.
97. Only a very small minority of business customers raised concerns about the Merger. Some business customers that had directly compared the Parties' products did not raise any concerns.

²¹ Churn rates show the percentage of first year annual membership customers not renewing their membership.

B2B: Conclusion on horizontal unilateral effects

98. As set out above, the CMA considered the presence of a wide range of products available to business customers, and the absence of substantial third party concerns. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition to business customers in the UK.

Barriers to entry and expansion

99. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²²
100. The CMA received evidence that some providers of subscription-based memberships for discounted restaurant dining, such as Hi-Life, were growing, as well as substantial growth by firms providing other sources of discount. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

101. The CMA contacted restaurants, business customers and competitors of the Parties. Only a few restaurants and business customers raised concerns, most of them regarding the risk of less competition and one mentioned that no alternative subscription-based clubs for discounted restaurant dining are left after the Merger. No other third parties raised concerns about the Merger.
102. Third party comments have been taken into account where appropriate in the competitive assessment above.

²² *Merger Assessment Guidelines*, from paragraph 5.8.1.

Decision

103. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.

104. The Merger will therefore **not be referred** under section 22(1) of the Act.

Michael Grenfell

Senior Director, Sector Regulation and Concurrency

Competition and Markets Authority

28 January 2015