WILLKIE

CLIENT ALERT

When is a minority shareholding “significant” for antitrust purposes? The European Commission’s decision in Naspers/Just Eat Takeaway

January 13, 2026

AUTHORS

Rahul Saha | Alaric Green | Nhi Nguyen

Overview

On 11 August 2025, the European Commission (the ***Commission***) approved the acquisition of Just Eat Takeaway.com (***JET***) by Prosus N.V. (***Prosus***), a subsidiary of Naspers Limited (***Naspers***) (the ***Transaction***). The Commission required Naspers/Prosus to give certain commitments to secure the approval, including the divestment of an undisclosed portion of Prosus’ pre-existing minority interest in one of JET’s main competitors, Delivery Hero SE (***Delivery Hero***).[1]

[1] See Case M.11936 – NASPERS / JUST EAT TAKEAWAY (2025).

The Commission's approval decision (the ***Decision***) was published on 23 December 2025, providing more detail into the Commission's analysis.

- The Commission found that Prosus' existing c.27% interest in Delivery Hero gave it influence over Delivery Hero's decisions, meaning that the Transaction would allow Prosus to control JET while also being able to influence the competitive strategy of one of JET's main competitors.

- This indirect "structural link" between JET and Delivery Hero could reduce JET's incentive to compete with Delivery Hero in countries where both businesses are active, and increase the likelihood of coordination between them on strategy, including pricing and market entry or exit.

Generally speaking, in merger assessments, the Commission focuses on overlaps between the target business and the businesses that the buyer is able to control. The Decision is therefore a relatively uncommon example in recent years of the Commission assessing overlaps between the target and businesses in which the buyer holds a minority, *non-controlling* interest.

This article examines the Decision in greater detail, focusing on the factors the Commission relied upon to determine that Prosus' minority shareholding in Delivery Hero was "significant", why this indirect structural link between Delivery Hero and JET could create competitive concerns, and the remedies the Commission accepted when approving the Transaction.

Background

Naspers is a multinational holding company headquartered in Cape Town, South Africa. It is a technology investor and owns a controlling interest in Prosus. Prosus, Naspers' investment company, is a globally active consumer internet group and technology investor headquartered in Amsterdam, Netherlands. Pre-Transaction, Prosus already owned a c.27% stake in Delivery Hero, a global online food delivery platform active in 15 countries in the European Economic Area (the ***EEA***).

Prosus announced its intention to acquire the entire issued share capital of JET on 24 February 2025. JET is a global online food delivery company headquartered in Amsterdam, Netherlands, and is active in 12 countries in the EEA. On 20 June 2025, Naspers/Prosus and JET formally notified the Transaction to the Commission. The Transaction was subsequently cleared at Phase 1 by the Commission on 11 August 2025, conditioned on a set of commitments which included the divestment of an undisclosed portion of Prosus' interest in Delivery Hero.

The Commission's approach to minority shareholdings

Under the European Union Merger Control Regulation (the ***EUMR***)[2], an acquisition of a minority shareholding that does not confer "control" is not notifiable to the Commission for merger control approval. "Control" for these

[2] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) Official Journal L 24, 29.01.2004, p.1– 22.

purposes is defined as "decisive influence" – i.e. majority voting rights, or key veto rights that allow the holder to decisively influence the target company's strategic decisions.

Accordingly, the Commission does not have jurisdiction to assess most minority acquisitions. In practice, it can however still examine the effects of non-controlling minority shareholdings when these are relevant to the analysis of a separate "controlling" acquisition.

That is to say, the Commission remains alert to the competitive risks posed by cross-shareholdings in competing firms.[3] While most cases are now relatively dated, the Commission has previously intervened in transactions where the parties held minority stakes in competitors or in vertically linked companies where those stakes were capable of influencing the companies' business decisions.[4] In these cases, the Commission examined (albeit in varying degrees of detail[5]) the actual or potential influence exercised over the minority-held company, including through board representation, access to information, and minority protection rights, and found that such links could cause competitive concerns when the buyer acquired control over a related business. The most common remedy accepted by the Commission in its review of the "controlling" acquisitions was the divestment of the pre-existing minority shareholdings.

Prosus' "significant minority shareholding" in Delivery Hero

In this case, to assess the Transaction's competitive impact, the Commission had to consider whether the post-Transaction structural links between Delivery Hero and JET – two competing online food delivery platforms active in the EEA – could harm competition. The Decision outlines a two-step approach.

First, the Commission sought to determine whether Prosus' minority shareholding in Delivery Hero amounted to control (decisive influence) under the EUMR. If so, the merger control analysis would then have been fairly standard, requiring the Commission to assess whether bringing JET and Delivery Hero under common control would remove a competitive constraint in the market for online platform food delivery services.

Perhaps unsurprisingly at just c.27%, the Commission found that Prosus' minority shareholding in Delivery Hero did *not* confer control within the meaning of the EUMR, whether on a *de jure* or *de facto* basis.[6]

---

3 For example, the Commission notes in its Horizontal Merger Guidelines that "*Structural links such as cross-shareholding or participation in joint ventures may also help in aligning incentives among the coordinating firms*" (Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, pp. 5–18), paragraph 48).

4 See, for example, case M.1673 – VEBA / VIAG (2000), M.2567 – Nordbanken / Postgirot (2001), M.4153 – Toshiba / Westinghouse (2006), M.5406 – IPIC / MAN Ferrostaal AG (2009), M.6541 – Glencore / Xstrata (2012), M.8465 – Vivendi / Telecom Italia (2017), M.10153 – Orange / Telekom Romania Communications (2021).

5 For example, in case M.6541 – Glencore / Xstrata (2012), Glencore's 7.79% minority stake in Nystar, a close competitor of Xstrata, was mentioned only briefly in relation to Glencore's remedy package and was not considered in the competitive assessment. By contrast, in case M.4153 – Toshiba / Westinghouse (2006), the Commission set out in detail its analysis of Toshiba's minority shareholding in GNF in the competitive assessment and explained how the associated minority protection rights gave Toshiba the ability to block GNF's expansion into competition with Westinghouse.

6 Case M.11936 – Naspers / Just Eat Takeaway (2025), paragraphs 54 – 67.

- Prosus had no legal right to board representation. Although a Prosus employee sat on Delivery Hero's Supervisory Board (which approves, *inter alia*, the annual budget and the appointment or removal of directors), that representative neither held a majority of voting rights nor possessed veto rights over Supervisory Board decisions that would allow Prosus to exercise decisive influence (i.e., control) over Delivery Hero.

- Prosus also did not secure a majority at any of Delivery Hero's general shareholders' meetings in the past five years, and its stake only allowed it to veto shareholder resolutions on standard minority protection matters, such as capital increases.

In the second step, the Commission then assessed whether Prosus could nonetheless still "influence" Delivery Hero's decisions by virtue of its "significant minority shareholding". This was a less straightforward analysis, which turned on the specific facts of the case. The Commission found that Prosus influenced Delivery Hero based on the following factors:

- **Relative size of the minority shareholding**: Prosus was, by far, the largest shareholder of Delivery Hero. The next top four shareholders each held interests below 10%. In addition, in a call with the Commission, Delivery Hero noted that "*all companies listen to their biggest shareholders and do not take steps that would go against them*", and that "*Prosus, as Delivery Hero's largest shareholder, holds a certain degree of influence over Delivery Hero*".[7]

- **Prosus' expertise in the food delivery sector**: Prosus is a prominent investor in the sector, with holdings such as iFood in Brazil and Swiggy in India. Delivery Hero therefore placed significant weight on Prosus' expertise and routinely sought, and took into account, its views when making business decisions.

- **Prosus' access to Delivery Hero's management**: Despite having no legal right to board representation, Prosus succeeded in placing a representative on Delivery Hero's Supervisory Board. More broadly, it had direct access to senior management, including the CEO, enabling it to present proposals and opinions directly to them.

- **Scope of information exchange between Prosus and Delivery Hero**: The Commission found that Delivery Hero was subject to strict statutory information-sharing rules under German law, whereas Prosus' constraints rested only on its internal policies and compliance programme. Consequently, information flowing from Prosus to Delivery Hero was not restricted to the same extent as Delivery Hero's communications with its minority shareholders. The Commission therefore considered that, post-Transaction, Prosus could influence Delivery Hero's decision-making *"even through mere unidirectional exchanges, especially since Delivery Hero itself confirmed that Prosus' suggestions would carry more weight after their acquisition of JET."*[8]

Indeed, the Commission found that Prosus would likely have a stronger incentive to exercise influence over Delivery Hero after the Transaction, given its control of JET. External pressures, such as activist investor campaigns, could

7 *Ibid.*, paragraph 59.
8 *Ibid.,* paragraph 66.

also prompt Prosus to pursue greater influence over Delivery Hero or, at a minimum, make Delivery Hero more reliant on Prosus' support.[9]

Accordingly, the Commission concluded that Prosus was able to influence Delivery Hero, and would continue to do so after the Transaction.

Potential effects on competition as the result of the Transaction

Having established Prosus' ability to control JET on the one hand and to influence Delivery Hero on the other, the Commission then set out in detail the potential competitive harm arising from the Transaction.

The Commission explained that minority shareholdings, even when non-controlling, could weaken rivalry by creating non-coordinated (i.e. unilateral) anti-competitive effects. Post-Transaction, Prosus would have the ability and incentive to soften competition by e.g. raising JET's prices or restricting output, using its influence to deter Delivery Hero from actions contrary to Prosus' interests (for example, engaging in a price war with JET), steering JET to exit or not enter markets where Delivery Hero is active, and/or discouraging Delivery Hero from competing effectively or entering countries where JET operates. The limited number of alternative players present in these markets, amongst other things, meant that actions such as the above would result in harm to competition in the national markets for online platform food delivery services.

The Commission found that the Transaction could also increase the likelihood of Delivery Hero and JET aligning their behaviour (on entry and exit decisions as well as on pricing), even without entering into an agreement or resorting to a concerted practice infringing competition law (known as "coordinated effects"). It noted that the recent cartel findings in *Delivery Hero / Glovo*[10] suggested that the food delivery services market was already conducive to coordination, being concentrated and transparent, and that the structural link arising from Prosus' minority shareholding in Delivery Hero and the Transaction could further align the interests of two important competitors.

Remedies to remove the structural link between competitors

To address the Commission's concerns, Naspers/Prosus offered a package of commitments relating to its participation in Delivery Hero:

- **Divestiture Commitment**: Naspers/Prosus agreed to sell down Prosus' stake in Delivery Hero to "below a specified very low percentage" within 12 months.[11] The Decision notes that this would remove Prosus as Delivery Hero's largest shareholder and weaken the structural link created by the Transaction. The Commission initially considered Prosus' proposed 18-month period acceptable but reduced it to 12 months following market feedback – though this is notably still longer than the Commission's typical six-month divestment period. Based

---

[9] *Ibid*., paragraph 64.

[10] See further details of this case in our recent client alert, *Food for thought: European Commission delivers antitrust fines for no-poach arrangement, information exchange and market sharing facilitated by a minority stake*, available here.

[11] Commission's press release, *Commission approves Naspers' acquisition of Just Eat Takeaway.com, subject to conditions*, 11 August 2025, available here.

on Delivery Hero's feedback, the final commitments also (i) prohibit "warehousing" shares with a bank or fund (i.e. potential circumvention), and (ii) broaden the suitable purchaser criteria to include potential competitors providing food delivery platform services outside the EEA.

- **Non-Voting Commitment**: Prosus will not exercise any voting rights attached to its remaining, limited shareholding in Delivery Hero.

- **Board Commitment**: No Naspers-linked or Naspers-affiliated nominee (including a nominee engaged by an entity in which Naspers/Prosus holds a minority interest) will be appointed to any Delivery Hero board, whether supervisory or management.

- **Non-Reacquisition Commitment**: Naspers will not increase its equity interest in Delivery Hero above a specified maximum level which is not disclosed.

- **General Commitment**: Prosus will (i) significantly reduce any potential influence over Delivery Hero's commercial strategy and decisions arising from its minority stake, and (ii) eliminate credible opportunities to monitor or retaliate against Delivery Hero, both during the divestment process and thereafter.

Final thoughts

The Decision makes clear the Commission's position that, even absent control under the EUMR, a "significant minority shareholding" can trigger concerns about both unilateral and coordinated effects of a transaction, particularly in concentrated and transparent markets. Here, the combination of Prosus' influence over Delivery Hero via its minority shareholding and its control of JET, in the context of the concentrated platform food delivery services market, was sufficient to warrant a robust remedy package aimed at severing or neutralising the potential structural link between the two close competitors.

For investors, the following takeaways arise:

- First, existing minority shareholdings, especially sizeable stakes with information rights or board representation, will face close scrutiny when a new transaction in the same sector is notified. The Commission has discretion to conclude that significant minority interests are sufficient to convey "influence" over the target, meaning that, in practical terms, this is somewhat similar to a controlling interest for merger control analysis.

- Second, remedies may extend beyond the target to include divestments and other commitments relating to existing minority stakes in the target's competitors.

- Third, early mapping of cross-shareholdings and governance arrangements across sector investments is essential, as these features can materially influence both the competitive assessment and the remedy package.

More broadly, the Decision signals continued vigilance by the Commission in platform markets and oligopolistic settings. Firms holding various investments in the same markets should expect detailed scrutiny and be ready to address questions about the influence they may exert over minority-held companies.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Rahul Saha	Alaric Green	Nhi Nguyen
+44 203 580 4741	+44 203 580 4865	+44 203 580 4989
rsaha@willkie.com	dagreen@willkie.com	nnguyen@willkie.com

WILLKIE

BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON