競爭事務委員會
COMPETITION
COMMISSION

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NOTICE REGARDING THE COMMISSION'S ACCEPTANCE OF A COMMITMENT FROM KEETA IN THE ONLINE FOOD DELIVERY PLATFORM CASE

17 June 2026

競爭事務委員會
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I. INTRODUCTION AND EXECUTIVE SUMMARY[1]

1. The Competition Commission ("**Commission**") has conducted an investigation into the market for online food delivery and beverage delivery platforms ("**OFP**") in Hong Kong. As part of its investigation, the Commission is aware that certain conduct engaged in by Kangaroo Limited (trading as "**Keeta**"), specifically, certain terms of its agreements with partnering restaurants in Hong Kong ("**Agreements**"), may lead to competition concerns.

2. To this end, the Commission has considered whether Keeta may have contravened the first conduct rule ("**FCR**") in section 6(1) of the Competition Ordinance (Cap. 619) ("**Ordinance**") by including the following contractual provisions in its Agreements (collectively, "**Provisions**"):

   (a) **Exclusive Terms,** whereby partnering restaurants are required to work exclusively with Keeta, in return for Keeta charging a lower commission rate to the restaurant.[2]

   (b) **Breach of Exclusivity Provisions**, which restrict partnering restaurants from, or penalise them for, switching from Exclusive Terms to Non-Exclusive Terms.[3]

   (c) **Price Restriction Provisions**, which prevent partnering restaurants from charging lower prices, or require them to charge the same prices, for menu items:

      (i) on their own direct channels; and

      (ii) on competing platforms,

   compared to their prices on Keeta's platform.[4]

3. For the avoidance of doubt, the Commission did not find any evidence that Keeta engaged, or will engage, in any tying of Order to Pick Up Services to Order to Deliver Services.[5]

4. The Commission is concerned that the Provisions may have the effect of foreclosing competing platforms, particularly those with low market shares, from the market for Order to Deliver Services in Hong Kong or of softening competition between platforms in that market. This is

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1 Unless defined otherwise, capitalized terms in this notice have the same meaning as those in the commitment offered by Kangaroo Limited.

2 Although the Exclusive Terms restrict partnering restaurants from partnering with *any other platform*, for the reasons explained below, the Commission's concerns arise only with respect to the application of the Exclusive Terms vis-à-vis OFPs with a low market share. See further paragraphs 61 to 65 below.

3 See further the definition of "Exclusive Terms" and "Non-Exclusive Terms" in Keeta's commitment.

4 Such Pricing Restriction Provisions give rise to, respectively, a narrow price parity obligation and an across-platform (or wide) price parity obligation.

5 See paragraph 16 below for the definition of Order to Pick Up Services and Order to Deliver Services.

particularly the case since Keeta appears to have a degree of market power in the market for Order to Deliver Services.

5. As a consequence, the Provisions may have led to Keeta being able to charge higher commission rates to partnering restaurants and, in turn, to end customers paying higher prices for the partnering restaurants' menu items.

6. The Commission takes the view that, by reason of the inclusion of the Provisions in its Agreements, Keeta may have made or given effect to agreements with the effect of preventing, restricting or distorting competition in Hong Kong in contravention of the FCR.

A. Keeta's Interim Amendments

7. On 12 November 2025, the Commission announced that Keeta had agreed to amend the Provisions in its agreements with partnering restaurants on an interim basis. Specifically, Keeta agreed to:

(a) permit its partnering restaurants to switch from Exclusive Terms to Non-Exclusive Terms;

(b) insofar as partnering restaurant are required to provide notice to switch from Exclusive Terms to Non-Exclusive Terms, provide for a period of notification which does not exceed two months;

(c) specify an Exclusive Terms discount if Exclusive Terms has been agreed by both Keeta and the partnering restaurant, while not excluding the right of Keeta to apply different discounts to different partnering restaurants which may be revised from time to time;

(d) specify that the Exclusive Terms discount or Exclusive Terms agreed between Keeta and the partnering restaurant does not prevent the partnering restaurant from partnering, having any communications or entering into agreements with any OFP in Hong Kong with a market share of 10% or less ("**Low Market Share Platform**");

(e) remove any provisions contained in any of Keeta's agreements with partnering restaurants in relation to switching from Exclusive Terms to Non-Exclusive Terms, insofar as such provisions restrict partnering restaurants from, or penalize them for, switching from Exclusive Terms to Non-Exclusive Terms; and

(f) provide that partnering restaurants may:

i. charge prices for their menu items on their direct delivery channels that are lower than the prices that they charge on Keeta's platform, subject to the condition that the latter prices may not exceed the partnering restaurant's direct delivery

channel price marked up by the commission rate charged by Keeta for Order to Deliver Services; and

ii. charge prices for their menu items on their direct dine-in channels and on other platforms providing Order to Deliver Services that are lower than the prices that they charge on Keeta's platform for Order to Deliver Services.

8. Notwithstanding the above interim amendments, the Commission is concerned that Keeta may re-implement or re-enforce the Provisions or enter into new Agreements with the Provisions absent a binding commitment under section 60 of the Ordinance.

B. Keeta's Proposed Commitment

9. In order to address the Commission's concerns, Keeta offered a commitment under section 60 of the Ordinance ("**Proposed Commitment**"). Under the Proposed Commitment, Keeta would, among other things:

(a) refrain from enforcing the Breach of Exclusivity Provision against partnering restaurants that switch from Exclusive Terms to Non-Exclusive Terms;

(b) refrain from imposing the Exclusive Terms against Low Market Share Platforms; and

(c) insofar as it has not done so, remove the Price Restriction Provisions and allow partnering restaurants to charge prices for their menu items on their direct delivery channels, direct dine-in channels and other OFPs that are lower than the prices that they charge on Keeta's platform for Order to Deliver Services. For the menu items offered on direct delivery channels, this is subject to the condition that the prices for their menu items on Keeta's platform can only be marked up by the commission rate charged by Keeta.

10. On 28 April 2026, the Commission initiated a consultation on the Proposed Commitment ("**Consultation**"). In response to the Consultation, the Commission received three representations, which are summarized below in Part V.

11. The Commission has carefully considered the three representations and takes the view that no revisions are needed to Keeta's Proposed Commitment.

12. Accordingly, the Commission considers Keeta's commitment ("**Commitment**"), as set out in Part IV below, appropriate to address the Commission's concerns about the possible contravention of the FCR and has decided to accept the Commitment in accordance with section 60 of the Ordinance.

13. The remainder of the notice sets out further details regarding:

(a) the relevant factual background (Part II);

(b) the competition concerns identified by the Commission (Part III);

(c) Keeta's Commitment (Part IV);

(d) the representations received (Part V); and

(e) the Commission's acceptance of Keeta's Commitment (Part VI).

II. RELEVANT FACTUAL BACKGROUND

A. Keeta

14. Keeta is one of the two largest OFPs with substantial business in Hong Kong.

15. Keeta is a subsidiary of Meituan, a leading OFP in the Chinese Mainland. Keeta launched its OFP business in Hong Kong in May 2023.

B. Services Provided by Keeta

i. Relevant Services

16. Keeta provides end customers with the ability to order and obtain delivery of food and beverages ("**F&B**") through its online platform, which is available on its mobile phone application. Using the platform, end customers can order from partnering restaurants and arrange for either:

(a) delivery, which is usually carried out by the OFP but in some cases is carried out by the restaurant ("**Order to Deliver Services**"); or

(b) pick up by the end customer from the partnering restaurant ("**Order to Pick Up Services**").

17. Order to Deliver Services and Order to Pick Up Services are referred to herein collectively as "**Relevant Services**".

18. Restaurants are providers of F&B to paying end customers. Restaurants may partner with OFPs such as Keeta to display their menu and prices to end customers on the OFP's platform. To help end customers to compare different restaurant options in their locality, the platforms also offer information to end customers such as restaurant ratings, pictures and delivery times. The OFP then intermediates food ordering, transactions and delivery logistics and act as a conduit between restaurants partnering with the OFP, delivery drivers and end customers who wish to order F&B online.

19. Typically, end customers will have their orders delivered to a designated location (i.e., Order to Deliver Services), although OFPs in Hong Kong also enable end customers to order online and pick up their orders at the partnering restaurant at a designated time and location (i.e., Order to Pick Up Services). Order to Deliver Services will incur a delivery fee and a service fee for the end customer, while Order to Pick Up Services do not involve a delivery charge for the end customer and may come with a discount on the listed price.

20. Ordinarily, an OFP and its partnering restaurant will enter into an agreement for the purpose of the former providing the Relevant Services to the latter. Generally, partnering restaurants will pay a commission to the OFPs (in terms of a percentage of the total value of F&B spent by an end customer) from each sale the partnering restaurants make through the OFP. In addition, and as mentioned, end customers ordinarily pay a delivery fee and a service fee to the OFP in cases of Order to Deliver Services.

21. OFPs constitute multi-sided platforms that connect both partnering restaurants and end customers. This means that OFPs compete both for end customers' order bookings as well as for providing ordering services to partnering restaurants. There are positive indirect network effects between partnering restaurants and end customers (that is, the more restaurants an OFP has on offer, the more end customers the OFP will attract and vice versa).

C. Market Players

i. Current players

22. Apart from Keeta, other OFPs which provide Order to Deliver Services and/or Order to Pick Up Services in Hong Kong as of April 2026 include Foodpanda, OpenRice, Oddle, DimOrder (點單) and Grab Food HK.

Competitor	Order to Deliver Services	Order to Pick Up Services
Keeta	√	√
Foodpanda	√	√
OpenRice	X	√
Oddle	√	√
DimOrder	√	√
Grab Food HK	√	√

23. Certain restaurants and restaurant groups also provide Order to Deliver Services for their own restaurants or restaurant groups. These include Blacksheep GO, JIA Everywhere, KFC and Pizza Hut.

ii. Previous players

24. Honestbee previously provided Order to Deliver Services in Hong Kong, but suspended its services and exited the market in May 2019.

25. In addition, UberEats, the OFP launched by the Uber ridesharing service, previously provided the Relevant Services in Hong Kong. UberEats commenced operations in October 2016, but exited the market on 31 December 2021.

26. Similarly, Lingduck previously provided the Relevant Services in Hong Kong, but exited the market after 31 August 2022.

27. The online retailer HKTVmall previously provided the Relevant Services in Hong Kong under the name HKTVexpress, commencing operations in June 2021, but suspended the provision of these services on 15 October 2022.

28. 51wm previously provided the Relevant Services in Hong Kong, but has altered its business model to provide IT solutions to restaurants to manage their own food delivery and self-pick up services in 2023.

29. Deliveroo Hong Kong Limited ("**Deliveroo**") was a member of the Deliveroo Group, a global OFP company. In September 2015, Deliveroo launched its OFP business in Hong Kong and had offered the Relevant Services. However, Deliveroo exited the Hong Kong market in April 2025.

iii. Prior investigation into Foodpanda and Deliveroo (Case EC/03JJ)

30. The Commission previously investigated Foodpanda and Deliveroo for having terms similar to the Provisions in their respective agreements with partnering restaurants.[6]

31. On 29 December 2023, the Commission accepted commitments from Foodpanda and Deliveroo under section 60 of the Ordinance to address its concerns relating to the concerned provisions in Foodpanda's and Deliveroo's agreements.[7]

[6] The Commission also had concerns regarding Foodpanda's tying provisions while Deliveroo did not employ across-platform price parity provisions.

[7] See Commission Notice of Acceptance in Case EC/03JJ *Online Food Delivery Platforms*, 29 December 2023.

32. Based on the evidence collected in the present investigation, the Commission considers its provisional findings in Case EC/03JJ to continue to be applicable and relies on its assessment conducted in Case EC/03JJ for its provisional findings contained herein.

D. The Provisions

i. Use of Exclusive Terms

33. Under the Exclusive Terms, partnering restaurants are required to work exclusively with Keeta, in return for Keeta charging a lower commission rate to the restaurant. The Non-Exclusive Terms allow partnering restaurants to partner with third-party OFPs for Order to Deliver Services but require payment of a higher commission rate.

34. The level of commission rates charged by Keeta varies between partnering restaurants and depending on whether the partnering restaurants enter into Exclusive Terms with Keeta. The information gathered by the Commission indicates that commission rates can range between approximately one-quarter (≈25%) of order values to greater than one-third (>33%) of order values, with non-exclusive rates being higher than exclusive rates and in general being towards the upper end of this range.[8]

35. Partnering restaurants that agree to the Exclusive Terms may also receive certain incentives from Keeta, such as order trend reports and real-time big data analytics.

ii. Breach of Exclusivity Provisions

36. Through the Breach of Exclusivity Provisions, Keeta has restricted partnering restaurants from, or penalised them for, switching from Exclusive Terms to Non-Exclusive Terms. This includes by allowing Keeta to:

(a) prevent the partnering restaurant from approaching competing OFPs for talks or negotiations;

(b) require a relatively long notice period of 90 days for partnering restaurants to switch; and

(c) cease all marketing activities on behalf of the partnering restaurant, remove the partnering restaurant from its platform, restrict the partnering restaurant from procuring the Relevant Services or suspend or terminate the relevant Agreement.

[8] The commission rate may vary in particular cases, e.g., restaurants newly joining the platform may be charged a lower commission rate.

iii. Price Restriction Provisions: narrow price parity

37. Keeta's Agreements have prevented partnering restaurants from charging lower prices for menu items on their direct channels[9] compared to those offered on Keeta's platform.

38. A material breach by a partnering restaurant of any of its obligations under the Agreement would have constituted a ground for Keeta to suspend the restaurant from the platform.

iv. Price Restriction Provisions: across-platform (wide) price parity

39. Keeta had the right to increase or reduce the partnering restaurant's prices on Keeta's platform to match those displayed on other OFPs without notice to the partnering restaurant. As such, Keeta effectively could have ensured that partnering restaurants did not offer prices for their menu items on other OFPs that were lower than those offered on Keeta's platform.

40. Keeta could have temporarily suspended the partnering restaurant from the platform if the latter was in breach of any terms of the Agreement (which included the across-platform price parity obligation).

III. COMPETITION CONCERNS IDENTIFIED BY THE COMMISSION

41. This section explains the situation that Keeta's Commitment is seeking to deal with for the purposes of section 2(2)(d) of Schedule 2 of the Ordinance.

A. Framework for Assessment

42. The Agreements entered into between Keeta and its partnering restaurants fall within the meaning of "agreements" under section 2(1) of the Ordinance. These agreements constitute vertical agreements, i.e., agreements between undertakings that operate at different levels of the stream of commerce and are not competitors.

43. The Commission's Guideline on the First Conduct Rule ("**FCR Guideline**") recognizes that whilst vertical agreements frequently improve economic efficiency within a chain of production or distribution, some vertical agreements may, nonetheless, cause harm to competition. This may be the case where vertical agreements include restrictions that foreclose existing competition or limit the scope for market entry or expansion.[10]

44. The Commission has assessed whether the Provisions have the actual or likely effect of preventing, restricting or distorting competition in Hong Kong within the meaning of the FCR. In

[9] The relevant restriction applies to the partnering restaurant's in-restaurant menu. Keeta's Commitment targets specifically restrictions on the partnering restaurant's direct delivery and dine-in channels (see paragraph 84(d) below).

[10] FCR Guideline, paragraphs 6.6 to 6.9.

doing so, the Commission has had regard to its guidance and decisional practice on exclusive dealing[11] and price parity.[12]

45. Section 60 of the Ordinance does not require the Commission to reach a firm conclusion on whether there has been a contravention of the FCR to resolve a matter by a commitment. The assessment that follows therefore comprises only the provisional views that the Commission has formed as a result of the investigation it has conducted to date.

B. Defining the Relevant Market

46. When assessing anti-competitive effects, the exercise of defining the relevant market assists in identifying in a systematic way the competitive constraints that undertakings face when operating in a market.[13]

i. Product market definition

47. In accordance with paragraph 45 above, the Commission has not reached a firm conclusion on market definition in this case.[14] Nonetheless, the Commission believes there is a reasonable basis to consider that the relevant product markets for the purpose of assessing the Provisions comprise:

(a) **Order to Deliver Services**, which include intermediation services by an online platform enabling F&B to be ordered from restaurants on the platform and delivered to end customers within a short timeframe;[15] and

(b) **Order to Pick Up Services**, which include both intermediation services by an online platform enabling F&B to be ordered from restaurants on the platform and the ordering service provided by the restaurant itself,[16] for subsequent pick-up of the F&B by the end customer.

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[11] See Commission's Guideline on the Second Conduct Rule ("**SCR Guideline"**), paragraphs 5.23 to 5.32. Footnote 24 of the SCR Guideline confirms the application of such guidance to vertical agreements under the FCR. See also Commission Notice of Acceptance in Case EC/03JJ *Online Food Delivery Platforms*, 29 December 2023.

[12] See Commission Notice of Acceptance in Case EC/02NJ *Online Travel Agents*, 13 May 2020; Commission Notice of Acceptance in Case EC/03JJ *Online Food Delivery Platforms*, 29 December 2023.

[13] FCR Guideline, paragraph 3.21. The SCR Guideline sets out the Commission's approach to market definition in further detail.

[14] See Commission Notice of Acceptance in Case EC/02UB *Car Warranties*, 10 October 2022, paragraphs 35 and 71.

[15] The delivery services in this market may ultimately be provided by the platform or, in a more limited number of cases, by the restaurant itself.

[16] Such ordering services may be offered by phone, on the restaurant's website or mobile application or in person.

48. The Commission has reached the provisional view that these are likely to be distinct relevant markets for the provision of F&B to end customers, based on the following considerations (which are related to the demand-side or end customers' perspective on substitutability):

(a) **Order to Deliver Services and Order to Pick Up Services address different needs of the end customers**. The evidence available to the Commission suggests that the primary motivations for end customers to opt for Order to Pick Up Services are to save time and get their food quicker, followed by an absence of minimum order value which may allow them to save money, and the ability to plan their time better by being able to schedule their orders. In contrast, the primary motivation for end customers to opt for Order to Deliver Services is that they do not want to leave their premises to obtain their F&B. Accordingly, for these end customers, Order to Pick Up Services would be unlikely to be a viable substitute. In addition, the evidence also suggests that if Order to Deliver Services are not available on a particular OFP, the end customers who prefer Order to Deliver Services are more likely to turn to other similar platforms, instead of using Order to Pick Up Services or dining in at the restaurant.

(b) **Location and distance of the restaurants are relevant considerations for end customers**. End customers are likely to only consider Order to Pick Up Services for restaurants located within short distance from their location. On the other hand, Order to Deliver Services can allow end customers to order from restaurants further away. Further, end customers opting for Order to Deliver Services do not need to travel to the restaurant to get the takeaway F&B, minimising the time and potential travel costs incurred.

(c) **Total price paid by end customers when opting for Order to Deliver Services compared to Order to Pick Up Services**. End customers who opt for Order to Deliver Services will have the F&B delivered to their addresses by paying a delivery fee, which may range from around HK$0 to HK$40. In addition, for orders below a minimum order value set by Keeta, end customers will be required to pay the difference between the menu item(s) and the minimum order value. In contrast, when using Order to Pick Up Services, an end customer can avoid such fees and will not be subject to any minimum order value, while the OFP may offer additional special offers.

(d) **Occasion on which F&B is ordered by the end customers**. Whilst the evidence available to the Commission suggests that some end customers may use both Order to Deliver Services and Order to Pick Up Services interchangeably, this does not necessarily mean that the two are substitutable. Whether or not the two are substitutable depends on the occasion on which F&B is ordered by the end customers. For instance, for a dinner party or a family gathering, end customers may consider delivery to be the better option as the order size is larger and hence the delivery fee would represent a small share of the total costs. Picking up a large order may also not be practical for such occasions. In contrast,

for a workplace lunch, end customers may consider Order to Pick Up Services to be a more appropriate option due to the convenience and lower prices for pick-up orders.

ii. Geographic market definition

49. The Commission believes there is a reasonable basis to consider that the relevant geographic market for the provision of the Relevant Services comprises the **Hong Kong Special Administrative Region**.

50. This is based on the following considerations:

(a) Keeta and Foodpanda each provides the Relevant Services in the same manner throughout Hong Kong, including with respect to the terms of their respective agreements with partnering restaurants, their offer to end customers and the various fees that they charge to such customers. These terms are applied irrespective of the locations of the partnering restaurants and end customers within Hong Kong.

(b) Once they have established a presence in one area, OFPs can expand quickly into other areas in Hong Kong using their existing infrastructure (in terms of the platform, logistics, rider fleet, etc.), potentially without having to incur very high costs.

(c) Several other jurisdictions have reached a similar view, finding the relevant geographic markets to be city-wide, or even national, in their cases concerning online food ordering and delivery platforms.

C. Assessment of Effects

51. The Commission sets out below its provisional views on Keeta's degree of market power, as well as the potential anti-competitive effects of each of the Provisions. It notes that the Provisions should not be assessed in isolation to each other, as the potential anti-competitive effects of one Provision may be significantly reinforced when applied in combination with another.

i. Keeta's market power

52. When assessing the actual or likely effects of an agreement, the Commission will generally consider the extent to which the undertakings concerned have market power in a relevant market.[17] The degree of market power for concerns to arise under the FCR is not the same as the degree of market power required for concerns to arise under the Second Conduct Rule and is typically less.[18]

[17] FCR Guideline, paragraph 3.21.
[18] FCR Guideline, paragraph 3.23.

53. The Commission believes there is a reasonable basis to consider that Keeta has market power in the market for Order to Deliver Services, based on the factors set out below.

ii. Market shares

54. From at least April 2025 to February 2026, Keeta has had a persistently high individual market share exceeding 60% of the market for Order to Deliver Services in terms of order value. Overall, the Order to Deliver Services market is highly concentrated, with Keeta and Foodpanda constituting the only remaining significant OFPs.

iii. Competitive constraints

55. In the Commission's provisional view, Keeta is unlikely to be sufficiently constrained by other competitors in the market for Order to Deliver Services, save for any competitive constraint imposed by Foodpanda.

56. Other competitors in the market (e.g., Oddle and DimOrder) generally each has a very low market share, with individual market shares likely considerably below 1% in 2026. Such competitors do not appear capable of providing a sufficient competitive constraint on Keeta.

57. Moreover, neither the partnering restaurants (with very few exceptions) nor end customers individually are likely to have bargaining power to negotiate individual contractual terms with Keeta and constrain it sufficiently.

iv. Barriers to entry and expansion

58. The market for Order to Deliver Services appears to be characterised by the existence of a number of barriers to entry and expansion, which may impede the emergence of another credible competitor to Keeta. In particular, the market for Order to Deliver Services appears to entail indirect network effects in the sense that it is necessary for a new OFP to gain a sufficient number of users on one side of the platform before users on the other side may find the OFP attractive to join. In addition, the market involves important economies of scale, with large investments and a significant amount of time being required to develop and optimise an OFP's technology and substantial resources needed to set up a logistics network for the OFP with sufficient coverage and delivery speed. Substantial marketing and advertisement expenses are also needed to create and establish the brands.

59. In addition, and as further described below, the use by Keeta of Exclusive Terms, Breach of Exclusivity Provisions and Price Restriction Provisions appear likely to themselves increase barriers to entry and expansion for competing platforms.

60. While Keeta was able to enter and expand in the Order to Deliver Services market, the Commission continues to have concerns that the Exclusive Terms, Breach of Exclusivity Provision

and Price Restriction Provisions may prevent future entry and expansion. Keeta's relationship with Meituan provided it with significant capital, resources and experience in online food delivery. The Commission considers that there is currently no indication that another potential entrant would replicate Keeta's position in a timely and effective manner.

v. Use of Exclusive Terms and Breach of Exclusivity Provisions

61. Exclusivity arrangements are commonly used commercial arrangements and in most cases will not harm competition.[19] In this case, however, Keeta appears to have some degree of market power, while all other OFPs have significantly lower market shares, with the exception of Foodpanda. The Commission believes there is a reasonable basis to consider that the use of Exclusive Terms and Breach of Exclusivity Provisions may have anti-competitive effects when applied against OFPs with low market shares (i.e., "**Low Market Share Platforms**"[20]).

62. In particular:

(a) By offering a lower commission rate under the Exclusive Terms, Keeta appears to entice partnering restaurants to agree to partner exclusively with it for Order to Deliver Services. In addition, the potential effect of the Exclusive Terms in locking in partnering restaurants to Keeta appears amplified by the concurrent use of the Breach of Exclusivity Provisions, which make it more difficult for partnering restaurants to switch away from Exclusive Terms and start partnering with other OFPs.

(b) Together, the use of the Exclusive Terms and Breach of Exclusivity Provisions may deter partnering restaurants from using Low Market Share Platforms and thus create a significant barrier to entry and expansion for those platforms. Conversely, they may help Keeta to maintain and strengthen its position in the market for Order to Deliver Services.

(c) The Exclusive Terms and Breach of Exclusivity Provisions may thus deprive Low Market Share Platforms of the possibility to attract a larger order and revenue base and prevent them from gaining a sufficient size to compete effectively against Keeta.

(d) In this respect, the Commission notes the market shares of the other OFPs in the market, with the exception of Foodpanda, have remained limited over several years.

(e) Keeta's significant market share, combined with the application of Exclusive Terms through its standard Agreements, likely indicates material market coverage and potential to foreclose Low Market Share Platforms.

[19] SCR Guideline, paragraph 5.23.

[20] For the meaning of this term as used in Keeta's Commitment, see paragraph 85 below.

(f) The standard Agreements in which the Exclusive Terms are laid down have a relatively long duration. The Exclusive Terms would apply for the same duration unless the partnering restaurant has elected to switch to Non-Exclusive Terms.

63. At the same time, the Commission recognises that the use of Exclusive Terms by Keeta appears unlikely to have the above foreclosure effect on Foodpanda. Given its strong market position, Foodpanda appears able to entice partnering restaurants to sign up under Exclusive Terms and may compete with Keeta to obtain Exclusive Terms from such restaurants.

64. The same would be the case if a third-party OFP gained significant size in the market, in which case the use of Exclusive Terms by Keeta would be less likely to have a foreclosure effect on that OFP. At present, it remains to be seen whether another third-party OFP would indeed be able to achieve sufficient size, given the foreclosing effect of the Exclusive Terms as discussed above.

65. Nonetheless, to cater for the fact that the Exclusive Terms would be unlikely to have a foreclosing effect on Foodpanda or a larger OFP (if one emerges), Keeta's Commitment provides for the cessation of the Exclusive Terms only as against Low Market Share Platforms (see paragraphs 85 to 88 below).

vi. Price Restriction Provisions: narrow price parity

66. The Commission believes there is a reasonable basis to consider that the narrow price parity arrangements, whereby Keeta prevented partnering restaurants from charging lower prices, or requires them to charge the same prices, for menu items on their direct channels,[21] may have given rise to anti-competitive effects.

67. In particular:

(a) Keeta's narrow price parity arrangement limited the ability of partnering restaurants' direct channels to compete with Keeta menu prices. As a result, the competitive pressure placed by direct channels on Keeta was lessened.

(b) Importantly, for partnering restaurants subject to the Exclusive Terms with Keeta, any price competition for their menu items may in practice have been excluded due to the operation of the narrow price parity arrangement.

68. In the Commission's provisional view, these harmful effects appear more likely given that the narrow price parity arrangements covered a significant part of the relevant market. It was

[21] See footnote 9 above for further details on the relevant direct channels.

provided for in Keeta's standard Agreement, to which almost all of its partnering restaurants are subject, while Keeta itself has a high market share in the Order to Deliver Services market.

69. The Commission nonetheless acknowledges that narrow price parity arrangements could be necessary to avoid partnering restaurants free-riding on OFPs' services. Absent such arrangements, a partnering restaurant could use the OFP merely to advertise its menu items and entice end customers to purchase the items on the restaurant's own direct channels instead by offering significantly lower prices on those channels.

70. The Commission considers that there may be some basis to this concern in the case of sales on the partnering restaurant's own direct delivery channel (where the partnering restaurant's services appear largely similar to those of the OFP). On the other hand, it considers the concern less likely to be well-founded for dine-in sales (which appear to relate to a different dining occasion from those on the OFP). Keeta's Commitment accordingly permits it to limit the mark-up applied by the partnering restaurant on its platform as compared to sales on its direct delivery channel, though not as compared to dine-in sales (see paragraph 84(d) below).

vii. Price Restriction Provisions: across-platform (wide) price parity

71. The across-platform price parity arrangement in Keeta's Agreements prevented restaurants from setting lower prices on Foodpanda or other platforms.

72. The Commission believes there is a reasonable basis to consider that this arrangement may have harmed competition as follows:

(a) Keeta's wide price parity arrangement may have softened the competitive pressure exerted on Keeta by other OFPs. Given restaurants on Keeta were subject to an across-platform price parity clause, other OFPs were unable to incentivise restaurants to undercut Keeta on menu price (e.g., through lowering commission rate). Thus, other OFPs had reduced incentives to offer restaurants lower commission rates because it would not have translated to lower menu prices and additional orders. As a result of this, the competitive pressure on Keeta was lessened.

(b) The arrangement may further have deprived smaller OFPs from attracting a larger order and revenue base and prevented them from gaining a sufficient size to compete efficiently with Keeta.

73. In the Commission's provisional view, the above potential effects appear more likely given that the across-platform price parity arrangement covered a significant part of the relevant market. It was provided for in Keeta's standard Agreement, to which almost all of its partnering restaurants are subject, while Keeta itself has a high market share in the Order to Deliver Services market.

IV. KEETA'S COMMITMENT

74. In this section, the Commission: (i) outlines the relevant legal framework for acceptance of commitments; (ii) explains the Commission's views on the appropriateness of Keeta's Commitment; and (iii) provides a high-level summary of the Commitment.

75. In doing so, it explains the intended object and effect of the Commitment for the purpose of section 2(2)(b) of Schedule 2 of the Ordinance.

A. Relevant Legal Framework

76. Under section 60 of the Ordinance, the Commission may accept a commitment from a person to: (a) take any action; or (b) refrain from taking any action, where it considers this appropriate to address its concerns about a possible contravention of a competition rule. The Ordinance does not require parties offering commitments to make any admission of a contravention.

77. If the Commission accepts a commitment, it will terminate its investigation and not bring proceedings in the Competition Tribunal regarding the matters covered by the commitment. This is subject, however, to the ability of the Commission to withdraw its acceptance of a commitment under the circumstances provided for in section 61 of the Ordinance, including where there has been a material change of circumstances or the person giving the commitment has failed to comply with them.[22]

78. In terms of procedure, Schedule 2 of the Ordinance requires the Commission to consult on the proposed commitment before acceptance and consider any representations received on the proposed commitment. If the Commission accepts the commitment following this consultation, under section 64 of the Ordinance, it is required to register the commitment on its Register of Commitments.

B. Appropriateness of the Commitment

79. The Commission considers that Keeta's Commitment would be an appropriate enforcement outcome having regard to the factors set out in paragraph 2.2 of its *Policy on Section 60 Commitments*:

(a) **Seriousness of the conduct.** The Provisions do not constitute cartel conduct involving competitors. The Commission considers that the Commitment provides a resolution to its concerns that is proportionate to the context of the conduct and the harm caused or likely to occur.

[22] Where the Commission has the requisite basis to consider that a party making the commitment has failed to comply with the commitment, it may either (a) withdraw acceptance of the commitment under section 61 of the Ordinance; or (b) apply to the Competition Tribunal for one or more of the orders in section 63 of the Ordinance.

(b) **Ability to address competition concerns.** As described below, the Commitment will address the Commission's concerns in a targeted and effective manner by ensuring that the Provisions will not be enforced or included in Keeta's Agreements and its partnering restaurants will be duly informed.

(c) **Effective implementation and monitoring.** As described below, the Commitment includes specific provisions to ensure its timely and effective implementation (including for its operation to vary in specific pre-defined circumstances) as well as ongoing monitoring by the Commission.

(d) **Other factors mentioned in paragraph 2.2.** Keeta has engaged with the Commission in good faith throughout the investigation and the Commission has not identified any severity factors mentioned in the Commission's *Enforcement Policy*, timing considerations or other elements that would militate against the appropriateness of the Commitment.

C. Summary of the Commitment

80. Keeta's Commitment applies to clauses in its Agreements, other than those with restaurants that have bespoke arrangements and where the Commission's competition concerns are less applicable.[23]

i. Non-enforcement and removal of Relevant Provisions

81. For the purposes of Keeta's Commitment, the "**Relevant Provisions**" are defined to comprise Breach of Exclusivity Provisions and Price Restriction Provisions (as described in paragraphs 36 to 40 above).

82. Keeta's Commitment is designed to cease any application of the Relevant Provisions, and thus remedy the Commission's concerns about such provisions. Specifically, Keeta commits:

(a) not to enforce any Relevant Provisions in existing agreements with partnering restaurants (clause 2.1);

(b) not to enter into any new agreement with a partnering restaurant that contains the Relevant Provisions (clause 2.2); and

(c) to remove any Relevant Provisions from contractual documentation for existing partnering restaurants or template agreements for future partnering restaurants (clause 2.4(a)).

[23] Such restaurants comprise those that have concluded "Outlet Expansion Terms" or "Profit Guarantee Terms" with Keeta.

ii. Consequential contractual amendments

83. Since Keeta would cease application of the Relevant Provisions under the Commitment, it is necessary to specify the contractual conditions that would apply in place of those provisions.

84. In particular:

(a) **Measures to provide clarity on ability to switch.** The relevant contractual documentation would specify that partnering restaurants may switch from Exclusive Terms to Non-Exclusive Terms (clause 2.4(b)) and specify the applicable commission rates under each set of terms (clause 2.4(e)). The Commitment contains an additional clarification that Keeta only has to specify the exclusive commission rate if exclusivity has been agreed between both Keeta and the partnering restaurant.

(b) **Notice period for switching.** Insofar as Keeta may require notice for the partnering restaurant to switch from Exclusive Terms to Non-Exclusive Terms, this should be limited to a reasonable period so as not to impede such switching and be no more than two months (clause 2.4(c)).

(c) **Permissible clawback.** Insofar as a partnering restaurant switches from Exclusive Terms to Non-Exclusive Terms without notification and Keeta cannot ascertain the date of its switch, Keeta may only clawback the difference in the applicable commission rate for a maximum of two months (clause 2.4(d)).

(d) **Non-restriction of partnering restaurant's pricing.** To provide clarity that the pricing restrictions no longer apply, the relevant contractual documentation would specify that the partnering restaurant may charge lower prices:

(i) on their direct delivery channels;[24]

(ii) on their direct dine-in channels; and

(iii) on competing platforms,

than those they charge on Keeta's platform (clause 2.4(g)).

iii. Carve-out of "Low Market Share Platforms" from Exclusive Terms

85. Under clause 2.4(f) of Keeta's Commitment, Keeta is required to carve out Low Market Share Platforms from the scope of its Exclusive Terms. For the purpose of the Commitment, "**Low**

[24] Further to the free-riding concern outlined in paragraph 69 above, the Commitment specifies that Keeta is entitled to limit the mark-ups applied by partnering restaurants on its platform (as compared to the prices on the restaurants' direct delivery channel) to the value of the commission rate charged by Keeta.

Market Share Platforms" are defined to comprise platforms that provide Order to Deliver Services and have a monthly market share of 10% or less measured by order value.[25] The 10% threshold is appropriate because the Commission's investigation found evidence that platforms with market shares below 10% have not been able to maintain a significant competitive presence in Hong Kong.

86. Under the carve-out, where a partnering restaurant agrees to the Exclusive Terms with Keeta in return for an exclusive commission rate, that partnering restaurant would:

(a) only be prevented from partnering with Foodpanda and any other platform that is not a Low Market Share Platform; and

(b) still be able to partner with a Low Market Share Platform.

87. The carve-out aims to limit the ability of the Exclusive Terms to foreclose Low Market Share Platforms by ensuring partnering restaurants may still use those OFPs. At the same time, the Commitment does not remove the Exclusive Terms entirely since they are unlikely to produce foreclosure effects as between non-Low Market Share Platforms and may promote competition between Keeta, Foodpanda and any other significant OFP, as outlined above.[26]

88. Keeta's Commitment contains a mechanism to determine when a platform is no longer a Low Market Share Platform and may become the subject of the Exclusive Terms (clauses 3.6 and 3.7). Keeta may provide written evidence to the Commission that another platform has exceeded the 10% market share threshold for its verification. Such evidence must give a fair and accurate representation of the market positions of the relevant market participants. For the purpose of verification, the Commission may conduct its own assessment and gather information from third parties.

iv. Carve-outs for Outlet Expansion Terms and Profit Guarantee Terms

89. Keeta's Commitment contains carve-outs for Outlet Expansion Terms ("**OETs**") and Profit Guarantee Terms ("**PGTs**") (clauses 1.1(w) and 1.1(aa), respectively). The carve-outs would mean that Keeta would be permitted to impose the Relevant Provisions[27] and Exclusive Terms against restaurants that are subject to the OETs or the PGTs.

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[25] As at the date of this notice, all platforms other than Keeta and Foodpanda would be Low Market Share Platforms.

[26] For the avoidance of doubt, insofar as the Breach of Exclusivity Provisions are concerned, Keeta may not apply these to any partnering restaurant, regardless of whether the restaurant wishes to partner with a Low Market Share Platform or another OFP. This aims to ensure that partnering restaurants may switch freely between Exclusive Terms and Non-Exclusive Terms.

[27] Namely, the Breach of Exclusivity Provisions and the Price Restriction Provisions.

90. The OETs are contractual terms whereby Keeta would pay a certain amount to a restaurant for the purposes of meeting such restaurant's capital expenditure needs, for example, to open up a new location. The PGTs are contractual terms whereby Keeta would guarantee that a restaurant will receive a target amount of gross food value on its platform for the purpose of facilitating investment in joint commercial initiatives, such as joint marketing.

91. The Commission does not have significant concerns regarding the carve-outs since:

(a) the OETs and PGTs may be procompetitive in that they facilitate activities such as the expansion of new outlets and joint marketing;

(b) the OETs and PGTs require some investment by Keeta and, therefore, unlikely to be broadly applied; and

(c) the same carve-outs are included in Foodpanda's commitment.

92. Keeta's Commitment contains monitoring provisions to allow the Commission to closely monitor the use of the OETs and PGTs (clauses 3.2(d) and 3.5).

v. Non-circumvention

93. Under clause 2.7 of Keeta's Commitment, Keeta commits not to circumvent or otherwise frustrate the operation of the substantive commitment described above.

vi. Timeframes

94. Keeta's Commitment enters into force on the date Keeta receives this Notice of Acceptance from the Commission ("**Effective Date**").

95. As of the Effective Date, Keeta is obliged not to enforce any Relevant Provisions or to enter into any new agreements containing such provisions.

96. Within 90 calendar days of the Effective Date, and insofar as Keeta has not done so prior to the Effective Date, Keeta is required to:

(a) amend its contractual documentation for existing partnering restaurants and update its template agreements for future partnering restaurants in the manner described above; and

(b) issue a communication to all of its respective partnering restaurants which confirms in clear and unambiguous language the amendments made.

vii. Duration and termination

97. Keeta's Commitment remains in place until 28 December 2026 (clause 4.2) in order to align with the duration of Foodpanda's commitment. This is subject to the Commitment being terminated at an earlier date, should:

(a) the Commitment be withdrawn, released, varied or substituted in accordance with the processes in sections 61, 62(1) and 62(2) of the Ordinance (clauses 4.2(a) to (c));

(b) the Commission withdraws, varies or releases Foodpanda's commitment for reasons that would apply to Keeta and if Keeta makes a request pursuant to section 62(2)(a) of the Ordinance and the Commission releases Keeta accordingly (clause 4.2(d)); or

(c) Keeta falls below a 30% market share in Order to Deliver Services measured by order value, in which case Keeta would be permitted to enter into and enforce Agreements with the Breach of Exclusivity Provisions and Price Restriction Provisions, but only insofar as the Price Restriction Provisions relate to narrow price parity and not across-platform parity (clause 4.3).

98. In relation to this latter termination event, the Commission considers that the imposition of the Relevant Provisions by Keeta is less likely to give rise to the foreclosure effects and other competition concerns identified above where it has a market share of below 30%.[28] Such a decrease in Keeta's market share would necessarily entail that other platforms had significantly increased in size and the Commission's concerns that the use of the Relevant Provisions by Keeta would foreclose other platforms would appear to have diminished substantially.

99. The Commission is prepared to accept a commitment that provides for the Relevant Provisions to be dis-applied on the occurrence of this event because such a criterion is transparent, objective and proportionate in the circumstances. There was some consideration as to whether a broader range of circumstances might also be captured but the Commission does not consider, at this time, it would have the same degree of confidence that it would no longer have competition concerns. Accordingly, the Commission, taking into account the factors referred to in its guidelines (see paragraph 79 above), did not consider it appropriate for a wider range of factors to be included. To the extent other circumstances arise, it remains open for a review and possible release or variation in accordance with the statutory process to be undertaken.

[28] The Commission notes that the block exemption regimes for vertical agreements in the European Union and the United Kingdom would provide for block exemption of much of the Relevant Provisions where the supplier's market share does not exceed 30% in the relevant market. See *Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices* and *The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022*.

100. The Commitment contains a mechanism to determine whether Keeta has fallen below the 30% market share threshold (clause 4.4), similar to the equivalent mechanism for Low Market Share Platforms.

viii. Reporting, compliance and monitoring

101. In clauses 3.1 to 3.5, Keeta is subject to the following reporting and monitoring mechanism to ensure compliance with the Commitment:

(a) **Written report.** Within 120 calendar days from the Effective Date, Keeta will provide a written report to the Commission confirming its compliance with the Commitment and providing the Commission with supporting documents.

(b) **Compliance statement.** Keeta will also provide a compliance statement to the Commission one month before the Commitment is due to expire on 28 December 2026, signed by an authorised officer confirming that to the best of his or her knowledge, Keeta continues to abide by the Commitment.

ix. Other matters

102. Keeta's Commitment does not constitute an admission by Keeta of a contravention of a competition rule (recital (5)).

103. In accordance with section 60(4) of the Ordinance, in accepting the Commitment, the Commission will not continue its investigation, or bring proceedings in the Competition Tribunal, with regard to the matters (i.e., the Relevant Provisions) that are addressed in the Commitment.

V. REPRESENTATIONS

104. During the Consultation, the Commission received representations from:

(a) the Consumer Council;

(b) Foodpanda; and

(c) a member of the public ("**Ms X**").

105. The rest of this Part of the notice summarizes the relevant issues addressed in the representations. The summary of issues is not intended to be an exhaustive, point-by-point rebuttal.

A. The Market Share Threshold to Determine Low Market Share Platforms

106. Ms X submits that the 10% market share threshold used to determine whether an OFP qualifies as a Low Market Share Platform under the Proposed Commitment is too low and should be increased to allow effective competition from new entrants with some scale.

107. The Commission does not consider it appropriate to increase the market share threshold for Low Market Share Platforms. There will be no perfect threshold for determining when an OFP becomes a significant competitive presence and the 10% threshold is justifiable based on the Commission's investigation, which uncovered that no OFPs other than Foodpanda, Deliveroo and Keeta have been able to achieve a market share above 10%. The 10% threshold is also consistent with Foodpanda's commitment in Case EC/03JJ. Market shares are standard in competition law contexts and consistent with the approach used in the EU (see in particular the EU's Vertical Block Exemption Regulation).[29]

108. The 10% threshold allows prospective new entrants to enter the market without needing to overcome the barriers posed by exclusivity. Specifically, a new entrant would be able to sign up a large number of restaurants prior to service launch, regardless of their exclusivity status with Keeta or Foodpanda. With more restaurants on the platform at launch, the entrant platform would be much more likely to succeed on the consumer side.

B. Preventing Algorithmic Control of Labour Mobility

109. Ms X submits that the Proposed Commitment should include technical regulatory clauses on the prohibition of algorithmic discrimination and the prevention of labour monopoly to address her concerns regarding Keeta's control over the manpower providing delivery service.

110. The purpose of the section 60 commitment in this case is to address the Commission's concerns about a possible contravention of a competition rule as a result of certain provisions in Keeta OFP/restaurant Agreements. Ms X's concerns regarding the algorithmic control of labour mobility are not relevant to the Commission's competition concerns in this case. In the event the Commission receives any evidence that raises competition concerns regarding Keeta's practices relating to its deliverers, the Commission reserves it rights to open a separate investigation into such practices.

C. Continued Monitoring of Market Developments

111. The Consumer Council suggests that the Commission continue to monitor the market developments after the expiry of Keeta's and Foodpanda's commitments on 28 December 2026,

[29] Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0720&qid=1652368074897.

in particular, the changes in OFP market shares, the prevalence of exclusive arrangements and market outcomes regarding benefits to consumers.

112. While in the event that the commitments were to expire, the Commission will continue to monitor the development of the OFP market upon their expiry and take appropriate actions if necessary to address any competition concerns, the suggestion from the Consumer Council is not directed towards the appropriateness of the Proposed Commitment.

D. Public Transparency of Keeta's Compliance Reporting

113. The Consumer Council submits that public transparency of Keeta's compliance reporting under the Proposed Commitment, to the extent feasible and consistent with confidentiality requirements, may help enhance public confidence in the commitment regime.

114. Maintaining a register of the written reports and the compliance statements is not a statutory requirement, and the written report and the compliance statement from Keeta will contain confidential information as defined in section 123 of the Ordinance. The Commission considers that the current compliance reporting and monitoring mechanism under the Proposed Commitment are appropriate and sufficient. It is also consistent with the Commission's practices in previous commitment cases including Foodpanda's commitment.

E. Effective Duration of the Proposed Commitment

115. Foodpanda submits that the short duration of the Proposed Commitment (i.e., expiring on 28 December 2026) is insufficient to: (i) prevent recurrence of Keeta's conduct of concern; (ii) ensure that market participants can internalise and operationalise compliance expectations; and (iii) allow the Commission and stakeholders to observe whether the commitment is effective in practice, which risks having little practical impact and undermines the deterrent value of the section 60 commitment framework. Foodpanda argues that the duration of the Proposed Commitment should be extended to three years from the effective date.

116. The Commission considers that the duration of the Proposed Commitment is appropriate as it aligns with the duration of Foodpanda's commitment. Having both commitments expiring at the same time helps the Commission to manage both Foodpanda and Keeta in a fair manner.

F. Removal of the 90-day Transition Period

117. Foodpanda submits that the proposed 90-day transition period should be removed as it is no longer necessary given that Keeta has already implemented voluntary amendments, and all the practical steps, including updates to contractual documentation and templates, and communications to partnering restaurants, have been completed.

118. The Commission acknowledges that the 90-day transition period is no longer strictly necessary in light of Keeta's prior voluntary amendments, which should have already come into effect on 3 April 2026. As such, to address the current circumstances where Keeta has already implemented the amendments prior to the commencement of its Commitment, the qualification "insofar as Keeta has not done so prior to the Effective Date" is contained in clause 2.4 of the Commitment. Consequently, the Commission considers Foodpanda's suggested amendment to be unnecessary and unlikely to have any material practical benefit.

G. Release Condition Linked to Release of Foodpanda's Commitment

119. Foodpanda submits that clause 4.2(d)[30] of the Proposed Commitment appears to provide for Keeta's automatic release if the Commission releases Foodpanda *"*for reasons that would apply to Keeta*"*. Foodpanda considers that this clause creates a one-way linkage between Keeta's obligations and a separate decision concerning Foodpanda's release under Foodpanda's commitment. In addition, Foodpanda expresses concerns that conversely, its commitment lacks provisions allowing its release if Keeta is, in fact, released, and anticipates that this clause may generate satellite disputes concerning whether the Commission's stated reasons for releasing Foodpanda are applicable to Keeta*.*

120. The Commission disagrees with Foodpanda's interpretation of clause 4(d) that the clause is a one-way linkage and that the release is automatic. Under clause 4.2(d), Keeta still needs to make a request pursuant to section 62(2)(a) even when the Commission releases Foodpanda from its commitment. Pursuant to section 62(2)(a) of the Ordinance, "[t]he Commission may release any person from a commitment that the person has made under this Part if it is requested to do so by that person." (Emphasis added.) This section gives the Commission discretion on whether to proceed with the release of Keeta's Commitment based on its assessment of the OFP market conditions, rather than merely based on the Commission's treatment of another market participant.

121. In addition, pursuant to Schedule 2, section 12 of the Ordinance, the Commission is required to explain the reasons for the proposed release under Schedule 2, section 12(2)(b) in its notice of proposed release, and to conduct a public consultation and consider all the representations received, before formally releasing Keeta from its Commitment.

122. Although a similar clause is not contained in Foodpanda's commitment, pursuant to section 62(2)(a) of the Ordinance, should Keeta be released from any of the commitment terms, and

[30] Clause 4.2(d) of the Proposed Commitment:

> This Commitment shall remain in force from the Effective Date until 28 December 2026 unless, at an earlier date:- […]
> (d) the Commission withdraws, varies, or releases Foodpanda's commitment in Case EC/03JJ for reasons that would apply to Keeta and if Keeta makes a request pursuant to section 62(2)(a) of the Ordinance, and the Commission releases Keeta from the Commitment under such request.

Foodpanda considers the reasons for such release would apply to Foodpanda, Foodpanda is eligible to request a release from its commitment. Alternatively, the Commission may, in the event that Keeta's Commitment has been released, release Foodpanda from its commitment pursuant to section 62(2)(b) of the Ordinance if it has reasonable grounds for believing that its concerns about the alleged contravention of the competition rule no longer arise.

H. Tying Restrictions

123. Foodpanda acknowledges that the Commission's investigation did not reveal any evidence suggesting that Keeta has engaged, or will engage in tying practices (i.e., requiring restaurants that acquire Order to Deliver Services from Keeta to also acquire Order to Pick Up Services). Notwithstanding this, Foodpanda submits that there remains a sound and practical basis to include a tying safeguard in the Proposed Commitment, especially given that Foodpanda's commitment already included provisions to remove tying practices.

124. Foodpanda rightly points out that the Commission has found no evidence of tying practices in Keeta's OFP/restaurant Agreements. The Commission considers that there is currently no basis to incorporate the removal of tying provisions into the Proposed Commitment, and this approach is consistent with the precedent established in Case EC/03JJ regarding Deliveroo's commitment, which did not include any removal of tying provisions as the Commission did not uncover during the investigation any tying practices engaged in by Deliveroo.

125. In the event that Keeta engages in tying practices in the future, the Commission will initiate an investigation to assess potential competition concerns and take necessary actions to address them.

I. Practical Impediments to Switching from Exclusivity to Non-Exclusivity

126. Foodpanda submits that the current provisions may not be sufficiently clear or certain to address Keeta's delay tactics or procedural friction that may, in practice, impede a timely transition of a partnering restaurant from exclusivity to non-exclusivity, even when the contractual notice period has been given. Foodpanda proposes strengthening and clarifying clause 2.4 of the Proposed Commitment, by introducing rate-confirmation[31] and switch implementation requirements.[32]

[31] Foodpanda's representation, page 12, Recommendation 5:
Where a Partner Restaurant requests information on the Non-Exclusive Commission Rate (including in the course of discussions about a possible transition from Exclusive Terms to Non-Exclusive Terms), Keeta shall, within 5 business days, provide in writing (or confirm, if already specified in the Agreement) the Non-Exclusive Commission Rate that would apply if the Partner Restaurant were on Non-Exclusive Terms. (Emphasis added.)

[32] Foodpanda's representation, page 13, Recommendation 5:
Where a Partner Restaurant gives notice to switch from Exclusive Terms to Non-Exclusive Terms, Keeta shall implement the switch so that the Partner Restaurant is on Non-Exclusive Terms no later than the end of the

127. The Commission is of the view that the Proposed Commitment adequately addresses Foodpanda's concern regarding Keeta's potential delay tactics or procedural friction. Specifically, the requirements for Keeta to specify exclusive and non-exclusive rates and to limit notice periods for switching from exclusivity to non-exclusivity to two months, together with the non-circumvention clauses [33] are sufficient, and the terms are the same in Foodpanda's commitment. Pursuant to clause 3.8 of Keeta's Commitment, to assist the Commission with verifying, determining or securing compliance with the Commitment, the Commission may request documents and/or information from Keeta, and Keeta shall provide the requested documents and/or information within 14 calendar days of the request or such other period as the Commission reasonably determines. The Commission considers it unnecessary to introduce any stricter or additional requirements concerning rate-confirmation and switch implementations in Keeta's Commitment that differ from Foodpanda's commitment.

VI. THE COMMISSION'S ACCEPTANCE OF KEETA'S COMMITMENT

128. In light of the foregoing and having carefully considered the representations received, the Commission considers that Keeta's Commitment is appropriate to address its concerns about a possible contravention of the FCR by Keeta.

129. In addition, the Commission considers Keeta's Commitment will help encourage competition in the Order to Deliver Services market in Hong Kong by removing obstacles for smaller OFPs that inhibit their ability to enter and expand as well as provisions that softened competition between OFPs. Greater competitive pressure between OFPs in turn will incentivize greater choice, higher quality services and lower F&B prices for Hong Kong consumers using OFPs.

130. As such, Keeta's Commitment will resolve the Commission's competition concerns in an effective and timely manner and achieve the Remedial Goals as set out in paragraph 3.13 of the Commission's Enforcement Policy. The Commission also considers that Keeta's Commitment provides an enforcement response that is proportionate to the context of Keeta's conduct and the harm caused or likely to occur, consistent with paragraph 3.14 of the Enforcement Policy.

131. In accordance with the requirements of section 60(6) and Schedule 2, section 4 of the Ordinance, therefore, the Commission hereby gives notice that, in the exercise of its powers under section 60 of the Ordinance, it has decided to accept Keeta's Commitment.

132. Finally, and for the avoidance of doubt, the Commission's acceptance of Keeta's Commitment reflects the specific circumstances of the case and relevant market context. It is not necessarily indicative of the Commission's enforcement approach in other cases or market contexts and does

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applicable notice period (and in any event within 2 months of the notice). For the avoidance of doubt, the switch shall not be delayed or made conditional on negotiations regarding rates or other commercial terms. (Emphasis added.)

[33] Pursuant to clauses 2.4(c), 2.4(e) and 2.7 of the Proposed Commitment

not bind the Commission in this respect. Accordingly, any conduct permitted under Keeta's Commitment should not be taken as an indication that the Commission would consider the conduct permissible if undertaken by different undertakings operating in different market contexts.