

Questions and Answers

1. **Foodpanda and Deliveroo have each offered to allow restaurants to partner with new entrants and small platforms without losing the benefits of being exclusive to either platform. What platforms would be considered small platforms?**

The Commission has defined a small platform as any online food delivery platform which has not previously exceeded a market share of 10% in Hong Kong (“Low Market Share Platforms”).

At the time of this consultation, Foodpanda and Deliveroo are the only online food delivery platforms with a market share of more than 10% in Hong Kong.

2. **Apart from not applying the Exclusive Terms¹ to small platforms, what other specific amendments would be made in Foodpanda / Deliveroo’s agreements with partnering restaurants?**

Other amendments in the agreements would contain the following elements:

- (a) **clarity on a partnering restaurant’s ability to switch.** The agreements would specify that partnering restaurants may switch from working exclusively with Foodpanda or Deliveroo to also partnering with other platforms (non-exclusivity), as well as the applicable commission rates under each set of terms;
- (b) **notice period for switching.** When partnering restaurants switch to non-exclusivity, the period for them to give notice to Foodpanda or Deliveroo would be limited to no more than two months;
- (c) **permissible clawback.** If a partnering restaurant switches to non-exclusivity without notification and Foodpanda or Deliveroo is not able to ascertain the date of its switch, the platform may only clawback the difference in the applicable commission rates for a maximum of two months;
- (d) **pricing freedom for a partnering restaurant.** The partnering restaurant may charge lower prices:
 - (i) on its direct delivery channels;
 - (ii) for dine-in; and
 - (iii) in the case of Foodpanda’s proposed commitments, on competing platforms; than those they charge on the platforms of Deliveroo or Foodpanda, and
- (e) **opt-in mechanism for order-to-pickup services (Foodpanda only).** The relevant agreements would specify a mechanism for Foodpanda to obtain explicit consent from partnering restaurants to use its order-to-pickup services², and to allow partnering restaurants to terminate the order-to-pickup services without also terminating online food delivery services.

¹ Exclusive Terms allow Foodpanda or Deliveroo to charge partnering restaurants a lower commission rate if they work exclusively with the respective platform.

² Whereby consumers can place an order on Foodpanda’s platform and pick it up at the restaurant themselves.

3. How would the proposed commitments benefit end customers, restaurants and the others?

The proposed commitments would benefit:

- **new entrants and small platforms providing online food delivery services**, as they would be able to partner with more restaurants, grow their network of restaurants and compete on a level playing field;
- **restaurants**, as they would be able to:
 - (a) partner with new entrants and small platforms without losing the benefits they are entitled to when they work exclusively with Foodpanda or Deliveroo;
 - (b) switch from working exclusively with Foodpanda or Deliveroo to non-exclusivity more easily;
 - (c) offer lower menu prices on their direct dine-in and delivery channels and on other platforms, which would put pressure on Foodpanda and Deliveroo to reduce commission rates;
 - (d) use Foodpanda's online food delivery services without having to also use its order-to-pickup services; and
- ultimately, **end customers**, as they would be able to benefit from increased competition between platforms which would result in more choices and potentially lower menu prices.

4. Why do the proposed commitments continue to allow the use of Exclusive Terms, except for their application to Low Market Share Platforms?

Exclusivity arrangements are commonly used commercial arrangements, which in most cases are not harmful and may even promote competition.

However, online food delivery in Hong Kong is a highly concentrated market with Foodpanda and Deliveroo each appearing to have a certain degree of market power, while all other platforms are very small players. In particular, the Commission's investigation found evidence that platforms with market shares of 10% or less have not been able to maintain a significant competitive presence in Hong Kong.

Under the specific circumstances of the market, the use of Exclusive Terms by Foodpanda and Deliveroo is considered likely to hinder entry and expansion by new or smaller platforms. The Commission considers that the proposed commitment not to apply the Exclusive Terms against Low Market Share Platforms is appropriate to address this concern.

5. Is there any mechanism in place to determine whether a platform is a Low Market Share Platform?

The Commission has defined a Low Market Share Platform as any online food delivery platform which has not previously exceeded a market share of 10%. At the time of this consultation, Foodpanda and Deliveroo are the only online food delivery platforms with a

market share of more than 10% in Hong Kong.

As market shares of Low Market Share Platforms may increase over time, the proposed commitments include a mechanism to determine when a platform is no longer a Low Market Share Platform. Under the mechanism, each of Foodpanda and Deliveroo may provide written evidence that another platform has exceeded the 10% market share threshold, for the Commission's verification and approval. The Commission has set out certain principles which Foodpanda and Deliveroo have agreed to follow when calculating market shares. The Commission may also gather information from third parties and conduct its own assessment.

For the benefit of restaurants, the Commission will post a notice on its website if Foodpanda and Deliveroo are allowed to stop treating a third-party platform as a Low Market Share Platform.

6. Do restaurants and other online food delivery platforms need to take any action if the Commission accepts the proposed commitments?

Restaurants and Low Market Share Platforms do not need to take any action if the Commission accepts the proposed commitments.

Once the proposed commitments take effect, Foodpanda and Deliveroo will each be required to issue a communication to all their partnering restaurants within 90 days, which confirms in unambiguous language the amendments made in their agreements with partnering restaurants.

7. How was the case discovered? What steps did the Commission take during its investigation?

The case was initiated as a result of several complaints. During the course of its investigation, the Commission approached relevant parties, including openly inviting the restaurant industry to provide information on the matter, which produced useful information.

8. What are commitments under section 60 of the Ordinance?

Under section 60 of the Ordinance, the Commission may at any stage accept a commitment to take any action or refrain from taking any action from parties under investigation, where the Commission considers this appropriate to address its concerns about a possible contravention of a competition rule. For the avoidance of doubt, the Commission does not need to reach a definitive conclusion that a contravention of the First Conduct Rule has occurred to accept a commitment.

If the Commission accepts a commitment, it may agree to terminate its investigation and not to bring proceedings in the Competition Tribunal regarding the matters covered by the commitments, or terminate them if it has already brought proceedings. The Ordinance does not require parties offering commitments to make any admission of a contravention.

As set out in the Policy on Section 60 Commitments, if a person fails to comply with a commitment, the Commission may withdraw acceptance of the commitment and/or seek to enforce it in the Competition Tribunal.

9. Why are commitments suitable in this case?

The Commission considers that the proposed commitments would appropriately address the concerns raised by the Commission's investigation in a speedy, targeted and effective manner. By ensuring changes to the agreements between Foodpanda/Deliveroo and partnering restaurants, the proposed commitments would be a quick resolution and proportionate response in the circumstances.

10. How can I make comments on the proposed commitments?

Representations should be sent to the Commission as follows:

- a. by email (preferred) to Consultation@compcomm.hk, with the case reference number EC/03JJ quoted in the subject line of the email;
- b. by fax to +852 2522 4997; or
- c. by post to:

Representations on Case EC/03JJ
Competition Commission
19/F, South Island Place
8 Wong Chuk Hang Road
Wong Chuk Hang, Hong Kong.

Representations received after the deadline will not be considered.