



COMPETITION COMMISSION OF SOUTH AFRICA

In the matter of

ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY PUBLIC INQUIRY (OIPMI)

held at

***DTI Building
Sunnyside and virtually via MS TEAMS***

on

11 November 2021

PANEL: *James Hodge – Chairperson
And Doris Tshepe*

TECHNICAL TEAM

Itumeleng Lesofe

CCSA Internal Team

Tshegofatso Radinku

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COMPANY: UBEREATS



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Recording & Transcriptions

PROCEEDINGS ON 11 NOVEMBER 2021

CHAIRPERSON: Welcome back to the afternoon session of the second day in the second week of the online platforms market inquiry. We are dealing with food delivery services and platforms today and tomorrow, and this afternoon's session we have UberEats up next and then Quench following them.

So I am happy to invite the UberEats team into the virtual hearing room. Good afternoon

MOLEWA: Good afternoon.

10 CHAIRPERSON: Welcome and I believe it is Nakampe Molewa and Lindi Vundla, is that right?

MS VUNDLA: That is correct.

MOLEWA: That is correct.

CHAIRPERSON: Mr Molewa, I believe you have a presentation. So if you want to share that with us and then go through that and then we will follow that with questions from the panel.

MR MOLEWA: Okay, great. Thank you very much. Can you see the presentation?

CHAIRPERSON: We can, yes.

20 MR MOLEWA: Great, thank you very much. So good afternoon ladies and gentlemen and thank you for giving us this opportunity to appear before the Commission. By way of introduction my name is Nakampe Molewa and I am the UberEats general manager for sub-Saharan Africa and I will be presenting with my colleague, Lindi Vundla, who is a senior counsel for sub-Saharan Africa.

Okay. We will be covering four major areas during our presentation as articulated by the agenda today. We will provide a brief history of our beginnings. We will articulate how we work as UberEats. We will then focus on the South Africa business and then we are going to round it off with a general discussion around some of the topics which are of interest to the Commission.

Let me go back to the beginning, to how it all started. We are a fairly young company with its genesis in California in 2014. Then we were known as Uberfresh and we were running a seemingly
10 sophisticated front end as you can see by the picture. Operating with a [indistinct – 00:02:47] back end as shown by the picture.

You can see the trays of food there. We changed our name to UberEats in 2015 and entered the South African market in 2016, starting in Johannesburg. We now operate in 16 cities across South Africa and we are expanding beyond delivery. A brief description of our platform. So our platform brings together a three sided market.

At the centre of this market are consumers who want to purchase food and other items for their convenience. We then have merchants who meet this need through offering a wide selection on the
20 platform and last but not least, we have independent delivery people who provide the delivery services.

So all three of these components come together and harmonise and that is what makes the platform tick. It is important to note however, that UberEats does not sell food or other items. We simply provide the platform. Brief description of how our app works. Our app

is fairly intuitive and easy to use.

The customer places an order which is sent to the merchant who prepares the order. The order is then assigned to an independent delivery person who will execute on delivery and that is about as intuitive as it gets. Pretty easy to use. Just generally high level. If we had to look at our market with regards to independent delivery people and merchants, so we got just over 9200 independent delivery people on our platform and over 6000 merchants to date.

I am going to transition now into explaining you know, how we
10 work. In order of objectives. Our business objectives are pretty simple you know. The first one is to have great merchants on the platform because that is what makes the business tick. The second part is to ensure magical customer experience through good delivery.

The last part of it is to let people know that we are there. The way this comes together is that the merchants will offer choice and... choice and variety and that works in attracting consumers to our platform. This lets independent delivery people to earn further creating new economic opportunities on the platform and this culminates in a magical experience for our customers through efficient delivery.

20 If we delve a little bit deeper into the inner workings of the platform, we basically run three delivery models on our platform. The first one which is the 3P model. This stands for third party, is the most common and in a nutshell generally a consumer would place an order and an independent delivery person would deliver the order to the consumer.

So this is what most of our consumers on the platform are used to. There is another two formats that we run. So the pickup model where the order is placed via our platform but the consumer does their own pickup. Lastly, it is the BYOC, which is bring your own courier, where merchants use their own couriers to fulfil the last mile delivery via the UberEats platform.

Allow me to deep dive into the mechanics of the 3P transactions which is the most common delivery model. Basically we charge merchants a market place fee for a variety of services that we bring,
10 namely lead generations, payment processes, payment processing amongst other things.

We then purchase delivery services from independent parties and we re-sell these to the consumer. A delivery fee would be paid by the independent delivery person by UberEats. The merchants will then provide the goods to the consumers and UberEats will collect all monies on behalf of the merchant.

In addition to these monies that have been collected for the merchant, the consumer will pay a delivery charge to UberEats. Then UberEats will then transfer the cost of goods net, the MPF to the
20 merchant and we will pay the delivery fee to the courier. Our other two delivery models, the pickup and bring your own courier models, are far simpler and the biggest distinguishing factor over there is that only a market place fee is paid to UberEats with no delivery fees or charges involved.

Let me deep dive or discuss some of the value that the platform

brings to the three sided market and I am going to start with the consumers. For the consumer, value can be summarised as a... as choice by providing choice to them and providing convenience to them. Choice for us is a function of great selection on our platform, ensuring that we are catering to as many tastes as possible for our consumers.

Convenience for us is a function of ease of using the app and driving that magical experience right through to delivery. If we look at the independent delivery people, value for independent delivery people is through the creation of earning opportunities for them, without really
10 having the hassle to contract with each and every merchant base service.

It is also the freedom to work anywhere and whenever they wish, right. Especially in under-serviced areas outside the big metros where the platform is lying. Finally, to ensure a better operating environment which is enhanced. We do look at things like on trip insurance and contact list delivery during Covid, amongst other things.

Moving into the merchants, value for the merchants is the ability to drive incremental revenue via an additional delivery channel right, giving them access to new markets and to new consumers in summary.
20 That is the key value that is given to merchants. In addition to that, there are a number of services that we do bring to merchants as well via the platform.

Amongst them V-generation services which connect all three sides of the market, a front end application called restaurant manager which is used to facilitate the accepting of orders that are placed on our

platform. Access to analytics generated by the abovementioned application. Access to tools that enable merchants to maximise value from the tool and lastly, support services for merchants in dealing with challenges regarding consumers and other eventualities.

Moving to the third part where we take a bit of a deep dive into South Africa. Again, just to recap the facts about UberEats in South Africa. We are five years old, having launched in September 2016. We operate across 16 countries, right. 16 cities with plus 6000 merchants and plus 9200 delivery people.

10 I want to give an overview of the competitive landscape in South Africa. So the market in South Africa is very competitive. Right now we do have two major players, which are UberEats and Mr Delivery. Mr Delivery pre-dating UberEats and in a way pioneering this sector being the first aggregated globally if I am not mistaken. However, we have seen the entrance of the likes of bulk foods in the market who are operating currently in Cape Town and Johannesburg and are expanding rapidly.

20 We have looked at opportunities within the township markets and have discovered players in areas like Guguletho, Hammanskraal and Soweto to name a few. Players such as Mr Fast D, Spaza Eats and the likes. Other constraints, other constraints... competitive constraints that we see are the likes of order-inns delivery as a service offering, merchants creating their own apps which we do see as introducing competition and different delivery modalities such as pick up.

Competition is also stimulated by low switching costs, meaning

multi-homing is a definite reality in South Africa. This is also further driven by the fact that switching... customers switching costs are also easy, fast and low in this sector. As stated before, I think it is important to realise that this is a sunrise industry which is very young, right.

As we look at the total address of a market in South Africa, we are hardly scratching the surface of potential and the industry we believe, has a fairly long runway for growth. It will continue to attract new players to the market. As a business in South Africa we continue to... we continue to evolve, introducing new features and amending
10 contractual agreements that is given in the presentation.

It is important that these changes... to note that these changes are all in response to a dynamic environment and balancing the need for financial sustainability, optimum consumer experience and value for merchandisers, merchants and delivery people is considered. I think it is well worth noting that it is also vitally important for the platform to have good merchant mix.

We recognise and appreciate the fact that merchants play different roles on this platform. Now some of them may drive traffic onto the platforms, while others may recruit first time eaters, while others
20 may drive basket sizes amongst other things. It is important to acknowledge that our local favourites come from the ranks of small medium enterprises, and are an important consideration on our platform, especially in driving first time eaters and returning consumers.

As the model evolves, there is a shift towards non-restaurant opportunities globally and South Africa is not exempt from this trend. At

UberEats we continue to explore these opportunities and gage whether we can participate in some of these opportunities which I will address further down in the presentation. An example of one of these opportunities is Uberdirect.

This is a solution that allows merchants to use their own platforms for order fulfilment and use Uber to fulfil the last mile delivery. We do not have a relationship with the consumer on this model, and it is these sort of products that are driving the evolution of the platform. On the non-restaurant operations, we launched our non-restaurant
10 operations April 2021 at the height of the Covid lockdown.

We are servicing mostly grocery and convenience channels, while a number of other independent larger chains have signed up to be merchants on this platform. This is a very dynamic sector of the market, seeing massive activity as competitors such as Pick 'n Pay and Checkers 60 are very active.

MS VUNDLA: One thing that is very interesting about the food delivery platform industry is how localised the nature of the business is. UberEats is an example of a business that has operations in many jurisdictions around the world, however it is important to note that
20 success in one part of the world does not necessarily guarantee success in all parts of the world.

Indeed UberEats is an example of this. It has been highly publicised in fact that UberEats has withdrawn from some markets, where unfortunately we were not able to make a go of it. Examples of these are in the Middle East and North Africa such as Egypt, Saudi

Arabia and the United Arab Emirates as well as Argentina.

Therefore there is an impetus for us UberEats South Africa, to make sure that we are competing very strongly in the local markets and to make sure that we are participating on a local scale rather than on a global scale. Local considerations thus continue to be super important as we try to make a go of it in South Africa.

MR MOLEWA: Turning our attention to the socio economic benefits of UberEats in South Africa, I mean it is safe to say that we are proud of the benefits that we bring about via the platform. Some of them to
10 enable restaurants to continue operating during Covid is a major contribution by a platform such as UberEats.

We create and continue to expand the rich of merchants to consumers to drive their own revenues. This is particularly important for merchants who are SME's, right. Who would not necessarily have this sort of exposure and finally the provision of earning opportunities to individuals, drawn from a very broad base.

Illustrative of the type, the type of power these platforms are driving the potential for apps like ours to enable work on the continent is enormous. Imports by BCG estimated that three million jobs could be
20 enabled through online market places by 2025.

MS VUNDLA: Now we often hear the terminology disruption and certainly in the various modalities in which Uber operates, we have certainly been referred to as a disruptive entrant, and UberEats is no exception to that. Now food delivery platforms certainly have characteristics that promote rivalry and competitive entry.

When UberEats entered South Africa, it certainly had certain positive effects for competition in South Africa. Firstly, Uber is a business as a whole and UberEats specifically that is in favour of good, strong and positive regulations. Therefore where ever we operate, we intend to and continue to work with regulators to ensure that we have markets in which regulators and regulations are put in place that continue to ensure good, strong and positive competition in the category.

In addition, making sure that you have non-exclusive,
10 independent delivery people and starting to encourage that sort of work amongst independent contractors, benefits new entrants. They no longer have to try and sell that idea of an independent delivery person when they come in because that has been created.

When a new entrant comes in, they no longer have to familiarise people with the idea of ordering food on an app. They no longer have to familiarise people with the idea of someone they had never met, dropping food off at their doorstep or contact less delivery or the new technology that comes along with all of this.

Therefore, by UberEats not necessarily introducing the idea of
20 aggregators, but certainly of online food delivery platforms in South Africa, make sure that subsequent entrants into the market were able to have an easier go of it, in coming into the South African market.

MR MOLEWA: Moving along, we are going to look at some of the areas of interest to the inquiry and the first one that I will address is visibility on the UberEats app. We could start by saying our primary objective is

to provide maximum visibility with the widest variety of merchants possible to aid in that consumer choice, that will be articulating.

UberEats does run a proprietary model for ranking merchants on the platform and we do acknowledge that the Commission has been supplied with the requisite information. On the workings on the algorithm and have reverted with questions. So we are working on following up those questions.

It is important to point out to the Commission that as part of this kind of ranking theme and visibility, we do have a category of merchants
10 called top eats who feature on the platform but I think it is important to point out that those top eats are solely the preserve of small and medium enterprises.

So that we can help levelling the playing fields in terms of visibility. On paid advertising, so we recently introduced [indistinct – 00:24:07] on the platform, and this enables merchants to submit offers for increased visibility on the feed. Listings are allocated through also a proprietary algorithm and for transparency those merchants that appear via these sponsored links, are tagged as such in the app.

On promotions, so largely our promotions can be divided into
20 two categories in the way we execute them. Largely through the use of promo codes and restaurant offers and maybe let me go into the two as to what they are. In the main, promo codes are unique codes that applied to individual user profiles.

These confer a benefit to the consumer. Right, and this benefit can take many, many forms. What is important there in the use of these

promo codes, is to note that these are solely created by UberEats, and not our merchant partners. Restaurant offers on the other side is a solution that is actually targeted at merchants, and it gives them the ability to set up and run their own promotion activities on the platform to generate demand.

All offers where they do apply are communicated on the app to alert consumers that they are available.

MS VUNDLA: Now one of the key questions that we have and would like to touch on, is around business access to user data. I do not know
10 about all of you, but I am certainly very concerned about where my data is there user of any app or any functionality or any technology is, and we ensure that all user data is governed and dealt with in accordance with applicable privacy laws.

So user data is not propitiously shared or transmitted without appropriate permissions and outside of the ambit of appropriate law. Of course, merchants who are on the app, do want to have certain information about how their products are being used. What sort of sales they have, ETC, because this is the core of how they are going to move forward with their business.

20 However, we make sure that where there is access to user data, it is aggregated and anonymised such that they do not... they cannot reverse engineer and find the drill down user data in contravention of applicable laws. It is important to note that first of all, UberEats does not sell food or other items on the platform.

Therefore UberEats does not have a need for that drilled down

information and again using it appropriately and secondly, that personally identifiable information is not shared in that three way platform amongst or between users. It is also very important for us as UberEats to ensure that we continue to support smaller merchants.

Nakampe spoke a little while ago about how certain promotions for instance or visibility is only available to smaller merchants. One of those ways is the availability of consumers to be able to access and see their local favourites. Those are smaller entities that are in their localities from which they can for instance order food or other goods.

10 At the beginning and as the category develops as more merchants come online, we have observed that a notable number of the merchants that are available in a person's feed as they look at the app continue to be and grow into being relatively small, local merchants who have been active in the local environment or are active in the local environment more and more.

As opposed to being the larger entities and lastly like Nike mentioned, UberEats does engage in promotion activities designed specifically to benefit small and medium enterprises. Another area of interest specifically to the Commission, has been the existence of
20 pricing parity or most favoured nation clauses, MFM clauses in contracts.

UberEats has not historically enforced any such clauses in South Africa. We do not feel that it is necessary to have such clauses in South Africa. They are redundant. Our view is that prices are determined by the merchants themselves, according to their own business principles

and their aims and goals.

They put their pricing for goods and services on the app and that UberEats has no control over this. Next, just looking at the registration of business users on the app, a question that arises is how exactly does someone become a merchant on UberEats. It is actually very simple. If you want to become a merchant on UberEats, you sign up as long as you do not meet any negative health and safety concerns, or you are not a fraudulent operation, you can sign up, become registered on the app and you are on and you can begin operating.

10 What we find is that we get a lot of interest from smaller and medium enterprises that operate in localities have a small local following and hopefully we have created a process that is easy for them to on-board onto the app. This really ties into the next point which relates to the fair treatment of business users.

Our principles are really quite simple. We try to ensure fair treatment and transparency across our business users. We have standard contract terms that are readily available, publically available for people to consider, but of course a contract is only a contract on offer and acceptance, so the contract terms remain negotiable.

20 Turning to the question of refunds. If there is an issue with regards to a delivery, an order or anything of the sort, where a complaint is received from a consumer, UberEats generally does provide refunds, unless there is a suspicion of fraud or it is very, very clear that the complaint is unfounded. The guiding principle is that if the issue seems to have arisen in the preparation of the order, such as the preparation of

a meal in a restaurant or a clearly missing item in a broker order, grossly inconvenience order then the restaurant or the merchant will pay for the refund.

Or if the refund was necessitated on the other hand by a clear issue in delivery, for instance you received your pizza upside down and all the toppings are at the bottom and the base is at the top which no one wants, then chances are UberEats will take care of the refund. We think that this is a fair approach and we continue to have conversations with merchants as to how this can best work across the board.

10 I think this brings to an end our formal presentation, and we would like to thank the Commission for its time and indulgence and we would like to invite you to ask any questions that you might have, for Nakampe and myself.

CHAIRPERSON: Thank you Ms Vundla. Sorry, we have got a bit of feedback at the moment. Alright, that is gone, and Mr Molewa. Can I just start with the price parity clauses that I mean you say that it is not being enforced in South Africa so I assume there was a price parity clause.

20 MS VUNDLA: That is correct. When I first joined UberEats, I discovered the existence of a price parity clause in the contracts, which had not been enforced.

CHAIRPERSON: And so what, sorry. Can you just enlighten us as to what clause that was not enforced?

MS VUNDLA: I do not have the wording here with me. I can provide the full clause in writing. I think we have provided it to the Commission

previously as well. I believe it asks merchants to have uniform pricing in their restaurants as well as on UberEats.

CHAIRPERSON: And across other platforms presumably.

MS VUNDLA: I am not sure about that last part I am afraid. I would need to check.

CHAIRPERSON: Can you check?

MS VUNDLA: I will ask the team to check right now and we will respond, yes.

CHAIRPERSON: Alright, and I presume there is, well let me ask... I
10 mean, are these clauses still in any contracts?

MS VUNDLA: These clauses are not in contracts. As soon as I became aware of the existence of the clauses, I first of all checked to see whether they had been implemented. The answer was no or enforced, the answer was no. Second was to institute a robust overhaul of the contracts to ensure that the clause was removed to ensure that there was no confusion whatsoever.

That people did not feel that they were obliged to abide by that clause.

CHAIRPERSON: And sorry, when did you join and when did you
20 undertake this exercise?

MS VUNDLA: This was in 2018, it would have been in or around September 2018.

CHAIRPERSON: Alright, because I just want to understand when you talk about current contracts and not historic, so have historic contracts that were signed and are rolled over, did those include these clauses?

MS VUNDLA: No. We have done an overhaul of the contracts, so current contracts do not have this provision.

CHAIRPERSON: So there is no contract out there that has this provision?

MS VUNDLA: I certainly hope not, I would be quite displeased if there was. May I please answer your question?

CHAIRPERSON: Certainly, go ahead.

MS VUNDLA: The clause read:

10 “You agree that you will not make a meal available
 under this addendum at a price higher than one, the
 amount you are charging for similar meals when sold
 by you in your restaurant or two, the amount you are
 charging for similar meals when sold by you through
 food delivery applications of food delivery services.”

 So you are correct it is the two part restriction.

CHAIRPERSON: Thank you and thanks to your team for quickly responding there.

MS VUNDLA: Thank you Mr Hodge.

20 CHAIRPERSON: I mean I just want to ask about enforcement and
 when you change. So you became aware somewhere in 2018 and
 when did you change these?

MS VUNDLA: I would need to get a printout for you. We did submit a printout to the Commission, because of course you cannot unilaterally change contracts on the 1st of September 2018, all your contracts are changed. So it took some time to do the rollover. But we did provide a

spreadsheet to the Commission showing when the new contracts came into effect.

So it was over a period of time.

CHAIRPERSON: Alright, but then sorry and I know I am belabouring the point, but that is new contracts. What about historic? Were those changed? Or was that a further rollover?

MS VUNDLA: There was no rollover of historic contracts. When the historic contracts came up for review, they went on to the new contracts and we also did a specific review of historic contracts to say these
10 historic contracts with that clause will no longer be in effect and new contracts will come into effect and that was the process that took a while.

I hope I am answering your question.

CHAIRPERSON: Ja, no you are. I mean, when you say it was not enforced was this communicated to the restaurants?

MS VUNDLA: We did not proactively communicate to restaurants at the time. However, in January 2019 there was a news article by I believe it was Wendy Nolar in a number of newspapers. Where they did comparisons of crisis of meals available on different apps and in the
20 restaurants themselves, where they had a comparison, where they showed that meals of UberEats were more pricy than in the restaurants themselves, as well as on other apps.

We gave out a press statement at the time specifying UberEats's principle that restaurants determine and set their own prices on the apps, and therefore if they chose to place higher prices on the UberEats

app as compared to in restaurants or on other apps, that was their prerogative.

That was quite widely shared.

CHAIRPERSON: Right, but there was no official communication?

MS VUNDLA: There was no outbound communication, no.

CHAIRPERSON: I mean you would accept I assume that is not typically how you communicate with your contractual partners, of following a press request for comment and then a comment I assume other terms and conditions have changed with communication.

10 MS VUNDLA: Sadly I am but a lonely lawyer, not a communications expert.

CHAIRPERSON: But you would accept as a lawyer that is how you communicate changes. I mean your contracts will say that if there are changes to the contract, that there are procedures to be followed.

MS VUNDLA: So when we did roll out the new contracts we gave training to the contract managers to explain what the changes were but there was no like big press release to say this is why we are changing our contracts. So there was one on one communication with the restaurants but no general communication to say this is the specific
20 change in the contracts.

CHAIRPERSON: Ja. You see, I am just trying to think of it from the restaurant's side, alright. I have a contract that has terms and conditions, and this condition is in there. This as I understand, you know regulates my relationship with Uber and if I am in breach of this contract, then I can be off boarded from the platform.

To the extent I am getting benefits from in fact you know deliveries that are boosting my business I may be reticent to contravene one of these provisions while it remains in the contract because it can be you know, because it sorry. If you... so for restaurants who want to remain on your platform, I am sure many of them would say well, you know I have had no official communication from this.

I do not know what the stance is and at the very least before January 2019 because even then there was not a press statement. So would you not accept that you know, for many restaurants they may
10 have adhered to this, even if you were not policing it actively.

MS VUNDLA: Might I perhaps explain how we work on contracts and how we work with the business on new contracts and contract changes and the like, perhaps that might help illuminate some of this?

CHAIRPERSON: I think can you just, ja if it helps answer my question.

MS VUNDLA: Sure. So like I said I do the drafting of contracts. I am sure it is a very boring job to many people, but what we do when we have the contract as well, is we tend to prepare a working document usually a slight deck or the like, that explains what the changes in the contracts are.

20 Especially the key changes in the contracts. We then prepare this for the key account managers who are the people who go out to the restaurants, and have a relationship with the restaurants, to say hi we have a new contract. This is what the new contract is about. These are the key changes in the contract.

This is how our relationship may or may not change, as a result

of the new contract that we are rolling out. So something like the change in the pricing parity clause, would be communicated to the key account manager and it would be my expectation that the key account manager would explain this to the restaurants.

I accept that that might not have happened in all circumstances and that would certainly be something that we would need to look at to ensure that in all circumstances, that we have enhanced communication with the restaurants and merchants, especially on sensitive topics, such that they are aware of these changes.

10 CHAIRPERSON: But Ms Vundla, that was after you arrived and with the change in the contract. I am talking about before the contract was changed. I do not think an account manager would go out there and say well, here is a clause in your contract you know, do not worry about that. It is not in your contract, we are not going to... so what I am proposing to you is that there is no official communication.

Restaurants have it in their contract, are aware of breach conditions and at the very least even on what you are telling us you know, this ran for at least probably three years.

20 MS VUNDLA: I will need to check when that contract came into impact, so I can give you the amount of the duration on which it has an impact, I am afraid I cannot speak right now to the balance of that, because of a lack of continuity in the business, but I can undertake to try and dig further to give you more information.

CHAIRPERSON: Ja, well we know it is in the contracts from when you launched. That is the three years. But tell me you know, this press

statement that goes to how they price relative to their menu. Not how they price across platforms. So how were business meant to know that that element of price parity which is again in their contract, does not apply.

MS VUNDLA: So the press statement did speak to pricing across platforms, as well as pricing against the menu.

CHAIRPERSON: It is not reported in the business insider story that you sent us.

MS VUNDLA: I do not have it before me, but if I recall correctly, there
10 were three columns. I recall specifically there was a pizza restaurant that had prices on their own restaurant, prices on a competitor and prices via UberEats.

CHAIRPERSON: Ja, and I have got that article in front of me and there is the same price on all the platforms. In fact everyone listed here has the same price across the two platforms. So as I said, maybe your statement reached some of the restaurants and maybe it has something to do with how they price relative to their menu, but there is no statement around across platforms.

So I mean again would you accept that some restaurants, well
20 put it this way the evidence in that article suggest that restaurants do actually price the same across the platforms and that may be a result of their understanding of your clause.

MS VUNDLA: This is certainly a very interesting observation. Thank you for drawing my attention to it.

CHAIRPERSON: It is a pleasure. I mean actually following that article,

I think some of the restaurants felt that they were under attack for putting prices above their menu prices. So a few days later there was a further article because restaurants had come back to business insider and said that... so they say after the publication of their insider story, several food outlets reached out to highlight the fee the delivery service ask.

So we had Spur spokesman, spokesperson Moshe Apleni, said all his delivery prices are 10% more than in the restaurants, but it is to account for the 20% fee. Another restaurant said they have a handful of
10 outlets and UberEats charge them 30%. I mean, they also say that UberEats encourage outlets to keep prices at in store levels.

So I think restaurants felt a bit unfairly picked upon by the press in terms of just you know, the fact that their being called out for higher prices and they are saying well, actually it is a product of the fees we charged.

MR MOLEWA: Ja, so what is the question? I am just trying to understand.

CHAIRPERSON: There is no question yet, I am just making the observation that the fees, I mean I suppose if there is a question I mean
20 Spur is talking about 20% and the restaurant is talking about 30%. I mean that is quite a difference. You would accept that.

MR MOLEWA: Yes, we do accept that there is a difference Mr Hodge.

CHAIRPERSON: You see, the difficulty with a virtual hearing is we cannot see who else is in your room but we can hear occasionally a voice.

MS VUNDLA: Oh, that was me whispering to Mr Molewa asking if I should answer or he should.

CHAIRPERSON: So ...[intervenes]

MS VUNDLA: We certainly accept that there is a difference. As I believe you will be aware Chairperson, we have provided significant and in detail submissions to the Commission on this point. Indeed we claimed confidentiality over this specifics of the percentages that different restaurants pay depending on which restaurant is which.

We are continuing to engage with the Commission in writing and
10 we are very happy to continue to do so on the specifics of those percentages. We are more than happy to discuss it in a more general manner but out of respect for the propriety nature and the confidential nature, that relates to how we compete via visa vie different competitors in the food platform delivery market, we are a bit constraint to go into too much detail at this stage.

CHAIRPERSON: Well, do not worry Ms Vundla. I mean this is in the public, it is in an article. Spur 20%, restaurant 30. So I just want to explore that with you. I mean, as I understand your model, your third party model that you explained on your slides. I mean, effectively you
20 have got the merchant transaction which is UberEats bills for the cost of the food and then gives a share of that less the commission.

Then there is separately the delivery element where you are charged a delivery fee and put that on the customer and pay the delivery driver. So if I understand, I mean if I order the R200-00 meal from the Spur you would take R40-00 and if I ordered a R200-00 meal

from the restaurant, you would take R60-00.

I mean it follows on the commission. Is that correct?

MR MOLEWA: Sorry, just explain it to me? I am just trying to follow you. The R40-00 and the R60-00.

CHAIRPERSON: Well, if I have a 20% commission for Spur and a 30% commission for the restaurant Tier I assume is an independent restaurant, and the meal is R200-00 and you bought from each of them you would deduct R40-00 from Spur and you deduct R60-00 from the restaurant.

10 MR MOLEWA: Well, Mr Hodge again I mean we also request from the Commission that we will not get into specifics, but for the purposes of the example, you would be correct.

CHAIRPERSON: Ja, and I mean Spur said that they get charged 20%. That was in the article, so it is not a hypothetical and the restaurant Tier also said they got charged 30%, that is not hypothetical either. So we do not have to traverse what everyone gets, or as a commission but just dealing with these two.

MS VUNDLA: We would need to check those figures because of course that is what is in the article and that was some time ago, but again just
20 for the purposes of this discussion let us speak about perhaps restaurant A with 20% and restaurant B with 40%. Would that be alright?

CHAIRPERSON: Note, it is Spur and restaurant Tier. The, I mean in essence though you make a lot more money out of the independent restaurant in that situation. You make R60-00 compared to R40-00 on

the same order size.

MR MOLEWA: So you are referencing two restaurants and what I will... what I will say Mr Hodge, is that generally speaking, there are considerations that we look at when pricing. Some of the considerations that we do take into account, is exactly what do restaurants and ourselves bring to the table.

I think we traversed some of these ...[intervenes]

CHAIRPERSON: Sorry Mr Molewa, I just do want to interrupt.

MR MOLEWA: Yes.

10 CHAIRPERSON: Because as I said the disadvantage of a virtual hearing, is that we do not know who is in the room. But as I sit here there is clearly reading prompts from behind the camera. So I am asking that whoever else is in your room refrain from interfering and allow us to have a participation with the two of you.

MR MOLEWA: Mr Hodge, I can assure you I am not reading any prompts. Perhaps when I am thinking I am looking away from my camera but there is no reading of prompts sir.

CHAIRPERSON: Proceed then. Sorry, I interrupted you. So I do not know if you want to proceed?

20 MR MOLEWA: Ja, so as I was saying there are some considerations that go into a pricing philosophy and we have traversed some of these in our presentations. We will take into consideration you know, some... some merchants that we deal with do come with a massive brand equity and we use them to drive traffic and first time eaters, on our platform.

Some restaurants and SME's are terms what we term local

favourites and it is with... it would do us well as a platform to have those restaurants on our platform that will drive pricing decisions and yes, there will be smaller restaurants that will come onto the platform and we provide a valuable regeneration service to them and our market place which will have a different pricing regime.

So it is while we accept yes the prices are different, but I think maybe the general statement of you know, merchant A versus merchant B is different in the general terms that may not necessarily hold.

CHAIRPERSON: Thanks Mr Molewa. I mean, you were at pains in
10 your presentation to say first of all the main thing you are offering customers is choice. Now independent restaurants bring more choice. If I look at Steers, Macdonalds and Burger King, it is the choice of burger, but it is a burger.

The range of cuisines are primarily provided by independent restaurants, and you were also at pains to say that things like basket size and all of that feed into this. So there is a lot of value that is bought by independent restaurants. I mean would you not agree?

MS MOLEWA: Yes, we agree.

CHAIRPERSON: So the way it seems to us and maybe to these
20 restaurants, is small business subsidising big business on your platform. Small business 30%, covering more of your costs than big business at 20%. I mean, why would that be an incorrect observation?

MR MOLEWA: I will go back I think to the observation that you made that generally it is that statement is not applicable in all senses. So that is where we will begin. Even for small businesses, there are a number,

like I said I think whom we term top eats and we term them that because they bring almost the kind of same attributes that we have been looking at, as from the bigger businesses that you... they are local favourite, they do drive traffic, they do drive basket sizes and what I am saying is that those businesses, even though small right, we would tend to look at them almost through the same lens because those are the things that we value right, and think about as we price.

CHAIRPERSON: So can you tell me any local favourite that is exactly the same as a KFC or Macdonalds commission rate on your platform?

10 MR MOLEWA: Like we said Mr Hodge, we are not going to go into specifics of pricing, but happy to go through in a more confidential session with the Commission, exactly how we tier our merchant partners and how we look at their pricing.

CHAIRPERSON: I mean, Mr Molewa, why I am raising this is you seem incredibly uncomfortable with this line of questioning. I will tell you why. Because it is uncomfortable for UberEats. The reason you are hiding behind confidentiality is because actually it is not fair, because funny enough with transparency comes fairness because once it is transparent, then you have to defend it not to me.

20 You do not have to defend it to me, and it is the inquiry not the Commission. You have to defend it to the restaurants on your platform. Here is a public hearing. You have an opportunity and you are choosing not to but can you explain to that restaurant Tier why they are paying 30% and Spur is paying 20%?

MR MOLEWA: We are open to discussing the pricing differentials Mr

Hodge. We could happy to explain to them, but again like we said we do think this is competitively sensitive information for us and probably not the best platform to discuss specifics.

CHAIRPERSON: Well, I am just dealing with spur and the restaurant Tier, that is in the public domain. Spur went and put it out there because they felt attacked about putting their prices up and therefore they put it out into the main. So that is not confidential and I just want to understand whether you have anything left to say to the restaurants that predominantly pay 30% because you know, there is recent press articles
10 you know, even from 2021 which are saying small independent restaurants say they have little choice but to pass these costs onto the consumer to make a profit and as a result they typically charge the full mark-up amount, which is usually around 30%.

That is what independent stores are saying. In that region, 30%. National chain, Spur 20%.

MS VUNDLA: I think what we would... you have given us an opportunity to I believe have our final say on this topic which is that we will continue to work with our restaurant partners and our merchant partners, and we look forward to discussing this in more detail in a closed and confidential
20 session with the Commission because of course we cannot violate that confidentiality.

CHAIRPERSON: As I said you do not have to explain it to us, well obviously you will but you also need to explain it to your business users. I mean you ended off your last slide says UberEats aims to ensure transparency and fairness across its business users. Now is that lip

service or is there actual transparency and fairness?

MR MOLEWA: Mr Hodge, we think it is not lip service. We do find ourselves in the position that we are being requested to disclose information or now that we are not in the position to disclose publically and that that is a major consideration set for us right now.

CHAIRPERSON: Look, I will end it there but let me say that is not an answer. We have information, the public domain which you have failed to actually explain to the public, which includes your restaurant partners, what that difference is. I would assume those restaurants paying 30%
10 are unaware of what other restaurants are paying.

So there is not a degree of transparency that you allege across your business users. I mean, would that be correct?

MR MOLEWA: No. So again ...[intervenes]

CHAIRPERSON: So business users know exactly what others are paying?

MR MOLEWA: I mean it is confidential. We deal with business users on a case by case basis. So I would not necessarily deal with the business user A, and disclose business user B's you know terms and conditions.

20 MS VUNDLA: Not to mention that our competitors are inevitably dialled into this call, are they not?

CHAIRPERSON: Ja, and as I said I am not looking for specifics at all. I am looking for what is the range. Let me just pick up as I said that last, when I read out that last and this is from I think June this year. So maybe that was in the possibly in the third wave and hence delivery was

much more a topic of conversation.

That restaurant, sorry that article seem to suggest that the small independent restaurants have little choice but pass it on, they mark-up 30% and we heard Spur you know, say that they also marked up because that is why they were trying to explain the difference in price. They would come to the press and said well, we get charged.

But what is interesting is Spur is marking up 10% according to this article and maybe this journalist lives in my area because two local favourites, Croft & Co and Café Picobella Trattoria were marking up 20
10 to 30%. Now if you are paying a higher commission, it would seem that may prompt you to mark your prices up higher, because you know, Spur may have said I will take a 10% hit.

I am charged 20%. I am putting my prices up 10%, with the independent restaurant facing a 30% as opposed to a 20% cannot necessarily take a 20% hit so they are putting up their prices by 20 or 30%. I mean that is what we are seeing in the article. So would you not accept that the higher the commission fee, potentially the higher the mark-up?

MS VUNDLA: I am afraid we do not have the article to which you refer
20 in front of us. Which would be the first point, so I will just ...[intervenes]

CHAIRPERSON: Sorry, Ms Vundla with all due respect. You sent us this article.

MS VUNDLA: Oh, is it the article from 2019?

CHAIRPERSON: Correct. Where, as you see you will see their price are the same across the two platforms and they list five, six restaurants

in a table.

MS VUNDLA: Okay, my mistake. You said June 2021. So I thought it was a different article. So just responding to your question now that I have the full context, it is important to note that we do not look into the pricing philosophy of each independent merchant or restaurant. Of course, this fully opted them to determine how they do their pricing.

Nakampe, would you like to add anything on that score?

MR MOLEWA: No, I mean again I would just echo that. So is it possible Mr Hodge? Maybe it is. But again, we do not control the
10 pricing of our merchant partners at all.

CHAIRPERSON: More saying as a matter of logic if you charge, if restaurants are passing on this commission. If you charge me 20% to Spur, or 30% as an independent restaurant, the independent restaurant is more likely to pass on more because they are being charged more because that is the philosophy of many of them.

That I need to pass some of this fee on because otherwise it eats into my profits.

MR MOLEWA: Again Mr Hodge, we are not disagreeing with you. We are saying it is possible. Again, we are just highlighting that that, what
20 they pass on we have no say or control over.

CHAIRPERSON: But you do have control over the commission fees. So when you charge that independent restaurant 30% and you charge Spur 20%, you must expect that either they have to swallow another 10% in margin and suck it up or they are going to pass that on to the consumer.

MR MOLEWA: Look, two very possible outcomes Mr Hodge ...[intervenes]

CHAIRPERSON: Not just possible Mr Molewa, it is inevitable.

MR MOLEWA: Well, we will defer to that wisdom Mr Hodge, but again that is not something we can anticipate and again I think we will go back to say how they do react is not within our [indistinct – 01:07:02].

CHAIRPERSON: And all I have put to you is that you do control that by determining the commission fees and so the consequences are certain and result in higher prices for independent stores, otherwise lower
10 profitability. It is inevitable. Can I ask, can restaurants tell the consumer through your app or through the delivery that next time they should order direct it is cheaper?

MS VUNDLA: Through the app? They cannot communicate via the app.

CHAIRPERSON: And ...[intervenes]

MS VUNDLA: But I personally have instances of where I have received in an order bag, several times, links to their websites and links to their own personal apps, encouraging me to order direct, yes.

CHAIRPERSON: And are they allowed to do that, are part of the terms
20 and conditions to solicited customers from the Uber app?

MS VUNDLA: They are certainly not prevented from doing it.

CHAIRPERSON: So no restaurant, sorry. Any restaurant can in their delivery, tell the consumer next time come direct, it is cheaper and you would not have a problem with that?

MR MOLEWA: We do not encourage it Mr Hodge, but it does happen

but again we do not take active steps to ...[intervenes]

MS VUNDLA: To encourage them to do that.

MR MOLEWA: To encourage them to do it or to mitigate against them.

CHAIRPERSON: So there is nothing in your contract again, that states that they cannot solicit the customer?

MS VUNDLA: I will need to double check the contract because you are looking at me very sternly, but we certainly have never wrapped them over the knuckles and said you bad restaurant.

CHAIRPERSON: But that is a question of enforcement or that we have
10 already traversed, versus what is in the contract, and if it is in the contract then there is self-enforcement. I pity the poor restaurant that happen to send their food to you as a legal head of Uber, maybe they will be more careful in the future.

But as I said, rules can be put in place to result in self-enforcement and that is the truth of contracting.

MS VUNDLA: We will certainly respond to that in writing to you. Like I said, I received it a number of times myself.

CHAIRPERSON: Well, I think the public would like to know, to be honest.

20 MS VUNDLA: I have asked for that to be checked right now. If I can I will respond during this hearing. If not, I will respond in writing but I would like to respond during the hearing if I can.

CHAIRPERSON: Thank you very much and I know your team is efficient, so and it is interesting that you can notice that I am sternly looking at you as opposed to Mr Molewa, but anyway. Clearly virtual

hearings still have an element of physical.

MS VUNDLA: They work.

CHAIRPERSON: And I assume because it is confidential you obviously do not tell the public what you are charging the restaurants.

MR MOLEWA: No, we do not communicate that.

CHAIRPERSON: And is there anything restricting the restaurant from telling customers what is charged or would they be bound by confidentiality?

MS VUNDLA: I am just mentally running through the contract right now.

10 Can I ask for that to be looked up as well and to respond to you later on in the call?

CHAIRPERSON: That is fine. It is impressive that you can run through in your head.

MS VUNDLA: I am trying.

CHAIRPERSON: I mean, the reason I raise this is in a completely different context, one which I think has some parallels. In app stores there was a recent decision in the Apple versus Epic case and you may not be familiar because you are not an app store, but in that particular case the court bemoaned the extent of secrecy that ultimately
20 undermines consumer choice.

So they say look, consumers do not know that if they subscribe to their favourite newspaper on the web, all the proceeds go to the newspaper rather than the reduced amount by subscribing to the IOS device which is Apple, and while some consumers want the benefit Apple offers, and there are many maybe, Apple actively denies them

that choice.

That is the concern that they raise. So in your context, consumers may love the delivery you provide and certainly my daughters do, but if they are informed they can make an informed choice and weigh up the value add that you are providing compared to going direct and exercise that choice.

But at the moment, and we will see when we come back, it is not apparent that consumers know how much is being charged to the restaurants that they routinely deliver from and if they did, they might
10 exercise that choice and I would say my local favourites down the road let me go pick it up.

Phone them and pick it up because they are going to get the full amount, but transparency has its benefits. I mean would you not agree?

MS VUNDLA: Transparency, do you want to go ahead ...[intervenes]

MR MOLEWA: No, go ahead.

MS VUNDLA: Transparency certainly has its benefits and Mr Hodge, I think this is an interesting topic that we could discuss for quite some time, and try to figure out as a relatively new segment how we continue to foster this transparency. So for instance if you choose to order from a
20 certain merchant on the app you can see their address, you can see their telephone number.

So you are able to click on more information and get their operating hours and their contact details and contact them directly. Is that enough transparency for them to be able to make a choice between ordering direct with the merchant versus going with the app or is there

more that we can do bearing in mind that an app is a relatively small amount and a relatively small screen?

So I think that is an interesting discussion point that we can certainly take forward as we continue to iterate, develop and look at how this category continues to develop. Ja, I totally agree with you that transparency does improve consumer choice and it is something that is continuously at the top of our minds that we continue to iterate and grow as a category.

CHAIRPERSON: Just on the issue of transparency. Sorry, I am just
10 trying to weigh through your slides here. The... you may or not be aware but in Europe there is a platform to business regulation. Are you aware of that?

MS VUNDLA: I believe there might be a draft regulation if I am not mistaken.

CHAIRPERSON: There is a draft of the Digital Market Act which is to act against [indistinct – 01:15:51] but what came into force I think two years ago, maybe last year was the platform to business regulations governing in effect transparency between the platforms and the businesses that operate on them.

20 MS VUNDLA: I am afraid I cannot speak to that. You are teaching me something new here.

CHAIRPERSON: Well, I am pleased I could teach you something new. I just want to ask, I mean the one thing you have claimed confidentiality over, despite sort of traversing it is on your ranking and your ranking algorithm.

MR MOLEWA: Yes.

CHAIRPERSON: And I just want to understand why.

MR MOLEWA: Because I think we do see it as a competitive advantage. Our sponsored listings is offered as an additional tool for those who want to use it. we do see it as giving a competitive advantage, especially to the likes of the smaller merchants, whom the marketing budget may not... marketing and promo budgets may not be that big, who do require the sort of visibility that other players would get.

So we do see it as a pivotal tool for us and something that does
10 give us a competitive advantage versus our competitors.

CHAIRPERSON: I mean I assume ranking has some impact. So I am not going to... I will come to sponsored ranking after this. That where you rank I think we have been hearing for over a week now, matters.

MR MOLEWA: Yes, it does.

CHAIRPERSON: You see, I mean why I raised it is I am sure Uber operates in the European Union. You may not be familiar so I am not going to ask you to talk about how they comply, but part of those platform to business regulations, cover transparency of ranking and it is not the here is an algorithm because clearly that has confidential
20 elements.

They start by saying the ranking of goods and services by the providers of online intermediation services has an important impact on consumer choice, and consequently on the commercial success of the business users offering those goods and services to consumers. They sort of define ranking but I do not want to bore you with that.

I think we are all familiar with ranking and they talk about predictability means that providers of online services determine ranking in a non-arbitrary manner. Providers should therefore outline the main parameters determining ranking beforehand, in order to improve predictability for business users, to allow them to better understand the functioning of the ranking mechanism and to enable them to compare the ranking practices of various providers.

So they kind of proceed to say the specific design of this transparency obligation is important for business users as it implies the
10 identification of a limited set of parameters that are most relevant out of a possibly much larger number of parameters that have some impact on ranking.

The regulations also precede to say that businesses should say why they chose these parameters and not others. So certainly the European Union has felt the need for the benefit of both, I suppose consumers but also predominantly business users who operate on the platforms, that they know the main parameters.

I think even last week you know, it may have been at a high level but certainly Google came and gave us the main parameters for their
20 search and a few other platforms in travel accommodation and even in app stores. So I just want to ask do you want to persist with the confidentiality or do you want to tell the restaurants what are the main parameters that affect their ranking?

MS VUNDLA: At present our view and thank you for that elucidation but at present our view is that our ranking is integral to how we see our

business, and it is not so much as versus our restaurants, rather than versus our competitors because it really does speak to how we see our business uniquely vis-a-vis our competitors and disclosing that might give insight into how we... how we view our business, our strategic plans and the like and what moves we might be making in the future with regards to our insights about our business.

You have certainly given us food for thought and I think we would want to certainly go back and review our confidentiality claim in light of what you have just shared with us now.

10 CHAIRPERSON: Because it would seem Uber, who has an obviously unique model, would have to comply with this in the European Union. So the businesses there would know. We have seen these declarations. They are quite high level. They are not you know exactly how much weight or anything is given to each factor.

That is proprietary but it is about the businesses knowing. So I am just suggesting that in other markets, UberEats would be making this transparent at the right level of aggregation.

MR MOLEWA: Ja, look Mr Hodge, I think it is food for thought, for sure and it is something, I mean as you say if our partners in Europe are
20 looking at doing this, and it does set a higher standard and bench mark in terms of its transparency, of course we will consider it. But just for us in South Africa, it has not kind of entered that orbit and we would need to sit down and consider it.

But for sure, point taken.

CHAIRPERSON: Maybe just a last point on that slide. The one thing I

find fascinating, last week at least players like Google were at pains to tell us that this is all about consumer relevance, the best ranking for consumers, but you do not say that at all. You do not try re-assure consumers. Your presentation says these are the design to maximise certain identified objectives for the platform.

So they are done in a manner to maximise your objectives, not the consumer, not the business user. Do you want to respond to that?

MR MOLEWA: Look, of course part of it is looking at the consumer and I know we will cover sponsored rankings later, but I think this was also
10 introducing some of these new products was also in response to doing this, to make sure that we do enhance that consumer part. But for sure the... at the moment, what we do... what we have admitted to the Commission Mr Hodge, is that the facts that you have given us around Europe, the trends that we are moving in, especially in light of disclosing some of these rankings parameters, we do take for counsel.

We will look at it. We will look at it closely.

MS VUNDLA: And if I can just add one more point. I think our terminology is slightly different to the terminology other people use. So we use consumer to refer to the person who at the end of the day eats
20 the meal or receives the parcel of groceries or whatever the case is, but in actual fact because this is a three sided market place, there are different categories of people to consider who all might be consumers.

Whether it is a person receiving the goods or services, whether it is the restaurant or whether it is the independent delivery person. So in circumstances such as this, when we refer to benefits for the market

place, in many instances we are referring to all three players in the three sided market place.

CHAIRPERSON: But ranking affects consumer choice, you accepted that and here we are talking about the person who eats the meal, because that is what was presented to them.

MS VUNDLA: Sorry, I missed that?

CHAIRPERSON: Sorry, I said ranking affects the final consumer choice, because that is the person choosing a meal what they are going to eat and so we are talking about that consumer.

10 MS VUNDLA: It also affects the restaurant because the ranking affects the choice of restaurant and also affects the independent delivery person because the independent delivery person who is near the restaurant is the one that gets chosen to go and deliver that meal. So it really does affect the three sided market place and we cannot focus on one at the expense of the other two.

CHAIRPERSON: No, exactly. I would agree with you. It affects the restaurant. I had not thought of the delivery driver. But that is why transparency matters. I mean it does affect people and that is why the European Union's felt the need to regulate this because it was not
20 voluntarily done.

MS VUNDLA: And that is why we are so excited that you brought it to our attention.

MR MOLEWA: Yes.

CHAIRPERSON: Well, I look forward to public announcement soon then on this front, and as I said, it is great that we know what your

parameters are but we do not list on your platform. We do order your food, but you know certainly I think it is more for the business, the merchants as we call them, the restaurants, the consumers and maybe even the delivery drivers.

MR MOLEWA: Yes, we take it under advisement Mr Hodge.

CHAIRPERSON: Then maybe just on sponsored ranking, I mean you did highlight one thing. That you are transparent. Can I ask why you feel the need to make it transparent by putting sponsored on? That is what I mean by transparent, sorry if I was bit ambiguous.

10 MR MOLEWA: Because I think it is important so we... the ranking system is there, but as well I think it is important to highlight where the... where the counterpart is responsible and the reason we say that Mr Hodge, is that a lot of these parties that are using sponsored links, are the smaller medium... small medium enterprises that are coming onto the platform and using this.

So again, if we believe that this intention is to give visibility to those sort of merchants that would not necessarily have it, I think it makes sense to make sure that we do highlight them when they do use this product and increase visibility.

20 MS VUNDLA: In addition, there are guidelines. I am just trying to recall which guidelines they are. I think they are advertising standard guidelines that encourage the tagging of sponsored listings as such and of course we do seek to abide by those guidelines. I am just getting the name of those guidelines for you.

CHAIRPERSON: If you could because I was not aware of that because

we certainly are observing that many platforms do not do this, and that is why I was interested as to why you do do it. Ms Vundla, if there are guidelines, I assume it is a guideline, not a binding regulation then.

MS VUNDLA: That is... I am getting those details for you just now.

CHAIRPERSON: Great, thank you and I think the public would like to know. I think you are right Mr Molewa. I think it is fair that the public can assume that... are told that this is sponsored. It may still suit their needs and they may still want to click through but they do so with their eyes open and that is transparency I suppose.

10 Maybe just moving to your list of competitors. Sorry, I just need to find it. You talk about the, I mean as you I think said yourself and Mr D are the two big fish in the bowl. The bowl of food is expanding. But then you go, I mean constraints from local food delivery. I just wanted to ask about some of those.

 You know, because obviously we are interested in talking to as many platforms as we can. But Spaza Eats we are unable to get hold of. Their website does not come up. There is no app. I mean, are you aware whether they are even operational anymore?

20 MOLEWA: I can come back to you on that Mr Hodge, but as far as we go, this was the list of the small ones that we identified playing in mainly the township markets.

CHAIRPERSON: So there cannot be a big constraint if you are not aware of if they are still operating.

MR MOLEWA: Ja, I think the overall point that we are trying to drive here Mr Hodge, is that there are markets clearly where UberEats is not

operating and these are the townships. This year for the first time I think we have made a concerted effort to try to enter some of these markets. To enter some of these markets outside of Soweto which was the only one that we have been operating in.

But these markets are difficult and what we are finding is that there are these smaller players who seem to have started there. So here, while at the moment in terms of size, they are very small for sure, we cannot afford any way to keep our eyes of these players because we do regard them as competitors in those niche markets.

10 CHAIRPERSON: Mr Molewa your slide says constraints on the food delivery offering, are also exerted by. You are telling me you do not operate in the same places that those township delivery services do, so how do they constrain you?

MR MOLEWA: Mr Hodge, we did not historically. We have moved into three townships so far this year and again, as we roll out this, it is a less than six month journey that we have been on. The likes of Atteridgeville or Mamelodi, we have not been operating there you know, for more than a month and a half. These are new areas to us as well, as we enter these markets and for sure when we do look at these
20 markets we do see these people as competitors.

If you look at these markets, we are trying them. Right, it is not like we are driving large businesses like in the Joburg suburbs. We are very small there and these competitors become significant.

CHAIRPERSON: I mean look, I just put to you that it is very easy to find a list of anyone who is offering delivery, throw it in your presentation and

say these are constraints. It is quite another thing that they actually are, because I mean even [indistinct – 01:34:18] as I understand is not in Mamelodi or Atteridgeville. They are in Khayalitsha, Langa Gugu and Nyanga.

So they are not necessarily where you are either. And what we can see, My Chef is a virtual restaurant, not a platform. Any comments on that?

MR MOLEWA: Yes, we do accept Mr Hodge, maybe we were putting in examples and for sure, the likes of Guguletho, I mean Guguletho is a
10 market that we have been looking at in the Cape, looking at entering that market. So for sure, we do accept that while some of these are not in scope yet, they are on part of our roll-out plan.

CHAIRPERSON: Alright, but they are not a constraint on your business right now as I understand the answer?

MS VUNDLA: When our sales managers go to restaurants to seek opportunities to sign them up, these are the people who they say they are currently working with. That is the short answer.

CHAIRPERSON: In your slide presentation you also said you had a
20 slide on the benefits to others of a disruptive entrant that you kind of make consumers familiar, merchants, delivery people familiar with your new technology. You almost, I suppose paving a way for others is the way you put it.

So subsequent entrants are able to benefit from much of the work done by a disruptive entrant. That, sorry is slide 30 and unfortunately the public does not have it, but I read through... I mean,

would you accept that in the townships it is exactly you that is benefitting from the paving the way done by others, that it is exactly the order Khazi Spaza Eats, and the like that have familiarised consumers, worked how to operate in those more difficult environments, signed up restaurants, got the restaurants familiar with their app and train delivery drivers.

So they have done the disruption. They were first. Would you accept that?

MR MOLEWA: I think that is a fair comment. I mean just by their very
10 nature that they were first there.

CHAIRPERSON: Ja, well the township consumer cannot get UberEats, is not familiar with food delivery. He needs to have that trust built. Needs to know it works. Sometimes payment methods have to be you know determined. But that has been the innovation of exactly these companies, and now consumers are more comfortable, merchants are more comfortable.

The delivery driver is going to come, they will get credited in their bank account and it works. Not so?

MR MOLEWA: Fair assessment Mr Hodge.

20 CHAIRPERSON: Look, tomorrow we will hear from ones that player as well, and I mean what do you think is going to happen to those platforms when UberEats enters with your big promotions?

MR MOLEWA: Well, look. It is difficult to hypostatise and I say that because these markets are new to us as well Mr Hodge. Like I said I think we have been, we are in Soweto at the moment. We have just

started to enter other townships and I did name Mamelodi. I think Umlazi was the one that we are also looking at rolling out soon, Atteridgeville.

So it is a lesson for us. A lesson for us as well. To predict how it is going to turn out, it depends how entrenched these competitors are. At the moment, it is a steep learning curve for myself and my team as we assess these markets, because these are not traditionally markets that we operate in.

CHAIRPERSON: Fair enough. I assume when you go in as I would
10 read your business model, you will offer consumers you know incentives, promos, promo codes as you put it where the consumer punches that in and they can use that for the order, because that seems to be you know, part of your customer acquisition strategy.

MR MOLEWA: Part of it Mr Hodge, but I think we have got other avenues that we also use as part of our entry strategy.

CHAIRPERSON: I am sure you have got others. I am just saying if a prominent feature of your platform is the use of promotions to drive orders and acquire customers, it is not the only thing, but that is quite a prominent feature.

20 MR MOLEWA: Ja, I mean we would disagree on prominent because when we do assess markets, like I said there are other features that we do look at, which promo is part... is only but a part of.

CHAIRPERSON: I mean, if we look at other areas, I mean we heard this morning from Buzz Delivery and you may or may not have been in on that session, but the person from Buzz was almost listing the

graveyard of South African platforms, obviously other than Mr D. Appetite, Order Inn, Extreme Delivery and I cannot remember who else, but you know the feedback we are getting from these smaller platforms, is you just simply cannot match R50-00 off an order every week or free delivery or, and the deep capital on backing of yourself and Mr D and possibly Bolt, really make it impossible to compete.

What is your view of that?

MR MOLEWA: I am not sure. I mean look, we have been in the game for five years in this country and again this is such a new... this is such a
10 new market which is fast developing. So to say that they cannot succeed, I cannot... I really cannot talk to that. But I mean, if we had to look you know, internationally, if memory serves.

There have been markets where UberEats had had to pull out because competition was growing so rapidly that we also could not keep up with the competition and had to abandon those markets. I think if I am not mistaken, China comes to mind where DD Foods did that, right. So it is a really difficult question to answer because some of it yes, does lie in you know the Uber's the Mr D's and the Bolt's.

They got capital. But some of that also lies in the competitor
20 strategies of these smaller players who may or may not even probably know the markets in which they operate even better than us. So what I am trying to say there is no guarantee me going into Atteridgeville, I am suddenly going to become the biggest player.

We certainly try to push but we found these markets really really difficult because we are also learning.

CHAIRPERSON: But where you have operated in the urban areas, metros of Cape Town, Johannesburg, Durban I do not think we have got many small players left. I think most have closed their doors because you know DD is a giant in itself, as we know. It seems to be that if the business model is fund massively losses upfront in order to acquire consumers and get them on board that you obviously have to have capital to match that because I would be stupid as a consumer to pass up my R100-00 off or free delivery.

You know, and use someone else. I mean is that not fair? It
10 does not mean that here you face Mr D and Bolt, but is it fair that the small players just cannot match those promotions?

MR MOLEWA: Ja, I mean sitting on this side of the table, that is a really difficult answer. I mean that is a really difficult thing to confirm Mr Hodge. Yes, they are going to face hurdles and I mean that is not lost upon us. For sure with the heavier lift, probably given the advantages that the rest that the rest of the people, well the rest of the competitors do have.

Is it fair? I am not too sure I answered that question.

MS VUNDLA: However, we also I think need to respect the fact that
20 there are competitors out there who have started off in one segment and have pivoted based on competitive pressures to see how they can re-adjust their business model based on for instance the technology they have at hand, the relationships they have built, to be able to compete in an adjacent sort of category.

So you gave the example of Order Inn for instance. You might

no longer as a consumer necessarily have the Order Inn app on your phone to be able to order from them as an aggregator, right. However, we are aware that they have a white label solution where they run the backend of technology for many restaurants and I think also perhaps some aggregators.

I guess you would need to confirm that with them. So they are able to continue offering food delivery as a service or as a platform in this new iteration. They do continue to exercise or to give some constraint, competitive constraint in this new world that they have. So
10 adapt business, a savvy business that has the technology in hand is able to pivot to continue competing I think.

CHAIRPERSON: Well, maybe not competing but maybe just retain a business of some sorts, and that I mean is interesting because I think as you highlight the grocery game seems a very different game to us from restaurants, but in restaurants it is starting to look like you know, money talks and as grocery the partnerships that are forming with big chains seem to be changing that dynamic.

MS VUNDLA: And I think that is a very important point to bring up because that is another example of I think an app which was in more the
20 traditional food delivery platform space bottles which teamed up with Pick 'n Pay and now is Pick 'n Pay ASAP. So again, pivoting the business model into something which now is absolutely massive, and we are seeing that consolidation across the board.

Is grocery a convenience necessarily a completely different line of business from food delivery? I am not sure. As the category

continues to grow and develop and iterate, I think there is some splitting but there is also some convergence where some of these things are more alike than we think.

CHAIRPERSON: Ja, and look I suppose other necessity platforms must find a way to keep their business moving because it is tough to be in the same playground as yourself and Mr D. one thing that was highlighted earlier by... in the morning session by Sisters on the Move, was that most of the drivers on the platforms are not South African, and obviously one of the objectives of our act is about employment creation but it is
10 also you know, employment creation among the citizens of South Africa as well.

So I just wanted to get a sense and it is very broad you know, what proportion of UberEats is 9200 drivers I think you said are South African?

MS VUNDLA: I am afraid we do not have those numbers available and full disclosure, simply because we do not record the information in that manner.

CHAIRPERSON: And I mean any sense of the extent to which the drivers are local?

20 MR MOLEWA: Ja, I would not know Mr Hodge. I mean, we will try to determine but I am not even sure how, but no opinion on that at the moment for now.

MS VUNDLA: Like I said we simply do not record it in that manner I am afraid.

CHAIRPERSON: I mean but would you accept that that is a fair

observation? I mean that is the observation of I do not think it is limited to Sisters on the Move.

MS VUNDLA: I cannot discount their observation. What I do agree with Sisters on the Move on, because I did get some feedback on their presentation this morning, is that we should certainly look to continue to empower local people, especially in light of our significant unemployment numbers, to be able to grow business if they want to seek employment, to seek employment.

10 If they want to be independent delivery people, to have the opportunities to be independent delivery people and this is certainly something that I would 100% support that they should be able to... that we should be looking to continue to support people in seeking work opportunities.

CHAIRPERSON: So does Uber have a program to support South African citizens to become drivers much like Sisters on the Move?

MS VUNDLA: We have had one or two programs in the past. I do not have the details with me right now, being able to do this at scale has been challenging. I can try and draw down numbers on I think we ran one sprint a couple of years ago before the lockdown. Things have
20 been a bit difficult since Covid came into effect to do things in person.

But I can try and track that down.

CHAIRPERSON: So one sprint a few years ago. That is it?

MS VUNDLA: That I am aware of. I have only been around for three years and Covid has been two years.

CHAIRPERSON: But in the three years you have been around one

sprint a few years ago?

MS VUNDLA: One sprint in my one year and the last two years have been lockdown.

CHAIRPERSON: Ja, I mean we are all battling with lockdown. But you know, they are not looking at a complex program, a long program and they are a small business, you know but they recognise almost their social obligations to the country in which they are operating in, and the high in employment rate and the challenge for government and them making that investment, notably without even the backing of funders.

10 MS VUNDLA: We 100% recognise that we have an obligation to the countries in which we operate. South Africa being notable amongst those. Can I give the name of the partner? I am not sure if I can give the name of the partner, I am sorry. I think the agreement is confidential but I will send it through to you.

We also recognise that it is very important to keep people safe, keep people protected, you will have seen that we put in programs to keep our delivery people protected during the lockdown. A lot of these programs that we put in place such as the one I am going to send you details on, required in person engagement.

20 Actually going out to communities, identifying people who had a need for work opportunities, actually signing them up, making sure they had access to motor cycles for instance for delivery. Making sure that we teamed up for instance with the Tshwane Municipality for the physical inspection of their motor cycles because that is a requirement with Tshwane Municipality in order to get a certificate of competence.

Making sure that they have the physical training to be able to ride a motor cycle and all those things that actually require physical contact between people. It would be irresponsible of us as a business at a time when the country has told us that we need to lock down and keep people safe and healthy to continue with that during the 21 months of the Covid lockdown.

CHAIRPERSON: I mean I accept you have to comply with the law and that is what you are doing. I am asking about if it is, I mean it cannot be. Sisters on the Move is operating on the same Covid lockdown that
10 you are and yet they are still managing to train South Africans in the townships in which they are operating to drive a motor cycle.

I come into work. It is still feasible to do that. I do not think we can use lockdown as an excuse. I mean, level 5 was two years ago almost. So I am just, or 18 months. I suppose I am asking you know, I am asking why Uber is not doing more. One sprint a few years ago does not seem like much.

MR MOLEWA: So Mr Hodge, taken I think in all spheres always more could be done, but again I think maybe what makes this question a little complicated, is getting a lock on those numbers to begin with. As to the
20 proportion but your point is taken. Like Lindi says, I think we do understand the obligations that we have, especially to South Africa.

Especially the kind of environment that we are working in and could we do more? For sure. I mean, there should not be any argument there.

CHAIRPERSON: Thank you Mr Molewa and we look forward to seeing

what develops in that respect but as you understand, it is part of our mandate as well in terms of a market inquiry. I suppose we understand that maybe that is why you have a market inquiry because it is not happening and the inquiry hopes to shift the mind-set but we look forward to engaging you then, going forward around this. I do not have any more questions.

You may be relieved to hear. I do not think my panel members also have. I have just checked with them. So I think from my side just to thank you for coming and participating in the inquiry. I apologise if I
10 looked stern. But I do appreciate that you have come, you have engaged, and I hope the public has also benefitted from these interactions and the knowledge, and I look forward to hearing from you going forward on issues like drivers, transparency, and the others and we will obviously interact with you also in in-camera sessions to cover stuff that is confidential.

So thank you very much both, and Ms Vundla as well and we will then I think move across to our next participant, but thank you. Sorry Ms Vundla, sorry ...[intervenes]

MS VUNDLA: Yes Mr Hodge, just a quick question. Would you like me
20 to answer those three points that you had left for me to get confirmation on?

CHAIRPERSON: Yes, please. Sorry, I did not realise you had been fed that information. Maybe our new participant who has joined, just put your camera off, thank you.

MS VUNDLA: Sure. So question 1 was can merchants market directly

to eaters through orders that they place, that eaters place on UberEats. The answer is yes, this is not prohibited in the contract and or constrained in any way in the contract. The second question was that can merchants disclose their commercial terms as set out in the contracts. This is not explicitly constrained in the contracts that we have with our merchants and the third point that you had is you wanted to know which regulations or guidelines required that we disclosed that certain advertising is sponsored.

In the advertising regulatory board, code of advertising practice,
10 at Section 2 Article 12, it requires the identification of advertisements.
12.1 holds that advertisement should be clearly distinguishable as such.

CHAIRPERSON: Thank you very much Ms Vundla for bringing that to our attention. I think we will certainly get hold of that advertising regulatory board code and determine what obligations it does provide and to see whether in fact that should be an answer to this issue or not. Thank you very much for the other two.

So I presume now the restaurants at least, if they are listening to us now, can happily put their leaflets into your delivery and not fear any reprisals. So you know, I think that is beneficial that they can and I think
20 they should. Thank you very much.

MS VUNDLA: Thank you for your time.

MR MOLEWA: Thank you.

SESSION ENDED

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