Public Version

BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER PHASE II REVIEW OF ACQUISITION OF M/S. CAREEM INC. BY M/S. UBER TECHNOLOGIES, INC. THROUGH M/S. AUGUSTA ACQUISITION B.V.

File No: 1032/Merger-CCP/19

Dates of Hearing:	12th November 2019 11th December 2019 12th December 2019 17th December 2019
Commission:	Ms. Vadiyya Khalil ***Chairperson*** Dr. Shahzad Ansar ***Member*** Dr. Muhammad Saleem ***Member*** Ms. Bushra Naz Malik ***Member*** Ms. Shaista Bano ***Member***
Present:	Mr. Noman A. Farooqi ***Director General (Legal & Exemptions)*** Mr. Omar Farooq ***Director General (M&A)*** ***Assisted By:*** Mr. Usman Ahmed ***Deputy Director (M&A)*** Mr. Arsal Ikram ***Assistant Director (Legal)***

Present on behalf of:

M/s. Orr, Dignam & Co.	Barrister Shahid Raza, *Partner* Syed Hassan Ali Raza *Senior Associate*
M/s. Uber Technologies Inc.	Mr. Matthew Wilson *Associate General Counsel* Europe, Middle East & Africa Mr. Matthew Devlin *Head of International Affairs* *Uber* Mr. Ricardo Falconi Legal Director Europe, Middle East & Africa Mr. Mansoor Nabi *Senior Counsel for Pakistan* Mr. Saad Pall, *General Manager for Pakistan*
Careem Pay	Junaid Iqbal *Managing Director*
Charles River Associates	Muath Masri *Senior Associate* Charles Roberts *Associate* (on video/telephone conference)
Herbert Smith Freehills	André Pretorius *Partner*
Wilson Sonsini Goodrich & Rosati	Stuart Baimel *Associate*

O R D E R

1. The Competition Commission of Pakistan ("**Commission**") is mandated under the Competition Act 20101 ("**Act**") and the Rules and Regulations framed thereunder, to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and protect consumers from, inter alia, anti-competitive behaviour, abuse of dominance, deceptive marketing practices and mergers which substantially lessen competition by creating or strengthening a dominant position in the relevant market.

2. An order concluding the Phase I Review was passed by the Commission on 9th August 2019 ("**Phase I Order**"), thereby initiating phase II review in the instant matter ("**Phase II Review**"). This Order concludes the Phase II review of the pre-merger application in the matter of the proposed acquisition of M/s. Careem Inc. ("**Careem**" or "**Target**") by M/s. Uber Technologies, Inc. ("**Uber**") (collectively "**Merger Parties**") through M/s. Augusta Acquisition B.V. ("**Augusta**" or "**Acquirer**") This Order has been passed after giving opportunities of hearing to the undertakings concerned and to relevant stakeholders.

I. BACKGROUND

3. On the 19th of April, 2019, the Commission received a pre-merger application ("**Application**") sent jointly by the Merger Parties, notifying the Commission of Ubers acquisition of Careem through Ubers subsidiary Augusta, pursuant to an asset purchase agreement ("**Agreement**"). The Application had been submitted in accordance with Section 11 of the Act, and the Competition (Merger Control) Regulations, 2016 ("**Merger Regulations**").

II. PARTIES

Uber:

4. Uber is a technology company founded in 2009, with its headquarters located in San Francisco, USA. It operates in more than 700 cities and 60 countries worldwide, including Pakistan where it entered in 2016. It is engaged in providing Ridesharing Services. Within Pakistan, Uber has no activity save for Ridesharing Services.

5. Shareholders in Uber with [redacted]% or more voting rights are M/s. Softbank Corp. and M/s. Benchmark Capital, with [redacted]% and [redacted]% shareholding, respectively.

6. As per financial statements submitted by Uber for the year ended 31st December 2018, revenue for Uber in Pakistan has risen by [redacted]% from PKR [redacted] (FY17) to PKR [redacted] (FY18). On similar grounds, expenses of Uber have also increased, however, the gross profit percentage has remained constant at [redacted]% FY18 ([redacted]% FY17). The company's profit was PKR [redacted].

7. For the year ended 2018, Uber has expanded its fixed asset base by more than double, taking the base to PKR [redacted] from PKR [redacted]. The liquidity position of Uber has remained at a stable position as shown by the Current Ratio of [redacted] FY18 ([redacted] FY17). The Debt-to-Asset has improved from [redacted] in FY17 to [redacted] in FY18.

Acquirer:

8. Augusta is a Dutch private limited liability company. It is a special purpose vehicle[1] set up as a subsidiary of Uber, for the purposes of holding shares in Careem entities post-transaction. It was set up in March, 2019, and has no operational activities. It therefore does not have any turnover, in Pakistan or worldwide.

9. M/s. Uber International B.V. holds [redacted]% shareholding in Augusta.

Careem:

10. Careem is a company limited by shares incorporated in the British Virgin Islands, with its headquarters located in Dubai, UAE. Established in 2012, Careem operates in more than 125 cities across 15 countries. In Pakistan, Careem is active in the Ridesharing Services market.

11. Shareholders in Careem with [redacted]% or more voting rights are M/s. Rakuten, M/s. AlTayyar Travel Group Holding Company, M/s. Kingdom Holding Company, Mr. Mudassir Ilyas Sheikha, and M/s. Saudi Telecom, with [redacted]%, [redacted]%. [redacted]%, [redacted]% and [redacted]% respectively.

[1] Special Purpose Vehicle (SPV): a separate legal entity created by an organization. The SPV is a distinct company with its own assets and liabilities, as well as its own legal status. Usually, they are created for a specific objective, often which is to isolate financial risk.

12. As per the financial statements submitted for Careem in Pakistan, in terms of revenue, it witnessed a significant 99.6% increase in overall revenue figures almost doubling from PKR [redacted] billion (FY17) to PKR [redacted] billion (FY18). However, service revenue rose by [redacted]%. Overall operational costs also rose in parallel to the revenue figures. The costs were increased by [redacted]% from PKR [redacted]2 billion to PKR 8.47 billion.

13. Despite increased revenue, the company faced an operational loss of PKR [redacted] (FY18). Profit Margin has slightly improved as compared to FY17, with an increase from (-) [redacted] to (-) [redacted].

14. Furthermore, due to devaluation of Pak Rupee, the company also faced [redacted] which computes to almost [redacted]% of the revenue.

15. In the FY18, Careem's non-current assets have dropped in valuation from PKR [redacted] million (FY17) to [redacted] million (FY18). [redacted] [redacted]% (FY18) as compared to [redacted]% (FY17).

16. [redacted] from current ratio of [redacted] to [redacted] in 2018. Debt-to-Assets ratio [redacted] from [redacted] in FY17 to [redacted] in FY18. As of FY18, the current liabilities [redacted] total assets by PKR [redacted].

17. [redacted].

III. TRANSACTION

18. As per the Agreement, this transaction is an asset sale and purchase, whereby the Acquirer, an acquisition vehicle indirectly wholly-owned by Uber, will acquire [redacted]% of the assets of Careem in Pakistan. These assets include (i) limited assets of Careem in the British Virgin Islands; and (ii) [redacted]% of the shares of the three Careem subsidiaries that are directly owned by Careem, namely (a) Careem PS Inc., (b)

Carsupply Holding Inc., and (c) Careem Networks FZ LLC, as well as entities that are directly or indirectly owned by these three subsidiaries.

19. The total consideration for this acquisition is US$ [redacted] *(approximately PKR* [redacted][2]*)*, which is the transaction value in this case.

20. Careem's shareholders will receive a mix of cash *(US$* [redacted], *approximately PKR* [redacted][3]*)* and convertible notes issued by Uber *(US$*[redacted], *approximately PKR* [redacted][4]*)* that will be convertible into common stock of Uber for a period of time after the closing.

IV. PHASE I ORDER

21. On the basis of the information before it, a two member Bench of the Commission issued the Phase I Order, under Section 11 (5) read with Section 31 of the Act, wherein it was determined that the relevant product market would consist of "Ridesharing Services" rather than the *"broader local, urban transportation market including all the means of transporting people from A to B such as rickshaws, taxis, buses and minibuses"* as submitted by the Merger Parties. For the purposes of this Order, Ridesharing Services refers to **Application based passenger vehicle ridesharing services**. The relevant geographic market comprised of Islamabad, Karachi, Lahore, Faisalabad, Gujranwala, Hyderabad, Multan and Peshawar.

22. It was determined that the proposed transaction was likely to substantially lessen competition through the creation or strengthening of a dominant position in the relevant market, in terms of Section 3 of the Act, and required a more detailed assessment during the Phase II Review.

V. PHASE II REVIEW

23. During the Phase II Review, the Commission took the following steps:

    i. Reviewed submissions of the Merger Parties, sent several requests for information to them, and reviewed responses;

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[2] *As on 10th July 2019 (1 US$ to PKR = 158.47)*
[3] *Ibid*
[4] *Ibid*

ii. Sent requests for information to Stakeholders and reviewed responses;
iii. Conducted Hearings with Merger Parties and Stakeholders; and
iv. Conducted an independent 3rd party Survey of consumer preferences in the relevant market. This Survey was conducted in Islamabad/Rawalpindi, Lahore and Karachi to gauge the response of consumers to the transaction.

24. The Commission convened two hearings in the matter, i.e., on 12th November 2019, and 12th December 2019. These were attended by the representatives of Uber and Careem. Additionally, the Commission convened two more hearings for stakeholders, on 11th December 2019 and 17th December 2019. Relevant stakeholders were in attendance at these hearings, and their concerns regarding the transaction were heard and recorded. Details of submissions made at these Hearing, along with queries of the Full Bench and their responses, are detailed further below in this Order, on page 16.

25. This Order represents the Commissions' conclusions having perused all documentation and information that was submitted to the Commission by the Merger Parties and stakeholders since the notification of the transaction on the 19th of April, 2019. These submissions include information provided by Merger Parties and Stakeholders, and are as follows:

- Information requested by Commission during meeting held on 13th May 2019 received on 20th June 2019;
- Information requested by Commission on 9th July 2019 received on 30th July 2019;
- Conference call with representatives of the Merger Parties on 28th August 2019;
- Meeting with SWVL on 5th October 2019;
- Comments of Merger Parties on Phase I Order requested by the Commission on 17th September 2019 received on 7th October 2019;
- First Commitments proposal submitted by Merger Parties on 16th October 2019;
- Comments received from SWVL on 12th November 2019;
- The First Hearing with Merger Parties convened on 12th November 2019;
- Conference call with representatives of the Merger Parties on 22nd November 2019;

- Information requested by Bench during 12th November Hearing received on 22nd November 2019;
- Revised (2nd) Commitments proposal received on 26th November 2019;
- First Stakeholders Hearing convened on 11th December 2019;
- Second Hearing with Merger Parties on 12th December 2019;
- Third Commitments proposal received on 13th December 2019;
- Information requested by Bench during 12th December Hearing received on 16th December 2019;
- Second Stakeholders Hearing convened on 17th December 2019;
- Fourth Commitments proposal received on 8th January 2019
- Comments of the Merger Parties on the Conditions Imposed by the Commission.

VI. OVERVIEW OF RIDESHARING MARKET IN PAKISTAN

26. Ride-sharing services enable passengers to hail a vehicle using online platforms. They help connect an existing workforce, like private car owners, with customers in need of their service via an online platform.[5] The transportation industry was revolutionized with the launch of ridesharing sharing services few years ago. As business models change and industries shift focus to digitization, on demand apps stand as economical docks, anchoring suppliers and customers alike to one user-friendly platform[6].

27. With the growth in this disruptive model a number of new global platforms are marching into the market to transform it further. Smart phones have contributed to the rise of urban transportation options hence they can be attributed as game-changers. Due to the ecological awareness, ride sharing has increasingly become a noticeable part of the modern-day transportation conversation.

28. The global ride-sharing market is predicted to reach US$170 Billion by 2025, up from US$43 billion in 2017, according to Adroit Market Research. However, low

[5] https://mobility.here.com/demand-transport-and-rise-demand-economy
[6] https://mobility.here.com/demand-transport-and-rise-demand-economy

rate of internet penetration in developing regions considerably hampers the growth of the market[7].

29. The culture of public transport in Pakistan is strong. People use cabs, buses, rickshaws, metros to travel from one place to another. However after decades it is finally changing. Ridesharing companies are launching in Pakistan to introduce innovation, technology, and modernization in public transport[8].

30. With many customers seeing such applications as necessary substitutes for an otherwise unreliable and sometimes inaccessible public transport system like traditional black and yellow cabs which are only accessible through street hailing. Pakistani public transportation situation is transforming by the launch of these ride sharing applications. They have introduced the idea of being sustainable and green by sparing individuals the trouble of driving through the nerve-wracking traffic helping them conserve on their limited resources of time, space and money.

31. Ride sharing apps allow its customers to request a ride from anywhere at any time. Not only can consumers request a ride from anywhere they want, but they can also choose between different classes of rides *(rickshaws, motorcycles, cars with/without ac, and premium ride types)* that vary in price and convenience.

32. Ridesharing passengers get a fare estimate before starting a ride. This fare estimate is shown before completing the ride request process on the app, helping consumers decide whether they want to go on with the ride or cancel the ride request. This saves consumers from the hassle of haggling as with a taxi, as they don't get any estimates and they can vary with different cabbies offering different rates for the same route. They can also go completely cashless by choosing to pay with their credit/debit card[9].

33. With ride-sharing services, one can almost always expect professional service as drivers try to keep their ratings up so they get more rides. The drivers or riders can be reported and terminated from the service if there are reports of misconduct on either party's account. Consumers can also track the rides, match the driver's profile

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[7] https://www.alliedmarketresearch.com/ride-hailing-service-market
[8] https://www.researchsnipers.com/top-ride-hailing-companies-pakistan/
[9] https://propakistani.pk/2019/07/22/why-are-ride-hailing-services-more-popular-in-pakistan/

with the vehicle or cancel their rides and get their money back. Local taxi drivers are not subject to the same rules. And for that reason, Ridesharing services are normally considered the safer option compared to taxis. These services also offer promo codes and attractive rewards for commuters. The few downsides of these services include surge pricing, trip cancellations and safety concerns[10].

34. Careem entered the Pakistani market in late 2015, and Uber entered shortly thereafter in mid-2016.[11]Despite the fact that Uber was second to reach Pakistani market, it is giving a tough competition to Careem. Since then, the use of ride-share applications has been on the rise in Pakistan and the transportation landscape has changed as many other companies have moved in to solve the transportation issues of Pakistan. Bykea Pakistan's first motorbike ride-sharing technology startup, launched in 2016 in Karachi, with an app in Urdu to facilitate broader Pakistani demography given that English is a big hurdle.

35. Shahi Sawari, a 24/7 on-demand rickshaw hailing service also launched in 2016 in Lahore. In the beginning of 2019, Airlift was launched, allowing users to book rides on premium quality (air-conditioned) buses (and vans) that have fixed routes, stops and times, in Lahore and Karachi. The users after signing up and logging in, can reserve their seats by selecting their pick up and drop off locations or browsing the routes.[12]

36. Airlift offers a way to increase asset utilization by running their buses during idle time. In July 2019, SWVL, the Cairo-headquartered app-based bus booking startup expanded to Pakistan with its Lahore launch. SWVL operates bus lines on fixed routes like Airlift with customers boarding the buses from specific pick-up spots to be dropped at pre-defined (virtual) stations. SWVL later expanded its services in the twin cities and then in Karachi. These bus services are cheaper than the conventional Ridesharing options including Uber and Careem.

37. In August 2019, Timesaco (A Chinese firm) launched their brand Buraq Taxi Service in Rawalpindi/Islamabad and after few months Timesaco plans to start its operation across the country. Buraq drivers will get 97% share of their earnings and company

[10] *Ibid*
[11] https://digitalrightsfoundation.pk/wp-content/uploads/2019/01/Careem-Uber-Research.pdf
[12] https://www.menabytes.com/airlift-2-2-million/

will get only 3% from drivers. The company has an open-door policy as people could register their cars, bike, rickshaws, pickups, Qingqi loaders, and trucks with the company and get multiple ways for earning[13].

VII. FEATURES OF THE RIDESHARING MARKET

38. The ridesharing segment stands out as distinct from general transportation due to a number of unique factors. The following are some features that are specific to ridesharing in general, and as it operates in Pakistan.

A Two-Sided Market

39. A two-sided market is one in which a firm acts as a platform and sells two different products or services to two groups of consumers, while recognizing that the demand from one group of customers depends on the demand from the other group and, possibly, vice versa[14]. In Pakistan, Uber and Careem both operate platforms that, *inter alia*, match those seeking transportation and those that provide it, i.e., riders and drivers. Both are users of the platforms provided by the Merger Parties. A distinct feature of two-sided markets is that the value that each group gets from the platform depends on the presence of the other group. In other words, Uber and Careem riders only derive value from the platform if enough drivers are present on the same platform, and vice versa.

Network Effects

40. Coupled with a two-sided market, another feature of the ridesharing sector is the presence of Network Effects, which can be direct or indirect.

    i. Direct network effects are related to the size of a network and mean that the utility that a user receives from a particular service is directly affected by the number of other users. The classical example is telecommunications networks, e.g. a service such as Skype or WhatsApp becomes more attractive the more users it has, just as the possibility of communication amplifies as the number of other Skype or WhatsApp users increases. Similarly, if a large customer base is already using certain social networks such as Facebook or

[13] https://www.technologytimes.pk/timesaco-buraq-cab-service-pakistan/
[14] Market Definition in Multi-Sided Markets - Note by Dr Lapo Filistrucchi, OECD Directorate for Financial And Enterprise Affairs Competition Committee; 12th January 2018.

LinkedIn, this tends to attract even more users, as a large customer base increases the probability of finding valuable contacts[15].

ii. In contrast, indirect network effects arise if the increase in the number of users on one side of the market attracts more users on the other market side. While there is no direct benefit of an increase in users on the same market side, the network effect unfolds indirectly through the opposite market side as an increase in users on one market side attracts more potential transaction partners on the other market side. Taking eBay or Amazon Marketplace as illustrations, more potential buyers attract more sellers to offer goods on these platforms as (a) the likelihood to sell their goods increases with the number of potential buyers and (b) competition among buyers for the good will be more intense and, therefore, auction revenues are likely to be higher[16].

41. In the case of Uber and Careem, network effects are indirect. That is to say, the value that a user on one side of the platform *(i.e., a rider)* derives from the service is linked to the number of users on the other side of the platform, which is drivers. The more the number of drivers that are available to provide transportation, the more the value to the rider. This translates into shorter waiting times, more options with regard to the quality of the ride *(such as air-conditioned and non-air-conditioned)* and more options as to the cost that a rider is prepared to incur *(such as small hatchback cars which are cheaper, or larger executive sedans which typically cost more)*. The same is true for drivers. The more Riders that are available to use transport provided by drivers, the more value the drivers derive from using that platform.

Multi-Homing

42. In settings where a multiplicity of platforms co-exists, horizontal differentiation can result in customers choosing to join and use several platforms, a phenomenon called "multi-homing". How easy it is for consumers to multi-home depends, among other

[15] J.Rohlfs : A theory of interdependent demand for a communications service, in: Bell Journal of Economics and Management Science, Vol. 5, 1974, pp. 16-37; M. Katz, C. Shapiro: Network externalities, competition, and compatibility, in: American Economic Review, Vol. 75, No. 3, 1985, pp. 424-440; J. Farrell, G. Saloner: Standardization, compatibility, and innovation, in: RAND Journal of Economics, Vol. 16, 1985, pp. 70-83.

[16] J.C. Rochet, J. Tirole: Platform competition, op. cit.; J.C. Rochet, J. Tirole: Two-sided markets, op. cit.; G. Ellison, S.F. Ellison: Lessons from the Internet, in: Journal of Economic Perspectives, Vol. 19, No. 2, 2005, pp. 139-158.

things, on the nature of the alternative platforms *(substitutes or complements)*, switching costs between platforms and the pricing policy *(usage-based tariffs or flat rates)* of the platform. Multi-homing can occur on both sides of the platform[17].

43. Uber and Careem users, both riders and drivers, are able to multi-home. In case of riders, they can book a ride using either Uber or Careem, as long as they have both services available *(i.e., they have both Uber and Careem applications installed on their smart phones).* In the case of drivers, they too can pick up riders using either Uber or Careem, provided that there are no exclusivity clauses in their agreement with either Uber or Careem[18].

Regulatory Vacuum

44. The Commission notes that there is no regulation of the ridesharing segment in Pakistan. Apart from corporate laws, rules and regulations that all companies doing business in Pakistan must adhere to, there is a regulatory vacuum when it comes to operations by Ridesharing Service providers such as the Merger Parties.

VIII. HEARINGS

FIRST HEARING

(12th November 2019; Merger Parties)

45. Uber made preliminary arguments which were broadly structured into three segments; Market Definition, Market Context, and Survey Reports.

46. **Market Definition:** the Merger Parties argued that the relevant market should be wider and the question of substitutability should be determined, not only through the Rider's perspective, but also through that of the Drivers.

47. Being commercially licensed, Uber submitted, Rickshaw and Taxi drivers have an advantage since they are at liberty to provide either application-based services or non-application based street hailing services. For this reason, they find it easy to substitute non-application based services with application based services. In other words, it is at the option of Rickshaw or Taxi drivers whether to use Uber's platform

[17] Néstor Duch-Brown; The Competitive Landscape of Online Platforms; JRC Digital Economy Working Paper 2017-04
[18] *See Footnote 16, above.*

or not, giving them a competitive advantage as compared to drivers solely driving with Uber. For this reason, it was submitted, street hailing market should not be separated from application based ride sharing market given the ability of the former to influence the later.

48. It was further submitted that, being independent of Uber's price point, Taxi and Rickshaw drivers have always had the ability to charge lower prices compared to Uber or Careem, and that this ultimately affected the Ridesharing market. Therefore, it was, submitted, street hailing services such as Rickshaws and Taxis should be included within the ambit of the relevant market, as opposed to the narrower market defined by the Commission.

49. **Market Context:** Uber submitted that it has been operating in the market for Ridesharing Services based on mobile applications and that this is a market highly competitive in nature. SWVL's announcement regarding the US$25 Million investment is an example of the markets competitive potential. More so, according to market data collected by Uber, the number of SWVL's application downloads was greater than that of Uber's, which indicated SWVL's popularity.

50. Likewise, other competitors such as Bykea and Airlift have also been expanding with respect to number of Riders and Drivers across various cities in Pakistan. This further indicated the markets potential to absorb new entrants. The Merger Parties also highlighted the interest shown by American firms to invest in local companies across Pakistan. Moreover, the patterns of consumers in the ridesharing market have been frequently changing from quarter to quarter, showing the market is dynamic in nature.

51. **Survey Report:** Looking through the perspective of Drivers, the Merger Parties referred to the Survey they conducted, wherein riders had been questioned regarding their choice among Uber and other Ridesharing Service providers. Their Survey data suggested that if the price of Ridesharing Services is increased by [redacted]%; only [redacted]% of survey participants would stay with Uber or Careem. This showed that demand was elastic and Riders were willing to switch to other substitute, i.e., other modes of transport besides Ridesharing Services. As for Drivers, the survey report showed that a [redacted]% decrease in their income would cause [redacted] to leave their platform.

52. It was further submitted that their survey report revealed that [redacted] of survey participants had expressed their willingness to switch to other services if Uber or Careem were not present at all. More than [redacted]% of participants had expressed their willingness to download competitors' applications, showing that there were no entry barriers or loyalties to Uber or Careem. For this reason, it was submitted, the definition of the relevant market should be wider, i.e., it should include street hailed services as well.

53. The Merger Parties submitted that the transaction would bring in efficiencies such as the expansion of international investment and Uber's plan to invest in heavy duty vehicles. From the perspective of Riders, it was submitted that two factors are important; Speed and Money. The transaction would integrate technical and operational systems of the Merger Parties, thereby creating a pool of drivers. Hence, the algorithmic match of Drivers with Riders stood to become more precise, eventually reducing waiting times for Riders, and more trips for Drivers, leading to an increase in their incomes.

54. The Merger Parties also shared their experience and expected outcomes in other jurisdictions, particularly in Singapore, where they have already been granted conditional clearance. The Merger Parties committed to sharing details of outcomes in other jurisdictions with the Commission in writing.

55. Concluding the 1st Hearing, the Commission directed the Merger Parties to submit questionnaires used in their survey, their sources of data, final survey reports, graphs upon which they relied during their submissions, price data for the last ten years, copies of agreements with Drivers and copies of decisions from other jurisdictions.

<u>SECOND HEARING</u>

(11th December 2019; Stakeholders)

56. The Commission convened a Second Hearing in order to offer an opportunity of hearing to Stakeholders including Airlift, SWVL, Bykea, TransPeshawar, FoodPanda. SWVL submitted that the Relevant Market should be Ridesharing Services, and that though Uber and Careem have thus far operated passenger vehicle services as oppose to SWVL, which operates van/minivan services, however if one

of the Merger Parties decided to start van/minivan service then it would have a tremendous impact on competition between SWVL and the Merger Parties.

57. SWVL further submitted that, given their large scale and data advantages, the transaction would provide the Merger Parties the ability to offer additional advantages to Driver or Riders, which SWVL cannot do. This may enable the Merger Parties to abuse their dominant position. Upon a query by the Commission regarding the number of cities they have currently been operating in, SWVL responded that it has been operating in Karachi, Lahore and Islamabad thus far.

58. The Commission asked SWVL to elaborate on entry barriers which it had to face at the time of entering the market. SWVL responded that it entered into the market approximately three months ago and, as a new entrant, it needed fitness certificates from government authorities. The sector, it was submitted, is expected to have new regulatory laws in the near future. It was submitted that this has already been under consideration with government authorities.

59. Furthermore, SWVL submitted that the Merger Parties have already achieved a substantial market share, and that this would give them a competitive advantage over competitors. For example, they would be able to exploit their position to leverage into neighboring markets, for example bus, van or minivan services, therefore, SWVL strongly opposed the transaction.

60. Followed by SWVL, Bykea submitted that they operate in the motorbike Ridesharing market, as well as that of food delivery, however, it would be appropriate if motorbike Ridesharing and food delivery markets be kept distinct from that of Ridesharing for passenger vehicles.

61. Further, they submitted that the Merger Parties operate through mobile applications only, as opposed to Bykea which operates through both mobile applications and conventional telephone calls. For this reason, it was stated, that market segmentation would be slightly different. However, Bykea asserted that its apprehensions regarding the post-transaction market situation would not be very different from what SWVL had already mentioned, i.e., that that the Merger Parties have already achieved a substantial market share, and that this transaction would give them a

competitive advantage over competitors, enabling them to exploit their position to leverage into neighboring markets.

62. Upon a question by the Commission as to whether the Merger Parties would likely integrate into motorbike Ridesharing services in the future, Bykea responded in affirmation and expressed their apprehensions regarding the transaction, i.e., it would enable the Merger Parties to achieve a strong financial position, eventually helping them to integrate into the motorbike Ridesharing market through predatory pricing.

63. Subsequent to Bykea, TransPeshawar made its submissions and stated that it is a public sector company. TransPeshawar is not yet active operationally due to incomplete technical construction, but it hoped to start operations by next year, and would provide Bus Rapid Transit services ("**BRT**"). It was submitted that the Merger Parties have operations in Peshawar, where they have not faced any competition so far.

64. The Commission asked TransPeshawar whether the KPK Government is considering the formulation of new laws to regulate the Ridesharing sector. In response, TransPeshawar submitted that no such bill had yet been discussed. The Commission posed further questions; whether TransPeshawar would consider the services of the Merger Parties as substitutes to BRT, whether TransPeshawar expected to launch a mobile application for its services, and whether the KPK Government would be promulgating any transport laws in future. The representative of TransPeshawar requested the Commission for additional time to submit their written replies to these technical questions.

65. An opportunity of hearing was also afforded to FoodPanda, which operated in the market for food delivery. FoodPanda submitted that it regards urban transport services all over the country as the relevant market in this transaction, as opposed to limiting the relevant market to Ridesharing services, as was done in the Phase I Order of the Commission.

66. With respect to repercussions following the transaction, FoodPanda agreed with other stakeholders and expected potential abuse of dominance on the part of the Merger Parties. It was submitted that the transaction would further strengthen the

existing dominant position of the Merger Parties, and would eventually lead to higher prices for Riders or the imposition of difficult contractual terms on Drivers. There would be no price competition or choices left for consumers.

67. Upon a question by the Commission as to whether the transaction would likely affect the food delivery market, FoodPanda responded affirmatively. The Commission directed FoodPanda to elaborate on difficulties or barriers which they had faced while entering the market, whereby, FoodPanda responded that no such difficulty or entry barriers were faced.

68. With regard to any difficulties in accessing data, FoodPanda submitted that the market in which FoodPanda operated should be considered distinct from the market in which the Merger Parties are operating, and for this reason, it did not require any data from the Merger Parties.

69. The Commission asked FoodPanda whether cross-subsidization by Uber will affect competition in the market for food delivery, upon which FoodPanda responded that competitors in this market normally compete on delivery time rather than price. Therefore, it would not face any threats from Uber in this respect.

<u>THIRD HEARING</u>

(12th December 2019; Merger Parties)

70. Based on the concerns raised by the Commission in the 1st Hearing, Uber presented its Commitments Proposal. [redacted], the Merger Parties committed to providing Riders with access to their data, and not imposing any personalized pricing.

71. The Merger Parties further submitted that the validity of commitments will be for a period of three years, however the commitments would be cancelled [redacted][19] by a competitor.

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19 [redacted].

For the definitions please refer to Appendix-I of the Order 'Glossary of Terms'.

72. [redacted]. With regard to the Commission's concerns regarding whether the transaction would cause any problems or create barriers for new entrants into the relevant market, the Merger Parties responded that switching between different services would be easy for both Riders and Drivers, and therefore there would be no problems faced by a new entrant in establishing a market share.

73. With respect to the Commissions query as to the expected time in which a new entrant would be likely to establish a Meaningful Market Entry *(i.e., a* [redacted]*% market share)* [redacted], the Merger Parties were unable to respond with certainty. However, as per their information, Bykea and SWVL had rapidly gained a share of the market within a few months, as opposed to the Merger Parties taking 3 to 4 years to gain a meaningful market share.

74. The Merger Parties were asked whether they had been offering any loyalty rebates to Drivers or Riders. In response, they not only denied the current existence of any loyalty rebates, but also committed not to introduce any such schemes, or anything having similar effects in the future. However, Careem admitted to have introduced gift schemes in form of batteries, tires, etc.

75. Furthermore, the Merger Parties were required by the Commission to disclose whether data on Drivers had ever been made available to other competitors. They submitted that no such data had been made available, and stated that Drivers would usually enter the platform as a result of marketing, not through data sharing.

76. The Commission directed the Merger Parties to explain their Total Organic Fare[20] formula. It was submitted that this is calculated on the basis of three factors, namely

[redacted]

20 [redacted].

Base Fare, Minimum Fare and time & distance. An automatic algorithm takes the data and calculates fare based on the above mentioned factors. There would be no human intervention at all while calculating the fare.

77. Furthermore, the Commission also required the Merging Parties to explain how Surge[21] Price would works and what the reason for setting Service Fee[22] Cap was. In response to this, the Merging Parties stated that surge price principally would work when demand for drivers would suddenly rise. Then in order to attract more drivers to the platform, the system automatically would signal them by displaying a price, for example, two or three time the basic price. It would be actually done by the system without human intervention to incentivize the drivers so that supply could meet demand on the platform.

78. As far as purpose for setting Surge Cap was concerned, parties stated that a cap would be set on Surge Price so that the system would not raise Surge Price to such an extent where supply and demand balance would get disturbed. The Merging Parties also highlighted ultra-sensitivity of Surge Price system, for example, if demand for drivers would extraordinarily increases then the system could raise Surge Price up to one hundred percent. Though this increase would be lucrative for driver but, on the other hand, it would decrease drastically demand from rider's side. Hence, Surge Price Cap would be needed. With regard to Service Fee Cap, the Merging Parties asserted that this cap would be set up in order to keep the platform lucrative for drivers who always have incentive to leave the platform at any time and start conventional ride hailing. At the same time, it was also be intended to make sure that other competitor in the market would not feel any threat from the Merging Parties.

79. The Merger Parties were directed by the Commission to explain the digital wallet and its mode of operation. Careem submitted that the digital wallet had the objective of putting Riders at ease while making payments. Any extra amount, in case of

For the definitions please refer to Appendix-I of the Order 'Glossary of Terms'.

[21] [redacted].

[22] [redacted]

insufficient cash change with the driver, would be credited to Rider's digital wallet, allowing the Rider to adjust that amount against future rides.

80. Careem submitted that the digital wallet is a closed-loop service, not able to make normal purchases like other open-looped wallet services in the market. It was further submitted that the digital wallet should not be considered a separate market, rather it should be taken as an additional complementary service provided to Riders.

81. The Commission directed the Merger Parties to explain how the transaction would bring about improvements in quality. The Merger Parties responded that they regarded improvement in safety to be the improvement in quality.

82. Subsequently, the Commission directed the Merger Parties to state the amount of revenue they would be willing to put into Research & Development. [redacted]. Moreover, the Commission required the Merger Parties to address its concern with regard to probable post-transaction predatory pricing, and how they would ensure that they will not indulge in such a conduct in the future. To this question, Careem responded that price would not be the only factor in the relevant market upon which competitors compete, and that innovation would be an important factor too.

83. For this reason, the Merger Parties submitted it would never be easy to reap the fruit of predatory prices, especially when competitors could compete in terms of innovation. However, Uber responded that without some evidence on the record, it would be incorrect to establish a presumption with regard to predatory pricing or Uber leveraging its position into different neighboring markets. Nonetheless, the proposed commitments would apply only to the extent of the relevant market.

<u>Fourth Hearing</u>
(17th December 2019; Stakeholders)

84. Technical assertions were made on behalf of SWVL and FoodPanda. The Commission directed stakeholder to express their understanding of the relevant market. SWVL defined Ridesharing Services to be an over-arching relevant market which was divided into two sub-categories; Cab hailing services and Bus hailing services. Each of these two could be further divided into street hailing and

application based hailing services. SWVL submitted that it operated in application based bus hailing services. It also opposed the transaction due to the possibility of abuse of dominance, leading to elimination of new entrants or current competitors. According to SWVL, the Merger Parties already hold a dominant position.

85. The Commission also asked SWVL to explain how, in their view, the transaction could affect them. SWVL responded that, although the Merger Parties and SWVL have as yet operated in two distinct markets and their targeted audience has been entirely different, they both converge or overlap from the Drivers perspective.

86. In addition, SWVL submitted that Careem expected to launch its bus service very soon. Since drivers usually work on commissions, therefore, it was argued that if the transaction is allowed to proceed, the Merger Parties would have the financial strength to offer more commission to bus drivers, meaning less drivers available for SWVL. It was submitted that Careem had already abused its dominant position by reducing margins of commission to Drivers. In 2015, when Careem started its business, it had offered more commission to Drivers than what was being offered in 2019.

87. It was submitted that between 2015 to 2019, the market was open for new entrants to venture in, however if this transaction is allowed, the market will no longer be lucrative. With regard to Uber, it was asserted that it had a previous record of fluctuating commissions and fares around the world, due to which this transaction had already been refused in Sudan and Qatar. However, in order to dampen the anti-competitive impacts of the transaction, the Egyptian Competition Authority had proposed a remedy that Uber would execute separate agreements with the rest of the competitors in the market. At this point, Commission asked the SWVL to elaborate on Sudan's case. Being not fully conversant with the facts of the case, it was left to be explained in written submissions.

88. Moreover, it was also asserted that Uber had started a car sharing service almost identical to the corresponding bus sharing service provided by SWVL. For this reason, SWVL believed that the transaction might distort competition directly. Additionally, it was asserted that the Merger Parties had been fairly competing with

each other in the past, however, in the event that this transaction is allowed, there would be the apprehension of reduction in the quality of services offered.

89. The Commission further required SWVL to explain how long a new entrant would usually take to establish meaningful market share in app-based market such as in the instant case. It was responded that the answer to this question would not be definite. However, since a new entrant would have to go to ground root level for getting vendors/drivers on its platform or to make unfamiliar vendors acquainted with operations of the sector, time would definitely be required. Besides, the relevant market is unregulated so far, therefore, it would be more time taking and pain staking for a new entrant to convince or attract vendors already working with previous dominant players. Already existing Motor Vehicle Ordinance does not cater this problem, therefore, vacuum of legislation could be considered as another problem for a new entrant to get meaningful market share. Upon inquiry, the term 'Vendor' was explained i.e. he who either owns buses or gets buses on rent, then hires drivers for these buses. Afterwards, vendors get their buses placed on online platform such SWVL. Putting it in other words, vendors could also be called investors.

90. SWVL also highlighted the importance of "Data", submitting that it is the most important element in the industry. SWVL submitted its apprehension that the transaction would consolidate the databases of the two largest players in the market, and competitors could be driven out if data is not made available to them.

91. The following were few other technical questions and information which SWVL was required to answer or provide:
    - Data with regard to number of drivers who have left SWVL recently.
    - Data with regard to vendors working with SWVL previously and have left now.
    - Data with regard to vendors who have refused to work with SWVL.
    - Information whether entry in the relevant market is capital intensive in terms of infrastructure set-up and subsequent operations.
    - When a new entrant into the market is considered to have achieved market power? Is it by number of application downloaded or by number of trips achieved?
    - Would it address stakeholder's concerns if Uber/Careem data is shared with existing competitors or new entrants?

- Information with regard to Sudan's experience; Have prices gone up or has there been a fall in the quality of services post-transaction.
- AirLift to provide submission in writing.

IX. COMPETITION ASSESSMENT

THE RELEVANT MARKET

92. Section 2 (1) (k) of the Act provides the definition of the "Relevant Market" and is reproduced below:

> *"[The] relevant market means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products' characteristics, prices, and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring geographic areas because, in particular, the conditions of competition are appreciably different in those areas."*

93. As stated above in paragraph 24, in the Phase I Order passed by a Two Member Bench of the Commission, the relevant product market was identified as that of "Ridesharing Services" rather than the *"broader local, urban transportation market including all the means of transporting people from A to B such as rickshaws, taxis, buses and minibuses"* as submitted by the Merger Parties, and that the relevant geographic market comprised of Islamabad, Karachi, Lahore, Faisalabad, Gujranwala, Hyderabad, Multan and Peshawar.

94. The Full Bench of the Commission agrees with the assessment of the relevant product market as identified in the Phase I Order. It is the Commission's view that there are multiple factors that distinguish application based Ridesharing Services from all other modes of transport in Pakistan, by reason of Ridesharing Services' characteristics, price and intended usage, as stated below:

Ridesharing and "All other modes of transport from A to B"

Ridesharing Services

95. Riders using application based Ridesharing Services such as Uber and Careem utilize their platforms to be matched with Drivers that can reach their location in the least time possible. Further, Riders have the option of choosing between different forms of transport, be it a motorcycle, a small economic vehicle, a small sedan or a large executive sedan. They further have the choice of opting for either an air-conditioned vehicle, or one that doesn't have air-conditioning.

96. Riders using these services often have a sense of personal security when travelling since all Ridesharing Services have stringent background checks for Drivers that use their platforms to be matched with riders, including background screening and ensuring that Drivers have valid driving licenses. Ridesharing Service providers also track vehicles on their platforms as a security measure. Additionally, Ridesharing Service providers also perform periodic checks as to the condition of vehicles that are on their platform to ensure they are roadworthy, and maintain standards that must be met.

97. Based on their choices, they will select a Driver that will arrive at a location of their choosing using the Global Positioning System ("**GPS**"). Not only will the Driver arrive at a Riders exact location to pick them up, but will also use GPS to find the most convenient route and will drop them off at the exact destination selected by them. Once a Rider has arrived at their destination, they can give feedback on the journey and the Driver, and give ratings according to their experience. Drivers can also rate Riders. These ratings are monitored by the Ridesharing Service providers.

98. Riders get an estimated fare based on time and distances travelled, even in the case of a promotion or discount being offered, and there is no room for negotiation as to the price of the trip once it has been calculated. The Driver arrives at the Riders location, takes the Rider to the destination selected, and the Rider will then pay in cash or use their credit or debit card to pay the fare.

99. Ridesharing Services also offer digital wallets, so that if the Driver does not have sufficient change in case of payment by cash, the extra amount will be added to the Riders digital wallet so that it may be utilized for the next ride they take.

"Street Hailed" Taxis

100. "Street hailing" refers to the practice of "flagging down", or waving at a taxi driver to communicate that a Rider needs transport from one point to another. In Pakistan, it is common for taxis to be parked in busy areas waiting for customers, also known as "taxi ranks" or "taxi stands".

101. For example, if a customer is desirous of finding a taxi to take them from one spot to another, they will approach a taxi stand and let drivers know where they would like to be dropped off. This is usually followed by negotiations over the fare to be charged, and most often a compromise will be reached between the customer and the taxi driver. Additionally, street hailed taxis are usually compact cars, often with no air-conditioning, and with very few comforts offered to the customer.

102. Taxis do not offer the same level of security for their customers that Ridesharing Services do to their Riders. There are no background checks for criminal records, nor are their taxis tracked to ensure safety of passengers. Further, there are often no checks as to the condition of the taxi or its roadworthiness.

103. Street hailed taxis do not have GPS, and the driver relies on his own knowledge of the roads, or more likely, from directions given by the customer, in order to navigate to the desired destination. Upon arrival, there is no option of paying by credit or debit cards. There is also no digital wallet service available for customers.

104. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from street hailed taxis, by virtue of their characteristics and intended usage. Street hailed taxis, therefore, have been excluded from the relevant product market.

Metro Bus Service

105. The Metro Bus Service in Pakistan currently serves the cities of Lahore, Multan, Rawalpindi/Islamabad. It is a rapid transit service that uses specially designed buses that ply on enclosed, pre-defined roads within these cities. It is a point-to-point service where passengers are picked up from, and dropped off at designated terminals or stations along the route of the Metro Bus Service. The usual waiting time for passengers is between two and three minutes before the next bus arrives.

106. The Metro Bus is a government built and owned service. The construction of enclosed roads, underpasses, overhead bridges and stations/terminals for the Metro Bus service is a mega-infrastructure project that is usually not affordable by private enterprises.

107. The Metro Bus Service runs at designated times. By way of example, the Rawalpindi/Islamabad Metro Bus Service operates between 6:15 AM and 10:00 PM. Passengers must use other modes of transport to arrive at the terminal or station that they are to depart from within these fixed times in order to avail the service.

108. Passengers pay a fixed fare for the ticket when they arrive at the terminal or station they are to depart from, and the fare is the same whether their destination is the next terminal, or any other terminal along the route. The Metro Bus Service does not offer discounts, promotions or digital wallets, and there is no room for negotiating the fare, although the fare is much lower than the minimum fare for Ridesharing Services such as Uber or Careem.

109. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from the Metro Bus Service, by virtue of their price, characteristics and intended usage. In view of the above, the Metro Bus Service has been excluded from the relevant product market.

Auto Rickshaws and Qinqqis

110. Auto Rickshaws are compact three-wheeled motorized vehicles used in the majority of cities in Pakistan. They generally run on gasoline, compressed natural gas, liquefied natural gas or liquefied petroleum gas, and have small capacity engines. Auto Rickshaws have the capacity to carry two or three passengers comfortably, and are limited to short distance travel.

111. Auto Rickshaws have to be flagged down on the streets, similar to street hailed taxis[23]. They do not have GPS and the driver relies on his own knowledge of the roads or from directions given by the customer, in order to navigate to the desired destination.

[23] Application based hailing of Auto Rickshaws has recently been introduced in certain areas of Pakistan, such as the service provided by M/s. Shahi Sawari ("**Shahi Sawari**").

112. Fares for Auto Rickshaws are not uniform or pre-determined, and are often agreed upon after negotiations between the driver and passenger. Upon arrival at the destination, there is no option of paying by credit or debit cards, and there is no digital wallet service available for customers.

113. Auto Rickshaws are considered a cheap mode of transport, and do not offer the comforts that other types of passenger vehicles can offer, such as air-conditioning or heating, privacy, etc. They are also not considered as secure as other modes of transport, especially considering the fact that there are no background checks carried out for drivers, and that they are not tracked as they pick and drop passengers. As is the case with street hailed taxis, there are often no checks as to the condition of the Auto Rickshaw or its roadworthiness.

114. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from Auto Rickshaws, by virtue of their price, characteristics and intended usage. For this reason, Auto Rickshaws have been excluded from the relevant product market.

115. With regard to Qingqis, Jinan Qingqi Motorcycle Co., Ltd is a Chinese manufacturer of mopeds, quad- bikes and electric motorcycles. In Pakistan, it manufactures three wheeled motorcycle rickshaws, i.e., two wheeled carriages with seating for two to three passengers, pulled by a motorcycle with its rear wheel removed. These motorcycle rickshaws are popularly known as "Qingqis", due to the name of the company that manufactures them.

116. Similar to Auto Rickshaws, Qingqis are used for travel between short distances. Due to their design, which typically features a rear facing open carriage for passengers, their use is generally avoided in inclement weather. As is evident from their design, they do not offer comforts such as air-conditioning, heating or privacy.

117. Qingqis are similar to Auto Rickshaws in other ways. They are generally street hailed, do not have GPS, do not offer any safety features and are not maintained to any set standards. Fares are not uniform, and often are agreed upon after negotiations between the passenger and driver. They do not offer discounts or promotions, accept credit or debit cards, and there are no digital wallet services offered.

118. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from Qingqis, by virtue of their price, characteristics and intended usage. Qingqis, therefore, have been excluded from the relevant product market.

<u>Public Transport provided by Buses, Mini-buses Wagons and Vans</u>

119. Pakistan has a large network of buses, mini-buses, wagons and vans providing transport to millions of passengers per day. They run on point-to-point fixed routes. Passengers are picked up from and dropped off at designated stops, on a first come first served basis[24]. In the case of buses and mini-buses, these stops are generally special bus stops that offer seating and are sometimes semi-enclosed to protect passengers from inclement weather.

120. Buses, mini-buses, wagons and vans are considered one of the cheapest modes of transport in Pakistan, and have fixed fares. They do not offer promotions or discounts, nor do they have digital wallet services. Similar to Auto Rickshaws and Street Hailed Taxis, and for the same reasons, this mode of transport is generally considered less secure than Ridesharing services, and the vehicles used are generally in various states of disrepair.

121. They do not offer the same comforts that other modes of transport can, such as air conditioning or heating, or privacy. They can carry multiple passengers at once depending on their capacity, which ranges from 15 to 50 persons, however they are usually over-crowded and passengers often have to stand during their travels as no seats are available.

122. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from Public Transport provided by Buses, Mini-buses, Wagons and Vans, by virtue of their price, characteristics and intended usage. For this reason, Public Transport provided by Buses, Mini-buses, Wagons and Vans have been excluded from the relevant product market.

[24] Application based point-to-point mini-bus/wagon services have recently been introduced in certain areas in Pakistan, such as the services provided by M/s. Airlift ("**Airlift**") and M/s. Swvl ("**Swvl**").

Privately owned Passenger Vehicles

123. Privately owned cars constitute the majority of passenger vehicles on Pakistan's roads. They are, by far, the most convenient and popular mode of travel for those who can afford it. According to a major news publication, as many as 2,500,000 cars are registered in Pakistan every year[25], a major portion of which are privately purchased for personal use.

124. Ownership of a locally assembled private passenger vehicle is an expensive affair in Pakistan, as is the maintenance of one. Brand new cars can range from PKR 1 million to over PKR 8 million. Imported private passenger vehicles are even more expensive, with some costing over PKR 50 million. Purchasing such a vehicle also entails ongoing expenditure on its maintenance and upkeep, and may include the added expense of hiring a driver.

125. Ridesharing Service platforms usually have the same vehicles that are available for private purchase, with the exception of some imported vehicles, and they offer the same comforts such as air-conditioning, heating, etc. Where the two types of transport differ, however, is in terms of price, characteristics and intended usage. As stated above, privately owned vehicles are costly to purchase and maintain. With Ridesharing Services, the Rider need not incur the initial cost of purchasing the vehicle, nor the ongoing cost of maintaining it; the only cost incurred is the fare.

126. Further, owning a private vehicle and booking a ride with Ridesharing Services are also distinct in terms of characteristics and intended usage. An owner of a vehicle for personal use may decide to book a ride with a Ridesharing Service provider for a variety of reasons; convenience, lack of parking at their destination, avoiding driving in high traffic areas, saving fuel, etc. A Ridesharing Service customer will, however, not chose to simply buy a vehicle for personal use merely for the convenience of owning a vehicle that can be used at any time of their choosing, especially given the high costs associated with purchasing and maintaining a private vehicle.

127. Based on these factors, the Commission deems Ridesharing Services to be a distinct form of transport from privately owned passenger Vehicles, by virtue of their price,

[25] Daily Jang, March 2019: https://jang.com.pk/news/614610-topstory

characteristics and intended usage. Privately owned passenger vehicles, therefore, have been excluded from the relevant product market.

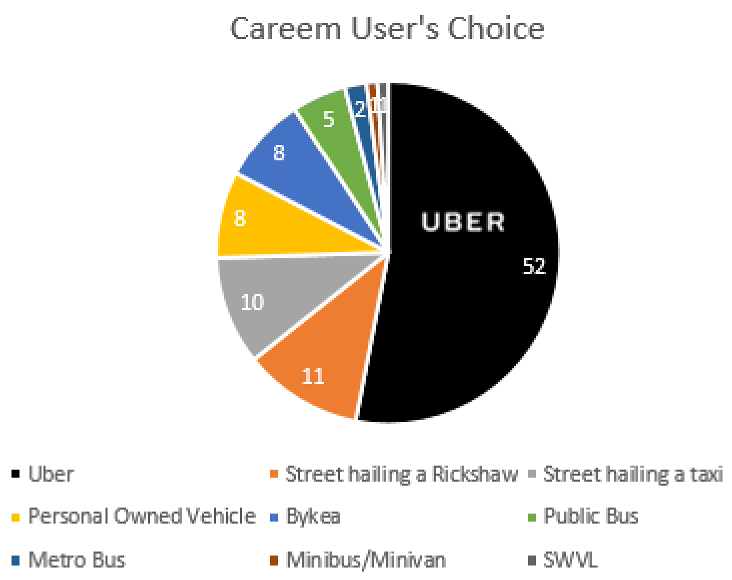
X. INDEPENDENT 3RD PARTY SURVEY OF CONSUMER PREFERENCES IN THE RELEVANT MARKET

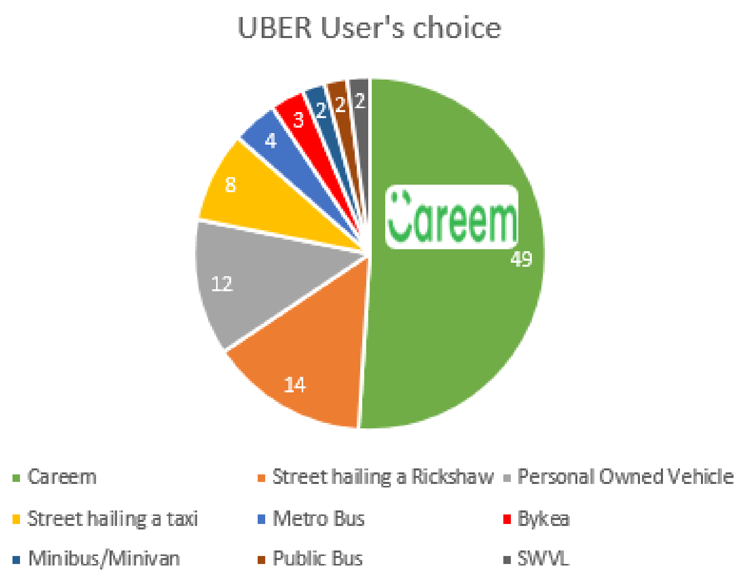
128. In arriving at the above conclusions regarding the relevant market, the Commission conducted an independent 3rd party Survey of consumer preferences in the relevant market in December 2019 ("**Survey**"). This was conducted for the purpose of identifying the degree of substitutability or closeness of competition between Ridesharing Services provided by Uber and Careem, from the point of view of Riders. The Survey also enabled the Commission to apply the "Small but significant non-transitory increase in price test", better known as "SSNIP" or the "Hypothetical Monopolist" test, to the current transaction[26].

129. The Survey found that, when faced with a 10% increase in fares by Careem, only 1% of Survey participants stated they would switch to both SWVL or Minibuses/Minivans. 2% would switch to the Metro Bus Service, 5% to Public Buses, 8% to both Bykea and Privately owned passenger vehicles, 10% to street hailing a taxi, 11% to street hailing a Rickshaw, while 52% would switch to Uber. The percentage of participants who would opt for Airlift or Daewoo Cab was negligible.

130. When faced with a similar 10% increase in fares by Uber, 2% of participants surveyed stated they would switch to SWVL, Public Buses and Minibuses/Minivans. 3% would switch to Bykea, 4% to the Metro Bus Service, 8% to street hailed taxis, 12% to privately owned passenger vehicles, 14% to street hailed Rickshaws, while 49% would switch to Careem. The percentage of participants who would opt for Airlift or Daewoo Cab was negligible.

[26] The Agencies use the hypothetical monopolist test to identify a set of products that are reasonably interchangeable with a product sold by one of the merging firms: U.S. Department of Justice and the Federal Trade Commission; Horizontal Merger Guidelines (August 19, 2010) available at: https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c

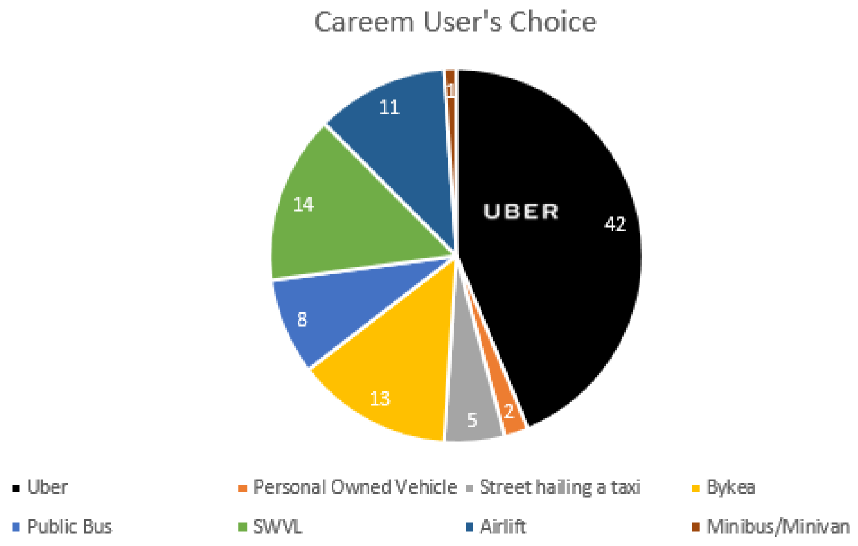


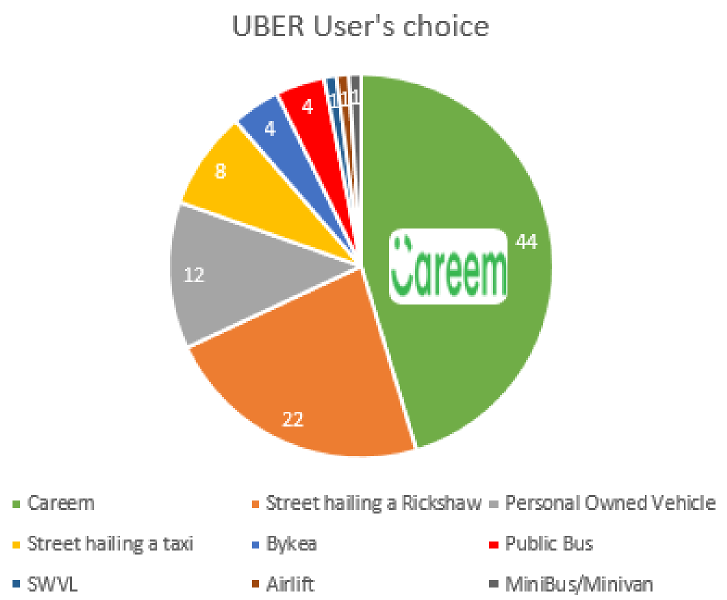


131. The Survey also asked participants how they would react to a drop in quality of service by Careem. 1% answered that they would switch to Minibuses/Minivans. 11% would move to Airlift, 14% to SWVL, while 8% said they would switch to Public Buses. 13% of participants said they would switch to Bykea, 5% said they would street hail a taxi, 2% would use their Privately owned passenger vehicles, while 42% stated they would use Uber instead of Careem. The percentage of participants who would opt for Daewoo Cab was negligible.

132. When participants were asked how they would react to a drop in service quality by Uber, 1% of participants surveyed said they would switch to Minibuses/Minivans, Airlift and SWVL. 4% answered that they would switch to Public Buses and Bykea, 8% would street hail a taxi, 12% would use their privately owned passenger vehicles,

22% would street hail a Rickshaw, while 44% would switch to Careem. The percentage of participants who would opt for Daewoo Cab was negligible.

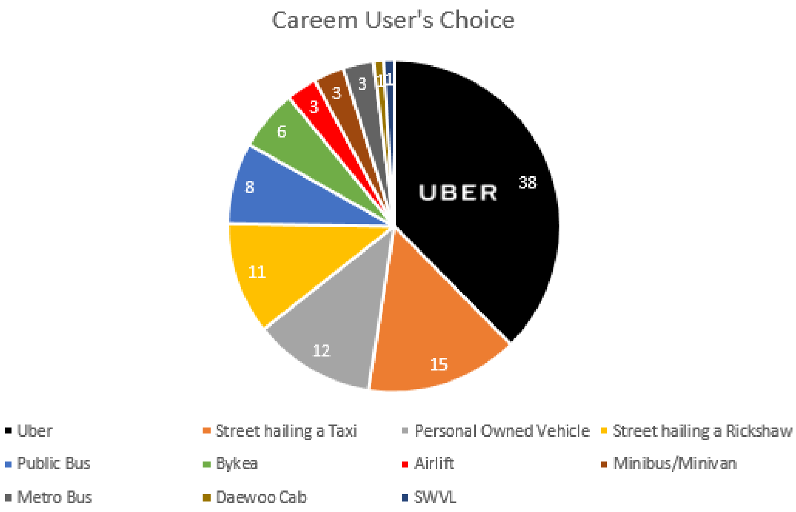


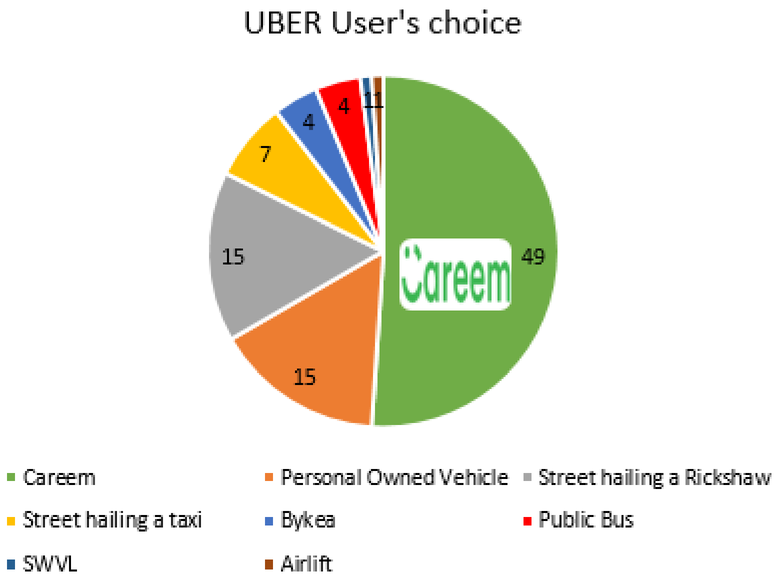


133. Lastly, the Survey asked participants how they would react if Careem stopped giving promotions and/or discounts. 1% said they would move to SWVL and Daewoo Cab, 3% to the Metro Bus Service, Minibuses/Minivans and Airlift, 6% to Bykea, 8% to Public Buses, 11% would street hail a Rickshaw, 12% would use their Privately owned passenger vehicles, 15% would street hail a taxi, while 38% would switch to Uber.

134. Answering the same question with regard to Uber not giving promotions and/or discounts, 1% said they would move to Airlift and SWVL, 4% to Public Buses and

Bykea, 7% would street hail a taxi, 15% would street hail a Rickshaw and use their Privately owned passenger vehicles. 49% would switch to Careem. The percentage of participants who would opt for Daewoo Cab was negligible.





135. The Survey results confirm the fact that there is closeness of competition between Uber and Careem, with a high degree of substitutability between the services offered by both. This enables Uber and Careem to exert competitive pressure on each other. In addition, given the high diversion of Ubers Riders to Careem, and vice-versa, and the low diversion to other modes of transport (when faced with a 10% increase in price, fall in the quality of services and if they stop giving promotions and discounts), it is clear that Ridesharing Services do not compete with "*all the* [other]

means of transporting people from A to B such as rickshaws, taxis, buses and minibuses."

XI. MARKET SHARES

136. In view of the above, the Commission, in its Phase I Order, had identified Uber and Careem to be the two largest (in terms of market shares) providers of Ridesharing Services in Pakistan. The relevant portion of the Phase I Order is reproduced below:

> *"Based on our assessment of the relevant market, Uber has a market share of approximately 41.61%, while Careem's share is approximately 55.24%. Post-transaction, the combined market share of the parties will be approximately 96.85%.*[27]*"*

137. The Full Bench of the Commission agrees with the assessment of market shares as stated in the Phase I Order. Pre-transaction market shares of both Uber and Careem, taken separately, show that Careem enjoys a higher share of the market compared to Uber, however both trigger the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Act. When combined, the post-transaction entity will clearly enjoy a near monopoly with a 96.85% share of the market. It is evident, therefore, that this transaction brings with it a significant lessening of competition in the market for Ridesharing Services.

XII. MARKET CONCENTRATION

138. Before moving on to the Theories of Harm identified by the Commission in the present transaction, it is pertinent to look into the level of concentration in the relevant market of Ridesharing Services. Indeed, *"market concentration is often one useful indicator of likely competitive effects of a merger. In evaluating market concentration, the Agencies consider both the post-merger level of market concentration and the change in concentration resulting from a merger."*[28]

[27] Shares calculated by volume, based on information provided by Merger Parties
[28] U.S. Department of Justice and the Federal Trade Commission; Horizontal Merger Guidelines (August 19, 2010) available at: https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c

139. In calculating the levels of concentration, both pre and post-transaction, a useful tool that is often employed by competition enforcers is the Herfindahl-Hirschman Index ("**HHI**"), which is calculated by summing the squares of the individual firms' market shares[29]. Markets that are un-concentrated have an HHI value of below 1500, while moderately concentrated markets show an HHI value of 1500-2500. Highly concentrated markets have an HHI value of 2500 and above.

140. The Commission has calculated both pre and post-transaction HHI values, which are as follows:

<u>Pre-transaction:</u>
HHI: [redacted]

<u>Post-transaction:</u>
HHI: [redacted]

141. It is clear that the market for Ridesharing Services is already highly concentrated, with a HHI value of [redacted]. Post-transaction, the HHI value soars to [redacted], a near pure monopoly.

142. Additionally, the difference between pre and post-transaction HHI values, known as the "HHI Delta", is another useful indicator of market concentration. *"Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power…*[30] *"In* our present transaction, the HHI Delta is [redacted], representing a huge increase in market power, post-transaction, forming the basis of the Commission's concerns relating to this transaction.

XIII. <u>THEORIES OF HARM AND MITIGATING FACTORS</u>

143. In view of the above, it is the Commissions assessment that this transaction will lead to the elimination of competitive constraints on the post-transaction entity through an increase in market power. In such situations, some of the major concerns of competition enforcers are that there may be an increase in prices of products or

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[29] *Ibid*

[30] U.S. Department of Justice and the Federal Trade Commission; Horizontal Merger Guidelines (August 19, 2010) available at: https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c

services, a degradation in quality of services, a lack of innovation, or discriminatory pricing. A further concern of the Commission is that there may be a decrease in incentives for Drivers that use the platform. While these may help in identifying potential risks to competition post-transaction, it is more appropriate to point out some data-specific theories of harm for our present transaction.

144. It is our view that digital mergers, such as the transaction before us today, may allow aggregated data to be used by the post-transaction entity to increase its position of dominance in neighbouring markets. In the present case, such leverage may be bestowed by the use and control of data that the Merger Parties have accumulated over years of operations in Pakistan, with neighbouring markets *inter alia* food delivery and/or courier services. Indeed, *"while such a merger is likely to generate synergies, it could also be the case that it generates such an advantage in favour of the merged entity that no competitor will have sufficient incentives to challenge one or more markets where the digital conglomerate is active, which in turn may increase the ability and incentive to entering into behavioral strategies such as an increase in prices of products or services, a degradation in quality of services, a lack of innovation, or discriminatory pricing."*[31]

145. Such advantages may potentially allow the post-transaction entity to make it harder for competitors to enter the market, or operate effectively, thereby creating an environment more suited to the adoption of anti-competitive practices. Having said that, data aggregation may also lead to positive outcomes. One such advantage that data aggregation may provide is; a decrease in the costs of providing services, *"since the volume and variety of data may lead to better quality of services, which will be beneficial to consumers.*[32]*"*

146. Additionally, as stated above, one of the features of online platforms is network effects which are enhanced by economies of scale and scope. "*The greater the scale and scope of data extracted, the better the quality of products and, therefore, the*

[31] EU-Merger Control & Big Data On Data-specific Theories of Harm and Remedies, Jörg Hoffmann and Germán Johannsen: Max Planck Institute for Innovation and Competition Research Paper No. 19-05

[32] EU-Merger Control & Big Data On Data-specific Theories of Harm and Remedies, Jörg Hoffmann and Germán Johannsen: Max Planck Institute for Innovation and Competition Research Paper No. 19-05.

more attractive for consumers. The more consumers, the greater the volume and variety of data collected, and so on[33]." While this may potentially lead to efficiencies, it could also be argued that it may increase the cost borne by competitors in entering or competing in the market, as gaining access to such data by a new entrant may involve significant investment. This spiral effect may generate so huge a gap between the incumbent and its rivals that the ultimate outcome may be the platform ending up "tipping" in favour of the incumbent, who will end up winning the whole market[34].

147. There is no doubt that having access to data may be capital intensive for new entrants. This is especially true for two sided markets. By way of example, "*if in order to compete in one side of a multi-sided market, the side X, it is necessary to first enter the side Y, because the data obtained in this side are necessary to compete in the side X, the firm wanting to enter the market will face a double entry barrier"*[35]. This may potentially widen the gap between the post-transaction entity and its competitors.

148. It is clear that the access to, and control of, one of the most important assets of undertakings in the digital economy, i.e., aggregated data, may encourage anti-competitive strategies by the post-transaction entity. There are at least two theories of harm that may be applied in such cases; (i) **The Efficiency Offense doctrine**, and (ii) **The Financial Power theory of harm**. These theories of harm, though established during the pre-digital era, may be helpful in understanding the power of data in digital mergers.

149. The Efficiency Offense doctrine claims that merger-based efficiencies in the short term *(e.g. reducing costs of production)* could in some scenarios reduce the incentives for rivals to enter or remain in competition in one or more markets dominated by the conglomerate[36]. This alone is reason enough for competition

[33] *Ibid*
[34] OECD (2014), 7.
[35] See Rubinfeld / Gal (2017), 375. "[C]onsider the use of free goods and services in online markets. The availability of free goods creates a two- level barrier to entry into data collection. Suppose that Firm A has a comparative advantage in market A which provides data access points. Firm B wishes to compete in market for the data. Firm B faces two entry options: (a) contract with firm A for access to its data; or (b) incur the high costs of entering market A.
[36] EU-Merger Control & Big Data On Data-specific Theories of Harm and Remedies, Jörg Hoffmann and Germán Johannsen: Max Planck Institute for Innovation and Competition

enforcers to step in. "*When it comes to big-data, a merger case in which a market with strong network effects may end up tipping in favour of the incumbent post-merger, might be taken as enough risky for generating a foreclosure scenario.*" [37]

150. The Financial Power theory of harm states that an undertakings financial strength may bestow benefits that new entrants are unable to replicate[38]. Applying the same to digital mergers, it is possible that the accumulation of data could generate a similar effect, because data is also an asset representing economic power that may be exerted in different directions *(e.g. in a whole industry or sector of the economy)*. Moreover, the accumulation of data assets could be even more risky for competition, as obtaining a certain volume and variety of data may be much more difficult to replicate than just having a large amount of financial capital. In other words, data is not a commodity in the same way as financial capital, as it can represent an entry barrier to access as the same scale and scope of data may be needed to get valuable information to compete in one or more markets. Particularly, the accumulation of different data could represent a higher advantage -than financial capital- in relation to actual or potential competitors. A consequence might be the creation of an environment that suits better for entering into anti-competitive strategies.[39]

151. A way to offset any increase in market power or the elimination of competitive constraints would be to ensure the ease of entry into the market. The Commission deems one barrier to entry to be the accumulation and access to data. In the Ridesharing sector, an important asset of undertakings is map data accumulated over years of operation. Any undertaking desirous of starting operations in the Ridesharing sector must have access to data in order to remain competitive. The control of data by a single undertaking with market power is a significant barrier to entry, if the undertaking chooses not to share it with new entrants. For this reason, access to, and control of, data is another concern for the Commission. However, at

Research Paper No. 19-05. *See also: Lindsay / Berridge (2017), 293. See also Padilla / Renda (2003).*

[37] *Ibid*

[38] For a detailed analysis of this theory of harm, see Lindsay / Berridge (2017), 296.

[39] EU-Merger Control & Big Data On Data-specific Theories of Harm and Remedies, Jörg Hoffmann and Germán Johannsen: Max Planck Institute for Innovation and Competition Research Paper No. 19-05.

the same time, the Commission is cognizant of the fact that given the high demand from consumers in the Ridesharing Market, and no regulatory barriers to entry, and the fact that Ridesharing Market is not capital intensive; there is a likelihood of new entry at the local level of Ridesharing Market, particularly by smaller undertakings with less capital, that may serve as potential competitive restraint on the post-transaction entity.

152. Indeed, the European Commission, in the ***Google/Double Click*** case, discussed to what extent the advantages generated by the mere accumulation of data may give rise to entry barriers up to the point that would be extremely difficult for any actual or potential rival to compete, leading to a foreclosure scenario[40]. Such advantages can, on their own and without the need to establish the likelihood of a certain specific type of exclusionary strategy, lead to a market foreclosure.[41]

153. Although the Commission has found that this transaction will lead to the elimination of competitive constraints on the post-transaction entity through an increase in market power, we are cognizant of certain mitigating factors related to the transaction. The transaction will bring with it significant foreign direct investment ("**FDI**") into Pakistan, which in turn will stimulate the economy and aide in the development of human capital.

154. The Commission also sees the Ridesharing sector as a developing market. Investment in this industry will bring with it increased job opportunities and state-of-the-art innovation and technologies through research and development, forever changing the transport sector in Pakistan. The Commission is mindful of these benefits, and does not want to deny consumers of the same.

XIV. THE EFFICIENCY CRITERIA

155. Regulation 15 of the Merger Regulations states as follows:

> *"(1) If after the Phase 2 review, the Commission determines that the intended merger substantially lessens competition by creating or*

[40] European Commission, COMP/M.4731 – Google / DoubleClick

[41] *Ibid*

strengthening a dominant position, it may nonetheless approve the intended merger, if it is shown by the Applicant that:

a) It contributes substantially to the efficiency of the production or distribution of goods or to the provision of services;

b) Such efficiency could not reasonably have been achieved by a less restrictive means of competition;

c) The benefits of such efficiency clearly outweigh the adverse effect of the absence or lessening of competition; or

d) It is the least anticompetitive option for the failing undertakings' assets, when one of the undertakings is faced with actual or imminent financial failure."

156. The Commission directed the Merger Parties to submit in writing how the transaction will bring with it efficiencies. Their response is as below:

(a). The transaction will bring about efficiencies by merging their supply and demand via integration of their applications and cross-dispatching drivers in order to increase network density and lower wait times.

(b). Launching new affordable joint services, such as high capacity vehicles *(minibuses)*, bikes and shared rides with the goal of serving consumers and improving transportation options in the region.

(c). Improved mapping *(in particular "points of interest")*, dynamic route technology and other technology.

(d). Integrating customer support functions *(whether for riders or drivers)* as relevant, such as on-boarding and compliance services, anti-fraud services, processing of users' claims and/or requests *(e.g., lost and found items, complaints handling, refund requests, etc.)*.

(e). Integrating payment processing services and associated financial services.

(f). Optimizing insurance coverage for users as well as lowering insurance costs for each of the Merger Parties through increased volumes.

(g). Enabling consumers to plan their journey by integrating various modes of transport on the application.

(h). Sharing state-of-the-art innovation and technologies that each Party has access to and develops.

157. It is the Commissions view that the above mentioned efficiencies, as submitted by the Merger Parties, will benefit Pakistan through the development and launch of new products. The introduction of new products will lead to increased work opportunities, and contribute to the development of a world class transport sector in Pakistan, leading to less congestion and pollution.

158. As for Drivers, the creation of greater density of Riders will lead to improved matching, utilization and trip economics, since idle time and time driving to pick-ups will be reduced, allowing them the benefit of more trips per hour. Further, this will result in fewer Rider/Driver cancellations and eventually lead to higher and more predictable earnings.

159. It is, therefore, the Commissions view that the transaction will contribute substantially to the efficiency of the provision of services by the post-transaction entity, and that these could not be achieved through a less restrictive means of competition. Lastly, we are of the view that the benefits of the efficiencies that the transaction will bring about outweigh the adverse effects of the absence or lessening of competition.

XV. COMMITMENTS
INITIAL COMMITMENTS

160. The Commission received the **First Commitments Proposal** from the Merger Parties on 16th of October, 2019. A summary of the commitments is as follows:

[redacted]

161. [redacted].

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[42] [redacted].

[redacted]

162. [redacted].

[redacted]

163. [redacted].

[redacted]

164. [redacted]de.

165. [redacted]istan.

166. [redacted]t.

[43] [redacted].

[44] [redacted]r.

[45] [redacted].

167. [redacted].

168. [redacted]s[47]:

[redacted]

169. [redacted].

[redacted]

170. [redacted]ee.

171. [redacted]

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[46] [redacted]

[redacted]

• [redacted]

[47] [redacted].

[48] [redacted].

[49] [redacted].

[redacted].

[redacted]

172. [redacted].

[redacted]

173. [redacted].

174. [redacted]

175. [redacted].

176. [redacted]

177. [redacted].

178. [redacted].

50 [redacted].

179. [redacted]tful.

[redacted]

180. [redacted].

[redacted]

181. [redacted].

182. [redacted].

183. [redacted].

[redacted]

184. [redacted].

185. [redacted]roval.

[51] [redacted]

[52] [redacted].

186. [redacted].

187. [redacted].

188. [redacted].

Validity of commitments

189. [redacted].

190. [redacted].

191. [redacted] of

53 [redacted]:

[redacted].

[redacted].

192. [redacted].

REVISED COMMITMENTS

193. The Commission received the Third Commitments Proposal from the Merger Parties on 13th December 2019. A list of new commitments which are as follows54:

194. [redacted].

195. [redacted].

196. [redacted]

197. [redacted].

198. [redacted]

[54] Commitments identical to the Second Commitments Proposal have been omitted.

[55] Commitments identical to the Third Commitments Proposal have been omitted.

[redacted].

199. [redacted]

XVI. CONDITIONS IMPOSED BY THE COMMISSION TO ADDRESS ITS CONCERNS

200. The Commission is of the view that the commitments proposed by Uber through Fourth Commitments Proposal do not sufficiently address the concerns of the Bench. For this reason, we have imposed the following conditions/revisions:

No Contractual Exclusivity

201. Uber shall not introduce any contractual exclusivity provision or any measure having an equivalent effect in Uber's contracts with drivers/captains, individual DOSTers or partners including fleet/leasing companies and limousine companies or any other entities providing services to Ridesharing Services Providers for the onboarding of drivers for the Applicable Products throughout Pakistan. For the avoidance of doubt this commitment shall not apply to Uber's driver service centers which also perform driver onboarding activities *(known as Greenlight Hubs for Uber and "opportunity" centers for Careem)* including where such similar services are undertaken by third party companies on an exclusive basis.

Service Fee Cap

202. Uber shall maintain the contractual Service Fee for UberGo and UberMini across all drivers Pakistan-wide in the range of **22.5% to 27.5%**, unless a Ridesharing Services Provider in Pakistan charges a sustained lower base contractual Service Fee *(i.e. for a period of at least three months)*, in which case Uber would be able to decrease the Service Fee *(at its discretion)*, but not to a level lower than that charged by the same Ridesharing Services Provider.

203. Uber shall maintain the contractual Service Fee for Careem Go and Careem Go Mini across all captains Pakistan-wide in the range of **22.5% to 27.5%**, unless a Ridesharing Services Provider in Pakistan charges a sustained lower base contractual Service Fee *(i.e. for a period of at least three months)*, in which case

Uber would be able to decrease the Service Fee (at its discretion), but not to a level lower than that charged by the same Ridesharing Services Provider. In order to enable the Monitoring Trustee to verify Uber's compliance with this Service Fee cap, Uber shall provide the Monitoring Trustee with the necessary pricing data for a Random Sample of Careem Go and Careem Go Mini trips on a monthly basis.

204. These conditions will benefit Drivers, as no contractual exclusivity will ensure that they will be free to offer their services on any Ridesharing platform they choose, as well as being street hailed, and the service fee cap, on one hand will ensure that Drivers do not see a decrease in their earnings and on the other hand any potential new entrant is protected by way of a minimum service fee cap. It will ensure that post transaction entity will not charge such a low fee to oust the potential competitors. Above conditions/commitments sufficiently address the Commission's concerns regarding the potential of decreased Drivers incentives and possible post-transaction exclusionary conduct.

<u>Total Organic Fare Increase Cap</u>

205. [redacted]. The Bench after giving due consideration to Uber's submissions and vouching for the consumer welfare, directed that Uber shall not raise the Total Organic Fare beyond **12.5%** per year above Inflationary Cost Increases for the Applicable Products Pakistan-wide. For the avoidance of doubt, individual components of the Total Organic Fare may exceed the 12.5% threshold, as long as the Total Organic Fare does not exceed that threshold. While, determining the Inflationary Cost Increases, the Bench considered that the change in fuel prices are implemented immediately, as opposed to CPI, which are determined periodically. Therefore, the Bench accepted the definition of Inflationary Cost Increase, however, the percentage of [redacted]% was considered on higher side. Therefore, for the advantage of the Riders as well as the Drivers the Bench directed Uber not to raise the Total Organic Fare beyond **12.5%** per year above Inflationary Cost Increases for the Applicable Products Pakistan-wide.

Surge Cap

206. Uber shall apply a ceiling on its Surge multiplier at a maximum level of **2.5** times the non-Surge price on the Applicable Products Pakistan-wide. Uber shall ensure that Surge prices are applied on no more than **30%** of the annual trips made across all of the Applicable Products *(taken together)* Pakistan-wide.

207. The Surge Pricing Conditions will ensure that there is no unreasonable increase in prices post-transaction, thereby protecting consumers from burdensome increase in fares. Therefore, ensuring that peak time fare (Surge Cap) does not cross a certain limit and the post transaction entity cannot indulge in exploitative conduct. The Bench imposed an additional condition that the Surge Price cannot be applied to more than 30% annual trips of a Rider.

Innovation and Service Quality

208. In order to ensure innovation and service quality, Uber agreed to the following conditions with the Bench:

209. To provide satisfactory rider and driver experience, Uber commits to using best efforts to maintain a high degree of innovation and service quality. Uber is strongly incentivized to do this in order to maintain its pattern of strong growth in Pakistan and globally. As regards innovation, Uber shall dedicate 10 engineers who will primarily work on R&D activities focused on bringing innovation to the wider region, including Pakistan.

210. Uber shall in particular implement the following innovations in Pakistan, if they prove successful and impactful, within a period of one year following the completion of the Proposed Transaction in Pakistan:

    i. **The DOST/Hero app.** Uber's new driver acquisition app *(Hero)* is being tested in Pakistan and it will be deployed more broadly. It will enable drivers *(and other third parties)* to earn money while not driving, by helping to recruit other drivers. This new app will make it easier and quicker for drivers and other third parties to make additional income by assisting other prospective drivers in the on-boarding process and the early driving stages.

ii. [redacted].

iii. **Uber Lite**. Uber Lite was launched in Pakistan in the past year. It is a new, separate rider app that Uber redesigned to be "light" – meaning it has a much smaller file size and requires less data transmission. This version of the rider app is more reliable and simple to run on older Android phones and on low bandwidth mobile networks. It is therefore particularly beneficial in Pakistan, where mobile internet bandwidth is lower and older Android phones are more common. Uber will invest in the product and enhance its scale in Pakistan by marketing it.

211. Uber shall also implement the following innovations in Pakistan, which are new tools currently being tested in the United States, provided the tests demonstrate that these innovations are successful and impactful and that they are permitted by applicable regulations:

i. [redacted].

ii. [redacted].

212. An entity with market power will have lower incentives to innovate. The specific innovation and service quality Conditions imposed upon Uber sufficiently addresses the Bench’s concern that there will be a lack of innovation or a fall in the quality of services post-transaction.

Access to Data

Map Data:

213. Uber shall grant access to a Ridesharing Services Provider upon the latter's request to Careem's points of interest map data. Access to Careem's points of interest map data shall be granted to a Ridesharing Services Provider on a one-time basis based on the following specific access criteria:

i. The Ridesharing Service Provider *(Licensee)* has to sign a contract with Uber which will define the rules for such use by the Licensee. In particular, the data may only be used by the Licensee for the purpose of providing ridesharing services equivalent to the Applicable Products in Pakistan *(and not for any other purposes, e.g. data analytics)* and may not be used outside approved/existing ridesharing applications.

ii. The Licensee may not unfairly exploit the data.

iii. The Licensee may not distribute or resell the data to third party services.

iv. The Licensee may not create stand-alone mapping solutions on the basis of the data.

214. Provided the access criteria are fulfilled, Uber shall provide access without undue delay and on a non-discriminatory basis on a one-time basis. Uber shall treat all Ridesharing Services Providers – that seek access based on these Commitments and that fulfill the access criteria – equally, regardless of, inter alia, ownership, size or financing.

215. Access to Careem's points of interest map data can be rejected and/or revoked if the criteria are not met or violated.

216. Uber shall grant access to Careem's points of interest map data against the payment of a license fee on an arm's length prevailing market conditions basis by the relevant Licensee *(as determined by the Monitoring Trustee if an agreement cannot be reached between Uber and the Licensee).*

User Data:

217. In order to facilitate riders to port their data to alternative ridesharing suppliers, Uber shall continue to grant riders access to their data included in the following link:**https://help.uber.com/riders/article/whatsinyouruberdatadownload?nodeId=3d476006-87a4-4404-ac1e-216825414e05**. Uber will enable Riders to download this data in comma-separated values ("**CSV**") format.

218. In view of the importance of data, as stated above in paragraphs 144 to 153, these conditions relating to access to data go a long way in addressing our concerns, especially in view of the importance of data as an asset in digital mergers and the fact that access to and control of data is a significant barrier to entry into this market. The condition that Uber will give new entrants access to data will ensure that new entrants will not face difficulty in accumulating data, and will be able to effectively offer services. The availability of User data for consumers will ensure that they face no hurdles in accessing it, and are able to make it available for new entrants should they choose to do so.

Personalized Pricing

219. In order to address any concerns about potential exploitation of riders, Uber shall not introduce Personalized Pricing in Pakistan.

220. This ensures that the post-transaction entity will not be able to charge different prices to different Riders for similar journeys, thereby protecting consumers from the potential charging of discriminatory prices.

Reporting

221. Uber shall engage a Monitoring Trustee that will submit a written report to the Commission in English no later than three months after the completion of the Proposed Transaction in Pakistan. The Monitoring Trustee will describe in the report whether Uber is complying with the Conditions.

222. Thereafter, the Monitoring Trustee will submit written compliance reports in English to the Commission every three months and a final written report in English within four weeks after the expiry of the Conditions period.

223. Uber shall provide the Monitoring Trustee with all the information reasonably necessary to enable the Monitoring Trustee to assess Uber's compliance with the Conditions.

Monitoring Trustee

224. The Monitoring Trustee will be responsible for informing the Commission about the implementation of and compliance with the Conditions by Uber.

Appointment Procedure:

225. Uber shall appoint a Monitoring Trustee to carry out the functions specified in Section 4 above by entering into a trustee mandate with the Monitoring Trustee, following the appointment procedure described in the following paragraphs.

226. The appointment of the Monitoring Trustee shall be completed as soon as possible after the Proposed Transaction has been approved and closed in Pakistan. For the avoidance of doubt, the approval of the Monitoring Trustee and its mandate by the Commission shall not delay the approval or consummation of the Transaction in Pakistan.

Proposal by Uber:

227. No later than four weeks after the Effective Date, Uber shall submit to the Commission the name or names of one or more natural or legal persons whom Uber proposes to appoint as the Monitoring Trustee for the Commission's approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfill the requirements set out below and shall include:

i. The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfill its duties under these Conditions; and

ii. The outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or Rejection by the Commission:

228. Within four weeks following Uber's proposal on a Monitoring Trustee, the Commission shall have the discretion, acting reasonably, diligently and in good faith, to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfill its obligations. If only one name is approved, Uber shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Uber shall be free to choose the Monitoring Trustee to be appointed from among the names approved.

229. The Monitoring Trustee shall be appointed within two weeks of the Commission's approval, in accordance with the mandate approved by the Commission.

New Proposal by Uber:

230. If the Commission rejects all the Monitoring Trustees proposed by Uber, Uber shall submit the names of at least two more natural or legal persons within two weeks of being informed of the Commission's rejection. The Commission will then be able to approve or reject the proposed Monitoring Trustees within two weeks following Uber's proposal.

Monitoring Trustee nominated by the Commission:

231. If the Commission rejects all further Monitoring Trustees proposed by Uber, within two weeks following such rejection, the Commission shall nominate a Monitoring Trustee, whom Uber shall appoint, or cause to be appointed, in accordance with a Monitoring Trustee mandate approved by the Commission.

Appointment Criteria:

232. The Monitoring Trustee shall:

   i. At the time of the appointment, be independent of Uber and Careem and their Affiliated Undertakings;

ii. Possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as a professional advisor including as a consultant, auditor, or economist; and

iii. Neither have nor acquire a Conflict of Interest.

233. The Monitoring Trustee shall be remunerated by Uber in a way that does not impede the independent and effective fulfillment of its mandate and the amount of remuneration paid by Uber shall be disclosed to Commission to ensure transparency.

Functions of the Monitoring Trustee:

234. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Conditions. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Uber, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee:

235. The Monitoring Trustee shall:

i. Propose to Uber such measures as the Monitoring Trustee considers necessary to ensure Uber's compliance with the conditions and obligations attached to the Decision;

ii. Promptly report in writing to the Commission in English, sending Uber a copy at the same time, if it concludes on reasonable grounds that Uber is failing to comply with these Conditions.

Duties and obligations of Uber:

236. Uber shall provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks. This shall include a Random Sample of trip data for the Applicable Products each month from Uber and Careem.

237. Uber shall indemnify the Monitoring Trustee and its employees and agents *(each an "**Indemnified Party**")* and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Uber for any liabilities arising out of the performance of the Monitoring Trustee's duties under the Conditions, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

238. Uber agrees that the Commission may share Confidential Information proprietary to it with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information.

Replacement, Discharge and Reappointment of the Monitoring Trustee:

239. If the Monitoring Trustee ceases to perform its functions under the Conditions or for any other good cause, including the exposure of the Monitoring Trustee to a Conflict of Interest:

i. The Commission may, after hearing the Monitoring Trustee and Uber, require Uber to replace the Monitoring Trustee; or

ii. Uber may, with the prior approval of the Commission, replace the Monitoring Trustee.

240. If the Monitoring Trustee is removed pursuant to paragraph 222 (i) above, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 222 et seq. above.

241. Unless removed pursuant to paragraph 222 (i) above, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant Commitments might not have been fully and properly implemented.

XVII. CONCLUSION

242. The Ridesharing Market is a developing sector and can also fetch a significant FDI and may provide for new employment opportunities. At the moment this increasingly important developing segment of the economy has no regulatory legal framework in place, therefore, the Bench strongly recommends that the concerned legislature should propose a modern regulatory law for regulation of this sector *inter alia* taking care of licensing and issuing certificates of roadworthiness of vehicles.

243. In view of the above, we are of the view that, though the transaction may result in increased market power and decreased competitive constraints, however, the conditions imposed upon Uber by the Commission sufficiently address our competition concerns in terms of subsection (10) of Section 11 of the Act. Therefore, subject to the conditions imposed upon Uber, the proposed merger is hereby authorized under Section 31(1)(d)(i) of the Act.

244. It is so ordered.

(Ms. Vadiyya Khalil)
Chairperson

(Dr. Muhammad Saleem)
Member

(Dr. Shahzad Ansar)
Member

(Ms. Bushra Naz Malik)
Member

(Ms. Shaista Bano)
Member

ISLAMABAD THE 31ST JANUARY 2020