



**ECA's Assessment of the Acquisition of Careem, Inc. by Uber Technologies, Inc.**

**Executive Summary**

**Non-Confidential**



Cairo

## **1. Introduction**

On 7 April 2019, the Egyptian Authority on the Protection of Competition and the Prohibition of Monopolistic Practices (“ECA”) received a formal notification (“Notification”) as to the proposed acquisition, by which Uber Technologies Inc. (“Uber”) acquires 100% of the assets of Careem Inc. (“Careem”) and its subsidiaries (referred to jointly as “the Parties”) (“the Transaction”), pursuant to the Interim Measure decision rendered by ECA on 22 October 2018 (“IMO”). The IMO ordered the Parties not to consummate their transaction before ECA’s approval and to notify the transaction to ECA according to Article 6(2) of the Egyptian Law No. 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (“ECL”). The main activity of the Parties is to provide a transport service through an application platform, offering an intermediary service connecting partner drivers with riders. Therefore, defining the relevant market must entail assessing the Parties’ activities on these different transportation verticals.

An acquisition transaction is “an agreement that brings two legally independent undertakings, in which one party (the acquirer) controls another party (the acquired) by absorbing the latter’s assets”. Such transactions may eliminate competition between independent undertakings thereby resulting in a reduction and/or restriction of competition and/or the creation of a dominant position. They may hence constitute an infringement of Article 6 ECL if they concern a transaction between competing parties in a horizontal relationship. The transaction in question is horizontal in nature: it concerns the only current competitors operating in the same relevant market. Such transactions can be detrimental to competition, as they may lead to a significant lessening of competition on the market. In some cases, such horizontal agreements may eliminate competition altogether on the market. This would in turn violate Article 6 of ECL, which aims to ensure a genuine process of undistorted competition.

In turn, ECA has assessed the potential acquisition of Careem by Uber under Article 6 ECL as follows:

- The agreement is one between two competitors in a horizontal relationship, which would infringe Article 6(1) ECL;
- The Parties may be granted exemption under Article 6(2) if they present to ECA efficiencies that outweigh the harm caused by the transaction;
- The transaction may otherwise be exempted if the Parties present to ECA adequate commitments that relax ECA’s concerns and create efficiencies (by incentivizing entry) as a result of the transaction.

## **2. Due process**

The IMO granted ECA 60 working days, from the day of notification, which can be extended indefinitely by ECA’s Board of Directors (“the Board”), to study the transaction in question. ECA began its investigation the day the notification was fully received from the Parties, 7 April 2019. After the first 60 working days, the board offered ECA an extension for a further 60 working days,

and again for a further 30 working days. The Parties then requested an extension to 20 December 2019.

The following assessment is based on constant engagement with the Parties, including several conference calls and meetings, as well as a thorough market examination, which included but was not limited to meeting stakeholders, offering stakeholders the chance to communicate with ECA at any time, and conducting a consumer survey. ECA also engaged with other competition authorities under the remits of confidentiality waivers signed by the Parties. This led to the creation of the following documents, the substance of which is summarized in this Executive Summary:

- ECA’s Statement of Concerns (24 May 2019);
- The Herbert Smith Freehills (“HSF”) Response (27 June 2019) and its annex, the Charles River Associates (“CRA”) Response (21 June 2019);
- ECA’s Commentary on the Parties’ Response (8 August 2019);
- The Parties’ Response to the ECA’s Commentary on the Parties’ Response to the ECA’s Statement of Concerns (28 August 2019);
- The Summary of ECA’s Findings (9 September 2019);

Following the conclusion of ECA’s assessment of the transaction and the identification concerns it raises, the Parties came forth with the following commitments proposals in order to mitigate the potential anti-competitive effects of the transaction, to which ECA replied both in writing (as outlined below) and in meetings with the Parties held at ECA:

- The Parties’ First Commitments Proposal (3 September 2019);
- ECA’s Commentary on Commitments Offered by the Parties<sup>1</sup> (22 September 2019);
- The Parties’ Second Commitments Proposal (16 October 2019);
- Results of Market Testing of the Parties’ Second Commitments Proposal (31 October 2019);
- The Parties’ Third Commitments Proposal and their response to the ECA’s Market Test Results (6 November 2019);
- The Parties’ Commitment in Relation to UberBus (19 November 2019);
- Results of Market Resting of the Parties’ Third Commitments Proposal (25 November 2019);
- The Parties’ Second Commitment in Relation to UberBus (9 December 2019);
- The Parties’ Fourth Commitments Proposal and their Third Commitment Proposal in relation to UberBus (11 December 2019);
- The Parties’ Fifth Commitments Proposal (18 December 2019).

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<sup>1</sup> In this document, ECA highlighted to the Parties a number of commitments from previous cases, as examples of international best practices, that could be used to mitigate ECA’s concerns.

Throughout this process, the Parties were afforded due process in accordance with international best practices. The Parties were granted access to file, in accordance with EU and international practices, to a non-confidential version of ECA’s meeting minutes with several stakeholders. They were given the right to reply to all documents produced by ECA, both in writing and through meetings and conference calls, and were given several opportunities to present commitments to remedy ECA’s concerns. The following is based on this objective due process.

### **3. Relevant Market**

#### **3.1. Methodology and ECL**

Market definition serves to identify the scope of competitive constraints under which the post-transaction entity<sup>2</sup> will operate.<sup>3</sup> This is key to identifying the competitive effects of the concentration. In defining the relevant market, ECA follows Article 3 of ECL and Article 6 of the Executive Regulations.

Article 3 ECL dictates that the relevant market consists of the relevant products and the geographic area.

*Relevant products* are products that are considered practical and objective substitutes to each other. Article 6 of the Executive Regulations clarifies that the status of products as practical and objective substitutes must be determined from the point of view of the consumer, in particular by taking into consideration:

- a) “The similarity of the relevant product(s) with other potentially substitutable products in terms of usage and characteristics; and/or
- b) the willingness of consumers to switch from using the relevant product to other potentially substitutable products resulting from a relative change in price or any other competitive factors.”

These two factors are not exhaustive, and are merely used to guide ECA’s assessment of substitutability. Establishing the absence of one of the requirements suffices to deter any claims of substitutability.

The nature of the market in question is two-sided, where demand on one side affects demand on the other. Hence, ECA views both riders and drivers as consumers and takes into consideration both perspectives in its assessment.

The *geographic market* means a certain geographical territory where competition conditions are reasonably homogenous, taking into account potential future entry or competition.<sup>4</sup>

#### **3.2. Relevant product market**

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<sup>2</sup> When discussing the post-transaction scenario, ECA uses the term “post-transaction entity” and “entity” to refer to Uber after acquiring Careem.

<sup>3</sup> European Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2004/C 31/03, 5 February 2004, §10.

<sup>4</sup> Article 3 ECL.

ECA's main concern is that the transaction will result in a significant lessening of competition on the markets in which the Parties operate. Hence, ECA's market definition focuses on the Parties' overlapping activities. The Parties' activities do not overlap on the markets of food-delivery and courier services. For that reason, these markets will not be part of ECA's assessment. The Parties' overlapping activities are: app-based ride-hailing via passenger vehicles (cars), high capacity vehicles ("HCV") (microbuses, mini-busses, and busses), scooters, and tuk-tuks. ECA's market definition will focus on the Parties' overlapping activities.

ECA hence found a key distinction between two models of transportation: point-to-point and door-to-door. Point-to-point transportation includes transportation through HCVs and the metro. Door-to-door transportation includes transportation via passenger vehicles, scooters, and tuk-tuks. ECA also found key distinctions between the different modes of door-to-door transport Uber and Careem provide: app-hailed tuk-tuks, scooters, and passenger vehicles, and their distinction from street-hailed taxis and tuk-tuks. This shows that the substitutability of the relevant product, **app-hailed passenger vehicles**, with all the other modes of transportation.

Specifically, ECA is of the view that street-hailed taxis differ from app-hailed passenger vehicles in terms of usage and characteristics and in terms of the ability of drivers and riders to switch between the two. By applying ECL and conducting a consumer survey, ECA found that white taxis are not part of the relevant product market because of: 1) price and non-price factors that characterize the service provided by the ride-hailing companies as shown in Figure 1) 2) the unlikely ability to switch to other transport means in response to a hypothetical 10% price increase (SNIIP Test) illustrated in Figures 2 and 3) the profitability of the hypothetical monopolist to raise its prices (Critical Loss Analysis) shown in Table 2.

### **Figure 1: Comparison of price and non-price factors**

[\*]

*Source: Submission by the Parties to ECA, 6 March 2019, Figure 2*

### **3.3. Relevant geographic market**

As for the geographic market, given the nature of ride-hailing activities, ECA recognizes that competition occurs at a governorate level. However, given that the Parties operate throughout Egypt, and for the purposes of the assessment, ECA considers that the relevant geographic market is likely to be national in scope. Where necessary for its assessment, ECA will focus on specific governorates. Given that Uber states "that Cairo [makes] the Egyptian capital the fastest growing city in the region for the car-hailing application"<sup>5</sup>, ECA, at some points in the assessment, may be more focused on Cairo as it represents the largest part of the Parties' business in Egypt.

## **4. Competition assessment**

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<sup>5</sup> Cairo Fastest Growing City in MENA with 30,000 Drivers, says Uber Egypt, Ahram Online, 14 August 2016. Available at: <http://english.ahram.org.eg/NewsContent/3/12/238745/Business/Economy/Cairo-fastest-growing-city-in-MENA-with-,-drivers.aspx>

ECA’s competition assessment includes: identifying the features of the ride-hailing market in general, the pre-transaction closeness of competition between the Parties, and the barriers to entry and expansion on the market.

The Egyptian ride-hailing market as a whole can be described as a two-sided market with network effects and multi-homing users<sup>6</sup>, regulated by an inadequate framework.

**Two-sided.** The ride-hailing market is composed of platforms that match riders to drivers, and can hence be seen as two-sided sided market with network effects.<sup>7</sup>

**Network effects.** Two-sided markets are characterized by network effects. Where network effects are important, building a sustainable network requires the new entrant to replicate at least a large part of the network of the incumbent in the ride hailing to ensure effective competition. Due to the network effects present on the market, more drivers use the service, the more riders are incentivized to use it. As technology companies, the networks of ride-hailing service providers “become smarter with every trip”.<sup>8</sup> More specifically, however, ECA shares CRA’s position that ride-sharing markets exhibit “indirect network effects”.<sup>9</sup> Indirect network effects are actually harder to replicate than direct network effects, as market players are required to build two types of consumers who interact with each other.

**Multi-homing.** Multi-homing is the use by a single consumer of different providers of the same service. It is a characteristic that may distinguish the ride-hailing market from some other technology based services. Differences in price and quality motivate consumers to switch from one provider to the other in order to receive the most convenient service. While single-homing markets are a prime example of a “network effect creating monopoly”, multi-homing significantly increases competition in a market.

**Absence of adequate regulation.** At the time of drafting of ECA’s preliminary assessment (the Statement of Concerns dated 24 May 2019), the applicable regulation was The Law Regulating Road Transport Services Using Information Technology (Law No. 87 of 2018). It was later enacted with the release of the Executive Regulations on 18 September 2019 (through Ministerial Decree No. 2180). Although the Law and its Executive Regulations are necessary to the market, many market players, including the Parties, have stated that the Law and its Executive Regulations do not adequately address the market in question as they are currently drafted in a way that makes entry more difficult for small players due to high licensing fees and long-winded driver registration processes.

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<sup>6</sup> Marc Rysman, The Economies of Two-Sided Markets, Journal of Economic Perspectives, Vol. 23, No .3, p. 125-143.

<sup>7</sup> Ibid.

<sup>8</sup> Uber Technologies Inc., Amendment No.1 to Form S-1 Registration Statement, 26 April 2019, p. 92. Available at: <https://www.sec.gov/Archives/edgar/data/1543151/000119312519120759/d647752ds1a.htm>.

<sup>9</sup> CRA Response, p. 6

In this context, ECA analyzes the closeness of competition between the two Parties and the existing barriers to entry and expansion.

**4.1. Market shares and market concentration**

ECA notes that Uber and Careem are each other’s closest competitors on the relevant market, where the acquiring entity, Uber, enjoys a substantial market share. This closeness of competition is due to the high degree of substitutability and, as such, the market power that may arise post transaction will likely enhance the ability of the post-transaction entity to raise the price significantly or decrease the driver’s income.

Table 1 shows that the variability in market shares indicates the active competition between the Parties and that Careem, places a competitive constraint on Uber in the relevant market. The post-transaction scenario will have 100% market share in the relevant market.

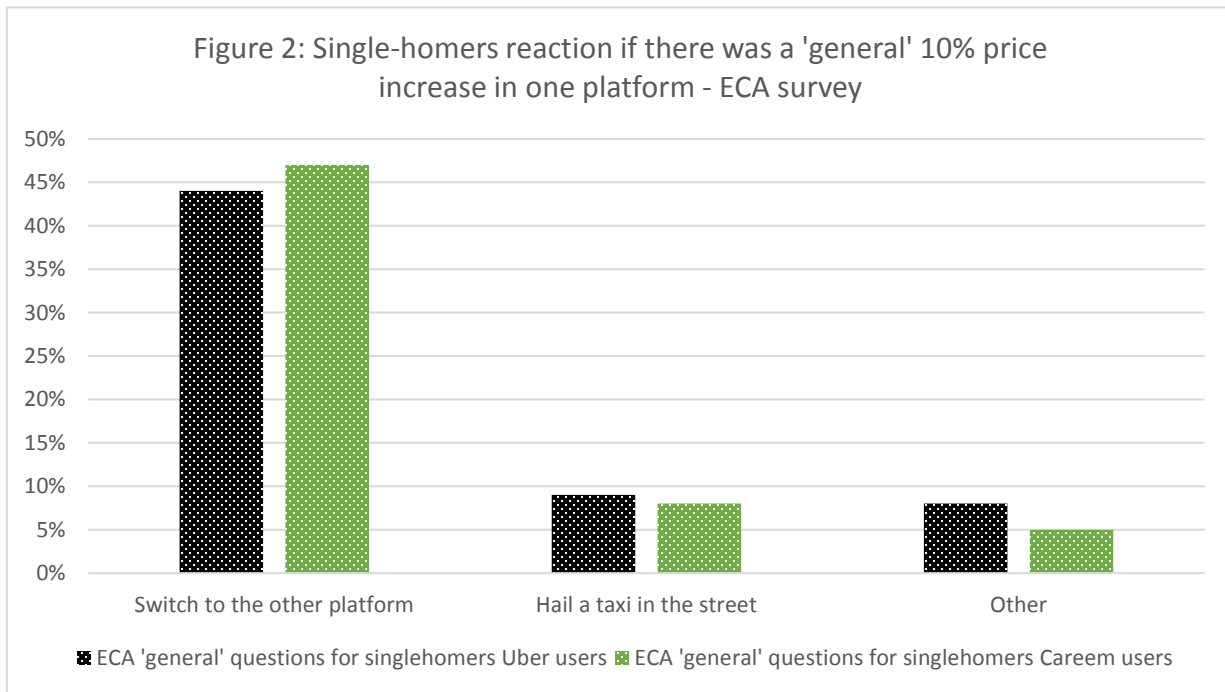
Table 1: Quarterly market shares - number of trips

Year	Quarters	Pre Transaction		Post Transaction
		Uber	Careem	Post-Transaction entity
2017	Q3	[60 - 70]%	[30 - 40]%	100%
	Q4	[50 - 60]%	[40 - 50]%	100%
2018	Q1	[50 - 60]%	[40 - 50]%	100%
	Q2	[60 - 70]%	[30 - 40]%	100%
	Q3	[60 - 70]%	[30 - 40]%	100%
	Q4	[70 - 80]%	[20 - 30]%	100%

In relation to substitutability, Figure 2 shows that given a 10% increase in the price level of one platform, the diversion to the other competitor is higher than the diversion to any other means of transportation.<sup>10</sup> This shows the high degree of substitutability between Uber and Careem and implies that they are each other’s closest competitor.

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<sup>10</sup> ECA survey.



Source: ECA survey data

In addition, ECA conducted a Critical Loss Analysis to assess if the post-transaction entity could profitably raise its price by 10%. The Critical Loss Analysis, based on a competitive margin of less than [\*]% and a diversion away from ride-hailing of 36% in response to a 10% increase in price, shows that a monopolist app-hailed passenger vehicle firm would be able to profitably raise price by 10% for a non-transitory period of time (Table 2).



**Table 2: Critical Loss Analysis**

	Margin (m)	Price (X)	Critical loss	Reported diversion away from ridesharing in response to 10% increase	Result of Critical loss test
<b>Scenario</b>	[*]%	10%	[*]%	36%	A price increase of 10% would be profitable
<b>Justification</b>	- Conservative estimate of margin.  - It is more likely to be <[*]%	Assumed within the SSNIP test adopted above	Equation: $X/(X+m)$	Reported diversion was estimated according to ECA survey.  The results yielded that it ranges from 28% to 38%	As the reported diversion (actual loss) < critical loss

As such, ECA reaches the conclusion that it is likely that such transaction will significantly lessen competition on the market because of the absence of any other potential substitute from the consumers’ perspective and the high level of substitutability between the acquirer and the acquired companies, through strengthening the market power post transaction.

**4.2. Barriers to entry and expansion**

ECA finds that the ride-hailing market as a whole currently presents a number of significant barriers to entry and expansion. Potential entrants may face barriers due to: the lack of short-term profitability on the market; the requirements and costs of building and managing a network; the difficulty of accessing funds and of attracting drivers and vehicles; the difficulty of overcoming brand loyalty; and the importance of access to data:

- **Lack of short-term profitability.** Despite the Egyptian market being one of Uber’s biggest markets, the margin of profitability is constrained by several factors including the parties own practices. This may indicate that, given the nature of the market, even the biggest players may take some time to achieve profitability. This may act as an important deterrent specifically for startups with limited access to funds.
- **Requirements and costs of building and managing network density.** ECA finds that the payment of incentives to drivers is essential for creating sufficient network density, and that payments to both riders and drivers are necessary to maintain network balance in the face of competition. In other words, the stronger the competition, the more market players are induced to invest. From the above, a new entrant, wishing to compete against the post-transaction entity, will likely have to at least pay incentives equal to the current market

players if not more. This is a significant barrier to entry, especially considering the relatively low profitability that the industry appears likely to record. Table 3 shows the amount of incentives paid by the Parties.

Table 3: Total incentives- Uber & Careem

Year	Total incentives (EGP) - Uber	Total incentives (EGP) - Careem
2015	[*]	[*]
2016	[*]	[*]
2017	[*]	[*]
2018	[*]	[*]

- **Access to funds.** The difficulties of accessing the scale of funds required for successful entry, in particular for start-ups, combined with Uber’s past cash-burning strategy and its deep pocketing abilities, may create a barrier to entry. Any new entrant would need similar significant capital in order to compete effectively with the post-transaction entity. In other words, Uber’s higher ability to acquire and burn funds might be a barrier to entry because any new entrant must have a substantial ability to continue to bear loss and thereby increasing the risk of new investments in this sector. *Egyptian start-ups that have overlapping services with the Parties, such as Swvl and Halan, may face significant barriers to expansion on the national and international level as well as to access of investment.* The post-transaction entity will exploit its market power in the app-hailed passenger vehicle market to leverage it into other verticals it operates in such as buses and food delivery. This would damage Egyptian start-ups by further limiting their chances to access sufficient funds in a timely manner.
- **Brand loyalty.** The existing players on the market (Uber and Careem) incur significant brand loyalty, which may act as a barrier to entry for potential future entrants.
- **Access to data.** ECA finds that data is important for competitors wishing to enter and compete effectively on the ride-hailing market. Some forms of data are harder to obtain than others: while driver-related data can be accessed on easier terms, the specificities of the Egyptian market make access to, riders data, marketplace and transaction data as well as mapping data difficult, reinstating data as a barrier to entry for potential competitors.

To effectively mitigate the effects of the transaction and to constrain the power of the dominant entity, entry must be likely, sufficient, and timely. However, ECA’s investigation showed that, in light of the above barriers, there are no other actual competitors on the Egyptian app-hailed passenger vehicle market, and that international competitors currently show no evidence of likelihood of entering the market. This is because the above barriers to entry will likely reduce the

investments poured into the Egyptian ride-hailing market, whether in the form of funding for Egyptian startups or in the form of existing international players entering the market.

While some of the above-mentioned barriers may be already existing prior to the transaction, they are very likely to increase and become more pronounced and even enhanced as a result of the transaction. Other barriers may be created because of the loss of rivalry. The market situation in the post-transaction scenario may as such lead to significant harm on the structure of the market and both riders and drivers.

## 5. Theories of harm

ECA's preliminary conclusion is that the transaction involves the concentration of the closest competitors in the passenger vehicle ride-hailing market, removing all principal competitive constraints and increasing the market power of the post-transaction entity. This may negatively impact consumer choice, lead to price increase, degrade quality standards, and reduce innovation. The transaction may also provide the post-transaction entity with more incentives to leverage market power to adjacent verticals leading to an overall loss in consumer welfare. ECA believes that, in the counterfactual situation, Uber and Careem would have continued to compete, and will hence elaborate on that basis in regard to each theory of harm:

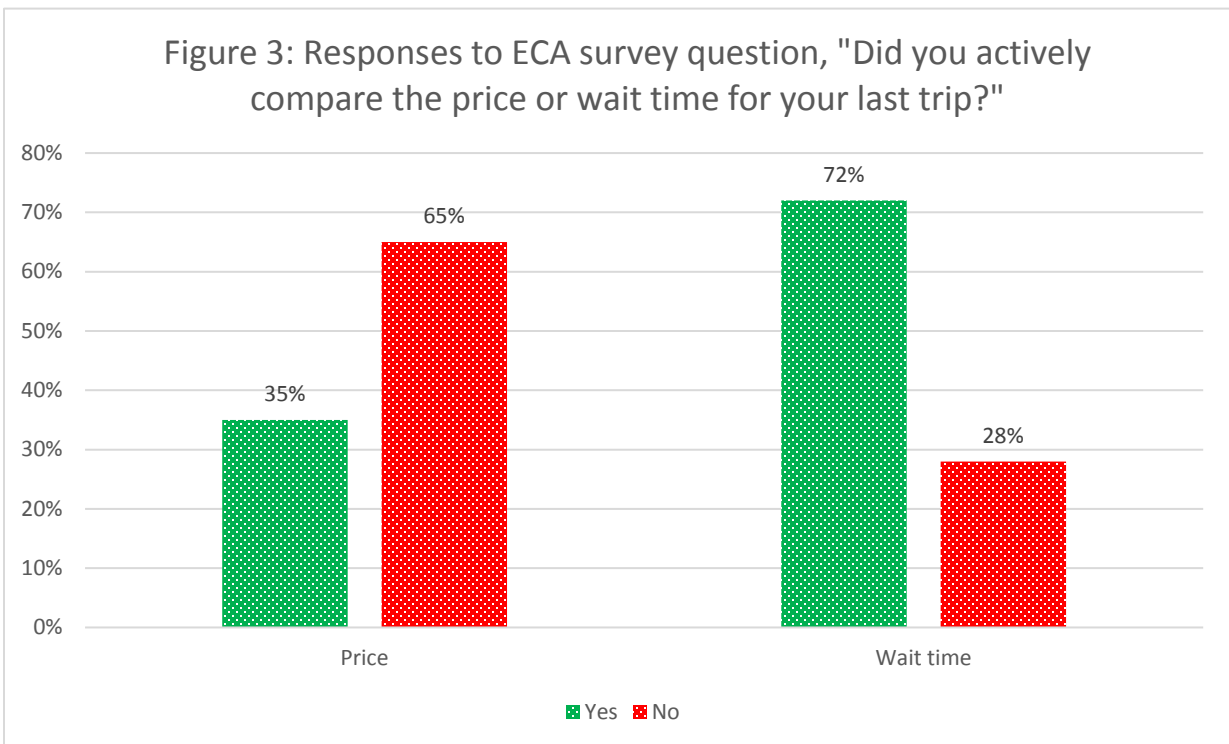
- ***Effects on pricing.*** If the transaction is consummated, the elimination of competition may reduce the incentives offered to attract and keep drivers within the post-transaction entity's platform. The resulting decrease of supply means that a larger part of the demand will remain unsatisfied leading to an increased surge rate and an overall price increase, thereby harming both sides of the market.
- ***Quality degradation.*** In the post-transaction scenario, Uber can act independently from the standard of service set by its competitors and those expected by its consumers. Such independence will significantly reduce any motive to improve the service. In the ride-hailing market, quality and quantity are interconnected: the higher the quality standards of vehicles admitted within the platform, the lower the number of vehicles admitted; the stricter the background checks, the lower the number of drivers admitted. In the absence of competition, firms may sacrifice quality to increase quantity. Table 4 shows the importance of quality to consumers; the table ranks the non-price factors that consumers consider when deciding on which mode of transport to use.<sup>11</sup> As shown in Table 4, price is considered the fourth factor that riders take into consideration when choosing a mode of transportation, while quality, familiarity with using the application and reliability are main factors in determining a consumer's choice.

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<sup>11</sup> The question was a multiple answer question; the same respondent could choose several reasons why he uses the ride-hailing applications. Consequently, the sum of each factor does not sum up to 100%.

Table 4: Riders' ranking of price and non-price factors when considering a mode of transportation

Rank	Factors	Weight
1	Quality	68%
2	Familiarity with using the application	66%
3	Reliability	51%
4	Price	39%
5	Safety	19%



Source: ECA survey data

In addition, Figure 3 shows that 72% of riders compare the wait time of the trips further supporting the argument that non-price factors is important to consumers.

- **Reduced consumer choice.** ECA believes that competition policy must ensure that consumers on the market are provided with a significant range of meaningful options. This is threatened by the proposed transaction, especially given current plans to maintain two

separate brands despite ownership and back-office functions being consolidated.<sup>12</sup> ECA is concerned that the post-transaction scenario will not only entail the presence of a powerful entity, but that consumers may not realize this reduction due to the existence of two seemingly competing platforms.

- **Reduced innovation.** ECA is concerned that the transaction may halt innovation on the market as a whole. ECA envisions that but for the acquisition, Careem would continue to try to gain market power by innovating as the more local brand. Likewise, Uber would continue to innovate in response to Careem's innovation by adapting its international strategies into the Egyptian market, either by adding new services or by creating new promotional incentives. However, ECA envisions that the lack of competitive pressure on Uber will only discourage it from innovating.
- **Impact of unilateral actions on adjacent or complementary markets.** ECA finds that the conglomerate may have incentives to leverage their power and assets from one vertical onto others. Given the Parties' assets, Uber's position on the app-hailed passenger vehicle market, and their future power on the markets on which Uber and Careem currently overlap, ECA is concerned that the post-transaction entity may use these factors to avoid competition on adjacent and complementary markets, for example through tie its services together in an exclusionary manner.
- **Reduced investment.** The above harms may also lead to a general reduction in investment in the ride-hailing sector as a whole. A reduction in incentives offered to riders and drivers, the degradation in quality, and the reduction in innovation will all mean that the existing incumbent will invest less on their operations in the Egyptian market. The increased barriers to entry, explained above, will also mean that foreign entities may be disincentived from investing in the market in question or in its adjacent and complementary markets. The post-transaction entity's likely ability to leverage its market power onto other adjacent or complementary markets may reduce the chances of foreign entities in investing in these markets, whether through the funding of Egyptian startups or through expanding onto the Egyptian market.

## 6. Possible beneficial effects of the transaction

Referring to the legal framework laid out previously, Article 6(2) of ECL grants agreements prohibited under Article 6 an exemption if said agreements lead to economic efficiencies. These efficiencies must be passed on to consumers, exceeding the harms of the transaction on competition. Additionally, following international best practices, ECA's assessment must ensure that claimed efficiencies must be passed on to consumers, be merger-specific, and be verifiable.<sup>13</sup>

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<sup>12</sup> Uber Technologies Inc., Amendment No.1 to Form S-1 Registration Statement, 26 April 2019, p. 156. Available at: <https://www.sec.gov/Archives/edgar/data/1543151/000119312519120759/d647752ds1a.htm>.

<sup>13</sup> European Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ 2004/C 31/03, 5 February 2004, §86.

In that context, the notifying Parties have claimed a number of efficiencies that allegedly will result from the transaction. These claimed efficiencies are: more precise and efficient mapping capacities, the ability to introduce new customer services, low-cost alternatives, and new products; and increased driver density.

- The acquirer has claimed that by acquiring Careem, the merged entity would be more effective in pursuing new solutions than either party would independently. One way the acquirer explained this efficiency was by submitting that the acquired company has more region-specific mapping technology/data. In that context, ECA finds that this efficiency is not merger-specific; sharing mapping data/technology may be achieved by other less restrictive means.
- The Parties have submitted that the transaction will roll-out new customer services, such as those of on-boarding, compliance, anti-fraud services, and better processing of users' claims and requests. ECA believes that this improvement is not merger-specific, as it can be achieved through less restrictive means.
- Another efficiency the acquirer presents relates to the growth of transportation services, such as expanding and improving the HCV model. ECA does not find this alleged efficiency to be specific to the transaction in question. The efficiency of expanding HCVs is not merger-specific; it can be achieved through less restrictive means.
- Similarly, the Parties claimed that the transaction would create new products. In order to validate this efficiency, it must be verifiable: the claimed efficiencies and their benefits to consumers should be quantified.<sup>14</sup> ECA finds that the Parties have not submitted any evidence or examples as to these new products.
- The Parties have claimed that the transaction will bring higher network density, namely by reducing churn and turn. ECA notes that none of its findings contradict the Parties' view that the transaction will increase network density for the entity.

The Parties have also submitted a simple stylized model of efficiencies that may be gained from the transaction, namely that the number of drivers will increase. Their model assumes that the Parties will not constrain driver numbers post-transaction.

Central to the model is an assumption that relates the number of available drivers to wait time.

[\*]

ECA has assessed whether this assumed relationship is compatible with historical data supplied by the Parties in the course of the investigation. It has done so by conducting a simple regression of the log of pick-up time against a constant,  $\alpha$ , and the log of the number of unassigned drivers. The coefficient of the unassigned drivers would thus measure the impact of an increase in the number of unassigned drivers on the pick-up time.

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<sup>14</sup> Ibid.

*ECA used two different data sets provided by Uber and Careem, separately: a per trip dataset and a weekly data set. After compiling around 178 million observations from Uber's per trip dataset and approximately 92 million observations from Careem's per trip dataset, the data were arranged on a monthly basis from January 2016 until November 2018. Similarly, the weekly datasets were also converted to monthly datasets for the respective Parties during the same time period. As previously mentioned, the variables used for the analysis are the pick-up time and the number of unassigned drivers. Figures 4 and 5 below outline the results of the regression analysis for both Uber and Careem:*

[\*]

*Source: Uber's historical data*

[\*]

*Source: Careem's historical data*

In both cases the coefficient for the log of unassigned drivers is substantially lower than the coefficient asserted by the Parties [\*] for Uber and [\*] for Careem - compared to the Parties assumption of [\*]. This implies that the impact of an increase in the number of drivers on wait time is approximately [\*] times less than the Parties assumption i.e. a 1% increase in the number of unassigned drivers would decrease wait time by [\*]% for Uber and [\*]% for Careem respectively, instead of [\*]% as assumed by the Parties.

The methodological flaws in the Parties analysis lead the ECA to significantly discount its evidentiary value. Given the significant competition concerns identified by the ECA, including the likelihood that the transaction itself will provide incentives for the Parties to reduce overall driver numbers and thus increase wait time and the occurrence of surge, the ECA is unable to conclude that the transaction as currently structured will create sufficient efficiencies to offset the clear harm to competition.

By analyzing the Parties' proposed efficiencies in light of the three cumulative conditions, ECA is of the position that the transaction, as it currently stands, may not create verifiable efficiencies that can be passed on to consumers.

## **7. Commitments**

After the conclusion of substantive discussions, the Parties presented ECA with a number of commitments in a total of five proposals. ECA tested each proposal and responded to the Parties in writing and through a number of meetings held at ECA.

The final document, received on 18 December 2019, presented commitments that were found to amend the function of the transaction in a way that addresses ECA's concerns and facilitates entry in a way that outweighs the harm by the transaction, within the meaning of Article 6(2) ECL.

The table below summarizes ECA’s concerns and includes a (non-confidential) summary of each commitment used to mitigate them. A more detailed description of the commitments can be found in the Non-Confidential Commitments Proposal.

Mitigated concern	ECA	Commitment from Parties
Price-related harms		
Total organic fare may increase		Uber shall not raise the Total Organic Fare beyond 10% per year above Inflationary Cost Increases for Uber X and Careem GO Egypt-wide (ensuring that prices can only increase at a rate lower than that in the pre-transaction scenario). For the avoidance of doubt, individual components of the Total Organic Fare may exceed the 10% threshold, as long as the Total Organic Fare does not exceed that threshold.
Commission may increase		Uber shall maintain the contractual Service Fee for Uber X across all Drivers Egypt-wide at (i) the current level of 22.5%, or at Uber’s discretion (ii) a lower level but not lower than a sustained lower base contractual Service Fee (i.e. for a period of at least three months) charged by another Ridesharing Services Provider in Egypt. Uber shall maintain the contractual Service Fee for Careem GO across all captains Egypt-wide at (i) the average of 25.5%, or at Uber’s discretion (ii) a lower level but not lower than a sustained lower base contractual Service Fee (i.e. for a period of at least three months) charged by another Ridesharing Services Provider in Egypt.
Surge occurrence and levels may increase		Uber shall apply a ceiling on its Surge multiplier at a maximum level of 2.5 times the non-Surge price on Uber X and Careem GO Egypt-wide. Uber shall ensure that Surge prices are applied on no more than 30% of annual trips on UberX and on no more than 30% of annual trips on Careem Go Egypt-wide. The thresholds of this Commitment are subject to the ECA’s review in accordance with paragraph 6.4 set out in the non-confidential Fifth Commitments Proposal to the ECA.
Driver numbers may be constrained		Uber shall maintain the Driver Utilization Rate on Uber X and Careem GO Egypt-wide within a 60-80% range.
Non-price related harms		
Quality and incentives to innovate may decrease		To provide satisfactory Rider and Driver experience, Uber commits to using best efforts to maintain a high degree of innovation and service quality. As regards innovation, Uber shall dedicate [*] who will primarily work on R&D activities focused on bringing innovation to the wider Middle East, including Egypt.



	<p>Further, Uber shall implement the following innovations in Egypt within a period of one year following the Completion Date:</p> <ul style="list-style-type: none"> <li>• [*]</li> <li>• Safety features within the Driver app. [*]</li> </ul> <p>Uber shall also implement the following innovations in Egypt, which are new tools currently being tested (in the United States for the safety features within the rider app and the trip checks/anomaly detection, and in Cairo for the rider verification method), provided the tests demonstrate that these innovations are successful and impactful:</p> <ul style="list-style-type: none"> <li>• Safety features within the Rider app [*].</li> <li>• Trip checks/anomaly detection [*].</li> <li>• Rider verification method [*].</li> </ul> <p>As regards service quality, Uber shall:</p> <ul style="list-style-type: none"> <li>• maintain the average wait times for all Riders Egypt-wide between 2 and 4 minutes.</li> <li>• maintain its current standards with regard to vehicle quality and cleanliness for Uber X and Careem GO Egypt-wide or comply with the requirements of the Regulations in case these are stricter than Uber’s current standards.</li> <li>• maintain its current standards with regard to Driver on-boarding criteria Egypt-wide or comply with the requirements of the Regulations in case these are stricter than Uber’s current standards.</li> <li>• continue for Uber X and Careem GO Egypt-wide (i) to make on-boarding education available either in person or virtually for all new Drivers who sign-up to the platform on their own or are referred by other Uber drivers, (ii) to train again in person any Driver with a rating below 4.60, (iii) to apply the Quality and Safety Infraction Process (“QSIP”), and (iv) to impose a minimum rating of 4.60 for Drivers to drive on its platform.</li> <li>• require annual inspections for cars used for Uber X and Careem GO in Egypt, which have more than one Driver and are operating full time (over 50 hours a week).</li> <li>• facilitate the enrollment of Drivers into a vehicle upgrade program offered by vehicle leasing/finance companies for cars used for Uber X and Careem GO in Egypt, which have more than one Driver, are over five years’ old and are operating full time (over 50 hours a week).</li> </ul>
<p>No exclusivity</p>	<p>Uber shall, within a period of 1 month as of the Effective Date, either remove the exclusivity provision contained in the Strategic Relationship Agreement entered into between [*] dated [*] by securing an amendment of the said agreement or unilaterally notify [*] that Uber will not rely on the exclusivity provision in the said agreement which shall be considered null and void. Uber shall not introduce any contractual exclusivity provision or any measure having an equivalent effect in Uber's contracts with Drivers,</p>

	DOSTers or partners including fleet/leasing partners/recruitment intermediaries, for Uber X and Careem GO Egypt-wide.
<b>Harms in other markets</b>	
Maintaining competition on complementary and adjacent market and preventing exclusionary integration	<p>Uber shall not Tie or engage in Pure Bundling or Mixed Bundling of Uber X with Uber Bus, Uber Eats, Uber Scooter, Careem Bike, Careem Box, Careem Bus, or Careem GO Egyptwide.</p> <p>For the avoidance of doubt this Commitment would not prevent Uber from including various product offerings on its application.</p> <p>Uber shall also not Tie or engage in Pure Bundling or Mixed Bundling of Careem GO with Uber Bus, Uber Eats, Uber Scooter, Uber X, Careem Bike, Careem Box, or Careem Bus Egypt-wide. For the avoidance of doubt this Commitment would not prevent Careem from including various product offerings on its application.</p> <p>Uber shall not to price their HCV services below the Profitability Benchmark, as to ensure that undertakings on adjacent markets, such as that of app-hailed HCVs, will be allowed to grow and compete more effectively. The commitment ensures that an adequate transition period is granted to the Parties to be as follows:</p> <ul style="list-style-type: none"> <li>• As of one year after the Completion Date, Uber will not set the Pricing of its App-hailed HCV products on any Intra-city Routes in Egypt below the Profitability Benchmark.</li> <li>• As of 1 month of the Completion Date and until 3 months of the Completion Date, Uber will not set the Pricing of its App-hailed HCV products on any Intra-city Routes in Egypt below the First Transitional Profitability Benchmark.</li> <li>• As of 3 months of the Completion Date and until 6 months of the Completion Date, Uber will not set the Pricing of its App-hailed HCV products on any Intra-city Routes in Egypt below the Second Transitional Profitability Benchmark.</li> <li>• As of 6 months of the Completion Date and until 12 months of the Completion Date, Uber will not set the Pricing of its App-hailed HCV products on any Intra-city Routes in Egypt below the Third Transitional Profitability Benchmark.</li> </ul>
<b>Merger-specific barriers to entry</b>	
Access to mapping data	<p>Uber shall grant access to a Ridesharing Services Provider or an App-hailed Bus Services Provider upon such party's request to Careem's static points of interest map data as at the time of such a request.</p> <p>Access to Careem's static points of interest map data shall be granted to a Ridesharing Services Provider or an App-hailed Bus Services Provider on a one-time basis based on specific access criteria set out in paragraphs 2.32.1-2.32.4 in the non-confidential Fifth Commitments Proposal to the ECA.</p>

<p>Access to user data</p>	<p>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 <a href="https://help.uber.com/riders/article/whats-in-your-uber-data-download?nodeId=3d476006-87a4-4404-ac1e-216825414e05">https://help.uber.com/riders/article/whats-in-your-uber-data-download?nodeId=3d476006-87a4-4404-ac1e-216825414e05</a> by enabling them to download this data in comma separated values ("CSV") format.</p> <p>In addition, Uber shall use commercially reasonable best efforts to expand the scope of data that Riders can download and port to a competitor by including within such data Riders’ “saved places” (e.g. Riders’ favourite places such as “Home” or “Work”) within one year of the Completion Date, provided the data included in “saved places” is available under Uber’s contracts with maps data providers, such as Google. If a Ridesharing Services Provider creates a portal to facilitate the transfer of the data from Uber to its own application in CSV format, with the express prior consent of the Rider(s) concerned, Uber will make commercially reasonable best efforts to cooperate with the Ridesharing Services Provider and facilitate the creation of such a portal, provided that a solution is practicable and compliant with all applicable laws (including those regarding data security and the General Data Protection Regulation).</p>
<p>Access to trip data</p>	<p>Uber shall also grant one-time access to a Ridesharing Services Provider upon the latter’s request to the following data dating from the 12 months preceding such a request for the purpose of training algorithms for matching riders and drivers, dispatching drivers and pricing trips in Egypt:</p> <ul style="list-style-type: none"> <li>• Anonymized Trip Data;</li> <li>• Rider Information, subject to the General Data Protection Regulation and opt-in consent;</li> <li>• Driver Information, subject to the General Data Protection Regulation and opt-in consent.</li> </ul> <p>Access to the data described shall be granted on the following specific set out in paragraphs 2.37.1-2.37.7 in the non-confidential Fifth Commitments Proposal to the ECA.</p>
<p>Maintenance of multiple brands</p>	<p>Uber shall ensure that the following measures are taken to ensure that Riders are not confused into thinking that Uber and Careem are independent after the Completion Date:</p> <ul style="list-style-type: none"> <li>• Amending Careem's branding in Egypt to make it clear that Uber and Careem are Affiliated Undertakings</li> <li>• Ensuring the fact that Uber and Careem are Affiliated Undertakings is displayed during a user’s visit to Uber and Careem's rider and driver applications, Uber and Careem’s websites and any online portals from which the Uber and Careem's applications can be downloaded, in Egypt.</li> <li>• Ensuring that the interface of, as well as the notifications received from, the Uber and Careem rider applications make clear to riders</li> </ul>

	<p>when they book a ride, whether they are receiving a ride from Uber or Careem.</p> <ul style="list-style-type: none"> <li>• In the application of general marketing and rider and driver / captain</li> <li>• communications (excluding SMS messages, in app push notifications or similar short messages) in Egypt, ensuring that such communications display that Uber and Careem are Affiliated Undertakings.</li> </ul>
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The commitments will be imposed for a total of five years or until the occurrence of meaningful market entry (as defined in the commitments) and will be monitored by a number of Monitoring Trustees (chosen by both the Parties and ECA).

## 8. Conclusion

ECA has reached a conclusion that the relevant market is app-based ride-hailing through passenger vehicles. Regardless of the market definition, the Parties are by far each other's closest competitors on both the rider and driver sides of the market. The transaction may hence create a monopoly.

ECA has also reached a conclusion that the barriers to entry on the ride-hailing market on a whole are high, and entry post-transaction is unlikely. ECA has analyzed the barriers which currently exist on the market, as well as how these may be exacerbated post-transaction. ECA has concluded that entry is unlikely because of the following likely factors, taken in the round: the market appears unlikely to be highly profitable; entry requires significant investment in rider and driver incentives to obtain network density; access to funds may be difficult given the reputation and history of the Parties; the post-transaction entity have a number of exclusive contracts with entities that may be important for the supply of drivers; the post-transaction entity will have access to highly valuable data, which may be difficult for entrants to gather; ECA is not currently aware of any credible entrants.

Due to the low likelihood of entry onto the market, ECA has reached a conclusion that the post-transaction entity may directly harm consumers. ECA has reached this conclusion because of the following possibilities, taken in the round: the post-transaction entity may harm consumers through higher prices; lower quality; reduced consumer choice; reduced incentives to innovate on the market. ECA is also concerned that the transaction may create increased opportunity and incentive to foreclose complementary and adjacent markets.

The transaction is in breach of Article 6 ECL and there are insufficient countervailing benefits under Article 6(2); the agreement is thus in breach of ECA. However, the commitments offered by the Parties were found to amend the function of the transaction in a way that addresses ECA's concerns and may facilitate entry in a way that may outweigh the harm caused by the transaction, within the meaning of Article 6(2) ECL.