

# Five key “takeaways” from Hong Kong’s online food delivery platform investigation\*

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Over the course of more than two years, the Hong Kong Competition Commission (“**Commission**”) investigated the exclusivity and price parity provisions of Hong Kong’s two leading online food delivery platforms, Foodpanda and Deliveroo, with partner restaurants.<sup>1</sup> The investigation ended after the Commission accepted unique commitments from the platforms to address its potential competition concerns.

The case stands out as one of the Commission’s most important, complex and widely publicized enforcement actions to date, also reflecting its emphasis on regulating digital platforms and the digital economy.

The case has also sparked discussions on broader topics, such as: (i) the legality and effects of exclusivity and price parity terms in a non-dominance context; (ii) the assessment of credible new entry in the context of foreclosure; and (iii) the thoughtful design of commitment terms that help preserve (rather than undermine) competition in a highly dynamic platform market.

**In this briefing, we provide our thoughts on some key takeaways from Hong Kong’s online food delivery investigation.**

\* Fangda Partners advised Deliveroo in the investigation.

## Highlights

- 1. Market power without individual dominance.** The Commission took action against exclusivity and price parity terms despite a lack of “substantial degree of market power” by either Foodpanda or Deliveroo (the equivalent of “dominance” adopted in most jurisdictions). The Commission noted that Foodpanda and Deliveroo held only a “certain degree of market power” with individual shares over 40% and proceeded on the basis of the First Conduct Rule (prohibition against anticompetitive agreements) rather than the Second (abuse of dominance). Based on the commitment terms, the Commission appears to suggest that a market share of at least 30% would be indicative of sufficient market power for competition concerns to arise, aligning with EU and UK block exemption regimes, which provide a safe harbor for shares below this threshold.
- 2. Cumulative foreclosure effects of parallel agreements.** The Commission highlighted that the “high cumulative captive market share” of Foodpanda and Deliveroo potentially foreclosed smaller platforms, with approximately 50% of Hong Kong’s online food delivery market tied to their exclusivity agreements. This threshold mirrors the EU’s approach, where a parallel network of agreements of suppliers with similar vertical restraints can raise concerns if they cover more than 50% of the market.

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<sup>1</sup> The Commission also investigated tying/bundling terms imposed by Foodpanda.

- 3. Legality of narrow price parity clauses.** The Commission prohibited narrow price parity obligations. First, the Commission was not convinced that the narrow price parity obligations had any pro-competitive benefits (such as preventing free-riding). Second, like with the market coverage and cumulative effect of exclusivity terms, the Commission was concerned that the narrow price parity obligations of Foodpanda and Deliveroo covered a significant part of the market, therefore effectively mirroring wide (across-platform) price parity, which is considered more harmful than narrow price parity.
- 4. Threat of credible market entry.** The Commission maintained a foreclosure theory of harm even though there was evidence of a credible threat of a new competitor entering the market. In the last year of the investigation, Meituan entered the market with its "Keeta" app and managed to secure a market share above 10% within six months of commencing operations.
- 5. Dynamic commitment terms.** The commitments continue to allow exclusivity while preventing market distortions through dynamic market share thresholds that adjust to changes in market conditions. Foodpanda and Deliveroo can incentivize exclusivity as long as restaurants can also work with smaller platforms (under 10% market share) without losing benefits like lower commission rates. Meituan's "Keeta" does not qualify for this carve-out as it exceeded the threshold by the time the commitments were entered into. Additionally, if Foodpanda or Deliveroo's market share falls below 30%, they can be released from the commitments.

## Summary of competition concerns and commitments

In January 2022, the Commission announced it was investigating the conduct of Foodpanda and Deliveroo in relation to exclusivity and price parity arrangements with partnering restaurants.<sup>2</sup> The Commission brought the investigation under the so-called "First Conduct Rule", which prohibits anticompetitive agreements between parties operating at different levels of a supply chain, such as those between restaurants partnering with online food delivery platforms.<sup>3</sup>

The Commission later confirmed that the investigation originated from several complaints by restaurants.<sup>4</sup> Online food delivery also gained significant attention at the time because Hong Kong residents relied heavily on these services amidst COVID-19 stay-at-home directives and Uber Eats exiting the market a month earlier.

### Market power and competitive dynamics

Under the First Conduct Rule, exclusivity and price parity arrangements are not *per se* infringements and are only considered problematic if they cause, or have the potential to cause, anticompetitive effects. To assess the potential anticompetitive effects of an agreement, the Commission will consider the extent to which the relevant parties have market power. In the absence of market power, there would be no basis for finding that the agreements infringe the First Conduct Rule.

The Commission found the online food delivery market to be highly concentrated and that Foodpanda and Deliveroo were the most significant players with a combined market share of around 90%. Notwithstanding this, the market was also highly dynamic. By the end of the investigation, there were at least three other players active in Hong Kong. In particular, in May 2023, Meituan launched its own food delivery app "Keeta" and managed to secure a market share above 10% within six months of commencing operations.

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<sup>2</sup> See Commission's press release (27 Jan 2022), available at [https://www.compcomm.hk/en/media/press/files/PR\\_Online\\_Delivery\\_Platform\\_EN.pdf](https://www.compcomm.hk/en/media/press/files/PR_Online_Delivery_Platform_EN.pdf).

<sup>3</sup> This investigation was conducted pursuant to section 39 of the Competition Ordinance. For more information, see Commission's Guideline on the First Conduct Rule (27 July 2015), available at [https://www.compcomm.hk/en/legislation\\_guidance/guidance/first\\_conduct\\_rule/files/Guideline\\_The\\_First\\_Conduct\\_Rule\\_Eng.pdf](https://www.compcomm.hk/en/legislation_guidance/guidance/first_conduct_rule/files/Guideline_The_First_Conduct_Rule_Eng.pdf).

<sup>4</sup> For details on the proposed commitments, see Commission's Q&A (1 June 2023), available at [https://www.compcomm.hk/en/media/press/files/Food\\_Delivery\\_Platform\\_EN\\_QA.pdf](https://www.compcomm.hk/en/media/press/files/Food_Delivery_Platform_EN_QA.pdf).

**Competition concerns and commitments**

The Commission was concerned with the exclusivity and narrow price parity clauses of Foodpanda and Deliveroo as well as the wide price parity and tying practices of Foodpanda only. Broadly, the Commission was concerned about the potential foreclosure effects and softening of competition that could arise from these arrangements.

As the Commission’s concerns did not amount to “Serious Anticompetitive Conduct”, the Commission accepted commitments pursuant to section 60 of the Competition Ordinance that removed certain clauses from agreements with partner restaurants. In addition, Foodpanda and Deliveroo (i) were required to allow restaurants to maintain their exclusive commission rates whilst partnering with smaller platforms that had a market share below 10% (subject to evaluation by the Commission); and (ii) would be released from the commitment obligations entirely if their individual market shares fell below 30% (subject to evaluation by the Commission). A summary is provided in **Table 1** below.

The commitments are effective for three years and will expire at the end of 2026. As a result of accepting the commitments, the Commission agreed to terminate its investigation and not bring proceedings in the Competition Tribunal regarding the matters covered by the commitments.

**Table 1: Summary of competition concerns and commitments**

	Relevant clauses and practices	Competition concerns	Commitments/ remedies
<b>Exclusivity</b>	<p>A platform will typically charge a lower commission rate if the restaurant is “exclusive” to the platform and does not sign up to any other platform.<sup>5</sup></p> <p>If a restaurant signs-up to exclusivity but then partners with other platforms, the restaurant may be liable to penalties, including cessation of all marketing activities, clawing back the difference between exclusive and non-exclusive rates (from the date of agreement), suspending services, etc.</p>	<p>The Commission was concerned about (i) the “lock-in” effect of penalties for breaching exclusivity, hindering restaurants from switching away from exclusive terms; and (ii) the potential foreclosure effects of the exclusivity arrangements, deterring restaurants from using smaller platforms and thereby creating barriers to entry and expansion of those platforms.</p>	<p>The commitments do not prohibit exclusivity arrangements altogether. Instead, Foodpanda and Deliveroo were required to amend their contracts with partner restaurants to:</p> <ul style="list-style-type: none"> <li>• remove any penalties for breaching exclusivity to enable greater switching; and</li> <li>• allow exclusive restaurants to partner with smaller platforms (with a market share below 10% in Hong Kong) without losing any commercial incentives, such as lower commission rates.</li> </ul> <p>In addition, the platforms were required to provide clarifications about switching, including by limiting any notice of switching to no more than two months and specifying the applicable commission rate under exclusive and non-exclusive terms.</p>

<sup>5</sup> The Commission reports that the exclusive commission rate is typically about 25% of order values, while the non-exclusive rate is greater than 33%. For more information, see Notice of Acceptance in the Online Food Delivery Platforms Case (29 Dec 2023), available at [https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP\\_Notice\\_of\\_Acceptance\\_ENG.pdf](https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP_Notice_of_Acceptance_ENG.pdf), p. 12

<p><b>Price parity</b></p>	<p>Price parity clauses enable platforms to require that restaurants do not offer lower prices on other platforms or on their own menus than they do on the platform. There are two types of price parity clauses – wide and narrow.</p>		
	<p><b>“Narrow”</b> price parity clauses only prohibit lower prices on the restaurant’s own dine-in menu.</p>	<p>The Commission was concerned that the narrow price parity arrangements would decrease the incentives of partner restaurants to charge lower prices on competing platforms as such lower prices would risk undercutting the direct sales of the partner restaurant. As a result, platforms wishing to enter or expand in Hong Kong would be deprived of offering a partner’s menu items at lower prices than their competitors.</p>	<p>The commitments required Foodpanda and Deliveroo to remove provisions that would prevent restaurants from offering lower menu prices to consumers on their own direct channels.</p>
	<p><b>“Wide”</b> price parity clauses prevent a restaurant from offering a lower price across competing platforms. Only Foodpanda adopted wide price parity clauses.</p>	<p>In terms of the wide price parity clauses imposed by Foodpanda, the Commission was concerned that these arrangements would soften competition between Foodpanda and Deliveroo when applied in combination with the exclusivity terms. If applied together, there would be no price competition because Foodpanda’s partner restaurants either list exclusively with Foodpanda or are subject to price parity requirements where they list on both platforms.</p>	<p>The commitments required Foodpanda (only) to remove provisions that would prevent restaurants from offering lower menu prices on competing online platforms.</p>
<p><b>Tying</b> (Foodpanda only)</p>	<p>Foodpanda also automatically signed-up partner restaurants to its “order to pick-up” services when subscribing to online food delivery services.</p>	<p>The Commission considered “order to pick-up” to be distinct from online food delivery services. Tying these services together would foreclose competing platforms from offering “order to pick-up” services as the number of available partner restaurants would be restricted if they were already signed-up to Foodpanda.</p>	<p>The commitments required Foodpanda to remove provisions that automatically sign up restaurants to Foodpanda’s “order to pick-up” services if they use Foodpanda’s online food delivery services.</p>

## Analysis and key takeaways

### 1. Market power without a “substantial” market share

A key feature of the investigation was that the Commission took action against exclusivity and price parity terms in the absence of a “substantial degree of market power” (the equivalent of “dominance” in many jurisdictions).<sup>6</sup> In Hong Kong, Foodpanda and Deliveroo were found to only have a “certain degree of market power” due, in part, to each having individual market shares exceeding 40% during the period being investigated.

The Commission’s Guideline on the First Conduct Rule makes it clear that “[m]arket power is... a matter of degree. The degree of market power for concerns to arise under the First Conduct Rules is not the same as the degree of market power required for concerns to arise under the Second Conduct Rule [which prohibits abuses of a substantial degree of market power] and is typically less”.<sup>7</sup>

In this case, the Commission appears to have taken the position that a market share of at least 30% would represent a sufficient degree of market power for it to have concerns. The Commission points to the block exemption regimes of the European Union (“EU”) and the United Kingdom (“UK”) which provide for a safe harbor if market shares do not exceed 30%.<sup>8</sup> The same market share threshold underpins the mechanism adopted by the Commission to release Foodpanda and Deliveroo from the commitments if either of them falls below a market share of 30% during the three years in which the commitments are effective. This is presumably because, under such conditions, a platform would no longer have a requisite degree of market power.

### 2. Foreclosure: Cumulative effect of Foodpanda’s and Deliveroo’s agreements

While market shares are indicative of market power, it is the degree of market foreclosure that is often the deciding factor in examining whether exclusivity arrangements are anticompetitive. After all, it is entirely possible to have “insufficient foreclosure” even if market power exists or market shares are high, so long as a sufficient degree of partner restaurants remain accessible to new and smaller platforms.

In its Notice, the Commission referred to:

- the foreclosure of smaller platforms due to the “high cumulative captive market share” of Foodpanda and Deliveroo; and
- **about 50%** of the online food delivery market in Hong Kong being tied to exclusivity of Foodpanda and Deliveroo, also meaning that half of the market was “non-exclusive” and open to competition from other platforms.<sup>9</sup>

The Commission appeared to take into account the “cumulative effect” of Foodpanda’s and Deliveroo’s agreements (notwithstanding their market shares) as Foodpanda and Deliveroo impose similar exclusivity and price parity arrangements.

The “cumulative effect” of similar agreements is also recognized in the block exemption regime of the EU:

- The benefits of the block exemption regime can be withdrawn if access to the relevant market is restricted by the cumulative effect of parallel networks of similar vertical restraints implemented by competing suppliers. In these circumstances, the safe harbor is reduced to 5% instead of the 30% market share threshold.

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<sup>6</sup> This case differs from the online food delivery investigation in China, where Meituan was fined \$534 million for abusing its dominant position through “pick one from two” exclusivity practices. For details, see our update, “China’s antitrust enforcer fines food delivery platform for exclusivity arrangements” (October 2021, available at) <https://www.fangdalaw.com/wp-content/uploads/2021/10/Meituan-article-20211022.pdf>.

<sup>7</sup> See Commission’s Guideline on the First Conduct Rule (27 July 2015).

<sup>8</sup> See Commission’s Notice of Acceptance in the Online Food Delivery Platforms Case (29 Dec 2023), available at [https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP\\_Notice\\_of\\_Acceptance\\_ENG.pdf](https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP_Notice_of_Acceptance_ENG.pdf), p. 31.

<sup>9</sup> See Commission’s Notice of Acceptance in the Online Food Delivery Platforms Case (29 Dec 2023), available at [https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP\\_Notice\\_of\\_Acceptance\\_ENG.pdf](https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP_Notice_of_Acceptance_ENG.pdf), p. 20.

- In addition, a regulation can be imposed declaring that, where parallel networks of similar vertical restraints cover more than 50% of a relevant market, the block exemption will not apply to all vertical agreements containing specific restraints in that market.

It appears that the Commission has drawn inspiration from the EU's approach, which assumes foreclosure is feasible with limited market power when vertical restraints from various suppliers account for over 50% of the market, as seen with the exclusivity and price parity agreements of Foodpanda and Deliveroo.

### 3. Divergence on legality of narrow price parity obligations

The predominant view is that wide (across-platform) price parity clauses are more restrictive than narrow price parity as they prevent sellers from offering lower prices across different sales channels/platforms, thus weakening competition among the channels/platforms. Narrow price parity clauses are not as harmful as they can prevent “free-riding” by prohibiting lower prices on the supplier’s own website (but not across channels/platforms).

In its 2020 investigation concerning clauses imposed by online travel agents on accommodation providers, the Commission only prohibited wide price parity and recognized the pro-competitive benefits of narrow price parity in preventing accommodation providers from “free-riding” on the online travel agent’s advertising of their accommodation. In the absence of such clauses, accommodation providers would have been able to obtain the sale themselves by offering the accommodation for a lower price on their own website.<sup>10</sup>

The Commission was not convinced about similar pro-competitive justifications to support narrow price parity in the online food delivery investigation. Like with the market coverage and cumulative effect of exclusivity terms, the Commission was similarly concerned that the narrow price parity arrangements of Foodpanda and Deliveroo, taken together, covered a significant part of the market. If a partner restaurant was bound by narrow price parity for both Foodpanda and Deliveroo, prices on both platforms would be tied to dine-in prices as a ceiling — effectively mirroring wide price parity that could reduce competition between Foodpanda and Deliveroo.

The Commission’s approach broadly aligns with the EU’s updated block exemption regime, which excludes wide (across-platform) parity from exemption and only protects narrow-price parity where the 30% market share threshold is met. Under certain conditions, the protection can also be withdrawn where platform markets are highly concentrated or where the narrow price parity obligations cover a significant part of the market (i.e., cumulative effects).<sup>11</sup>

The Commission was also concerned about:

- Increased barriers to entry, reducing the competitiveness of smaller rival platforms. This is because smaller rivals may not be powerful enough to negotiate for narrow price parity obligations, such that restaurants could be able to offer higher prices on smaller platforms in particular.
- Decreased incentives for restaurants to set lower prices on their own channels because any decrease in dine-in prices must be reflected on platforms.
- Reducing a platform’s incentives to lowering commissions because commissions are absorbed by restaurants.<sup>12</sup>

<sup>10</sup> See Commission's Notice of Acceptance in Case EC/02NJ Online Travel Agents (13 May 2020) [https://www.compcomm.hk/en/enforcement/registers/commitments/files/ENG\\_Notice\\_of\\_Acceptance\\_OTA.pdf](https://www.compcomm.hk/en/enforcement/registers/commitments/files/ENG_Notice_of_Acceptance_OTA.pdf), pp. 13–14. Note that there continues to be conflicting case law on the subject. In September 2024, the European Court of Justice issued a preliminary ruling that Booking.com's narrow parity clauses violated EU competition law. The court rejected Booking.com's prevention of free-riding defense, noting that narrow price parity clauses did not appear essential for ensuring the economic viability of the hotel booking platform. This decision supported the German Federal Court of Justice's findings. Case C-264/23 (19 Sep 2024), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62023CJ0264>

<sup>11</sup> See the EU's Vertical Block Exemption Regulation (updated 10 May 2022), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0720>, Article 6. See also, European Commission Notice: Guidelines on vertical restraints 2022/C 248/01, available at <https://eur-lex.europa.eu/EN/legal-content/summary/guidelines-on-vertical-restraints.html>, para. 20.

<sup>12</sup> See Commission's Notice of Acceptance in the Online Food Delivery Platforms Case (29 Dec 2023), available at [https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP\\_Notice\\_of\\_Acceptance\\_ENG.pdf](https://www.compcomm.hk/en/enforcement/registers/commitments/files/OFP_Notice_of_Acceptance_ENG.pdf), p. 21.

Therefore, narrow price parity obligations are not always risk-free, especially in concentrated platform markets where narrow price parity obligations cover a significant share of the market with no evidence of efficiencies. A case-by-case assessment is necessary taking into account the platform's market presence and the market structure it operates in.

#### **4. Threat of credible market entry**

One of the more notable features of the investigation is how the Commission dealt with the emergence of a credible new entrant in Hong Kong. During the course of the investigation, Uber Eats exited Hong Kong and Meituan announced plans to enter less than a year later, arguably demonstrating that the market was competitive and dynamic even absent any commitments.

The Commission took Meituan's entry into account in deciding whether and on what terms it would be appropriate to accept commitments. During the first public consultation in May 2023, after Meituan announced its plans to enter Hong Kong, the Commission claimed that *"forward-looking assessments are inherently uncertain and the Commission cannot, at this stage, reach any firm conclusions as to the likelihood that such entry will be successful, regardless of Meituan's resources or experience in the Mainland. In view of the experiences of other [platforms] – some of whom have been successful in other markets or have significant resources – it is not necessarily the case that this will translate into successful market entry in Hong Kong"*.<sup>13</sup>

Less than a month later, Meituan entered the Hong Kong market with its "Keeta" app and quickly captured market share within just a few months. Today, Keeta is a formidable player in the Hong Kong market.

The assessment of credible market entry differs slightly from the approaches taken by other regulators. When ride-hailing apps Grab and Uber merged in Singapore, the Competition and Consumer Commission of Singapore rejected claims that barriers to entry were low due to the *potential* entry of Ryde and Go Jek, since their announcements did not translate into actual entry.<sup>14</sup> In the present case, the emergence of Meituan not only translated into actual entry but also successful entry as evidenced by confirmation from the Commission that Meituan had exceeded a 10% market share by the time the commitments were entered into.

#### **5. "Dynamic" commitment terms reflecting changing market conditions**

The Commission maintained its foreclosure theory of harm, but did not advocate for the complete abandonment of exclusivity either, presumably because Foodpanda and Deliveroo were non-dominant players in Hong Kong. The Commission was therefore careful to design commitments that would avoid risks of market distortions or unintended consequences that could upset competitive dynamics.

A distinctive feature of the commitment terms is their "dynamism," which involves set market share thresholds that determine the applicability of certain actions and outcomes if market conditions shift.

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<sup>13</sup> See Commission's Notice of Proposed Acceptance in the Online Food Delivery Platforms Case (1 June 2023), available at <https://www.cccs.gov.sg/-/media/custom/ccs/files/public-register-and-consultation/public-consultation-items/uber-grab-merger/final-imd-notice-non-confidentialpublicpublished-7-may-2018.ashx>, p. 7.

<sup>14</sup> See the Competition and Consumer Commission of Singapore's Final Imposition of Monetary Penalty Notice (7 May 2018), available at <https://www.cccs.gov.sg/-/media/custom/ccs/files/public-register-and-consultation/public-consultation-items/uber-grab-merger/final-imd-notice-non-confidentialpublicpublished-7-may-2018.ashx>.

**Table 2: Dynamic commitment terms to maintain dynamic competition**

<p><b>10% market share threshold: Protecting smaller but not all platforms</b></p>	<p>Under the commitments, Foodpanda and Deliveroo are permitted to continue applying exclusive terms with partner restaurants to the extent those restaurants are able to freely partner with new entrants and smaller platforms without losing commercial incentives such as lower commission rates.</p> <p>The commitments define a small platform as any online food delivery platform which does not exceed a market share of 10% in Hong Kong. The 10% market share threshold does not appear to be grounded in any guidelines but is based on the Commission’s own market evidence that platforms with market shares below 10% have not been able to maintain a significant competitive presence in Hong Kong.</p> <p>Over the course of the investigation, Meituan gained market share quickly. In less than six months, by the time the commitments were accepted, Meituan’s Keeta achieved a market share above 10% and was assessed as no longer falling within the “smaller platform” carve-out. Consequently, Foodpanda and Deliveroo’s exclusivity arrangements apply against Meituan but not other platforms (for now).</p>
<p><b>30% market share threshold: Early termination of commitment obligations</b></p>	<p>The Commission also built in a mechanism for the early termination of the commitment obligations if Foodpanda’s or Deliveroo’s market share drops below 30%.</p> <p>As mentioned earlier, the threshold indicates that the Commission would likely only have competition concerns if market shares surpass 30%, aligning with the safe harbors in the EU and the UK. It will be interesting to see whether the Commission takes any action against platforms that exceed the 30% market share in the future.</p>

**Concluding remarks**

The online food delivery investigation is one of the Commission’s most high-profile enforcement outcomes to date. All signals from the Commission are that it will not shy away from difficult and complex cases, including investigations of digital platforms and markets.

The Commission has traditionally focused on cartel cases but is now beginning to take an expansionist role in its enforcement actions to include vertical (non-cartel) conduct. The online food delivery investigation is the Commission’s first (at least public) enforcement action concerning exclusivity practices. At the time of writing, the Commission also recently completed its first-ever abuse of substantial power case before the Competition Tribunal (outcome pending) and will soon commence its first-ever enforcement action concerning resale price maintenance.

Although the online food delivery investigation did not advance to the Competition Tribunal, it showcases the Commission's commitment to keeping pace with the complexities of digital markets and designing remedies that strategically restore rather than upset competitive dynamics. The introduction of dynamic market share thresholds in the commitments (without banning exclusivity altogether) highlights the Commission’s efforts in remaining flexible and adaptable when intervening in rapidly evolving markets.

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