EUROPEAN COMMISSION
Competition DG

CASE AT.40795 – FOOD DELIVERY SERVICES

(Only the English text is authentic)

ANTITRUST PROCEDURE

Council Regulation (EC) No 1/2003

Article 7 and Article 23(2) and (3) Regulation (EC) 1/2003

Date: 02/06/2025

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EUROPEAN
COMMISSION

Brussels, 2.6.2025
C(2025) 3304 final

COMMISSION DECISION

of 2.6.2025

relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement

(Case AT.40795 – Food Delivery Services)

(Text with EEA relevance)

(Only the English text is authentic)

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COMMISSION DECISION

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(Case AT.40795 – Food Delivery Services)

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty[1], and in particular Article 7 and Article 23(2) and (3) thereof,

Having regard to Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty[2], and in particular Article 10a thereof,

Having regard to the Commission decision of 23 July 2024 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation (EC) No 1/2003 and Article 11(1) of Regulation (EC) No 773/2004,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

Whereas:

1. INTRODUCTION

(1) This decision (the "Decision") relates to a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union ("Treaty") and

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[1] OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (the "Treaty"). The two sets of provisions are, in substance, identical. Pursuant to Article 5(3) of the Treaty of Lisbon, references in legal acts to Articles 81 and 82 of the EC Treaty are to be understood as references to Articles 101 and 102 of the Treaty when appropriate.

[2] OJ L 123, 27.4.2004, p. 18.

Article 53 of the Agreement on the European Economic Area (the "EEA Agreement") in the sector for the services of delivery of food, grocery and other retail products to customers ordering it from an app or a website (hereinafter "food delivery services"). The infringement consisted in arrangements between two undertakings active in the food delivery services sector to exchange sensitive commercial information, allocate markets and not to poach each other's employees. The infringement lasted from 17 July 2018 until 22 July 2022 (the "Infringement Period") and covered the EEA.

(2) The legal entities to which this Decision is addressed are referred to as the "Addressees", or individually as an "Addressee".[3] The undertakings subject to the proceedings are collectively referred to as the "Parties", or individually as a "Party".[4]

2. THE INDUSTRY SUBJECT TO THE PROCEEDINGS

2.1. The product concerned by the conduct

(3) The case concerns the service of delivery of food, grocery and other retail products to customers ordering it from an app or a website.

(4) The Parties own and manage an app and a website through which customers may order food, grocery and other retail products and ensure the delivery of such products to customers. The product delivered can be meal-type, ready-to-eat food (*e.g.* directly from a restaurant, home-kitchen, or a professional kitchen dedicated to preparing meals for delivery – so-called "dark kitchens" or "ghost kitchens"), food that has not been specially prepared or cooked for immediate consumption (*e.g.* fruit or vegetables, processed food such as biscuits or drinks), but also any other (non-food) grocery product (*e.g.* cosmetics, home care products).

2.2. Undertakings subject to the proceedings

(5) The following undertakings, were involved in the infringement and are covered by the Decision:

2.2.1. Delivery Hero

(6) Delivery Hero is active in the food delivery services sector. It is currently present in more than 70 countries worldwide, of which 14 are situated in the EEA[5]. It is listed on the Frankfurt Stock Exchange. The consolidated worldwide turnover of the group in 2023 amounted to approx. EUR 9.942 billion and in 2024 amounted to approx. EUR 12.295 billion, which includes the turnover by its now subsidiary Glovo[6].

2.2.2. Glovo

(7) Glovo is active in the food delivery services sector. According to information published on its website, it is currently present in more than 20 countries across the globe, of which 8 are situated in the EEA[7].

(8) In July 2022, Delivery Hero acquired control over Glovo by purchasing the majority of its shares, and Glovo thus became Delivery Hero's subsidiary. Glovo's

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3 See Section 7.2

4 See Section 2.2.

5 https://www.deliveryhero.com/about/ (accessed on 23/10/2024). This includes countries where Delivery Hero is present through one of its subsidiaries, among which is currently Glovo.

6 Delivery Hero Annual Reports 2023 and 2024.

7 https://about.glovoapp.com/ (accessed on 23/10/2024).

consolidated worldwide turnover in 2023 amounted to approx. EUR [...][8] and in 2024 amounted to approx. EUR [...].

3. PROCEDURE

(9) The Commission carried out unannounced inspections at the premises of Delivery Hero in Berlin and of Glovo in Barcelona in June 2022, and continued this inspection at the Commission's premises in autumn 2022. A second unannounced inspection at the Parties' premises took place in November 2023.

(10) The Commission sent several requests for information under Article 18 of Regulation (EC) No 1/2003[9].

(11) On 23 July 2024, the Commission initiated proceedings pursuant to Article 11(6) of Council Regulation (EC) No 1/2003[10] against the Parties with a view to engaging in settlement discussions with them. After each Party had confirmed its willingness to engage in settlement discussions, the discussions started on [...].

(12) Settlement meetings between the Parties and the Commission took place between [...] and [...]. During those meetings, the Commission informed the Parties of the objections it envisaged raising against them and disclosed the main pieces of evidence in the Commission's file relied on to establish these objections. Between [...] and [...], the Parties were given a copy of the relevant pieces of evidence as well as a list of all the documents in the file and were also offered the opportunity to access all the documents listed. The Commission also informed the Parties of the fines parameters likely to be applied and provided the Parties with an estimation of the range of fines likely to be imposed by the Commission.

(13) The Parties expressed their views on the objections that the Commission envisaged raising against them. The Parties' comments were carefully considered by the Commission and, where appropriate, taken into account. At the end of the settlement discussions, the Parties considered that there was a sufficient common understanding as regards the potential objections, the fines parameters and the estimation of the range of likely fines to continue the settlement process.

(14) On […], the Parties submitted to the Commission their formal request to settle pursuant to Article 10a(2) of Regulation (EC) No 773/2004[11] (the "settlement submission"). The settlement submission of each Party contained:

– an acknowledgement in clear and unequivocal terms of the Parties' liability for the infringement summarily described as regards its object, the main facts, their legal qualification, including each of the Parties' roles and the duration of their participation in the infringement;

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8 ID […]

9 RFI No. 1 sent separately on 26 February 2024 to each of Delivery Hero and Glovo, answered on 18 March 2024, RFI No. 2 sent jointly to Delivery Hero and Glovo on 25 July 2024, answered on 30 August 2024, RFI No. 3 sent jointly to Delivery Hero and Glovo on 12 August 2024, answered on 30 August 2024, RFI No. 4 sent jointly to Delivery Hero and Glovo on 7 May 2025 answered on 8 May 2025.

10 Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1 of 4.1.2003, p. 1).

11 Commission Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, 27.4.2004, p. 18).

– an indication of the maximum amount of the fine each of the Parties expects to be imposed by the Commission and which they would accept in the framework of a settlement procedure;

– the Parties' confirmation that they have been sufficiently informed of the objections the Commission envisages raising against them and that they have been given sufficient opportunity to make their views known to the Commission;

– the Parties' confirmation that they do not envisage requesting access to the file or requesting to be heard again in an oral hearing, unless the Commission does not reflect the settlement submission in the statement of objections and the Decision;

– the Parties' agreement to receive the statement of objections and the final Decision pursuant to Articles 7 and 23 of Regulation (EC) No 1/2003 in English.

(15) On [...], the Commission adopted a statement of objections addressed to the Parties. The Parties replied to the statement of objections by confirming that it corresponded to the contents of their settlement submission and that they therefore remained committed to following the settlement procedure.

4. DESCRIPTION OF THE EVENTS

4.1. Nature and scope of the infringement

4.1.1. Scope of the conduct and the context in which it took place

(16) The conduct consisted of bilateral contacts between Delivery Hero and Glovo, amounting to agreements and/or concerted practices in the EEA not to poach each other's employees, exchanges of commercially sensitive information and the allocation of national markets.

(17) On 17 July 2018, Delivery Hero invested approx. EUR 51 million in Glovo, acquiring a 15% minority non-controlling stake (on a fully diluted basis) in the company. This initial investment was followed by additional rounds of non-controlling minority investments between 2018 and 2021, during which Delivery Hero increased its shareholding in Glovo to 37.4% (on a fully diluted basis) as of 31 December 2021. Finally, on 4 July 2022, Delivery Hero announced the acquisition of sole control over Glovo, becoming the majority shareholder with approximately 94% of the shares on a non-diluted basis and 80.9% of the share capital of Glovo on a fully diluted basis.

(18) Delivery Hero invested in Glovo and planned to, among other objectives, *"strategically influence and receive information from a fast-growing platform in Europe [...]"* (July 2018)[12]. The Parties considered that they were establishing a "partnership"[13], the content of which evolved throughout the Infringement Period into a deeper and multi-faceted coordination between them.

(19) Delivery Hero's minority shareholding in Glovo and the resulting shareholding relationship provided a forum for Delivery Hero and Glovo to coordinate their

[12] ID […].
[13] ID […].

business conduct throughout the Infringement Period. While a cross-shareholding between competing undertakings is not illegal in itself under EU law, the Parties used the shareholding relationship to enable the conduct under investigation.

(20) First, the minority shareholding entailed formal agreements that were used to coordinate the business conduct of the Parties. As part of the Shareholders' Agreements ("SHAs") that they concluded in the context of Delivery Hero's minority non-controlling investments into Glovo, Delivery Hero and Glovo agreed, starting in July 2018, on reciprocal no-hire clauses for certain categories of employees.

(21) Second, the minority shareholding granted Delivery Hero a position on Glovo's board of directors (first, one member and later, two members). Delivery Hero's representative on Glovo's board shared with Delivery Hero's staff Glovo's documents and related commercially sensitive information, which he had obtained because of his fiduciary duties towards Glovo. This gave Delivery Hero's management access to Glovo's board documents[14].

(22) Third, the minority shareholding gave Delivery Hero certain rights which allowed it to participate in Glovo's decision-making process. It notably gave Delivery Hero the right to participate in Glovo's shareholders' meetings and in Glovo's board, including participation in the approval of capital increases or modifications of Glovo's statutes and by-laws. Delivery Hero used its position as a shareholder to influence Glovo's business strategy and align it with its own business strategy. This was done both directly, by exercising (or threatening to exercise) its power of approval over specific decisions[15], and indirectly, by influencing the position of Glovo's other shareholders[16], in order to convince Glovo to share markets in the EEA[17].

(23) Fourth, the minority shareholding created ties between staff at different levels and across functions of the two undertakings that went beyond what was required in view of the (then) existing financial investment. These multiple staff connections led to mutual invitations to each other's general meetings and to dedicated knowledge-sharing discussions between specialised staff, leading to further exchanges of commercially sensitive information. Those ties were supported and reinforced at [a high level] of both companies, as evidenced by numerous exchanges of messages, calls and other communications between the Parties' management via email, WhatsApp or other means of communication[18]. In this context, [some members of the Parties' top management] discussed no-poach arrangements, agreed that they should "*not kill the relationship with poaching*"[19] and discussed market allocation inter alia "*to become better partners*"[20].

(24) Finally, on 22 July 2022 Delivery Hero acquired sole control of Glovo which is now part of the Delivery Hero group. On 1 March 2022 all relevant merger control approvals were obtained.

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14 See*, e.g.* ID […].
15 See*, e.g.* ID […].
16 See*, e.g.* ID […], ID […], ID […].
17 ID […], ID […], ID […].
18 See in particular ID […], ID […].
19 See, *e.g.* ID […], ID […], ID […].
20 ID […], message ID […].

4.1.2. No-poach

(25) On 17 July 2018, the Parties agreed on *de facto* reciprocal no-hire clauses[21] when they signed the first of four SHAs concluded in the context of Delivery Hero's four non-controlling investments into Glovo (the C, D, E and F "Financing Rounds")[22]. The first SHA (for Financing Round C) entered into force on 31 July 2018, the second SHA (for Financing Round D) was signed on 30 April 2019 and entered into force on the same day[23], the third SHA (for Financing Round E) was signed on 18 December 2019 and entered into force on the same day[24], and the fourth SHA (for Financing Round F) was signed on 31 March 2021 and entered into force on the same day[25]. All SHAs included two types of no-hire clauses, drafted in essentially the same terms.

(26) Clause 8.6 of the SHAs:

[…]

(27) This no-hire clause imposed a one-way obligation on Glovo (the target of the investment) in favour of Delivery Hero (the investor). It had no specified duration, its territorial scope was not limited to a specific country and/or region within the EEA and therefore had an EEA-wide scope, and its personal scope did not apply to all employees but was limited to "*anybody having a management grade or senior capacity in DH* [Delivery Hero] *in the previous 12 months*".

(28) Clause 8.7 of the SHAs:

[…]

(29) The definition of "Key Employees" was:

> "*Any employee, including the Founders, who is or was employed by any Group Company* [Glovo and subsidiaries] *at management grade or in a senior capacity as determined by the Board with Qualified Director Consent during the period of 2 years immediately preceding the Termination Date*".

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21 A no-hire agreement is a type of no-poach agreement by which the parties agree not to reach out to another party's employees, and also not to hire them even if the employees actively apply for an open position with the other party. The agreement was *de facto* reciprocal as opposed to one-way because, as discussed further below, different clauses imposed (slightly different) no-hire obligations on each of the Parties.

22 ID […], and ID […].

23 ID […] and ID […].

24 ID […], and ID […].

25 ID […], and ID […].

(30) This no-hire clause imposed a one-way obligation on Delivery Hero and most of Glovo's other shareholders in favour of Glovo (the target of the investment). Unlike other shareholders: (i) Delivery Hero was only prevented from hiring directly, while it could continue doing so indirectly, through its affiliates or subsidiaries, and (ii) [...] and [...] were entirely exempted from the obligation (so they could continue soliciting and hiring from Glovo). It had no specified duration, its territorial scope was not limited to a specific country and/or region within the EEA and therefore had an EEA-wide scope, and its personal scope was limited to Glovo's Key Employees as defined above.

(31) Starting in September 2018, there was a strong push within Glovo to hire personnel to fill a long list of vacancies, and it was suggested to give priority to hiring recruiters to increase the pace of hiring[26], in particular through active solicitation[27].

(32) On 30 October 2018, following attempts from Glovo to poach from Delivery Hero[28], a top manager of Delivery Hero sent an email to a top manager of Glovo to suggest that they should *"find some kind of non-solicitation agreement"*[29]. Glovo immediately replied and confirmed that they accepted to be bound by an agreement not to actively approach each other's employees[30] (the "General No-Poach"). Glovo asked its staff to be particularly careful not to breach that commitment (*"From now on let's be very careful with this ok?"*), because any such breach would jeopardize the overall relationship between the Parties (*"let's not kill the relationship with poaching"*)[31]. The evidence clearly shows the Parties had the objective to restrict or distort competition for talent[32].

(33) This happened in a legal and economic context in which Delivery Hero and Glovo competed to attract talent which Glovo saw as scarce and in high demand[33]. Glovo routinely used active solicitation and saw it as a decisive source of talent[34]. Active solicitation was used by the respective HR departments and recommended by Glovo as a method to external recruiters[35]. Moreover, Glovo […] used active solicitation of potential candidates on […][36]. Active solicitation from competitors was notably seen as a way to access […] expertise […][37]. When considering expansion […][38] […][39] […] Glovo's was active poaching […], in order to build its […] workforce. This is

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26 ID […]
27 See, *e.g.* IDs […] and […]
28 ID […]
29 ID […].
30 IDs […] and […].
31 ID 658-1581.
32 See, *e.g.* IDs […] and […], and […].
33 See, *e.g.* ID […].
34 See, *e.g.* ID […]and […].
35 See, *e.g.* ID […].
36 See, *e.g.* ID […].
37 See, *e.g.* ID […].
38 See, *e.g.* ID […].
39 See, *e.g.* IDs […] and […].

confirmed by internal Glovo documents showing […] poaching from […] competitors […] was […] element of Glovo's strategy […][40].

(34) Both Parties repeatedly implemented the General No-Poach *inter alia* by blocking attempts to hire specific personnel[41].

(35) The Parties agreed not to *actively* approach each other's employees (reciprocal non-solicitation)[42], but remained able to recruit employees of the other Party who proactively approached them[43]. The General No-Poach was implemented immediately and throughout the Infringement Period[44]. Contrary to the no-hire clauses in the SHAs, which focused on Key Employees or personnel with a managerial role[45], the General No-Poach was not limited to a specific group of employees[46], although there were no specific references or evidence relating to "riders" or similar solo self-employed persons. The General No-Poach applied both to the recruitment by the Parties' headquarters and to recruitment by any of their Member State subsidiaries[47]. Also, the Parties made sure through internal communications that those involved in recruitment, as well as other people with a managerial role, were aware of the General No-Poach and implemented it[48].

(36) The territorial scope of the General No-Poach was not limited to a specific country and/or region within the EEA and therefore had an EEA-wide scope[49].

4.1.3. Information exchange

(37) The Parties exchanged commercially sensitive information between 13 September 2018 and 22 July 2022. In the period between December 2018 and December 2019, there were considerably fewer exchanges between Delivery Hero and Glovo caused notably by a divergence of views regarding the geographical development of their activities.[50]

(38) The commercially sensitive information was passed on through direct exchanges between the Parties (emails, WhatsApp conversations), through documents related to

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40 See, *e.g.* IDs […] and ID […].

41 See, *e.g.* ID […], see also IDs […] and […], and IDs […], […], […], […], […].

42 See, *e.g.* ID […].

43 See, *e.g.* ID […] and ID […]. A non-solicitation or non-solicit is a type of no-poach agreement by which the parties agree not to *actively* reach out to the other party's employees to surmise their interest in a position with the objective of ultimately hiring them. The General No-Poach imposed reciprocal obligations as the evidence shows it applied equally on both Parties.

44 See, *e.g.* ID […], ID […], ID […], ID […], […], ID […], ID […], ID […], ID […], ID […], ID […], ID […], ID […].

45 See, *e.g.* ID […], ID […], ID […], and ID […]. See also ID […].

46 See, *e.g.* ID […], ID […], ID […], ID […], ID […], ID […], ID […], ID […], ID […].

47 See, *e.g.* ID […].

48 See, *e.g.* ID […], ID […], ID […].

49 See, *e.g.*, ID […].

50 See paragraph (42): Delivery Hero used its position as a minority shareholder to influence Glovo's geographical footprint in the EEA but Glovo resisted Delivery Hero's proposals during this period.

the organisation of meetings (invitations, agendas), including board of directors' documents, and through meetings/discussions between the Parties that each Party reported about within its respective company (through emails, notes, different messaging applications).

(39) The Glovo board of directors' documents that were shared with Delivery shared with Delivery Hero's representative(s) on the Glovo board included presentations for board meetings[51]; minutes of board meetings[52]; agendas of board meetings[53]; and email exchanges between Glovo and members of Glovo's board[54]. These documents were forwarded by Delivery Hero's representative(s) on the Glovo board of directors to managers of Delivery Hero. Such sharing of board documents was usually accompanied by an internal discussion within Delivery Hero analysing their content and drawing conclusions.

(40) The information exchanged concerned key parameters of competition such as current pricing and future pricing intentions, current and future production capacities, current or future commercial strategy, forecasts of future demand and/or sales and cost structure/elements.

(41) The information shared by the Parties regarding current pricing and future pricing intentions concerned for instance detailed descriptions of pricing methodologies[55]; guidelines on delivery fees[56]; discussions on free delivery, discounts, cashbacks, and funding of subscriptions[57] as well as details on pricing strategies and fees[58].

(42) The information shared by the Parties regarding current and future production capacities concerned for instance details on delivery efficiency and methods (dispatching algorithm)[59]; logistics[60]; delivery zones of restaurants, including methods for their determination and bundling of orders[61].

(43) The information shared by the Parties regarding current or future commercial strategy, concerned for instance details on the development of new services; forecasted evolution and breakdown of EBITDA; strategic objectives (in terms of volumes, market leadership and profitability) and instruments to achieve them[62]; the development of [...][63], including calculation of their EBITDA[64]; specific strategies, types and opportunities linked to Q-commerce (delivery of online-ordered FMCGs[65]); marketing strategies models (*e.g.* regarding advertising) and instruments (*e.g.* vouchers)[66]; the acquisition of new customers, including details on the use of referral programmes[67]; pickup service – strategies and

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51 See, *e.g.* ID […] and ID […].
52 See, *e.g.* ID […] and ID […].
53 See, *e.g.* ID […] and ID […].
54 See, *e.g.* ID […] and ID […]
55 ID […], attachment ID […].
56 ID […].
57 ID […].
58 ID […].
59 ID […], linked to email exchange ID […].
60 ID […].
61 ID […].
62 ID […], linked to email exchange ID […].
63 ID […] and ID […].
64 ID […].
65 Fast moving consumer goods, for which see ID […] and ID […].
66 ID […] and ID […].
67 ID […] and ID […].

numbers (*e.g.*, gross profit forecasts)[68]; financing issues, including *e.g.* levels of monthly average "burn"[69].

(44) The information shared by the Parties regarding forecasts of future demand and/or sales related for instance to forecasts of future orders (for instance for South-West Europe) and their levers; forecasts of future gross sales[70] and competitive order/gross merchandise estimation tools[71].

(45) The information shared by the Parties regarding the cost structure/elements concerned for instance customer acquisition costs, costs per order, general cost overview[72]; compensation per deal[73]; cloud costs[74].

(46) The exchanges of commercially sensitive information were two-sided[75] and both Parties stated that they could learn from each other[76].

(47) The sharing of commercially sensitive information had an EEA-wide scope.

4.1.4. Market sharing

(48) From November 2018 to December 2019, Delivery Hero used its position as a minority shareholder to influence Glovo's geographical footprint in the EEA[77]. Glovo resisted Delivery Hero's proposals during this period[78]. In January 2020, Glovo aligned with Delivery Hero on the principle to stop competing in the EEA and to share markets[79]. This was implemented in practice in three main ways[80]. Firstly, as from January 2020, the Parties refrained from entering the Member States/Contracting Parties in the EEA where the other Party was present through a coordinated strategy, including by foregoing specific entry opportunities[81] and reacting to competitors[82]. Secondly, starting in January 2020, the Parties coordinated their strategy on entry into the EEA countries where neither of them was yet present, by openly communicating and agreeing on which Party should enter which market[83]. Thirdly, in May 2021, the Parties removed the geographical overlaps between them

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68 ID […].
69 Unrecoverable spending. ID […].
70 ID […], linked to email exchange ID […].
71 ID […].
72 ID […], linked to email exchange ID […].
73 ID […].
74 ID […], ID […], ID […].
75 See, *e.g.* ID […].
76 See, *e.g.* ID […].
77 See*, e.g.* ID […], ID […], ID […].
78 See*, e.g.* ID […], ID […]. […], […]; Message ID […].
79 See*, e.g.* ID […], message ID […], ID […], ID […], ID […], ID […], ID […].
80 See*, e.g.* ID […], message ID […], ID […], ID […], ID […], ID […], ID […].
81 *See, e.g.* ID […], ID […], ID […], ID […], ID […] (Message IDs […]), ID […] (Message ID […], ID […], ID […], ID […]).
82 *See, e.g.* ID […], ID […], ID […] (Message IDs […], ID […], ID […], ID […], ID […]), ID […] (Message IDs […], IDs […], IDs […], IDs […]), ID […] (Message IDs […], IDs […]), ID […], […].
83 See*, e.g.* ID […], ID […], ID […], ID […], ID […] (Message IDs […], IDs […]) and ID […] (Message ID […], ID […], ID […], ID […]).

in the EEA as Delivery Hero sold its operations in Bulgaria, Croatia and Romania to Glovo[84].

4.1.5. Nature and pattern of the contacts

(49) The conduct was organised and discussed by the Parties' respective management. The evidence in the file shows a pattern of contacts between the Parties' management, through exchanges of emails[85], WhatsApp messages[86] (including among top managers), calls[87] and some meetings[88].

(50) Moreover, the Parties reported and discussed internally about the bilateral contacts and the arrangements concerned[89].

4.2. Geographic scope of the infringement

(51) The geographic scope of the infringement covered the EEA throughout the Infringement Period.

4.3. Duration of the infringement

(52) The infringement started when the Parties signed the first SHA on 17 July 2018[90] and ended on 22 July 2022, when the merger between the Parties became effective[91].

(53) On this basis, the overall duration of the infringement was from 17 July 2018 until 22 July 2022.

5. LEGAL ASSESSMENT

(54) Having regard to the body of evidence, the facts as described in Section 4 and the Parties' clear and unequivocal acknowledgement of the facts and the legal qualification thereof contained in their settlement submission, and their reply to the statement of objections containing their explicit confirmation that the statement of objections reflects the content of their settlement submission, the legal assessment is set out as follows.

5.1. Jurisdiction

(55) In the present case, the Commission has jurisdiction to apply Article 101 of the Treaty and Article 53 of the EEA Agreement since the cartel arrangements were capable of having an appreciable effect upon trade between Member States/Contracting Parties.

5.2. Application of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

(56) Article 101(1) of the Treaty and Article 53 of the EEA agreement prohibit as incompatible with the internal market all agreements between undertakings and concerted practices which may affect trade between Member States/Contracting

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84 See, *e.g.* ID […] (Message IDs […], IDs […], IDs […]), ID […] (Message ID […]) ID […], ID […], ID […], ID […], ID […].

85 See, *e.g.* ID […], ID […], ID […], ID […], ID […], ID […].

86 See, *e.g.* ID […], ID […], ID […], ID […].

87 See, *e.g.* ID […], message ID: […], ID […], message ID: […], ID […], message ID: […].

88 See, *e.g.* ID […], messages of […].

89 See, *e.g.* ID […], ID […], message ID […], ID […], ID […].

90 ID […] and ID […].

91 ID […].

Parties and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production and markets, or share markets or sources of supply[92].

5.2.1. Agreement and/or concerted practices

5.2.1.1. Principles

(57) An *agreement* may be said to exist when the undertakings adhere to a common plan which limits, or is likely to limit, their individual commercial conduct by determining the lines of their mutual action or abstention from action in the market. Although Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement draw a distinction between the concept of "*concerted practices*" and that of "*agreements between undertakings*", the objective is to bring within the prohibition of those provisions a form of co-ordination between undertakings by which, without having reached the stage where a properly so-called agreement has been concluded, they knowingly substitute practical co-operation between them for the risks of competition[93]. Thus, conduct may fall under Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement as a *concerted practice* even where the parties have not explicitly subscribed to a common plan defining their action in the market but knowingly adopt or adhere to collusive devices which facilitate the co-ordination of their commercial behaviour[94].

(58) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement preclude any direct or indirect contact between economic operators of such a kind as to either influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an operator has decided to follow itself, or contemplates adopting, on the market, where the object or effect of those contacts is to restrict competition[95].

(59) It is not necessary to define exactly whether a certain conduct constitutes an *agreement* or a *concerted practice* as long as it is established that the infringement involved anti-competitive agreements and/or concerted practices and that the participating undertakings intended to contribute, by their own conduct, to the common objectives pursued by all the participants and were aware of the actual

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92 Article 53(1) of the EEA Agreement is modelled on Article 101(1) TFEU.

93 Judgment of the Court of Justice of 14 July 1972 in Case 48/69, *Imperial Chemical Industries v Commission*, EU:C:1972:70, ("Case 48/69 – *Imperial Chemical Industries*"), paragraph 64. See also judgments of the Court of Justice of 4 June 2009 in Case C-8/08, *T-Mobile Netherlands and Others*, EU:C:2009:343, ("Case C-8/08 – *T-Mobile Netherlands*"), paragraph 26, of the Court of Justice of 5 December 2013 in Case C-455/11 P, *Solvay v Commission*, EU:C:2013:796 ("Case C-455/11 P, *Solvay v Commission*") paragraph 36, Case C-194/14 P, *AC-Treuhand v Commission*, EU:T:2016:42, paragraph 29.

94 *See* Case C-8/08 – *T-Mobile Netherlands*, paragraph 26 and Case C-455/11 P, *Solvay v Commission*, paragraph 36. See also judgments of the Court of First Instance of 17 December 1991 in Case T-7/89, *Hercules v Commission*, EU:T:1991:75, paragraph 256 and Case 48/69 – *Imperial Chemical Industries*, paragraph 64, and Judgment of the Court of Justice of 16 December 1975 in Joined Cases 40-48/73 etc., *Suiker Unie and others v Commission*, EU:C:1975:174, paragraphs 173 and 174.

95 Judgment of the General Court of 16 September 2013 in Case T-396/10, *Zucchetti v Commission*, EU:T:2013:446, paragraph 56 and case-law cited.

conduct planned, or put into effect, by the other undertakings in pursuit of the same objectives or could reasonably have foreseen it and were prepared to take the risk[96].

5.2.1.2. Application to this case

5.2.1.2.1. No-Poach

(60) The facts described in paragraphs (25)-(30) above show that the SHAs were formal written agreements signed by the Parties. The facts described in paragraphs (31)-(36) above show that the General No-Poach was an agreement and/or concerted practice, in the meaning of Article 101 of the Treaty and Article 53 of the EEA Agreement, entered into between top managers of Delivery Hero and Glovo.

5.2.1.2.2. Information exchange

(61) The facts described in paragraphs (37)-(46) above show that competitors exchanged commercially sensitive information on relevant business parameters in the food delivery services sector. The exchanges allowed the Parties to align and influence their respective conduct on the market.

(62) Accordingly, the behaviour presents all the characteristics of an agreement and/or concerted practice in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.2.1.2.3. Market sharing

(63) The facts described in paragraphs (16)-(23) and paragraph (48) above show that the Parties have, through various actions throughout the Infringement Period, substituted practical cooperation between them for the risk of competition, with the objective to share geographic markets in the EEA between them. This resulted in the removal of overlaps and avoided the creation of any new overlaps in their respective EEA businesses, implemented through the arrangements set out in paragraph (48).

(64) Accordingly, the behaviour presents all the characteristics of an agreement and/or concerted practice in the sense of Article 101 of the Treaty and Article 53 of the EEA Agreement.

5.2.2. Restriction of competition

5.2.2.1. Principles

(65) Through their conduct the Parties refrained from competing against each other in the EEA. They coordinated their behaviour on the market through agreements and/or concerted practices not to poach their respective employees in the EEA, to exchange commercially sensitive information in relation to the provision of food delivery services in the markets within the EEA, and to allocate national markets in the EEA.

(66) The Court of Justice has held that agreements whereby competitors deliberately substitute practical cooperation between them for the risks of competition can be characterised as "*restrictions by object*"[97]. Indeed, according to settled case-law,

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[96] Judgment of the Court of Justice of 8 July 1999, *Commission v Anic Partecipazioni SpA*, C-49/92 P, EU:C:1999:356, ("Case C-49/92 P, *Commission v Anic Partecipazioni*"), paragraphs 81 to 87.

[97] Judgment of the Court of Justice of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 83.

certain types of coordination between undertakings reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects[98].

(67) To determine whether this is the case, regard should be had to all relevant aspects and, in particular, to the content of the provisions of the agreement, its objectives and the economic and legal context of which it is a part. When determining that economic and legal context, consideration should be given to the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market in question[99].

(68) The analysis of the legal and economic context differs in nature and intensity from the analysis of restrictive effects of competition, otherwise the notion of restriction by object would lose its *effet utile*[100]. The Court of Justice has also added that finding that a certain restraint constitutes an infringement by object "*in no way requires that the effects of that agreement, decision or practice on competition, be they actual or potential, or negative or positive, be examined or, a fortiori, proven*"[101].

(69) Moreover, in cases where the anticompetitive object is readily apparent, in particular for object restrictions that are "*neither atypical nor complex*", they "*do not require an in-depth analysis of the economic and legal context*" to establish that they are restrictions by object, and therefore the analysis of the economic and legal context may be limited to what is strictly necessary[102]. This includes the types of restraints that are explicitly prohibited under Articles 101(1) of the Treaty and 53(1) of the EEA Agreement, such as the sharing of the sources of supply under Articles 101(1)(c) of the Treaty and 53(1)(c) of the EEA Agreement. No-poach agreements and/or concerted practices are a form of sharing of the sources of supply (akin to a buyer cartel)[103]. Past Commission practice and EU case-law have treated the sharing of the sources of supply[104] as a restriction of competition by object.

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98 Judgment of the Court of Justice of 11 September 2014 in Case C-67/13 P, *CB v Commission*, EU:C:2014:2204, paragraphs 49, 53 and 78 ("Case C-67/13 P – *Cartes Bancaires"*), paragraph 49 and case law cited.

99 Case C-67/13 P – *Cartes Bancaires*, paragraphs 53 and 78 and case-law cited. See also most recently judgment of the Court of Justice of 26 October 2023 in Case C-331/21, *EDP – Energias de Portugal and Others*, EU:C:2023:812, paragraphs 98-100 ("Case C-331/21-*EDP*") and case-law cited.

100 Judgment of the General Court of 12 December 2018 in Case T-691/14, *Servier SAS and Others v Commission*EU:T:2018:922, paragraph 328 ("Case T-691/14 – *Servier*"), paragraph 221.

101 Judgment of the Court of Justice of 29 July 2024 in Case C-298/22, *Banco BPN (and others) v Autoridade da Concorrencia*, EU:C:2024:638, ("Case C-298/22 – *Banco BPN*"), paragraph 46.

102 Judgment of the Court of Justice of 20 January 2016 in Case C-373/14 P, *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 27-29, read together with the opinion of AG Wathelet in the same case, EU:C:2015:427, paragraphs 69, 70, 89 and 90. See also Case C-331/21 – *EDP*, paragraphs 98-100 and case-law cited, and judgment of the General Court of 7 November 2019 in Case T-240/17, *Campine and Campine Recycling v Commission,* EU:T:2019:778, paragraphs 295-297 and case-law cited.

103 Communication from the Commission - Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, (OJ C 259, 21.7.2023, p. 1) ("Horizontal Guidelines"), paragraph 279: "*Buyer cartels are agreements or concerted practices between two or more purchasers which, without engaging in joint negotiations vis-à-vis the supplier: (a) coordinate those purchasers' individual competitive behaviour on the purchasing market or influencing the relevant parameters of competition between them through practices such as, but not limited to, the fixing or coordination of purchase prices or components thereof (including, for example, agreements to fix wages or not to pay a certain price for a product); the allocation of purchase quotas or the sharing of markets and suppliers; or (b) influence those purchasers' individual negotiations with*

(70) The EU Courts have also clarified that it is sufficient that a restriction by object reveals a "sufficient degree of harm" to the competitive process, *i.e.* the structure of the market and it is unnecessary to establish a direct link between the practice and consumer prices[105]. Moreover, the Court of Justice has stated in the *Royal Antwerp Football Club* judgment[106] that obstacles to hiring affect a key parameter of competition and this is likely to impact not only the "*upstream or supply market*" but also the "*downstream market*".

5.2.2.2. Application to this case

5.2.2.2.1. No-Poach

(71) The General No-Poach and the no-poach clauses included in the SHAs are restrictions of competition by object. They are a form of sharing of the sources of supply within the meaning of Articles 101(1)(c) of the Treaty and Article 53(1)(c) akin to a buyer cartel.

(72) As paragraphs (25)-(32) and (34)-(36) above show, the content and the objective of the General No-Poach and the SHA no-poach clauses show that they had as their object the restriction or distortion of competition for talent between the Parties. As paragraph (33) above shows, the analysis of the legal and economic context confirms this conclusion. No-poach agreements typically cause economic harm. In particular, they can have negative effects on wages because the parties can no longer proactively offer higher wages to induce employees to switch, and/or provide counteroffers to induce their own employees to stay. By doing so, no-poach agreements are capable of preventing the efficient allocation of productive employees to productive firms. Declining job reallocation rates have been linked to declining productivity and hence slower GDP growth.

(73) The General No-Poach reveals a sufficient degree of harm to competition even though it imposed a non-solicit obligation and not a no-hire obligation. As mentioned in paragraph (33) above, active solicitation was seen by Glovo as an important source of talent and an important factor driving expansion […]. The fact that the agreement only had two parties, and so Delivery Hero's and Glovo's employees could in principle look for employment opportunities elsewhere in the market does not change the conclusion that this was a restriction of competition by object. In particular, when the Court of Justice refers to practices that are "by their very nature" harmful to the "proper functioning of competition" it does not require proof of harm to the market or even harm to competition in the entirety of a relevant market. It is sufficient to be able to state that the practice would, based on the relevant economic

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suppliers or their individual purchases from suppliers, for example through coordination of the purchasers' negotiation strategies or exchanges on the status of such negotiations with suppliers."

104 Commission Decision of 20 October 2005 in Case COMP/C.38.281/B.2, *Raw Tobacco – Italy*, recitals 246-249, 277-279 and 281, upheld on appeal in judgment of the General Court of 9 September 2011 in Case T-12/06, *Deltafina v Commission*, EU:T:2011:441, confirmed in judgment of the Court of Justice in Case C-578/11 P, *Deltafina v Commissio*n, EU:C:2014:1742. See also judgment of the Court of Justice of 4 October 2024 in Case C-650/22, *Fifa*, EU:C:2024:824, see, *inter alia*, paragraphs 129, 145-147.

105 Judgment of the General Court of 27 September 2023 in Case T-172/21, *Valve v Commission*, EU:T:2023:587, paragraph 212, and judgment of the Court of Justice of 12 January 2023 in Case C-883/19, *HSBC Holdings*, paragraphs 120-121 and case-law cited.

106 Judgment of the Court of Justice of 21 December 2023 in Case C-680/21 - *Royal Antwerp Football Club*, paragraph 107.

and legal context, reveal a "sufficient degree of harm" to "competition"[107]. As mentioned, identifying a restriction of competition by object "*in no way requires that the effects of that agreement, decision or practice on competition, be they actual or potential, or negative or positive, be examined or, a fortiori, proven*"[108]. There is therefore no need to define a relevant market and assess effects on any possible parameter that might reflect the actual harm in the labour market (*e.g.*, salaries or employment levels), let alone in any downstream product market. As already mentioned, if that was the standard, this would essentially amount to an assessment of the effects, and therefore the notion of "restriction by object" would lose its "*effet utile*"[109].

(74) Given the non-controlling nature of the investments (see paragraphs (25)-(30) above), the SHAs no-hire clauses are not subject to the rules on ancillary restraints applicable to concentrations[110]. Moreover, as one can deduct from paragraphs (27) and (30) above, the no-hire obligations were not objectively necessary for, or proportionate to, the relevant investment agreements, and therefore do not qualify as ancillary restraints[111] because (i) they were unlimited in terms of duration and territory, (ii) they were de facto reciprocal, so they went beyond what was objectively necessary and proportionate to protect the value of the investors' interests in Glovo, and (iii) they did not equally apply to all investors, thereby again excluding that they were objectively necessary or proportionate to protect the value of the investors' interests in Glovo[112]. As a result, the no-poach clauses included in the SHAs are assessed together with the General No-Poach as part of the same single and continuous infringement having the object to restrict competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

5.2.2.2.2. Exchange of commercially sensitive information

(75) As it emerges from the facts described above in section 4.1.3, the Parties were involved in an agreement and/or concerted practice of a horizontal character, which formed part of an overall plan[113] of revealing, through the exchange of commercially sensitive information, competitors' strategy and behaviour in the market.

(76) The Parties knowingly substituted practical co-operation between them for the risks of competition. Instead of independently determining their conduct and business strategy, the Parties exchanged commercially sensitive information on key business

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107 Case C-67/13 P – *Cartes Bancaires,* paragraphs 50, 52.

108 Case C-298/22 – *Banco BPN*, paragraph 46.

109 Case T-691/14 – *Servier,* paragraph 221.

110 Commission Notice on restrictions directly related and necessary to concentrations (OJ C 56, 5.3.2005, p. 24).

111 See Guidelines on the application of article 81 (3) of the Treaty (OJ C 101, 27.4.2004, p. 97), paragraph 29, and judgment of the Court of Justice of 11 September 2014 in Case C-382/12 P, *MasterCard Inc. and Others v Commission*, EU:C:2014:2201 ("Case C-382/12 P *MasterCard Inc*"), paragraphs 91, 107-108 and 111, and judgment of the Court of Justice of 19 September 2024 in Case C-264/23, *Booking.com BV and Booking.com (Deutschland) GmbH v Commission*, EU:C:2024:764 ("Case C-264/23, *Booking.com*"), paragraphs 50-75.

112 See Guidelines on the application of article 81 (3) of the Treaty (OJ C 101, 27.4.2004, p. 97), paragraph 29, and Case C-382/12 P *MasterCard Inc,* paragraphs 91, 107-108 and 111, and Case C-264/23, *Booking.com*, paragraphs 50-75.

113 For details see paragraph (18) above.

aspects in that sector[114]. These exchanges were thus capable of removing uncertainty between the Parties as regards important aspects of their conduct on the market.

(77) In addition, the Parties were able to take into account the information exchanged with a competitor when determining their own conduct on the market, all the more so because the exchanges occurred at different levels of the Parties' management, over a long period of time, and on a regular basis outside the period of lower intensity.

(78) It follows from the case-law of the Court of Justice that, exchanging information with competitors of commercially sensitive information on current pricing and future pricing intentions[115], current and future production capacities[116], current or future commercial strategy[117], forecasts of future demand[118] and/or sales[119] as well as cost structure/elements[120] constitutes a restriction of competition, which is, by its very nature, harmful to the proper functioning of the market concerned and the conditions of normal competition.

(79) The fact that Delivery Hero held a minority shareholding in Glovo (and was negotiating with Glovo subsequent financing rounds) and had representative(s) on Glovo's board with fiduciary duties to act in Glovo's interests does not alter the fact that two independent undertakings exchanged commercially sensitive information including through direct contacts at different levels of the undertakings. Nor can such a practice be justified by the need to protect Delivery Hero's investment in Glovo. Delivery Hero could have protected its minority shareholding rights and financial interests through its representative(s) in the board of Glovo, without any exchange of commercially sensitive information between that representative and staff in Delivery Hero. In addition, in the context of the preparation of the acquisition of control by Delivery Hero over Glovo in 2022, any possible direct interaction between the Parties, for example for the purposes of integration planning, should have happened with appropriate antitrust safeguards in place.

(80) Accordingly, each of these exchanges had as its object the restriction of competition within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.

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114 For individual categories of commercially sensitive information exchanged by the Parties, see paragraphs (40)-(45) above.

115 See, for instance judgment of the General Court of 8 July 2020 in Case T-758/14 RENV, *Infineon Technologies v Commission*, EU:T:2020:307, ("Case T-758/14 RENV – *Infineon Technologies*"), paragraph 96; judgment of the General Court of 15 December 2016 in Case T-762/14, *Philips and Philips France v Commission*, EU:T:2016:738, ("Case T-762/14, *Philips and Philips France v Commission*") paragraphs 134-136. It is not necessary for the information to relate directly to prices. Exchanges concerning information that forms a decisive element of the price to be paid by the end user may also amount to a restriction by object. See Case C-8/08 – *T-Mobile Netherlands*, paragraph 37.

116 Case T-758/14 RENV – *Infineon Technologies,* paragraphs 85 and 96; judgment of 15 December 2016 in Case T-762/14, *Philips and Philips France v Commission*, paragraph 104.

117 Case T-758/14 RENV – *Infineon Technologies*, paragraph 98

118 Judgment of the General Court of 9 September 2015 in Case T-84/13 *Samsung SDI and Others v Commission*, EU:T:2015:611, paragraph 51.

119 Case T-758/14 RENV – *Infineon Technologies*, paragraph 96.

120 Case C-8/08 – *T-Mobile Netherlands*, paragraphs 30-43 (and paragraphs 61-63 of the Opinion of the Advocate General in the same case). See also paragraph 429 of the Horizontal Guidelines.

5.2.2.2.3. Market sharing

(81) It is well-established in the case-law of the EU Courts that market sharing is prohibited by Article 101(1) of the Treaty[121] and by Article 53(1) of the EEA Agreement. Furthermore, the case-law recognizes that it is unlikely that undertakings would enter into a market sharing agreement if they do not consider themselves to be at least potential competitors[122].

(82) The Parties agreed to avoid competing with each other in any national markets in the EEA. They took active steps to remove existing geographic overlaps and coordinated on entry into national markets. This constitutes market sharing which by its very nature is harmful to the proper functioning of normal competition on the markets concerned, and restricted competition by object within the meaning of Article 101(1) of the Treaty and of Article 53(1) of the EEA Agreement. This applies irrespective of whether there may have been certain national markets that either of the Parties may not have entered (or may have chosen to withdraw from) absent the arrangements between them[123].

5.2.3. Single and continuous infringement

5.2.3.1. Principles

(83) An infringement of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of those provisions[124]. When the different actions form part of an 'overall plan' because their identical object distorts competition within the common market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole[125].

(84) An undertaking that has participated in such a single and continuous infringement through its own conduct, which falls within the definition of an agreement or a concerted practice having an anticompetitive object within the meaning of Article 101(1) of the Treaty and/or of Article 53(1) of the EEA Agreement and was intended to help bring about the infringement as a whole, may accordingly be liable also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to

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121 Judgment of the Court of First Instance of 14 May 1998 in Case T-148/89, *Tréfilunion v Commission*, EU:T:1995:68; judgment of the Court of First Instance of 15 September 1998 in Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94, *European Night Services Ltd (ENS), Eurostar (UK) Ltd, formerly European Passenger Services Ltd (EPS), Union internationale des chemins de fer (UIC), NV Nederlandse Spoorwegen (NS) and Société nationale des chemins de fer français (SNCF) v Commission*, EU:T:1998:198; and judgment of the Court of First Instance of 10 March 1992 in Case T-14/89, *Montedipe SpA v Commission,* ECR II-01155. EU:T:1992:36.

122 Judgment of the General Court of 21 May 2014 in Case T-519/09, *Toshiba Corp. v European Commission*, EU:T:2014:263, paragraph 231.

123 Judgment of the General Court of 8 September 2016 in Case T-472/13, *Lundbeck v Commission* EU:T:2016:449, paragraph 473.

124 Judgment of the Court of Justice of 7 January 2004 in Joined Cases C204/00, C-205/00, C-211/00, C-213/00, C-217/00 and C-219/00 P, *Aalborg Portland et al. v Commission,* EU:C:2004:6, ("Joined Cases C-204/00 etc., *Aalborg Portland et al*") paragraph 258. See also Case C-49/92 P, *Commission v Anic Partecipazioni*, paragraph 81.

125 Joined Cases C-204/00 etc., *Aalborg Portland et al.*, paragraph 258.

contribute to the common objectives pursued by all the participating undertakings and that it was aware of the anticompetitive conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk[126].

(85) An undertaking may thus have participated directly in all the aspects of anticompetitive conduct comprising a single infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the anti-competitive conduct comprising a single infringement but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such a case, the Commission is also entitled to attribute liability to that undertaking in relation to all the anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole[127].

(86) On the other hand, if an undertaking has directly taken part in one or more of the aspects of anti-competitive conduct comprising a single infringement, but it has not been shown that that undertaking intended, through its own conduct, to contribute to all the common objectives pursued by the other participants in the cartel, and that it was aware of all the other unlawful conduct planned or put into effect by those other participants in pursuit of the same objectives or that it could reasonably have foreseen all that conduct and was prepared to take the risk, the Commission is entitled to attribute to that undertaking liability only for the conduct in which it participated directly and the conduct planned or put into effect by the other participants in pursuit of the same objectives as those pursued by that undertaking where it has been shown that the undertaking was aware of that conduct or could reasonably have foreseen it and was prepared to take the risk[128].

5.2.3.2. Application to this case

(87) The evidence and facts described in Section 4 show that the Parties pursued a common overall plan, proposed by Delivery Hero and agreed to by Glovo. This plan, which evolved over time, aimed at progressively removing competitive constraints between the two undertakings and replacing competition with a multi-layered coordination to "*partner-up*" and "*to be on the same side fighting off [...] joint competitors*"[129]. This coordination, which had been pursued as of July 2018 with the acquisition by Delivery Hero of a minority shareholding in Glovo, started with the no-poach arrangement (initiated in July 2018 and fully developed in October 2018), was accompanied by an exchange of information from September 2018 and finally complemented in January 2020 with a market sharing arrangement.

(88) Each of the no-poach, information exchange and market sharing infringements constituted a single and continuous infringement on its own, given the identity of object, product, people involved, pattern of communications and timeline of

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126 Judgment of the Court of Justice of 6 December 2012 in Case C-441/11 P, *Commission v Verhuizingen Coppens*, EU:C:2012:778 ("Case C-441/11 P, *Commission v Verhuizingen Coppens*") paragraph 42, Case 49/92 P, *Commission v Anic Partecipazioni*, paragraph 83.

127 Case C-441/11 P, *Commission v Verhuizingen Coppens*, paragraph 43.

128 Case C-441/11 P, *Commission v Verhuizingen Coppens*, paragraph 55.

129 See*, e.g.*, ID […], ID […], ID […], message ID […], ID […], message ID […].

events.[130] The General No-Poach and the no-poach clauses included in the SHAs pursued a single plan of limiting the competition for talent between the Parties in the EEA. The information exchanges pursued an identical anticompetitive object of exchanging commercially sensitive information in order to avoid or reduce competition between the Parties in the EEA. The market allocation pursued the overall plan of sharing markets on a geographic basis in the EEA, by removing existing overlaps, refraining from entering the markets in the EEA where the other Party was present and coordinating on entry into markets where neither of them was present.

(89) Moreover, the three individual infringements are all part of an overall anticompetitive plan pursued by the Parties consisting in the building-up of an alliance between them with a view to behaving on the market in a coordinated fashion. This overall plan is *inter alia* demonstrated through all instances where the Parties referred to the need to fight common competitors, to stop competing with each other and to become better partners[131].

(90) The Parties coordinated their conduct through numerous exchanges of messages, calls and other communication between the Parties' management via email, WhatsApp or other means of communications[132]. The contacts between the Parties were taking place in the same or a similar manner (via emails, exchange of WhatsApp messages as well as other instant messaging applications) as described at paragraphs (16)-(23) above mostly involving the same individuals including [some members of the Parties' top management][133], the same products/services and the same geographic scope (i.e. the EEA).

(91) Each Party contributed to the realisation of this common objective. Both Delivery Hero and Glovo participated directly in the relevant contacts, meetings, emails and other exchanges (see paragraphs (16)-(50) above). On that basis, the Parties were either aware of the actual conduct planned or put into effect by the other Party in pursuit of the same objective or, at the very least, could reasonably have foreseen that conduct and were prepared to take the risk[134].

(92) The conduct in question thus also constitutes a single and continuous infringement of Article 101 of the Treaty and Article 53 of the EEA agreement.

(93) On the basis of all these elements and of the Parties' clear and unequivocal acknowledgements of the single and continuous nature of the infringement, both individually and as a whole, the Commission concludes that the Parties participated in three individual single and continuous infringements which also form a single and continuous overall infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement.

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130 See paragraphs (25)-(48) above.

131 ID […], message ID […].

132 See above Section 4.1, paragraphs (16)-(23).

133 See Judgment of the General Court of 2 February 2022 in Case T-799/17 *Scania and Others* v *Commission*, EU:T:2022:48, paragraphs 478 and 505.

134 See to this effect Judgment of the Court of Justice of 24 June 2015 in Cases C-293/13 P and C-294/13 P *Fresh Del Monte Produce* v *Commission*, EU:C:2015:416, paragraph 156-157; Judgment of the Court of Justice of 19 December 2013 in Joined Cases C-239/11 P, C-489/11 P and C-498/11 P *Siemens and others* v *Commission*, EU:C:2013:866, paragraphs 242-243.

5.2.4. Effect on trade between EU Member States and between EEA Contracting Parties

(94) Article 101 of the Treaty and Article 53 of the EEA Agreement are aimed at agreements which might harm the attainment of a single market between the Member States and between the EEA Contracting Parties, whether by partitioning national markets or by affecting the structure of competition within the internal market. Similarly, Article 53 of the EEA Agreement is directed at agreements that undermine the achievement of a homogeneous European Economic Area.

(95) The relevant services concern a substantial volume of trade within the Member States and the Contracting Parties to the EEA Agreement. The Parties offered their services in a substantial part of the EEA and considered business opportunities also in other EEA countries where they were not yet present[135].

(96) The arrangements covered several Member States[136] and EEA Contracting Parties, and thus related to trade within the EEA. The infringement was therefore capable of having an appreciable effect on trade between Member States and between Contracting Parties to the EEA Agreement.

5.2.5. Application of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement

5.2.5.1. Principles

(97) In accordance with Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, the provisions of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement may be declared inapplicable to agreements or concerted practices, which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, without imposing on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives or without creating opportunities to eliminate competition in respect of a substantial part of the products in question.

5.2.5.2. Application to this case

(98) On the basis of the facts before the Commission, the conditions of Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement are not fulfilled in the present case.

5.3. Conclusion

(99) The Commission has reached the conclusion that the Parties participated in three individual single and continuous infringements entailing no-poach, information exchange and market sharing which also form a single and continuous overall infringement of Article 101 of the Treaty and Article 53(1) of the EEA Agreement , involving Delivery Hero and Glovo and covering the EEA. The infringement lasted from 17 July 2018 until 22 July 2022.

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135 See*, e.g.* ID […], ID […], ID […], ID […] (Message IDs […], IDs […]) and ID […] (Message ID […], ID […], ID […], ID […]).

136 Commission Notice — Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ C 101, 27.04.2004, p. 81), paragraph 64.

6. DURATION OF THE PARTIES' PARTICIPATION TO THE INFRINGEMENT

(100) In view of the facts and the evidence set out in paragraphs (16)-(53) above, the Commission has reached the conclusion that the duration of both Delivery Hero's and Glovo's participation in the alleged infringement is from 17 July 2018 until 22 July 2022.

7. LIABILITY AND ADDRESSEES

7.1. Principles

(101) Union/EEA competition law applies to undertakings and the concept of an undertaking encompasses any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed[137]. An undertaking therefore can consist of various legal entities.[138]

(102) According to the principle of personal responsibility, it falls to the undertaking to answer for an infringement of Article 101 of the Treaty and/or of Article 53(1) of the EEA Agreement, but the infringement must be imputed to one or several legal entities within that undertaking upon whom fines may be imposed. [139]

7.2. Application in this case

(103) Having regard to the body of evidence and the facts described in paragraphs (16)-(53) above, the clear and unequivocal acknowledgements by the Parties in their settlement submission of the facts and the legal qualification thereof, the Commission imputes liability for the infringement and addresses this Decision to the following legal entities.

7.2.1. Delivery Hero

(104) For Delivery Hero's participation in the infringement, the Commission holds Delivery Hero SE liable.

(105) Delivery Hero SE has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 17 July 2018 until 22 July 2022.

(106) The Commission, therefore, imputes liability for that infringement to Delivery Hero SE for its direct participation from 17 July 2018 until 22 July 2022.

7.2.2. Glovo

(107) For Glovo's participation in the infringement, the Commission holds Glovoapp23 SA liable.

(108) Glovoapp23 SA has clearly and unequivocally acknowledged liability for its direct participation in the infringement from 17 July 2018 until 22 July 2022.

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137 Judgment of the Court of Justice of 13 June 2013 in Case C-511/11 P, *Versalis v Commission*, EU:C:2013:386, paragraph 51.

138 Judgment of the Court of Justice of 10 September 2009 in Case C-97/08 P, *Akzo Nobel NV a.o. v Commission*, EU:C:2009:536, ("Case C-97/08 P, *Akzo Nobel NV"*) paragraphs 54-55 (.

139 Case C-97/08 P, *Akzo Nobel NV*, paragraphs 56-57; Judgment of the Court of Justice of 19 July 2012 in Joined cases C-628/10 P and C-14/11 P, *Alliance One International and Standard Commercial Tobacco* v *Commission* and *Commission* v *Alliance One International and Others,*EU:C:2012:479, paragraph 42; Judgment of the Court of Justice of 11 July 2013 in Case C-440/11 P, *Commission v Stichting Administratiekantoor Portielje*,EU:C:2013:514, paragraph 37.

(109) The Commission, therefore, imputes liability for that infringement to Glovoapp23 SA for its direct participation from 17 July 2018 until 22 July 2022.

8. REMEDIES

8.1. Article 7 of Regulation (EC) No 1/2003

(110) Where the Commission finds that there is an infringement of Article 101 of the Treaty and Article 53 of the EEA Agreement, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end in accordance with Article 7 of Regulation 1/2003.

(111) Given the gravity of the infringement which is the object of this Decision, the Commission requires the Addressees of this Decision to refrain from any agreement, concerted practice or decision of an association which may have the same or a similar object or effect.

8.2. Article 23(2) and (3) of Regulation (EC) No 1/2003 – Fines

(112) Pursuant to Article 23(2) of Regulation (EC) No 1/2003[140], the Commission may by decision impose on undertakings fines where, either intentionally or negligently, they infringe Article 101 of the Treaty and/or Article 53 of the EEA Agreement. For each undertaking participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

(113) In this case, the Commission considers that, based on the facts described in this Decision and the assessment contained above, the infringement has been committed intentionally or at least negligently.

(114) It is therefore appropriate for the Commission to impose fines on the Addressees.

(115) In fixing the amount of any fine, pursuant to Article 23(3) of Regulation (EC) No 1/2003, regard shall be had both to the gravity and to the duration of the infringement. In setting the fines to be imposed, the Commission refers to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003[141] (the "Guidelines on fines").

(116) In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the geographic scope of the infringement and/or whether or not the infringement has been implemented. The Commission also takes account of the duration of the Parties' participation in the infringement.

(117) In line with Article 23(2) of Regulation (EC) No 1/2003 for each undertaking participating in the respective infringement, the fine is not to exceed 10% of its total turnover in the preceding business year.

(118) Finally, the Commission applies, as appropriate, the provisions of the Settlement Notice.

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[140] Pursuant to Article 5 of Council Regulation (EC) No 2894/94 concerning arrangements of implementing the Agreement on the European Economic Area (OJ L 305, 30.11.1994), the Union rules giving effect to the principles set out in Articles 101 and 102 of the Treaty shall apply *mutatis mutandis*.

[141] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ C 210, 1.9.2006, p. 2).

8.3. Setting of the fines

(119) In accordance with the Guidelines on fines, the basic amount of the fine for each Party results from the addition of a variable amount and an additional amount. The variable amount results from a percentage of up to 30% of the value of sales of goods or services to which the infringement relates in a given year (normally, the last full business year of the infringement) multiplied by the number of years of the undertaking's participation in the infringement. The additional amount ("entry fee") is set as a percentage between 15% and 25% of the value of sales. The resulting basic amount can then be increased or reduced for each undertaking if either aggravating or mitigating circumstances are retained.

(120) The Commission may depart from the methodology set out in the Guidelines on fines where this is justified by the particularities of a given case or the need to achieve deterrence in a particular case[142].

8.3.1. The value of sales

(121) The basic amount of the fine to be imposed on the Parties is set by reference to the value of their sales[143], that is the value of the undertakings' sales of goods or services to which the infringement directly or indirectly related in the relevant geographic area in the EEA. In this case, the relevant value of sales is the undertaking's revenues generated by each Party for the provision of online ordering and delivery of food, groceries and other consumer goods, as defined in section 2.1 above in the geographic area as defined in section 4.2 above.

(122) The Commission normally takes into account the sales made by the undertakings during the last full business year of their participation in the infringement[144]. If the last year is not sufficiently representative, the Commission may take into account another year and/or other years for the determination of the value of sales. Based on the foregoing and on the information provided by the Parties, their sales varied significantly during the Infringement Period. The sales of the last full year of the Infringement Period, i.e. of year 2021, can therefore not be considered representative of either of the Parties' sales. Instead, the Commission uses the yearly average sales for the full years of the infringement (i.e. 2019-2021) as the basis for the calculation of fines, as it reflects more appropriately the harm caused by each Party's participation in the infringement.

(123) Moreover, it is clear from the facts set out above in paragraphs (25) to (49) that the cartel evolved over time from a limited no-poach arrangement to a multifaceted cartel. It is also clear that as a result of differences in the views of the Parties there were some periods of lesser exchanges and interactions. During the period from 17 July to 12 September 2018, the cartel only consisted of the no-poach infringement that emanated from the clauses in the SHAs. In the period from 15 November 2018 to 6 January 2020, the Parties' views differed on whether to allocate markets and the information exchanges and interactions between the Parties were considerably reduced. Taking into account these exceptional circumstances it is appropriate to consider these two periods as periods of lower cartel intensity ("lesser intensity periods") for which only a percentage of the value of sales is used to establish the basic amount. In view of the lower cartel intensity for two of the three elements of

142 Point 37 of the Guidelines on fines.
143 Point 12 of the Guidelines on fines.
144 Point 13 of the Guidelines on fines.

the overall single and continuous infringement during the lesser intensity periods, compared to the overall duration, the Commission takes 35% of the value of sales into account for these periods.

(124) Accordingly, the Commission takes into account the following value of sales for each undertaking:

TABLE 1: Value of sales

Undertaking	**Value of sales**	
	Period of normal cartel intensity	*Lesser intensity periods*
Delivery Hero SE	EUR […]	EUR […]
Glovoapp23 SA	EUR […]	EUR […]

8.3.2. Determination of the basic amount of the fines

(125) The basic amount consists of an amount of up to 30% of an undertaking's relevant sales, depending on the degree of gravity of the infringement and multiplied by the number of years of the undertaking's participation in the infringement, and an additional amount ("entry fee") of between 15% and 25% of the value of an undertaking's relevant sales, irrespective of duration[145].

8.3.2.1. Gravity

(126) The gravity of an infringement determines the percentage of the value of sales taken into account in setting the fine. In assessing the gravity of an infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the combined market share of the Parties, the geographic scope of the infringement and/or whether or not the infringement has been implemented.

(127) In its assessment, the Commission considers the facts described in this Decision, and in particular the fact that cartel conducts, such as the no-poach, information exchange and market sharing agreements and/or concerted practices in this case, are by their very nature, among the most harmful restrictions of competition. Therefore, the proportion of the value of sales taken into account for such infringements is set at the higher end of the scale of the value of sales[146].

(128) In addition, the Commission also takes into account the multi-faceted nature of the cartel and the fact that the infringement related to the whole territory of the EEA.

(129) Given the specific circumstances of this case, taking into account the nature and the geographic scope of the infringement, the proportion of the value of sales to be taken into account is set at 17%.

8.3.2.2. Duration

(130) In assessing the fine to be imposed on each undertaking, the Commission also takes into consideration the duration of the infringement, as described in Section 4.3 above. The increase for duration (duration multiplier) is calculated on the basis of

145 Points 19-26 of the Guidelines on fines.

146 Point 23 of the Guidelines on fines.

each Party's exact number of days of participation in the infringement, expressed in years.

(131) The time period to be taken into account for the purpose of setting the fines, specified in periods of normal and lower intensity, and the multiplier corresponding to those periods are set out in Table 2.

TABLE 2: Duration of participation for Delivery Hero and Glovo

	Period of the single and continuous infringement	**Duration in years**
Total duration	17/7/2018 - 22/7/2022	4.0164
Lower intensity	17/7/2018 - 12/9/2018, and 15/11/2018 - 6/1/2020	1.3041
Normal intensity	13/9/2018 - 14/11/2018, and 7/1/2020 - 22/7/2022	2.7123

8.3.2.3. Additional Amount

(132) Point 25 of the Guidelines on fines allows the increase of the variable amount by a percentage between 15% and 25% of the relevant value of sales, irrespective of the duration of the Parties' participation in the infringement ("entry fee"). The Commission considers that in view of the gravity of the infringement undertakings should be deterred from even entering into an agreement and/or concerted practice on no-poach, information exchange or market sharing. The factors to be taken into account for the calculation of the additional amount are the same as those that are taken into account to set the gravity percentage [147].

(133) Therefore, the proportion of the value of sales to be taken into account for the purpose of setting the additional amount is set at 17%.

8.4. Adjustment of the basic amount

8.4.1. Aggravating or mitigating factors

(134) The Commission may consider aggravating circumstances that result in an increase of the basic amount. These circumstances are listed in a non-exhaustive way in point 28 of the Guidelines on fines. The Commission may also consider mitigating circumstances that result in a reduction of the basic amount. These circumstances are listed in a non-exhaustive way in point 29 of the Guidelines on fines.

(135) The Commission does not consider that any aggravating or mitigating circumstances are applicable to any of the Parties in this case.

8.4.2. Deterrence

(136) Particular attention is paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fine to be imposed on undertakings which have a

147 Point 25 of the Guidelines on fines.

particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased[148].

(137) In this particular case, the Commission does not apply such increase for deterrence.

8.5. Application of the 10% turnover limit

(138) The fine imposed on each undertaking participating in the infringement shall not exceed 10% of its total turnover relating to the business year preceding the date of the Commission's Decision[149].

(139) Since Glovo was an independent undertaking during the whole infringement period, the 10% turnover limit is set based on its own turnover.

(140) In this case, the basic amount of the fine calculated exceeds 10% of Glovo's total turnover in business year 2023.

(141) New reliable figures on the 2024 turnover have become available very late in the settlement proceedings, in any case after the maximum amount that the Commission intended to impose, based on the 2023 turnover figures, was communicated to the Parties, and after the Parties, on this basis, confirmed that they remained committed to the settlement proceedings. Since reliance on the 2024 turnover would lead to an increase in the fine and would thus require reopening the discussions with the Parties, in the specific circumstances of this case, and with the view to achieving the procedural efficiencies pursued by the settlement process, the Commission considers it appropriate to base its decision on the (lower) 2023 turnover figures.

(142) As regards Delivery Hero, the amount of the fine remains below the 10% turnover limit irrespective of whether the 2023 or the 2024 turnover is used.

8.6. Application of the Settlement Notice

(143) As provided for in point 32 of the Settlement Notice, the reward for settlement leads to a reduction of 10% of the amount of the fine to be imposed on a party after the 10% turnover cap has been applied having regard to the Guidelines on fines[150]. The Commission in this case applies point 32 of the Settlement Notice.

(144) Consequently, in view of point 32 of the Settlement Notice, the amount of the fines to be imposed on the Addressees is further reduced by 10%.

Table 3 – Fines

Undertaking / Association of undertakings	Fines
Delivery Hero	EUR 223 285 000
Glovo	EUR 105 732 000

148 Point 30 of the Guidelines on fines.

149 Article 23(2) of Regulation No 1/2003.

150 Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ C 167, 2.7.2008, p. 1-6).

HAS ADOPTED THIS DECISION:

Article 1

Delivery Hero SE and Glovoapp23 SA have infringed Article 101 of the Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement consisting in agreements and/or concerted practices in the sector for the services of delivery of food, grocery and other retail products to customers ordering it from an app or a website, covering the entire EEA, to exchange sensitive commercial information, allocate markets and not to poach each other's employees.

The duration of the infringement was from 17 July 2018 until 22 July 2022.

Article 2

For the infringement(s) referred to in Article 1, the following fines are imposed on:

(a) Delivery Hero SE: EUR 223 285 000

(b) Glovoapp23 SA: EUR 105 732 000

The fines shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40795

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fine/fines shall be covered by its/their due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council[151].

Article 3

The undertakings listed in Article 1 shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or similar object or effect.

[151] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union, OJ L, 26.09.2024.

Article 4

This Decision is addressed to:

Delivery Hero SE, Oranienburger Straße 70, 10117 Berlin, Germany;

Glovoapp23 SA, Calle Llull 108, 08005, Barcelona , Spain.

This Decision shall be enforceable pursuant to Article 299 of the Treaty and Article 110 of the EEA Agreement.

Done at Brussels, 2.6.2025

For the Commission

Signed

Teresa RIBERA
Executive Vice-President