

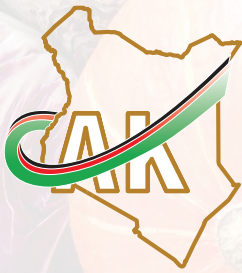
**COMPETITION
AUTHORITY
OF KENYA**

Creating efficient markets for consumers

ONLINE FOOD AND GROCERIES DELIVERY PLATFORMS MARKET STUDY



2024



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Lastly, whereas much effort has been put into verifying the contents of this report during its preparation, the authors take full responsibility for its accuracy and the presented evidence.

Competition Authority of Kenya
CBK Pension Towers, 15th Floor
Harambee Avenue,
P. O. Box 36265-00200
NAIROBI. KENYA
Telephone: 254-20-2628233
Website: www.cak.go.ke
Email: info@cak.go.ke

EXECUTIVE SUMMARY

Globally, an estimated 2.14 billion people purchase products online, representing 27% of the world population. The global e-commerce market was projected to total 6.3 Trillion in 2023. Online shopping in Africa continues to witness an upward trend and as of 2022, 31.6% of Africans shopped online. E-commerce penetration in Kenya stood at 40.3% by end of 2023, this included online food and groceries shopping and generated approximately USD 103 million in revenue. Kenyans who shopped for food and groceries in 2023 were 9.3%; this is projected to rise to 16.7% by 2027.

Online food and grocery delivery market is an emerging market in Kenya; multi-sided unlike the traditional markets and presents the need for regulators to understand the potential and/or existing competition issues as well as consumer protection concerns therein. To this extent, the Authority conducted a study in the Kenyan Online Food and Groceries market. The study employed mixed research methods and used both primary and secondary data. Purposive sampling technique was adopted and data was collected from consumers and digital platforms users in online food and groceries value chain from two cities: Nairobi and Mombasa. Equally, key informant interviews were conducted with key sector regulators, consumer bodies and trade associations.

The study findings indicate that there are no explicit regulations on online platforms in Kenya highlighting the need to comprehensively address the glaring deficiencies in regulation of the digital platforms. The major players in the Kenyan online food and grocery delivery market include: Glovo; Jumia Food; Uber Eats; Bolt Food; and Jumia. However, large retail chains such as Carrefour, Naivas, Quickmart, and Chandarana had their own platforms that operate in their online groceries' delivery business segment. Further, some restaurants had one-sided platforms through which they sold their food. Assessment of market power indicated that retailers did not yield market power over platforms. However, platforms yielded market power over couriers with regard to determination of courier charges, an indication that platforms unilaterally set the charges with no latitude for negotiation with the couriers.

Further, the study finds that platforms collect consumer data including: contact information, personal identity information, transactional information, and device information. This data is often shared with their subsidiaries/affiliates and in some instances with third parties and used to refine personalized recommendations, speed the delivery process, and provide a tailored user experience. Additionally, the use of the platforms' services is pegged to consenting to all data-related terms and conditions and platforms do not present consumers with the choice to accept or decline data-related terms and conditions. The consequence of declining the data-related terms and conditions is the discontinuation / barred access to the platform services.

The study equally found that consumers in online food and groceries market in Kenya were multi-homing due to commoditization, constant promotional efforts by the platforms, minimal switching barriers, and low to no cost of multiple platform on-boards. Consumers of online platforms have access to a wide variety of restaurants and price comparisons for their product requirements. Delivery speed was considered by consumers as the most important factor when choosing their preferred platforms whereas delivery-related complaints were the most reported complaints by consumers. Delivery delays and products not meeting consumer expectations were the most common complaints raised. Reported complaints were handled by the platforms in collaboration with the retailers, e-payment platforms, and couriers depending on the nature of the consumer complaints. Mobile money was the most commonly used payment method by consumers for online payment due to its convenience.

The study recommends that the Competition Authority of Kenya continuously monitors the online food and groceries market for anticompetitive conducts and analyzes the contract terms between the platforms and the users to determine issues of superior bargaining position. Further, it is recommended that the Authority undertakes online shopping focused consumer awareness campaigns and engages the platforms on the identified consumer protection issues including complaints handling and redress mechanisms, data privacy and delayed delivery among others. Additionally, there is a need for collaboration between the Authority and other relevant regulators on how to regulate e-commerce-related consumer concerns, as well as data privacy issues. Finally, advocacy initiatives to be undertaken in order to provide the platforms with a framework for self-regulation including developing and implementing codes of conduct.

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ACRONYMS

AfCFTA	- African Continental Free Trade Area
ACA	- Anti-Counterfeit Authority
AI	- Artificial Intelligence
CA	- Communications Authority of Kenya
CAK	- Competition Authority of Kenya
CCTV	- Closed Circuit Television
CBK	- Central Bank of Kenya
DPA	- Data Protection Act, 2019
DTS	- Digital Transformation Strategy for Africa
EEMEA	- Eastern Europe, the Middle East, and Africa
EU	- European Union
ICT	- Information and Communication Technology
IMEI	- International Mobile Equipment Identity
IMSI	- International Mobile Subscriber Identity
IoT	- Internet of Things
KEBS	- Kenya Bureau of Standards
KICA	- The Kenya Information and Communications Act, 1998
KIIs	- Key Informant Interviews
MFN	- Most-Favoured-Nation
OECD	- Organisation for Economic Co-operation and Development
ODPC	- Office of the Data Protection Commissioner
PIN	- Personal Identifier Number
PSPs	- Payment Services Providers
SPSS	- Statistical Package for Social Science
SSNIP	- Small but Significant Non-Transitory Increase in Price

GLOSSARY OF TERMS

Term	Meaning as used in this Report
Artificial Intelligence (AI)	The replication of human intelligence processes by machines, especially computer systems
Cloud computing	The delivery of different services through the Internet, including data storage, servers, databases, networking, and software.
Multi-sided platforms	E-commerce platforms that provide intermediation services by enabling interactions and transactions among users of two or more participating sides (e.g. consumers and retailers)
Data feedback loops	Combination of user data which involves a firm gathering customer data and feeding that data into machine learning algorithms to improve its product or service, thereby attracting more customers, and generating even more customer data.
E-Commerce	The buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet
Network Effects	A business principle that illustrates that as the user base of a product or service grows, the value and utility increase for current and future users.
Digital Platforms	A digital platform is the software and technology that support a company's operations and customer engagement.
Digital Marketplaces	Online stores where consumers can go to find and purchase products and services. They allow buyers to easily find and sellers to easily promote products; they facilitate e-Commerce such as online ordering and payment and they create a framework for the legal conduct of transactions
Internet-of-Things	Network of devices that are embedded with sensors, software, and other technologies to connect and exchange data with other devices and systems over the internet.
Switching Costs	Financial or non-financial costs incurred by a platform user when they switch from one platform to another.
Digital Economy	The economic activities that emerge from connecting individuals, businesses, devices, data, and operations through digital technology. It is characterized by network effects, rapid development of economies of scale, first-mover advantages, and winner-takes-all dynamics
Horizontal Integration	Horizontal integration is an expansion strategy that involves the acquisition of another company in the same business line.
Vertical Integration	Vertical integration is an expansion strategy where a company takes control over one or more stages in the production or distribution of its products
Gatekeeper	Large online platforms that provide an important gateway between business users and consumers, whose position can grant them the power to create a bottleneck in the digital economy
Payment Gateway	The virtual representation of a point-of-sale terminal.

Term	Meaning as used in this Report
Superior Bargaining Position	Business operators have the power and ability to control, direct, define, or determine the conditions of business operations with other business operators that the other business operators must accept by implication.
Market Power	A company's relative ability to manipulate the price of an item in the marketplace by manipulating the level of supply, demand, or both.
Authentication information	Bank verification number, Biometric, Fingerprints, Password, Personal Identifier Number (PIN), Photo and Signature
Contact Information	Account information, Address, Contact information, Delivery address, Email address, Mobile number portability records, Phone number, postal address
Cookies Information	Ad data, Browsing history, Clickstream, Cookies, Cooking preferences, Non-essential Cookies out option, Pages you accessed, Personal interest, Search, Standard weblog data, Statistics on page views, Subscriber identification module, Technical information, Technical Usage Data, Time and dates of upcoming flights, Traffic to and from the sites, Use of website and mobile app, and Views
Demographic Information	Age, Date of Birth, Demographic information, Ethnicity, Family details, Gender, Nationality, Occupation, Political views, Profiling information (Education, bank account status, income bracket, etc, Race/Tribe, Religion
Device Information	Browser information, Computer, Computer and connection information, Device information, Downloads, Installed applications, International mobile equipment identity (IMEI) International mobile subscriber identity (IMSI), IP address, MAC address, Mobile network information, Online identifier address, Operating system, Phone device, Referral URL, SMSs, Type of device and Unique identifier associated with your devices
Location information	GEO location and Location data
Personal Identity Information	Applications including job applications, CCTV footage, Criminal records, Health ID/Passport No, Identity data, Medical Information, Name, Trade union memberships
Social media information	Social media posts, Social media profile photo, and other social media profile information, Social media username or ID
Transactional Information	Amount paid for goods and services, Bank details, Billing details, Credit/Debit card information, Financial data, Food preferences, Interaction with the platform, Payment method, Payment transaction information, Personal preferences, Posts on platforms, Preferences for particular products and services, Purchases, Records of discussions, Swift code, Transactions and activities



1.0 INTRODUCTION

1.1 Background

Online platforms refer to services available on the internet including marketplaces, social media, search engines, creative content outlets, app stores, communication services, payment systems, and the gig economy among other collaborative services. In this report online platforms have been used to refer to digital services that smoothen interfaces among two or more distinct but interdependent categories of users be it firms or individuals whose transactions and interactions are through the services using the internet¹.

The world continues to witness rapid growth in the information and communication technology (ICT) sector, resulting in major transformations in social and economic activities. The advancements in the ICT sector have helped to reduce the cost of communication, increased market information, and facilitated ease of doing business. This has compelled governments and businesses across the globe to digitize their operations and processes.

Digitization refers to the transformation of the economy, achieved through an interaction of digital technologies such as cloud computing, Artificial Intelligence (AI), Internet of Things (IoT), etc. supported by an enabling environment comprising 'digital skills'; 'policies and regulations that encourage the development of ICT, innovation, digital business models, etc.; and 'digital accelerators' such as public-private partnerships and behavioral and cultural aspects of the economy. Digital connectivity has increased rapidly in recent years and as of April 2023, internet users globally were 5.18 billion which amounted to 64.6% of the global population (Petrosyan, 2023).

The development of digital markets has given rise to different business models, as well as innovative value chains in new and traditional business areas. Technological advances and related innovations have accelerated the shift to the digital space; reliance on digital payments and mobile money transactions, and altered consumer behaviors and experiences. In this context, platform-based business models which include a combination of digital resources that facilitate connections between peripheral producers and customers have transformed the business world.

Digital platforms are transformative data-facilitated business models that are instrumental in reducing transaction costs smoothening market failures, and connecting multi-sided markets of producers and consumers of various goods and services. They bring together buyers and sellers, facilitate business transactions, offer instant information distribution, and spur innovative products and services. This has resulted in the development of innovative markets and the restructuring of existing markets in the financial, hospitality, retailing, and transport sectors. The value of digital platforms is anchored on the robust network effects they produce, economies of scale and scope, and speedy growth and diffusion to different applications they permit. These features have led to market intricacies attracting the interest of competition agencies and policymakers (Mancini, 2021).

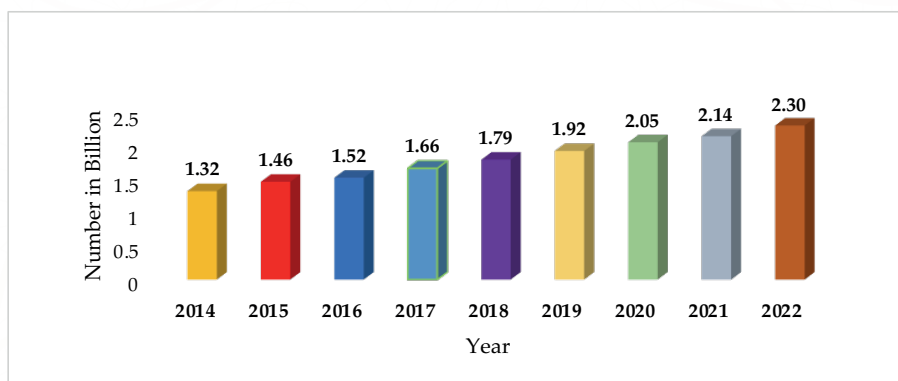
Online platforms are multi-sided in nature and present a challenge to regulators, unlike offline platforms in which identification of anti-competitive conduct and consumer protection violations is to some extent straightforward. The platforms can easily lead to concentration and tip over a player to monopoly, which may not be easy to reverse. Further, platforms are intermediaries, discharged from legal responsibility for the underlying goods and services, including counterfeited goods, unsafe goods copyright content, false information, and misrepresentation of information or illegal and damaging service.

The world is not only witnessing increases in the uptake of as well as a rise in the regularity of online shopping. Globally, an estimated 2.14 billion people purchase products online, representing 27% of the world population. Projections indicate that the value of global e-commerce at retail shops will be USD 9.4 trillion by 2026 from USD 5.2 trillion reported in 2021².

1 ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT. (2019). Introduction to Online Platforms and Their Role in the Digital Transformation. ORGANIZATION FOR ECONOMIC

2 <https://www.statista.com/statistics/1095969/retail-sales-by-channel-worldwide/>

Figure 1:1 Global Online Shoppers, 2014-2022



Source: Statista

According to Shopify, the global e-commerce market was expected to total 6.3 Trillion in 2023³. As illustrated in Figure 1.2 below, countries with the highest online shopping numbers include China, the United States, Japan, the United Kingdom, France and Germany, with more than 60% of the global e-commerce spending accounted for by these six countries (Freedman, 2023)⁴. China is the leading country in online shopping and its platform delivery industry was expected to generate a revenue of USD 153,200 million in 2023. The high proportion of Chinese shopping online is attributable to the country’s high mobile penetration of 48.5%. Other countries in the global arena with high levels of online shopping include the United States of America, where an estimated 70% of the population shops online. The country’s e-commerce industry accounts for 18% of the total global e-commerce (Fokina, 2024)⁵.

Figure 1:2 Global online shopping spending by countries in 2023

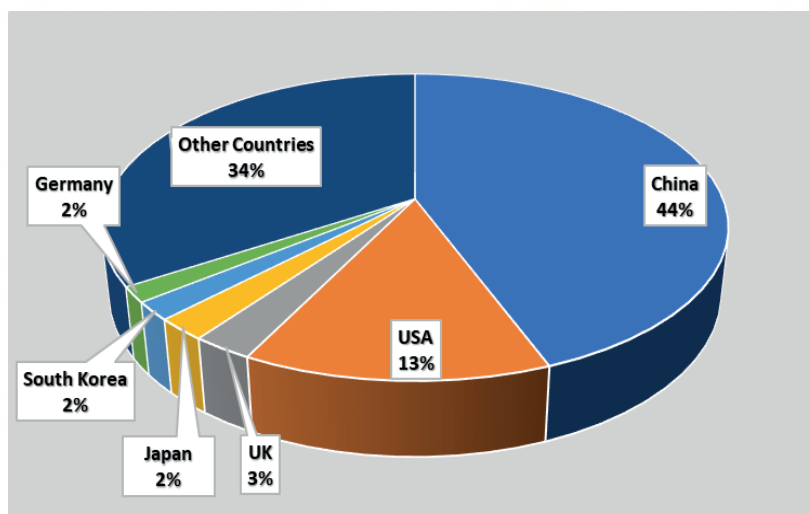


Figure 1.2 represents the global spending in online retail sales and as indicated, China leads with 44% of the total global spending in 2023. The USA is the second country with 13% while the UK is third with 3% of the global online retail spending. The total spending for the six countries accounts for 66% of the total global spending, with the rest of the world accounting for the remaining 34% (Figure 1.2).

Online shopping in Africa is equally witnessing an upward trend. As of 2022, 31.6% of Africans were estimated to be shopping online and this is projected to increase to 39.5% by 2025; accounting for 519.4 million Africans. Additionally, the average revenue per user reached USD 113.25 million by the end of 2023. The three countries that are ahead in e-commerce uptake in Africa include Kenya, Nigeria, and South Africa. Other upcoming e-commerce markets in the continent are Egypt and Morocco⁶.

3 <https://www.shopify.com/enterprise/global-e-commerce-statistics#:~:text=How%20big%20is%20the%20global,21.2%25%20of%20total%20retail%20sales.>

4 <https://www.business.com/articles/10-of-the-largest-e-commerce-markets-in-the-world-b/>

5 <https://www.tidio.com/blog/online-shopping-statistics/#is-there-an-increase-in-online-shopping>

6 <https://medium.com/pesakit/the-state-of-e-commerce-in-africa->

The digital economy is an essential substrate for inclusive, resilient, and substantial growth of the African continent and is critical to the implementation of the African Continental Free Trade Area (AfCFTA) and the Digital Transformation Strategy for Africa (DTS). As such, digitization in Africa has been recognized as a driver to the attainment of Agenda 2063 due to its potential to promote cross-border trade and cooperation.

Despite the presence of challenges like the digital divide between African countries and affordability, digitization initiatives directed toward investing in digital infrastructure to improve accessibility and quality of connectivity, are paying off in transforming Africa’s digital landscape. According to the World Bank, more than 300 digital platforms headquartered in Africa were active across major Sub-Saharan African economies as of 2020 (The World Bank , 2021)⁷.

1.2 The Growth of Online Food and Groceries Markets in Kenya

In the pre-COVID-19 pandemic era, in-person shopping and eating out had become so normal. Consumers preferred to have meals at the restaurants which came with a holistic experience. This was not only about the ambiance but also the need to network. Similarly, consumers shopped for groceries at open-air markets and mass grocery retail shops. Online food and grocery shopping comprised a very insignificant segment of the market set aside for first movers in urban areas. Additionally, mass grocery retailers and restaurants, who are on the supply horizon were equally skeptical about online food and grocery shopping, this was because they had a preference for walk-in customers (Ngoro, Digital transformation in the food & grocery delivery industry in Kenya, 2022). However, with the onset of the pandemic, restrictions were imposed on movements and lockdowns enforced, and retailers re-examined their business models and the value propositions concerning the need to continue serving their customers. The restaurant and grocery in-store business strategy had been challenged and had to make a swift shift in their sales model to remain in business remain in business (Ngoro, Digital transformation in the food & grocery delivery industry in Kenya, 2022)⁸.

Consequently, in 2020 online food and grocery market in Kenya experienced an upsurge as consumers abandoned their traditional shopping behaviors. Consumers could not purchase ‘ready-to-eat food’ and had to seek other options and identified an array of grocery retailers who offered online deliveries. The paradigm shifts in shopping incentivized food and grocery retailers including restaurants and supermarkets to partner with delivery platforms, payment and courier service providers with the object of serving the home and office delivery market segments.

Other factors that account for the increased adoption of online food and grocery shopping from the consumer perspective include the convenience and safety that came with the model. Consumers are currently able to make orders comfortably from their homes while concurrently being able to compare prices, product assortments, and individualized product offerings and advertisements. Restaurants and retail shops have since become more innovative and are offering a wider array of online food and grocery solutions including same-day delivery, timed delivery purchases, and buy and collect, which have enhanced consumer choices.

As of 2020, e-commerce penetration in Kenya including online food and groceries shopping was estimated to be at 40.3% and is projected to grow to 53.6% by 2025⁹. Additionally, the platform delivery market in the country was estimated to generate a revenue of USD 103 million by the end of 2023. The revenue generated from the sector is expected to grow annually at a rate of 19.15% to reach a market volume of USD 208.2 million by 2027. Additionally, it was estimated that 9.3% of Kenyans are shopping for food and groceries online as of 2023; this is projected to rise to 16.7% by 2027, an equivalent of 10.5 million consumers. The rapid growth in online food and grocery shopping in Kenya is attributable to the increased need for convenience and proficient delivery services¹⁰.

7 <https://www.worldbank.org/en/publication/wdr2021>

8 <https://fieconsult.com/digital-transformation-in-the-food-grocery-delivery-industry-in-kenya/>

9 <https://www.kasiinsight.com/post/online-shopping-addictions-on-the-road-to-being-a-problem-in-kenya#:~:text=Online%20shopping%20is%20growing%20in%20Kenya%20and%20Jumia%20is%20leading%20the%20way,-Updated%3A%20Sep%202014&text=E%2DCommerce%20is%20a%20rising,set%20to%20grow%20to%2053.6%25>

10 <https://www.statista.com/outlook/dmo/online-food-delivery/meal-delivery/platform-delivery/kenya>

The online shopping market is expected to grow continuously over the coming years. To this extent, businesses and industry regulation including competition law and policy enforcers, need to be adequately prepared and have an in-depth understanding of not only potential competition concerns in these markets but also consumer protection issues that may arise in online shopping platforms including, online food and groceries markets which are multi-sided.

The recent advances in technology come with the regulatory responsibility that underpins digital platforms and their related interconnected digital markets ecosystem. The key question is whether some of the existing policies and regulation practices enable the growth of the digital economy. Despite Kenya not having explicit regulation on e-commerce, there have been several legislative changes in the recent past including the Data Protection Act, of 2019 and the Copyright Amendment Act, of 2019 among others, which are likely to facilitate e-commerce.

Presently, there exists huge information and regulatory gaps on how digital platforms operate along the entire value chain (platforms, businesses, and consumers). For instance, a question arises as to what extent a combination of high market shares and network effects typical of the digital platforms create economic barriers to entry; which protect a digital platform. To enable the Authority to design reliable policies on this subsector, there is a need to collect primary data to better understand competition in the digital platform markets and their associated consumer protection concerns.

1.3 Emerging Competition and Consumer Protection Issues in Online Platforms

Evidence indicates that digital platforms provide efficiencies and opportunities for innovation while disrupting markets by challenging existing policy frameworks. However, questions arise as to whether existing regulatory approaches and instruments are adequate to promote and safeguard competition and protect consumer welfare and public interests in digital marketplaces.

Table 1:1 Competition Concerns and Consumer Protection Issues in Online Food and Groceries Markets

Key issue	Discussion
<p>Network Effects</p>	<p>Online platform markets are characterized by accelerated network effects, which are likely to fuel exponential growth, increase switching costs and barriers to entry, and result in monopolistic effects. Online platforms that are successful in harnessing these network effects are likely to be the main platform in a given industry becoming the key gateways via which markets and information are accessed. The consequence is a reduction in choice for consumers; an implication that they cannot be avoidable to other competitors as trading partners. This can reduce choice for users and mean that they become an almost unavoidable trading partner for businesses. Such platforms are likely to possess a significant degree of market power.</p> <p>Certain features of the digital economy create challenges, especially with horizontal and vertical mergers. Horizontal integration may present concerns of network effects, which may serve as barriers to entry or expansion, and are capable of conferring a significant degree of market power to the merged entity and aggravating the anticompetitive effects from the loss of competition between the merging parties.</p> <p>Vertical integration may also present concerns about network effects which have the potential to represent a barrier to entry or expansion. It could also increase the likelihood of foreclosure, worsening the anticompetitive effects of the merged entity's exclusionary strategies.</p>
<p>Entrenched Market Power</p>	<p>This could occur in the most prosperous online platforms' market power becoming entrenched. Rapid development and business models of early entrants into markets could result in monopolistic conditions, this has the potential to create a characteristic problem, in which an individual marketplace becomes the principal market stall, consequently dampening competition in such markets as well as acting as gatekeepers with regards to access to consumers by competitors.</p>

Key issue	Discussion
<p>Data-Driven Market Power</p>	<p>Assessment of market power in digital platforms requires analyzing different criteria including access to and control of data which confers market power. Firms, therefore, “<i>compete for the market instead of competing in the market, leading to ‘winner-takes-all’ outcomes.</i></p> <p>Digital platforms’ market power is further entrenched through vertical integration which improves their capacities to collect more data and increase their competitiveness. This confers on them the role of gatekeepers of online stores and application markets in which they are both owners and users.</p>
<p>Market Segmentation</p>	<p>Issues regarding potential market segmentation are notable potential concerns raised by several competition agencies in advanced economies, which have examined the issue of competition within the e-commerce sector.</p>
<p>The Role of Data on Online Retail Markets</p>	<p>The competitive strength of online businesses is increasingly being determined by the amount and the quality of the data they hold. Data plays a critical role in the competitive process between online platforms including search engines, social networks, and e-commerce platforms. However, data is never traded as a stand-alone product, therefore, no supply and demand exist and no relevant product market for data can be defined under current competition law standards.</p>
<p>Most Favoured Nation</p>	<p>This is a contractual restriction demanding that a given retailer will not sell at a lower price through a platform other than the one with which it has the platform Most Favoured Nation arrangement.</p> <p>This practice has been identified in other jurisdictions in which online shopping has been adopted in larger magnitude. The practice has equally been analyzed under EU Competition law as well as debated extensively in OECD concerning competition in online shopping and e-commerce.</p>
<p>Data Security and Payments Issues</p>	<p>E-commerce thrives on the accumulation of consumer data which is used for online marketing purposes in the digital economy. The Data Protection Act, of 2019 provides regulation for the collecting, processing, storage, and use of personal data collected in the digital environment. However, this provision has not stopped digital entities from amassing large volumes of consumer data and using it for online marketing.</p>
<p>Information Asymmetry</p>	<p>Consumer’s access to information is vital. Online traders may intentionally fail to disclose or may only give partial information regarding their products thereby hindering consumers from making informed decisions regarding their online transactions.</p> <p>Article 46 of the Constitution of Kenya, 2010 provides that consumers have the right to the information necessary for them to gain full benefit from goods and services. Further, the Sale of Goods Act 2009, provides that consumers should be accorded a reasonable opportunity to inspect products before purchase. This does not, however, apply to the online shopping model, which complicates the process of redress in cases of defective products or any disputes.</p>

Key issue	Discussion
Guarantee and Warranty	<p>Consumers are more confident purchasing items knowing that if an issue comes up, it will be replaced or fixed. In the Kenyan context, there are complaints by consumers against traders who fail to honor warranties, especially on online purchases.</p> <p>Section 55 (b) of the Competition Act prohibits businesses from making misleading representations concerning the existence of, exclusion, or effect of any condition, warranty, guarantee, right, or remedy regarding their products. This may, however, apply only to businesses within Kenya and may not necessarily compel businesses from other jurisdictions to honor their warranties.</p>
Managing and Resolving Disputes	<p>Effective protection of consumer rights entails the implementation of fair, effective, and transparent dispute resolution systems. Considering the global nature of digital markets and the different jurisdictions of the parties, businesses must develop alternative out-of-court dispute resolution mechanisms to enable consumers and businesses to resolve disputes faster, easier, and less expensively.</p>
Quality Assurance Concerns	<p>Uncertainty about quality assurance is one factor that deters consumers from embracing the Internet for food shopping, majorly for freshness of food and other consumables. This is a major consumer protection issue in the online food retail industry.</p> <p>Sometimes the product delivered may fail to meet consumer expectations and standards, as opposed to the in-person purchases. The extent to which such conducts exist in Kenya remains a grey area that begs consumer consultation.</p>
High Delivery Fees and Limited Delivery Options	<p>The delivery fees may be high, especially in areas where the digital market is comparatively less developed. Whereas home delivery tends to be convenient for shoppers because it saves travel time to the retail outlets, any concerns concerning delivery time options and 'hidden transactional charges' are largely unclear.</p> <p>The cost of delivery is always indicated before one completes the order, suggesting online shoppers are offered adequate transparency and disclosure during transactions.</p>
Return Policy	<p>Online shoppers (e.g. online food retailers) may not have a return policy that can be explored by consumers in instances where they are not satisfied with the product. Consumers are, therefore, compelled to accept products once they have been delivered, and this challenge exists too in cross-border digital markets.</p>
Data Protection	<p>Online transactions (payments) are made using digital platforms including mobile money, internet banking, and visa cards. During such payments, consumer data is shared with the sellers/retailers.</p> <p>Consumers tend to have limited control over how their data is used by the platforms or sellers. Data collected during such payments must be purpose-oriented and transparent, i.e. the data collected through the platform must only be for specified, transparent, and legitimate purposes.</p>
Excessive Pricing	<p>Ordering from online platforms involves several charges including delivery charges, service charges, etc. These charges add on to the final prices of online purchases and may inflate the prices compared to physical purchases.</p>

Source: Authority's compilation

1.4 Rationale for the Market Study

Kenya has been experiencing increased usage of online food and grocery delivery platforms post-COVID-19 period. More consumers are making it the new normal to buy food and groceries online. Equally, more platforms are registering for online food and grocery delivery. To make the value chain complete more retailers (restaurants and supermarkets) are getting their products listed on online platforms to meet the demand of this segment of consumers.

The logistics of how the physical products are delivered to consumers has further necessitated couriers to be registered by platforms. The appreciation that the online food and grocery delivery market is a new market; multi-sided unlike the traditional market presents the need for the Authority to understand the potential and or existing competition issues as well as consumer protection concerns that may come with the same. Moreover, the increased number of consumer complaints being witnessed in online food and grocery delivery markets demands the conduct of a market study to unravel consumer protection issues in the Kenyan online food and grocery delivery market. Key factors that may affect competition in these markets comprise the ease with which consumers can switch between platforms, market power and conduct, entry barriers for retailers, platforms, and couriers as well the difficulty of start-ups to contest markets with incumbents.

Consequently, the Authority has seen a need for an evidence-based understanding of the online food and grocery delivery market from not only competition dynamics but also a consumer protection perspective hence the market study in the sector.

1.5 Objectives of the Study

The main objective of the study is to uncover how digital platforms (e-commerce) work in practice and suggest regulatory and policy options for competition and consumer protection enforcement. The market study specifically seeks to:

- a) Identify players and services involved in the digital platforms (e-commerce) business model in Kenya and examine the relationships between the platforms and the users with a focus on the competition parameters (market power and conduct) and concerns amongst the players;
- b) Assess the role of data in operating multi-sided (e-commerce) platforms, customer acquisition, retention as well as data portability; and e-payment services and their importance concerning the digital markets (e-commerce) business model;
- c) Determine the consumer protection concerns to provide redress mechanisms available for consumers when shopping through online marketplaces; and
- d) Assess the viability of the existing regulatory framework and its applicability in the digital markets, to guide better policymaking.
- e)

1.6 Scope of the Study

The study entailed both primary and secondary research methodologies and covered targeted respondents in two cities in Kenya; Nairobi and Mombasa. It covered digital platforms (e-commerce) that have multi-sided market characteristics operate in multiple market segments, and are involved in the sale of food and groceries. The study is limited to users of the digital platforms including couriers, retailers (restaurants and supermarkets), consumers, and payment platforms in the online food and grocery delivery market.

The rest of the report is organized as follows: section two presents the research methodology employed in the study; section three presents an examination of online food and grocery delivery platforms regulatory framework in Kenya. Section four analyses the online food and grocery delivery platforms in Kenya; section five examines the role of data and section six details consumer protection in online food and grocery platforms. Finally, section seven presents the summary of findings and recommendations from the study.



2.0 RESEARCH METHODOLOGY

This chapter presents the methodology adopted in the study. This includes the target respondents, data collection tools and techniques, data entry, data cleaning, and data analysis and presentation methods.

The study adopted concurrent mixed research methods which entailed both quantitative and qualitative methods. This is justified by the fact that both quantitative and qualitative data were collected as either primary or secondary data.

2.1 Target Respondents

The study used purposive sampling and the target respondents were identified during the preliminary phase. The market study selected the online food and grocery platforms and the users of the platforms. The latter include the retailers who sell through the platforms, the e-payment services, courier services, and consumers. The study also interviewed the relevant regulatory agencies, consumer bodies, and trade associations.

2.2 Data Collection Techniques

To ensure that the objectives were answered appropriately, the study employed market scoping and mapping. Primary data included information collected from a total of 471 respondents using questionnaires through face-to-face interviews and key informant interviews (KIIs) where target respondents were drawn from the following:

Table 2:1 Data Collection Techniques

Target Respondents	Data Collection Techniques
Consumers	Questionnaires were administered to the online food and grocery consumers in Nairobi and Mombasa through face-to-face interviews.
Courier services	There were two separate questionnaires, for courier companies and individual couriers/riders. These were administered through face-to-face interviews in Nairobi and Mombasa.
Online groceries and food platforms	Questionnaires were administered through face-to-face interviews conducted with the platforms.
Retailers	Retailers included restaurants and supermarkets that sell through the platforms. Data collection was done through face-to-face interviews in Nairobi and Mombasa.
Regulatory agencies	Key Informant Interviews (KIIs) were conducted with the relevant regulatory agencies through face-to-face and virtual meetings. The individuals interviewed were key informants at directorate levels in the agencies and were well-versed and experienced in industry regulations.
E-payment platforms	Questionnaires were administered through face-to-face interviews conducted with payment service providers who support online food and grocery platforms as payment gateways.
Consumer bodies	KIIs were conducted with consumer bodies through virtual meetings.
Trade Association	KIIs were conducted with trade associations through virtual meetings.

Secondary data was collected by reviewing terms and conditions, data privacy policies, consumer complaint handling and redress mechanisms in place, various Kenya economic surveys, industry reports, and legislations.

2.3 Data Entry, Analysis and Presentation

Data entry and data analysis were done using Statistical Package for Social Science (SPSS) version 26 and MS Excel. Descriptive data analysis was done. This entailed frequencies, percentages, and cross-tabulations, presented using tables, graphs, and charts with appropriate inferences provided.



3.0 REGULATORY FRAMEWORK FOR THE ONLINE FOOD AND GROCERIES DELIVERY PLATFORMS

This section explores the legal and regulatory frameworks governing online food and grocery delivery platforms. It identifies the existing laws, regulations, and guidelines and highlights regulatory gaps, if any.

3.1 Existing Regulatory Framework

Kenya has a robust consumer protection law that is provided for in Article 46 of the Constitution of Kenya, 2010 which provides that consumers have the right to goods and services of reasonable quality; the information necessary for them to gain full benefit from goods and services; the protection of their health, safety, and economic interests; and compensation for loss or injury arising from defects in goods or services. The Constitution of Kenya, 2010 further provides that consumers have a right to fair, honest, and decent advertising which applies to goods and services offered by public entities or private persons. On this basis, Parliament has enacted two laws that provide for consumer protection across all sectors of the economy; the Competition Act No. 12 of 2010 and the Consumer Protection Act No. 46 of 2012. Further, consumer protection provisions are encompassed in various sectoral laws (e.g. The Prudential Guidelines 2013 and National Payment Systems Regulations 2014 under the Central Bank of Kenya Act; the Consumer Protection Regulations, 2010 under the Kenya Information and Communications Act 1998, Trade Descriptions Act 2012 among others).

The Competition Act No.12 of 2010 (the Act) provides for the protection of consumers from false and misleading representations in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods and services. The Act further provides for the protection of consumers from conduct that is in all circumstances unconscionable in trade in connection with the supply or possible supply of goods or services. Similarly, the Consumer Protection Act aims at promoting and advancing the social and economic welfare of consumers in Kenya and provides for a consumer market that is fair, accessible, efficient, sustainable, and responsible for the benefit of consumers generally. It also provides for the protection of consumers from all forms and means of unconscionable, unfair, unreasonable, unjust, or otherwise improper trade practices including deceptive, misleading, unfair, or fraudulent conduct and thus promoting fair and ethical business practices.

The Data Protection Act, 2019 (DPA), provides for the regulation of the processing of personal data entered in a record, by or for a data controller or processor through automated or non-automated means and protection of the privacy of individuals in Kenya. The DPA requires all data controllers/processors to ensure that personal data is processed according to the right to privacy of the data subject, processed lawfully, fairly, and in a transparent manner about any data subject, and collected for explicit, specified, and legitimate purposes, not further processed in a manner incompatible with those purposes and not transferred outside Kenya unless there is proof of adequate data protection safeguards or consent from the data subject among others.

The Kenya Information and Communications Act, 1998 (KICA), provides the framework for regulating the communication sector which includes broadcasting, multimedia, telecommunications, and postal services. The Communications Authority of Kenya (CA) which enforces the KICA is also mandated to facilitate the development of electronic commerce in Kenya. However, online trade platforms are not regulated under the KICA¹¹ (Communications Authority of Kenya, 2023) as they do not constitute electronic services as envisaged under the KICA and are therefore not licensable. This means that any provisions under KICA do not apply to online platforms as they do not constitute CA's licensees.

The Anti-Counterfeit Act, of 2008 explains counterfeiting as all forms of unlawful imitation of manufactured, produced, packaged, and labeled copyright-protected goods or acting without the authority of the owner of intellectual property rights existing in Kenya or elsewhere in respect of protected goods. Counterfeiting affects both the manufacturers whose goods are counterfeited and the consumers who either intentionally or unknowingly purchase the counterfeited goods.

11 Communications Authority of Kenya. (2023, May 2). The Development of E-commerce in Kenya. Retrieved from Communications Authority of Kenya: <https://www.ca.go.ke/index.php/e-commerce-development#:~:text=In%20Kenya%2C%20online%20trade%20platforms,and%20are%20therefore%20not%20licensable>

The Kenya Standards Act aims at promoting the standardization of the specification of commodities in Kenya, and to provide for the standardization of commodities and codes of practice. It also provides for the formation of the Kenya Bureau of Standards (KEBS) which is the custodian and the regulatory agency for Standards in Kenya.

The National Payment Systems Regulations 2014, govern the operation of payment systems in Kenya. The regulations aim to provide for the authorization and oversight of payment service providers, designation of payment systems, designation of payment instruments, and Anti- anti-money laundering measures. It provides a legal framework for the oversight and supervision of payment systems, payment service providers, and electronic money issuers in Kenya.

The prudential guidelines under the Central Bank of Kenya Act ensure the stability and reliability of financial institutions in the country. It aims to manage risks and maintain the integrity of the financial sector. It safeguards the interest and financial well-being of consumers in Kenya by promoting a stable, transparent, and well-regulated financial sector.

The Trade Descriptions Act, of 2012 provides for the protection of consumers by prohibiting false trade descriptions. it prohibits misdescriptions of goods, services, accommodation, and facilities provided in the course of trade, and false or misleading indications as to the price of goods.

The Public Health Act, No. 12 of 2012 aims for the protection of public health in Kenya and lays down rules relative to, among other things, food hygiene and the protection of foodstuffs, it also establishes and defines functions of health authorities.

In conclusion, the above-cited have no explicit regulations on online platforms and this highlights the need to comprehensively address the glaring deficiencies in regulation of the digital platforms.



4.0 ONLINE FOOD AND GROCERY DELIVERY PLATFORMS IN KENYA

This section presents an analysis of the online food and grocery platforms that operate in Kenya. It identifies players and services involved in the digital platforms (e-commerce) business model in Kenya and examines the relationships between the platforms and the users with a focus on the competition parameters (market power and conduct) and concerns amongst the players.

4.1 Online Food and Groceries Platforms

Several online and grocery platforms operate in Kenya, including; Jumia Foods, Jumia, Glovo, Bolt Foods, Uber Eats, and Take-Eat-Easy Kenya among others. Through these platforms, consumers can order food and groceries and make payments for the same.

4.1.1 Uber Eats

Uber Eats is a global food delivery platform that has operations in over 6000 cities in forty-five countries including Kenya¹². In Kenya, it has operations in Nairobi, Kiambu, Machakos, Nakuru, Kajjado, Mombasa, and Eldoret. Delivery of food is undertaken by Uber-contracted courier riders, while Uber Eats collaborates with restaurants.

4.1.2 Glovo

Glovo is one of the main online platforms/apps that are involved in the delivery of various products including food. It is a pioneering multi-category and leading delivery Platform. It operates in Southern Europe and Eastern Europe, the Middle East, and Africa (EEMEA). The app connects users with restaurants, grocery chains, pharmacies, retail stores, and couriers and includes an "anything" category that allows users to order whatever they want in their city.¹³ Glovo serves various towns and cities in Kenya including Diani, Eldoret, Kikuyu, Kisumu, Kitengela, Mombasa, Nairobi, Nakuru, Ngong, Rongai, Karen, Ruiru, Syokimau, and Thika.

4.1.3 Bolt Food

Bolt Food is an online food ordering and delivery platform. It's involved in the delivery of various products including groceries using cars, scooters, bikes, or on foot. It operates in over eighty (80) cities across nineteen (19) countries as of 2023. The service has more than 6 million registered users globally and features more than 30,000 partner restaurants and chains. In 2021, Bolt Food launched its rapid grocery delivery service, Bolt Market¹⁴. Bolt Food in Kenya is found in various cities and towns including Diani, Eldoret, Embu, Kakamega, Kilifi, Kisumu, Kitale, Kakamega, Karatina, Mombasa, Malindi, Meru, Nairobi, Naivasha, Nakuru, Nanyuki, Nyeri and Thika¹⁵.

Bolt is a mobility company that offers ride-hailing, micro-mobility rental, food and grocery delivery (via the Bolt Food app), and car-sharing services.

4.1.4 Jumia

Jumia is a Pan-African technology company that is built around a marketplace, food delivery, logistics service, and payment service. The logistics service enables the delivery of packages through a network of local partners while the payment services facilitate the payments of online transactions within Jumia's ecosystem. It is headquartered in Berlin, Germany. It has subsidiaries in Egypt, Kenya, Morocco, Nigeria and Ivory Coast. The founders of Jumia include Sacha Poignonnec, Tunde Kehinde, Jeremy Hodara, and Raphael Kofi Afaedor¹⁶.

12 <https://help.uber.com/ubereats/article/when-and-where-is-uber-eats-available->

13 https://glovoapp.com/ke/en/?utm_source=google&utm_medium=cpc&utm_campaign=google_search_brandprotection_newusers_KE_Exact_digitalbudget_english&utm_campaignid=2059513152&utm_adgroupid=80144567270&utm_term=glovo&utm_matchtype=e&utm_device=c&gclid=Cj0KCQjwy4KqBhD0ARIsAEBcT6h0nVtcbEZK_q6wDA6jYn18F_MR3iFKVRQA7R2GLmZxQA5EmdzvyyvUaAo8oEALw_wcB

14 <https://handlextra.pl/artykuly/257774,bolt-food-dostarcza-w-lodzi>

15 <https://bolt.eu/en-ke/cities/>

16 https://www.google.com/search?sca_esv=578070544&rlz=1C1GCEU_en-GBKE1074KE1074&sxsrf=AM9HkKldR1scmMil

Jumia Marketplace (Jumia Marketplace), connects thousands of sellers to millions of consumers, with integrated logistics (Jumia Logistics) and digital payment services (JumiaPay)¹⁷. The Jumia Marketplace offers goods from a large and diverse group of sellers across a wide range of categories including apparel,

smartphones, electronics, homeware, and beauty. It also provides consumers with easy access to several services, such as restaurant food delivery and everyday digital services including airtime recharge, utility bill payment, and transport ticketing.

Jumia Food is a food delivery platform under the Jumia Group. It has about a million customers in thirty (30) African cities with Kenya its biggest market yet. Jumia Food is Africa's largest on-demand Services Company operating in eleven (11) countries across East, West, and North Africa. The company is headquartered in Kenya¹⁸. In Kenya, it operates in Food Delivery in Nairobi, Eldoret, Kiambu, Kisumu, Nakuru, and Machakos¹⁹.

Jumia Logistics facilitates the convenient and reliable delivery of goods. It consists of a large network of leased warehouses, pick-up stations for consumers, drop-off locations for resellers, and more than 700 third-party logistics service providers, whom we integrate and manage through our proprietary technology, data, and process.

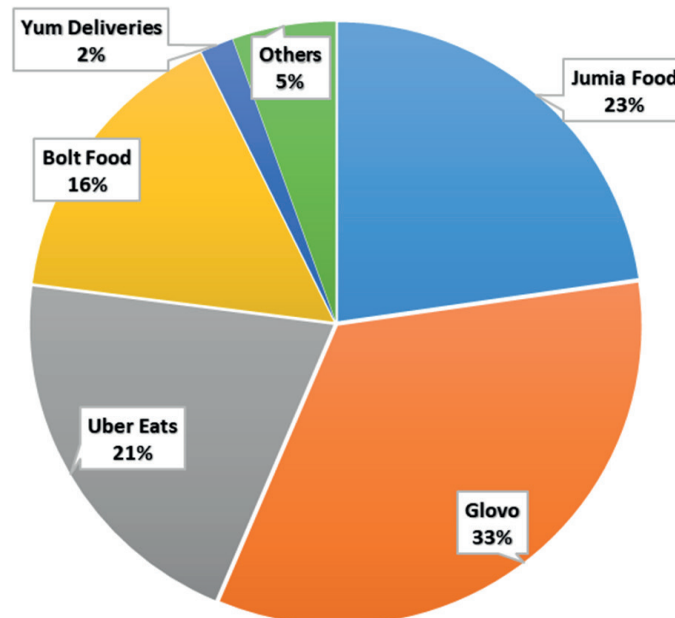
JumiaPay is a payment service designed to facilitate online transactions between sellers and consumers and provide certain participants with access to financial services. It allows consumers to complete online payments, such as airtime recharge or utility payments, and provides sellers with access to attractive financing solutions.

Since Jumia services/platforms are integrated, it may have market power since it aggregates and accesses customer data from the three integrated services and hence can utilize the data to grow its market share.

4.1.5 Online Food and Groceries Preference by Consumers

The sub-section is a presentation on the preference of platforms by consumers. The study sought to understand the use and preference of the various platforms. Figure 4.1 details the analysis of online food platforms.

Figure 4:1 Usage of Online Food Delivery Platforms



17 <https://group.jumia.com/business>

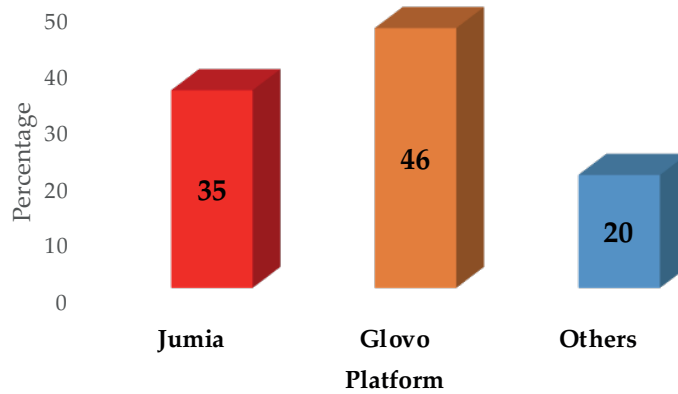
18 https://www.google.com/search?q=Where+is+Jumia+Food+Headquartered%3F&rlz=1C1GCEU_en-GB_KE1074KE1074&oeq=Where+is+Jumia+Food+Headquartered%3F&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAlQI

19 <https://food.jumia.co.ke/>

From Figure 4.1, the Most of the online platform consumers use Glovo with a share of 33%, followed by Jumia Food at 23%. Uber Eats comes third at 21.0%, while Bolt Food and Yum Deliveries recorded 16% and 2% preference levels respectively. Glovo remains the most preferred online food and grocery delivery platform by consumers.

Equally, the study analyzed online grocery delivery platforms, as presented in Figure 4.2.

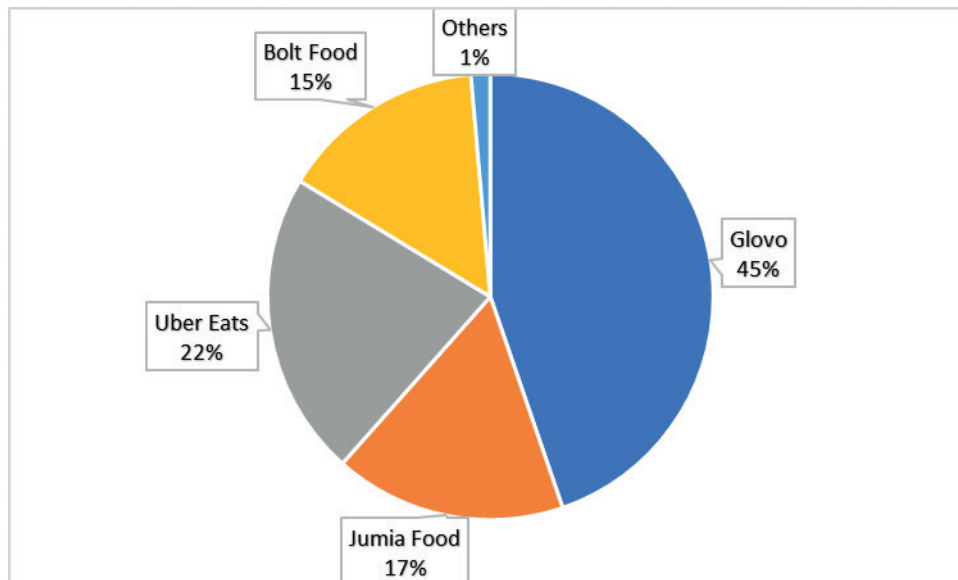
Figure 4:2 Preferred Groceries Delivery Platform



The study, as pe Figure 4.2 above, finds that Glovo was the most preferred grocery delivery platform as indicated by 46% of the consumers. Jumia was preferred by 35% of the consumers while other grocery delivery platforms were preferred by 20% of the consumers.

Additionally, consumers were asked to rank the various online food delivery platforms with 1 being the most preferred. The analysis is presented in Figure 4.3.

Figure 4:3 Most Preferred Platforms by Consumers



As Figure 4.3 shows, 45% of the consumers ranked Glovo as their most preferred platform while 16.8% ranked Jumia Food as their most preferred platform. Equally, 22% of the consumers ranked Uber Eats as their most preferred platform and 14.9% ranked Bolt Food as their most preferred platform. According to Figure 4.3, Glovo is the highest-ranked online food platform by consumers.

4.1.2 Ownership of Platforms

The sub-section details an analysis of the ownership of the online food and grocery platforms that operate in Kenya. Table 4.1. presents ownership details.

Table 4:1 Ownership of Online Food and Groceries Platforms

Platform	Ownership	Year Founded	Head Quarter	Marketsides	Products	Countries of operation
Uber Eats	Uber Portier B.V Public listed in NYSE Parent company- Uber Technologies INC ²⁰	2014	United States, California, San Francisco	Multi-sided	Food and Groceries	29 countries ²¹
Glovo	Glovoapp EMEA, S.L Acquired by Delivery Hero in 2022	2014	Barcelona, Spain	Multi-sided	Food and Groceries	25 countries ²²
Bolt Food	Markus Villig-Founder holds 74% and Enterprise holds 26%	2013	Tallinn-Estonia	Multi-sided	Food and Groceries	51 countries ²³
Jumia Food	MTN Group ²⁴	2012	Nairobi, Kenya	Multi-sided	Food and Groceries	7 Countries ²⁵

20 Main products are service/ride-hailing, food delivery/package delivery/couriers via Uber Eats and Postmates, and freight transport

21 <https://www.ubereats.com/ke/location> (Australia, Belgium, Canada, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Japan, Kenya, Mexico, Netherlands, New Zealand, Panama, Poland, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan (ROC), United Kingdom, United States)

22 <https://about.glovoapp.com/glovo-in-the-world/> (Armenia, Andorra, Ukraine, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Ghana, Italy, Côte d'Ivoire, Kazakhstan, Kenya, Kyrgyzstan, Moldova, Montenegro, Morocco, Nigeria, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Tunisia, Uganda)

23 <https://bolt.eu/en-ke/cities/> (Cameroon, Ghana, Kenya, Mali, Mozambique, Nigeria, South Africa, Tunisia, Uganda, United Republic of Tanzania, Zambia, Iraq, Lebanon, Nepal, Saudi Arabia, Thailand, Austria, Azerbaijan, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, The United Kingdom, Ukraine, Ecuador, El Salvador, Mexico and Paraguay)

24 <https://www.newyorker.com/business/currency/e-commerces-african-challenge-selling-to-people-who-arent-online>

25 <https://food.jumia.com/> (Algeria, Ivory Coast, Kenya, Morocco, Nigeria, Tunisia, and Uganda)

Platform	Ownership	Year Founded	Head Quarter	Marketsides	Products	Countries of operation
Jumia ²⁶	Parent company- Rocket Internet Public listed company NYSE-JMIA Jumia Group	2013	Berlin Germany	Multi-sided	E-Commerce- B2C marketplace, logistics service, and payment service	12 Countries ²⁷

Table 4.1 indicates that there is no common ownership among the online food and grocery platforms. Consequently, the platforms compete favorably but this does not imply there is no potential for coordinated conduct in these markets as the market is highly concentrated as the leading four online platforms control 85% of the market based on customer preference (see figure 4.1 above), which presents a possibility for coordinated conducts. Equally, two leading platforms continue to witness high traffic by consumers and an increase in orders²⁸.

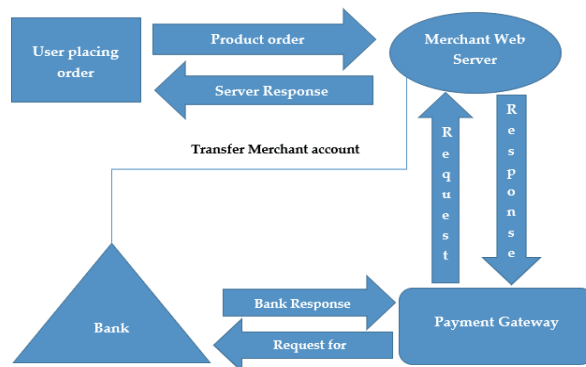
Additionally, from Table 4.1, all but one of the online food and grocery platforms are foreign-owned and have their headquarters located in cities outside Kenya. This implies that in the event of any competition and consumer complaints cases, the communications have to be submitted to the head offices outside the country. This has time cost to consumers and players in the value chain including restaurants and courier service providers.

The study finds that various challenges were registered with having the head offices of the platforms outside Kenya including lengthy redress processes as some of the user complaints have to be handled from the headquarters of the platforms, for instance, (████) Head Office is in (████); unreachable customer service offices, as some consumers complained of having their issues handled by customer service representatives domiciled outside Kenya. These customer service offices are often unreachable and emails may go unanswered for days. To enhance and facilitate the timely resolution of consumer issues as well as value chain issues including competition issues, the platforms should have country offices domiciled in Kenya with powers to resolve these issues promptly.

4.1.7 Online Food and Groceries Delivery Business Models

The study further sought to analyze the business model used by online food and grocery delivery platforms. In this respect, this sub-section examines the business model used in Online Food and grocery delivery platforms (see Figure 4.4).

Figure 4:4 Online Food and Groceries Delivery Business Model



26 Parent company to Afribaba Holdings PTE. Ltd

27 <https://group.jumia.com/about/locations> (Algeria, Egypt, Ghana, Kenya, Ivory Coast, Morocco, Nigeria, Senegal, Tunisia, Uganda, China & Portugal)

28 <https://africabusinesscommunities.com/tech/tech-news/kenya-glovo-recorded-a-160-increase-in-local-food-orders-in-2022/>

The model on the Online Food and grocery delivery platform consists of orders placed by users, who are consumers in this regard, The Merchant web server is on the other side which is connected to the bank. The Merchant Server is equally connected to the Payment Gateway. These interconnections are the enablers of online transactions and represent the online food and groceries platform business model.

4.2 Relationships between the Platforms and the Users

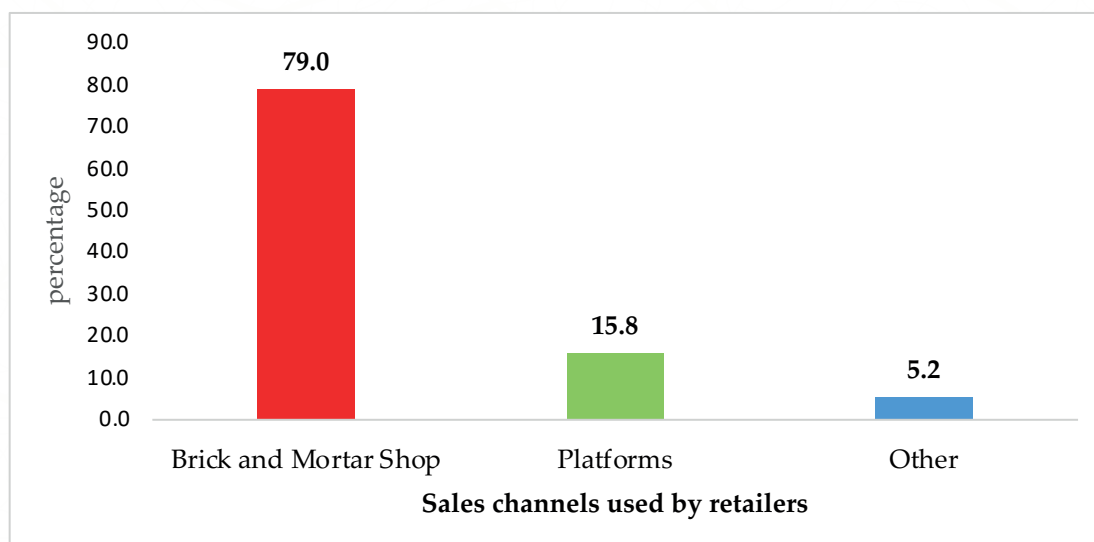
This section entails an examination of the relationships between online Food and Grocery delivery platforms and users while focusing on competition parameters including market power and conduct as well as competition concerns among players.

4.2.1 Market Power and Online Food and Groceries Deliveries

The Competition Act of 2010, defines market power as the ability of a firm to control prices, to exclude competition, or to behave to an appreciable extent, independently of its competitors, customers, or suppliers²⁹. The study examined the existence of market power in online food and grocery delivery platforms and its implication for competition among businesses and consumers. If online platforms have market power, they may control access to online markets and consequently may exercise significant influence concerning how the various market players are remunerated³⁰. In this respect, the study considered issues including exclusivity agreements, contracts, pricing setting on platforms, onboarding, delisting of products on platforms, switching costs to consumers, network effects, switching costs to businesses, and entry barriers.

To understand the extent to which retailers push their products through platforms, the study examined the sales channels used by retailers. Figure 4.5 presents the analysis results.

Figure 4:5 Sales Channels used by retailers in the online food and groceries market



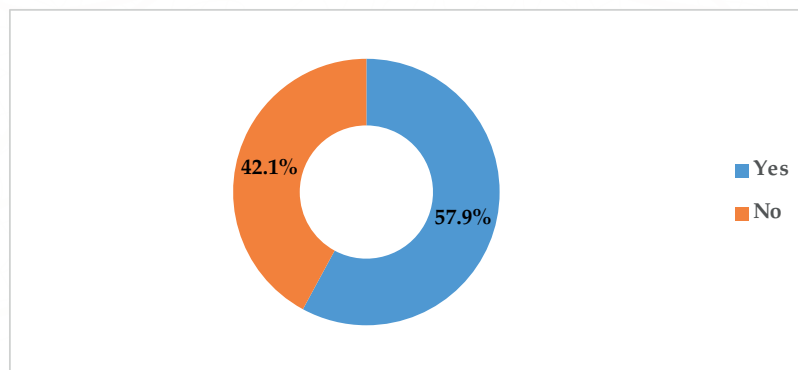
From Figure 4.5, it was found that retailers sell 79% of their products through brick-and-mortar shops 5.2% through other channels (including their websites and own apps) and 15.8% of their products through online platforms. The substantial proportion of products pushed through platforms presents an opportunity to examine potential competition concerns in this sales channel.

Additionally, the retailers were asked whether they have the platforms that they sell through. Figure 4.6 details the analysis output.

29 <https://cak.go.ke/sites/default/files/Competition-Act-No-1-%20of%202010-Amended-as-at-2019.pdf>

30 <https://publications.parliament.uk/pa/ld201516/ldselect/1deucom/129/12907.htm#:~:text=It%20noted%20that%20as%20a,terms%20and%20conditions%2C%20and%20switching%E2%80%94>

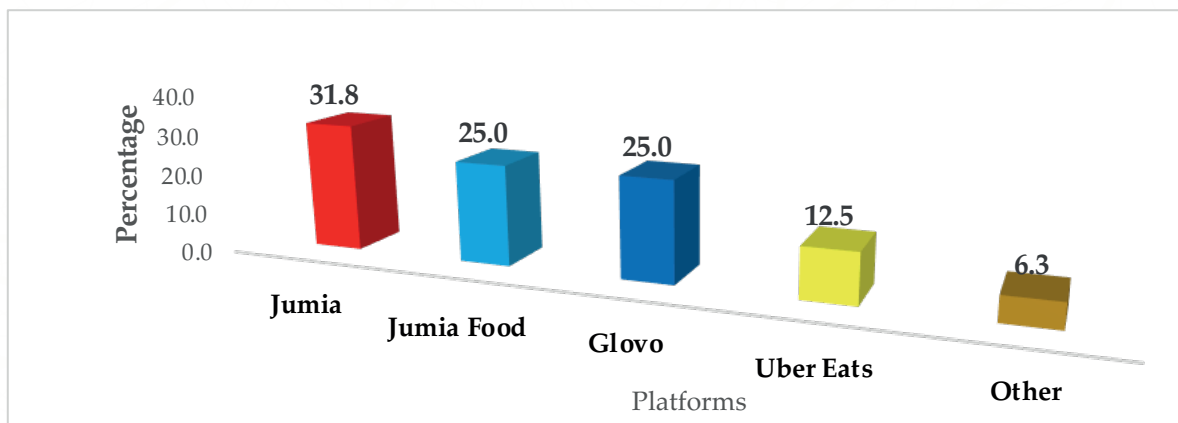
Figure 4:6 Retailers who have Own Platforms



According to Figure 4.6, the study finds that 57.9% of the retailers interviewed had their platforms while 42.1% of the retailers did not have their platforms. Notably, the platforms are exclusive to their products only while they still sell through the other platforms.

The study equally analyzed the platforms that retailers sell through. In this respect, retailers were questioned to state the platform that they sell through. Figure 4.7 details the findings output.

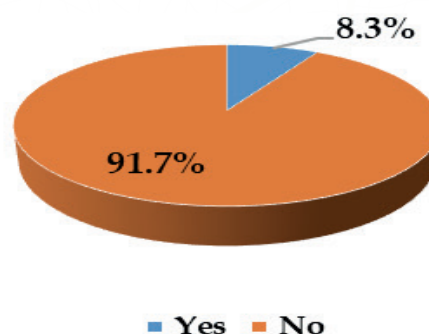
Figure 4:7 Platforms that Retailers Use³¹



The study according to Figure 4.7, indicated that 31.8% of the retailers sell through Jumia, while 25% of the retailers sell through Jumia Food. Additionally, 25% sell through Glovo with 12.5% and 6.3% of the retailers selling their products through Uber Eats and other platforms respectively. Retailers, therefore, had a preference to sell through Jumia Group platforms; Jumia and Jumia Foods where a cumulative 56.8% of retailers sold their products. Jumia Group platforms were the main platforms used by retailers followed by Glovo.

In efforts to understand if there exists restrictions in terms of the number of platforms that retailers can sell through, retailers were asked "Are you restricted on the number of platforms you can sell through". The analysis is detailed in figure 4.8 below.

Figure 4:8 Restricted Number of Platforms



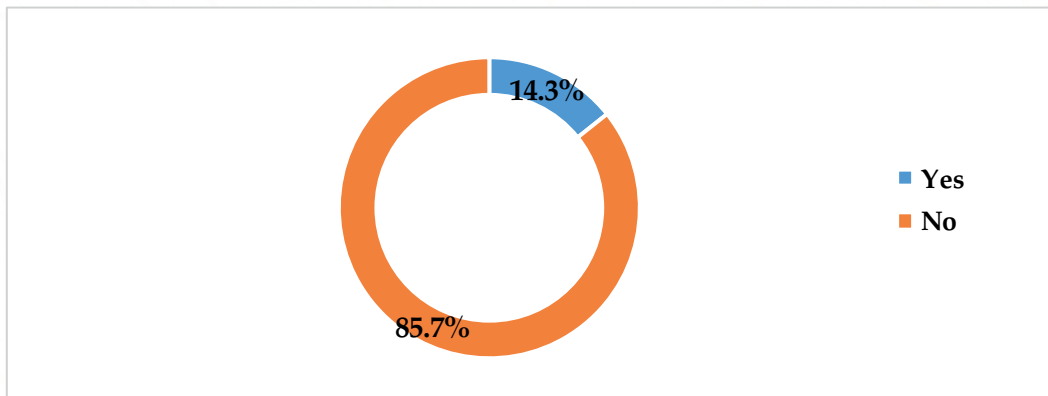
31 Disclaimer: This is dependent on the responsive retailers and thus the statistics may not reflect the position in the market.

From Figure 4.8 above, the study found that retailers are not restricted (91.7%) on the number of platforms they can sell their products through. Only 8.3% of the retailers felt that they were restricted. This indicates that retailers have the freedom to switch from one platform, use multiple platforms, and opt-out from any platform.

The study further asked the retailers whether they were restricted on the number of orders that they could deliver through platforms. All (100%) retailers indicated that they are not restricted on the number of orders they can deliver through platforms. Platforms therefore do not have market power over retailers on platforms.

The study in an attempt to examine the extent to which platforms may have a superior bargaining position over retailers asked retailers whether they were required to offer the best available terms or match terms with other sales channels while selling through platforms. The analysis is presented in Figure 4.10 below.

Figure 4:9 Requirement to offer best terms or match terms of other Sales Channels

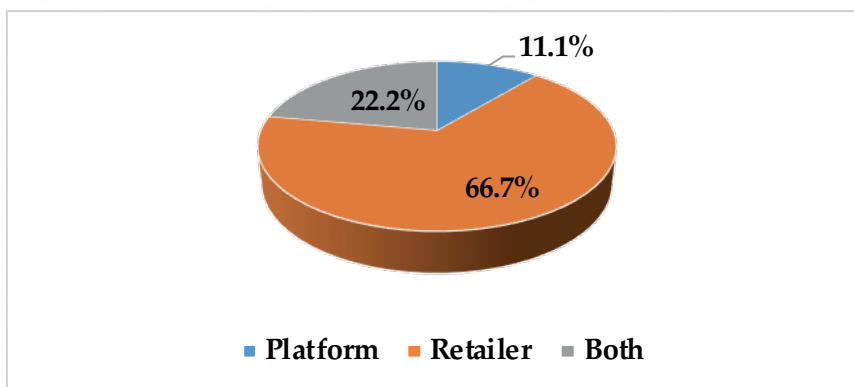


The study according to Figure 4.9 finds that 85.7% of retailers opine that they were not required by platforms to offer the best available terms or match terms in the platforms with other sales channels. On the other hand, only 14.3% indicated otherwise. Retailers, therefore, were not required by platforms to offer the best available terms or match terms in the platforms with other sales channels.

4.2.1.1 Setting of Product Prices on Online Food and Groceries Platforms

Product price setting is one of the variables that may be used by online platforms to exercise their superior bargaining position. The retailers selling their products through online food and grocery platforms were asked the question "Who sets product prices on platforms". The analysis is presented below in Figure 4.12.

Figure 4:10 Product Pricing on Online Platforms



From Figure 4.10, most retailers (66.7%) pointed out that they were responsible for setting prices on the platform, while 22.2% opine that product prices on platforms are set jointly by retailers and platforms. Only 11.1% of the retailers opined that product prices on online platforms are set by the platforms. The power to set product prices on platforms therefore rests mostly with retailers. Those who submitted that prices were set by platforms further elaborated that the platforms only added their commission and delivery costs to the product menu prices which are already set by the retailers.

To understand the concept of product pricing on platforms, the study analyzed the considerations used to determine product prices. In this respect retailers were asked, "How are prices determined on platforms". Figure 4.13 details the analysis.

Figure 4:11 Determination of Product Prices on Online Platforms

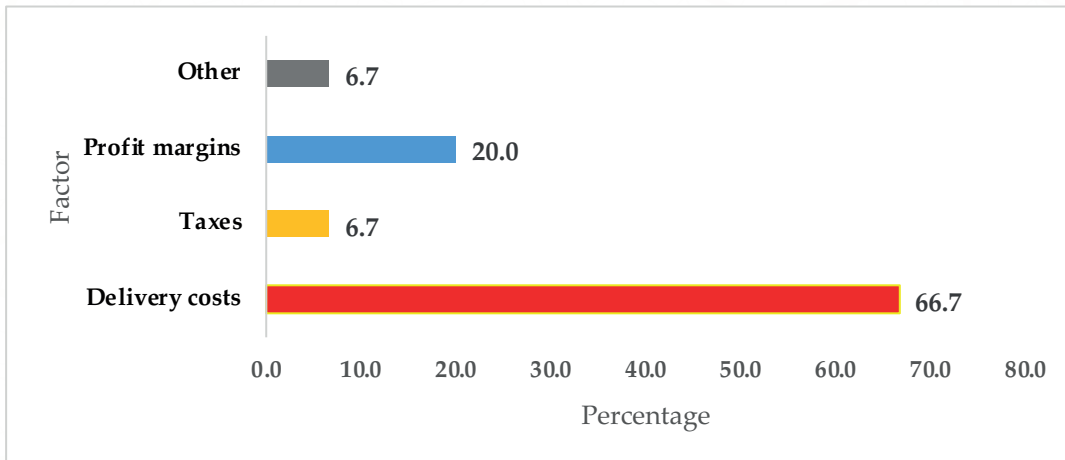


Figure 4.11 illustrates the factors that determine prices on platforms. Delivery costs (66.7%) are given the highest consideration, followed by profit margins at 20% and taxes at 6.7%.

Based on the analysis, the study finds that Online Food and Groceries Delivery Platforms do not have market power over retailers who sell their products through online platforms. The retailers are not restricted to the platforms through which they sell their products. Additionally, retailers had the responsibility to set prices for the products that they sell on platforms.

4.2.1.2 Exclusivity Agreements and Online Platforms

Online platforms may exert their market power by having exclusive agreements with retailers and restaurants. In this regard, the study examined whether retailers had exclusive agreements with Platforms, by responding to "Do you have any exclusive agreements with any platforms?". The analysis output is presented in Figure 4.14.

Figure 4:12 Exclusive Agreements with Platforms

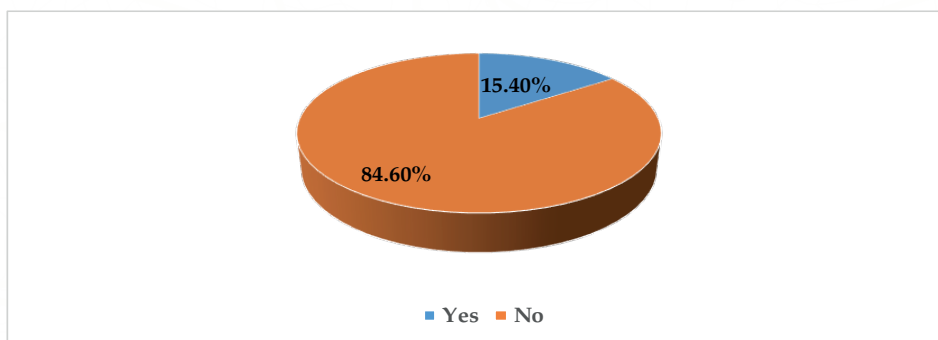


Figure 4.12, indicates that 84.6% of the retailers in online food and groceries delivery do not have exclusivity agreements with platforms. Nonetheless, 15.4% indicated that they had exclusivity agreements with the platforms. *The retailers who indicated that they had these agreements explained that the practice was only in instances where the platforms and the retailers were running joint promotions with the retailers and the cost of the promotions was being shared with the platforms, to this extent, retailers were not allowed to run promotions on the same product on another platform concurrently. However, if retailers were running promotions at their own cost, there were no exclusivity conditions imposed by platforms on them.*

In conclusion, the study found that platforms did not have exclusive agreements with retailers about registering with other competitor platforms and listing certain products with other platforms. Platforms therefore do not have superior bargaining power over retailers in online food and grocery delivery.

4.2.2 Online Payment Gateways and Market Power

Payment gateways provide services to merchants who initiate transactions via e-commerce platforms, in-app purchases, and/or point-of-sales payments, by providing a wide range of payment methods. Payment service providers may also be considered to be payment gateways as they act as intermediaries between those who make payments/consumers, and those who accept/receive them. Payment Service providers are third-party companies that assist businesses in accepting electronic payments.

The growth of e-commerce in Kenya has spurred the development of online payment systems. Companies like Pesaflow provide secure online payment gateways that enable businesses and consumers to transact digitally. Online payment options include credit/debit cards, mobile money payments, cash payments, and bank transfers.

Kenya’s retail payment automation of payments infrastructure and outlets started in 1989 through the launch of Automated Teller Machines and automation of the Nairobi Clearing House in 1998 and the establishment in 2005 of the Kenya Electronic Payment and Settlement System. The evolution that pushed Kenya’s National Payment Systems to new frontiers was the launch of innovative mobile money services, starting with M-PESA in March 2007³². Within a span of 16 years, the number of payment service providers has increased to 35 as of 17th November 2023³³. The rapid increase in the number of players indicates low barriers to entry.

4.2.2.1. Payment Methods

The study analyzed the payment methods used by consumers in online food and grocery delivery. The available payment methods while using the online food and grocery platforms are mobile money, cash, and bank cards (debit, credit, etc.) among others. Figure 4.16 details the analysis.

Figure 4:13 Most Preferred Payment Method

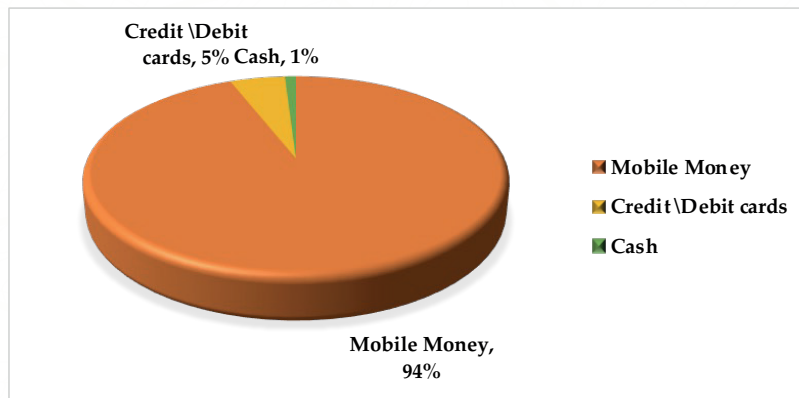


Figure 4.13 illustrates that mobile money was the most preferred payment method with 94% of the consumers indicating that they used mobile money to pay for food and groceries purchased online. The second most preferred method was credit cards at 5% while cash was preferred by only 1% of the consumers. The preference for mobile money was because of its convenience to the consumers.

4.2.3 Courier Services in Online Food and Groceries Delivery Platforms

This sub-section analyses the power relationships that exist between courier services and other players in the online food and grocery delivery value chain in Kenya. These included their relationships with retailers, platforms, and consumers.

32 <https://www.centralbank.go.ke/wp-content/uploads/2023/02/Kenyas-Payments-Journey.pdf>

33 <https://www.centralbank.go.ke/wp-content/uploads/2023/11/Directory-of-Authorized-Payment-Service-Providers-November-2023.pdf> (Safaricom PLC, Airtel Money Kenya Limited, Telkom Kenya Limited, Viewtech Limited (Sasapay),

Finserve Africa Limited, Web Tribe Limited (Jambopay), Tanda Agent Limited, Cellulant Kenya Limited, Pesapal Limited, Loop Payco Limited, Jumia Payment Services Kenya Limited, Umsuka Capital Limited, Kashia Services Limited, Fivespot Kenya Limited (Ipay), Craft Silicon Limited, Virtual Pay International Limited, Direct Pay Limited (DPO), Pesawise Services Limited, Paystack Payments Kenya Limited, Wakandi Kenya Limited, DLocal Payments Kenya Limited, Pesaflow Limited, PayU Kenya Limited, Unlimint Kenya Limited, Gladys Technologies Limited, Dolcepay Kenya Limited, Mamlaka Hub and Spoke Limited, Eclectics International Limited, Sky World Limited, Data Integrated Limited, Interswitch East Africa (Kenya) Limited, Kenswitch Limited, Integrated Payment Services Limited, Kenya Airports Parking Services (KAPS) Limited, Kenya Commerce Exchange Service Bureau (KENEX)

Couriers are the only players in the value chain of online food and grocery platforms that physically interact with consumers and retailers as they pick and make deliveries. Additionally, they physically handle the product from the time it leaves the retailer’s premises to the moment the products are received by consumers.

4.2.3.1 Online Food and Groceries Platforms Served by Couriers

To understand the online food and groceries served by couriers, the study sought to understand the platforms on which the couriers are registered for online food and grocery services. The analysis is detailed in Figure 4.15 below.

Figure 4:14 Food and Groceries Platforms Served by the Couriers Interviewed

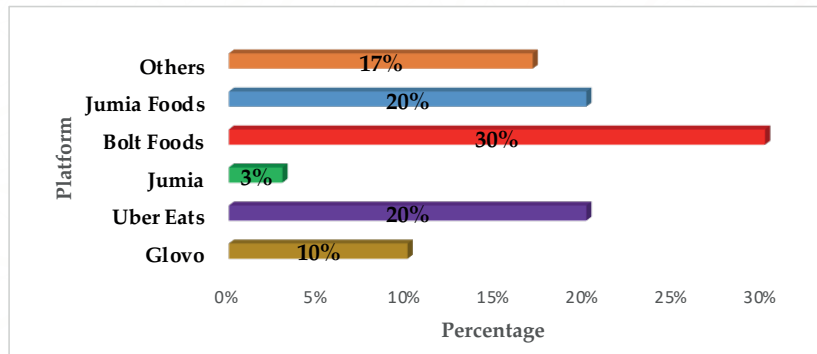


Figure 4.14 illustrates that Bolt Food had the highest number of couriers serving at 30%, closely followed by Jumia Food and Uber Eats at 20% of the couriers each. Glovo was served by 10% of the couriers, while 3% of them were registered with Jumia. Further, we found out that couriers were registered with multiple platforms and were not restricted by any platforms. However, couriers indicated that (■■■■) required that they choose and lock a specific time to be making deliveries for (■■■■), this practice does not amount to an exclusive agreement but to ensure efficiency and timely delivery of (■■■■) products as delays in delivery were the most common consumer complaint recorded by platforms³⁴.

4.2.3.2. Requirements to Register as a Courier Service Provider

The sub-section provides an analysis of the requirements for registration for the provision of courier services to platforms. In this regard, we sought to find out what these requirements are. Table 4.2 illustrates the requirements.

Table 4:2 Requirements to Register as a Courier Service Provider

Requirements to Register as a Courier Service Provider	
Driving License	Photo of the Motor Cycle
Certificate of Good Conduct	Phone
Motor Cycle Insurance	Branded Carrier Bag
Food Handling Certificate	KRA Pin
National Identity Card	Motorcycle Logbook
Individual’s Photo	

Table 4.2 above shows that the requirements are more or less similar across the platforms, however, small variations may exist based on the specific platform needs (For instance some platforms onboard bicycle riders who do not need motorcycle logbook). Courier companies indicated that the requirements are not unique to any particular platform.

The requirements do not present any entry barriers for couriers in online food and grocery delivery platforms.

4.2.3.3. Delivery Charges across the Online Food and Grocery Platforms

³⁴ Disclaimer: This is dependent on the couriers who were responsive and thus the statistics may not reflect the correct position in the market

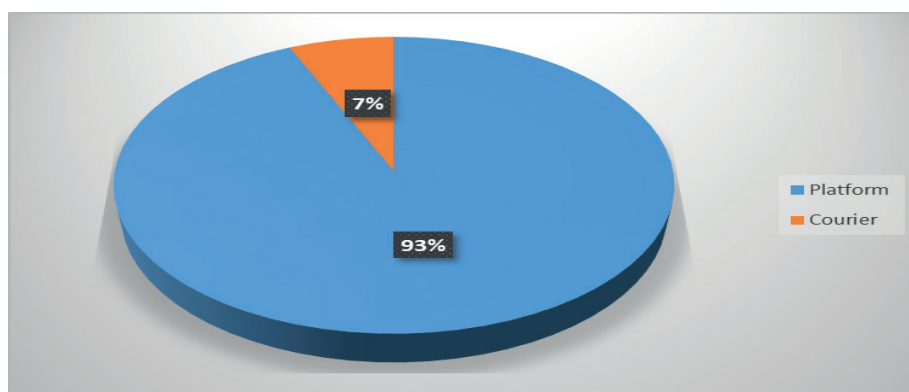
The study further analyzed the delivery charges across the platforms. A summary of the charges is detailed in Table 4.3 below.

Table 4:3 Summary of Delivery Charges across the Online Food and Grocery Platforms

How online food and grocery courier services are charged	Charges in KES
Charges per order	80 - 130
Base charge up to 5KMs	80 - 100
Charges per additional KM	10 - 30

From Table 4.3, charges per order range between KES 80 to 130, while the base charges up to a distance of five kilometers vary from KES 80 to 100. Charges per additional kilometer were between KES 10 to 30. The charges for courier delivery charges were more or less the same across the online food and grocery platforms.

Figure 4:15: Who Determines the Courier Charges

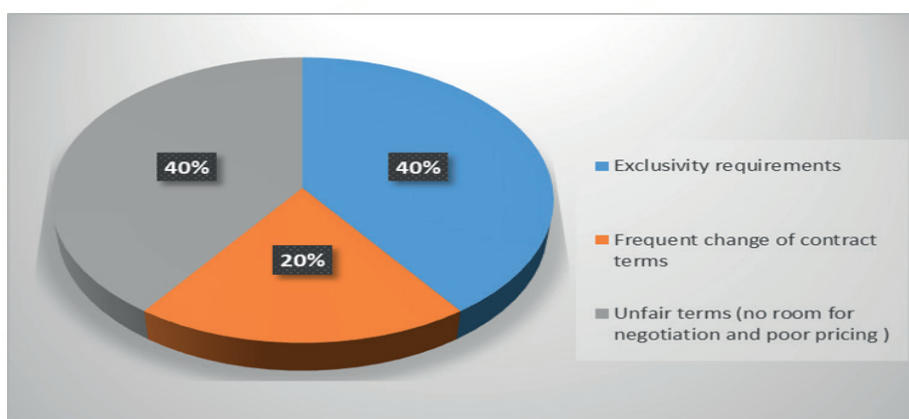


From Figure 4.15, 93% of the couriers indicated that the charges were determined by the platform, while 7% opined otherwise. Courier service charges are determined by the platforms.

4.2.3.4. Challenges Faced by Couriers

The study also analyzed the challenges faced by couriers in online food and grocery delivery platforms. In this regard, couriers were asked what the major challenges were while using the platforms. Figure 4.16 presents the responses received.

Figure 4:16 Challenges faced by couriers while using the platforms



From Figure 4.16, 40% of the couriers indicated that they were required to maintain exclusivity with the platforms that they were signed on. Similarly, 40% of the couriers indicated that they had challenges with unfair contract terms as they were not given room for negotiation as the terms of service are unilaterally devised by the platforms. An additional 20% of the couriers opined that they had the challenge of contract terms being frequent. **The study finds that platforms had more power over couriers concerning exclusive agreements, unfair contract terms, and frequent change of contracts.**



Delivery

5.0 THE ROLE OF DATA IN ONLINE FOOD AND GROCERY DELIVERY PLATFORMS

In this section, the role of data in enhancing competition and consumer protection is discussed, vis-à-vis the data acquisition, usage, and control practices amongst the e-commerce platforms. The analysis explores the likely effects of the data-related market practices in Kenya on market structure, market conduct, and consumer protection and further puts forward some proposals to enhance the same in the Kenyan market for platforms.

5.1 Information Access by Platforms

In the platform markets, data is accessed using three broad methods; the first is from **data individuals share** with the platforms upon signing up for the service; the second is **data that is automatically generated** by the platform based on the consumers' engagement with them while using the service; and the third is **data received from third parties** who the platforms have an affiliation with. The terms and conditions relating to privacy and data on these platforms are the main tools, that enable them to gain access to big data on their consumers. The acceptance of the terms and conditions by the consumer creates the gateway for the acquisition of this data by platforms.

The study did a sweep of the terms and conditions by a sample of multisided platforms operating in Kenya to ascertain the details collected by platforms. Table 5.1 presents categories of data collected by some online food and grocery platforms and payment platforms. The details contained in each data group are presented in *Annex I*.

Table 5:1 Data Collected by Platforms

Data Group	Uber eats	Glovo	Jumia	Bolt food	Cellulant	iPay	M-PESA	Airtel	Direct pay	Pesapal	Flutterwave	Jambopay	Jumiapay
Authentication Information	√	√	√	√	√		√	√			√	√	
Contact Information	√	√	√	√	√	√	√	√		√	√	√	√
Cookies Information	√	√	√	√	√	√	√		√	√	√	√	
Demographic Information	√		√		√		√	√	√		√	√	
Device Information	√	√	√	√	√	√	√		√	√	√	√	√
Location Information	√	√		√	√		√					√	√
Personal Identity Information	√		√	√	√	√	√	√	√	√	√	√	√
Social Media Information	√	√	√						√				√
Transactional Information	√	√	√	√	√	√	√		√	√	√	√	√

Source: *Platforms terms and conditions, as of October 2023 website*

As shown in Table 5.1 above, the data collected by various platforms varies by the intended use of this data and hence, some players collect more consumer data in comparison to others. However, it is worth noting that the usefulness of the volumes of data collected is subject to the sophistication levels of the data processing machinery owned by the data processor who may or may not be a platform. All platforms collect contact information, personal identity information, transactional information, and device information except Direct Pay which doesn't collect contact information, Airtel which doesn't collect transactional information and Device information and Glovo doesn't collect personal identity information. Uber Eats, Glovo, Jumia, Direct Pay and Jumia Pay collect social media information while Uber Eats, Glovo, Bolt Food, Cellulants, M-PESA, Jambo Pay, and Jumia Pay collect location information from the consumers. Most of the platforms collect authentication information except Ipay, Direct Pay, Pesapal, and Jumia Pay while Airtel and Jumia Pay don't collect cookie information. Glovo, Bolt Food, Ipay, Pesapal, and Jumia Pay are not collecting demographic information.

5.2 Data-related Consumer Protection Concerns

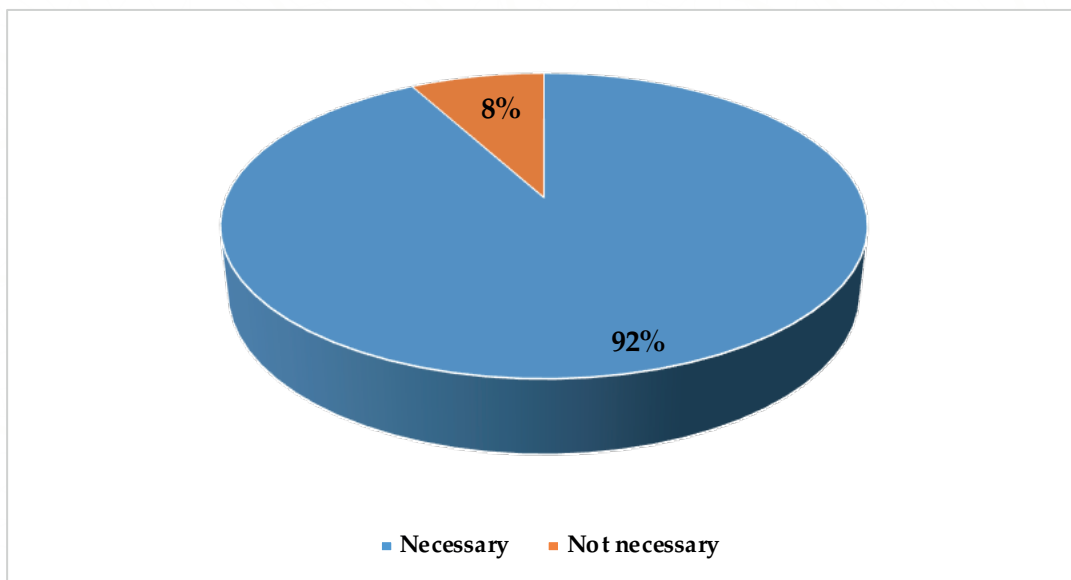
Notably, the data practices in Kenya recently came under regulation in 2019 through the Data Protection Act, 2019 (DPA), and therefore, the regulatory landscape is still in its nascent stages. The Office of the Data Protection Commissioner (ODPC) prescribes how consumer data should be protected by various parties which includes platforms. In compliance with the DPA, platforms often indicate the usage of the data they collect which often includes, improving the consumers' experience, product research and development, compliance with statutory obligations, service delivery, security-related issues, marketing, promotions, and advertising purposes. Platform economies present a myriad of unique consumer protection concerns; however, this section will focus on data control and privacy-related consumer protection concerns.

At the core of data privacy in platforms, is the question of consent and the conditions with which consent has been granted to a platform to acquire, store, process, use, and share an individual's data. Consumer consent, therefore, lays the foundation on who ultimately controls data in the platform economy. The access to, control of, and sophisticated use of data, in effect, sets the stage for a platform's ability to grow its market power.

In the context of platform economies, market power may arise from data feedback loops, which enable product quality enhancement. The underside of product quality enhancement in platform economies is the downgrade of consumer privacy. Therefore, a delicate regulatory balance is required, to promote innovation in markets that ultimately benefit the same consumer whose privacy is likely to be degraded.

In the Kenyan context, privacy and control of data-related issues by consumers, arise from inadequate mechanisms for consumer consent and unfamiliarity with the terms of service provision. A look at the consumer survey data indicates that 92% of the respondents opine that all the information requested from them by the platforms during online transactions is necessary, while 8% stated that some of the information required by the platforms was not necessary. (Figure 5.1)

Figure 5:1 Consumer views on information collected



Source Consumer Survey, May 2023

Ironically, those who opine that the information they shared with the platforms was necessary, were also of the opinion that it was wrongfully being used for purposes beyond the transaction. This is despite the platforms indicating the intended usage of the data shared by individuals in the privacy-related terms and conditions, by the DPA, as illustrated in *Box 5:1*.

This points to a likelihood that most consumers do not consciously consent to some of the data usage terms and conditions.

Box 5:1 JamboPay terms on use of data

JamboPay: Our primary purpose in collecting personal information is to provide you with a secure, smooth, efficient, and customized experience. We may use your personal information to: ... deliver targeted marketing, service update notices, and promotional offers on JamboPay services as well as JamboPay affiliate services and services incidental to your subscription.

In addition, the study observed that **consent to all the terms and conditions, including the use of individual data for marketing, promotional, and advertising purposes, are mandatory for the use of the platform services across platforms, presented in Box 5:2.**

Box 5:2 Consent and Use of Platform Service

"Your access and use of the Services constitutes your agreement to be bound by these Terms, which establishes a contractual relationship between you and Uber. If you do not agree to these Terms, you may not access or use the Services." ~ Uber Eats

"In order to be a User of the APP, it is essential that you meet in among others the following requirements: Users must agree to the privacy and Data protection policy and cookie policy" ~ Glovo Food

"By using our marketplace, you accept these general terms and conditions in full. If you disagree with these general terms and conditions or any part of these general terms and conditions, you must not use our marketplace" ~ Jumia Food

"These Terms apply in full force and effect to your use of this Website and by using this Website, you expressly accept all terms and conditions contained herein in full. You must not use this Website, if you have any objection to any of these Terms" ~ Flutterwave

"If you disagree with the contents of this agreement, you should not accept the terms and conditions set in this agreement and as a consequence, you shall be unable to use the JamboPay account and JamboPay services" ~ JamboPay

"By using our marketplace, you accept these general terms and conditions in full. If you disagree with these general terms and conditions or any part of these general terms and conditions, you must not use our marketplace" ~ Jumia Pay

Firstly, the DPA, defines consent as any manifestation of *express, unequivocal, free, specific, and "...informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject"*. Section (32) (2) envisions a scenario where a consumer is in charge of and can grant and withdraw consent to the access, use, and sharing of their data. Secondly, the ODPC guidelines further elaborate that consent is an appropriate lawful basis if the data subject has been genuinely offered the choice to accept or decline the terms without detriment. Lastly, section 56 (2)(b) of the Act considered a conduct to be unconscionable if *"... the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the person."* This then indicates that the spirit of the law envisions consumers having choice in data sharing practices, and the exercise of choice should not be detrimental to them.

In practice, it was observed that *platforms do not present consumers with the choice to accept or decline data-related terms and conditions and secondly, the consequence of declining the data-related terms and conditions is the discontinuation/barred access to the platform services.* Implicitly, the use of the platform services is pegged to consenting to all data-related terms and conditions. Consequently, the observed data-related market practices rob the consumer of control of their data and bestow it on the platform. Contrary to what was envisioned in the data protection legislation.

Control of data is key to competition and consumer protection as it ensures that consumers can exert much-needed demand-side pressure when seeking platform services. Therefore, for consumers to have control over their data, the mechanisms with which they consent to the acquisition, use, and sharing of their data must be prescribed. Currently, the DPA, 2019 provides for the market players to establish their methods for this. **Arguably, the regulatory architecture needs to guide how consent to data terms and conditions by consumers is presented, to achieve the objective of the law.**

Therefore, it is proposed that the terms and conditions relating to platforms should have opt-in/opt-out options, clearly distinguishing consent for the processing of data that is strictly required for the functioning of transactions on the platform and those that are not. This will essentially make consumers the primary controllers of their data, giving them the ability to exert demand-side pressure on platforms' competitiveness.

5.2 Data-related Competition Concerns

In this section, the report discusses further how consumers consent to the collection and usage of their information and transfer control of data from the consumer to the authorized platforms. The transfer of control of the consumer data to the platforms, in effect, can create scenarios that enhance a platform's market power.

The collection and usage of data by the platforms are fundamental to their operations. Platforms rely on the data they collect to optimize their services, improve user experiences, and boost operational efficiency. Platforms can then adapt their recommendations, speed the delivery process, and provide a tailored user experience by gathering and analyzing data on consumer preferences, ordering behaviors, and delivery locations. This data-driven strategy not only aids in forecasting demand and properly managing inventory but also allows platforms to engage in targeted marketing and promotions, increasing consumer loyalty and engagement.

Furthermore, data enables online food and grocery delivery services to work closely with their partner restaurants and supermarkets. These platforms enable their partners to make informed decisions about their menu offerings, pricing strategies, and general business operations by sharing vital insights on sales trends and customer behavior. Data-driven analytics may assist platforms in optimizing delivery routes, reducing delivery times, and efficiently allocating resources, all of which are critical for guaranteeing a seamless and timely delivery experience.

Platforms can leverage data to build large, interconnected ecosystems that provide a diverse range of goods and services to users. Platforms may smoothly combine numerous functionalities, such as online food and grocery delivery, digital payment systems, and even content recommendations, by leveraging data from user behavior and preferences. These ecosystems are intended to become indispensable in the daily lives of their users, diminishing the incentive for users to migrate to competing platforms or services. **As platforms continue to expand their ecosystems and integrate new products, users get more "locked in," resulting in network effects leading to single-homing where the user relies on the same ecosystem for various needs.**

Information collected during the market study indicated that some platforms utilized information collected across different business segments to improve the quality of their products across these business segments. Boxes 5.1, 5.2, and 5.3 illustrate three such instances by Safaricom PLC, Jumia Groups of Companies, and Uber Eats.

Box 5:3 Safaricom PLC data-related terms contributing to their Ecosystem

Data Privacy Statement

Clause 3.1.1 (a) & (f) “We collect your personal information with your knowledge and consent when you do any of the following (please note that this list is not exhaustive): register for a specific product or service, including but not limited to SIM-card registration, PostPay subscriptions, e-commerce platforms, M-PESA and M-PESA-powered services visit; access or use Safaricom or third-party websites”

Clause 3.3.10: “We may use and analyse your information for the following purposes: To understand how you use our network, products and services for purposes of developing or improving products and services;”

Clause 4.3 (b) “We may disclose your information to: ...our subsidiaries, associates, partners, software developers or agents who are involved in delivering Safaricom products and services you order or use”

Clause 5.2” We may also use this data in aggregate form to develop customised services - tailored to your individual interests and needs. Should you choose to do so, it is possible (depending on the browser you are using), to be prompted before accepting any cookies, or to prevent your browser from accepting any cookies at all. This will however cause certain features of the web site not to be accessible.”

Box 5.3 shows that Safaricom PLC collects data on its consumers across its various business segments and from third parties. This information is shared with its subsidiaries and is used to improve its products and services. The product offering by Safaricom PLC can be considered an ecosystem.

Box 5:4 Jumia data-related terms contributing to their Ecosystem

(Privacy Notice)

[Section 1] Jumia collects and processes your personal data when you visit our website or mobile applications.....

[Section 2] Our platform consists of our marketplace, which connects sellers with consumers, our logistics service, which enables the shipment and delivery of packages from sellers to consumers, and our payment service, which facilitates transactions among participants active on our platform in selected markets. This website and/or mobile app is operated by a member of the Jumia group of companies, the ultimate holding company of which is Jumia Technologies AG. Information on our subsidiaries can be found on our website. Any personal data provided or collected by Jumia is controlled by the subsidiary that the website and/or mobile app relates to.

[Section 3] ...We may collect, use, store and transfer different kinds of personal data for marketing and personal data optimization purposes.

[Section 3, B] We may receive information about you from third parties including our carriers; payment service providers; merchants/brands; and advertising service providers...

[Section 7, A] We may need to share your personal data with third parties for the following purposes: Business transfers: As we continue to develop our business, we might sell or buy other businesses or services. In such transactions, customer information may be transferred together with other business assets.

(Terms & Conditions)

[Section 9] You grant to us a worldwide, irrevocable, non-exclusive, royalty-free license to use, reproduce, store, adapt, publish, translate and distribute your content on our marketplace, and across our marketing channels and any existing or future media. You grant to us the right to

sub-license the rights licensed under section 9.1,

Box 5.4 shows that Jumia’s group of companies collects data on its consumers across its various business segments and from third parties. This information is shared with its subsidiaries and is used to improve its products and services.

Box 5:5 Uber Eats data-related terms contributing to their Ecosystem

(Uber Privacy Notice): Uber, Uber Eats

[Section B: How we use personal data] Uber uses data to enable reliable and convenient transportation, delivery, and other products and services. We also use such data: to enhance the safety and security of our users and services, for customer support, for research and development, to enable communications between users, for marketing and advertising, to send non-marketing communications to users, in connection with legal proceedings

We use the data we collect:

1. To provide our services. Uber uses data to provide, personalize, maintain, and improve our services. This includes using data to:.... enable dynamic pricing, in which ride prices, or delivery fees are determined based on factors such as estimated time and distance, predicted route, estimated traffic, and the current number of users requesting or providing services.

4. Research and development. We use data for testing, research, analysis, product development, and machine learning to improve the user experience. This helps us make our services more convenient and easy-to-use, enhance the safety and security of our services, and develop new services and features.

6. Marketing and Advertising. Uber uses data (other than Guest Users’ data) to market its services, and those of Uber partners.

[Section D: Data sharing and disclosures] Uber may share data: 5. With Uber subsidiaries and affiliates: We share data with our subsidiaries and affiliates to help us provide our services or conduct data processing on our behalf....

[Section IV: Choice and transparency] ...Uber enables users to access and/or control data that Uber collects, including through: privacy settings, device permissions, in-app ratings pages, marketing choices.

Box 5.5 shows that Uber Eats collects data on its consumers across its various business segments, ride-hailing and food and grocery delivery, and from third parties. This information is shared with its subsidiaries and is used to improve its products and services.

5.3.1 Market Structure

5.3.1.1 Market Definition

In competition assessment, the delineation of a relevant market is the first analytical step. The multifaceted nature of digital ecosystems makes them challenging to delineate since they may encompass several multi-sided markets. For instance, this study has established that online food and grocery delivery in Kenya encompasses at least two multisided digital markets, namely online food and grocery platforms and online payment gateways (PSPs). While considering a merger involving integrated platforms, consideration of the interaction that these multisided markets comes to the fore.

The two-sided nature of the dynamic online food and grocery delivery market also presents a challenge in trying to define such markets because of the feedback links between the two (or more) sides. These feedback links may be data-driven looking at how platforms utilize data to leverage their activities with

various sides of the market.

With this in mind, employing traditional market definition tools (e.g. the Small but Significant Non-transitory Increase in Price - SSNIP test) may lead to overly narrow markets and may ignore the competitive pressure coming from products and services outside the relevant markets but within ecosystems. Therefore, the Authority has considered the macro level of the digital ecosystem to understand all the competitive constraints at work. This will give a broad view of the digital ecosystem and help capture likely effects that would accrue in distantly related markets within the ecosystem, especially on the collection and usage of data.

5.3.1.2 Barriers to Entry

Another crucial aspect to consider in the assessment of digital mergers is how data can act as a barrier to entry for potential competitors. Data is fundamental to the operations of platforms in the online food and grocery delivery space in Kenya. As shown in Table 5.1, platforms gather and analyze vast amounts of data on consumer preferences, ordering behaviors, and delivery locations, which provides them with a unique and valuable resource that may be difficult for new entrants to replicate. Platforms then use this data to refine their personalized recommendations, speed up the delivery process, and provide a tailored user experience, creating a significant competitive advantage that new entrants may struggle to match.

Furthermore, data can act as a self-reinforcing barrier to entry. As more data is collected by established platforms (including those operating in various business segments), their predictive capabilities improve, making their services even more desirable for users. This, in turn, attracts more users and generates more data, resulting in a virtuous cycle of data gathering and user engagement. As a result, new entrants may struggle to compete with incumbents who have already achieved significant scale in terms of data and user engagement. For instance, Figures 4.11, 4.1, and 4.2 show that Jumia Group platforms - Jumia and Jumia Foods are among the most preferred platforms by consumers and retailers based on delivery time. Arguably, this could be attributed to their usage of the data they collect.

The cost of acquiring and managing data can also act as a substantial entry barrier. The infrastructure and resources required to collect, store, and analyze data can be prohibitively expensive for startups and smaller companies. The economies of scale enjoyed by established players may enable them to manage data more efficiently and cost-effectively, further widening the gap between them and potential new entrants. This economic barrier makes it challenging for smaller businesses to enter digital markets and compete effectively against data-rich incumbents.

In summary, data as a barrier to entry in digital markets not only stems from the strategic advantages it offers but also from the significant costs and resource requirements associated with data collection and management.

5.3.1.3 Ecosystem-based Merger Assessment

The emergence of ecosystems in platform-based markets means that companies' strategic decisions are likely to be taken at the level of constellation of markets rather than at the level of individual product markets³⁵. This means that the effects of mergers, for instance, may be spread beyond single and specific markets to even distantly related markets that may be connected through the ecosystem. Therefore, in the assessment of mergers in digital markets, beyond exploring traditional theories of harm, there is a need to explore ecosystem-related theories of harm.

Mergers involving ecosystems can have a broader influence in terms of strengthening the entire ecosystem's position and market power. By acquiring and adding market segments to their ecosystem, platforms can accrue significant informational advantages and make it exceedingly difficult for new entrants to compete within any market where the ecosystem operates. The merged entities may also leverage the ecosystem's power, accumulated inter alia through the collection and use of data, to potentially harm competition in specific markets.

Merger assessment can include looking at likely theories of harm that may arise due to the merging parties' involvement in ecosystems. This assessment would encompass horizontal analysis (e.g. likely unilateral effects) when looking at digital mergers especially where the parties do not necessarily have overlapping products in the traditional sense. Focusing on the competitive threat that the target poses to the acquirer's broader ecosystem. The acquirer may be employing envelopment strategies to capture and "lock in" users thus expanding their ecosystems and potentially limiting competition.

In conclusion, the role of data in the competition analysis during merger analysis for online food and grocery delivery platforms is pivotal. Data is both a competitive advantage and a potential source of anti-competitive behavior. It is therefore imperative to adopt a data-centric approach to merger analysis in digital.

5.3.1 Market conduct

In the assessment of restrictive trade practices, particularly unilateral conduct, the prerequisite of any assessment is the establishment of the existence of a dominant position or market power by an entity.

Section 2 of the Competition Act No. 12 of 2010 defines market power as the power of a firm to control prices, exclude competition, or behave to an appreciable extent, independently of its competitors, customers, or suppliers. An entity that controls less than forty percent of the market share but has market power may be considered dominant for purposes of the Act under Section 23 (2) (b) thereof.

This traditional assessment of market power, may not give a true reflection of the market power arising from control and use of big data by entities, leveraging on data from their various business segments. Leveraging data to

Srnicek opines that platforms produce and are reliant on 'network effects'; where the more users of a platform, the more valuable the platform is to other users within the network. The key to network effects is data and the way it is used by platform companies to bring together different sides of the market. As the user base of platforms grows, platform companies can harvest more and better-quality data which can be used to increase service quality on both sides of the platform. Big data is, therefore, a very important element of platform companies as data feedback loops help enhance product quality, which is a source of Market Power.

It was observed that a market practice relating to data by entities whereby, in the terms and conditions, the platforms gain blanket consent for the processing of collected data to be shared by platform affiliates exists. This is in addition to platforms collecting data from third parties who possess consumers' data, whether given by the individual or automatically generated, and the platform is offering the third party a service.

Similarly, it is observed that various platform players have other business segments which have access to big data which they may leverage for internal use in the enhancement of product quality, which may give rise to market power. For instance, it is observed that players such as Safaricom PLC, Uber, and Jumia have multiple business segments that are beneficiaries of big data being leveraged from their various business segments.

Their terms and conditions allow them access to data that may be shared with their other business segments and /or business affiliates. Such market practices may require a new approach to the assessment of market power and or market definition when assessing market conduct by a player in the platform economy. This requires a different approach to players with a strategic market position.



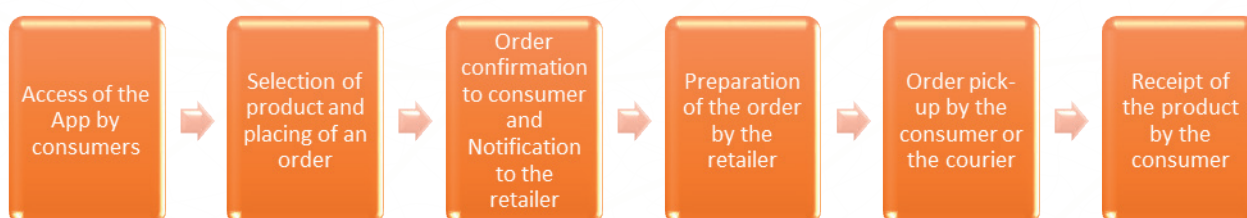
6.0 CONSUMER PROTECTION IN ONLINE FOOD AND GROCERY DELIVERY PLATFORMS

Consumer protection in Kenya is anchored under Article 46 of the Constitution of Kenya 2010, the Competition Act, and the Consumer Protection Act. Additionally, there are other sector-specific laws with consumer protection provisions. Consumer protection is one of the biggest aspects of online food and groceries markets as consumers are the end users of the products purchased online. In the online food and grocery platforms, consumers make transactions that are conducted through a third party. The third party in this case is the food and groceries platform that enables the online transactional process to be carried out.

6.1 Consumers in Online Food and Groceries Platforms

Consumers in online food and grocery platforms choose products to purchase, set their location, and the product is delivered to them from the retailers that are located near them, by the couriers. Figure 6.1 below is a representation of how the online food and grocery ordering process operates.

Figure 6:1 Online food and grocery ordering process



Step one: The online food and grocery ordering process begins with the consumer accessing the app and browsing through the available retailers and products (grocery shops, restaurants, and menus).

Step two: The consumer selects the product (food or groceries) and the retailer and places an order. During the placing of the order, the consumer may opt to either pick up their order or provide the delivery location. Also, some apps provide consumers with an option to either pay for their order at this stage or pay on delivery.

Step three: After the order placement, the app sends an order confirmation to the consumer and also sends a notification to the retailer with the order details.

Step four: The retailer prepares the consumer's order and notifies the consumer and/or the courier that the order is ready for collection.

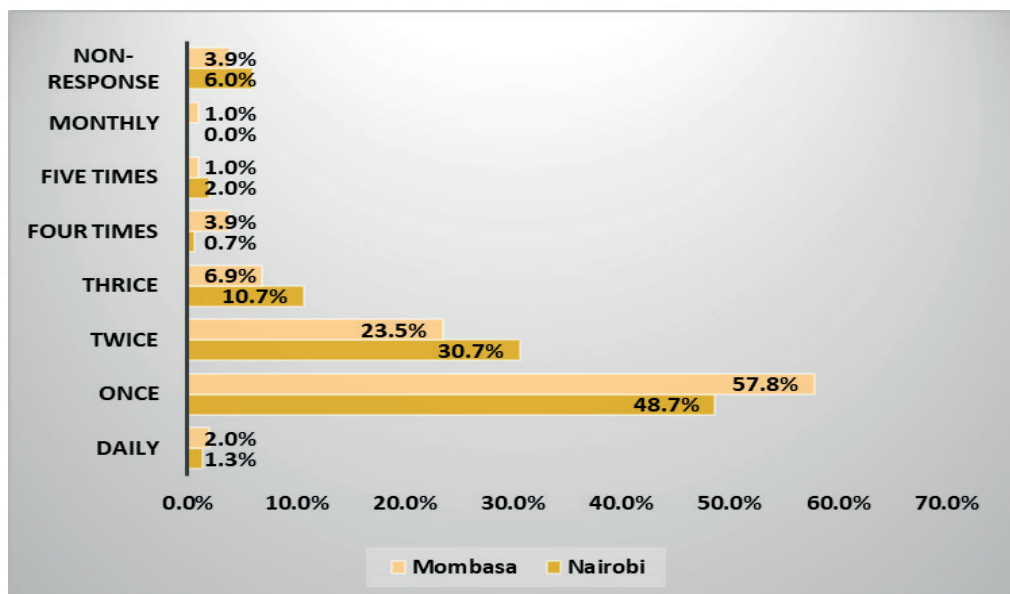
Step five: In this stage, the consumers who opt to pick up their order from the retailers can collect their food or groceries. In cases where the consumers need their order delivered to their locations, the retailer notifies both the consumer and the courier. The courier then collects the order from the retailer and delivers it to the consumer.

Step five: On delivery, the courier sends a notification through the app that the order has been delivered. Consumers who opt to pay on delivery make their payment either by cash or online (through bank cards or mobile money).

6.1.1 Frequency of Consumers Shopping Online for Food and/or Groceries per Week

The study sought to establish the frequency of online shopping for ready food and groceries in a week. Consumers in Nairobi and Mombasa were asked to indicate how many times they shop for food and groceries online in a week and the results are as indicated in figure 6.2.

Figure 6:2 Frequency of consumers shopping online for food and/or groceries per week.

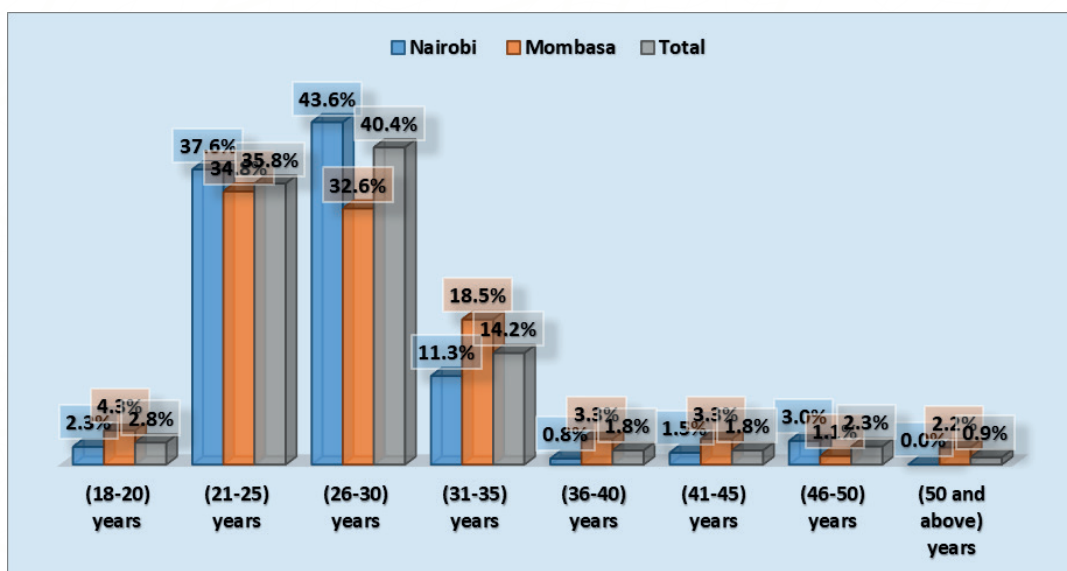


About 58% and 49% of the respondents in Nairobi and Mombasa respectively indicated that they shopped online for food and/or groceries once a week (Figure 6.2). Further, 23.5% of respondents in Nairobi and 30.7% in Mombasa indicated that they shopped twice a week. The analysis shows that most consumers of online food and grocery platforms shop once or twice a week.

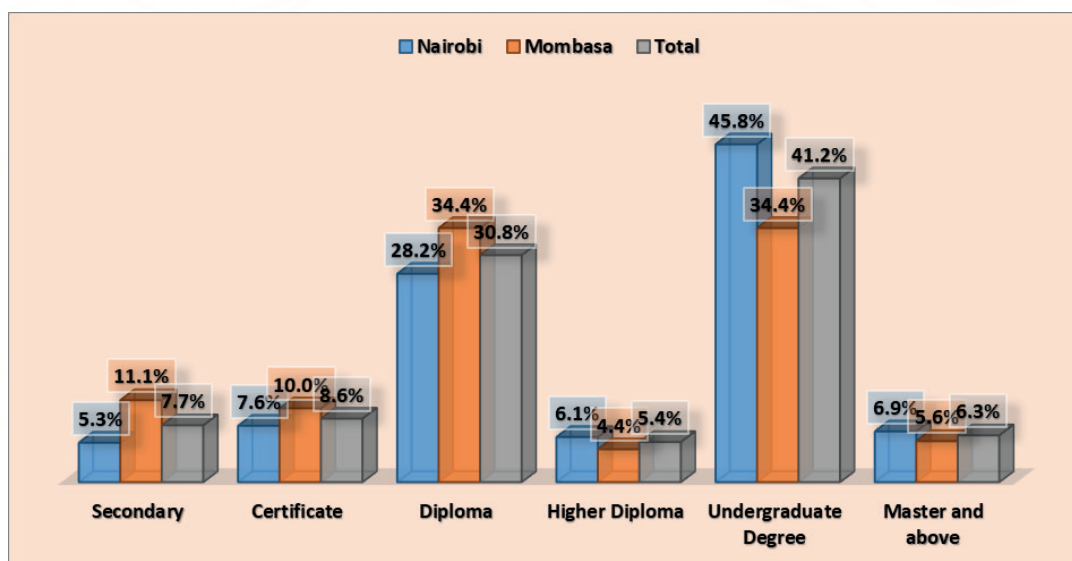
6.1.2 Consumer Demographics

Figures 6.3 and 6.4 illustrate the demographic of the users of the food and delivery platforms, in terms of age and education levels.

Figure 6:3 Age distribution of consumers using online food and grocery platforms



The analysis of the age groups of the respondents is shown in Figure 6.3 and it shows that 76.2% of the users of the online food and grocery platforms are between the ages of 21 and 35 years.

Figure 6:4 Sampled consumer's education levels


In addition, figure 6.4 is the analysis of the education levels of the sampled consumers and as shown, 41.2% of the respondents have undergraduate degrees while 30.8% have a college diploma. This shows that most of the consumers of online food and groceries have post-secondary school education levels.

6.2 Consumer Choice

The consumer choice hypothesizes why people make the choices when faced with trade-offs. The theory of consumer choice attempts to understand why consumers choose one good or experience over another, working versus leisure, or saving versus spending their money³⁶. The platforms also offer convenience to consumers by streamlining the food ordering process and making it hassle-free enabling them to get their preferred foods and groceries quickly on their doorsteps³⁷. By using the platforms consumers can easily and effectively access and order their food from a wide range of restaurants at times and locations convenient to them. The platforms also provide customers with more comprehensive, up-to-date, and accurate information about the restaurants and the menu options³⁸.

The consumer's decision-making process in online food and grocery platforms entails decisions between online platform alternatives, choices of product, brand, restaurant, or brand item options, paying possibilities, and whether or not to purchase at all. (Lantos, 2015)³⁹.

Online food and grocery platforms are characterized by commoditization, constant promotional efforts by the platforms, minimal switching barriers, and low or no cost of multiple platforms onboard, which enables consumer multihoming behavior. Multihoming has been described as a unique post-adoption behavior where consumers simultaneously onboard more than one platform and exhibit repeated and regular usage patterns (Zhang et al., 2020). Multihoming consumers benefit by gaining access to a more comprehensive network of restaurants and allied service providers than single-homing consumers (Zhu and Iansiti, 2019)⁴⁰. Multihoming allows consumers to have access to a large variety of restaurants and price comparisons for their product requirements. Consumers are also able to benefit from promotions and discounts that are offered on the various platforms.

During the study, consumers were asked to indicate the online food and grocery platforms they use to establish whether they were on-boarded in more than one platform and the results were as shown in Figure 5.5.

36 <https://www.studysmarter.co.uk/explanations/microeconomics/consumer-choice/>

37 <https://www.kopatech.com/blog/factors-which-influence-consumer-to-use-an-online-food-delivery-system#:~:text=Online%20platforms%20enable%20them%20to,%2C%20allergies%2C%20and%20dietary%20restrictions.>

38 <https://www.sciencedirect.com/science/article/abs/pii/S0268401219302038>

39 <https://acta.mendelu.cz/pdfs/acu/2018/05/17.pdf>

40 <https://www.sciencedirect.com/science/article/abs/pii/S0969698922001229>

Figure 6:5 Online food and grocery platforms consumers multi-homing

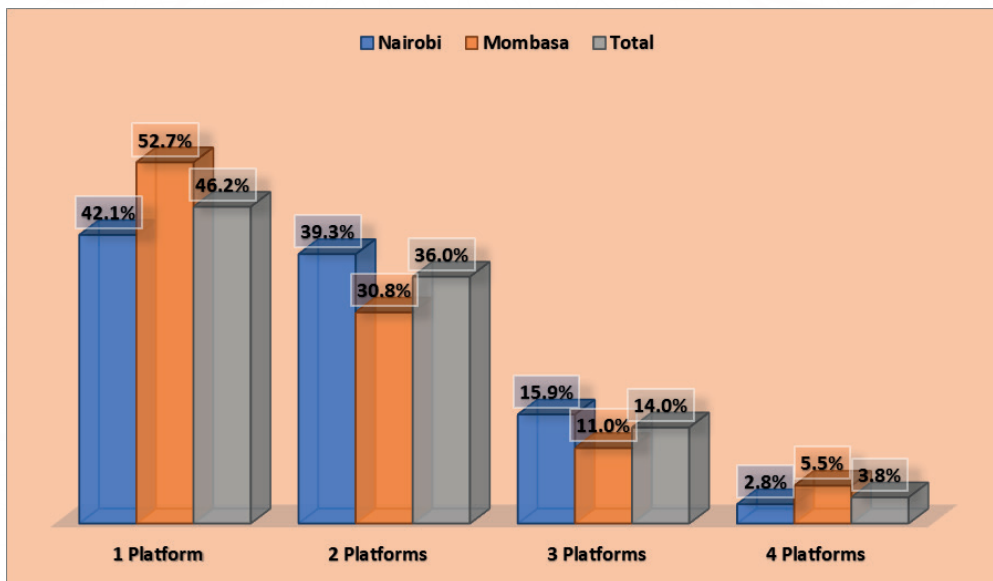
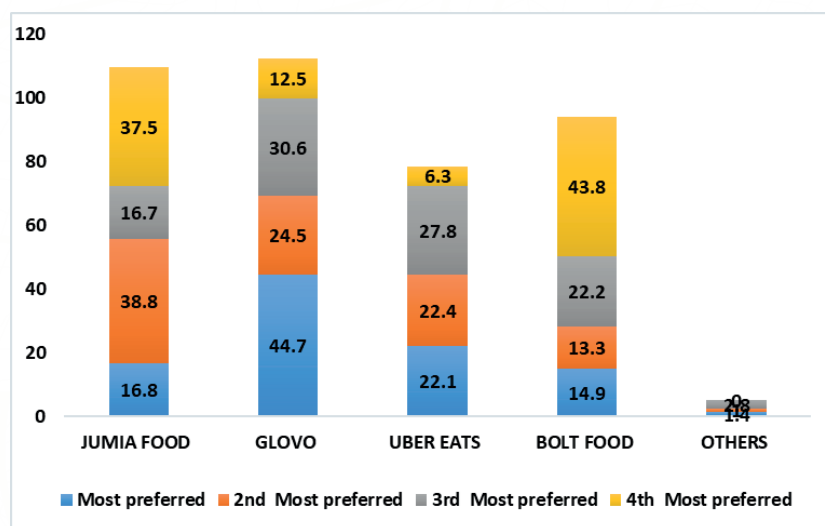


Figure 6.5 shows that 42.2% and 52.7% of the consumers in Nairobi and Mombasa respectively were using only one platform for food and/or grocery shopping (single homing). Generally, 46.2% of the total respondents indicated that they were single-homing while the remaining 53.8% were multi-homing with some consumers having on-boarded two, three, or four food and grocery platforms. This established that most of the consumers of online food and grocery delivery platforms are multi-homing and this thus indicates that consumers have a choice to switch between the platforms depending on their preferences.

Additionally, consumers were asked to indicate their most preferred online food delivery platforms and the results are as indicated in Figure 6.6. Consumers who single-home indicated the on-boarded platform as their most preferred platform while those who were multi-homing ranked the various on-boarded platforms from the most preferred to the least preferred.

Figure 6:6 Consumers most preferred online food delivery platforms



Analysis of the most preferred platforms by consumers indicates that 44.7% of the consumers chose Glovo as their most preferred platform while 22.1% chose Uber Eats and 16.8% indicated Jumia Food as their most preferred platform. 38.8% of consumers cited Jumia Food as their second-most preferred platform with 24.5% citing Glovo and 22.4% indicating Uber Eats as their second-most preferred platform. This shows that Glovo, Jumia Food, and Uber Eats are the three most preferred platforms by consumers in Nairobi and Mombasa.

6.2.1.1 Factors Affecting Consumer Preference of Online Food and Groceries Platforms

Online food and grocery platforms enable consumers to make choices according to their preferences and dietary restrictions. Consumer behaviors in online food delivery services are affected by food price, service quality, packaging, advertisement, food quality, food taste, speed of food, delivery, payment options, offers and discounts, hygiene, delivery tracking, menu, number of restaurants/grocery stores, the attitude of the delivery person, convenience (Arun Giri, November, 2022)⁴¹.

The study sought to establish the factors affecting consumer choice of platforms in Kenya's online food and grocery platforms as indicated in Figure 6.7.

Figure 6:7 Factors Affecting Consumer preference of Online Food and grocery Platforms

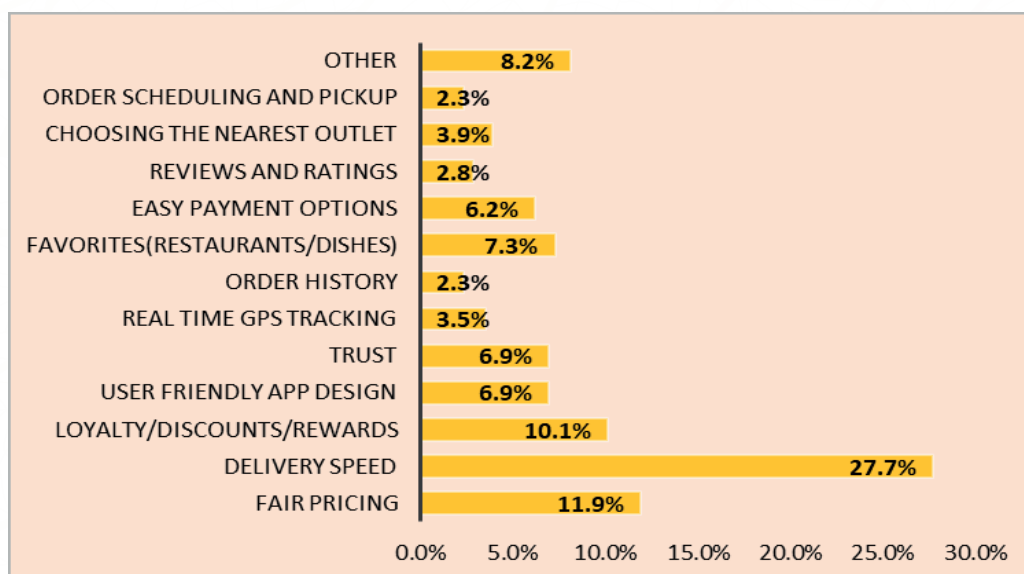


Figure 6.7 indicates the factors affecting consumer choice of online platforms. Delivery speed is considered the most important factor at 27.7% when choosing their preferred platforms, followed by fair pricing at 11.9%. It is also important to note that emotional attributes such as trust and ease of usage are also considered.

6.2.1 Choice of Payment Methods

Online food and grocery platforms offer three payment options including card payments, mobile money (Pay-in-advance), and cash on delivery (Pay-on-delivery). Consumers can choose the payment option they prefer on the checkout page when making an order through the platforms. With pay-in-advance, the food/groceries are only shipped once the consumer has paid for them in full while pay-on-delivery is when consumers buy goods but only pay for upon receipt.

The study further sought to establish whether consumers have a choice in the payment methods when purchasing food and groceries through online delivery platforms in Kenya. The analysis of the results is detailed in Figure 6.8.

41 https://www.researchgate.net/publication/367158302_Factors_Affecting_Consumer_Behaviour_Towards_Online_Food_Delivery_Services_Providers_in_Delhi-NCR

Figure 6:8 Payment methods used by consumers

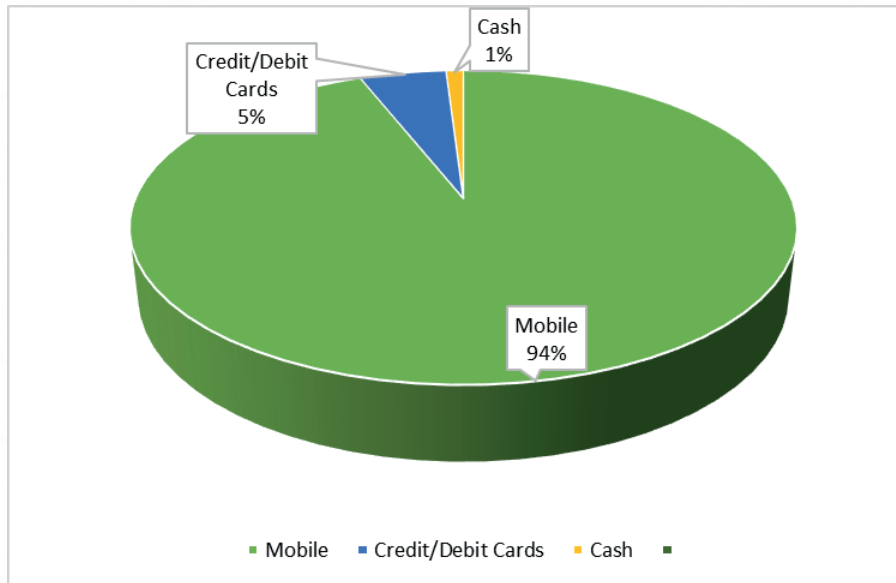
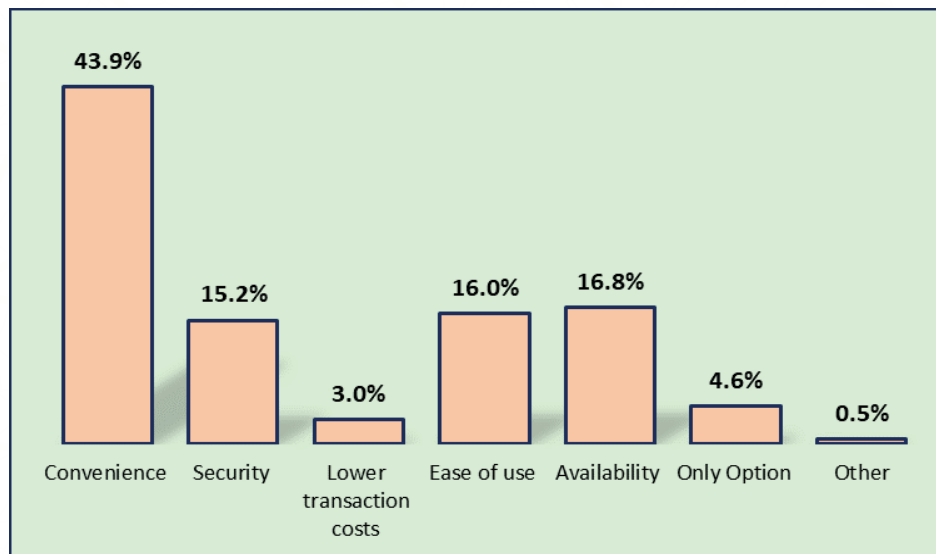


Figure 6.8 illustrates that mobile money was the most preferred payment method with 94% of the respondents indicating that they used mobile money to pay for food and groceries purchased online. This is, as indicated in Figure 6.9, due to the convenience, availability, and ease of use. Security is also a consideration by users of mobile money.

Figure 6:9 Why Consumer prefer one payment method over the other



6.3 Consumer Complaints in Online Food and Groceries Platforms

Consumer complaints in online food and grocery platforms originate from complaints filed with the platforms. The platforms, therefore, require a proper mechanism for handling these complaints. The study established the type of complaints and the platforms' complaint-handling mechanisms.

Figure 6.10 indicates that only 16% of consumers have ever filed a complaint.

Figure 6:10 Consumers who ever lodged complaints with the platforms

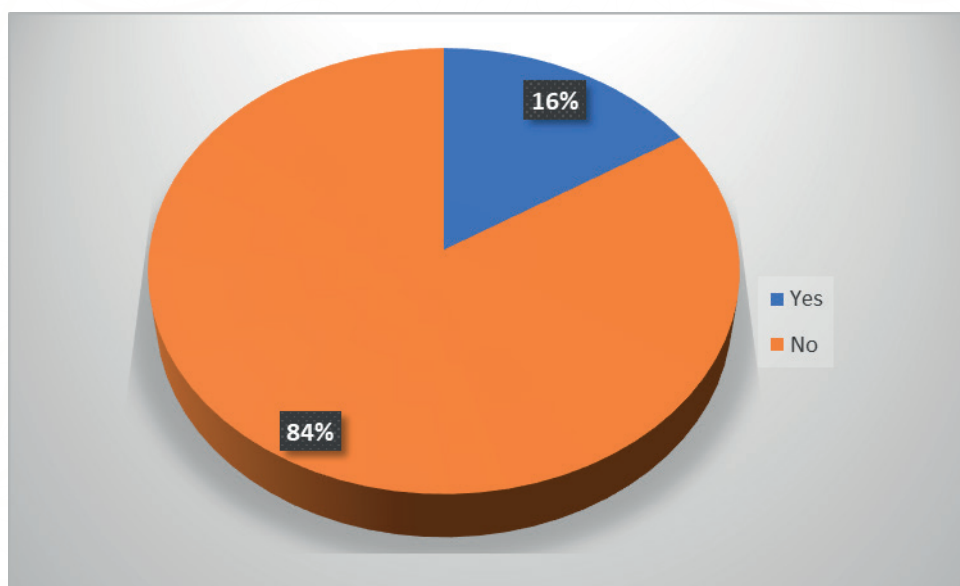
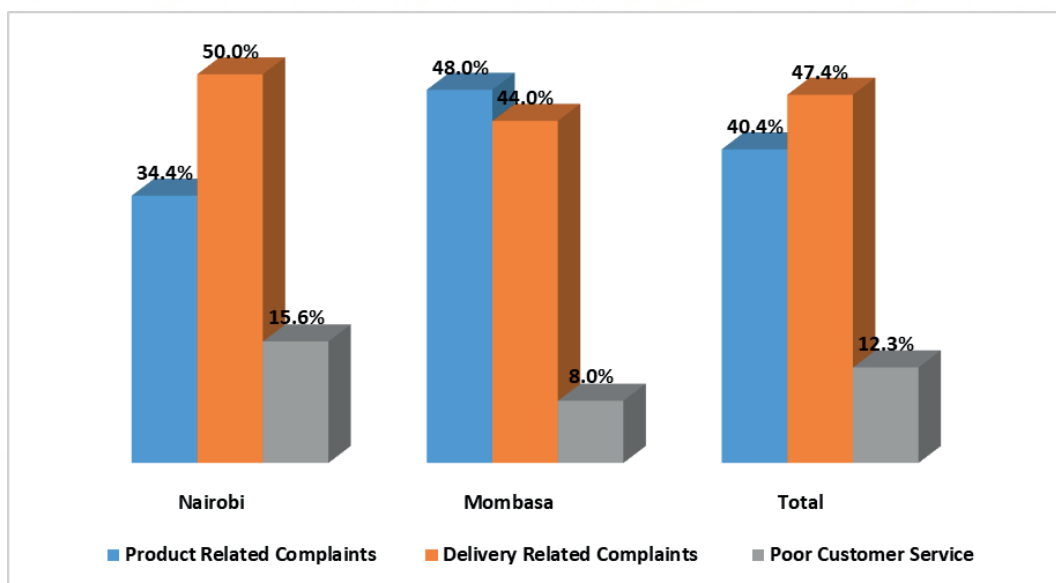


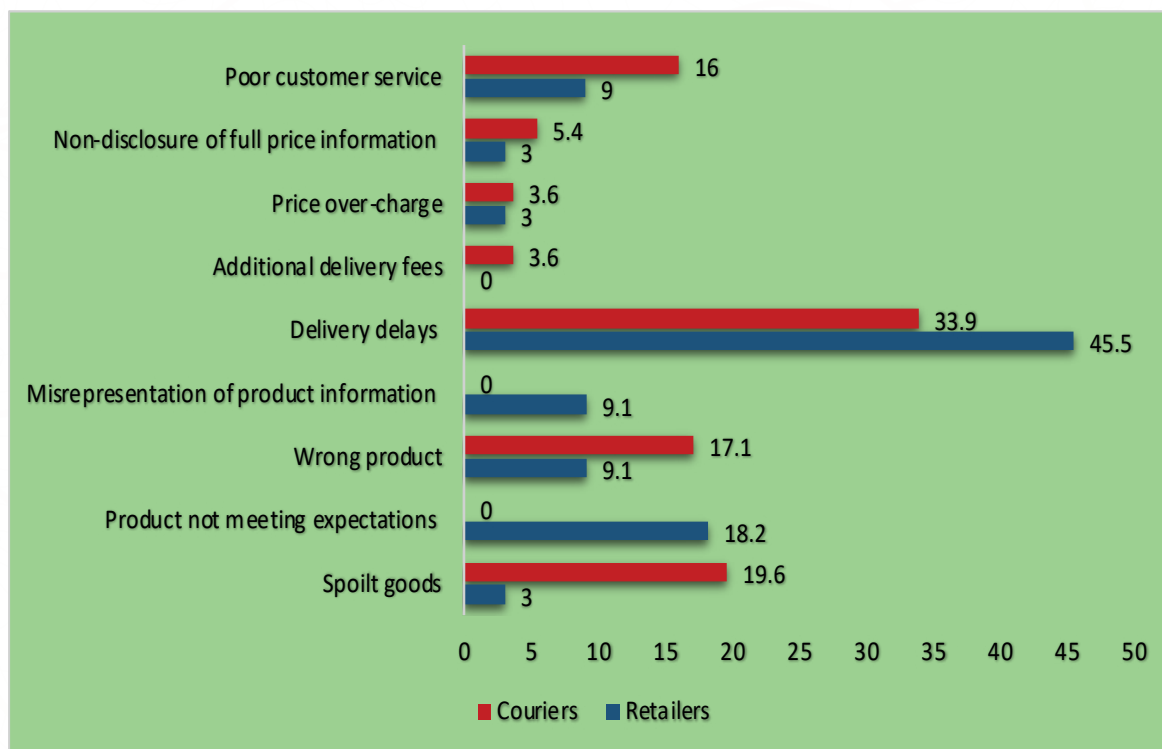
Figure 6.11 further elucidates the type of complaints, with delays in delivery being the most frequent complaint, at 32.9%, followed by product expectations and quality of goods.

Figure 6:11 Nature of consumers complaints lodged with the online food and grocery platforms



As shown in Figure 6.11, 50% of the consumer complaints in Nairobi were delivery-related, 34.4% were product-related, and 15.6 % were on poor customer service by the platforms. On the other hand, 48% of the consumer complaints in Mombasa were product-related, 44% delivery-related, and 8% poor customer service. Generally, delivery complaints (delivery delays and products not reaching consumers) and product-related complaints (products not meeting expectations, wrong product, and spoilt goods) were the two major categories of complaints that consumers indicated that they had complained about.

Figure 6:12 Percentage nature of complaints handled by retailers and couriers in online food and grocery platforms



On the other hand, the most handled consumer complaints by the retailers indicated that 45.5% were on delays in delivery while 18.2% of the complaints were on products not meeting expectations as ordered and wrong products delivered and misrepresentation of product information coming in third as shown in figure 6.12. Couriers also indicated that 33.9% of the complaints received from consumers were on delivery delays 19.6% were on spoilt food/groceries and 17.9% were on wrong products, as illustrated in figure 6.12.

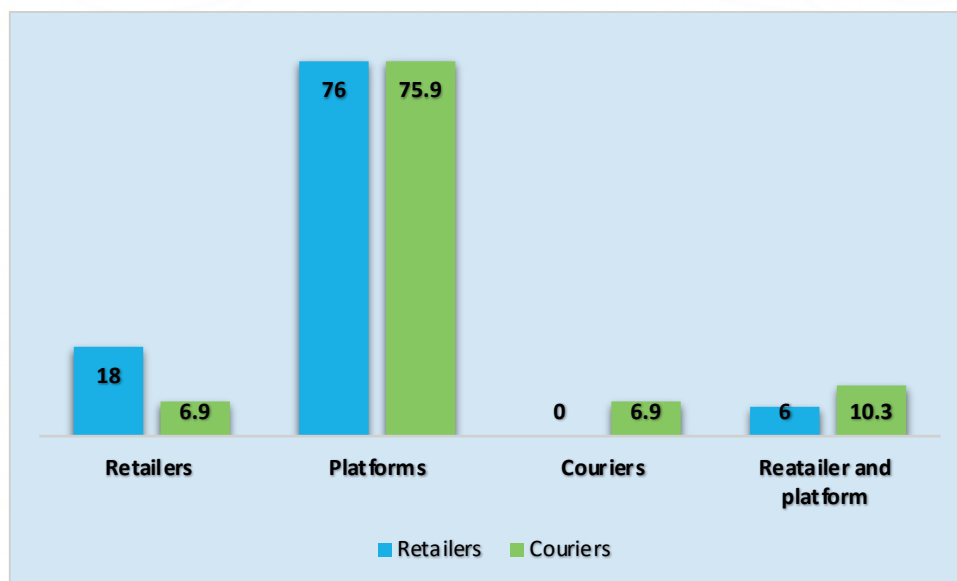
To further support the analysis in figures 6.11 and 6.12, consumers cited that they had faced instances whereby the product photos in the online platforms did not match the real product that was delivered to them. This can be established by the complaints lodged with the platforms by consumers indicating that 15.8% of consumer complaints were on the product not meeting their expectations based on the product images displayed on the online platforms. Moreover, retailers cited that 18.2% of the consumer complaints received were on products not meeting consumer expectations.

In conclusion, **delays in delivery** and **products not meeting expectations** were identified as the most prevalent complaints raised by consumers, retailers, and couriers using food and grocery platforms. This reiterates the fact that consumers in online food and grocery delivery platforms consider delivery speed as the major factor when choosing which platform to use.

6.3.1 Consumer Complaints Handling

The study carried out an analysis of who was responsible for handling consumer complaints in online food and delivery platforms as indicated in Figure 6.13

Figure 6:13 Who handles consumer complaints according to retailers and couriers



Couriers and retailers were asked to indicate who was responsible for consumer complaints in online food and grocery platforms and the results are as indicated in figure 6.13. Couriers indicated that 75.9% of the consumer complaints received are handled by the platforms. Couriers further indicated that 10.3% of the consumer complaints were handled by both retailers and platforms.

In addition to this, retailers indicated that 76% of the received consumer complaints were handled by the platforms while 18% were handled by the retailers as illustrated in Figure 6.13. This indicates that online platforms are mostly involved in handling consumer complaints.

6.3.2.1 Online Platforms Complaint Handling Mechanisms

Internal complaints handling processes are an integral element of consumer dispute resolution and redress systems. It is considered an effective process for businesses to handle consumer complaints internally and can help alleviate the need for external resolution procedures, saving both consumers and businesses valuable time and money. The OECD E-commerce Guidelines recommend that businesses and consumer representatives should continue to establish fair, effective, and transparent internal mechanisms to address and respond to consumer complaints and difficulties in a fair and timely manner and without undue cost or burden to the consumer⁴².

From a consumer perspective, a direct recourse to the company is also usually the most advantageous way to solve a dispute. Consumers are generally more interested in concrete solutions to their problems, by obtaining delivery, repair, replacement, or refund of a product or service they have purchased than in asserting their legal rights (Ramsey, 2003).

An analysis of the terms and conditions of the most used online food and grocery platforms indicated that 83.3% of the platforms have internal consumer complaint-handling mechanisms. Further, it was established that some platforms redirect consumer complaints to be handled from their headquarters domiciled outside Kenya. This implies that consumer complaints are likely to take longer to be resolved hence costlier and time-consuming. *It was also noted that 40% of the commonly used food and grocery platforms did not have specific terms and conditions for their food and groceries market segment.*

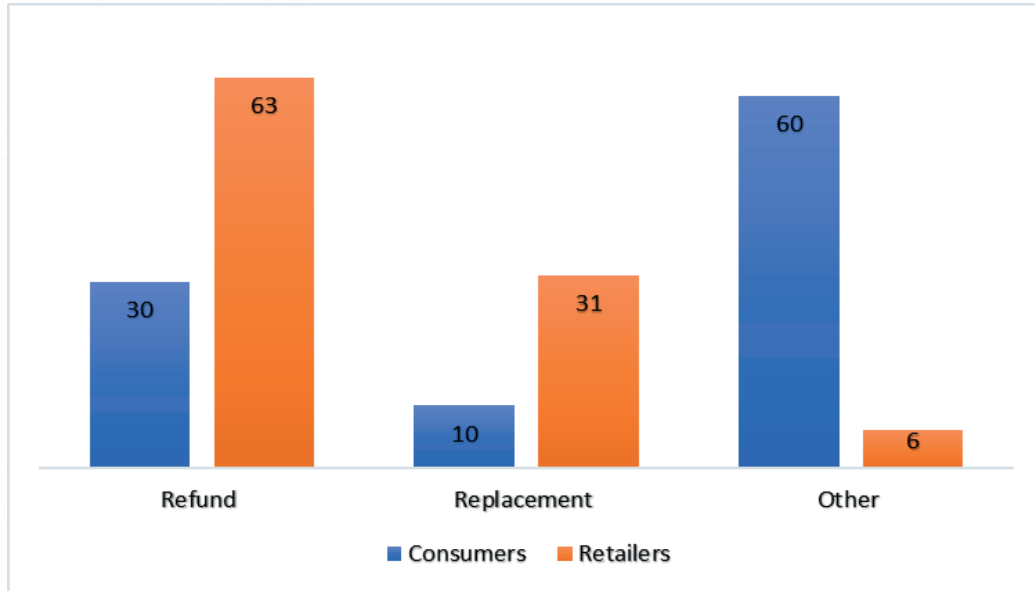
Moreover, some food and grocery platforms had some clauses that indicate that they reserve the right to cancel an order without having to provide a just cause. However, the said platforms will inform the affected consumer of the said cancellation and any amount held in the consumer's account or credit card will be released.

42 <https://www.oecd.org/sti/consumer/36456184.pdf>

6.3.2 Consumer Redress Mechanisms

The study assessed the consumer redress mechanisms applied in online food and grocery platforms, as illustrated in Figure 6.16 below.

Figure 6:14 Redress mechanisms

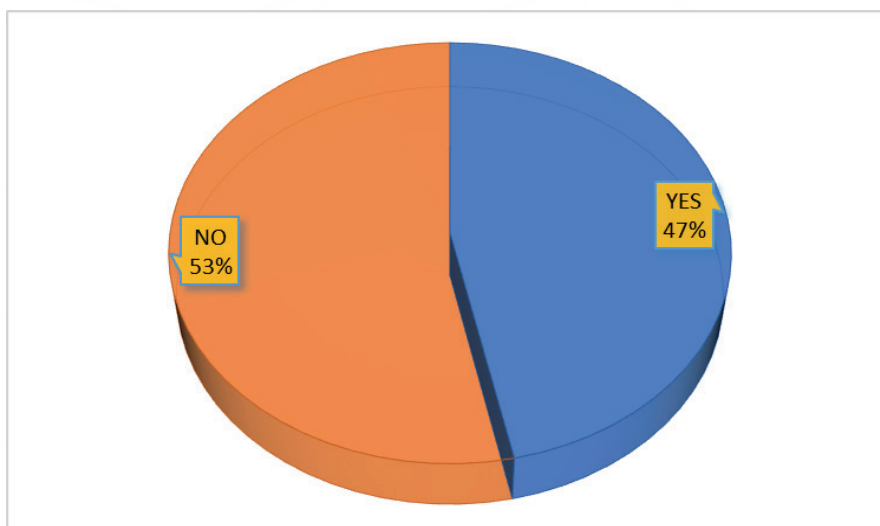


30% of consumers indicated that they had received a refund, 10% a replacement, and 60% of the respondents indicated that their consumer complaints were redressed by other means. Further, Retailers indicated that 63% of the complaints were redressed through refunds, 31% through replacement, and 6% by other means.

6.3.3.1 Consumer Satisfaction with Complaint Resolution in Online Food and Groceries Platforms

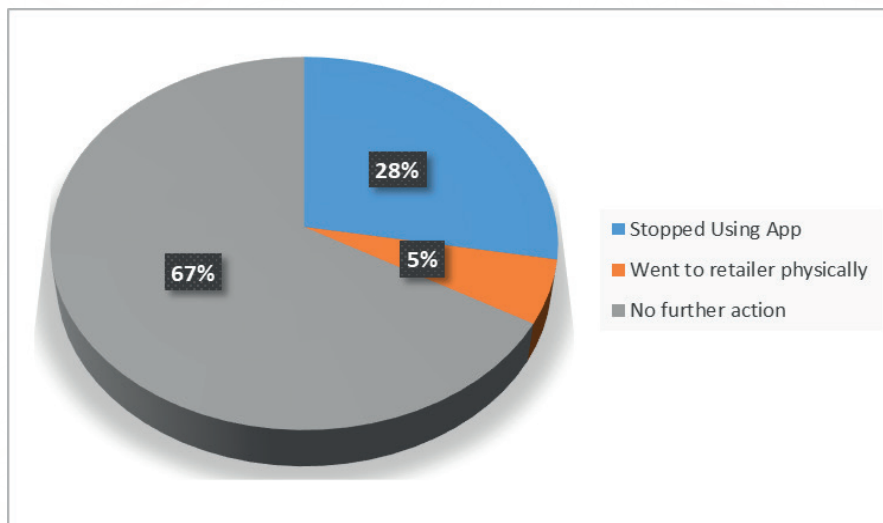
As indicated in Figure 6.18, notably, 53% of the consumers indicated that they were not satisfied with the complaint resolution provided by the online food and grocery platforms while the remaining 47% were satisfied. This led them to take further action, as illustrated in Figure 6.19, where 67% of consumers indicated that they did not take further action, 28% indicated that they stopped using the platform and used other platforms while 5% of the consumers indicated that they had to visit the retailers physically to get their complaints resolved.

Figure 6:15 Consumer satisfaction on complaint resolution



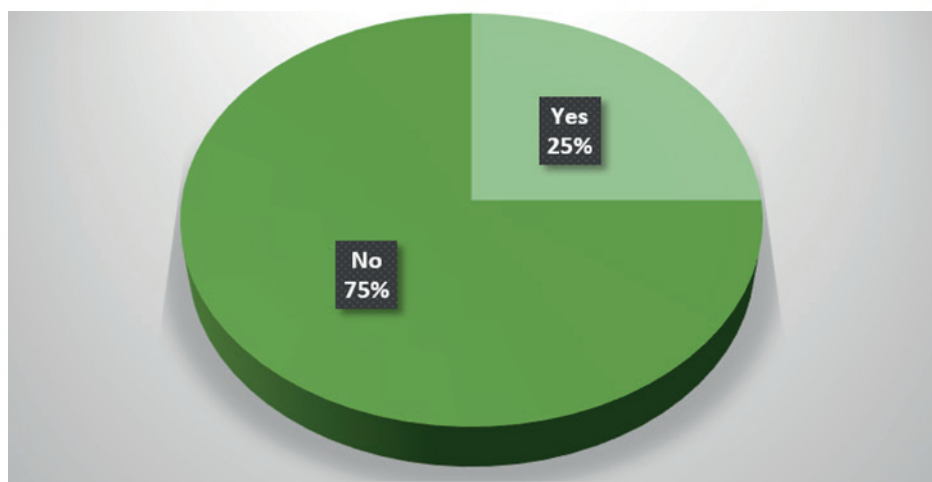
Further, consumers who indicated that they were not satisfied with the complaint resolution provided by online food and grocery platforms were asked to indicate what further actions they took.

Figure 6:16 Further action taken by consumers



As illustrated in Figure 6.20, 75% of the consumers indicated that they had not experienced a repeat of the same issue complained about before while 25% indicated that they had indeed experienced a repeat of the same issues complained about before.

Figure 6:17 Repeat of the same issue complained about before

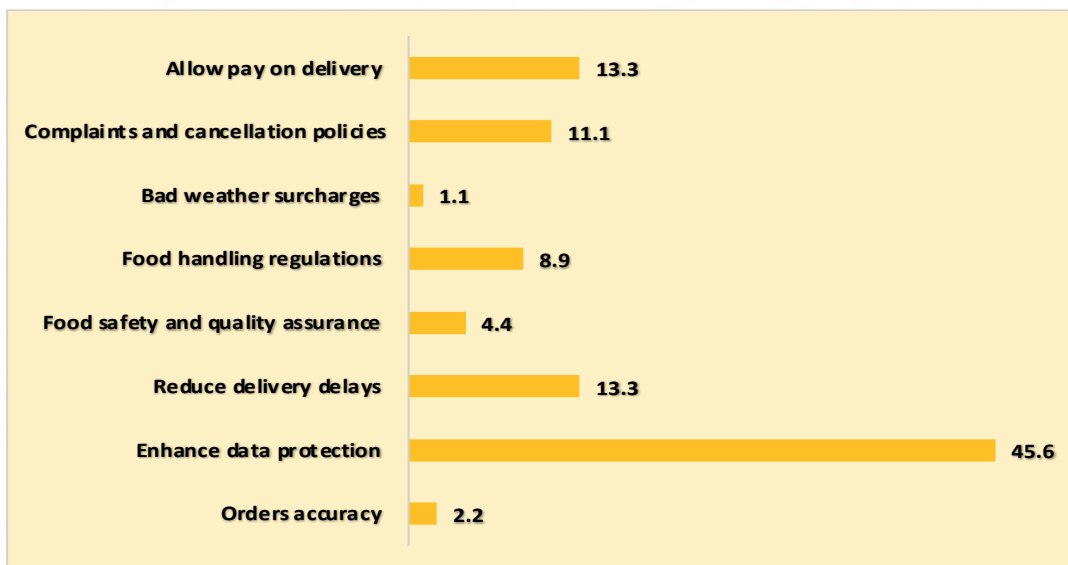


In conclusion, consumer complaints emanating from online food and grocery platforms are mostly handled by the platforms and in some instances, in collaboration with the retailers, e-payment platforms, and couriers depending on the nature of the complaint.

6.3.3.2 Suggestions on How to Improve consumer Experience in Online Food and Groceries Platforms

The study sought to understand from consumers what suggestions are for improvement of their experience while using the food and grocery platforms and these suggestions are as indicated in Figure 6.21. 45.6% of the consumers recommended the enhancement of data protection in online food and grocery delivery platforms. 13.3% of consumers suggested reduced delivery delays as well as being allowed to pay for delivery.

Figure 6:18 Suggestions on how to improve consumer experience in online food and grocery platforms



This analysis illustrates that data privacy⁴³ and control remains a major consumer concern despite the presence of the DPA. An analysis of the data privacy policies of the platforms recommends that the platforms should indicate the intended usage of the data collected. This, therefore, indicates that data-related consumer concerns may be arising from inadequate mechanisms for consumer consent and unfamiliarity with the terms of service provision.

6.3.3.3 Product Quality Control

Product quality matters in Kenya on food and groceries may be handled under Section 56 of the Competition Act No. 12 of 2010 which prohibits misleading representations regarding the quality of products.

Further, the Kenya Bureau of Standards provides a Standard for Ready-to-eat-foods specifications and requires that they be prepared and handled by KS Standard EAS 39. The Standard also provides that raw materials used in ready-to-eat foods shall comply with the relevant Kenya standards. The food shall also be free from foreign matter, objectionable tastes, and/or odors, be washed and prepared with potable water complying with KS EAS 12, and have characteristic taste, smell, texture, and color.

Also, the Anti-counterfeit Agency is mandated to combat counterfeiting, trade, and other dealings in counterfeit goods and to enlighten and inform the public on matters relating to counterfeiting. Digital market platforms use images of products for listings and the creation of profiles to give the brand of the product sources and to also interest consumer to purchase their products. Laws touching on enforcement of counterfeit trade do not expressly or sufficiently provide for e-commerce, creating a gap that allows the sale and listing of counterfeit products on online platforms to thrive.⁴⁴

Moreover, the Food, Drugs and Chemical Substances Act, Chapter 254 of the laws of Kenya prohibits false, misleading, or deceptive representation regarding the character, nature, value, substance, quality, composition, merit, or safety of any food in labeling, packaging, treating, processing, selling or advertising. This Act further provides the Food, Drugs and Chemical Substances (Food Hygiene) Regulations and the Food, Drugs and Chemical Substances (Food Labelling, Additives, and Standards) Regulations that guide the conduct and licensing of any persons dealing in food.

Despite these laws and regulations in Kenya, product quality in online food and grocery platforms remains a grey area as there's a lack of clarity on who is responsible for quality assurance among the platforms and the retailers. Essentially, only the retailers and the couriers handle the actual product before it reaches the consumer and thus, the platforms do not handle the products physically but rather act as intermediaries.

⁴³ Data privacy was not part of the most frequent complaints lodged by consumers

⁴⁴ <https://bowmanslaw.com/insights/intellectual-property/counterfeiting-is-stalling-the-growth-of-e-commerce-in-kenya/>



7.0 CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

7.1.1 Regulatory Framework

Based on the findings of the study, there are no explicit regulations for online food and grocery platforms in Kenya. Nonetheless, there exists regulations under the Competition Act, Kenya Information and Communications Act, Anti-Counterfeit Act, Kenya Standards Act, Data Protection Act, and Trade Descriptions Act that touch on various aspects of online food and grocery platforms activities. Specifically, for food and groceries, the Food, Drugs, and Chemical Substances Act, Chapter 254 of the laws of Kenya prohibits false, misleading, or deceptive representation regarding the character, nature, value, substance, quality, composition, merit, or safety of any food in labeling, packaging, treating, processing, selling or advertising.

7.1.2 Online Food and Groceries Delivery Value Chain

The platforms that operate in the Kenyan online food and grocery delivery market are Glovo, Jumia Foods, Uber Eats, Bolt Foods, and Jumia. Additionally, large retail chains such as Carrefour, Naivas Quickmart, and Chandarana have their platforms. Glovo was the most preferred online food delivery platform followed by Uber Eats. Similarly, Glovo was the most preferred online grocery delivery by consumers, followed by Jumia.

The online food and grocery platforms do not have market power over retailers (restaurants and supermarkets). Retailers are responsible for setting product prices on platforms and are not restricted on the number of platforms they could register with, hence they competed favorably across the various platforms. Additionally, there were no exclusive agreements imposed on retailers by platforms. Retailers similarly do not impose Most Favoured Nation conditions concerning selling their products on online food and grocery platforms. Online food and grocery delivery platforms also do not require retailers to match the terms on platforms with the terms on other sales channels.

Further, there was no common ownership of online food and grocery delivery platforms. Nonetheless, Jumia Foods and Jumia were under one trading group; Jumia Group. The absence of common ownership, however, does not rule out the potential for coordinated conduct in the market, given that only four main players in the online food and groceries market control the platforms market. The fewer the players, the easier it becomes to implement and monitor conduct coordination.

With regards to the power relations between platforms and couriers, the platforms have more power over couriers with respect to determination of courier charges, where platforms are solely responsible for determining courier charges with no room for couriers to negotiate. Additionally, the main challenges faced by couriers listed on platforms were: exclusivity requirements; unfair terms with no room for negotiation and poor pricing; and frequent changes in contract terms.

7.1.3 The Role of Data in Online Food and Groceries Delivery Platforms

Data is fundamental to the operations of online platforms and it influences practically every element of their operations. Most platforms collect data relating to contact information, personal identity information, transactional information, and device information.

Most platforms share the data they collect with their subsidiaries/affiliates and in some instances with third parties and use that information to refine their personalized recommendations, speed the delivery process, and provide a tailored user experience.

The use of the platform services is pegged to consenting to all data-related terms and conditions. Unfortunately, platforms do not present consumers with the choice to accept or decline data-related terms and conditions and furthermore, the consequence of declining the data-related terms and conditions is the discontinuation / barred access to the platform services.

7.1.4 Consumer Protection in Online Food and Groceries Delivery Platforms

The study aimed at better understanding consumer protection concerns to provide redress mechanisms available for consumers when shopping through online marketplaces.

To this extent, more than half of the consumers of online food and grocery platforms shop online for food and groceries once a week. Further, more than half of the consumers in online food and grocery platforms have an undergraduate degree and above, and aged between 21 and 35 years.

It further emerged that most of the consumers of online food and grocery delivery platforms are multi-homing. Because of commoditization of products offered by online food and groceries platforms, constant promotional efforts by the platforms, minimal switching barriers, and low to no cost of multiple platform on-boards, consumers have access to a large variety of restaurants and price comparisons for their product requirements.

One key finding is that consumers considered delivery speed as the most important factor when choosing their preferred platforms. This observation is validated by the fact that delivery-related complaints were the most reported consumers complaints, and also the most handled complaints by retailers selling through online food and grocery platforms.

The available payment methods for consumers, while using online food and grocery platforms, are mobile money, cash, and debit/credit cards. However, mobile money was the most used mode by consumers for online payment. Convenience was the major reason for consumers preference of a particular payment method over the other.

Delivery delays and products not meeting consumers expectations were the most common complaints raised by food and grocery platforms users. Consumer complaints emanating from online food and grocery platforms are handled by the platforms in collaboration with the retailers, e-payment platforms, and couriers depending on the nature of the consumer complaints.

More than half of the commonly used food and grocery platforms had terms and conditions. However, some platforms did not have specific terms and conditions for the food and groceries market segment. This notwithstanding, consumers indicated that they needed enhanced data protection in online platforms.

The results of the study revealed that more than half of the platforms handle consumer complaints while others redirect the complaints to be handled from their headquarters domiciled outside Kenya. This implies that consumer complaints are likely to take longer to be resolved hence costlier and time-consuming. Some platforms nonetheless, do not have internal consumer redress mechanisms.

Some food and grocery platforms had some clauses that indicate they reserve the right to cancel an order without having to provide a justifiable reason. However, such platforms inform the affected consumer of the said cancellation and any amount held in the consumer's account or credit card will be released. *This Clause is in contravention of section 56 (1) (2) (a) and (e) of the Act.*

7.2 Recommendations

7.2.1 Review of Existing Powers and Approaches

There is need for the Authority to continuously monitor the online food and grocery market for anticompetitive conduct. To address the issues of power relations between platforms and the couriers, the Authority should undertake to analyze the contract terms between couriers and platforms to determine whether platforms have a superior bargaining position over couriers and whether they are abusing the same. Further, the Authority may consider enhancing its enforcement powers to allow for investigations into abuse of superior bargaining position and *suo moto* initiation of consumer cases. Lastly, there being multiple legislations are governing e-commerce, there is need to re-think the regulation of e-commerce towards effective regulation of the digital sub-sector..

7.2.2 Consumer Welfare

The Authority should conduct consumer awareness campaigns to educate consumers on their rights and responsibilities relating to e-commerce, as enshrined in Article 46 of the Constitution, 2010. Further, the Authority needs to engage the platforms on the issues of delayed deliveries and product-related complaints to ensure that consumers get value for their money.

7.2.3 Regulatory Co-operation

The need for collaboration between the Authority and other relevant regulators cannot be underscored through a referral mechanism or the establishment of a network of regulators. The findings indicate that no one agency or legislation regulates e-commerce businesses and that data privacy is one of the major

concerns for consumers. This, therefore, calls for the agencies to collaborate and build a network where regular reporting mechanisms will be adopted and communicated to the public, presenting an opportunity to look at emerging issues and promote consistent decisions.

7.2.4 Advocacy

Online platforms should be supported in the development of a framework for self-regulation including developing and implementing codes of conduct. There is need to enact a code of conduct for online platforms where the terms and conditions relating to data should have opt-in/opt-out options, clearly distinguishing consent for the processing of data that is strictly required for the functioning of transactions on the platform and those that are not.

Evidence show that self-regulation has been used by industries for two main reasons: it responds to the absence of state regulation on the one hand and, it is chosen to avoid excessive state regulation, on the other. Joskow and Rose (1989) argue that excessive state regulation would potentially hinder market growth and innovation⁴⁵. The e-commerce market is still in its infancy, and should for this primary reason be supported to grow as it is an enabler and provide critical inputs for various economic activities and other sectors, as well as brings commercial advantages. This is an option that the Authority can consider to explore further.

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CBK Pension Towers, 15th Floor,
Harambee Avenue.
P.O. Box 36265-00200.
Nairobi, Kenya.

Email - info@cak.go.ke
Direct Line: +254 20 2628233
Pilot Line: +254 20 2779000

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