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Boss D/SNA  
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REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION - 2025

DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

REPORT ON THE CONSIDERATION OF PUBLIC PETITION (NO. 14 OF 2024)  
REGARDING LEGAL RECOGNITION AND PROTECTION OF E-HAILING  
MOTORCYCLE RIDERS AND DELIVERY PERSONNEL



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## ABBREVIATIONS

DST	-	Digital Service Tax
EV	-	Electric Vehicle
E-hailing	-	Electronic Hailing
Fin-tech	-	Financial Technology
IC	-	Independent Contractors
IPRS	-	Integrated Population Registration Database System
JKIA	-	Jomo Kenyatta International Airport
KRA	-	Kenya Revenue Authority
NTSA	-	National Transport and Safety Authority (NTSA)
TNCs	-	Transport Network Companies (TNCs)
SMS	-	Short Message Service
SoS	-	an international code signal of extreme distress
UK	-	United Kingdom
VAT	-	Value Added Tax (VAT)

## CHAIRPERSON'S FOREWORD

The Public Petition No. 014 of 2024 by the Digital Boda Drivers Association regarding legal recognition and protection of E-hailing motorcycle riders and delivery personnel, was reported to the House on 18<sup>th</sup> September, 2024 by the Honourable Speaker on behalf of the Petitioners.

The Petitioners are a registered Association with the Registrar of Societies. The Cyclist Transport subsector, popularly known as the Bodaboda industry, has become a strategic part of the Kenyan transport system, providing last-mile connectivity and creating employment opportunities for thousands of Kenyans.

The Petitioners raised many issues, including unfair misclassification of Drivers, where Riders are often misclassified as independent contractors. At the same time, Transport Network Companies (TNCs) retain significant control over their work, effectively treating them as employees without offering employee protections, and oppressive Pricing Formulas, where the pricing mechanisms implemented by TNCs are unfair and unprofitable. The Riders also claimed that they often face sudden deactivation from platforms without fair warning or justification

The Petitioners prayed that the National Assembly through the Committee, among other things, enacts or amends relevant legislation to formally recognize digital riders as a core subsector of the transport industry and ensure their rights are protected; recommends necessary amendments of the National Transport and Safety Authority (Transport Network, Owners, Drivers and Passengers) Regulations, 2022 to include Motorcycles as Vehicles protected under Regulations. The Petitioners also prayed that the Committee inquires into and urgently recommends appropriate legal and regulatory reforms on the operations of Transport Network Companies, including pricing mechanisms and contract terms; establishing a minimum wage for e-hailing riders and reviews the minimum cost of deliveries and designation of specific parking areas for riders.

The Committee observed that the NTSA (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022, omitted motorcycles since the business model of TNCs at the time of enacting the regulations did not engage motorcycles. The market has evolved by engaging vehicles, three three-wheelers, two-wheelers (motorcycles, e-bikes, bicycles), and pedestrians, especially for delivery services. Therefore, there is a need to review the regulations so that they can adequately govern the app-based transport/ e-hailing sector.

The digital taxi and delivery service sectors employ drivers and riders who are mainly the youth segment of the population and, therefore, are a significant contributor to the economy. Notably, the Kenya Revenue Authority submitted that in the financial years 2022/23 and 2023/2024, the revenue collected from digital taxi hailing and digital delivery services amounted to Kshs. 16 Billion.

The Committee, therefore, recommends that the Cabinet Secretary for the Ministry of Roads and Transport should review the National Transport and Safety Authority (Transport Network, Owners, Drivers and Passengers) Regulations and submit the revised Regulations incorporating three-wheelers, two-wheelers (motorcycles, e-bikes, bicycles) to the National Assembly within ninety (90) days of the adoption of this report. The reviewed Regulations should address the issue of pricing formula and dispute resolution mechanisms;

Further, the Cabinet Secretary for the Ministry of Roads and Transport ensures that a Regulatory Impact Assessment on the National Transport and Safety Authority (Transport

Network Companies Owners, Drivers and Passengers) Regulations, 2022, is done within sixty (60) days of the adoption of this report and submit a report to the National Assembly.

**Hon. GK George Kariuki, MP**

**Chairperson, Departmental Committee on Transport and Infrastructure**

## **1.0 PREFACE**

### **1.1 Introduction and Committee Mandate**

1. The Departmental Committee on Transport and Infrastructure is established under the National Assembly Standing Orders No. 216 (1). The functions and mandate of the Committee as per Standing Orders, No. 216(5) include: -
  - a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
  - c) To study and review all the legislation referred to it;
  - d) To study, access and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on Appointments);
  - g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;
  - h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - i) To examine any questions raised by Members on a matter within its mandate.
  - j) To examine treaties, agreements and conventions;
2. The subject matter of the Departmental Committee on Transport and Infrastructure are stated in the Second Schedule of the National Assembly Standing Orders as follows: Transport, including non- motorized transport and maintenance of Roads, rails, air and marine transport, seaports and national integrated infrastructure policies and programmes and transport safety.

### **1.2 Committee Subjects and Oversight**

3. The Committee is mandated to consider the following subjects as per the second schedule of the Standing Orders:
  - (i) Transport, including non-motorized transport;
  - (ii) Construction and maintenance of roads;

- (iii) Rails, air and marine transport; Seaports and national integrated infrastructure
- (iv) policies and
- (v) programmes; and
- (vi) Transport safety.

4. The Committee oversees the Ministry of Roads and Transport which has two (2) state departments namely:

- i. State department for Roads
- ii. State department for Transport

5. Further, Committee oversees the State Department for Shipping and Maritime Affairs which is under the Ministry of Mining, Blue Economy, and Maritime Affairs.



### 1.3 Committee Membership

6. The Committee comprises the following Members:

The Hon. G.K George Kariuki, CBS M.P - **Chairperson**  
Ndia Constituency  
**United Democratic Alliance Party**

The Hon. Mutua Didmus Wekesa Barasa, M.P- **Vice- Chairperson**  
Kimilili Constituency  
**United Democratic Alliance Party**

The Hon. Arama Samuel. M.P  
Nakuru Town West Constituency  
**Jubilee Party**

The Hon. Abdul Rahim Dawood, M.P.  
North Imenti Constituency  
**Independent**

The Hon. Naicca, Johnson Many, CBS, M.P  
Mumias East Constituency  
**Orange Democratic Movement Party**

The Hon. Elsie Muhanda, M.P.  
Kakamega County  
**Orange Democratic Movement Party**

The Hon. Francis, Kajwang' Tom Joseph,  
CBS, M.P  
Ruaraka Constituency  
**Orange Democratic Movement Party**

The Hon. Chege John Kiragu, M.P.  
Limuru Constituency  
**United Democratic Alliance Party**

The Hon. Kiaraho, David Njuguna, M.P.  
**Jubilee Party**  
Ol Kalao Constituency

The Hon. Kiunjuri Festus Mwangi, M.P.  
Laikipia East Constituency  
**The Service Party**

The Hon. Bady, Bady Twalib, M.P.  
Jomvu Constituency  
**Orange Democratic Movement Party**

The Hon. Abdirahman, Husseinweytan  
Mohamed, M.P.  
Mandera East Constituency  
**Orange Democratic Movement Party**

The Hon. Komingoi Kibet Kirui, M.P.  
Bureti Constituency  
**United Democratic Alliance Party**

The Hon. Saney Ibrahim Abdi, M.P  
Wajir North Constituency  
**United Democratic Alliance Party**

The Hon. Jhanda Zaheer, M.P  
Nyaribari Chache Constituency  
**United Democratic Alliance**

#### 1.4 Secretariat

7. The following members of Staff service the Committee:

Ms. Tracy Chebet Koskei  
Senior Clerk Assistant  
**Head of Secretariat**

Mr. Mohamednur Mohamud Abdullahi  
**Clerk Assistant III**

Mr. Abdinasir Moge  
**Fiscal Analyst**

Mr. Eric Kariuki  
**Research Officer**

Mr. Clinton Sindiga  
**Legal Counsel II**

Ms. Clare Choper Doye  
**Clerk Assistant III**

Ms. Rinha Saineye  
**Media Relation Officer**

Mr. Danton Kimutai  
**Audio Officer**

Ms. Faith Makena  
**Serjeant at-Arms**

## CHAPTER TWO:

### 2.0 BACKGROUND INFORMATION

#### 2.1 Introduction

1. The Public Petition No. 014 of 2024 by the Digital Boda Drivers Association regarding legal recognition and protection of E-hailing motorcycle riders and delivery personnel was reported to the House on 18<sup>th</sup> September, 2024 by the Honourable Speaker on behalf of the Petitioners.
2. The Petitioners, the Digital Boda Drivers and Deliveries Association of Kenya, are a registered Association with the Registrar of Societies.
3. The Cyclist Transport subsector, popularly known as the Bodaboda industry, has become a strategic part of the Kenyan transport system, providing last-mile connectivity and creating employment opportunities for thousands of Kenyans. Digital platforms have significantly transformed the sector, bringing riders new opportunities and critical challenges.
4. The Digital Boda Drivers and Deliveries Association represents a large community of digital riders who operate through various platforms.
5. The Petitioners claimed that the digital platform industry has brought immense growth to the transport sector, providing employment and convenient last-mile services. However, riders continue to face serious challenges such as unfair pricing, lack of legal protection, and exploitative contracts.
6. The Petitioners further claimed that some of the key issues faced by digital riders include—
  - a. Unfair Misclassification of Drivers: Riders are often misclassified as independent contractors while Transport Network Companies (TNCs) retain significant control over their work, effectively treating them as employees without offering employee protections;
  - b. Lopsided Contracts: Riders are subject to contracts with unrealistic and one-sided terms that favour the TNCs;
  - c. Oppressive Pricing Formulas: The pricing mechanisms implemented by TNCs are unfair and unprofitable, leaving riders with inadequate wages after covering their expenses;
  - d. Unfavorable Working Conditions: There is little sensitivity to the unique conditions faced by riders, including safety concerns, long working hours, and insufficient benefits;
  - e. Unfair Compensation: The payment system leaves riders with earnings that do not cover operational costs, let alone provide a decent living wage;

- f. Arbitrary Administrative Actions: Riders often face sudden deactivation from platforms without fair warning or justification;
  - g. Inadequate Complaint Handling: The processes for addressing rider complaints are insufficient and ineffective;
  - h. Unlawful Account Deactivations: Riders' accounts are arbitrarily deactivated without due process, leaving them with no income;
  - i. Lack of Dispute Resolution Mechanisms: There is no robust system to resolve disputes between riders and TNCs fairly;
  - j. Data Protection Violations: There is non-compliance with the Data Protection Act, compromising the safety and integrity of riders' personal information.
  - k. Failure to Recognize Rider Welfare Organizations: Organized welfare groups representing rider interests are not integrated into the management of e-hailing services;
  - l. Inadequate Support from Local Authorities: Local authorities fail to offer adequate protection and support for digital riders in their operations; and
  - m. Lack of a Legal Framework: Existing traffic and labour laws do not adequately recognize or protect the digital riding subsector, leading to arbitrary decision-making by TNCs through automation and artificial intelligence.
7. The Petitioners contended that other digital platforms such as *Bolt, Glovo and Uber* charge excessive commissions exceeding the 18% recommended for the e-hailing sub-sector. This subjects riders to losses or no profits after accounting for operational costs. Moreover, riders lack designated parking areas, leading to unfair harassment from traffic police and county officials
  8. The Petitioners claimed that riders face constant and unfair harassment from traffic police and law enforcers despite complying with regulations. There are also no designated areas for riders to wait for orders or park safely without risking harassment.
  9. The Petitioners further claimed that the digital riding subsector is unrecognized in existing labour laws, leaving riders without critical legal protection. There is insufficient government oversight over the operations of TNCs leading to unfair treatment of riders.
  10. The Petitioners claimed that the NTSA Regulations do not cover the specific needs of digital riders leaving a significant regulatory gap. The current transport regulations do not sufficiently address the unique safety needs of digital riders, especially regarding accidents and insurance.
  11. The Petitioners further claimed that the Ministry of Transport has failed to recognize digital riders as a legitimate labour sector deserving of protection under labour laws. Instead, the Ministry has allowed TNCs to operate without sufficient oversight leading to exploitative practices.

## **2.2 Prayers of the Petitioners**

12. The Petitioners prayed that the National Assembly through the Committee —

- (a) Enacts or amends relevant legislation to formally recognize digital riders as a core subsector of the transport industry and ensure their rights are protected.
- (b) Recommends necessary amendments of the National Transport and Safety Authority (Transport Network, Owners, Drivers and Passengers) Regulations, 2022 to include Motorcycles as Vehicles protected under Regulations; and
- (c) Inquires into and urgently recommends appropriate legal and regulatory reforms on:
  - i. the operations of Transport Network Companies, including pricing mechanisms and contract terms; .
  - ii. establishing a minimum wage for e-hailing riders and minimum contractual terms;
  - iii. the empowerment of rider welfare organizations;
  - iv. fair hearing before adverse action against riders;
  - v. clear timelines for addressing rider complaints both internally and externally;
  - vi. review of the minimum cost of deliveries;
  - vii. designation of specific parking areas for riders; and
  - viii. training of riders on county regulations.

## **2.3 Legal Underpinning of the Petition**

13. Article 37 of the Constitution, under the Bill of Rights, provides for the right of any citizen to present a petition to public authorities. Article 119 of the Constitution further provides for the right of every person to petition Parliament to consider any matter within its authority, including to enact, amend, or repeal any legislation.
14. Article 95 (4) and (5) of the Constitution provide that The National Assembly represents the people of the constituencies and special interests in the National Assembly, deliberates on and resolves issues of concern to the people and exercises oversight of State organs.
15. Additionally, the Petition to Parliament (Procedure) Act, 2012, and the National Assembly Standing Orders provide the procedure to be followed to ensure the right is exercised.

## 2.4 Situational Analysis

16. E-hailing or ride-sourcing services have been a major innovation in the transport sector. The providers of these services, often known as *Transport Network Companies (TNCs)*, use an online, information technology-enabled, and smartphone-based platform to connect available car or taxi drivers and potential passengers in real-time, resulting in an efficient, convenient, quick and transparent procurement of the passenger ride service<sup>1</sup>.
17. Some of the global and regional TNCs licenced to operate in Kenya includes: *Uber, Bolt, Little Ltd, Faras Cabs, Safe Boda, Yego, and Space Taxi*.
18. Other online platforms such as *Grubhub, Glovo, Uber Eats, and DoorDash* connect consumers and restaurants by facilitating takeout and delivery orders in exchange for commission fees
19. The Cabinet Secretary in charge of Transport, in 2022, made Regulations referred to as the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022.
20. According to section 4 of the Regulations, the Regulations apply to: transport network companies, transport network owners, transport network drivers and transport network passengers. (A transport network driver is defined by the regulations as a person authorized by transport network company to offer transport network services to transport network passengers through transport network platform).
21. Section 9 (2)(g) of the Regulations states that “ the commission which shall be paid by a transport network driver or transport network owner to the transport network company, shall not exceed eighteen percent of the total earnings of the trip”.
22. Further, section 9(3) of the Regulations states that “ a transport network agreement shall not include terms or conditions designed to increase the commission payable by a transport network driver or transport network owner to an amount exceeding eighteen percent of the total earnings per trip as required under sub-regulation (2)(g).
23. Before the Regulations were adopted, the Transport Network Companies (*Uber, Bolt, and Littlecab*) were charging commissions to a high of 25%, 20%, and 15% of the ride value or fare, respectively.

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<sup>11</sup> Shaheen S, Chan N, Bansal A and Cohen A 2015: Shared Mobility: <http://innovativemobility.org/?project=shared-mobilitydefinitions-industry-developments-and-early-understanding>

## A. FOOD DELIVERY INDUSTRY

24. Economists project that the online food delivery business will grow into a \$60 billion industry by 2025. Online food delivery business earns revenue through:-

- i. **Commission fees-** restaurants are charged a commission fee for each order facilitated through its platform. This fee typically ranges from **15% to 30%** of the total order value, varying based on the restaurant's agreement and services provided.
- ii. **Delivery fees-**Customers often pay a delivery fee for the convenience of having their meals brought to their doorstep. Delivery fees fluctuate based on factors like distance, demand, or promotional offers.
- iii. **Service fees-** Supplementary service fees, such as small order fees or busy area fees, occasionally apply to orders, adding to the overall revenue stream.

## B. REGULATION OF THE FOOD DELIVERY INDUSTRY

25. Many U.S. cities announced temporary commission fee caps sometime during the COVID-19 pandemic. But as of early 2023, most of these caps had ended. San Francisco City was among the very first cities to introduce a **commission fee cap of 15%**. The city dropped their cap in January of 2023. On January 4, 2023, Portland City Council voted unanimously in favor of a permanent limit on **delivery commissions to 15%**.

26. As of late 2022, British Columbia implemented a province-wide cap through the Food Delivery Service Fee Act prohibiting Restaurant Delivery Services from charging more than 20% in fees. That breaks down to 15% of the total food cost and 5% for "other fees."

## 2.5 Comparative Analysis

27. The following is an analysis of operations of digital taxi operations in other countries:

### I. REPUBLIC OF RWANDA

28. Rwanda has two *e-hailing* or ride-sourcing services firms, *Move* and *Yego Cabs*. Yego Cabs charges a commission of less than 10% commission or \$ 1.5 (Kshs. 200) day platform fees to transport network drivers or transport network owner<sup>2</sup>.
29. Other e-hailing or ride-sourcing services firms like Uber and Bolt have been unable to penetrate the Rwandan Market due to inability to meet Rwanda's Data Localization Law<sup>3</sup>. According to Article 3(18) of the Data Protection Law, consent must be a freely given, specific, informed, and unambiguous indication of the data subject's wishes by which they, by an oral, written, or electronic statement, or by clear affirmative action, signify agreement to the processing of personal data relating to them.

### II. SOUTH AFRICA

30. In South Africa, like Kenya, there are several E-hailing or ride-sourcing services firms, including Uber, Bolt, *inDriver*, *Lyft*, *Safeboda*, *Yookoo Ride*, and *Scoutours*. 21.1% of the population uses these transportation alternatives.
31. In 2024, Rwanda amended its National Land Transport Act, introducing compulsory operating licences for e-hailing drivers, thereby ensuring the law is brought in line with the evolving digital economy<sup>4</sup>.
32. Further, a new Law was enacted in 2024 referred to as the *Economic Regulation of Transport Act*, which establishes a transport regulator responsible for regulating prices in the broader transport sector, which means shipping and ports, aviation, rail and road transport are all affected<sup>5</sup>. Additionally, the Act seeks to establish a single regulatory body to focus on the economic regulation of the transport industry including **price controls such as tariffs, charges, fees and tolls**.
33. The Commissions charged by Transport network companies in South Africa is not uniform with some companies charging a high of 25%. This will however change due to the passage of the two laws.

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<sup>2</sup> <https://www.afsic.net/wp-content/uploads/2019/05/YEGO.pdf>

<sup>3</sup> [ppsafrika.com/how-yego-moto-helped-digitize-rwandas-moto-taxi-industry/](https://ppsafrika.com/how-yego-moto-helped-digitize-rwandas-moto-taxi-industry/)

<sup>4</sup> <https://www.dailymaverick.co.za/article/2024-06-25-new-e-hailing-laws-welcomed-but-driver-bodies-say-serious-problems-remain-unresolved/>

<sup>5</sup> <https://www.dailymaverick.co.za/article/2024-06-25-new-e-hailing-laws-welcomed-but-driver-bodies-say-serious-problems-remain-unresolved/>



### III. NEW YORK, UNITED STATES OF AMERICA

34. Transportation network companies, also known as ride-hailing, ridesharing, or app-based for-hire vehicle companies, first entered New York in the early 2010s, with *Uber* launching in 2011, *Via* in 2012, *Lyft* in 2014, and *Juno* in 2016<sup>6</sup>.

35. In 2018, New York City became one of the first cities to regulate the economics of *app-based for-hire vehicles like Uber and Lyft* by establishing a **minimum rate for drivers and a cap** on the number of licenses for for-hire vehicles. The minimum per trip standard gave drivers estimated gross hourly earnings **of at least \$27.86** per hour, before expenses, for an estimated net income of \$17.22 per hour<sup>7</sup>This policy aimed to protect drivers from being paid less than the minimum rate and to ensure compensation for all hours worked and driving expenses.

### IV. UNITED KINGDOM

36. A U.K. Supreme Court judgment in February 2021 ruled that Uber's drivers should be considered workers, not contractors. *Uber* and fellow ride-hailing player '*FreeNow*' filed a lawsuit asking to have its model deemed legal in the U.K where drivers were contracted. The ruling meant that drivers on ride-hailing are guaranteed at least the National Living Wage, holiday pay and a pension plan.

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<sup>6</sup> <https://academic.oup.com/ser/article-abstract/20/4/1881/6460247?redirectedFrom=fulltext>

<sup>7</sup> <https://www.labor.ucla.edu/wp-content/uploads/2023/02/Taxi-Commission-policy-brief-2.9.23.pdf>

## CHAPTER THREE

### 3.0 SUBMISSIONS BY STAKEHOLDERS

#### 3.1 Introduction

37. The Committee invited various stakeholders to provide their oral or written submissions. The Committee received submissions from the following stakeholders whose representations are outlined below:

- (1) The Petitioners;
- (2) Transport Network Companies attended a meeting on 14<sup>th</sup> October, 2024:
  - a) SafeBoda
  - b) UBER
  - c) Bolt
  - d) YeGo
  - e) In-Driver
  - f) Space Taxi
  - g) PTG Limited
- (3) National Transport & Safety Authority
- (4) Office of the Data Commissioner
- (5) Competition Authority of Kenya
- (6) Communications Authority of Kenya
- (7) Kenya Revenue Authority

#### 3.2 Submission by Petitioners

38. The Petitioners, Digital BodaBoda Drivers and Deliveries Association of Kenya, accompanied by their legal representative, appeared before the Committee on 17 October 2024 to make their presentation.
39. The Petitioners raised their concerns, highlighting the exclusion from the National Transport and Safety Authority (Transport Network Company (TNC), Drivers and Passengers) Regulations, 2022.
40. They also protested the misclassification of riders as independent contractors. He raised issues with platform companies, including one-sided contracts, arbitrary terminations, and inadequate complaint-handling processes.
41. He emphasized the need for regulatory changes to include motorcycles in the Regulations and amendments to the Employment Act to represent gig workers better.
42. The Petitioners informed the Committee of the specific challenges in the industry as follows;

- i. **Pricing Models:** The association believes the current pricing models are skewed to benefit platform companies rather than drivers.
  - ii. **Contract Transparency:** Contracts between drivers and platform companies lack transparency, with riders often unaware of terms until issues arise.
  - iii. **Data Privacy Concerns:** Riders are concerned about the handling and security of their personal data, raising the need for better compliance with the Data Protection Act.
43. In response to these challenges, the Petitioners proposed solutions, including;
- i. Issuance of a certificate of integrity for platforms that comply with fair contracting practices.
  - ii. Establishment of an appeals mechanism for riders to challenge platform decisions.
  - iii. Regulatory oversight to ensure platform companies comply with the Data Protection Act and safeguard riders' information.
44. In concluding their submission, the Petitioners brought to the Committee's attention prior collaborative efforts with agencies such as the National Transport and Safety Authority (NTSA) and referenced instances of attempted mediation and legal actions that had not yet yielded satisfactory results for the association.

### 3.2 Submissions by Transport Network Companies (TNCs)

#### 3.3.1 SAFE BODA

45. On the Amendment of the National Transport and Safety Authority (Transport Network, Owners, Drivers and Passengers) Regulations, 2022, the representatives of SafeBoda submitted that they fully support motorcycle PSV drivers being included in the Regulation to ensure that their rights are protected. They provide a similar service to car taxi drivers and are entitled to the same protections. This recommendation extends to drivers who exclusively offer package delivery services as well
46. Regarding complex Driver Contracts and Terms and Conditions, they indicated that the contracts are important to ensure the protection of the companies from lawyers who may seek technical victories. Whilst it is important for drivers to understand the agreements they are signing, complex contracts are no different from those in other industries.
47. All the same, SafeBoda submitted that it had taken note of the feedback from drivers and now provides to the Digital Boda Drivers and Deliveries Association a “Contract Explainer”, that explains the key terms and conditions in simple terms. They informed the Committee that they were in discussions with the Association to agree on those terms, after which they would translate them into Kiswahili (the current contracts are in English only) and distribute them to all new and existing drivers working on their platform.
48. On handling grievances, SafeBoda submitted that they take feedback from passengers, drivers and the general public through their local call centre (*Tel: +254 20 7763333*), social media channels and in person at their offices. When a passenger raises a grievance

with a driver, the SafeBoda policy is to contact the driver to hear their views on the incident. After considering both the passenger and driver's points of view, a decision is made, and the outcome is communicated to the driver via a phone call and SMS message.

49. During onboarding, drivers are made aware of the SafeBoda code of conduct they are to adhere to, as well as the consequences of breaching it
50. On Trip Pricing & Discounts, SafeBoda submitted that it firmly believes in a fair price for the driver as well as a competitive price for the passenger, who has many options to choose from. They informed the Committee that they continually take on board feedback from drivers on pricing and refine it to meet their expectations as much as possible, while also aiming to remain competitive to passengers. Price changes are communicated to drivers and NTSA via *SMS, WhatsApp, and a letter*.
51. Trip discounts offered to passengers are fully at SafeBoda's cost. Driver earnings are exactly the same whether there is a discount running or not. To ensure that drivers have clarity on this, the amount that SafeBoda compensates the driver when a customer discount has been applied is shown in the driver app at the end of each trip.
52. Drivers can review their trip history and see the amount that SafeBoda has topped up to their accounts for any discounted trips.
53. They also submitted that they believe in a free market and to that end, do not support price regulations. They opined that price regulations will stifle innovation and will ultimately depress drivers' earnings, since new regulations would be needed every time a price change is to be implemented. It is important that different TNCs are able to set prices that target their specific passenger and driver segments. We believe that drivers hold more power than they realize and they can choose to work only with the TNCs that offer them fair pricing and commissions.
54. On the Commission charged to drivers, SafeBoda submitted that they charge BodaBoda drivers 15% of the full price of a completed trip. This 15% encompasses our commission, the 1% digital service tax and the 16% VAT on commission. There are no hidden fees or additional charges. Additionally, SafeBoda drivers can access their earnings within 1 minute of a trip's conclusion, regardless of the passenger's mode of payment. These earnings can be withdrawn from the driver application to *MPesa* anytime.
55. SafeBoda also informed the Committee that it is fully supportive of motorcycle PSV and delivery drivers having designated pick-up and drop-off locations in the central business district of Nairobi and other cities and towns, as had been raised in the Petition. It recognized that county governments are working to bring order to cities and towns and minimize congestion.

56. Regarding training drivers/riders on County Regulations, as part of SafeBoda's onboarding process, drivers are trained on adherence to Kenya's road rules. We welcome collaboration with NTSA and county governments on more detailed road safety training and county regulations. As our name suggests, safety is one of our core principles and we champion any efforts to make our roads safer for drivers and for passengers. As an example, SafeBoda was the first ride-hailing company in Kenya that insisted on a helmet for both the driver and the passenger

### **3.3.2 Submissions by UBER**

51. Representatives from Uber appeared before the Committee on 14th October 2024 and made oral submissions and later submitted written submissions. In their submissions, they indicated as follows:

#### **I. Uber's operations in Kenya**

57. Uber is a global technology company providing lead generation services in the road-based public transport and delivery industry. Uber provides technology-based intermediary services for e-hailing to both passengers and drivers (Rides) and for delivery services to merchants, eaters and delivery people (Eats), who connect via an application (the Uber app) or Uber's website.

58.

59. Uber began operations in Kenya in Nairobi in 2015 (Rides) and 2018 (Eats) and has since expanded our services to six cities and now provides earnings opportunities directly to over 20,000 Kenyans.

60.

61. According to a report on Uber's economic impact in 2023, Uber contributed an estimated Kshs. 14.1 billion to the Kenyan economy, while Uber Eats contributed an estimated Kshs. 534 million in additional value for restaurants across the country.

62.

63. Uber B.V. (Uber BV) and Uber Portier B.V. (Uber Portier) are companies incorporated under the laws of the Netherlands, whose ultimate parent company is Uber Technologies Inc., a public company headquartered in San Francisco, U.S.A. Uber B.V. is the technology company that offers the services through the "Uber App", for connecting passengers with drivers.

64.

65. Uber Eats Kenya Limited offers digital intermediary services for the Eats line of business which connects merchants selling food and groceries with users requiring the items on the one hand and provides delivery services on the other hand. Uber B.V. is registered locally for Value Added Tax (VAT) and Digital Service Tax (DST) and has been compliant with filing VAT and DST returns and remitting these taxes to the Kenya Revenue Authority (KRA).

66. Marketing and Support Service Entity In all countries where the Uber App is available, Uber has a Local Service Entity (LSE) which provides marketing and support services to Uber B.V. The LSE is incorporated under the laws of the specific jurisdiction (e.g. Kenya,

Uganda, Tanzania). The LSE incorporated in Kenya is Uber Kenya Limited (Uber Kenya) for Rides and Uber Eats Kenya Limited (Uber Eats Kenya) for the Eats business.

67. Uber Kenya is neither owned by nor an agent of Uber B.V. Uber Kenya typically supports Uber B.V. by promoting the Uber App among local drivers and passengers, running other local promotions, answering questions from local passengers and/or drivers, and operating the state-of-the-art driver and passenger service centre located in Nairobi.
68. Uber Eats Kenya provides all the services, including the purchase and sale of delivery services to merchants, couriers, and eaters. As tax residents of Kenya, both Uber Kenya and Uber Eats Kenya discharge Corporate Income Tax, Value-Added Tax (VAT), and other tax obligations in respect of the income generated from the marketing and support services provided by Uber Kenya and the digital and intermediary services provided by Uber Eats Kenya.

## **II. Relationship between Uber and drivers/delivery people**

69. Drivers/delivery people are independent contractors (ICs), not Uber employees. The Drivers/delivery sign commercial terms in order to use the Uber App to provide independent transportation/delivery services as ICs. Drivers/delivery people can choose when and where they would like to use the Uber App.
- 70.
71. Additionally, the driver/delivery person decides whether or not they want to accept a request. They are not obligated to use the Uber App or provide transportation/delivery services and may accept or reject any request. In relation to the Rides line of business, Uber is a mere technology intermediary connecting drivers providing transportation services to their passengers (riders). In relation to the Eats line of business, delivery people are ICs who sign up to use the Uber App to receive requests to provide delivery services to Uber Eats Kenya. In addition, as ICs, drivers/delivery people:
  - i. have no fixed/confirmed remuneration and receive earnings for the trips that they carry out of their own choosing (unlike employees who have a fixed salary/income paid on a regular, usually monthly or as otherwise agreed, basis);
  - ii. are free to work for and with whoever they want whenever they want, including with competitors (which is inconsistent with an employment relationship);
  - iii. are responsible for paying their own taxes (as applicable) and obtaining their own vehicles/tools to carry out any driving/delivering that they wish to on the Uber App and are also responsible for the maintenance and upkeep of their vehicles. Uber does not own or operate any vehicles; and
  - iv. Drivers/delivery people are solely responsible for generating their own income and controlling their own expenses. Uber does not guarantee drivers/delivery people a minimum number of trip requests.

## **III. United Kingdom Worker Status**

72. Uber's model in the UK is very different from that in Kenya for several reasons, including the legal and regulatory regimes and the current business model, which does not charge a service fee. The UK courts assessed Uber's model in 2016, with the Supreme Court ultimately finding that some UK drivers were workers, not employees.
73. Worker status is a third category of status in the UK, between employee and independent contractor. It should be noted that Uber's delivery business in the UK remains that delivery people are ICs. This is consistent with the Supreme Court authority in the UK finding that one of the market-leader platforms has cycle/bicycle/moped delivery people who are ICs for delivery.

#### **V. Contracting terms and negotiation process between Uber and drivers/delivery persons**

74. As a technology intermediary, the Uber app is utilised by tens of thousands of drivers and delivery people across Kenya. This creates significant efficiencies for drivers/couriers and convenience for passengers, eaters and merchants. Like other technology companies offering similar services, Uber has put standard terms in place to ensure consistency and efficiency in providing its services. This approach is common in industries that rely on large-scale, platform-based models.
75. Given the scale of operations and the sheer number of drivers/delivery people using the Uber App, it would be impractical to negotiate individual terms with every single driver/courier. Uber uses standard-form terms and conditions, carefully tailored to reflect local needs and ensure fairness to drivers/delivery people across the board. This standardized approach allows us to maintain a seamless, high-quality experience for drivers/delivery people and all other users of the Uber App alike.
76. The negotiation process is a huge challenge for the reasons stated above, including the large volume of drivers and delivery people using the Uber app daily. Uber, however, is committed to regularly engaging drivers and delivery people to gather feedback on various aspects of the services we offer.

#### **VI. Courier licensing**

77. Under the existing framework, the Kenya Information and Communications Act, 1998 ("KICA") covers the delivery of non-food items. The Communications Authority of Kenya ("CAK") oversees this through a courier services licensing process. Currently, Kenyan laws do not specifically regulate the delivery of food items. The CAK currently only issues courier licenses to corporate entities, not to individual delivery people operating as independent contractors.
78. The National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations, 2022 (TNC Regulations) apply solely to technology platforms that connect drivers providing transportation services with passengers in need of transportation services. It is important to note that the TNC

Regulations only apply to four-wheeled motor vehicles, and expressly, 4 excludes its application to motorcycles and taxicabs. Extending these regulations to cover delivery services would introduce a risk of overlapping Regulations of the delivery people.

#### **VII. Dispute resolution mechanisms/complaint handling procedures between Uber and drivers/delivery people**

79. In addressing disputes and complaints between Uber and drivers and delivery people, Uber submitted that it is committed to maintaining a transparent and fair approach for all parties involved. They submitted that they actively seek continuous feedback from drivers/delivery people through regular engagement and information sessions, providing a platform for drivers/delivery people to voice their concerns, share experiences and help shape the improvements to their services.

80. Uber also submitted that it prioritises a fair and balanced process where drivers/delivery people are given an opportunity to be heard and respond to any accusations made against them. In addition, the company offers various avenues to resolve concerns efficiently. Drivers can access assistance and resolution of complaints through in-app support and in-person support at their state-of-the-art local driver and passenger support centre.

81.

#### **VIII. Data protection of passengers and drivers**

82. Uber submitted that it values the privacy of all users and is dedicated to maintaining high data protection and security standards. To uphold this commitment, Uber submitted that it continuously aligns their operations, internal processes, and policies with global data protection standards and Kenya's Data Protection Act, 2019 requirements.

83. Further, the Committee was informed that Uber has implemented robust data protection measures to comply with Kenyan law, including but not limited to policies for data classification, confidentiality, technical security controls, and mandatory training to safeguard user data as "Restricted/Confidential." Additionally, Uber maintains transparency through a "Privacy Notice" detailing data handling practices and user rights in relation to their personal data.

84. Additionally, to ensure continuous protection and compliance across all of Uber's operations, Uber continuously conducts data privacy audits and third-party risk assessments and has incorporated privacy principles in the design, development, and maintenance of Uber's platforms and systems. Uber only uses personal data to provide its services on Uber's platform and comply with a legal obligation.

#### **IX. Pricing formula**

85. For rides, fares are calculated based on a Time and Distance mechanism. The Time and Distance amount is calculated at the time the passenger books a trip, using the following methodology: Example calculation: The total of (Distance + Time + Base) is compared to the Minimum Fare, and the higher of the two fares is then carried to the next step.



86. The Base fare compensates the driver for the average distance travelled from the driver's location to the passenger's location. This means that a higher fare per km applies for longer-distance trips. This is designed to compensate drivers for taking long-distance trips that may not have a return journey.
87. Regarding the Commission charge, Uber confirmed that it complies with the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations, 2022 (the Regulations), which, among other things, prescribe an 18% commission cap for Uber's receipts from drivers of five-seater category cars.
88. They pointed out that the Regulations do not apply to motorcycles but confirmed that Uber does not collect more than 18% commission from motorcycle drivers on Rides. They also submitted that it is important for the Committee to note that the commission that Uber collects from drivers is heavily reinvested into the market (through promotions) and used towards safety initiatives (Emergency response, etc.), technology innovations, and features that directly benefit passengers and drivers (such as AIG insurance on every trip).
89. VAT on Rides Separately, please note that the Kenya Revenue Authority (KRA) requires that we charge and collect a 16% Value Added Tax (VAT) on the service fee charged to drivers in the Rides business. Under the Value Added Tax (Digital Marketplace Supply) Regulations, 2020, operators of Digital Marketplaces (DMPs) such as Uber are KRA's collecting agents and, as such, charge, collect, and remit VAT on their supplies.

## **B) UBER EATS**

90. *Uber Eats* has recently introduced a new upfront pricing model to give delivery people more transparency and fairness in trip compensation. Delivery people now see detailed trip information and final pricing upfront, reflecting real-time trip factors such as demand and complexity, giving them more autonomy in their decision-making processes. The new pricing model uses advanced algorithms to set offers based on multiple factors rather than a fixed rate per kilometre.
91. This approach aims to better reflect each trip's true value, considering factors like trip complexity, demand, and current marketplace conditions. The new model may show varied trip prices. While some trips might pay more or less than previously, the overall goal is to optimize earnings based on real-time data and fair compensation.
92. The goal is to ensure weekly and monthly earnings remain the same by optimizing how each trip is calculated. We want to set prices based on actual market conditions and the details of each trip. This helps delivery people earn more fairly and creates a better balance between supply and demand in the marketplace.

**X. Proposed changes to the National Transport and Safety Authority (Transport Network Companies, Owners, Drivers and Passengers) Regulations, 2022 (the Regulations)**

93. While noting that Regulations have provided clarity on various matters relating to the ride-hailing sector, Uber submitted that a few areas have made implementation and adherence to the Regulations difficult or otherwise undesirable. These include:
- i. commission cap and price regulation;
  - ii. challenges surrounding licence verification for drivers;
  - iii. conflict between the Regulations and compliance with data protection laws as pertains to publishing driver data on the NTSA website;
  - iv. the need to review deactivation requirements to allow for drivers to be heard before access to the app is terminated; and
  - v. clarification that a transport network company is not required to be incorporated in Kenya.

**XI. Commission cap and price regulation**

94. Uber submitted that a TNC's commission regulation is unprecedented. Of more than 100 countries that have ride-hailing services, only three have implemented a commission cap. Tanzania and Portugal have set a cap of 25%, and Kenya is the outlier at 18%.
95. The application of a commission cap seriously impacts a private company's ability to generate revenue and fulfil its commitments to users. Commissions constitute the main revenue stream for a ride-hailing company, representing the primary compensation for the company's provision of "lead generation" services.
96. Uber informed the Committee that it has invested heavily in Technology, educational initiatives, promotions, and incentives to ensure that the company continues to support all of these areas to benefit the platform's users and differentiate the Company's services. However, they noted that investment levels are not sustainable in the long term unless the Company can have more flexibility in managing the revenue that the business can generate.
97. The restrictions in the current Regulations - specifically the commission cap caps can stifle competition. Platforms compete for drivers. Regulating the commission and making it the same for all platforms eliminates one of the main ways platforms can compete to attract drivers.
98. Caps on commissions also likely punish smaller players and discourage competition and innovation to improve apps for drivers and riders. Local companies and startups might be most impacted, which is an outcome that is not in line with Kenya's objectives to enable small business growth.

99. According to a report on Uber's economic impact in 2023, Uber contributed an estimated Kshs. 14.1 billion to the Kenyan economy, while Uber Eats contributed an estimated Kshs. 534 million in additional value for restaurants across the country. Digital platforms that provide income-generating opportunities for both individuals and businesses (e.g. ride-hailing, food delivery, grocery shopping, etc.). The imposition of commission caps and additional taxes will reduce the opportunities for Kenyans to procure work and generate business online.

### 3.3.3 Submissions by YEGO Mobility

100. Representatives of YEGO MOBILITY appeared before the Committee on Thursday, 17<sup>th</sup> October 2024 and made oral submissions and thereafter made written submissions.

101. The Company commended the National Transport and Safety Authority (NTSA) and the National Assembly for taking steps to regulate the ride-hailing industry to safeguard the welfare of drivers and passengers. However, they observed several areas for further improvements within the Regulations, particularly in addressing two-wheeled, three-wheeled, and electric mobility that have not been captured in these Regulations.

102. Their submission outlined several key areas for review, specifically, contracting Terms and negotiation processes, dispute resolution mechanisms and data protection for Passengers and Drivers.

103. YEGO submitted that a comprehensive review of the TNC Regulations would create a fairer, safer, and more economically sustainable ecosystem for all stakeholders involved.

104. **On Contracting Terms and Negotiation Processes**, they submitted that the existing TNC Regulations outline obligations between app companies and drivers but lack specificity on fair contracting terms and negotiation processes. We propose the following enhancements to ensure balanced contractual relationships:

105. **On Contract Clarity**, the App companies should be mandated to provide drivers clear, understandable, standardized, and domesticated contract terms. These terms should cover essential points such as payment structures, commission rates, dispute mechanisms, and termination clauses, and they should be in simple language that is understandable by the driver partners.

106. **In the negotiation framework**, driver partners should have the right to negotiate with app companies regarding commission rates, bonus structures, and working conditions. To facilitate this, we suggest the establishment of a government-recognized Unified Drivers' Representative Association that will entail all workers of the Gig Economy, including four-wheelers, three-wheelers (tuk tuk), and two-wheelers (boda boda). App

companies would consult quarterly to discuss pertinent issues and foster mutual understanding.

107. **On Dispute Resolution Mechanisms, Effective** dispute resolution mechanisms are crucial for minimizing conflicts between app companies and drivers. They proposed an Independent Mediation Body Establishment of an independent mediation body specifically for TNC-related disputes, composed of representatives from app companies, drivers' associations, and the NTSA. This body should be empowered to handle transparent, fair, and efficient grievances.
108. **Data Protection for Passengers and Drivers:** As per the Data Protection Act, data security for all parties within the ride-hailing ecosystem must be a priority. To further enhance data protection.
109. They proposed the following:
  - (i) **Data Minimization and Access Restrictions:** TNCs should only collect data essential for ride-hailing services and limit data access to authorized personnel only. The office of the Data Commissioner should enforce policies on data utilization, encryption, storage duration, and storage location, which should be clearly stipulated and regularly audited.
  - (ii) **Enhanced Transparency for Drivers and Passengers:** Both drivers and passengers should know how their data is used, stored, and protected. Regular updates and an accessible privacy policy are necessary to maintain transparency.
  - (iii) **Inclusion of Electric Vehicles, Electric Motorcycles, Two Wheelers and Three Wheelers:** The 2022 TNC Regulations do not address the *Bodaboda and tuktuk* riders. Additionally, given Kenya's commitment to environmental sustainability, they recommended incentives for Electric TNC Vehicles: Electric vehicles should be provided with reduced licensing fees, subsidies, and import duty exemptions, which would encourage their adoption within the ride-hailing sector and EV-specific infrastructure by investing in charging infrastructure which is essential for the scalability of EVs in the TNC ecosystem.
  - (iv) **Tailored Pricing Models.** Separate pricing formulas for two-wheelers, three-wheelers, electric vehicles, and bikes should be developed to reflect their unique operational costs and demand dynamics. Factors such as fuel efficiency, load capacity, and trip duration should be considered in the pricing formula to ensure fare rates are economically viable for both drivers and passengers.
  - (v) **Commission Caps for Alternative Vehicle Types:** The commission cap of 18% established for standard TNC vehicles should be revisited for two-wheelers and three-wheelers. We recommend a cap of 15%, which is more sustainable given the lower earnings per trip for these vehicle types.
  - (vi) **Proposal for Economic Impact Assessment.**

An economic impact assessment of the TNC industry has not been conducted to inform these regulations, leaving significant gaps in understanding the actual costs and economic implications for drivers, passengers, and TNCs. They requested Parliament to fast-track the economic impact assessment covering:

- a. **Commission Caps and Driver Earnings:** an analysis of how commission caps affect driver earnings and app companies' sustainability.
- b. **Pricing Structures:** examining pricing models, especially for different vehicle types, to ensure fair and sustainable rates for drivers and passengers.
- c. **Regional Economic Variances:** considering economic disparities across regions, allowing for region-specific adjustments to commissions and fares. This assessment would guide future regulatory adjustments that are economically viable and fair.

(vii) **Passenger Verification Proposal**

The current TNC Regulations lack an enforcement mechanism for passenger verification. App companies don't have access to the integrated Population Registration Database System (IPRS). To improve security and accountability, they proposed that passengers must upload valid identification documents, such as a National ID or Passport, before using the passenger app, the same way drivers must upload their personal documents before offering the service.

Yego also proposed that NTSA should also give minimal access the IPRS system to app companies to verify their passengers. This process is intended to deter potential misconduct and increase safety for drivers. To enhance safety and accountability, we propose that passenger verification be mandated within TNC regulations. Verified data should be securely stored, with limited access, to prevent unauthorized usage while ensuring transparency in handling and usage.

110. In concluding their submissions, Yego Indicated that the proposed modifications and additions to the 2022 TNC Regulations are intended to create a more equitable, safe, and economically sustainable environment for all stakeholders in Kenya's ride-hailing industry. We respectfully urge Parliament to consider these recommendations for a more comprehensive and inclusive regulatory framework.

### 3.3.4 Submission by Space Taxi Limited

111. Space Taxi, represented by the Company's managing director, Mr. Mohamed Mohamud, made its oral submission to the Committee on 14 October 2024.

112. The Committee was informed that Space Taxi Limited is based in Kenya, with its headquarters at *Vision Plaza, Mombasa Road*. It is a new entrant into the ride-hailing business with an innovative operational model that seeks to address long-standing

challenges in the industry, specifically cornering regulations of TNCs and the interests of driver and rider associations.

113. Space Taxi submitted as follows regarding the questions raised through the Petition:

*i. Contracting terms and negotiation processes*

114. The TNC stated that they recognize rider associations and have held meetings with them. Further, they treat riders with similar standards applicable to drivers. Further, their commission model ensures fair compensation based on individual effort and has simplified terms and conditions available in both English and Swahili.

115. The TNC endorsed a regulatory framework formalizing the status of rider associations. In addition, they stated that a comprehensive regulatory and economic impact assessment should be conducted to scientifically justify commission structures and address the current lack of justification for the 18% cap.

*ii. Dispute Resolution Mechanisms*

116. The TNC stated that disputes are inevitable under the TNCs business operation model. They stated that they value the principle of fairness by providing a structured dispute resolution process through a dedicated committee involving representatives from rider and driver associations and a transport mechanism that ensures every party's right to be heard and disputes resolved efficiently.

*iii. Data protection of passengers and drivers*

117. The TNC stated that they are licensed by the Office of Data Protection Commissioner and strictly adhere s to the Data Protection Act. They implement robust data security measures and fully comply with regulatory guidelines to safeguard passenger and driver information.

*iv. Pricing formula for fair compensation*

118. The TNC stated that the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022, imposes an 18% cap on driver commissions but does not address riders, a gap that must be rectified.

119. They stated that Space Taxi's pricing policy is based on three transparent parameters: base price, price per kilometre and time-based charges (per minute). This model ensures fair compensation from the outset of each ride.

120. Further, the TNC stated they had introduced a subscription-based model that works as follows:

- i) Subscription packages: riders and drivers pay a daily or monthly fee instead of the traditional 18% commission, providing greater take-home pay. They charge Boda Bodas Kshs 50 for a duration of 24 hours as subscription fees.

- ii) Value preservation: if a driver subscribes and remains online throughout the subscription period without securing a ride, the subscription automatically rolls over to the next period. This ensures that drivers don't lose their investment and hence take care of their welfare.
- iii) Fair Usage policy: If the driver secures a ride during the subscription period, the subscription is considered utilized; hence, they will need to renew it when the duration lapses.

v. ***Recognition of Riders Welfare Organizations***

121. TNC stated that they support the recognition of welfare organizations for riders and the establishment of structured engagement frameworks with TNCs and regulatory bodies. They advocate for:

- i) Amendment to the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022 to include motorcycles to clarify their legal status;
- ii) Designate parking areas for riders; and
- iii) Defined timelines for addressing grievances involving regulatory bodies and TNCs.

122. In conclusion, the TNC stated that it remains committed to enhancing the working conditions of riders and drivers and will collaborate with the National Assembly and other stakeholders to improve the digital transport sector.

**3.3.5 Submission by PTG Travel Ltd**

PTG Ltd during the appearance before the Committee on 14<sup>th</sup> October 2024, made the following submissions

123. **Regarding the Inclusion of Motorcycles and Other Motorized Transport in NTSA Regulations**, PTG Ltd submitted that motorcycle riders are not covered under any existing law within the NTSA Transport Network regulations. This leaves a significant and growing segment of transport providers unregulated, affecting safety and industry standards.

124. **PTG Ltd proposed that** Motorcycles and other motorized transport types should be incorporated within NTSA Transport Network regulations to ensure comprehensive oversight and standardized requirements for all transport modes.

125. **Regarding the Pricing Mechanism for Fair Driver Compensation**, they noted that frequent complaints from riders and drivers indicate dissatisfaction with pricing. While current NTSA regulations cap TNC commissions at 18% per trip, some companies have set pricing excessively low to remain competitive, which impacts drivers' ability to earn sustainably.

126. They proposed introducing a minimum payable amount per trip, with rates defined by vehicle category/size, to ensure fair compensation for drivers across all vehicle types.
127. They also noted the need to Streamline and have Inclusive Regulations for Diverse Vehicle Types since the Current regulations omit many emerging vehicle types, leading some companies to claim non-compliance based on the absence of their vehicle types in the framework. These types include electric cycles, bikes, and other modern vehicles.
128. **They isolated** the UK, where the regulatory framework divides transport vehicles into two broad categories with two separate regulations for each: **Private Hire Vehicles Regulation**, Covering companies that operate bookings through any platform, including phone, app, or digital technology and **Public Hire Vehicles Regulation**: Covering individual drivers who operate from taxi ranks or high-traffic areas, servicing walk-in clients without bookings.
129. They proposed replacing overly specific definitions of Transport Network Companies with broader categories, as demonstrated in the UK model. This approach will cover all current and future vehicle types, encouraging industry-wide compliance.
130. **Regarding ways to enhance Safety and 24/7 Support Services, drivers and riders** continue to express concerns over safety and emergency response support.
131. **They Proposed mandating all TNCs in Kenya** to offer 24-hour support services for both riders and clients to address safety concerns effectively.

### 3.3.6 Submissions by BOLT

Representatives of Bolt Limited appeared before the Committee on 17<sup>th</sup> October, 2024 as submitted as follows:

132. That, Bolt has implemented the following measures as part of ensuring passenger well-being and safety while on the platform:
- (i) Exhaustive background check which requires provision of a valid certificate of good conduct from DCI, National Identity card, valid PSV badge and regular driving licence from NTSA;
  - (ii) Once a passenger's order is accepted by a driver; the passenger is able to see the driver's name, driver's photo, vehicle plates, vehicle colour and driver's overall quality rating; and
  - (iii) An SOS button on the rider app which is connected to Rescue.co who provide almost real time response to any stress call.
133. The Company also submitted that it has a thorough system of vetting its drivers and riders. The has a rigorous onboarding process which is not only compliant to NTSA policy and regulations on Public Service Vehicles drivers and cars. The Company also submitted that it does an additional check by reviewing the potential drivers' criminal records as indicated on the certificate of good conduct.



134. For driver vetting, they require a current Driver's photo, National Identity Card, Regular Driving licence checked for validity on the NTSA portal, PSV driving licence / PSV Badge checked for validity on the NTSA portal and a Certificate of Good conduct, which indicates that the driver does not have any prior criminal records.
135. For vehicle vetting, Bolt requires a clear photo of the vehicle showing vehicle plates, an NTSA inspection report checked for validity on the NTSA portal, PSV insurance checked for validity on the Association of Kenya Insurers (AKI) portal and Log book / Sales Agreement.
136. If all the above documents check out; the driver then goes through training on how to use the app and customer service before being allowed to operate on the Bolt platform.
137. Bolt also informed the Committee that it has a Monitoring System, which is an end-to-end process to ensure that they have good, compliant drivers and cars on the platform. The mechanisms are; Automated frequent selfie checks. This limits accounts sharing possibilities by different drivers on the platform, a sufficient and efficient customer service team which promptly picks up both passenger and driver feedback about a trip.
138. The System also provides an automated driver behaviour tracking system where the Company ask passengers to rate the quality of service after each trip on a scale of 1 to 5, with 5 being excellent service. Consistent low ratings lead to Bolt's discontinuance of the driver's access to the platform.
139. The Company also undertakes continuous driver compliance checks. Bolt reviews documents with expiry dates and ensures that valid and up-to-date documents are on the driver profiles. The safety Team conducts thorough investigations on accounts to pick up on negative behaviour patterns & fraudulent/ suspicious account activity. These measures provide a strong monitoring system for drivers using the Bolt platform.
140. To ensure the safety of riders and passengers, Bolt submitted that it has a dedicated In-House Safety team of well-trained Senior Safety Specialists handling severe and critical cases. This team has 24/7 coverage. Passengers can contact Bolt In -App or through email to report an incident.
141. As part of its incident handling procedures, the Company submitted that it always reaches out to passengers via outgoing calls for severe or critical cases. They submitted that they provide the passenger with guidance on the next steps should the case require police intervention, at the same time applying the company's internal standard operating procedures (SOPs) based on the incident being reported.
142. The Company informed the Committee that it has put in place a process for handling requests for information from formal investigating authorities. They require all information requests to come in writing, on official police letterhead, and from the relevant station's email address.

143. On Driver's accountability, Bolt informed the Committee that once an investigation is concluded & the driver is found guilty, Bolt permanently blocks that account and communicates to the driver that they can no longer have them working on the platform.

### **3.4 Submission by the Office of the Data Protection Commissioner**

144. The Data Protection Commissioner, **Ms. Immaculate Kassait**, appeared before the Committee on 18<sup>th</sup> November 2024 and made the following submissions:

#### ***i. Mandate of the Office of the Data Protection Commissioner***

145. The Commissioner stated that the office of the Data Protection Commissioner is a regulatory office established under the Data Protection Act of 2019. The Office is mandated to regulate the processing of personal data; ensure that the processing of personal data is carried out in line with the principles outlined in section 25 of the Act; protect the privacy of individuals; establish both legal and institutional mechanisms to protect personal data and provide data subject with rights and remedies to protect personal data from processing that is not in accordance with the Act.

#### ***ii. Registration of entities***

146. The Commissioner stated that the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022 requires that Transport Network Companies (TNCs) meet specific regulatory requirements prior to obtaining a licence from the primary regulator, including registering with the Data Commissioner as either a data controller or data processor, as stipulated by the Data Protection Act, 2019. This regulatory requirement underscores the importance of compliance with data protection laws for TNCs that process the personal data of passengers and drivers.

147. Further, the Act and the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021, require all entities processing personal data, including those not ordinarily resident in Kenya, to register as data controllers or data processors with the Office of Data Protection Commissioner. The registration signifies that the Office of Data Protection Commission recognizes the entity as processing the personal data of individuals located in Kenya.

148. Registration is a prerequisite for processing personal data. In this regard, registration under the Act enables the Office to maintain a register of data controllers and processors and monitor compliance with the data protection framework effectively.

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#### ***iii. Audits and Assessment***

149. Additionally, the Commissioner submitted that the office is empowered under section 23 of the Act and Regulation 53 of the Data Protection (General) Regulations, 2021, to conduct assessments and audits of registered entities. This function allows the office to

evaluate whether entities, including TNCs, adhere to data protection requirements based on risk factors, including the industry in which they operate, the nature and volume of data breaches reported and complaints filed by the public. These audits may lead to regulatory action, such as penalties or directives to rectify non-compliant practices, where necessary.

150. In line with their mandate to promote data protection awareness, the Office has conducted several initiatives targeting both regulators and TNCs to improve data protection standards within the transport industry.

151. The Committee was informed that in September 2024, the Office engaged with regulators and Associations, including the National Transport and Safety Authority and Public service Vehicles associations, to discuss compliance requirements and best practices, emphasizing the importance of data protection compliance to build public trust and ensure data privacy for all individuals.

#### ***iv. Complaints***

152. The Commissioner submitted that the Data Protection Act, 2019 and Data Protection (complaints Handling and Enforcement Procedures Regulations) 2021 provide a robust complaints mechanism to address grievances from individuals who believe their data protection rights have been violated by TNC or any other processing entity.

153. The office has set up dedicated channels, including contact lines and email addresses, to receive and process complaints regarding violations of privacy rights. This system is designed to ensure that any reported breaches are handled efficiently and appropriate actions are taken in accordance with the law.

154. If a TNC is found non-compliant, the office can impose penalties and, where appropriate, order compensation for individuals whose data privacy rights have been infringed. This process ensures that there are consequences for data protection violations and that individuals have access to remedies if their personal data has been misused.

#### ***v. Complaint against Bolt Support KE Limited***

155. The Committee was informed that The Office of Data Protection Commissioner received a complaint on 19<sup>th</sup> March 2024 against Bolt Support KE Limited. The complainant alleged that the respondent unlawfully accessed and processed the complainant's personal information, resulting in unlawful disclosure of the complainant's personal data to third parties.

156. The Commissioner stated that after reviewing the complaint, the Office of Data Protection Commissioner observed that the respondent had contravened Section 25 of the Act which provides that "every data controller shall ensure that personal data is, among others is:

- i. Processed in accordance with the right to privacy of the data subject;

- ii. Processed lawfully, fairly and in a transparent manner in relation to any data subject;
- iii. Accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay.

157. Further, the Office of Data Protection Commissioner observed that it was evident that the respondent had not conducted the necessary verifications needed to ensure the accuracy of personal data they processed and failed to put in place measures to ensure that inaccurate personal data is erased or rectified without delay.

158. In the findings by the Office of Data Protection Commissioner, Bolt Support KE Limited was found liable, the complainant was awarded Kes 500,000 and the respondent was issued with an enforcement notice of sixty (60) days to rectify and put in place a raft of measures as outlined by the Office of Data Protection Commissioner.

*iv. Registered TNCs*

159. The Committee was informed that the following sixteen (16) companies had been registered by the Office of Data Protection Commissioner as data controllers/processors hailing Apps

- i. Uber Kenya Limited
- ii. Bolt Support KE Limited
- iii. Little Limited
- iv. Flex Rideshare Limited
- v. Hela Boda Limited
- vi. Moveon Telecoms Limited
- vii. An Nisa Taxi Limited
- viii. Yego Mobility Kenya Limited
- ix. Hava Net Limited
- x. Faras Cabs Kenya
- xi. J-Ride Limited
- xii. Maramoja Transport
- xiii. Amicabre Travel Services
- xiv. PTG Travel (formerly Pewin Cabs)
- xv. H Cab
- xvi. SafeBoda

## Committee Observations

160. From the discussions with the Office of Data Protection Commissioner, the Committee observed that
- i. The Data Protection Act and regulations do not provide for making complaints as a group; rather, only affected individuals can personally make the complaints.
  - ii. The Committee noted that section 25 of the Data Protection Act provides principles of data protection that every data controller or data processor shall ensure compliance while processing personal data, specifically
    - a) section 25(b) provides that personal data shall be processed lawfully, fairly and in a transparent manner in relation to any data subject (lawful basis)
    - b) Section 25 (d) provides that personal data shall be adequate, relevant, limited to what is necessary concerning the purposes for which it is processed (data minimization)
  - iii. Transport Network companies were relying on the data minimization principle to block the sharing of important information with drivers and riders, including the destination of passengers. The TNCs stated that the reason for not sharing the information was due to the capping of the commission at 18%; hence, some drivers will opt to drop requests that aren't pricey. The committee was of the view that the drivers/ riders should have some basic information regarding the client for their safety.
  - iv. The Office of Data Protection Commissioner should issue general guidance to the TNC industry players regarding their responsibilities and obligations regarding the data protection framework.
  - v. The TNCs should be registered as Data processors, while drivers/riders should be registered as data controllers under the Data Protection Act. However, the Data Commissioner stated that, from the TNC business model, a data controller could be defined as the person who provides the system/ platform and has personal data sites for drivers and users. Since the drivers can misuse the information, the data commissioner can only hold the data controller to account.
  - vi. NTSA should develop a policy on how the industry should be regulated through a consultative approach that includes other government agencies and stakeholders.
  - vii. Members noted that a data protection impact assessment for the TNC model of operations was needed.
  - viii. The Committee noted that the big TNC players in Kenya are foreign-owned; hence, data processing occurs through servers and data centres located outside the Country. Kenya has data localization guidelines provided for through The Data Protection (General)

Regulations, 2021. However, the transport sector is not among the sectors that data localization guidelines apply to.

- ix. The Office of the Data Commission should develop regulations on a minimization basis, a lawful basis that is used by TNCs to deny information, and a prototype of data processors its independent contractor; they should have meaningful agreements between controllers and processors. Interdisciplinary framework.

### 3.5 Submission by the National Transport And Safety Authority (NTSA)

The Director General for the National Transport and Safety Authority, **Mr. George Njao**, made oral submissions to the Committee on 19<sup>th</sup> November 2024 and submitted that:

161. The National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022, gazetted on 3rd June 2022, empowers the Authority to license and regulate Transport Network Companies in Kenya.
162. The Regulations aim to establish a legal framework that governs the operations of app-based car-hailing services, enhancing accountability and safety for both drivers and passengers.
163. The Director General further stated that the regulations aim to address issues such as pricing through commission capping, data protection, and safety protocols by ensuring fair practices in the TNC industry.
164. Additionally, the regulations create compliance standards that seek to promote a balanced relationship among stakeholders, encourage responsible business practices, and contribute to a more organized and sustainable urban transport ecosystem.
165. The Director General responded as follows in relation to issues raised by the petitioner and questions asked by Members of the Committee
  - i. *Exclusion of motorcycle riders in The National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022*
166. The National Transport and Safety Authority submitted that during the formulation of the regulations, transport network companies only engaged vehicle drivers. The incorporation of Boda bodas and other services, such as courier services and food delivery options, were incorporated into TNC platforms post-enactment of the regulations.
167. The Committee was informed that motorcycle riders have become major stakeholders in the operations of most TNCs, necessitating their inclusion in the regulations through a comprehensive review.
168. The Director General submitted that a review of the Regulations will not only recognize Boda Bodas but also address other pertinent issues, including road safety, security, and adherence to traffic laws.
  - ii. *Lack of enforcement of the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulation, 2022*

169. The Committee was informed that NTSA began implementation of the TNC Regulations on 18th September 2022 and registered the following twenty-two (22) Transport Network Companies to operate in Kenya:

- i) Yego Yego mobility Limited
- ii) Little Limited
- iii) Uber BV
- iv) Bolt operations OU
- v) Farasi Cabs Limited
- vi) Havana net Limited
- vii) An Nisa Taxi Limited
- viii) H Cab Limited
- ix) PTG Limited
- x) Maramoja Transport Limited
- xi) TMNK Enterprise
- xii) Amicabre Travel Services
- xiii) Move on Telecoms
- xiv) J-Ride Limited
- xv) D & H Media Services Limited
- xvi) Wheels App Kenya Limited
- xvii) Nawi Rides
- xviii) Cab Me Limited
- xix) Space Taxi Limited
- xx) Safe Boda Kenya Limited
- xxi) Africa Smart Mobility Solution Kenya Limited
- xxii) Umney Company Limited

170. The Director General informed the Committee that twelve (12) TNCs were operational with valid licenses and compliant with the regulatory requirements. However, due to challenging economic conditions, six (6) TNCs have ceased operations and four (4) others failed to meet the necessary compliance standards outlined in the TNC regulations 2022, leading to non-renewal of their license. Table one depicts the registration status of TNCs



Table 1: Registration status of TNCs

No	Compliant TNCs	Non-compliant TNC/ Pending Approval	TNCs that ceased operations
1	Yego Yego mobility Limited	J-Ride Limited	An Nisa Taxi Limited
2	Little Limited	H Cab Limited	Amicabre Travel Services
3	Uber BV	D & H Media Services Limited	Cab Me Limited
4	Bolt operations OU	Move on Telecoms	Havana net Limited
5	Faras Cabs Limited	Nawi Rides	
6	PTG Limited	TMNK Enterprise	
7	Maramoja Transport Limited		
8	Wheels App Kenya Limited		
9	Safe Boda Kenya Limited		
10	Space Taxi Limited		
11	Africa Smart Mobility Solution Kenya Limited		
12	Umney Company Limited		

iii. Gains made from the implementation of the Regulations

171. The Committee was informed that through the implementation of the regulations, the following gains have been realized:-

i) *Reduction in the commission payable by owners / drivers of TNC to TNCs.*

Before the enactment and implementation of the regulations, the commission paid by owners was an average of 25% of the earnings. This has been reduced to 18%. Further, there is a restriction that no TNC can charge other charges of any description above 18%.

ii) *Improved contractual environment.*

Previously, the contracts between the TNCs and the owners placed the jurisdiction and governing law at the TNCs' place of origin. This changed; currently, all contracts are subject to the jurisdiction and governing law of Kenya.

iii) *Enhanced data protection.*

All TNCs are required to register with the Office of the Data Protection Commissioner. This ensures TNCs comply with the data protection obligation through internal procedures and international data transfers.

iv) *Provision of dispute resolution mechanism.*

Previously there was no avenue or requirement for dispute resolution mechanisms in the contracts.

v) *Safety and incidence reporting.*

TNCs are legally required to deactivate a driver from their transport network platform and notify NTSA of the deactivation in case the driver's conduct raises public safety concerns, including a criminal complaint, investigation, or arrest; conviction of drunk driving; allegation or complaint of sexual misconduct; traffic accident that resulted in a fatality; assault or battery; or verbal abuse.

vi) *Duties of drivers.*

The Regulations currently enumerate drivers' duties, key among them being passenger safety. The Regulations also protect the driver by providing for the refusal of a ride from a passenger of improper demeanor.

vii) *Duties of transport network passengers.*

The Regulations prescribe the conduct and behavioral standards of passengers, which include not using obscene or offensive language or riotous or disorderly conduct; willfully damaging, soiling, or defiling a part of the vehicle; paying the fare for the whole journey; and not willfully doing or causing to be done anything calculated to obstruct or interfere with the working of the vehicle or cause damage to the vehicle or equipment or accessory.

iv. Conflict resolution mechanisms

The Director General Submitted that the authority has put in place the following mechanisms to address challenges that stem from both TNCs and owners/drivers

i) *Regular compliance audits and provision of regulatory support.*

The Authority continuously monitors the operational standards of the registered TNCs to ensure compliance with all regulatory requirements and provides guidance to ensure compliance by all stakeholders.

ii) *Stakeholder Engagement and sensitization.*

Through stakeholder engagement, the Authority provides guidance and updates on regulatory expectations. These engagements help reinforce understanding and adherence to all aspects of the regulations for both TNC drivers and Transport Network Companies.

iii) *Collaborative issue resolution.*

The Authority works with stakeholders to ensure prompt issue resolution and collaboration. The Director General submitted that the Authority is committed to ensuring stakeholders' compliance with the TNC regulations and to fostering a transparent, fair, sustainable, and compliant app-hailing sector.

Committee Observations

172. From the submissions by the Director General of NTSA, the Committee observed that

i) The Traffic Act CAP 403, which commenced on 1 January 1954, is the primary Legislation that regulates road use, including vehicle legislation, driver licencing, road safety, traffic offences, and penalties. As of the end of 2024, the Act had been amended fifty-two (52) times. Despite the numerous amendments, the Act does not address emerging issues, including transport network companies and evolving technological developments.

ii) The National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022, omitted motorcycles because the business model of TNCs at the time of enacting the regulations did not involve motorcycles.

The market has evolved by engaging not only vehicles but also three-wheelers, two-wheelers (motorcycles, e-bikes, bicycles), and pedestrians, especially for delivery services. Therefore, the regulations need to be re-enacted so that they can adequately govern the app-based transport-hailing sector. The Committee was informed that NTSA has drafted new amendments that are under consideration and should be available by March 2025.

iii) The discounts by TNCs to their customers are usually meant to attract customers and the discounted amounts were to be borne by TNCs and not the riders or drivers. The Committee recommended that TNCs should file periodic returns to NTSA detailing the discounts and compensation to drivers due to the discounts.

iv) The Committee was concerned about the safety of TNC drivers/riders due to increased insecurity noting an incidence of a woman driver who was killed in Mlolongo. Further, an incidence was mentioned of a passenger who refers to himself as killer zone. The Committee observed that TNC drivers/riders should be protected by offering them some level of passenger identification for authentication.

v) The issue of drivers being independent contractors in Kenya while in the USA, UK and India, they are regarded as employees needs to be reevaluated since drivers/riders in Kenya accept terms and conditions from the TNCs; hence, they can not be regarded as independent contractors.

vi) The following Transport Network Companies from the list submitted to the Committee on 12<sup>th</sup> November 2024 were licensed without having been registered by the Office of Data Commissioner contrary to Sections 6 and 7 of the National Transport and Safety

Authority (Transport Network Companies, Owners, Drivers and Passengers)  
Regulations, 2022:-

- a) TMNK Enterprise.
- b) D & H Media Services Limited.
- c) Wheels App Kenya Limited.
- d) Nawi Rides.
- e) Cab Me Limited.
- f) Space Taxi Limited.
- g) Africa Smart Mobility Solution Kenya Limited.
- h) Umney Company Limited.

### 3.6 Submission by the Competition Authority of Kenya

173. The Competition Authority made written submissions dated 18<sup>th</sup> November 2024 to the Committee. The Authority submitted as follows

*i. Digital platform/ E-Hailing Services*

174. Digital platforms have been on an upward trajectory not only in Kenya but also across the globe. This has expanded from online transport platforms to other sectors of the economy including FinTechs, food retailing, online healthcare, online electronics, advertising and online retail shopping.

175. The digital marketplaces have almost similar operation models, with minor variations. The marketplaces match merchants and consumers for orders to be fulfilled, and payment and delivery services are provided by third parties engaged by the platforms based on their own internal criteria. Notably, a merchant's fulfilment of an order is interdependent on third-party services, i.e., payments and delivery.

176. Network Platforms act as intermediaries/agents through the payment gateways they have contracted for payment processing. They collect payments on behalf of merchants and delivery service providers. Given the numerous payment service providers available in the market, there are payment gateway service providers who have access to various payment service providers via Application Programming Interfaces (APIs), which act as payment aggregators for platforms.

*ii. Mechanisms put in place to ensure fair and effective competition in the digital taxi and digital deliveries services in the Country*

177. The Competition Act provides a safety net for regulating effective competition for digital taxi and delivery services in the economy. Section 21(1) of the Act provides that agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya or a part of Kenya, are prohibited, unless they are exempt in accordance with the provisions of Section D of the Act.

178. Sub-section 3 of section 21 of the Act prohibits agreements which fix prices, divides customers or markets, leads to collusive tendering, sets minimum resale price maintenance, controls production, among others.

179. Section 23 (1) of the Act provides the criteria for determining a dominant position. Specifically, an undertaking is considered dominant if:

- a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed in Kenya or any substantial part thereof; or

- b) provides or otherwise controls not less than one-half of the services that are rendered in Kenya or any substantial part thereof

180. Section 23 (2) further provides that notwithstanding the above, an undertaking is also deemed to be dominant for the purposes of the Act where the undertaking:

- a) though not dominant, controls at least forty per cent but not more than fifty per cent of the market share unless it can show that it does not have market power or
- b) controls less than forty per cent of the market share but has market power.

181. Section 24 (1) prohibits any conduct which amounts to abuse of a dominant position in a market in Kenya, or a substantial part of Kenya, is prohibited". Section 24 (2) further outlines a non-exhaustive list of conducts prescribed or considered to amount to abuse of dominance. These include: -

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- b) limiting or restricting production, market outlets or market access, investment, distribution, technical development or technological progress through predatory or other practices;
- c) applying dissimilar conditions to equivalent transactions with other trading parties and
- d) tying/bundling, exclusive territory/market allocation

iii. *Reported incidences of unfair competitive strategies employed by companies in the digital taxi and digital deliveries sector and the actions that have been taken against such companies.*

182. The Authority submitted that it had received and taken action on unfair competitive practices in the TNC sector as depicted in Table 1 below:

Table 1: Reported unfair competition strategies in the TNC sector

S/No	Complaint	Action Taken	Remarks
1.	The Authority received a complaint from Jack Kahuru, a concerned citizen, in November 2023 alleging that Bolt Kenya was perpetuating unfavourable pricing policies. Specifically, He alleged that despite the Ministry of Road and Transport's Transport Network Companies, Owners, Drivers and Passengers (TNC) 2022	While investigating this conduct, the Authority sought to ascertain whether Bolt was dominant and, if so, whether Bolt was abusing its dominant position to charge lower than average variable cost and, therefore, making losses. The	The investigation was therefore closed, as it was established that Bolt was not dominant and also did not have market power as there were many application-based taxis like and

S/No	Complaint	Action Taken	Remarks
	Regulations, Bolt Kenya had been charging very low fares compared to its competitors	Authority established that Bolt Kenya was not dominant in providing taxi services in Kenya as their combined market shares by fleet and revenue were only 26.3 % and 9.95%. It was also established that Bolt did not have market power as there were many application-based taxis like, <i>Uber, Faras, Hava, Little, Mara Moja, Wasili and Indriver</i> . Additionally, there were many traditional (nonapplication-based) taxis, including rank and corporate taxis such as <i>Delight Cabs, Kenatco, Jatco Tours, Pewin Cabs and Absolute Cabs</i> .	traditional taxis in the market
2.	In December 2021, the Authority received a complaint from Mr. Ken Muiruri against App-Based taxi companies, alleging that the digital taxi companies were engaging in abuse of dominance and perpetuating unfavorable discounting policies, among other unfair conduct.	The Authority sought and obtained data from the various market players to establish their market players and established that Uber Kenya and Bolt Kenya who were the big players in Kenya were not dominant as their market shares based on fleet were 34.5% and 26.3 % respectively. Further, from the data, it was established that that Uber and Bolt are not dominant in the provision of taxi services by their sizes of revenues generated from the trips as their market shares were	The investigation was closed on the grounds that Uber, Little Cab and Bolt were not dominant in the provision of digital taxi services. They also did not have market power because of ease of entry into the and expansion and were therefore not in a position to directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions

S/No	Complaint	Action Taken	Remarks
		30.63% and 9.95%, respectively.	
3.	The Authority received a complaint from Erick Onyango in May 2022 alleging that Bolt Kenya had been engaging in anticompetitive conduct by lowering the prices of their services compared to their competitors with up to 60% of the average service fees	The Authority sought data from the various market players and NTSA to establish their market players and establish that Uber Kenya and Bolt Kenya were not dominant as their market shares based on fleet size were 34.5% and 26.3 %, respectively. Further, from the data, it was established that that Uber and Bolt are not dominant in the provision of taxi services by their sizes of revenues generated from the trips as their market shares were 30.63% and 9.95%, respectively	The investigation was closed on grounds that Bolt was not dominant in the provision of digital taxi services. It also did not have market power because of ease of entry it into the market
4.	The Authority received a complaint from Isaak Maina in September 2023 alleging that Bolt Kenya had been engaging in anticompetitive conduct by lowering the prices of its services compared to its competitors and offering discounts and promotions to the detriment of drivers.	The Authority sought data from the various market players and NTSA to establish their market players and established that Uber Kenya and Bolt Kenya were not dominant as their market shares were based on fleet size, which was 34.5% and 26.3 %, respectively. Further, from the data, it was established that that Uber and Bolt are not dominant in the provision of taxi services by their sizes of revenues generated from the trips as their market shares	The investigation was closed on the grounds that Bolt was not dominant in the provision of digital taxi services. It also did not have market power because of ease of entry and expansion and was, therefore, not in a position to directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions.



S/No	Complaint	Action Taken	Remarks
		were 30.63% and 9.95%, respectively	
5.	The Authority received a complaint from James Wambua in August 2020 on allegation of possible coordinated conduct and abuse of dominance by <i>Glovo, Uber Eats &amp; Jumia Food</i> to effect pricing discrimination with respect to the commission charges by charging exorbitant commissions based on the size of one's business; and to predatorily price their delivery fees below cost within the market for the provision of online food retail services through platforms contrary to sections 21 and 24 of the Act respectively.	The Authority tested the allegations against Section 21 of the Act, which prohibits agreements between undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya; and Section 24 (2) which prohibits any conduct that amounts to abuse of a dominant position in a market. The Authority concluded the said investigation and, based on the information gathered, it was noted that neither Uber-Eats nor Glovo App were dominant in the relevant market. As such, no competition concerns regarding abuse of dominance could be pursued. Further, no agreements or concerted practices on terms of trade or pricing existed between the three parties: Uber-Eats, Glovo App and Jumia Food.	The investigation was closed on the grounds that <i>Uber-Eats and Glovo</i> were not dominant and did not have market power. There were many players in the market, and entry into it was also easy. Also, there was no evidence of collusion between the three players.

*iv. Emerging issues in the digital taxi and digital delivery services and proposed interventions to enhance efficiency in the sector and to promote consumers and players in the market*

183. The National Transport and Safety Authority (NTSA) formulated and had Regulations gazetted on 22nd June 2022 to govern the operations of Transport Network Companies (TNC) in Kenya
184. These Regulations contain major features meant to address the issues faced by drivers in Kenya. The Regulations pursuant to Regulation 9 (3) provides that “A transport network agreement shall not include any terms or conditions designed to increase the commission payable by a transport network driver or transport network owner such that it exceeds eighteen per cent of the total earnings per trip...”. This capping of the commission was set to benefit taxi partners who had decried the charges for a long time.
185. Promotions that seemed to be eroding drivers/riders' revenues; these promotions are common across the platform companies such as Uber Kenya and Bolt Kenya. To address this problem, Regulation 16 on promotional price offerings made the following provision: “A transport network company shall ensure that an owner is not negatively affected in cases of promotional price offerings to passengers.”
186. The Regulations in Regulation 7 further provide that an application for a TNC application shall be accompanied by, amongst others;
- a) the standard contract between the transport network company and owners of the vehicles in their fleet;
  - b) the revenue sharing agreement between the transport network company, the owner and the driver; and
  - c) the pricing mechanism between the transport network company and the subscribers;
187. However, the Authority takes note of the lacuna presented by the lack of regulations for the Bodaboda sector. The existing provisions in “the Regulations, 2022” only define a motor vehicle with a manufacturer’s seating capacity originally designed for not more than seven passengers, excluding the driver, used to provide transport network services through a transport network platform, but does not include a taxicab, motorcycle or shared pool motor vehicle.
188. This exclusion makes it impossible for the Bodaboda players to enjoy the benefits that Transport Network Vehicles (TNV) are accessing. Since Section 4 of the NTSA Act mandates that NTSA formulate and implement road transport and safety policies, NTSA should review the regulations to include all players.

v. *Self-Regulation Policy for the Digital Transport Sector (Ride hailing Transporters) Policy Framework (Self-Regulatory Policy)*

189. The Self-Regulatory Policy results from consultations held through targeted discussions with drivers, driver leaders, vehicle owners, registered societies, associations, Transport Saccos, and welfare groups across the country and is being spearheaded by the Ministry of Roads and Transport. This process led to the submission of a Petition on 18th August 2023 to the National Assembly and the Ministry of Roads and Transport, as well as to seven other government agencies on 29th August 2023.

190. The Self-Regulation Policy for the Digital Transport Sector, specifically targeting ride-hailing transporters, aims to establish a framework for responsible self-governance within the digital transport sector in Kenya. The Policy has provisions to address pricing transparency and fair practices, including the need for clear fare structures, dynamic pricing policies, and mechanisms for addressing pricing disputes. It also has a provision for Conflict Resolution Mechanisms for resolving disputes between drivers, vehicle owners, and passengers and outlines the role of Transport Network Companies (TNCs) in facilitating conflict resolution.

191. In conclusion, the Authority submitted that sufficient mechanisms are provided for in the Competition Act Cap. 504 Laws of Kenya to foster competition and consumer welfare for the Bodaboda riders, particularly the e-hailing motorcycle riders.

### 3.6 Submission by the Kenya Revenue Authority (KRA)

192. The Commissioner General for the Kenya Revenue Authority, **Mr. Humphrey Wattanga**, made written submissions to the Committee vide a letter KRA/5/1002/5 (11668) dated 22nd November 2024. The Authority submitted as follows

i. *The amount of revenue collected from digital taxi and digital delivery services in the financial 2022/2023 and 2023/2024*

193. The Authority submitted that in the financial year 2022/23 and 2023/2024, the revenue collected from digital taxi hailing and digital delivery services amounted to Kshs. 16,060,555,571.25 as indicated in table one and two:

Table 1: Revenue collected in financial year 2022/2023

Company	Gross Income	DST	VAT	Corp Tax	Total
Bolt	3,272,480,625.00	49,099,625	523,596,900	-	3,845,177,150.00
Uber	2,154,611,893.75	30,812,660	344,737,903	-	2,530,162,456.75
LittleCab	1,133,581,181.25	-	181,372,989	1,356,693.00	1,316,310,863.25
Glovo	419,063,012.50	-	67,050,082	-	486,113,094.50
INDriver	16,175,943.75	281,466	2,588,151	-	19,045,560.75
<b>Total</b>	<b>6,995,912,656.25</b>	<b>80,193,751.00</b>	<b>1,119,346,025.00</b>	<b>1,356,693.00</b>	<b>8,196,809,125.25</b>

Table 2: Revenue collected in Financial Year 2023/2024

Company	Gross Income	DST	VAT	Corp Tax	Total
Bolt	2,454,222,613	39,281,409	392,675,618	-	2,886,179,640.00
Uber	2,399,914,788	36,114,884	383,986,366	-	2,820,016,038.00
LittleCab	1,447,613,369	-	231,618,139	1,400,000	1,680,631,508.00
Glovo	400,694,381	-	64,111,101	-	464,805,482.00
INDriver	10,309,594	154,649	1,649,535	-	12,113,778.00
<b>Total</b>	<b>6,712,754,745.00</b>	<b>75,550,942.00</b>	<b>1,074,040,759.00</b>	<b>1,400,000.00</b>	<b>7,863,746,446.00</b>

ii. *Taxes imposed on digital taxi services and digital delivery services*

194. The Authority submitted that the digital taxi services are subject to Income Tax and Value Added Tax (VAT). Effective January 2021 and April 2021, the non-resident digital taxi providers are subject to Digital Services Tax (DST) and VAT on electronic, internet and digital marketplace supplies respectively, on transactions by Kenyan users.

195. On the other hand, local digital taxi providers are subject to Corporation Tax, VAT on their services, Withholding Taxes (WHT), and any other local taxes applicable. The delivery persons earn a fee for each delivery, which is subject to Income Tax.

iii. *Emerging issues in the digital taxi and digital delivery services and proposed interventions*

196. The TNC sector is considered an informal digital economy sector, and visibility of the players and sector size may be difficult to estimate. However, most taxpayers in the sector are small and micro taxpayers.

197. Taxpayer education and sensitization of the players are necessary to enable them to understand their role in contributing to the economy. Publicity and an elaborate framework to sensitize these players are important initiatives.

198. The business models of digital taxis and delivery services make implementing e-invoicing a big challenge. The players may not be aware of the income earned within the sector.

199. With the various proposals to utilize technology and integrate with telecommunication companies (Telcos), financial institutions, and payment service providers (PSPs), KRA is seeking to leverage these initiatives to ensure the sector's revenue potential is unlocked.

No	Emerging Issues	Proposed solutions	Outcome
1.	Awareness of the various tax law requirements	Training and capacity building on tax laws and their tax obligations.  Follow up on the training and further engagements leading to key collaboration areas. This includes the engagement between Driver Associations and Government Agencies such as NTSA	The players are better equipped in understanding their obligations which will foster tax compliance.

No	Emerging Issues	Proposed solutions	Outcome
2.	Visibility of the economy and size of the market	<p>Elaborate framework with third parties including PSPs to tap into the digital economy and unlock the revenue.</p> <p>Engaging the Telcos would be useful in various tax areas including recruitment, compliance verification and enforcement of both resident and non-resident digital players.</p>	Tax base expansion and revenue growth.
3.	Financial institutions, PSPs	The commercial banks would avail data on non-resident digital merchants, information that would be useful in recruitment, compliance verification and enforcement of non-compliant players.	Targeted recruitment, compliance and enforcement of non-compliant players in the digital space.
4.	<p>Digital Marketplaces:</p> <ul style="list-style-type: none"> <li>• Uber</li> <li>• Bolt</li> <li>• Glovo</li> </ul>	<p>Collaboration with the platform/marketplace owners with respect to obtaining information on digital service drivers and delivery persons deriving income through platforms.</p> <p>The information will be useful in compliance work, enforcement and assist in training the merchants.</p>	Continuous collaboration and discussions to ensure the sector is compliant.
5.	Development of international framework on taxation of the digital economy.	KRA to adopt international best practice in the taxation of the digital economy.	Align with the international best practice to enhance compliance of non-resident players.

200. In conclusion, KRA submitted that its committed and complies with all the laws in place as it executes its mandate of Tax Administration and Trade Facilitation.

### 3.7 Submission by the Communications Authority of Kenya

201. The Director General for the Communications Authority, **Mr. David Mugonyi**, vide a letter Ref. No. CA/LS/002/2024 (950) dated 13 December 2024, submitted that the Kenya Information and Communications Act, 1998, mandates the Communications Authority to license and regulate the Communications sector, including postal and courier services. The Act also makes it illegal to operate a postal/courier business without a license from the Authority.
202. On the issue of licensed courier companies undertaking digital delivery services in Kenya, the Director General submitted that all firms offering postal/courier services are legally subject to licensing, including public postal licenses, courier firms, and delivery companies. Further, the DG submitted that the license categories in existence under the current legal framework are as follows:
- a) Public postal operators are responsible for universal service obligations and have the widest international and domestic categories (networks)
  - b) National Operators are authorized to operate within Kenya
  - c) International Operators are authorized to operate internationally with domestic and worldwide coverage (networks).
203. The Director General submitted that the Authority had received one application for a license to provide delivery services from M/s Digital Boda Drivers Association on 9th July 2024, which was processed and the National Operators licence was issued to them on 8<sup>th</sup> November 2024. In addition, *Little Limited* has been licensed as a National Operator to offer courier services.
204. Regarding regulation for digital delivery service providers, the Director General submitted that the Authority proposed a raft of measures to review the Kenya Information and Communications Act in 2022. Among the measures proposed was the inclusion of other small courier delivery players who had found a niche in the postal courier industry due to the growth of e-commerce and changes in consumer needs marked by a preference for delivery of such items to their physical locations/ addresses, fulfilling the need for last-mile delivery to consumers.
205. The Director General also submitted that the Authority was responsible for enabling the expansion of postal courier services across the country.
206. Further, the Authority proposed a review of the Postal and Courier Service Regulations to provide for:
- a) Establish a legal and regulatory framework for the undertaking of postal and courier services to achieve an efficient, effective, sustainable, and orderly development and operation of postal and courier services in Kenya.

- b) Promote and encourage the expansion and growth of postal and courier services to support the country's social and economic development.
- c) Provision of postal and courier services nationwide to cover a wide population.
- d) Ensuring that providers of postal and courier services achieve the highest level of efficiency in the provision of the services and that the licensees are responsible to consumer needs and regulations
- e) Quality of service standards required by the Authority to provide postal and courier services in Kenya.

207. **On emerging issues in the digital delivery services and proposed interventions,** the Director General submitted that in responding to the needs of the players, the Authority had noted the need to undertake the following measures in support the sector:

- a) Partnerships, in terms of sensitization and education, carry out awareness-raising activities for their members to enable them to comply with the relevant regulations.
- b) Recognition in the postal and courier subsector as they undertake last-mile delivery courier services not only in urban areas but also in rural areas, including unserved and underserved areas within the country.
- c) Expose them to the royal and regulatory framework regarding the requirements for carrying out certain activities or providing services in the market in accordance with prescribed standards.
- d) Security issues touching on consumers of the services and the security and safety of their items during delivery.
- e) Consumer complaints management and resolution of the same, including compensation.
- f) Collaboration with other government agencies in supporting digital e-hailing delivery providers for successful business development and growth.



## CHAPTER FOUR

### 4.0 OBSERVATIONS

208. Following engagements with the Petitioners and other stakeholders who were invited to make submissions, the Committee makes the following observations:

- 1) The National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022, omitted motorcycles since the business model of TNCs at the time of enacting the regulations did not engage motorcycles. The sector has evolved by engaging vehicles and three-wheelers, two-wheelers (motorcycles, e-bikes, bicycles), and pedestrians, especially for delivery services. There is, therefore, a need to review the regulations so that they can adequately govern the app-based transport-hailing sector.
- 2) Digital platforms have been on an upward trajectory not only in Kenya but also across the globe. This has expanded from online transport platforms to other sectors of the economy, including FinTechs, food retailing, online healthcare, online electronics, advertising, and online retail shopping, among others. E-hailing/ Digital Boda-bodas make up a big segment of digital taxis and should be included in the Regulations. The Taxis provide convenience and a quick solution to movement from one area to another.
- 3) The digital taxi business has employed drivers and riders who are majorly the youth segment of the population and, therefore, are a significant contributor to the growth of the economy. Notably, the Kenya Revenue Authority Submitted that in the financial year 2022/23 and 2023/2024, the revenue collected from digital taxi hailing and digital delivery services amounted to Kshs. 16 Billion;
- 4) The implementation of the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022 has provided clarity in the digital taxis sector by providing a cap on the commission payable by owners/drivers of TNCs to TNCs from an average of 25% of the earnings to 18%. The Regulations have also enhanced data protection and provided a dispute resolution mechanism. However, the Regulations need to be reviewed to deal with emerging issues in the sector;
- 5) The Petitioners had indicated that promotions and discounts extended to customers by TNCs usually affect the drivers or riders' earnings; however, during engagements with TNCs, it was clarified that the discounts, which were intended to attract customers, were to be borne by TNCs and not the riders or drivers;
- 6) Transport Network Companies rely on the data minimization principle to block the sharing of important information with drivers and riders, including passengers' destinations. This approach compromises the safety of drivers/riders due to increased insecurity, noting various incidents that have been reported. The TNCs stated that

the reason for not sharing the information was the capping of the commission at 18%; hence, some drivers will opt to drop requests that have low fares; and

- 7) Currently, Kenyan laws do not specifically regulate the delivery of food items. The Communications Authority of Kenya currently only issues courier licenses to corporate entities, not to individual delivery people operating as independent contractors and yet some companies use individuals to make deliveries.

## CHAPTER FOUR

### 5.0 RECOMMENDATIONS

209. The Committee, following its deliberations and having considered the submissions received, makes the following recommendations:

- 1) The Cabinet Secretary for the Ministry of Roads and Transport should review the National Transport and Safety Authority (Transport Network, Owners, Drivers and Passengers) Regulations and submit the revised Regulations incorporating three-wheelers, two-wheelers (motorcycles, e-bikes, bicycles) and pedestrians to the National Assembly within ninety (90) days of the adoption of this report. The reviewed Regulations should also address the issue of pricing formula and dispute resolution mechanisms;
- 2) The Cabinet Secretary for the Ministry of Roads and Transport, ensures that a Regulatory Impact Assessment on the National Transport and Safety Authority (Transport Network Companies Owners, Drivers and Passengers) Regulations, 2022, is done within ninety (90) days of the adoption of this report and submit a report on the Assessment to the National Assembly;
- 3) The Cabinet Secretary for the Ministry of Information, Communication, and The Digital Economy should develop draft Regulations to guide the operations of digital courier services in Kenya, especially the delivery of food items. The Regulations should be forwarded to the National Assembly within ninety (90) days of the adoption of this report for consideration;
- 4) The Cabinet Secretary for the Ministry of Roads and Transport should establish a team consisting of representatives of the National Transport and Safety Authority, Transport Network Companies, and the Petitioners to deliberate on a fair, transparent and equitable pricing policy for all players, especially the end user, the customer;
- 5) The Data Protection Commissioner should develop a draft Policy/ and or draft Regulations on Data Minimization to guide the operations of digital taxi/ e-hailing transport and digital delivery services and enhance the safety of riders and passengers. The Policy / Regulations should be submitted to the National Assembly within sixty (60) days of the adoption of this report;
- 6) The Cabinet Secretary for the Ministry of Roads and Transport should ensure that Transport Network Companies operating in Kenya establish a presence in Kenya, including having a local telephone contact and a physical office;
- 7) To enhance accountability, Transport Network Companies should file bi-annual returns to the National Transport and Safety Authority (NTSA) detailing the discounts and compensation to drivers due to the discounts and promotions extended to customers;

- 8) The Director General of the National Transport and Safety Authority and the Data Protection Commissioner should strengthen licensing requirements for Transport Network Companies to enhance safety and operations standards. Additionally, the Transport Network Companies should enhance the vetting of drivers and riders before engaging them as Independent Contractors;
- 9) To enhance the safety of drivers, riders and passengers, the National Transport and Safety Authority should ensure that Transport Network Companies establish 24-hour emergency response systems to ensure swift responses to emergency and security situations;
- 10) In consultation with County Governments, the Cabinet Secretary for the Ministry of Roads and Transport designates pick-up and drop-off spaces for digital taxis in major cities across the country and utility areas such as airports and railway stations; and
- 11) Pursuant to the provisions of Standing Order 208 A ( c ), the findings of the arising from the consideration of this Petition debated by the House.

SIGNED.......... DATE..........

**HON. GK GEORGE KARIUKI, CBS, M.P**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON TRANSPORT AND INFRASTRUCTURE**

