

United States Senate

WASHINGTON, DC 20510

February 17, 2023

Dara Khosrowshahi
Chief Executive Officer
Uber Technologies Inc.
1455 Market St. Suite 400
San Francisco, CA 94103

Dear Mr. Khosrowshahi,

We write today to express concern and seek information about Uber Eats' practices, specifically regarding concerning reports that Uber Eats engaged in junk fees, a misleading and harmful practice directed at consumers and small businesses. With 16% of Americans reporting income from an online gig platform¹, many small businesses struggling to stay open, and many vulnerable Americans relying on food delivery apps during the COVID-19 pandemic, Congress has a responsibility to ensure consumers, workers, and restaurants that rely on those applications have access to a fair and transparent marketplace. To that end, we are writing to request clarification on the current practices by Uber Eats that relate to fees, payments to businesses, consumer disclosures, and compensation for delivery workers.

Food delivery apps play an important role in many Americans' lives, and they experienced massive growth during the pandemic. Unfortunately, however, the industry has been regularly accused of unfair and deceptive practices. These include listing restaurants on its platform without a contract or consent,² misleading consumers by charging hidden fees,³ using bait and switch tactics,⁴ and misrepresenting whether tips would ultimately increase driver pay.⁵ Consumers should not have to work through a confusing fee structure, deceptive offers and discounts, and potentially inflated prices while attempting to order a meal and support local businesses.

¹ Monica Anderson, Colleen McClain, Michelle Faverio, and Risa Gelles-Watnick, "The State of Gig Work in 2021", Pew Research, December 8, 2021, <https://www.pewresearch.org/internet/2021/12/08/the-state-of-gig-work-in-2021/>

² Ayana Archie, "D.C. sues Grubhub for allegedly using deceptive trade practices", NPR, March 22, 2022, <https://www.npr.org/2022/03/22/1087988691/washington-dc-attorney-general-DoorDash-food-delivery-lawsuit>

³ "AG Racine Sues Grubhub for Charging Hidden Fees & Using Misleading Marketing Tactics During the COVID-19 Pandemic to Increase Profits at the Expense of Consumers & Restaurants", D.C. Office of the Attorney General Newsroom, March 21, 2022, <https://oag.dc.gov/release/ag-racine-sues-grubhub-charging-hidden-fees-using>

⁴ *Id.*

⁵ "AG Racine Reaches \$2.5 million Agreement with DoorDash for Misrepresenting the Consumer Tips Would Go to Food Delivery Drivers", D.C. Office of the Attorney General Newsroom, November 24, 2020, <https://oag.dc.gov/release/ag-racine-reaches-25-million-agreement-doordash>

As the COVID-19 lockdown immersed communities around the country in March and April 2020, many restaurants turned to food delivery apps to stay afloat.⁶ As a result, companies like Uber Eats enjoyed increased profits and unprecedented growth. In the third quarter of 2020, Uber Eats bookings increased 135% year over year, and its revenue grew 125% to \$1.45 billion.⁷ Such growth, however, came at the cost of consumers, who consistently faced deceptive and confusing information and fees.

Another concern regarding Uber Eats relates to the pricing structure and accusations of inflated prices. Uber Eats reportedly inflated the prices of individual menu items above what the restaurant charged, in order to make additional profit without informing the consumer. Such practices led to an agreement between the Attorneys General for the District of Columbia and Pennsylvania and Uber Eats requiring the company to disclose the difference in menu prices on its app versus in-restaurant.⁸ While we welcome this transparency, it's unfortunate that such a move required legal intervention, and only applies in two state-level jurisdictions. We remain concerned that Uber continues similar practices in other states across the nation.

Based on these concerning behaviors displayed by Uber Eats as well as other deceptive and predatory practices we observed from companies with similar business models, we request answers to the following questions:

1. Please provide information on the Uber Eats fee structure, including:
 - a. Information relating to any fee charged for optional marketing programs offered to restaurants.
 - b. Which fees, discounts, and offers are paid by or offered to customers and which fees, discounts, and offers apply to restaurants.
 - c. A state-by-state, per month average and distribution range of the cost to restaurants to partner with Uber Eats, including both one-time and recurring fees.
 - d. An average percentage of the total bill and distribution of charges to consumers for each individual fee including, delivery, service, COVID-19 related fees, and any other fees regularly charged.
 - e. Information regarding at what point in the ordering process the customer is made aware of all service charges or fees.
 - f. Information about how the delivery and service charges are determined for each individual order, and how Uber Eats and/or the restaurant profits from these charges.
2. Please provide information as to how the Uber Eats tip structure works, including:
 - a. The percentage of customer tips that go to the delivery worker

⁶ Levi Sumagaysay, "The pandemic has more than double food-delivery apps' business. Now what?", MarketWatch, November 27, 2020, <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>

⁷ *Id.*

⁸ Rick Massimo, "Uber Eats will now highlight price differences from restaurants, DC's AG says", WTOP News, June 22, 2021, <https://wtop.com/food-restaurant/2021/06/uber-eats-will-now-highlight-price-differences-from-restaurants-dcs-ag-says/>

- b. Whether Uber Eats uses customer tips to offset the guaranteed flat fee paid to delivery workers.
 - c. Whether Uber Eats discloses the amount tipped to a delivery worker *before* the worker accepts the order.
 3. How does Uber Eats calculate the “base pay” or flat fee paid to delivery workers for any given order?
 4. Is Uber Eats currently adding “non-partnered” restaurants to its platform, or otherwise adding restaurants without their knowledge or consent?
 - a. If no, when did Uber Eats end the practice?
 - b. If yes, does Uber Eats provide notice that it is adding the restaurant?
 - c. What percentage of restaurants currently listed on Uber Eats are “non-partnered”?
 - d. Please describe the process by which a non-partnered restaurant may remove itself from listing on the platform.
 5. Does Uber Eats allow listings with higher prices for items than the prices offered by the restaurant directly?
 - a. If yes, does Uber Eats disclose the price discrepancy to the consumer in every jurisdiction? How does Uber Eats communicate to customers that restaurants may offer lower prices when ordering directly from the restaurant?
 - b. If yes, what percentage of listings contain a discrepancy?
 - c. If yes, on average, how much more are Uber Eats listings compared to the price available directly from the restaurant?
 - d. If yes, is this higher price on Uber Eats established by Uber Eats or by the restaurant itself?
 6. Does Uber Eats disclose to customers the commission they receive from any given restaurant on the platform?
 - a. Does Uber Eats permit restaurants to disclose such information to customers?
 - b. If no, please provide a breakdown of the average commission Uber Eats receives from restaurants on the platform.
 7. How does Uber Eats calculate delivery time?
 - a. Does Uber Eats offer dynamic pricing based on delivery time and/or times of high demand?

Thank you in advance for your cooperation. We look forward to receiving your response by March 3, 2023.

Sincerely,



BEN RAY LUJÁN
United States Senator

RICHARD BLUMENTHAL
United States Senator

RON WYDEN
United States Senator