

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARIAM DAVITASHVILI, *et al.*,

Plaintiffs,

v.

GRUBHUB INC., *et al.*,

Defendants.

Case No. 1:20-cv-03000 (LAK)

ECF Case

Electronically filed

**REPLY MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANTS' JOINT MOTION TO
DISMISS PLAINTIFFS' AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

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Plaintiffs' opposition brief does not salvage their claims. Plaintiffs fail to overcome that they are challenging contractual provisions that *prevent* restaurants from charging *higher* menu prices to *consumers* on Defendants' platforms. Plaintiffs also ignore their factual allegations suggesting Defendants compete in a *growing* and *competitive* marketplace for food delivery services where neither consumers nor restaurants are forced to use any Defendant's platform. And Plaintiffs provide no answer to the obvious flaw in their theory of harm: DoorDash, the largest platform, does not use the challenged provisions, and restaurants and consumers are free to switch to that platform.

As the opposition confirms, Counts I and III allege that the restrictions on restaurants charging higher menu prices on Defendants' platforms than they do for items sold directly cause anticompetitive effects in the direct channels, where Defendants do not compete. Plaintiffs' own precedent shows, however, that they must allege harm to a market in which Defendants do compete, and Plaintiffs do not—and cannot—allege that these restrictions reduce competition in the purportedly separate platform market. Plaintiffs' arguments reveal their Catch-22 problem: the restrictions on higher restaurant pricing in the direct channels could harm competition only if meal-ordering platforms and restaurants' direct channels were part of the same product market. But Plaintiffs have not pled such a market because Defendants would have a minuscule market share and their restrictions could not conceivably cause market-wide harm.

Opposing dismissal of Counts II and IV, Plaintiffs repeat only conclusory allegations of anticompetitive effects in the platform channel from inter-platform NDPs that are allegedly in Uber Eats and Grubhub's contracts. They do not address the disconnect between their assertion that Uber Eats and Grubhub force restaurants to accept inter-platform NDPs and their factual allegations suggesting that customers use multiple platforms interchangeably and that Uber Eats

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