

ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY



competition commission
south africa

SUMMARY OF FINAL REPORT FINDINGS AND REMEDIAL ACTIONS

JULY 2023



a growing, deconcentrated and inclusive economy

[Inquiry Panel and Team members]

PANEL:

James Hodge (Chair)
Doris Tshepe

CASE MANAGER:

Noluthando Jokazi

ADMINISTRATIVE:

Nomsa Mokoena
Zinhle Cele

TECHNICAL TEAM:

Itumeleng Lesofe
Hariprasad Govinda
Tshegofatso Radinku
Rahma Leuner
Donnavan Linley
Raksha Darji
Siphosethu Tetani
Sthabiso Mkwazazi
Aphiwe Nanto

Phathutshedzo Manenzhe
Sivuyise Mtiki
Lumkisa Jordan
Thapelo Booi

SUPPORT TEAM:

Itebogeng Palare
Abram Tiro
Xolani Skhosana



[INTRODUCTION]

SUMMARY OF FINAL REPORT FINDINGS AND REMEDIAL ACTIONS

The Competition Commission formally initiated the Online Intermediation Platforms Market Inquiry (“Inquiry” or “OIPMI”) on 19 May 2021 in terms of section 43B(1)(a) of the Competition Act 89 of 1998 (as amended) (“the Act”). An Inquiry was initiated because the Commission has reason to believe that there are market features of online intermediation platforms that may impede, distort or restrict competition; and in order to achieve the purposes of the Act including the participation of small and medium enterprises (“SMEs”) and historically disadvantaged persons (“HDPs”) in these markets. Those intermediation platforms include eCommerce, online travel agencies, food delivery, app stores and property/automotive classifieds, along with the role of Google Search in shaping B2C platform competition. The choice of this area for the online inquiry was that these platforms affect real business activity across a wide range of the economy.

All Inquiry documents and public submissions are available on the Inquiry website.¹ Since initiation, the key Inquiry processes and proceedings to date have been as follows:

- Release of the Statement of Issues (“SOI”) for public comment (19 May 2021);
- Issuing a first round of Requests for Information (RFIs) and business user survey (May 2021);

- Release of the Further Statement of Issues (FSOI”) for public comment (17 August 2021);
- Issuing of second round of RFIs and refined business user survey (August 2021);
- Public hearings and follow up RFIs (November 2021);
- Receipt of expert reports and in-camera hearings (February 2022);
- Publication of the Provisional Inquiry Report along with provisional findings and recommendations (13 July 2022);
- Submissions on the Provisional Inquiry Report (August/September 2022);
- Engagements with stakeholders and follow-up RFIs (October/November/December 2022).
- Engagements with stakeholders on final findings and remedial actions / recommendations (January to July 2023).

The Inquiry has continued to engage on the remedial actions required to address any identified harm which are both reasonable and practical, but also comprehensive solutions. The report provides the Inquiry’s final findings on features that adversely affect competition in these markets and includes the decision on the set of remedial actions that platforms, and some other businesses, are required to implement to remedy the adverse effects. This summary sets out the primary findings and remedial actions in each of the platform categories and Google Search.

1 <http://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>

[PLATFORM COMPETITION]

Online intermediation platforms may not be the only distribution channel for business users to reach consumers to sell their products or services. However, they have a unique proposition that has driven growing adoption by both consumers and businesses. For the consumer it is the convenience of a single aggregator where the consumer can easily search and compare the product and service offerings of a much wider variety of businesses, along with the convenience of online transacting anytime from anywhere. For business users, the proposition is national (or international) marketing access to consumers and the online sales that these platforms generate, as well as the payments, technical and physical infrastructure to conclude transactions online.

Intermediation platforms are subject to so-called network effects, where more users on the one side of the platform makes the platform more valuable to the other side. A platform that can deliver the bulk of current online consumer leads and sales will make itself invaluable to business users, enabling that platform to extract more from the business users to fund its lead in platform

development and consumer acquisition. This is the virtuous cycle of scaled platforms and the barrier to expansion for entrants.

The importance in online leads or sales and level of dependency by business users means that scaled platforms can influence competition amongst businesses on the platform or exploit the businesses. This may be through, for instance, their fees, fee structure, ranking algorithms or terms and conditions. The platforms may not necessarily set out to influence competition, except in the case of self-preferencing, but it may emerge as a by-product of their monetisation strategy and business model.

These market features result in a bifurcated market with one or two scaled platforms that influence both platform and business user competition. The Inquiry has sought to distinguish the scaled platforms with leading positions in each category from other market participants, terming them leading platforms. It is these leading platforms that are the focus of findings and remedial actions

[GOOGLE SEARCH]

Most online search, travel and shopping journeys for goods and services start on general search, the entry point for most consumers to the Internet. General search leads are considered particularly valuable to platforms because they are intent-based. Google Search is a de facto monopoly, accounting for over 90% of all general search across desktop, tablet and mobile devices. Given its importance for customer acquisition, visibility on the Google search is critical and impacts on discoverability and website traffic. On Google Search itself, ranking matters as consumers show a predisposition to click on the first results assuming they are most relevant to the query.

Google Search has evolved over time to provide more prominence to paid results and Google's own properties relative to organic results for commercial search. This is reflected in the large and growing spend on Google paid results by platforms. Whilst paid ads are on a cost-per-click (CPC) auction basis and technically allows any platform to contest for a click, large platforms have considerable advantages, including budget size, contesting more popular commercial search terms given the higher returns on clicks, and the additional quality measures used in determining the outcome all favour established platforms. Those same quality measures influence organic

results and similarly favour larger platforms able to invest in search engine optimisation. The fact Google allows duplication where a platform appears in paid and organic results, means large platforms can dominate both the top paid and organic search results. The disadvantage faced by SMEs is compounded in the case of black-owned platforms that lack even venture-capital backing domestically.

The Inquiry finds that the Google Search dominance and business model distorts platform competition as small and new platforms struggle for visibility and customer acquisition. To address this distortion, the remedial actions have focused on improving paid and organic result visibility for smaller SA platforms. On organic results, Google must introduce a new platform sites unit (or carousel) to display smaller SA platforms relevant to the search (e.g travel platforms in a travel search) for free and augment organic results with a content-rich display. Google must also introduce an SA flag identifier and SA platform search filter to aid consumers to easily identify and support local platforms in competition to global ones. On paid results, Google must provide R180m in advertising credits for small platforms to use in customer acquisition along with free training to optimise advertising campaigns. Google must also provide a further R150m in training, product support and other measures for SME and black-owned online firms to offset the competitive disadvantages faced on Google Search.

In certain platform categories, such as shopping and travel, there is the additional distortion of Google providing services that compete with its customers for consumer attention. Google has strong incentives to capture this specialist search traffic and has the ability to do so given that the majority of traffic originates on Google search, where it designs the search page and algorithm. In this way it can influence where and how its own Shopping and travel units appear on the search page relative to competitors. Google's Shopping Unit appears at the top of all search results, and its travel units at the top of organic results with a new paid hotel unit now appearing at the top of all search results. The evidence demonstrates these units attract a large growing share of consumer traffic, and for Shopping this has been found to distort competition in the EU.

The Inquiry finds that Google self-preferencing of its own shopping and travel units on its search results page distorts competition. To address this distortion, the remedial actions focus on changes to Google Search to cease self-preferencing its own products. In the interests of both regulatory compliance for Google and oversight by the Commission, Google is required to implement in SA measures taken in Europe to comply with similar provisions in the Digital Markets Act to address self-preferencing.

[TRAVEL AND ACCOMMODATION]

In travel, Booking.com is the largest online travel agent (OTA) for traditional hotel and accommodation establishments by a huge distance, with Airbnb only being large in alternative accommodation (which typically includes homes, apartments, villas and house shares). With a significant share of bookings, dependency of establishments and strong network effects, Booking.com is the leading platform in travel in South Africa.

Booking.com imposes so-called 'wide price parity' conditions on hotels and other establishments which require them to offer room prices to Booking.com that are no less favourable than the room price offered to other OTAs. Wide price parity is now generally accepted to be a hardcore restraint of trade and Booking.com has removed these clauses in the EU but persists in applying them in SA. In essence, the clause prevents other platforms competing with Booking.com on price which not only harms consumers but impedes

other OTAs from charging a lower booking commission to hotels in exchange for lower prices, hurting competition on platform commissions and prices too.

In addition, Booking.com imposes so-called 'narrow price parity' which prevents hotels and other establishments from pricing lower on their own websites for online bookings. The ability of hotels to price lower on their own direct channel is important to develop the channel and reduce dependency on Booking.com, as it provides a reason for consumers to book direct. Under narrow parity, there is no reason for consumers to book direct as there is no advantage, and potentially a disadvantage where there are loyalty discounts and a generous cancellation policy on Booking.com. This dependency on Booking.com enables it to extract higher commission fees directly or through loyalty programmes and other schemes that provide greater visibility and customer acquisition, or punish hotels that deviate with low ranking.

The Inquiry finds that Booking.com's wide and narrow price parity clauses impede competition. To address this, the remedial action is to remove these obligations and inform all hotels and

[ECOMMERCE]

In eCommerce, the clear market leader is Takealot which has a dominant share of even overall online sales in South Africa, including other eCommerce platforms and direct retailer or manufacturer sales channels. Takealot has an even stronger position in providing online marketplace services to sellers. In essence, they allow businesses to trade within the Takealot platform by listing products on their customer website and using their warehouse and logistics services to fulfil orders for a fee. Smaller businesses wishing to trade on online marketplaces in SA are highly dependent on Takealot.

As with Booking.com, Takealot does impose on sellers 'narrow price parity', preventing them

accommodation providers in South Africa that list on its platform.

Booking.com has increasing influence on bookings by both foreign and domestic travellers, as ranking high on the search results drives bookings. Whilst black communities struggle to compete in the tourism sector due to a historical lack of tourism infrastructure development, the OTAs have predominately focused on established tourism and travel destinations and establishments, reinforcing historical advantage and disadvantage. This is reflected in the small number of listings from black owned establishments and communities, and the lack of promotion of alternative tourism communities. This market feature impedes the ability of black-owned establishments and communities to compete and sustain themselves in the tourism industry.

The Inquiry finds that Booking.com's lack of diversification distorts competition from black communities. To address this distortion, it is required to put in place substantial programmes to provide funding of initiatives in the identification, onboarding, promotion and growth of SMEs that are black-owned and/or in black communities on the Booking.com platform.

from pricing lower on their own websites, and in the same way prevents them from reducing their dependency on Takealot by developing this alternative online channel. The Inquiry similarly finds that Takealot's narrow price parity clause distorts competition and requires Takealot to remove this clause and inform all marketplace sellers on its platform.

Whilst Takealot opens its online marketplace to third party sellers, it also trades extensively itself through the Takealot Retail division. This creates a conflict of interest in the same manner as Google, namely it sets the rules for the marketplace and at the same time competes with the marketplace sellers. Takealot too has incentives to favour itself,

and at the very least its retail buyers on sales commission have strong incentives to tilt the balance in their favour.

The Inquiry investigated numerous complaints from marketplace sellers on Takealot around self-preferencing or other conduct which distorts competition with marketplace sellers. Positive findings were made by the Inquiry in respect of the following:

- Unilateral product gating not at the supplier's request which prevents marketplace sellers from selling certain brands on Takealot in competition with its own retail.
- The use of seller data by Takealot buyers to inform their own retail offering on the marketplace and Takealot private label team to develop their own private label lines. This unfairly free-rides on sellers that have invested in developing or identifying products that may appeal to SA consumers, take risk on trialing those products on the marketplace and invest in promoting those products to build awareness and popularity, both on and off the platform.
- The pressuring of suppliers by Takealot retail buyers where they are outcompeted on the platform by marketplace sellers selling the same product, resulting in the suppliers either raising their price to the marketplace sellers or threatening sellers with non-supply if they do not soften competition.
- The Takealot 'Buy Box' for branded items with multiple sellers selects the cheapest price of those in-stock in the warehouse, rather than the cheapest price regardless of lead time. As consumers mostly select the Buy Box item, this favours Takealot retail as their products are generally in the warehouse.
- Marketplace seller applications for promotional participation are materially less likely to be successful than Takealot's own retail buyers.
- The failure to resolve numerous disputes within a reasonable time frame where the marketplace seller is left bearing the cost of the dispute in the interim.

To address these distortions arising from the conflict of interest, Takealot is required to segregate its Retail division from its Marketplace operations and to prevent its retail services from accessing seller data and unilaterally stopping sellers from competing for certain brands. Further measures required to contain the incentives by its own retail buyers and staff include extending the employee code of conduct and independent complaints channel to include contraventions based on unfairly harming marketplace sellers that may result in disciplinary action. In addition, Takealot must introduce a 60 day dispute resolution process for marketplace sellers complaints on returns and stock loss which will be deemed resolved in favour of the seller if not resolved within 60 days. Finally the Buy Box must be re-engineered to reflect the cheapest (regardless of delivery time) and fastest options for the consumer.

The Inquiry also finds that the business model in eCommerce currently provides additional restrictions to the participation of historically disadvantaged businesses, amongst them that onboarding favours established businesses along with other promotional features. To address this distortion, Takealot is to implement an HDP Programme that provides (i) personalised onboarding, the waiver of subscription fees for the first three months and at least R2000 advertising credit for use in the first three months, (ii) offering promotional rebates and the inclusion of HDPs in HDP-specific campaigns on the platform, and (iii) a programme to specifically support targeted groups within HDPs such as female, youth and rural enterprises with business mentoring and funding support.

During the Inquiry rumours have persisted about the entry of Amazon. Whilst it has not entered South Africa, were it or any other large eCommerce player to do so, they will similarly be expected to comply with similar provisions as set out for Takealot.

[SOFTWARE APPLICATION STORES]

In SA, mobile devices are the primary means through which the majority of people engage the digital economy. On the devices, it is through apps, distributed through software application stores, that digital content and services are provided. For businesses and app developers that wish to be part of this lucrative and growing software economy, it is also through the app stores that they access consumers. The Apple App Store and Google Play Store collectively account for the vast majority of mobile users, app downloads and revenues earned in SA. Google Play is the default on Android devices which account for the overall majority of devices, in particular lower end priced smartphones, and hence users. Whilst Apple accounts for fewer smartphone devices, it accounts for a much higher share of app downloads and app store revenue due to the high-end target market. Both are essential for local app developers accessing the global app market.

The revenue model is to charge a commission on sales only where the app generates revenue through the delivery of digital content. This is because stores do not want to discourage free apps that add value to their devices, and revenue from digital content delivered through the store is measurable by the store whereas apps used to sell physical services are not. To measure those transactions and ensure they are able charge the apps their commission, the stores do not permit alternative payment processing services on their stores for all in-app payments (IAPs). The exclusion of alternative payment processing methods not only ensures that the commission fees cannot be bypassed by design, but also that the application store owns the customer relationship unless additional logins are required.

For apps that provide digital content through other channels, such as websites, PCs or consoles, there are typically means for consumers to pay for the content through these channels. Application stores permit consumers to access that content or credits through the applications where there is a login on the app, referred to as the App Store Multiplatform rule and the Play Store's Payments

Policy. However, the stores have imposed anti-steering rules to prevent app developers from circumventing their IAP by steering consumers to these outside options. This means that where discovery of the app takes place through the application store, consumers will be ignorant of alternative payment options, limiting their discovery and use. In this manner, the anti-steering rules restrict competition from alternative payment methods for the app available through other channels. The result is high commission fees that are either likely to raise the pricing of apps to the detriment of consumers or reduce the earnings of app developers which impedes investment and innovation.

For apps whose primary functionality is the distribution of digital newspaper, magazines, books, audio, music or video, these have the option to be pure reader or consumption apps but must then forego the option of the IAP enabled to do one-click purchases, and still require consumers to discover their website for subscription or content purchases. There have been adjustments to the anti-steering rules following litigation. Both Apple and Google now allow app developers to communicate with consumers through means other than the app itself. Apple now permits a narrow group of reader apps globally to provide an external link to their website for the purpose of subscribing or purchasing content but Google does not.

The Inquiry finds that Google Play and Apple App Store are unconstrained in the commission fees they charge paid app developers and the anti-steering rule limits competition. To address this distortion, the remedial actions require Google Play and Apple App stores to stop preventing apps from directing consumers to pay on the app's own website, and to ensure continued free use by consumers of content purchased from that website. Implementation in South Africa of measures taken in Europe to comply with similar provisions in the Digital Markets Act, including fair and reasonable pricing, will be considered as compliance with the remedial actions.

Given the market feature of millions of apps overall, and thousands in any single category, being sold through monopoly application stores on different device OSs, discoverability and visibility on those application stores is essential for apps to compete effectively. The application stores provide for discoverability through two main features, namely curation and search. Curation is where store editors identify quality apps and promote them through a wide variety of means such as featured apps, category recommendations, new apps, classics, apps of the day, etc. Given the importance of search for discoverability and the volume of apps in any search results, developers have made increasing use of ads which appear on the search page itself as suggestions and at the top of search results.

Neither the Apple App Store nor the Google Play Store has local curation of apps despite the

hundreds of millions in revenue generated from South Africa each year, other than automated curations based on sales or downloads for the SA storefronts, and some geo-relevance criteria applied to certain search terms. Local apps may have particular relevance for domestic consumers but the lack of local curation means this would not be a factor in the editorial process, with global apps served up instead. The result is that competition from domestic apps is impeded. On search, South African paid and gaming app developers have highlighted the challenge of competing against well resourced global competitors.

The Inquiry finds that the global business model of the application stores limit curation and visibility of local SA paid app developers. To address this distortion, Google and Apple must also provide a South African curation of apps on their app stores and advertising credits to SA app developers.

[ONLINE CLASSIFIEDS]

Classifieds made a rapid transition from print to online from 2010 to 2015 due to rising Internet access along with the unparalleled convenience of online search and comparison tools. Within classified verticals, property and automotive represent the biggest categories. Within the automotive online classifieds, Autotrader and Cars.co.za represent the leading platforms by some distance with over 80% share between them. Within property online classifieds, Property24 is the dominant platform and Private Property is the second largest. Private Property is uniquely placed in that it is a partnership with the large national estate agencies through the Estate Agency Property Portal Company (EAPPC), facilitated by the industry association, Reboosa. As a result, Private Property has been able to secure, and lock-in, most of the listings.

A vertical classifieds platform needs to have most of the listings as consumers want the convenience of a one-stop-shop for search and comparison. In property classifieds, unlike automotive, there are

a raft of features that hinder platforms other than the two leading platforms from securing listings, including:

- Estate agents make use of listing engine software (“syndication software”) to manage their listings and feed them onto their own websites, and those of property classifieds. Property24 and Private Property both provide syndication software to estate agents listing on their platforms. PropData is the largest independent supplier. Whilst smaller syndication software providers feed out to all platforms, this is not the case for the leading platforms and PropData. The implication is that 70% of estate agents wishing to list on alternative classified platforms face considerable practical barriers to doing so, raising the cost of using those platforms that deters use and their development as competing platforms.
- The two leading property classifieds have also reinforced their position in syndication

software through charging a monthly R500 for feed in from external syndication software. The fee means for smaller agents especially it will always be cheaper to use the software of the leading platforms, impeding competition at a syndication software level. As these software providers are the most likely competitors in platforms, it has a ripple effect on platform competition.

- Estate agents typically have a budget for marketing and promotion and look to optimize that budget between different marketing activities including property classified listings. Both Property24 and Private Property have sought to lock-in this spend through multi-year contracts, limiting opportunities for competing platforms to contest this spend. Property24 offered a multi-year subscription package to estate agencies that would limit increases to make it attractive. Private Property has achieved the same outcome contractually with the largest estate agents through the EAPPC shareholding in the platform. Moreover, Reboza has actively promoted Private Property as a partnership with the industry and which agents should support as a preferred provider, facilitating the share offers to Reboza members.

The Inquiry finds these features impede competition. To address these distortions, Property24, Private Property and PropData must provide interoperability at no fee for estate agents to feed listings to other platforms. Property24 and Private Property must cease charging for incoming listings and put an end to multi-year contracts with large agencies. The Inquiry has required that Reboza must cease to support Private Property as the preferred platform for the industry, which has already been communicated to its members. An application will be made to the Tribunal for the national agencies to divest their shareholding in Private Property.

The leading platforms in both property and automotive classifieds exercise extensive price discrimination based on the volume of listings that an agency or dealer brings, both at a group and at an office level. These differences are not based on cost. Rather the claim is that the difference is based on the value provided and that larger

agents or dealers bring more listings and hence provide more value to the platform. The primary difficulty for the platforms is explaining why this justifies price differentials in excess of 300% on rate card and none have attempted to do so. There is no objective value-based pricing model at play but rather relative bargaining power that drives price differences.

The effect of the discrimination on smaller agents and dealers, including HDPs, is that the marketing budget does not go as far, forcing SMEs to forego additional marketing activities relative to the national agencies and dealers, resulting in lower visibility to the consumer. Some small agents/dealers list only on one platform due to the higher cost unlike the national agencies, which denies them exposure to a portion of leads, or do not list on platforms at all. Other smaller dealers/agents forego the use of value-added services that provide visibility and brand-building benefits on the classified platforms.

For new estate agency and auto dealer entrants, the high and discriminatory fees pose a barrier to entry as it raises costs during the establishment phase of the business where it needs to market itself more intensely to build visibility and brand equity, whilst lacking the cash flow to fund the high and discriminatory fees of the classified platforms. This will impede competition and participation by black-owned agents and dealers in particular, whose lack of historic wealth accumulation reduces the extent of financial resources at startup. Moreover, the classified platform business model and fee levels are tailored to the more established agencies / dealers operating in historically white middle class areas with higher property and car prices.

The Inquiry finds that the discrimination on listing and promotion fees impede and distort competition in online classifieds, particularly to the detriment of SME and HDP agencies and dealers. To address this distortion, the property and automotive platforms must substantially reduce their prices to SME agents and dealers to a level closer to that of larger agents and dealers. Property24 must introduce a Small Independent Business Package (SIBP) for business users with 30 leads or less priced at an average per lead or listing level within 15% of the average of all other

business users, reducing to 10% later. Autotrader must also introduce a SIBP for dealers with 20 listings or less, with the average cost per listing to be priced within 15% of the average for dealers on other rate bands, reducing to 10% later. Property24 and Autotrader must similarly adjust the pricing of their value added services for SIBP users. Cars.co.za must price its Flexi and Dynamite package at an average cost per listing that is within 15% of the weighted average cost per listing of its other Packages and introduce a premium offer for these packages. These interventions are expected to halve the monthly fees of listing for SME agents and dealers. Private Property already has a Kickstarter package and its lower revenues and market share has precluded it from further action.

To address the distortion to black-owned agencies and dealers in particular, all the leading platforms except Private Property must introduce an HDP

Programme. For Property24, that programme must at no cost provide personalised training including site design and support, branded listings, 5 value-added services per month, access to the market intelligence report, and for new HDP agents, 12 months free standard listing subscription. Autotrader must at no cost provide at no cost personalised workshops with experts and events, assistance with the initial upload and photography, a 50% discount on the Instant Offer, free standard listings for 12 months or premium at the cost of standard, and for existing HDP dealers a free upgrade to Premium and/or Featured Dealer. Cars.co.za to provide for free enrolment in the Cars.co.za dealership training programme, a mentorship and training programme, guidance on creating a professional 'About Us' page, an upgrade to the premium package at no additional cost for 12 months, a rebate amounting to two months of the users base package.

[FOOD DELIVERY]

The Covid-19 pandemic provided a huge boost to Food Delivery which is now well-established in South Africa. UberEats and Mr D Food are the leading platforms in restaurant food delivery and have all the restaurant chains listed along with thousands of independent restaurants, enabling them to offer consumers a wide choice in any local area and benefit from network effects. Bolt Food is the only other 'national' food delivery company operating a similar business model, with a small share but global backing. Local delivery services have emerged in areas not serviced by the national delivery platforms, such as townships and small towns. These are typically resident entrepreneurs without substantial capital backing and ability to offer a similar promotion-led model to the national platforms.

Food Delivery, as with all intermediation services, requires platforms to secure a wide range of restaurants to be an attractive proposition to consumers. Bolt Food and the array of local delivery services have been relatively successful

in signing up independent restaurants, but far less so with the restaurant chains even where they are individual franchisees. Many, but not all, restaurant chains prohibit their franchisees from contracting with local or national delivery services that are not approved by the head office. The reasons provided by those restricting franchisees are unpersuasive as demonstrated by the fact that some global and national chains do not place such restrictions. The stance adopted by the restaurant chains is in part the result of the two leading platforms incentivising them to bring in more of their restaurants and to drive order volumes through their platforms. This is mostly achieved through commission negotiations, where the delivery platforms reward more restaurants and volumes with lower commissions on orders.

The Inquiry finds these restrictions by national restaurant chains impede competition in food delivery. To address this distortion, national restaurant chains are prohibited from restricting or dictating the choice of food delivery platform

by its franchisees. However, this does not preclude the national restaurant chains setting minimum standards or guidance criteria, as long as these do not include terms that are exclusionary of local delivery platforms and new entrants by their very nature. It also does not preclude centralised rate negotiations.

Local delivery platforms operate a different model to the national platforms, charging a lower commission fee to restaurants as they do not invest significantly in promotions and tend to charge full delivery fees to customers. They also do not discriminate to the same extent against independent restaurants to cross-subsidise the chains. This model provides the basis for potentially competing through lower everyday menu prices on their platforms relative to the national delivery platforms due to the lower commission, even if they cannot match the promotions. This would benefit consumers. One impediment to doing so is the lack of transparency to consumers that platforms charge restaurants a commission fee and that this is typically passed onto consumers through a menu surcharge. A further impediment is wide price parity clauses requiring the same pricing across delivery platforms. Whilst Uber Eats has removed these from their contracts, they have not informed restaurants which means many may still apply the rule. Bolt currently enforces wide parity. The Inquiry finds these clauses to adversely affect competition with local delivery platforms. To address the first distortion on a lack of transparency, UberEats and Mr D Food are required to notify consumers through a pop-up message periodically that they charge restaurants a commission fee for their service, and restaurant in-store pricing may differ from the prices they charge on their service. To address the second distortion, Uber Eats is required to clearly inform restaurants that it has removed this requirement and Bolt Food is to remove this requirement and inform restaurants.

The financials of all three national food delivery companies have shown periods of below variable cost pricing through subsidising delivery charges to the consumer and engaging in substantial promotions, including restaurant funded promotions. This has led to the exit of many local delivery platforms. Regardless of whether this was necessary or not in the past to build scale, that

is no longer the case. As the leading platforms move into townships or small towns where local entrepreneurs have established themselves outside of the shadow of their operations, these tactics will decimate local delivery if not kept in check. Local delivery options are important for competition for consumers, both on service and price, but also for commission fees and orders for the restaurants that list. Local delivery is also important for inclusion and remains a legitimate business model as costs and scale are mostly local, not national. The Commission will need to continually monitor developments in these areas to ensure exclusionary predation does not occur.

The two leading food delivery platforms both offer significantly differentiated terms of service against the independent restaurants by charging a much higher level of commission fees for food orders on their platforms. Their financial reports demonstrate that this difference is not based on cost and nor have they sought to make this claim. Rather, the platforms have sought to justify the differences based on the number of restaurants and orders that the restaurant chains bring to the platforms. Where the leading platforms have had the most difficulty is in justifying the extent of the difference due to the reasons they have put forward, and neither made any attempt to do so. Moreover, independent restaurants collectively bring substantial volumes, offer greater variety in cuisines, and consistently have larger order sizes which benefits the platform. As a result, independent restaurants contribute disproportionately to the profits of delivery platforms.

The extent of differentiation, as a result of the inability of independent restaurants to negotiate terms, does distort competition between restaurants on the platform. Both chain and independent restaurants tend to add a menu surcharge roughly in line with the commission fees, with independent restaurants adding a higher surcharge due to their higher commission fees. This has negatively affected the relative pricing of independent restaurants to chains on the platforms, making their menu relatively less attractive to consumers and impacting on their competitiveness. The difference in commission fees has knock-on effects for platform competition too. The ability to extract higher commission fees

from independent restaurants, up to twice that of local delivery platforms, is part of the reason that the leading platforms can engage in the sustained use of aggressive promotions and subsidized delivery.

The Inquiry finds the price differentiation impedes competition on and between platforms. To address this distortion, Uber Eats must implement the standardized tiered commission fee structure it is currently experimenting with whereby independent restaurants have the option of selecting from a range of commission fees

associated with different levels of service and/or monthly/ongoing charges. This currently offers a material reduction in the commission fee for the standard service levels and includes at least one commission fee tier significantly below that. Mr D Food must put in place a promotional rebate for independent restaurants on their gross sales which can be used for discounts or promotions on Mr D Food, along with monthly advertising credits. These effectively reduce the commission fee paid and promote greater sales for the independent restaurants.

[TRANSPARENT ADVERTISING]

A common feature of intermediation platforms is that they all sell visibility to their business users on their search results page given the large number of relevant listings. Consumer behaviour is biased towards clicking on higher ranked impressions regardless of platform category, driving a willingness amongst business users to pay for specific rank positions or a ranking boost and a revenue source for the platform. The only constraint on the excessive sale of visibility is if consumers are aware that listings have paid for position on the search results. Most domestic intermediation platforms simply do not label those impressions that pay for improved visibility as adverts, whereas most international do so in compliance with consumer protection laws in other countries.

The Inquiry finds that the pervasiveness of unidentified advertising on intermediation

platforms distorts consumer choice, and therefore undermines competitive outcomes. Furthermore, the practice encourages more visibility to be sold than would otherwise be tolerated by consumers, exacerbating the consumer and competitive effect. The practice distorts competition from SMEs which are less likely to be able to purchase visibility, especially where they face price differentiation in listing and promotional fees.

To address this distortion, the Remedial action required is that South African platforms must label all listings that have paid for a position or boost in ranking position as 'promoted', 'sponsored' or 'Ad'. This is in line with the recently changed Advertising Regulatory Board's (ARB) Code of Advertising Practice. They must also commit to a responsible advertising code.

[HDP FUNDING]

The lack of wealth accumulation by HDPs due to exclusion from the economy under apartheid has created a substantial barrier to HDP tech entrepreneurs accessing pre-revenue funding (pre-seed and seed funding) from a family or associate 'angel investor', unlike their white counterparts. Pre-revenue funding is not supported by the venture capital ("VC") industry, whose support at this stage is often in the form of incubators / accelerators where the founding team receives guidance and access to business development resources. The small size of the VC industry in SA and its lack of transformation is a further barrier to seeking out the talents of a broader base of entrepreneurs. The Inquiry finds that there is an additional funding impediment to HDP inclusion and participation in the platform markets, with particular challenges at the pre-revenue stage. The Inquiry also finds that the VC industry along with the institutional funders requires transformation and a shift in resources to support and develop HDP entrepreneurs.

Globally, governments have sought to support the funding of tech startups given the potential for high growth and employment, known as impact investing for social returns. In the startup space, governments have typically sought to do this through reducing the risk for private investors and in so doing crowd them in. This means government does not take on all the risk, and it is able to leverage its own funding to grow the pool of funding available for startups. One of the means to do so is through first loss funding, where government assumes the first losses in the portfolio of investments held by a VC fund, and in so doing reduces the risks of other investors by reducing their exposure to the potential downsides. Government funding has also taken the form of convertible loans which means private investors do not see their equity stake diluted unless growth targets are met. The

Inquiry finds that these instruments are missing in the current package of funding provided by the SA government.

Whilst the Inquiry has required specific remedial action from all leading platforms to support HDP business users access, afford and attain visibility on those platforms, funding is likely to present another challenge for some businesses in making the necessary investments to achieve and exploit an online presence. An effective online presence provides considerable opportunities for business growth through exposure to a national consumer audience (or global for apps) and reach beyond the physical confines of a retail presence. There are more government programmes to support these types of businesses including on a funding level. However, their skills and focus is not on how to invest in and exploit an online presence, including pure online business ventures.

To address these distortions, the Inquiry recommends that an allocation of government funds is made to supporting HDP digital economy startups through the DTIC or DSBD where the HDP Startup Fund is actively administered by an agency of government. The funds should be mandated for HDP startups only and may be allocated in support of other geographic and sectoral priorities. This should include funds for the operation of incubators and accelerators. Beneficiary VC funds should commit to achieving internal transformation targets set by the agency. In addition, it is recommended that existing government financial support programmes for SMEs and HDP businesses within the DTIC and DSBD include funding for investments in an online presence and capabilities. The Inquiry expects that institutional and corporate funders will start to consider the importance of mandates going forward as these are lacking currently.

[CLOSING OBSERVATION]

This Inquiry has proactively engaged with a rapidly emerging digital economy to ensure it is competitive and inclusive. However, it happens at a point in time and in respect of a particular set of digital platforms, namely intermediation platforms. There are growing concerns globally across all digital platforms and not just intermediation platforms, and concern that the enforcement tools are insufficient to ensure competitive outcomes and a cessation to anti-competitive conduct. Within intermediation platforms themselves, conduct that has not yet emerged in some of the categories may do so in future, other intermediation services will gain traction in the market and, if the remedial action is effective, new leading platforms may emerge. In addition, there are continental developments that have implications for South Africa. The African Union has adopted a Competition Policy Protocol for the African Continental Free Trade Area (AfCFTA) which includes digital gatekeeper provisions to which our law should eventually align.

The Inquiry did provisionally recommend potential regulations and/or legislative changes. Given the Inquiry has gained material insights into the business models and competitive dynamics amongst intermediation platforms that may entrench an uncompetitive and exclusionary market structure, there is an opportunity to build these into such regulations and/or legislative changes. However, that approach may be piecemeal and fail to systematically address the overarching challenges of digital markets. The Inquiry therefore no longer recommends specific regulations in respect of intermediation platforms. Rather, there should be continued debate about how best to respond to the challenge of digital markets and whether a more comprehensive solution can be achieved, be it regulations or legislative changes.

[CONCLUSION]

The remedial actions should provide the following benefits to platforms, businesses listing on the platforms and consumers

- Greater visibility and opportunity for smaller South African platforms to acquire customers through Google Search, enabling growth and greater platform competition with larger, sometimes global, rivals;
- Enabling more intense platform competition in each of these categories, which in turn will offer businesses that list on the platforms and consumers more choice and innovation. This should result in lower prices for the businesses listing on the platforms, and for consumers too where they currently pay for the service;
- Providing a level playing field for small businesses selling through these platforms, including fairer pricing and opportunities for gaining visibility and customer acquisition relative to the large national businesses they compete with;
- Providing a more inclusive digital economy through overcoming impediments for participation and fair competition by black-owned South African businesses on online platforms and funding opportunities for black entrepreneurs.



competition commission
south africa



Telephone Number:
+27 (012) 394-3200 | +27 (012) 394-3320

Email Address:
ccsa@compcom.co.za

Physical address:
The DTI Campus, Mulayo (Block C),
77 Meintjies Street,
Sunnyside, Pretoria

Postal address:
Private Bag x23,
Lynwood Ridge, 0040



competition commission
south africa



competition regulation for a growing and inclusive economy