

ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY



competition commission
south africa

PROVISIONAL SUMMARY REPORT

JULY 2022



a growing, deconcentrated and inclusive economy

[TABLE OF CONTENTS]

1. INTRODUCTION	02	6. HDP platforms / business users	40
2. Adoption, closeness of competition and leading platforms	04	6.1. Platform level	40
2.1. Adoption and user case	04	6.2. Business user level	41
2.2. Closeness of competition	04	7. Other Issues	43
2.3. Leading platforms	06	8. Main Provisional Findings and Recommendations	45
3. Platform Competitive Dynamics	08	8.1. Provisional Leading platforms findings ...	46
3.1. Initial business user acquisition	08	8.2. Provisional platform competition findings and recommendations	47
3.2. Consumer acquisition	10	8.2.1. Google Search	47
3.2.1. Software app stores	11	8.2.2. Online Classifieds	49
3.2.2. Google Search	12	8.2.3. Food Delivery	50
3.2.3. Customer promotions and subsidies	16	8.2.4. Travel and Accommodation	52
4. Reinforcing the virtuous cycle and barriers to expansion	19	8.2.5. eCommerce	52
4.1. Strategies to retain and extend leadership	19	8.2.6. Software application stores	53
4.1.1. Undermining price competition	19	8.3. Provisional business user competition findings and recommendations	54
4.1.2. Leveraging visibility	20	8.3.1. Cross-cutting finding	54
4.1.3. Loyalty schemes	20	8.3.2. Online Classifieds	55
4.2. Vicious cycles and expansion barriers ...	21	8.3.3. Food delivery	56
4.2.1. First-mover to scale advantages	21	8.3.4. Travel and accommodation	57
4.2.2. Limits to business user multi-homing	22	8.3.5. eCommerce	58
4.2.3. Limits to consumer multi-homing	23	8.3.6. Software application stores	59
4.3. Global platform tax benefits	25	8.4. Provisional findings and recommendations to government	60
5. Business user competition and exploitation on leading platforms	26	8.4.1. Regulatory oversight of future conduct...	60
5.1. Exploitative fees	26	8.4.2. Competitive distortions from tax differentials.....	61
5.2. Fee Discrimination	28	8.5. Provisional HDP platform and business user findings and recommendations	62
5.3. Selling visibility	33	8.5.1. Platform level	62
5.4. Self-preferencing conduct	35	8.5.2. Business user level	62
5.5. Terms & conditions	38		

[1. INTRODUCTION]

1. The Competition Commission formally initiated the Online Intermediation Platforms Market Inquiry (the "Online 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.
 - 3.1. market features that may hinder competition amongst the platforms themselves;
 - 3.2. market features that may hinder competition amongst business users or undermine consumer choice;
 - 3.3. market features that give rise to exploitative treatment of business users; and
 - 3.4. market features that may negatively impact on the participation of SMEs and/or HDP firms.
2. The Scope of the Inquiry is set out in the Terms of Reference ("ToR") which was published on 9 April 2021. Online intermediation platforms facilitate transactions between business users and consumers (or so-called "B2C" platforms) for the sale of goods, services and software, and the scope includes eCommerce marketplaces, online classifieds and price comparator services, software application stores and intermediated services such as accommodation, travel and food delivery.¹ The scope includes digital advertising insofar as it may pose a barrier to platform or business user competition, and the extent to which those platforms also offer intermediation services. The scope also includes foreign domiciled platforms that have an economic effect in South Africa.²
3. The inquiry is broadly focused on four areas of competition and public interest, namely:
 4. All Inquiry documents and public submissions are available on the Inquiry website.³ Since initiation, the key Inquiry processes and proceedings to date have been as follows:
 - 4.1. Release of the Statement of Issues ("SOI") for public comment (19 May 2021);
 - 4.2. Issuing a first round of Requests for Information (RFIs) and business user survey (May 2021);
 - 4.3. Release of the Further Statement of Issues ("FSOI") for public comment (17 August 2021);
 - 4.4. Issuing of second round of RFIs and refined business user survey (August 2021);
 - 4.5. Public hearings and follow up RFIs (November 2021);
 - 4.6. Receipt of expert reports and in-camera hearings (February 2022).
 5. The Main Provisional Report provides detailed chapters on each of the primary intermediation platform categories identified in the initial SOI and expanded upon in the FSOI. Chapters are also included for insurance comparator sites which emerged as an area of interest following

1 The scope of the inquiry specifically excludes e-hailing services which were the subject of a previous inquiry and other pure gig economy platforms.

2 See document 'Clarification on the Inquiry Scope', August 2021. The document also clarified that metasearch engines (MSEs) fell within the scope.

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

the FSOI. Each chapter essentially follows a similar structure, namely (i) the adoption, user case and delineation of competitive constraints on the intermediation platforms, (ii) the intermediation platform structure and competitive dynamics, (iii) findings on factors impacting on platform competition, and (iv) findings on factors impacting on business user competition, exploitation and participation of SMEs and HDPs. In addition, there is a chapter on venture capital funding and support (private and public). The Main Provisional Report concludes with a chapter containing a summary of the provisional findings and proposed remedies to address those provisional findings.

6. This Summary Provisional Report aims to condense the main cross-cutting themes across emerging across the intermediation platform categories, along with the provisional findings on competitive dynamics and features with an adverse effect on competition, especially SMEs and HDPs participation. Whilst the different platform categories do focus on different products and services, and each has some unique features, there is a substantial amount in common since they are all two-sided intermediation platforms. This includes commonality in business models, incentives, strategies, competitive dynamics and therefore common features which may impede competition at a platform or business user level or result in exploitation due to a lack of competition. There is also a common thread of a lack of participation by HDPs that is far more marked than the broader SA economy, itself relatively untransformed. The Summary Provisional Report concludes with a discussion on the provisional recommendations.

7. Following the release of the provisional reports there will be a period of six weeks for the submission of public comments. Affected parties will also receive a version where their own confidential information is unredacted. The Inquiry will review all public submissions and engage directly with stakeholders affected by any provisional findings and recommendations. That process may result in changes to the provisional findings and/or recommendations. The Inquiry contemplates releasing a final report with findings, remedial actions and recommendations in November 2022.

[2. Adoption, closeness of competition and leading platforms]

2.1 Adoption and user case

8. Overall, the broader online platforms market in SA is limited by the country's enormous wealth inequality. Whilst smartphone access is growing, online consumption is mostly limited to those with sufficient discretionary income for the products and services on offer, and credit cards to process payments. This also means that scale is mostly achieved at a national level, except for potentially localised markets such as food delivery.
9. The level of adoption of online intermediation platforms by the addressable market differs across the categories of platforms. There is widespread adoption for software app stores, classifieds, and flights & accommodation where offline channels rarely feature. Food delivery and eCommerce are still growing rapidly but have already reached critical scales whereas some price comparators and elements of travel are in a nascent stage. The general user proposition across intermediation platforms is the convenience of a single aggregator where the consumer can easily search and compare the product and service offerings of a wide variety of businesses, along with the convenience of online transacting anytime from anywhere. For business users, the proposition is national 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.

2.2 Closeness of competition

10. In general, other intermediation platforms are the closest competitors to each other for

consumers and especially for SME business users, in line with the convenience and marketing access outlined in the use case. This is typically the finding in most jurisdictions globally in recent years as intermediation platforms have gained more traction with consumers.

11. The direct online channels of individual businesses may be the nearest online alternative, offering the potential convenience of anytime, anywhere online transactions. However, direct channels typically lack the scale and aggregation benefits of intermediation platforms, reducing their discoverability and attractiveness to consumers. Scale from aggregating many businesses permits larger budgets to (i) direct market to online customers via internet-based search, (ii) invest in better user interfaces for ease of use, and (iii) to reduce the unit costs per transaction, whether that is customer acquisition costs, platform development costs or last mile delivery costs. Indeed, for some platforms the scale is a global one. Whereas some third-party service providers have emerged in areas of online storefront development, transaction processing and last mile logistics, using third parties instead of own capabilities is more costly than scaled vertically integrated platforms because of the double-margin problem (i.e. third parties and the platforms charge a margin instead of a single margin for a vertically integrated platform). It also does not overcome the marketing budget and benefits from aggregated search.

12. Direct online channels for individual businesses do not permit consumers to easily compare prices and product/service specifications across businesses to facilitate

choice. This means that where platforms are available with a broad range of business users, direct online channels are unlikely to constrain a dominant intermediation platform.

13. A further benefit offered to both consumers and business users is a national or international reach where the typical search by consumers or marketing by businesses are otherwise more localised. For instance, platforms may enable business users to get more visibility before international travellers in the case of travel & accommodation, or a global installed base in the case of software app stores. In eCommerce and classifieds, business users appreciate the national marketing reach.
14. However, where the business user market is highly concentrated or platform markets undeveloped, direct online channels from the dominant firms may continue to offer consumer-side constraints in some cases. This is because (i) consumers face limited credible options in any event and so comparison across the viable options may still be relatively quick, (ii) the national scale and marketing budget dominant firms can bring as a single entity, and (iii) their ability to hinder the scaling of intermediation platforms through a lack of support, making these platforms less attractive to consumers. In SA this is evident in grocery delivery, where the major national retailer's online channels predominate, and insurance comparator sites, which are not supported by most major insurers in favour of their direct and broker channels. Flights and car rental are also highly concentrated, making their direct channels (or via airlines for car rental) popular with domestic users. However, the airlines and rental companies still tend to support platforms primarily because of access to customers they may not otherwise reach, such as international travellers.
15. Even in these categories, the intermediation platforms are usually the only viable online distribution channels for SMEs which lack

the scale of dominant firms in their industry. As such, even if constraints on the consumer side exist, such constraints are less prevalent on the business user side where market leadership amongst intermediation platforms may still come with some bargaining power in relation to SMEs.

16. The conduct of leading platforms in certain categories also contributes to a reduction in the constraint of direct online alternatives from the business user. In this respect the Inquiry has found the following:
 - 16.1. In software app stores, direct online alternatives may be completely excluded (e.g. Apple App store is the only software app store on the device and sideloading is technically restricted) or limited by creating friction for the consumer to use direct channels (e.g. Android warnings and system over-ride requirements for side-loading, along with no automatic updates).
 - 16.2. In travel & accommodation and eCommerce, price parity clauses (wide and narrow) preclude the business user from offering a lower price through their direct channel relative to the price on the platform. This disincentivises the consumer to explore direct channels as they gradually learn that there is no benefit to doing so. This is despite many business users indicating in the Inquiry survey that they would likely reduce the price on their own channel if permitted to do so. No platform has put up any evidence that potential billboarding or free-riding on platform marketing, the case made for parity, is material and in fact the evidence from where these have been ceased shows it is immaterial.
 - 16.3. The near universal practice across platforms of the so-called 'anti-steering provisions' which prevent business users from making consumers aware of cheaper alternatives on the platform itself, and the withholding of consumer information which may enable marketing communication. This is prevalent

in software app stores, eCommerce, food delivery, online classifieds, travel & accommodation and comparator sites except in very limited cases (such as dispute resolution). In some cases, business users may get customer details only after the transaction is concluded, such as in travel & accommodation where a booking is linked to a person and eCommerce sites relying on business users to deliver.

17. Traditional brick & mortar ("B&M") or 'offline' channels are not available in certain categories (e.g. software app stores) or have been largely displaced by online channels in others (e.g. classifieds and travel & accommodation bookings⁴). In eCommerce and food delivery, B&M options of in-store purchases and takeaways respectively still account for most sales. However, not only are online purchases growing rapidly, but the online purchase is typically a different consumer journey to the offline alternative, where other online options are still the closest constraint on intermediation platforms for most transactions. This is typically where convenience plays a role in the consumer journey and decision-making. For instance, eCommerce transactions can be done anywhere and anytime, which may be relevant for some consumer journeys such as where the consumer is time-constrained and the items are known and required quickly. Lower prices from lower cost infrastructure are another attractive feature of eCommerce in certain product categories. Similarly, take-away may be convenient for a consumer in a shopping area or where it is on the path home, but less so when the consumer is at home and would be required to travel and wait for food unlike the convenience of delivery.
18. For eCommerce, online platforms also offer a wider range of products to consumers by aggregating businesses from across the country and enabling marketplace sellers to

offer a long tail of products due to the national customer base on the platform, and the relatively less expensive use of commercial warehouses. This contrasts with the limited range offered by B&M retailers driven by retail shelf space and stock turn constraints. Moreover, for SME business users featuring on eCommerce platforms, own B&M sales are not a real alternative as the consumer reach is generally local relative to platforms which offer a national reach. The same limited range stocked by B&M retailers means few of these businesses will get national reach through stocking with the B&M retailers.

2.3 Leading platforms

19. The ToR of the Inquiry identified the need to act pre-emptively to ensure that intermediation platform markets where there are already established leaders do not irreversibly tip towards a single dominant operator, and ensure these markets become more contestable in future to the benefit of consumers and business users. The Inquiry has identified that in all the intermediation platform categories with a sizeable level of adoption there are one or two leading platforms. These are platforms which attract the predominant online consumer traffic in their market category, on which business users are relatively dependent already to access online customers, and which are either entrenched or likely to become entrenched given the observed market dynamics even where there is still growth in the market. Furthermore, because of their market position, the conduct of leading platforms can impact on platform competition, business user competition and participation, consumer choice, and the dependency of business users places them in a position to potentially exploit that position. Whilst we have not used the term 'dominance' as that is unnecessary to establish under an inquiry, the leading

4 Except for corporate bookings which would be considered B2B in any event.

platforms have the features of dominance given their position in their markets.

20. These leading platforms by category are:

- 20.1. Apple App store and Google Play store in software app stores;
- 20.2. Takealot in eCommerce;
- 20.3. Property24 and Private Property in property classifieds, and Autotrader and Cars.co.za in automotive classifieds;
- 20.4. Booking.com & Airbnb in travel & accommodation;
- 20.5. Mr Delivery and UberEats in food delivery.

21. International platforms tend to dominate where there is a global dimension, such as software app stores and travel & accommodation, but some local platforms have done well where the customer base is mostly local (classifieds) or which require investments in last mile infrastructure (eCommerce and delivery). The Inquiry has found that a fringe of smaller platforms generally exists in most categories, but are battling to scale and contest most online consumers. Typically, these smaller platforms are more niche (geographically or product wise) and often loss making, lacking the capital backing to fund growth. The Inquiry has also identified that the venture capital industry domestically remains small and is generally unwilling to back platforms which face scaled incumbents. The degree of entrenchment of the leading platforms in part depends on the maturity of the platform category and in part the competitive dynamics that are playing out including the existing conduct. These are discussed next.

22. The Inquiry has found that in other intermediation platform (sub-)categories there are platforms that have the early lead, but the lack of consumer adoption means there is less business user dependency and likely impact from any adverse market features or conduct. This includes Travelstart in flights, Rentalcars in car rentals, Computicket in

buses, GetYourGuide and Viator in activities, Huawei in software app stores, UberEats and Mr D in grocery delivery and Hippo in insurance. Adoption is likely to increase in many of these markets in future, and as that occurs, there may be a need to have protections in place to avoid some of the adverse effects identified by the Inquiry in more mature platform markets. In a few cases, the Inquiry has felt compelled to make certain provisional findings and recommendations given the conduct and the lead they hold at this nascent stage. In travel metasearch there is higher levels of adoption but no clear leading platform at the moment. Trivago used to hold that position but has subsequently lost share to Google Hotels and Skyscanner.

23. The Inquiry is also aware of the rumours of Amazon's entry into SA's eCommerce market but has not had any confirmation of such from Amazon itself. If it were to enter, then Amazon's global strength and potential brand appeal is on balance likely to see it establish itself as one of the leading eCommerce platforms alongside Takealot, but unlikely to completely displace it. The Inquiry provisional findings are likely to remain robust to such an eventuality, as these are predominately in respect of market features and common platform behaviour, but any provisional recommendations would need to be extended to both leading platforms.

[3. Platform Competitive Dynamics]

24. One of the important features of intermediation platforms is that they are so-called two-sided markets, needing to acquire consumers on the one side and business users on the other. Two-sided markets are also subject to network effects, where more users on the one side of the platform makes the platform more valuable to the other side. Network effects can result in virtuous cycles whereby growing users on one side drives growing users on the other, which then repeats itself. It is these market features that can drive intermediation platforms to tipping points of entrenched dominance, but such effects can also be aided, or retarded in the case of rival platforms, by market features in the acquisition of users on either side (including related markets), the behavioural heuristics and biases of consumer decision-making, and of course conduct of the leading platforms themselves.

3.1 Initial business user acquisition

25. New intermediation platforms typically first seek to sign up a minimum number of businesses to have something to interest consumers on the other side of the platform before marketing to them. This is generally achieved by trying to lower the cost to the business users in joining the platform, including the cost of effort to manage the listings, sales and relationship with the new platform. For instance, in classifieds new platforms tend to offer free listings initially but also need to ensure that loading and managing those listings on the platform is also relatively costless and effortless. In travel & accommodation, food delivery and eCommerce where business's generally only pay when there is a sale, it is the onboarding and listing management costs that matter.

26. For eCommerce platforms, another strategy is to build an online retail service first to grow consumer sales and infrastructure before opening the platform to marketplace sellers, a strategy even some B&M retailers have followed (e.g. Makro). Global platforms may bring existing business users developed in other markets to draw in customers before expanding with local businesses (e.g. software app stores) or bring in international customers that prompt the domestic businesses to sign up (e.g. travel & accommodation). Alternatively, where a platform already has success in other geographic or related product markets, this can be used to showcase the potential sales benefits of joining the platform along with capital backing and acquired experience even if there are interface or upfront costs (e.g. food delivery or eCommerce).

27. The Inquiry found that because some costs and effort in joining and managing the platform interface inevitably exists, business users will not just join every platform that sets up shop. Businesses will be far less inclined to join platforms where those costs and effort is higher. In some instances, third-party software, such as listing engines, can reduce these costs and facilitate participation on a broader set of platforms. For instance, in accommodation the relatively cheap access to room management systems (or channel managers) that interface with platforms makes it easy for even small accommodation providers to list on multiple platforms and avoid double-bookings. Similarly, listing engines that initially sought to manage the listings on own websites have expanded to interface with classifieds platforms too.

28. However, the Inquiry has also found that conduct by platforms can serve to artificially

raise these costs to deprive competing platforms with business users, which makes them less attractive to consumers from the start and hobbling their ability to get some virtuous cycle into effect. In particular, the Inquiry found the following conduct restricts competition:

- 28.1. In property classifieds, the two largest platforms (Property24 and Private Property) provide listing engine services for free to estate agents listing on their platform (PropCtrl and Fusion respectively) and which feeds the estate agent website. This has resulted in these two being amongst the largest listing engine software providers to estate agents. However, the listing engines of these platforms do not interface with many platforms other than each other, artificially raising the costs of their listing engine clients listing on new platforms in competition. New entrants have even resorted to manually capturing listings to lower costs for agents, but there remain inescapable costs in managing that listing over time (e.g. change in price, under-offer or sold status). In contrast, third party listing engines look to interface with the dominant platforms to make their service attractive to estate agents. Furthermore, there is no compelling reason not to do so, with the platforms stating that either it has not been a priority or the initial intention of the system.
- 28.2. Third party listing engines are also likely entrants into classified platforms because they can bring the listings of estate agents they manage. The larger they are, the more listings they can bring initially to their platform. However, the Inquiry found that both the leading property classifieds discourage switching by estate agents to third party listing engines by charging a R500 monthly fee for the incoming feed where an estate agent has switched. This limits the size of business listings that these potential entrants can bring to a platform

launch. The fact that both platforms charge the same fee and Property24 even collected the fee from its clients on behalf of Private Property is suggestive that this may be the product of a collusive arrangement. One property platform has recently indicated to the Inquiry that it will waive the fee going forward which confirms that there is no compelling reason for the fee.

- 28.3. The largest insurance comparator site, Hippo, is owned by Telesure which has five insurance companies within its group, namely 1Life, Auto & General, Budget, Dial Direct and First for Women. Telesure has little incentive to support competing comparator sites and only lists on Compare Guru which acts as a broker rather than pure comparison site. Short-term insurance products typically account for over 80% of the traffic and revenue of comparator sites, with life insurance 5% or less. The low adoption of comparator sites to date and the lack of support from the largest insurers means this is not currently a large concern, but that may change depending on how the market develops. If the largest insurers remain opposed to comparator sites, then the market may not develop much at all, and if they do support comparator sites, but do so through Hippo's rivals due to the conflicts of interest, then the market may develop in a more competitive manner.
29. The Inquiry has also found that leading platforms may induce businesses not to list on new or smaller competing platforms, either through providing them a stake in the platform, or incentivizing them to list first on the leading platform where they are likely to limit the number of platforms they support.
- 29.1. In property classifieds, both the leading platforms have used a partnership or commercial stake with the leading national estate agents to deprive other platforms of their support. Initially Property24 had a partnership with the industry body

which grew support for its platform at the expense of Private Property and propelled it into a leading position. Subsequently, the leading national estate agents took a commercial stake in Private Property through the EAPPC with the industry body Rebossa actively promoting the partnership, and the leadership discouraging the use of new platforms which may dilute support for Private Property as the alternative to the 'must have' Property24. This arrangement currently undermines platform competition through depriving new platforms of support from the largest agencies outside the two incumbent platforms, and stifles innovation by doggedly picking one champion to challenge Property24.

- 29.2. In food delivery, there is currently some friction for a restaurant to deal with multiple delivery firms given the lack of point of sale (PoS) integration as they need to track sales through different devices. The leading national food delivery companies seek to contract all the corporate restaurants within a national chain and incentivise the chain to bring in their franchisees too even if the chain cannot legally bind them. The outcome is that numerous national chains have refused to support local delivery providers with corporate-owned restaurants and have prevented franchisees from using any delivery service not approved by the chain. This has resulted in a lack of support for local delivery platforms even where the national delivery platforms are not yet present and the franchisees are looking to expand distribution through the local delivery platforms. Whilst some national chains argue this is to protect the brand reputation, the fact that some leading brands such as Nandos and Burger King have not done the same indicates this reasoning is not credible.

3.2 Consumer acquisition

30. Platforms require an intuitive user interface, good service and sufficient business users support in order to offer consumers a good experience that might result in sales. However, whilst getting these things wrong may guarantee failure, getting them right also does not mean that consumers will simply come. Discoverability of the platform is key to consumer acquisition, with ongoing marketing also essential for repeat consumer traffic. It is no mystery why marketing costs are the single largest cost item for intermediation platforms, ranging anywhere from 20-80% of costs, on an ongoing basis. The sole exception is software app stores which either do not permit competition on their devices (i.e. Apple) or demand default status on the home screen from device manufacturers (i.e. Google).
31. Ultimately acquiring consumers is the key part of building a successful platform and triggering a virtuous cycle. 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 platform development and consumer acquisition marketing. Successful platforms have typically made use of large capital backing initially to fund growth through customer acquisition and platform infrastructure development whilst revenues from business users are low. Once growth and a large consumer base is achieved, then business users will need to come to the platform for the leads and sales, growing the platform income in the process. Once this is achieved, the large ongoing customer acquisition costs become more sustainable given the growth in revenue, from transaction volumes but also greater levels of extraction from the business users over time (through higher commissions or fees), and lower unit costs.

32. Other first mover platforms with limited access to capital are usually left behind as they cannot drive growth in customer acquisition in the same way and become relatively less valuable to business users as a result. This hinders revenue growth and the ability to spend large on customer acquisition relative to the leading platform, which ultimately sees the leading platform extend its lead. As outlined later in this report, the virtuous cycle for the leading platform, aided in many cases by conduct in addition to market features, also raises barriers to expansion by competing platforms, putting them in a contrary position of facing a 'vicious cycle'.

33. For most platform categories (eCommerce, travel & accommodation, classifieds, comparator sites), the market for online consumer acquisition is itself highly concentrated through Google Search and subject to conduct and/or features which reinforce the virtuous cycle of leading platforms (and vicious cycle of challenging platforms). For food delivery and increasingly travel & accommodation, platform funded promotions have become a key tool for customer acquisition. Brand advertising is used as a complement to the main customer acquisition strategy in all platform markets, often to a greater extent where the platform wants to drive direct traffic. In this respect, the Inquiry found that platforms that can leverage media assets within the conglomerate can and have used that benefit to reduce the costs of brand advertising, and customer acquisition as a result, such as the Naspers companies using DStv historically and Media24 currently. This has been through deeper discounts and access to unsold inventory to run more extensive consumer awareness campaigns relative to their competitors. But software app stores stand out in their strategies to secure customers at the device level.

3.2.1 Software app stores

34. The one category of platforms that do not need to spend on marketing for consumer acquisition are the leading software app stores. Rather, integration of the dominant operating systems ("OS") with their own software app stores has resulted in conduct which naturally drives consumers to their own stores. This is not a strategy that is easily replicated by third party software app stores, providing the OS-integrated stores with a material advantage in customer acquisition.

Apple

35. Apple App Store is the only software app store permitted to operate on iOS (or Apple) devices. In essence, Apple completely excludes any competing software app stores and even outright prohibits sideloading (incl. of other software app stores). Apple maintains that there is competition for the consumer at the device purchase stage, so-called competition for the market. However, the Inquiry finds that this does not discipline the App store fees to app developers, which competition between software app stores on the device might otherwise do.

36. Competition for the consumer to purchase the device will incentivise Apple to innovate and develop the features on the iPhone, including the application programming interfaces ("APIs") to allow app developers access to those features. These features and APIs in turn will directly improve the customer experience and indirectly enable a broader range of apps or app features which may appeal to consumers. The drive for device sales will also incentivise Apple to provide the tools for app developers to develop for the platform as the range of apps will add value to the device. Consumer acquisition is based primarily on device features and whilst the availability of apps form part of the overall decision, there is little to differentiate app numbers across

the two largest operating systems. Android and iOS have millions of apps, and the app developers produce for both given their large installed base, even if the app is developed for one OS before the other. Moreover, app pricing tends to be uniform across devices and consumers do not necessarily know which apps they may purchase in future making price comparisons futile in any event.

37. So, whilst the drive for consumer acquisition for the App store through device sales requires Apple to enable app developers in various ways, it does not translate into Apple facing competitive pressure on commission fees. Fees do not play a role in consumer decision-making and app developers are primarily drawn to the App store to access the billions of consumers globally regardless of the fees.

Google

38. Google purchased the android OS and developed it further as an open-source OS for device manufacturers. Google has also developed over 50 Mobile Applications for the Android OS, many of which are essential for the consumer mobile experience, which are proprietary and do not form part of the open-source OS. However, in terms of a Mobile Application Distribution Agreement ("MADA"), Google makes available these applications to device manufacturers for free if certain conditions are complied with. Amongst these conditions, the device manufacturer must place Google Play Store on the home screen of the device as the default software app store, as well as restricting the ability of the consumer to delete it. Historically, the MADA prevented the device manufacturer from placing their own software app store or a competing software app store on the home screen alongside the Play Store. However, as these practices have come under antitrust scrutiny, Google has relaxed this condition in recent years but well after it had

already entrenched its position as the leading Android software app store.

39. In essence, Google is relying on the well-studied behavioural economics phenomenon of consumer default bias (or status quo bias) to acquire consumers for its Play Store. This is a behavioural trait where consumers are most likely to choose inaction over action, and therefore will typically continue with the default setting. This is self-evident from the fact that Google is willing to forego a fee for its suite of mobile applications in exchange for a default position on the home screen. In doing so Google anticipates that most consumers will stick with the default and it can then monetize the consumer acquisition through commissions charged to app developers on the Play Store. In many respects this is the (opportunity) cost that Google incurs for consumer acquisition, instead of promotions or marketing spend of other intermediation platforms. Given that Google is in a unique position to offer the suite of mobile applications, and offers them as a bundle only, Google faces no real competition for default status and consumer acquisition.

3.2.2 Google Search

Consumer acquisition bottleneck

40. Most online shopping journeys for goods and services start on general search, the entry point for most consumers to the Internet. Search leads are considered particularly valuable to platforms because it is intent-based, i.e. the consumer is searching because they have some intent to purchase the good or service they are searching for. Across intermediation platforms, the single largest source of customer leads to platforms is from search, including general search, and various forms of specialist search platforms (such as comparator sites, vertical search or metasearch engines ("MSEs")).

41. In South Africa, much like most of the world, Google search is a *de facto* monopoly, accounting for over 95% of all general search across desktop and mobile devices. In mobile, which already accounts for more than 50% of search, the Inquiry finds that this position has been aided by conduct that seeks to entrench it as the default across both iOS and Android ecosystems. As outlined above, default or status quo bias is an extremely strong consumer behavioural trait that results in consumers sticking with the default by choosing inaction over action.

41.1. On iOS, Google is reported to pay Apple a substantial sum annually to be the default search engine behind Apple Safari, the iOS branded search app. Most users are not even aware that search engines offer white label search to Apple, and to change this default, users not only need to be aware, but then they also must navigate through multiple setting screens to do so.

41.2. On Android devices, Google search and the Chrome browser fall part of the default home screen apps that Google's MADA requires device manufacturers to install and prevent user deletion. As search is so incredibly valuable to Google, it goes one step further and concludes Revenue Share Agreements (RSAs) with device manufacturers and even dominant mobile network operators ("MNOs") to ensure that Google Search is the default, including Google voice assistant for voice-based search. This is no different in South Africa.

42. It is well documented how the Google search engine results page ("SERP") has evolved over the years to (i) provide more space to prominently placed ads, and (ii) to reduce the distinction of paid search (i.e. where the placed result is based on payments as well as relevance) from organic (or natural) search results (i.e. where the result is based on relevance alone). As ads are the only source of revenue for Google Search,

this is the natural outcome of its revenue maximising incentives. Google has argued that ad blindness research it has done shows that there are limits to the number of ads it can serve, and the relevance of those ads. Whilst this may be the case, it has clearly pushed those limits (aided by the research) and continues to do so. Relevance is often rarely an issue as a large multitude of search results will closely match most intent-based search, but paid search will affect the order of display as the bid is one factor in addition to relevance. It is not just the increased number and prominence of paid search, but also the reduction and reduced visibility of organic search which maximises Google revenue. This is because a failure to get visibility from organic search drives platforms to invest more in paid search to maintain visibility

42.1. Currently a maximum of the top four and bottom three results on the SERP are allocated to paid search adverts if there are enough bidders of minimum quality, or 7 out of the maximum 17 third-party impressions on the SERP. It is not unusual for the intent-based search which can be monetized by intermediation platforms to yield numerous ads which will push the first organic search results below the 'fold', or scroll point on the SERP, especially for mobile search.

42.2. Aside from paid search taking the top four spots, organic search has also been pushed further down the SERP, and some displaced, due to the additional Google features on the SERP. This includes its own specialist search units which compete with comparator sites and metasearch engines to feed leads to platforms (including Google Shopping, local area search and Google Travel), as well as other features such as 'People also ask', images and videos (often YouTube, another of its own products). Until recently, SERPs which had fewer than 10 organic search impressions accounted for only 2% of queries, but this has risen to

- 18% following Google algorithm changes in recent years.
- 42.3. The Google specialist search units also present a further layer of paid search when users click on those, transporting users to a new SERP with more paid results in most cases. Thereby creating another layer of advertising in the consumer search journey, and directing consumers to remain on Google rather than leave to third parties.
43. Another well researched consumer behavioural trait increases the importance of position on the SERP and as a result paid search, namely to reduce mental effort in smaller decision-making situations, consumers show a predisposition to click on the first results assuming they are most relevant to the query, rather than using mental energy to scroll down the page and assess the relevance of the different impressions. Whilst Google has an incentive to ensure that paid search is relevant, this still provides a very broad scope as there will be many highly relevant results to most commercial intent-based search. It is also apparent that paid search is unlikely to be the most relevant as the bid price forms part of the ranking criteria. In other words, absent the bid a different organic result is likely. Academic research on general search queries indicates that the click through rate ("CTR") on the first slot is around 33%, halving for the second slot and halving again for the third slot. Data provided by Google for some travel & accommodation searches indicates the CTR on the first slot may be materially higher than this, and the drop off in CTRs materially more. CTRs on organic results are typically in single figures given their position further down the SERP. Evidence before the Inquiry indicates that CTRs on paid search are around 17% and 2% for organic search. This behavioural trait further incentivizes platforms to spend on paid search.
44. The success of Google's revenue maximization approach to search is evident in its financials.
- Since 2017, search revenue has more than doubled from \$70bn to \$150bn, and profits up six-fold from \$13bn to \$76bn. However, the Inquiry has found that the combination of the above features, namely the importance of search in the consumer online journey, the monopoly position of Google, the elevation of paid search and demotion of organic search on the Google SERP, and a consumer tendency to click on the top ranked results, increase platform costs, distorts platform competition and raises business user dependency on platforms.
- 44.1. These market features have essentially raised the costs of consumer acquisition, as platforms need to invest in paid search to acquire customers through Google. As Travelstart put it in the public hearings, this essentially results in platform margins being reallocated to advertising, adding a cost layer to the platform business which must ultimately be recouped from the domestic consumer or the business user. Google's impressive profit growth represent the extent of that transfer globally over the past five years. The Inquiry also finds that the use of minimum bid thresholds by Google essentially places a floor on bidding prices, enabling them to artificially raise bid prices and revenues, especially for less popular keyword search terms.
- 44.2. The need to invest in paid search to acquire customers also favours the existing leading platforms which have a larger revenue stream to fund such expenditure, or platforms backed by deep pockets in the growth phase. Cars.co.za which established itself before the major changes to the Google SERP, admitted that its low-cost approach to building an audience for its platform through predominately organic search would not be possible today. Google argues that all platforms can bid to acquire a customer, but this belies the fact that a large platform with

a very large customer acquisition budget will be able to continually bid all day and across a wide range of search terms relative to a budget-constrained small platform. Domestic platforms in travel & accommodation argue that this favours global platforms relative to domestic ones for those exact reasons. Global platforms in turn argue that self-preferencing by Google is now threatening them. What the self-preferencing complaints reveal is precisely the importance of Google search for platform competition.

- 44.3. The elevation of paid search means that the ability to contest for visibility on the Google SERP is even more difficult for individual business users, which effectively makes them even more dependent on the intermediary platforms as a channel to acquire customers. In essence, platforms compete to acquire customers from Google as the first step in the acquisition funnel, and then business users compete on the platforms to acquire those same consumers as the next step in the acquisition funnel.

Self-preferencing

45. Shopping, travel and local search are amongst the most lucrative specialist, or vertical, search categories due to the prevalence of online search by consumers in these categories. It is for this reason that shopping comparator sites and metasearch engines in travel have sprung up to intermediate leads to eCommerce sites and Online Travel Agents ("OTAs") respectively. These sites essentially provide consumers with information and reviews on different products or services to aid their decision-making, which is then monetised on a cost-per-click ("CPC") basis primarily to eCommerce and OTA platforms.
46. The lucrative nature of the lead generation services offered by these sites has prompted Google to invest in its own competing

specialist search units, namely Google Shopping, Google Travel (incl. Google Hotels, Flights, etc) and local search. These units appear in the general search results of Google, providing some immediate options within view, but then allowing consumers to click through to a separate specialist search page where more results are provided. Google has also monetised these specialist units on a CPC basis much like general search, but also the comparator sites and MSEs. Google Flights was previously monetised but is not currently.

47. Google has been accused of using its dominance in search to self-preference its own specialist units at the expense of rival platforms, and in so doing undermining platform competition. Given the important role of Google search in the consumer online journey and influencing customer acquisition for intermediation platforms, including comparator sites and MSEs, the Inquiry finds that Google can self-preference and distort competition. It seems Google also has the incentive, as it enables Google to transfer intermediation revenues from comparator sites and MSEs to itself, maximizing its overall revenues from search. Indeed, Google has already been prosecuted for such conduct in respect of the Shopping unit in the European Union, which was upheld on review.
48. For Shopping, the Inquiry similarly finds that Google has engaged in self-preferencing given the available evidence.
- 48.1. The Google Shopping unit always secures the first position on the SERP where the search query has shopping relevance. The Shopping unit does not bid to secure that position or secure it based on an algorithmic assessment of relevance. As outlined above, the first position receives the highest CTR and is therefore the most preferential positioning.

- 48.2. After Google Shopping's entry in SA, the leading price comparator site, PriceCheck, saw a large decline in its traffic.
 - 48.3. Google Shopping unit revenue has ballooned very quickly, reflecting the fact that eCommerce platforms and retailers in SA see it as an important customer acquisition channel. This also shows that Google has added another layer of advertising costs to SA platforms and ultimately consumers.
 - 48.4. Google argues that SA has skipped the price comparator stage, and yet the Shopping Unit itself seeks to provide consumers with a range of product alternatives in response to their search not unlike a comparator site (albeit inferior in respect of showing lower prices as shown by research in the EU). Comparator shopping sites can play an important role in promoting eCommerce platform competition by aiding customers in finding the cheapest price, and the conduct is likely to inhibit the entry of comparator sites in future.
49. In terms of travel, the evidence is also supportive of a finding of self-preferencing even if the revenue streams are not yet as impressive as the shopping unit.
- 49.1. The Google Travel unit (Hotels, Flights or whatever is relevant) appears in organic search and always at the top of organic search. The reason may be self-preferencing in the algorithm, or simply self-preferencing in allowing the Travel unit to be much larger, enabling it to exhibit rich graphics and content unlike rival MSEs, which naturally means the algorithm promotes it up the ranking in organic search. Either way, it gets the prime organic slot and draws a higher CTR than other organic search results due to its visual appeal to consumers.
 - 49.2. More recently when travel started to resume following the lifting of restrictions, revenues and traffic for the Google Travel unit have increased whilst those of other prominent

MSEs in SA have continued to decline. This mirrors a global pattern where the OTAs have continued to grow their spend on Google Travel unit whilst reducing their spend on MSEs. This shift in OTA spend is indicative of consumers shifting their search to the Google Travel unit and away from MSEs, resulting in more customer acquisition options from Google Travel. Whilst Google Flights is not monetized currently, it too is drawing traffic from MSEs and OTAs, and can be monetised in future as it was in the past. Car rental is typically raised in the local search unit rather than the travel unit, but local search enjoys the same preferential treatment in Google search.

50. The other preferential treatment afforded Google's specialist units is the ability to draw content from customers and competitors through their dependency on its general search product. Websites are incentivised to provide greater snippet content to Google search as this enables them to improve their general search ranking. In so doing, they waive any digital copyright over the content which enables Google to make use of that content for other purposes, including building its own competing specialist units.

3.2.3 Customer promotions and subsidies

51. Food delivery platforms backed by substantial capital, have funded large-scale customer acquisition primarily through platform-funded promotions and subsidized delivery, in addition to the usual brand and search marketing. This is also in addition to restaurant-funded promotions which are actively encouraged, some of which the platforms effectively fund by foregoing commission to secure marketing commitments.
- 51.1. The typical platform-funded promotion for new eater acquisition is a Rand amount (or a discount) off the order or free delivery, with

- ongoing promotions aimed at customer retention using discounts of varying other forms such as buy one get one free (BOGOF), free delivery, and discounts for a spend over a minimum threshold.
- 51.2. Delivery fees can be anywhere around R10-15 when the delivery cost are typically R30-35 per order, implying a delivery subsidy of 50-70%.
 52. For the capital-backed national platforms, the cost of promotions and delivery subsidies alone can constitute 40-70% of platform revenue from commissions, subscriptions and delivery charges. This is before other platform variable costs such as transaction processing, maps licensing and food loss, and fixed costs such as staff and technology. It is therefore little wonder that the national food delivery platforms are making losses currently. In some instances, the losses fall into the abusive predation levels at least for certain restaurant chains that get favourable commissions, or local areas where delivery fees are discounted below the standard level and additional promotions occur.
 53. The deep capital backing of national platforms enables the platforms to fund these losses which support growth through customer acquisition. As outlined above, this promotion and delivery subsidy spend will eventually be supported through extracting higher and higher commissions from business users as the platforms become essential avenues to reach online food delivery customers. Already the national platforms charge higher commission fees than local delivery platforms to fund customer acquisition, and these have gradually increased by c.1% or more per annum. National platforms are in some cases charging 50% higher commissions on average relative to local delivery platforms. This entrenches the leading position because it can support higher customer subsidisation than entrants on an ongoing basis
 54. However, this strategy of customer acquisition does result in the demise of alternative business models based on localised delivery by SMEs which lack the ability to fund customer acquisition in this manner. As with search marketing spend on Google for other platform categories, massive marketing budgets by leading platforms ultimately result in the exclusion of smaller platforms, and the ongoing nature of such spend, funded by more business user revenue, serves to erect a permanent barrier to entry. Illustrative of this, Bolt Food which has global backing, is essentially needing to spend more on promotions and delivery subsidies than the incumbents just to try gain a foothold in the market. For local delivery platforms in SA without that capital backing, there is simply no way to match the marketing spend at all. It is for this reason that the local platforms have exited in large numbers, with the surviving ones in areas outside of where the national chains operate. However, that will not last very long.
 55. In travel & accommodation, platform-funded discounts have become a tool used by the leading platforms in recent years to maintain price leadership and customer acquisition. This is in addition to business user funded discounts which can be valued collectively at more than half of commission revenue in some years. As with all leading platforms, this is funded through higher commission revenues which the platforms can extract, illustrated by the leading travel & accommodation platform's average commissions being 10-50% higher than rival platforms.
 56. In eCommerce, the Inquiry examined the extent to which products in different categories were priced below variable cost over time, where variable costs include the product cost (gross margin) but also packaging, net delivery costs (delivery costs less delivery fees) and stock losses i.e. before fixed and common costs such as warehousing and personnel. The Inquiry found that the

proportion of products priced below variable costs in certain categories reached material percentages of gross merchandise value during periods of high growth, even if overall the product categories were recovering variable costs. Whilst it is expected that some items which do not move may be discounted to free up warehouse space, it is not typically this high within retail and this is evidenced also by the fact that in periods of lower growth the proportion is much lower. The Inquiry concludes that product subsidies are used in eCommerce as part of the strategy to grow customers and sales, feeding the consumer belief that online is cheaper, and this naturally favours those platforms with material capital backing. Such conduct also leads consumers to start choosing only the leading platforms in the belief that they are always cheaper which may not be the case, weakening platform competition.

[4. Reinforcing the virtuous cycle and barriers to expansion]

4.1 Strategies to retain and extend leadership

57. As identified above, leading platforms engage in substantial customer acquisition spend to grow but also to retain their leadership. The high levels of spend may be funded by capital-backing initially but become sustainable due to the ability to extract higher fees from business users that become dependent on these platforms to access online customers. These fees include payments for visibility on the leading platforms through sponsored ranking. It also includes greater extraction in the form of higher fees from those with even more dependency, namely SMEs, resulting in discriminatory fee structures. This is discussed in more detail in the section on business user competition and exploitation.

4.1.1 Undermining price competition

58. Rather than simply extracting more fees, leading platforms may use their position to deploy strategies aimed at preventing competing platforms from undercutting on price, converting customer leadership into price leadership. One particular strategy, namely the use of wide price parity conditions, is prevalent in travel & accommodation and has been applied historically in food delivery and eCommerce domestically. Wide price parity conditions require a business user to provide prices to the platform that are no less favourable than the price offered to alternative platforms, as well as its own direct online channel (narrow parity).

59. Such practices have been found to be problematic in other jurisdictions, and the

Inquiry similarly finds that wide price parity clauses result in harm to platform competition and the alleged benefits of protecting platform investment from free-riding are unsubstantiated.

59.1. Wide parity clauses in essence prevent competing platforms from under-cutting pricing on the leading platform, removing an important competitive variable that may be used by challengers. Removing this dimension of competition is also likely to condition consumers to multi-home less if they consistently find that the leading platform is also never more expensive than the alternatives. Interestingly, one platform replied that the purpose was to be able to consistently provide consumers with the best price without having to shop around, precisely the competition problem for other platforms trying to compete.

59.2. Wide parity clauses also have been shown to raise the overall level of prices of business users subject to the clause. Academic studies of hotel pricing in the EU showed that prices for certain categories of hotels were discounted more often following the termination of wide parity clauses by Booking.com. The Inquiry survey asked business users how they would price absent these conditions, and a high proportion indicated that they would price lower on other platforms and/or their own channel, indicating the likely benefits to platform competition and consumers exist in SA too.

59.3. The evidence from the removal of wide parity in Europe and even narrow parity in Germany shows that consumers continue to book on platforms and free-riding is not a material problem. The Inquiry

invited Booking.com to provide any of its estimated impacts from this natural experiment but did not receive any evidence to the contrary. This was also the case with Amazon which removed parity in eCommerce in the EU and then later in the US. Local platform Lekkeslaap which has no parity clause indicated that free-riding was trivial at less than 1% and domestically few users search hotel sites in the same session as platform visits. Evidence from hotels is that removing the restrictions would enable more dynamic pricing, including targeting specific consumer groups through different platforms. This will benefit consumers and accommodation providers alike.

- 59.4. Narrow parity clauses imposed by leading platforms can create the same effect as wide parity where business users are unlikely to be willing to offer lower prices than those on their own channel on other platforms either.

4.1.2 Leveraging visibility

60. Aside from preventing business users pricing cheaper elsewhere, leading platforms can leverage the importance of visibility on their platform to extract better promotions or discounts relative to competing platforms or achieve the same effect as price parity clauses. The Inquiry finds that some of the conduct deliberately hinders competition whilst others may provide consumer benefits even if it creates a barrier to the expansion of smaller platforms.

- 60.1. In much the same way as platforms strive for top position on Google search due to its importance for customer acquisition and the click behaviour of consumers, so leading platforms in each category can influence the volume of online sales or leads to business users through controlling visibility. Whilst Google and many platforms seek to leverage this to sell ad space and generate revenue, intermediation platforms have

also used this to shape pricing behaviour by business users through rewarding favourable pricing behaviour with a higher ranking or punishing unfavourable pricing behaviour (like being cheaper on another platform) with a lower ranking.

- 60.2. Travel & accommodation platforms have used an assessment of the quality of the price offered on the platform relative to other channels as a factor in determining ranking on their SERP. In essence, if the same room is priced cheaper on other channels then the hotel is demoted down the ranking as punishment, which acts as an enforcement mechanism for wide parity clauses.
- 60.3. Discounts or promotions are also routinely elevated in the ranking across most intermediation platforms, including travel & accommodation, food delivery and eCommerce. This reward for promotional pricing is useful to business users wanting to clear stock (of rooms or products) or generate growth, but a number of business users indicated that they faced a constant pressure to discount on leading platforms to remain visible. The discounting also appears to be more targeted at leading platforms than smaller ones given the far greater importance of visibility on those platforms.

4.1.3 Loyalty schemes

61. The Inquiry has found that another noticeable feature of intermediation platform markets is the growing use of customer loyalty programmes, often driven by leading platforms across categories. This may be a natural development as platforms seek to retain customers for repeat business where consumers might multi-home but may also be an offensive strategy to leverage their leading position to deprive competing platforms of customers. For this reason, the Inquiry is concerned about the precise functioning of some of these loyalty programmes and in

particular finds a problem with those loyalty programmes where the leading platform leverages its position to extract business-funded discounts as these are unlikely to be matched by rivals.

- 61.1. A typical eCommerce or food delivery programme is the offer of free delivery on all orders over a certain threshold amount for a set monthly fee (e.g. the UberEats Pass). As the fee is only economic if more than a few orders are placed, this rewards loyal users or incentivizes others to select that platform over alternatives further into the month. Such loyalty programmes are also funded by the platform itself as the reward applies to every purchase, and there is a cost to the consumer of joining the programme, namely the monthly fee.
- 61.2. In contrast, on Booking.com and Google Play, only a select group of business users form part of the loyalty rewards programme targeted at all consumers. In essence, by making it selective, the platforms can leverage improved visibility (and hence sales) on the platform, through ranking boost, filters or joint marketing spend, to extract discounts from businesses which ultimately funds a large part of the loyalty programme. Google claims to fund the Points programme, but apps wishing to join need to provide discounts of 40-99% on the items for which points are redeemed, transferring some of the cost of the programme. For Booking.com, those wishing to join Genius need to offer the Genius member discount. Effectively this is leveraging the position as the leading source of the sales, which is unlikely to be matched by smaller platforms. The ease of customers joining in both cases, essentially just by signing up, also leverages the full customer reach of the platform. This is only recently the case for Booking.com which up until 2021 required two booked nights over two years to qualify for a tier 1 Genius discount. In total, accommodation-

funded discounts is now reached material levels in Rand terms, which would be difficult for other platforms to match without the same leverage. Similarly, the introduction of Google Play Points is more recent which coincides with the increased antitrust scrutiny on its device manufacturer relationships.

4.2 Vicious cycles and expansion barriers

62. In most of the intermediation platform categories, both business users and consumers can multi-home, except where this has been restricted or frictions created (such as in software app stores for consumers and property classifieds for agencies). It is frequently argued that business and consumer multi-homing promote the contestability of platform markets, constraining the leading platform from exploiting consumers or business users. The logic goes that if a new platform can acquire multi-homing business users then it is in the same position to contest for consumers. All the better if consumers multi-home too. Platforms have also argued that this nullifies any first-mover advantages that may be said to exist.

4.2.1 First-mover to scale advantages

63. The Inquiry finds that the 'first-mover to scale' does hold advantages that are not erased by multi-homing behaviour of business users and consumers. This is apparent from the evidence of all the small platforms which have documented the difficulties they face in trying to replicate the success of the leading platforms. It is also apparent from the gulf in size between the leading platform(s) and those smaller platforms. The Inquiry finds that these barriers may only be surmountable, if at all, by a global platform which preferably has some brand equity with local consumers or can bring existing customers (e.g. international travellers), and such can draw on global revenue sources to fund growth whilst

incurring low incremental costs of platform technology. However, the difficulties that Bolt Food has experienced in tackling the leading food delivery platforms even raises question marks over that, as tackling a leading platform with its own revenue base and capital backing can be a very expensive exercise when they respond. Similarly, Expedia acknowledges that it is too late to make material inroads into the African market due to Booking.com scaling first to take the leading position. The main barriers are those to expansion to become a credible competitor and constraint rather than simply entry, as sometimes establishing a notional presence can be achieved with relative ease.

64. First-mover advantages accrue to platforms that invest in scaling rapidly before other platforms and which succeed in building a large customer base. First-movers in this sense are first-to-scale and may not necessarily be the first in the market. For early pioneers that lacked the capital backing to scale or later entrants, the existence of a scaled platform poses substantial barriers to expansion and becoming an effective direct competitor.
65. One of the clear first mover advantages is the relatively lower cost of customer acquisition. With few competitors aggressively acquiring customers initially, the costs of search marketing are lower as there are fewer bidders, all with smaller budgets. The same applies to promotional spend which can be less generous when it is not contested. Once that first-mover platform has scaled and is able to spend substantial sums on marketing or promotion, then the smaller platforms face much higher budget and bid costs on search marketing or need to match the higher levels of promotional spend. In some cases, they would even need to outspend the scaled platform if they need to overcome reputational benefits accruing to the incumbent. However, whereas the scaled platform has the revenue streams to fund customer acquisition, the

smaller platforms do not. In essence, they need to fund from debt or investors whereas the scaled platform can do so from revenue. Not only is the scaled platform spend more sustainable as a result, but also, as the venture capital industry indicated, smaller domestic platforms are unlikely to get the capital backing in the face of a scaled incumbent to compete head-on.

4.2.2 Limits to business user multi-homing

66. The 'first-mover to scale' advantages extend to advantages in respect of business users too. Business users support the scaled platform not just through listing, but also through their marketing and promotional efforts and through higher fee payments. This provides the scaled platform with more revenue (to fund amongst other things customer acquisition) but also better business user pricing. Small platforms may get business users to list in many cases, but that listing does not necessarily come with the same support because they lack the customer sales volumes.
- 66.1. For instance, small classifieds platforms find it hard to get business users to pay listing fees (or anything more than nominal fees) and hence generate revenues. The lack of revenues makes large-scale customer acquisition impossible without capital backing. The Inquiry found that the businesses have a budget for marketing and promotion, and higher fees for listing and visibility on the leading platforms essentially crowds out expenditure on the smaller platforms. In this way, the conduct of the leading platforms has indirect consequences for expansion barriers. The Inquiry has also found that the conduct by Property24 for instance, of concluding multi-year listing agreements incentivised by a package of services offered at reduced annual price increases contributes to this crowding out effect on smaller platforms.

Whilst notionally the agreement can be cancelled annually, there are strong incentives to remain contracted which ties them into a level of spend for a protracted period.

- 66.2. Small eCommerce platforms indicated difficulties in getting marketplace sellers to stock items in their warehouse. The lower volume of sales through these platforms makes stocking less attractive, and preference is given to the scaled platform where sales volumes are higher. This makes the smaller platforms less attractive to consumers as it adds lead time to the delivery of products relative to the scaled platform. Scaled platforms also incentivise certain products to be placed in stock by, amongst others, making in-stock a factor in winning the buy box and in the general search results ranking.
- 66.3. Less promotional support for smaller platforms through marketing spend and price promotions occurs across all platform categories. Once more, all business users have limits to what they may be willing to invest in marketing or promotional pricing in order to grow sales and they will determine where best to deploy these. The sale returns to such promotional activity are likely to be greater on scaled platforms. However, the crowding out of promotional expenditure is in part because scaled platforms use visibility to extract more spend on these items.
67. More generally, business users are less likely to put the same amount of management effort in supporting the smaller platform sales channel in many other ways because it delivers fewer customer sales or leads. This may include the level of engagement with the sales channel, the range of listings, or the launch of new products. The level of effort, cost and other frictions from using multiple platforms can also result in business users not supporting more than a few platforms, obviously to the detriment of smaller

platforms as users will list first on the scaled provider of the most customer leads. In short, business multi-homing is more complex than simply identifying its existence and assuming it solves entry barriers.

4.2.3 Limits to consumer multi-homing

68. Similarly, when consumer multi-homing is identified to exist, it is assumed that the conduct is widespread and that consumers research and select across most available platforms and that they completely lack loyalty. The Inquiry finds that consumer multi-homing, like that of business users, is less extensive but also more complex resulting in material barriers to smaller platforms and a lack of material constraints on leading ones.
69. The fact that platforms spend so much on customer acquisition is already evidence that consumers do not extensively research and weigh up all the alternatives. Behavioural economics has shown that consumers will revert to simplified and often automated decision-making processes to reduce mental effort where it is less required. This is already evident in the first stage of the online search journey where most consumers are prone to click on the first few impressions on the SERP rather than engage in the minimal effort of scrolling down.
70. The Inquiry has made use of web traffic tracking services and internal research of platforms to understand consumer behaviour better. Web traffic tracking provides information on other sites visited within the same online search event which can provide some informative on the extent to which consumers engage in multiple searches across platforms or are loyal to individual platforms. What is relevant is not just whether consumers engage in multiple searches, but also the proportion of consumers that do, and how wide they then search if they do. Even then, it is important to

understand what consumers are doing when they look across sites. This has revealed the following:

- 70.1. A material number of consumers do not visit more than one platform on their search journey. As expected, this is higher for leading platforms relative to smaller ones, for instance reaching over 30% in categories such as travel & accommodation. For consumers that do look at more than one site, around a third only look at one more site and so less than half look at three sites or more. The vast differences in site traffic (and even sales volumes) across platforms is also consistent with this evidence as that indicates consumers do not explore the alternatives every time they shop for goods or services online.
- 70.2. In addition, the bounce rate, which is the percentage of site visitors that leave after viewing only one page, is over 50% for many of the small platforms and direct online channels. This typically indicates that those consumers visiting the site realised it was not responsive to their query and then left, i.e. it did not constitute a serious search of alternatives or what may be classed as multi-homing behaviour.
- 70.3. These observed patterns of behaviour are intuitive given what we know about consumer decision-making and other evidence. Consumers limit the effort they put into search and are likely to gravitate to the leading platforms which Google or promotions drive them too most of the time. If the extra effort to explore a wide variety of options rarely results in a change in choice, then they will be conditioned to revert to their preferred platform. Those consumers may occasionally undertake a quick check to see if they are missing any options or if the price is within expectations, but if these simply confirm their behavioural biases then the limited multi-homing behaviour is further reinforced. This is what accounts for growing loyalty levels to the leading platforms over time.

71. Smaller platforms without considerable capital backing ultimately must start to break even to remain sustainable, or limit losses to what founders or shareholders can tolerate. The virtuous cycle of the scaled platform and the concomitant barriers this erects for smaller ones, aided in some instances by deliberate conduct, means that head-to-head competition by 'me-too' competitors typically fail (e.g. Delivery Extreme). Alternatively, the me-too platforms must substantially pair back on costly customer acquisition to contain costs, which in turn limits their growth (e.g. a Loot or Safaricom). These platforms may tread water at a far smaller scale to the lead platform, or potentially go backwards as the 'vicious cycle' turns into a 'death spiral'.
72. The Inquiry has observed that some of the smaller platforms have achieved profitability by focusing on a niche instead of head-to-head competition with the leading platforms, as this permits them to reduce their customer acquisition costs. For instance, in food delivery several localised delivery platforms operate successfully in geographic areas where the leading platforms are not active, enabling them to avoid the promo wars that have closed many other direct competitors. In travel & accommodation, Lekkeslaap has used the Afrikaans language and a focus on car-based local travel to avoid direct competition on key travel search terms to contain their customer acquisition costs, permitting profitable growth. In eCommerce, OneDayOnly has managed to build a following based on its limited range of daily deals. However, the implication is that these platforms do remain more niche and will not be able to expand to constrain the leading platforms. For instance, Lekkeslaap battles to compete head on in the primary tourist destinations such as Cape Town, and where local food delivery platforms have expanded, it is into areas where the national platforms are not present. Alternatively, they are eventually over-run by the leading platforms as the leading platforms

extend their footprint.

4.3 Global platform tax benefits

73. Global platforms have the benefit of being able to exploit tax competition and tax havens to reduce their overall tax burden. For example, Apple's SEC 10k filing of its annual financial results indicates it pays an effective tax rate of only 13.3% on profits, with Google paying a rate of 16.2%. One concern with the tax arrangements of global digital companies is that the country where the income is sourced are denied the tax payments where global platforms use domicile arrangements to pay in another jurisdiction typically at a lower rate. This has become self-evident for South Africa through the Inquiry process as the scrutiny of financial statements to understand the local businesses has shown that limited revenue is declared domestically. Often the only revenue reflected is a notional amount from head office to cover domestically incurred costs at a small margin to comply with transfer pricing requirements (where it is payment for a service).
74. Of concern to the Inquiry is the potential competitive advantages that these arrangements have on platform competition between global platforms and domestic ones. For instance, in the travel & accommodation platform category, Booking.com is the largest platform and has historically benefitted from an Innovation Box Tax break from the Dutch Authorities (which accounted for \$230m in 2021). In addition, Booking Holdings is subject to a US federal tax rate of 21% according to its SEC 10k filing. In contrast, profitable domestic platforms pay a 28% corporate tax rate. From a shareholder return perspective, this means that Booking.com can make a lower margin on its operations relative to domestic platforms and still meet the same shareholder expectations. Technically this means they can go deeper on customer acquisition, such as bidding on Google Adwords on a lower return-on-investment basis or get more expansive on platform-sponsored discounts.
75. The recognition of income outside of our jurisdiction also implies that Value-Added Tax (VAT) is not raised on sales, such as advertising from Google or commissions from global platforms. The Inquiry's current understanding is that this practice may not influence competition. This is because a domiciled business user or platform that must pay VAT on the final customer sale, offsets from this any VAT payments on inputs (such as advertising or commissions). Therefore, if a domestic platform charges VAT for commission it will simply be offset against the final settlement with SARS. If a global platform fails to raise VAT, then there is just less to offset. However, the Inquiry will endeavour to test this understanding in the remaining period.

[5. Business user competition and exploitation on leading platforms]

76. Intermediation platforms represent an important channel for business users to access and transact with online consumers. The fact that market features tip platform competition in favour of one or two leading platforms in each category, instils even more importance in those platforms which creates a level of dependency by business users. The Inquiry's survey systematically found across categories that the majority of business users identified moderate to high levels of dependency on leading platforms. The importance and level of dependency means that leading platforms can influence competition amongst business users on the platform.

77. They may not necessarily set out to do this, except in the case of self-preferencing, but it may emerge as a by-product of their monetisation strategy. For instance, in looking to maximise fee revenues, the platform may extract more out of those business users with greater dependency and less bargaining power, resulting in a system of discriminatory pricing. Similarly, in monetising visibility on the platform, much like Google Search, the intermediation platform may effectively favour those businesses with deep pockets to appear at the top far more often. More cynically, platforms may also transfer risks or costs onto their business users as they continue to drive for greater platform profitability. Another means of impacting business user competition can be through the SERP algorithms where ranking parameters that appear to be rational contain an implicit bias towards own products or large business users.

78. Intermediation platforms argue that they have no incentive to either exploit or discriminate (including self-preference) as otherwise they

would simply lose business users and send the platform into a 'vicious cycle' or potentially even a 'death spiral'. However, it is evident to the Inquiry that the dependency on the platform for online sales means that business users will typically tolerate a fair amount of exploitation and discrimination, as the alternative, which is to forego online sales altogether, is typically far less attractive. This was self-evident from the number of complaints about fees and treatment even by large national business users. The Inquiry has also observed that as dependency increases, so does the level of monetisation, and that platforms largely have a revenue maximisation incentive, exploiting any opportunity to extract more revenue, given the desire to acquire an advantage in funding customer acquisition. This is the virtuous cycle discussed above.

5.1 Exploitative fees

79. Whilst all leading platforms can extract far more from business users due to the levels of dependency, the extent of exploitation may differ depending on the levels of consumer adoption and degree of entrenchment. Software app stores probably embody the most entrenched platform status, with no alternative to apps for consumers and with effective monopolies over their respective operating systems and hence the users on those devices. The result has been a highly profitable business based on high commission fees which are the subject of complaints and litigation globally.

79.1. The software app stores historically charged 30% on all digital content and, as the recent *Epic v Apple* case brought out,

this was not based on cost. Digital content is subject to a fee to pay for the software app store infrastructure (APIs, developer tools, in-app payment processing costs and subscription management) because it can be easily and accurately be measured by the store's in-app payment mechanism, but also because there are genuine payment processing costs. This is not unlike how countries decide what to tax. Over the years some adjustments have been made, most under pressure of litigation. For Apple it is 15% for app developers earning under \$1m per annum, for news and video streaming partners and for the second year of a subscription. Google has largely responded to these changes given it faces the same litigation risks (and sometimes remedial actions), with 15% for subscriptions, 15% for the first \$1m earned and 10% for ebooks and music streaming.

79.2. Whilst these changes have reduced the commissions substantially, the software app stores have, and continue to, make enormous profits on this line of business. Apple's 10K SEC filing of its global financial results distinguishes between product and services. App Store revenue forms a major part of the services category which operates at a margin of ~70% for FY2021 & FY2022 year to date, or double the margin earned on their devices. For Google, the Play Store revenues fall under 'Other' within Google services, earning \$28bn in FY2021. A global perspective is relevant to the SA market because, whilst the software app stores can report revenue from the SA storefront, the main costs are common globally other than transaction processing variable costs (2-3%). Furthermore, the global fee impacts not only domestic app developer margins (which the stores maintain mostly fall within the lower fee bracket) but also the pricing of global apps sold to domestic consumers through the SA storefront.

79.3. Globally the antitrust response to the effective monopoly on software app stores

has been to try introducing in-app payment competition, forcing software app stores to allow apps to offer an alternative in-app payment mechanism. However, as the commission fee is not just for payment processing, which is all that an alternative in-app payment mechanism does, the software app stores have proceeded to still levy a commission fee which is just the previous percentage less 3-4% for the saving on payment processing, defeating the objective of an in-app payment competitor. The only potential difficulty faced by app stores is measuring the app revenue to which the commission is applied, but this has probably already been solved. An alternative remedy determined in the Epic case and in Japan against Apple for subscription apps, is to outlaw the anti-steering provisions and allow apps to inform and direct users to a webpage where they can make app or subscription payments respectively. The Epic decision is on appeal but Apple is implementing the reader app remedy globally, but neither apply to Google.

80. Online classifieds have high levels of consumer adoption which increases dependency, but with two leading platforms in each. However, in property classifieds there is more of an imbalance as Property24 generates substantially more leads than Private Property, making business users disproportionately more dependent. This has permitted Property24 to increase fees at double-digit percentages annually for a sustained period. This is rationalised to the estate agents based on growing site traffic, but what matters from their listing fee model is ultimately leads which have not seen similar growth, in large part because the number of houses sold have not changed materially. The result is that Property24 is now spectacularly profitable, easily within excessive pricing territory, confirming the degree of entrenchment. However, the online classifieds

profitability is also largely a product of the extensive price discrimination and selling of visibility discussed next.

5.2 Fee Discrimination

81. Most intermediate platforms seek to have standardised terms & conditions, and operating procedures, given that they have hundreds to tens of thousands of business users listing on their platform. This often extends to commission and promotional fees, but not always. The Inquiry found that in eCommerce there is typically a standardised fee structure, which may differentiate based on product category (in the case of success fees) and item weight or size (in the case of delivery or warehouse fees), but not volumes or firm size. The fee differentiation seems to be logically linked to differences in cost, albeit that the exact extent of fee difference may not reflect the exact cost difference. In software app stores, fees are applied only to apps selling digital content and not others, based on what software app stores could easily identify and tax given the payments went through its in-app payment mechanism. The initially standard fee of 30% has subsequently differentiated for some different app categories, and SMEs, identified as those earning under \$1m, now benefit from a far lower rate.

82. In contrast, classifieds and food delivery not only differentiate their fee structure based on volumes, and hence business user size, but may also negotiate bespoke deals with the largest business users in their category (that latter also a feature of travel & accommodation). The Inquiry found that the extent of that differentiation is not trivial, but rather remarkably large.

82.1. In food delivery, the leading platforms generally differentiate between restaurant chains and independent restaurants (which would mostly be SMEs), and then some

differentiation amongst the restaurant chains (e.g. international v national, or corporate v franchised chains). The rates are not standardised, but rather subject to some negotiation. However, independent restaurants do not appear to have much negotiation scope if any, and are usually placed on the highest rate by default. The difference in the average commissions between the different categories of restaurant chains is anywhere from [0-5] percentage points, and that difference has moved over time. However, the difference in average commissions between the top category and independents is much greater at [5-10] percentage points. Expressed differently, independent restaurants are paying anywhere from 30% to 60% higher commission fees than the largest restaurant chains on average. As was outlined in newspaper articles discussed at the public hearings, on UberEats a chain such as Spur was charged 20% commission and the independent restaurant 30%.

82.2. In property classifieds, there are differences between the two leading platforms in terms of their fee structure. Private Property charges a single fee for unlimited listings per agency or agency office which creates huge discrepancies between the effective rate per listing paid by small estate agencies with ten or twenty listings relative to the large estate agency groups with hundreds of listings at any one time. Given that the largest estate agencies are invested in Private Property and sit on the Board, along with pledging support, it is maybe unsurprising that the platform has a fee structure that is most favourable to them. Property24 has a more complex fee structure which differentiates based on volume of lead categories and average house price. Property24 does charge a higher monthly fee for larger leads categories, but the fee differences are much smaller than the volume differences, resulting in small agencies or offices paying

- substantially over 300% on a per listing basis than large agencies. Furthermore, there is a similar fee discrimination in all the promotional packages available to estate agencies as they are differentiated on the same basis.
- 82.3. Automotive classifieds also differentiate based on volume of listing categories, but the difference in fees is far lower than the difference in volumes and therefore the effective rate per listing is also anywhere from 150% to over 300% higher for small dealers relative to large dealers. For example, on Autotrader, a dealer with 20 vehicles will pay three times the amount per listing relative to a dealer with 350 vehicles, a result that is consistent even accounting for the mean listings per dealer in each volume category. Groups and mini-groups with more vehicles than this will get bespoke deals that are even cheaper on a per listing basis. For Autotrader which offers promotional packages, the volume categories and extent of differentiation is the same as for listing fees.
- 82.4. In the leading travel & accommodation platforms, there is a standard commission fee and negotiations do take place with the global hotel groups primarily around a reduction from the standard fee, with some more limited local hotel group discounts. The extent of differential is not as vast as that of food delivery or classifieds but is still [0-5] percentage points, which translates into roughly [10-20%] discounts. However, as with classifieds, there is also discounting on visibility boosters for these major hotel groups which can increase the extent of discount into the [15-25%] range.
83. The submissions in response to these differences have largely been (i) that a difference is justified due to the greater value that large users bring in terms of attracting customers/consumers on the other side of the platform in the form of more listings or more popular food, and (ii) that the platforms are not dominant and the differential does not result in a substantial lessening of competition. The Inquiry has found that neither argument is convincing.
84. In terms of the first line of argument and the justification, the Inquiry makes the following finding.
- 84.1. Firstly, the difference in fees has no basis in cost. Whilst there were some throw away comments that it is more costly to serve lots of little business users compared to dealing with one large group, this was not seriously pursued nor was there any attempt to put up evidence to that effect. This indicates that even where there may be some difference in costs, it is likely to be marginal and not the main explanation for the differences in fees.
- 84.1.1. In food delivery, the evidence indicates there was no material difference in variable costs (transaction processing, delivery, and promotional spend) nor on a fully allocated cost basis (i.e. including an allocation of common costs) where this exercise was done by the platform.
- 84.1.2. For classifieds, no evidence was put forward to quantify differences in costs despite some claims that smaller dealers or agents take disproportionately more administrative time. However, the extensive use of listing software engines, including that of the leading platforms in property, means the primary technical interface is managed by a scaled third party that has scale in excess of large users with their proprietary software.
- 84.2. Secondly, whilst some just simply stated the reason was that the larger business users have more bargaining power, there were some attempts to rationalize the conduct as actually beneficial to small business users. In

some submissions this was premised on the fact that large users bring a larger number of restaurants/listings/rooms which helps get coverage and scale the platform. Whilst the Inquiry accepts that it is important to have the larger business users on the platform, and for this reason the Inquiry finds above that the lack of support for some small platforms by large business users as harmful to competition, the evidence is clear that it is also important to have the collective of small business users which is why platforms seek to sign them up. This is because for any platform it wants to have the majority of business user listings in order to offer that aggregation value to consumers and ultimately lower customer acquisition costs, and collectively the smaller business users typically contribute the bulk of listings in all three platform categories as well as the variety in options in food delivery and travel & accommodation.

- 84.2.1. In classifieds the smaller agencies and dealers collectively bring a substantial portion of the total number of listings, and often disproportionately so in smaller cities and towns which provides the platforms with geographic reach and scale.
- 84.2.2. In travel & accommodation the same general reasoning holds, namely that small hotels bring the bulk of available room volumes, far greater variety of accommodation type and a far broader geographic spread, all of which are of value to the consumer.
- 84.2.3. In food delivery the independents tend to make up the bulk of restaurants in any local area and the evidence clearly indicated that variety, which disproportionately comes from independent restaurants, was an important factor for consumers in their use of food delivery platforms, including retention. Furthermore, the average food order value on

independent restaurants was [30-60%] higher than that of the largest restaurant chains, resulting in a disproportionate contribution to absolute revenue even if commissions were the same.

- 84.2.3.1. One leading platform sought to quantify the alleged benefit of large restaurant chains by alleging that new eaters disproportionately join the delivery platform specifically to place their first order from the strategic chain restaurants, reflected in a slightly higher share of new eater first orders relative to ongoing orders on the platform. The claim was that this provides benefits to all other restaurants, including independents, from which these acquired customers subsequently order due to ongoing order.
- 84.2.3.2. However, the argument is unconvincing for many reasons. First among these is that the platform algorithm have a bias towards large chains for the first orders placed, a more likely explanation of causation for the observed marginally higher order rate on first orders than the unsubstantiated claim of consumer intent. That causation is reinforced by the higher restaurant and platform funded promotions on chains, a key strategy in driving order volumes. Second, the analysis required claims around which chains were considered strategic or not, which were inconsistent with their documents. Third, the analysis failed to undertake a similar exercise for independents whose variety and 'local hero' status aids with retention, in addition to acquisition, a key problem for delivery platforms and hence a benefit that then accrues to the large chains in terms of ongoing orders.

84.3. Third, even if the Inquiry were to accept the proposition that larger business users warrant a lower commission fee or listing fee because they bring more restaurants/ listing/rooms to the platform (which is not accepted), there has been no evidence to justify the absolute extent of that difference, especially for food delivery and classifieds, rather than argument that *some* difference should exist. Given that another obvious explanation for the discrimination is simply the result of differences in bargaining power, and the ability to exploit SMEs/HDPs relative to larger business users, a critical assessment is required to distinguish between what may be value based and what may be bargaining power.

84.3.1. In this respect, it is informative to contrast the different price setting mechanisms and resultant more modest discounts offered on travel & accommodation platforms relative to food delivery and classifieds. Travel & accommodation has a standard fee against which discounts are negotiated, a process which is more likely to consider any incremental value of the large hotel chain with resulting differences in the [10-20%] range. This is also more in line with some of the traditional industry discount processes and, as a result, discrimination ranges. In contrast, food delivery appears more akin to setting a fee for chains and separately setting a fee for independents based on what can be extracted, a less scientific measure. For classifieds, the fee setting process is one of pure price discrimination based on willingness to pay rather than value. The lack of scientific methods and discretionary nature of fee setting is also exposed by the sizeable differences in the extent of discrimination between leading platforms in both food delivery and

classifieds. This indicates that food delivery and classifieds fees are more set by relative bargaining power and monetisation strategies rather than value, which explains the much larger differences. Whilst the Inquiry is of the view that in contrast the fees to SMEs are too high, either way the inescapable conclusion is that the difference is too large.

84.3.2. The difference in commission fees is so large for food delivery and classifieds that it results in a complete imbalance in the relative contribution to profits, another indicator of value. In food delivery not only do independents pay [30-60%] more commission than the largest chains, but their food order value is also [30-60%] higher on average, which means that absolute Rand profit contribution per order can be up to ten times that of the largest chains and two to three times that of the smaller national chains. Independents will typically see their share of profit before fixed costs as substantially higher than their share of orders on a platform, and the extraction of the larger profit from independents has enabled platforms to even sell the largest chains at a variable cost loss for large periods of time.

85. In respect of the second argument, namely that the difference in fees does not result in harm to SME business users paying the higher fees, the Inquiry equally finds this unconvincing and rather finds that this impacts on the SME business users in several ways, all of which impedes participation and competition from SMEs on the platforms that discriminate against them.

85.1. As to the relevant test, in an inquiry, there is no requirement to demonstrate dominance (which would in any event be trivial for the leading platforms in these categories) or

a substantial prevention or lessening of competition ("SPLC"). Indeed, even under section 9, there is no requirement to show an SPLC in respect of discrimination against SMEs and HDPs. Rather, the test is simply whether the conduct or market feature 'impedes, restricts or distorts competition', or undermines the purposes of the Act which includes the participation in the economy of SMEs and HDPs.

- 85.2. In food delivery, the Inquiry business user survey found that around 70% of restaurants surveyed passed on some or all the commission charged by platforms to consumers in the form of higher menu prices. In that context, SME restaurants paying a higher commission will increase their menu prices on the platform by more than chains that are charged lower commissions. This was aptly demonstrated in submissions where, in an attempt to show why the practice did not erode SME margins, examples were provided of menu markups largely in line with commission fees charged, and hence around double for independent restaurants relative to chains. Naturally, this negative impact on relative price will make the independent restaurant less attractive to consumers, impacting on their participation but also competition for the sale of food on the platform. Consistent with this negative impact on competition from independents, the Inquiry found that the food value share of independent restaurants has consistently declined over the years. Even if an independent restaurant chose not to alter its relative price, the higher fee means that there is less budget for other marketing and promotional activity even on the platform, self-evident from the negotiation of lower fees for more marketing commitment that takes place with the large chains. This also leads to less visibility and fewer sales for independents.
- 85.3. In classifieds, the Inquiry business user survey found that not many of the survey respondents claimed to adjust pricing

to cater for the listing fees charged. This was especially the case for estate agents. However, higher listing fees along with higher fees for enhanced visibility, does mean that the marketing budget for smaller agencies and dealers does not go as far as those of the large agencies and dealers. The result, as discussed in the next subsection, is that smaller agencies and dealers do engage in less promotional spend on the platforms relative to larger agencies or dealers. As enhanced visibility has a strong influence on customer leads, as well as more marketing spend in general, the differences does hinder the participation by smaller agencies and dealers.

- 85.4. In travel & accommodation, far fewer of the hotels passed on the commission fees in the form of higher prices. This is most likely because price parity clauses would restrict them from doing so, as otherwise all prices would need to increase. The Inquiry business user survey did find that small hotels were more likely to pass on some of the commission relative to larger hotels, which would have a similar relative price effect. However, the lower fees charged to large hotel groups meant that these groups can (and do) purchase enhanced visibility for the same (or lower) commission fees as small hotels on the higher standard commission fee. The implication is that fee discrimination does influence the competitive outcomes and participation by small hotels.

5.3 Selling visibility

86. A common feature of intermediation platforms is that they all sell visibility to their business users. This is essentially the same as Google search discussed above, and for the same reasons, namely revenue maximization in the context where a platform produces a SERP in response to a consumer query, and where consumer behaviour is biased towards clicking on higher ranked impressions. Much

like Google, there is a tendency for platforms to sell more and more visibility over time because it does not degrade the consumer experience sufficiently to result in consumer loss. The opportunity to sell more visibility exists once a platform has a sufficiently large number of listings for the same product or service (e.g. running shoes or hotels in Cape Town) such that many listings are relevant to the consumer query so as not to degrade their experience, and business users are willing to pay as otherwise they may appear far down the SERP and lose sales. The general lack of ad identification by intermediation platforms makes it even less likely to degrade the consumer experience.

87. Payments for improved visibility on intermediation platforms can take different forms, including (i) payment (or bidding) for a specific position (e.g. ad at the top of the page in a software app store or classifieds query SERP), (ii) payment (or commission increase) for a ranking boost (e.g. higher commission fee in travel & accommodation), (iii) enhanced impression that stands out more (e.g. a larger impression with more pictures in property classifieds), (iv) various forms of brand building through display advertising or impression branding (e.g. on eCommerce or classifieds) and (v) the offer of discounts or loyalty programme support as outlined above. Sometimes the offer of improved visibility is given to a subset of business users meeting certain minimum criteria, such as the preferred partner programmes in travel & accommodation, but these are still tied to higher commissions or payments.
88. In most cases, intermediation platforms do not label those impressions that pay for improved visibility as adverts. Therefore, whilst Google may have gradually made the paid results less distinct from organic results over time to reduce potential ad blindness, on some intermediation platforms consumers are not even aware if a result is a paid

result or not. In fact, some of the labelling is completely misleading to the consumer as it suggests that the result was specifically endorsed by the platform, or is of more relevance, including labels such as 'preferred partner', 'premium listing' and 'featured listing'. The exception are typically foreign platforms which are required to label ads in their home jurisdictions (software app stores and travel & accommodation). However, as with Google, even these platforms do not prominently label ads to make them less distinct from organic results and make use of misleading labels. The reason for failing to label ads is obvious, namely that consumers may be less inclined to click on ads and may be put off platforms that serve too many ads if they are prominently labelled. This is the ad blindness that Google studiously researches to maximise its own paid search. As a result, by not labelling ads, platforms are able to serve more ads in the SERP and business users are willing to pay more for that advert, which maximises revenue from selling visibility. The Inquiry also found that with some travel & accommodation metasearch engines which show competing offers for the same hotel room, despite promising to provide consumers with the cheapest option, the payment for position based on cost per click bids means that the cheaper option was not necessarily the most visibly displayed. Rather, the option with the highest cost per click ("CPC") was most prominent.

89. South Africa does have a Code of Advertising Practice administered by the Advertising Regulatory Board ("ARB"), which includes a clause on the identification of advertising (Section II, clause 12) requiring that *"Advertisements should be clearly distinguishable as such whatever their form and whatever the medium used"*. There are also appendices outlining best practice for specific products (e.g. cosmetics) or medium (e.g. social media). However, industries need to opt into the Code voluntarily, after which

the ARB rulings are binding. The online intermediation platforms have not opted into the Code, although UberEats cited the code as the reason for its labelling of ads.

90. Consumer behaviour on intermediation platform SERPs is largely similar to Google search which is precisely what creates the opportunity to sell visibility. For instance, in looking to sell visibility, one classified platform informs business users that only 20% of consumers click through to page two of the SERP, and that its premium listing which appears at the top attracts up to four times as many consumer advert views. Another classified platform informs business users that premium listings get twice the customer leads and feature listings almost two and a half times. In travel & accommodation, the top five listings accounted for over 60% of bookings and the first page for over 80%. The Inquiry business user survey asked the extent to which a prominent position on the SERP influences sales, and without exception this was considered to have a moderate to extensive impact. All of this means that advertising does influence consumer decision-making. Whilst some submissions tried to downplay the extent of promoted listing effectiveness, ultimately the fact that business users are willing to pay substantial amounts to boost visibility means there is value in it. The platform statistics, often cited by platforms in selling visibility, also confirm the impact.
91. The Inquiry notes that intermediation platform categories differ in the extent to which they sell visibility, with travel & accommodation and classifieds doing so pervasively whilst in eCommerce and food delivery this was in its infancy. However, the evidence from budget forecasts for these latter categories indicates that even the laggards are planning to substantially increase the sale of visibility in future, which is incentive-compatible. In the platforms that have taken it the furthest, the sale of visibility can account for (30 - 40%)

of their income. In one classified platform, upwards of 40% of listing were subject to some ranking boost, and over 70% some larger impression boost. On another, the most search terms by category could have all the results on the first page subject to some promotion, and the top 100 search terms with 20% or more of the first SERP being promoted listings. In travel & accommodation, platforms could have up to seven of the top ten places taken up by hotels paying for a visibility boost through the different means.

92. Even where the sale of visibility is pervasive, the Inquiry found that it favours larger business users, not only because they have deeper pockets (and can therefore appear on top of more searches), but also because of the pervasive price discrimination. This meant that in leading travel & accommodation and classified platforms, larger business users could purchase the listing with boosted visibility at the same price or less than an SME could purchase a standard listing. Unsurprisingly, the evidence was that fewer SMEs relative to larger business users made use of promoted visibility. Within classified platforms, the Inquiry has observed that the proportion of users that purchased visibility enhancement products varied between the smallest volume category and the largest (before bespoke deals) by [10-20] percentage points and [50-60] percentage points.
93. On software app stores, where competition is global, the problem of visibility and marketing was highlighted by SA app developers of paid and gaming apps. Paid promotion and marketing, even outside of the software app store, was of growing importance in raising awareness and improving discoverability by consumers both domestically and abroad. The developers faced much larger and better resourced international app companies, with an ability to purchase promotional spots on the software app store search results, raising barriers to SA developers making inroads in

sales. The Inquiry found that aside from the top paid and free apps on the SA storefront, there was no SA-specific curation of local apps to aid discoverability by local consumers. The extent of curation was at best on a continent-wide basis. The app search function will consider geographic context where relevant (e.g. local retail or banking apps), but not necessarily for gaming or other paid apps where local context is not relevant. Local curation would also be a value-added service to SA consumers that software app stores would more likely invest in were they to face more intense competition for SA consumers.

94. The Inquiry has found that the pervasiveness of unidentified advertising on intermediation platforms distorts consumer choice, and therefore undermines competitive outcomes. The practice also distorts competition from SMEs which are less likely to be able to purchase visibility, especially where they face price discrimination. Furthermore, the practice encourages more visibility to be sold than would otherwise be tolerated by consumers, given the incidence of not labelling ads. The Inquiry also finds that even where foreign platforms are required to disclose paid results, there is a tendency to game the system and blur the distinction between paid and organic results. For instance, the use of terms like 'featured', 'premium' or 'preferred' listings are misleading and hide the fact that ultimately these are paid search results, and those terms are no substitute for a clear ad label.

5.4 Self-preferencing conduct

95. Self-preferencing in intermediation platforms is relatively rare but only because few platform categories, namely eCommerce, insurance comparator sites and software app stores, have an own retail offering in addition to that sold by business users in its platform marketplace. In software app stores, the issue of self-preferencing is the subject of litigation

in several jurisdictions. Aside from the relative price/margin impact of high commission fees not faced by the OS's apps, there has also been preferential ranking in app searches (Apple apps appeared first and were not reviewed). The issue of commissions is taken up below, whilst the preferential ranking appears to have been addressed by Apple. Pre-installation of search and platforms was addressed above, and outside of that, no domestic app developer came forward with other complaints as none competed with the software app store apps directly.

96. In eCommerce, self-preferencing can only arise where a platform operates a retail division which competes with the marketplace sellers (so-called Hybrid platforms). Some intermediation platforms either have no retail division (e.g. bidorbuy) or are retailers by origin, opening a marketplace for the sale of products that extend, but do not compete with, their retail range (e.g. Makro and Leroy Merlin). Hybrid platforms typically argue that they have no incentive to self-preference because they earn a higher margin on marketplace transactions relative to retail. However, margin analysis is not necessarily informative of incentives.
 - 96.1. Margin analysis fails to account for other factors that are important to a company, such as security of supply, risk reduction and cost avoidance. The latter arise in the context where the hybrid platform takes risk on its own retail as it purchases stock and holds that stock in its warehouse until sales take place. Given that a hybrid platform wants to ensure a consistent supply of branded product ranges in each category, its incentive is to move that stock to reduce working capital and warehouse costs to avoid discounting old stock to free up space.
 - 96.2. For instance, this is borne out by the incentives provided to Takealot's retail buyers as they are provided with a

- warehouse space and are rewarded on maximising returns to that space. It is also the incentives of buyers that ultimately need to be examined as those buyers do not have marketplace margins in their bonus determination.
- 96.3. Lastly the margin analysis fails to account for the fact that hybrid platforms have been discounting retail stock below variable cost to propel platform growth historically. This is a long-term strategic objective which cannot be achieved through marketplace sellers as a hybrid platform does not control their pricing.
97. Takealot is the largest hybrid platform and the Inquiry has found that in almost all cases the complaints against Takealot were justified, and the conduct did preference Takealot, or its retail buyers, or undermined competition on the platform to the detriment of marketplace sellers and ultimately consumers.
- 97.1. Several marketplace sellers complained that Takealot buyers had access to marketplace seller data and used this to target successful products of theirs, either sourcing the same product from their supplier or introducing their own brand. The Takealot Chairperson confirmed in the public hearings that their buyers have access to seller data as one of the tools used in decision-making, and the Inquiry identified that Takealot has introduced quite a wide range of own brands in high selling categories. The use of seller data in this manner effectively expropriates and undermines the investment in innovation and risk taking of marketplace sellers in identifying products that may appeal to SA consumers, that must negatively affect innovation at the margin.
- 97.2. Marketplace sellers also complained that where they outcompeted Takealot on a product price, their suppliers of that product would be approached by Takealot buyers which sometimes resulted in the suppliers either raising the product price to the marketplace seller or demanding the seller raise the final price on Takealot lest they cease supplying it to them. The Inquiry was provided with correspondence which confirmed this conduct. The Takealot Chairperson did not consider pressuring suppliers to be problematic and indicated they expected buyers to press for the best deal. The problem is that the way in which it is done means it plays out in a manner that may raise prices on the platform to the detriment of consumers, rather than Takealot buyers extracting a better price or reducing their margins to be more competitive on the platform. This outcome is also consistent with that of a 'hub and spoke' cartel which is extremely concerning to the Inquiry.
- 97.3. Marketplace sellers complained about Takealot unilaterally gating products on the platform, i.e. made them exclusive to Takealot retail and barred marketplace sellers from selling them on the platform. Takealot submitted that 'gating' or 'platform exclusivity' was always at the request of the supplier, which in some cases did so to protect its brand value from discounting or prevent 'grey goods' being sold on the platform. The Inquiry approached several suppliers on the gated list, many of which either did not know their product was gated or which confirmed it was not at their behest. In the public hearings a seller provided correspondence from Takealot informing them that 'management' had taken the decision to gate the Xiaomi brand, and other email evidence indicates Takealot management requesting product exclusivity from a supplier.
- 97.4. Takealot has mimicked Amazon and introduced the 'Buy Box' for branded items with multiple sellers. In essence, the Buy Box algorithm selects to display the offer from one of those sellers prominently to the consumer in the so-called 'Buy Box' whereas the offers from other sellers may

- be listed far less prominently on the side or below. As the consumers select the 'Buy Box' offer almost all the time, winning the 'Buy Box' is important. The Buy Box selects the cheapest price of those in the warehouse, rather than the cheapest, which favours Takealot retail as their products are generally in the warehouse.
- 97.5. On promotions, some marketplace sellers complained that their applications for participation in promotional sales was denied in instances where Takealot retail was approved for the same product. The Inquiry found that marketplace seller applications for promotional participation are less likely to be successful than Takealot's own retail buyers and the same division is home to both retail buyers and platform management. Whilst reasons may be provided for the lack of success of seller applications, there are also obvious conflicts of interest for Takealot, especially where buyers are incentivised on their sales and face risk of not moving stock if excluded from a promotion or where a marketplace seller promotes at a more favourable price.
- 97.6. The Inquiry confirmed that Takealot retail currently benefits from the use of promotional display on the platform at no cost due to the prevalence of unsold inventory. Whilst this clearly offers an advantage, the Inquiry can understand why Takealot may not wish to offload unsold inventory for free to sellers or suppliers that might otherwise pay for that display. However, Takealot could offer that unsold inventory to HDP or new marketplace sellers that are less likely to afford display advertising in order to balance out the current practice.
98. Ultimately there are obvious conflicts of interest where a leading platform competes with its business users so extensively. Even if management does not actively promote self-preferencing, retail buyers, strongly incentivised by sales performance, can use their insider status to achieve preferential treatment. An absence of policies or organizational structural separation to prevent this, or a lack of enforcement of policies, ultimately makes management responsible for the conduct as it is effectively condoning it by not preventing or punishing it. Whilst marketplace sellers can walk away from small eCommerce platforms that do the same, this is not the case with the leading platform accounting for most online sales. The actions also harm online consumers as a result.
99. In insurance comparator sites, the Telesure ownership of Hippo creates potential conflicts of interest and opportunities for self-preferencing. Whilst currently the comparator quotes are provided on a cheapest to most expensive basis, that need not always be the case in future. There is also scope for self-preferencing on fees, charging the Telesure insurers a lower rate than that of third parties. The governance structure also does not provide for any separation, with the Telesure executive free to sit on the Board of Hippo alongside all the insurance companies in the Group. Therefore, there are risks that Telesure management would be privy to that data even in the event that the data is kept separate.

5.5 Terms & conditions

100. In general, intermediation platforms have set terms & conditions (T&Cs) that are not negotiable. This is largely because they may deal with hundreds or thousands of business users (or many more for global platforms) and it is not efficient to negotiate individually. The fact that T&Cs are not negotiable does not make them *per se* unfair, but leading platforms with bargaining power resulting from dependency may be able to impose unfair T&Cs. Unfair T&Cs are typically defined as those that unreasonably transfer risks and costs to business users, are one-sided or unrelated to the object of the clause.

101. The Inquiry sought to identify those T&Cs that may be potentially unfair through submissions by a review of T&Cs against the criteria for unfairness, direct inputs from business users and a survey of business users. On balance, the vast majority of T&Cs in most platform categories were not the subject of complaints or considered unfair by most business users, a finding confirmed by the Inquiry's own technical analysis. A generous returns policy in eCommerce and cancellation policy in travel & accommodation, commission and promotion fees and the dispute mechanism all arose as issues from business users, and the Inquiry identified a few other potential areas as well.

101.1. The returns policy of Takealot, which was seen as overly generous relative to the Consumer Protection Act ("CPA") requirements, received much heated debate at the public hearings. Takealot stated that a generous returns policy was important for consumers to build trust in online channels where they cannot physically engage with the product before ordering, and therefore generates more online sales. The evidence before the Inquiry largely confirms this, and so the Inquiry does not take issue with the returns policy *per se*, which also seemed to be the case with most business users.

101.1.1. The heated debate seemed to be more about the implementation, where obvious customer abuse was not stopped, and the frustration with delays in resolving returns after quickly reversing the payment to the marketplace seller. These included delays in accessing the return, timeframes that made reimbursement from suppliers difficult and delays in the dispute mechanism. One additional complaint was that Takealot retail was able to resell returned items as 'unboxed deals' to recoup some of the monies,

whereas this avenue was not open to marketplace sellers.

101.1.2. Takealot conceded that some service standards to sellers have come under pressure during Covid due to unexpectedly high platform activity. The Inquiry accepts this but notes that this has been a persistent issue. Ultimately it is a matter of incentives, and a leading platform has less incentive to prioritise investing as much in seller support where sellers are dependent and have no real alternative channels able to provide volume to sellers. If sellers were actually leaving in greater numbers than they were arriving, then that incentive changes, but it is not the case. There is also little incentive to invest in rapid dispute resolution mechanisms where the marketplace seller bears the cost in the meantime, which is how the T&Cs are typically set up, namely the monies are mostly resolved in Takealot's favour until the seller can show otherwise.

101.1.3. However, Takealot is not alone in this respect, nor is it just Takealot's returns policy, as the Inquiry found that most leading platforms have a dysfunctional dispute mechanism. Where monies are involved, it seems to be always the business user that must bear the cost until the dispute is resolved. Similarly, on Takealot and other platforms any suspension for contraventions are imposed quickly at cost to the business user, in the form of reduced sales from loss of visibility, whilst the platform is under no pressure to invest in resolving the dispute quickly. In essence, it is the quick implementation of rules with no effective dispute mechanism which is one-sided and unreasonably transfers costs to business users.

101.2. In travel & accommodation the cancellation policy of leading platforms similarly received some complaint, but as



with the returns policy of eCommerce, the evidence indicated that this was a material factor for giving consumers comfort in going ahead with online bookings. The Inquiry did, however, identify the asymmetry in payment terms between when accommodation providers owed the platform compared to when the platform owed the accommodation provider (depending on which party the consumer paid for the booking). The former was required quickly whereas the latter occurred at more leisure.

101.3. The Inquiry also identified a particular clause in rental car platform contracts that raised potential ‘hub and spoke’ cartel issues. The clause states that in respect of last-minute booking, either the platform can add a fee to the car rental company price, or the car rental company can charge a higher price (for a higher commission). This clause is in contracts with all car rental companies and therefore may signal to each of them that others will either raise the price for last-minute bookings, or the platform will do so. The Inquiry was informed that the clause is not enforced, itself suggestive that it is probably problematic. However, until the clause is removed from the contract, it can still impact on the expectations and behaviour of car rental companies through self-enforcement.

[6. HDP platforms / business users]

102. The Inquiry has found a distinct lack of participation by HDPs in online platform markets and even low representation amongst the business users on the intermediation platforms. Whilst in some cases this reflects the lack of transformation of the industries served by the platforms, such as tourism and estate agency, it is striking how even more untransformed the online economy is relative to the traditional economy even in these categories. Given the pace of movement to the online economy, these barriers to participation threaten a new and deeper level of exclusion for South Africa.

6.1 Platform level

103. On the intermediation platform level, a critical element to the entry and expansion of new intermediation platforms is funding. Entrepreneurs must evidently have good ideas and be able to execute on those ideas, but funding is essential to realise platform development and growth. The venture capital ("VC") industry identifies two broad phases of funding, namely pre-revenue (pre-seed and seed funding) and post-revenue (Series A, B & C funding rounds). Pre-seed is the very initial start of operations and typically funded by the founders themselves or their immediate family and friends. Seed funding finances a founding team to do market research and product development, then start building a user base and generating revenue. VC support at this stage is often in the form of incubators where the founding team receives guidance and access to business development resources. Post-revenue, as the name suggests, develops the start-up in phases once a revenue model exists. Series A funding is still considered

a start-up phase where the products and markets that have been shown to be capable of revenue generation are developed. Series B is aimed at scaling the product, whilst Series C allows for successful start-ups to enter new markets and develop new products. Private equity funding would step in following this VC stage to further grow and develop successful start-ups. VC funding in South Africa is still in its nascent stage and is largely focused on post-revenue stages. However, many entrepreneurs indicated that even where VC funding in SA is available, the approach remains relatively conservative and adopts assessment measures more appropriate at a private equity funding level.

104. The Inquiry heard evidence from HDP entrepreneurs and the venture capitalists, including the South African Venture Capital Association ("SAVCA"), about the challenges for HDP start-ups. The lack of wealth accumulation by HDPs due to exclusion from the economy under apartheid has created a substantial barrier to accessing pre-revenue funding from a family or associate 'angel investor', unlike their white counterparts. Whilst many HDP start-ups reached out to government funding sources, these are not focused on start-up VC funding resulting in a mixture of non-responses or applicants being informed that the agency does not fund online ventures. There are some sporadic instances of support by the DTIC through other programmes but no systemic digital economy focus. Several incubators have emerged, but interestingly many of these are global company or foreign government funded.

105. At the stage where the VC industry gets involved, HDP start-ups continue to face far greater barriers to funding support

than white entrepreneurs. The VC industry concedes that it lacks transformation itself, that it perceives the risks in township economies to be higher than they actually are, and that it does not actively seek out HDP opportunities unless there is a mandate to do so from funders. This set of circumstances clearly places HDP entrepreneurs in a significantly disadvantaged position relative to their privileged white peers. The primary VC fund with an HDP mandate for 75% of funding is the SA SME Fund, a joint initiative by government and the CEO initiative of large corporations. However, beyond this, mandates are scarce and even the largest VC funder in SA, Naspers Foundry, has no mandate to support HDPs and could cite only a single small investment in an HDP entrepreneur. One black female entrepreneur indicated that she ultimately received support from foreign VC funders rather than local ones, apparently more willing to take risk on new ventures.

106. A further material barrier faced by many HDP entrepreneurs is getting large business user support to contract with their startup platforms. Business user support is essential to move a startup into the post-revenue phase where VC funding comes into play, and to get that post-revenue growth to move into later series of funding. The high levels of concentration and lack of transformation of most industries served by intermediation platforms, characterised by networks of white privilege, makes penetrating the boardrooms in search of contracts a severe challenge for HDP entrepreneurs. The Inquiry was confronted with many stories from HDP platform start-ups of not even getting through the door of key business users or being rebuffed if they did. In stark contrast, the public hearings were characterised by submissions from successful platforms led by a procession of white males.

6.2 Business user level

107. Given the previous exclusion from participation in the economy, most HDP businesses are newer entrants and so also fall within the SME category for industries served by the intermediation platforms. As a result, conduct identified as hindering SME participation more broadly, such as discrimination and exploitation, would equally hinder HDP participation. However, HDP businesses face even greater barriers to participation and competition than your typical SME, as reflected in their under-representation in those industries. These include greater challenges in providing or securing startup financing (given a lack of wealth accumulation and assets for security), business networks for inputs and services, and the fact that much of the market for consumers with discretionary income that intermediation platforms target lies in formerly white middle-class suburbs.
108. For instance, HDP estate agents, let alone HDP agencies, battle to operate in predominately white middle class suburbs whilst at the same time the lower value of properties in predominately black low middle income areas make using platforms with high listing fees onerous. Similar challenges are faced by HDP auto dealers, who also face exclusion from OEM dealer networks and repair panels as highlighted by the recent Commission's Automotive Code of Conduct. In travel & accommodation, tourist infrastructure predominately lies in historically white areas where HDP ownership remains low, with little infrastructure in historically black areas, affecting HDP accommodation and experiences ('things to do') businesses. In eCommerce, HDP businesses face greater challenges in securing domestic distribution agreements for products where there are existing long-standing distributors and

securing working capital finance to invest in stock.

109. The Inquiry came across a few isolated instances where platforms had recognised the unique barriers to participation faced by HDP businesses and sought to provide some limited support. For instance, Airbnb and Safaricom had supported a few listings in township areas, and Property24 reduced fees for a few HDP estate agencies. However, outside of these isolated instances, intermediation platforms offer absolutely no means of redressing the additional barriers to participation and competition faced by HDP businesses. In fact, many of the practices directly work against HDP businesses, such as eCommerce platforms fast-tracking the onboarding of so-called tier 1 businesses which are larger predominantly white-owned, with tier 3 businesses left to languish. More dedicated support is also provided to the larger businesses on platforms.

110. Interestingly, the Inquiry has found that several US platforms, some represented in SA, have instituted measures back home to address the additional barriers faced by black business and entrepreneurs. These initiatives are informative not just of the reality of the barriers that arise from the accumulated disadvantage that hinders HDP participation, but also the types of barriers and hence the types of remedial action.

110.1. For instance, last year Amazon launched a black business accelerator aimed at addressing barriers to access, opportunity and advancement in the US. This includes financial assistance through advertising credits and free product imaging, along with crowding in some limited startup funding (presumably made easier with an assured presence on Amazon). Amazon offers business guidance and mentorship beyond the usual online resources offered to marketplace sellers and has developed

a black-owned virtual storefront and search discoverability for black-owned businesses.

110.2. In India, Amazon's Sahel initiative targets woman entrepreneurs and offers very similar types of support but also a reduced referral fee. In many respects these are low-cost interventions to the platform, such as providing advertising credits where unused inventory exists or crowding in funding by making the business more likely to succeed. In software app stores, the main stores have both invested in app development support at colleges or universities, to improve skills and draw entrepreneurial talent into app development.

110.3. Apple and Google also recognise the existence of systemic barriers to opportunity for African Americans in the US and provides grants to Historically Black Colleges and Universities (HBCU) to establish HBCU coding centres or technology hubs, as well as other programmes to develop technology skills.

[7. Other Issues]

111. The Inquiry received written and oral submissions for the in-camera sessions in early 2022 from the Publishers Support Services (“PSS”) representing the largest news publishers in the country with collectively 256 titles and over 4000 employees. The PSS submitted that the transition to digital news consumption and advertising had resulted in all publishers seeing a massive decline in advertising revenue, and an increase in costs as newsrooms needed to devote resources to their digital presence. The transition had left the publishers in a precarious financial position despite cutting costs, and that independent journalism in the country was under threat as a result. Independent public interest journalism is one of the cornerstones of a healthy democracy.

112. The PSS submissions cover a range of issues that impact negatively on their ability to fully enjoy the revenue benefits of their content, namely:

112.1. Google and Facebook are dominant gateways to consumers and news publishers are dependent on referral traffic from these platforms. However, these platforms use that dominance to effectively extract copyright news snippet content for free by demoting news articles that lack a snippet on the SERP, or excluding them from the social media feed, denying the publishers referral traffic that would allow them to earn display advertising revenue. However, the practice of offering news snippets also denies the publishers referral traffic as news consumption has shifted to many consumers simply browsing news snippets. This change in news consumption adds value to the search and social media platforms, allowing them to monetise data

or advertising, and in so doing extract the benefits of copyright content from the publishers.

112.2. The dominance also enables the search and social media platforms to act as a gatekeeper on consumer data, denying publishers full access to that data which prevents them from better understanding and serving the SA consumer. The practice of disabling third party cookies is likely to worsen the situation and increase reliance on Google for display advertising inventory sales. In addition, the dominance has imposed costs on the publishers as changes in algorithms impact on publisher visibility and referral traffic and require ongoing investments in news site optimisation for search and social media. This situation is worsened by the lack of engagement by these companies.

112.3. Google and Facebook are also dominant in digital advertising and the so-called ‘adtech stack’ or supply chain used in the buying and selling of display advertising on websites, including news sites. The PSS submits that these platforms are used for the sale of display advertising inventory and simultaneously offer display advertising purchases by advertisers given their dominance over consumer data allowing improved targeting. The PSS argues that this dominance means that their members receive a lower proportion of the fee paid by advertisers than they would in a competitive market.

112.4. The primary remedy that the PSS seeks is a commercial negotiations and collective bargaining arrangement for news snippets, with a forced arbitration and arbitrator decision if negotiations fail.

113. Outside of the PSS submission, the Inquiry also received a submission from a news publisher in respect of the software app store commission fees charged by Apple App Store and Google Play Store for monthly subscriptions purchased through the in-app payment mechanism. The publisher indicated that the fees were excessive and contributed to undermining their revenue model as they were unable to differentiate the in-app subscription price from the website price where they only paid transaction processing fees of 2-4%. The current inability to direct mobile consumers to their website from the app and raise awareness of the website price contributed to the inability to differentiate the price and avoid the software app store high commission fees.

114. The first issue that confronts the Inquiry is the extent to which these issues lie within the scope of the Inquiry. The software app store fees clearly do, whilst the “adtech stack” issues clearly do not. Whilst recognising that digital advertising markets raised legitimate concerns, the Inquiry ToRs specifically excluded these advertising markets, leaving those issues for a separate process.⁵ Search and social media were only included to the extent that they impacted on platform competition or offered intermediation services themselves. The issues around the use of news snippets and news referrals lie in a contested area in terms of scope, with objections by Google.

115. There is clearly some merit to the concerns expressed by the news publishers as numerous jurisdictions have not only found the practices of search and social media companies to be harmful, but also against the public interest by undermining local and national news journalism. The importance of these search and social media for referral traffic and news consumption means that

there are distinct market power issues. As a result, many countries have sought to introduce remedial action in the form of negotiations over payment to news publishers.

116. Given the lateness with which this issue has been brought before the Inquiry, contestation over whether this lies within scope and the complexity of the issues, the Inquiry is of the view that these issues may best be addressed through a separate process, including potentially a more focused market inquiry. As a result, the Inquiry will not continue to investigate these issues further.

5 See para 2.10 and 3.3 of the Inquiry ToRs.

[8. Main Provisional Findings and Recommendations]

117. The Inquiry has been tasked with identifying market features that may impede, restrict or distort competition at an intermediation platform level and amongst business users on the platforms, including where a lack of competition may result in exploitation. The Inquiry is also tasked with including a particular focus on SMEs and HDP participation. The analysis summarized above and outlined in more detail in the Provisional Main Report has informed the provisional findings of the Inquiry. These findings are generally in respect of the leading platforms in each intermediation platform category, as it is typically leading platforms that are in a position to shape platform competition or which matter most for business user competition, or participation opportunities.

118. In setting out these findings, the Inquiry notes that the relevant test in an Inquiry is simply whether a market feature has an adverse effect on competition, including a regard for the impact on SMEs or HDPs, not that there is a substantial prevention or lessening of competition. The findings contain market features with varying effects on competition or the purposes of the Act, some small and others substantial. Ultimately that differentiation is reflected in the types of remedial action proposed where a feature which has a more limited adverse effect may attract more limited remedial action, relative to a feature with a more substantial effect that may require more substantial remedial action.

119. These findings are provisional based on the evidence collected and analysed to date by the Inquiry, including the oral evidence in the public and in-camera hearings. In setting

out the provisional findings, the Inquiry calls for comments and any further evidence by all parties affected by the findings, as well as those affected by the adverse effects on competition and participation. Such comments and evidence may be in dispute or support of the finding, including the effect of the conduct or market feature. The Inquiry will make any final findings only after reviewing the further comments and evidence put forward in the next phase of the Inquiry.

120. The legal framework for the Commission to act in respect of any findings of the market inquiry are set out in sections 43C, 43D and 43E of the Act. More specifically:

120.1. Section 43C of the Act (Matters to be decided at a market inquiry) subsection 3 states that where an adverse effect on competition is decided, then the Commission must determine the remedial action to take in terms of section 43D and whether to make recommendations to the Minister, regulatory authority or affected firm to take remedial action to remedy, mitigate or prevent the adverse effect. Subsection 4 requires that the Commission should seek to achieve as comprehensive a solution as reasonably practical.

120.2. Section 43D of the Act (Duty to remedy adverse effects on competition) subsection 1 states that the Commission may take remedial action to remedy, mitigate or prevent the adverse effect on competition, which may include a divestiture subject to a Tribunal order as per subsection (2). Subsection (3) requires that the decision on remedy must be consistent with the findings of the report and subsection (4)

requires that any remedial action must be reasonable and practical taking into account relevant factors listed under the subsection. These include the nature and extent of the adverse effect on competition, the remedial action and the relation between the two, the likely effect of the remedial action on competition and the availability of a less restrictive means to remedy the adverse effect on competition. In addition, the typical standards for competition law remedies are that they should have the ability to be monitored and enforced.

120.3. Section 43E of the Act (Outcomes of market inquiry) subsection 1 further states that report may include recommendations to the Minister for new or amended policy, legislation or regulations, as well as recommendations to other regulatory authorities. Subsection (3) further states that based on information obtained in an inquiry, the Commission may initiate a complaint against a respondent.

120.4. Section 43E(4) requires that before the completion of the inquiry, the Commission informs any person materially affected by any provisional finding, decision, remedial action or recommendation of the market inquiry and calls for comments from them.

121. The Inquiry sets out below the provisional findings remedial actions and recommendations to address the provisional findings, in line with the legal framework. These remedial actions and recommendations only apply in respect of South African operations for global platforms and domestic platforms. This includes the platform use by South African consumers and the contracts and treatment of business users on the platform,

122. In considering the proportionality of the interventions, the Inquiry has considered not only the degree of impact on competition and participation, but also the extent to which the relevant leading platforms are entrenched.

In addition, the Inquiry has also considered the approach and efficacy of remedial action imposed by other jurisdictions for similar findings and sometimes in respect of the same platforms. In many cases the Inquiry has set out a range of options that may achieve the purpose of ameliorating the feature that has an adverse effect on competition or SME/HDP participation.

123. In setting out the provisional remedial actions and recommendations, the Inquiry calls for comments by all parties affected by the proposals, as well as those affected by the adverse effects on competition and participation. Such comments may include perspectives on the need for remedial action at all, the proportionality of the proposed remedy to the identified market feature, the efficacy of the remedy proposed including the potential for bypass, the likelihood of unintended consequences and most importantly, alternative proposals for remedies to achieve the same purpose that may be evaluated by the Inquiry.

8.1 Provisional Leading platforms findings

124. *The Inquiry has identified the following platforms as leading platforms in their respective platform categories.*

124.1. *Apple App store and Google Play store in software app stores;*

124.2. *Takealot in eCommerce;*

124.3. *Property24 and Private Property in property classifieds, and Autotrader and Cars.co.za in automotive classifieds;*

124.4. *Booking.com & Airbnb in travel & accommodation;*

124.5. *Mr Delivery and UberEats in food delivery, and*

124.6. *Google search in general search (as an input to platform competition)*

125. In each platform category, leading platforms will be subject to remedial action or the

subject of recommendations. As noted above, whilst we have not used the term 'dominance' as that is unnecessary to establish under an inquiry, the leading platforms have the features of dominance given their position in their markets. The main distinction from other platform categories is that other categories are too immature to warrant remedial action yet against firms holding a lead. The Inquiry invites submissions on the identification of leading platforms, and whether leading platforms should be identified in other platform categories.

8.2 Provisional platform competition findings and recommendations

126. The Inquiry makes the following provisional findings in respect of features which impede, restrict or distort online intermediation platform competition in South Africa, and remedial actions to remedy these.

8.2.1 Google Search

127. The Inquiry makes the following provisional findings in respect of Google Search as an input to platform competition and its intermediation services that compete with intermediation platforms (in particular, findings from travel and accommodation platforms, eCommerce, online classifieds and food delivery).

- 127.1. *Google Search is a de facto monopolist in general search in SA;*
- 127.2. *The default arrangements of Google Search on both Android and iOS mobile devices has materially contributed to entrenching its status as a de facto monopoly;*
- 127.3. *The prominence of paid results (i.e. results based on payments or advertising results) at the top of the Google search results page (SERP) and their lack of sufficient distinction from organic results (i.e. natural search results based on relevance alone), along with its monopoly status,*

materially restricts intermediation platform competition across most categories as it elevates payment for customer acquisition which strongly favours leading platforms with deep pockets from capital-backing and established revenue streams;

- 127.4. *Intermediation platform competition is further impeded by Google Search self-preferencing its own specialist search intermediation platforms in shopping, travel and local search, which impedes competition from metasearch, comparator sites and online travel agencies;*
- 127.5. *The prominence of paid results and their lack of distinction to organic results, also permits Google to profiteer excessively from general search, which raises the costs of customer acquisition by intermediation platforms to the ultimate detriment of business users and consumers;*
- 127.6. *The Google Search SERP has incrementally become more of Google's own product and diminished variety of third-party results on the SERP, which has also pushed down organic results.*

128. The Inquiry is of the view that the problem of paid results on Google both raising platform marketing costs and distorting competition can be addressed by improving ad identification and/or elevating organic (or natural) search results. The question for the Inquiry is whether prominent ad identification alone will achieve this outcome as it may reduce the optimal number of ads and could change consumer click through behaviour to more favour organic results. However, the volume of google own content is another factor pushing down organic results. For this reason the Inquiry is of the provisional view that both may be required but welcome submissions on this issue. These remedial actions are likely to aid in reducing the efficacy and price of ads, lowering costs to platforms and aiding smaller platforms which benefit from elevating organic results too. Demotion though may also address the

oddity of bidding on your own and other platform names to appear first, which also raises costs. The Inquiry is of the view that this remedial action would also need to be applied to the Google specialist search properties which the consumer clicks through from the specialist search unit on the general search results page.

129. On self-preferencing, the Inquiry does not believe the EU Google Shopping remedy has been effective, nor does it address high marketing costs as there is still payment to appear at the top even if it now comes from other platforms rather than directly from businesses. For this reason, the Inquiry is inclined to recommend that competing platforms are allowed to replicate the units that Google creates, and then compete on the merits in organic search for ranking position rather than have it guaranteed for Google units. This is in line with some of the submissions from global OTAs. If there is to be a potential reduction in the efficacy and hence price of paid search, then the Inquiry believes the removal of minimum bids is also necessary to allow the other measures to see meaningful drops in bid prices and address costs where there are few bids.

130. The Inquiry is also considering recommendations on search engine choice which may seek to address the market power of Google search at source and give some chance to other search engines to grow and improve. The typical remedy proposed in other jurisdictions in this regard is that Google cannot pay for default on iOS devices,

nor require default status through the MADA or RSAs. This does have implication for device manufacturers as it may require the introduction of a search engine choice screen on setup. The Inquiry would like to engage device manufacturers to find out the implications of such an actionable remedy and if alternative remedies exist that may be equally effective.

131. The Inquiry therefore calls for input in respect of the following provisional remedies against Google Search within South Africa:

131.1. *Paid results (i.e. results in whole or part based on payments) integrated into the search results (including the general search page and specialist search properties) are required to be clearly distinguishable as advertising including (i) both prominent shading and border, (ii) a large, bold and unambiguous 'ADVERT' label in the middle above the impression;⁶ and/or*

131.2. *The first (or top) search results screen (including for the general search page and specialist search properties) may only have organic (or natural) search results and any paid results can only appear once the consumer has scrolled down (i.e. paid results may not appear until after the 'fold' on a desktop and the scroll point on a mobile search results page);*

131.3. *Google may not place its specialist search units in a guaranteed position on the search results page, nor favour them in any way in organic search results through intended or unintended algorithm bias;*

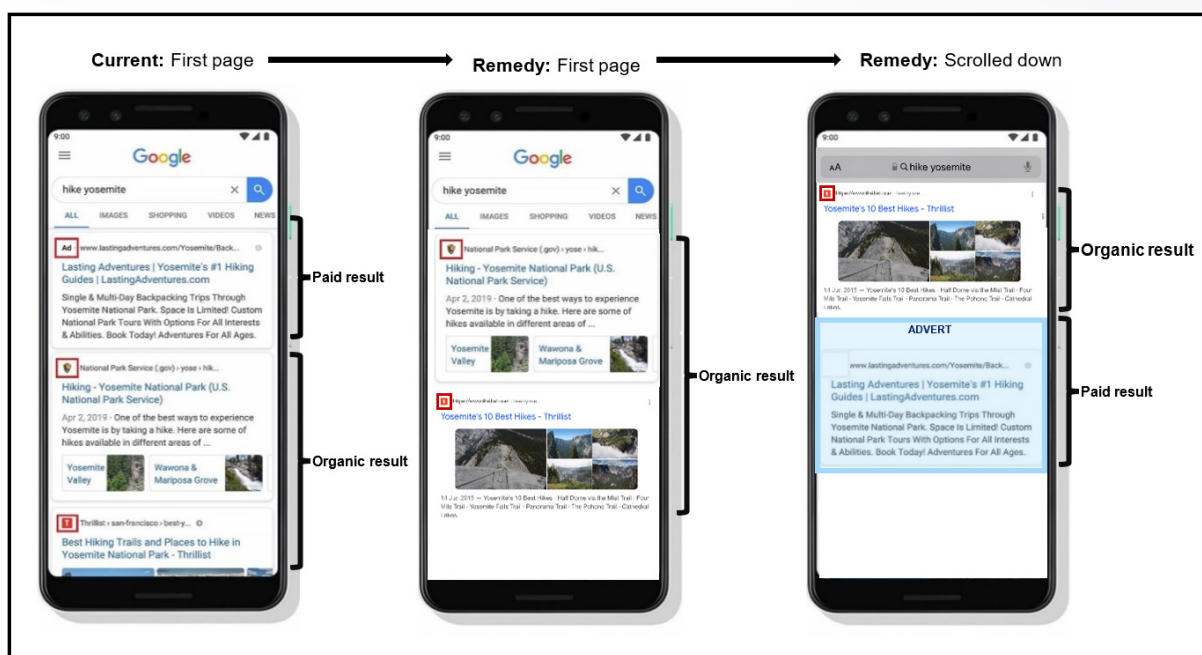
6 This is in line with previous guidance provided by the US Federal Trade Commission. See FTC, (2013). Sample Letter to General Purpose Search Engine. Available at: <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-consumer-protection-staff-updates-agencys-guidance-search-engine-industryon-need-distinguish/130625searchengineneletter.pdf> (Accessed on 26 April 2022). The FTC recommended visual cues that "in distinguishing any top ads or other advertising results integrated into the natural search results, search engines should use: (1) more prominent shading that has a clear outline; (2) a prominent border that distinctly sets off advertising from the natural search results; or (3) both prominent shading and a border". Furthermore, it also recommended that the Text Ads should have a text label that clearly and unambiguously marks paid search as adverts. For example, the text label should "(1) use language that explicitly and unambiguously conveys if a search result is advertising; (2) is large and visible enough for consumers to notice it; and (3) is located near the search result (or group of search results) that it qualifies and where consumers will see it."

131.4. Google must afford competing metasearch or specialist search (including travel, local and other), comparator sites (shopping or other) and online travel agents the same opportunity to provide content and visual rich impressions or units that it affords its own specialist shopping, travel and local search units;

131.5. Google may no longer impose minimum bid thresholds for paid results; and

131.6. An end to default arrangements for Google Search on iOS and Android devices sold in South Africa.

Figure: Illustration of proposed Google search remedy on a mobile device



8.2.2 Online Classifieds

132. The Inquiry makes the following provisional findings in respect of online classified platforms:

132.1. The lack of interoperability of the listing engine software of the leading property classifieds with third party platforms denies these platforms property listings, and in so doing impedes platform competition;

132.2. The levy of a R500 fee on listings sourced from third party listing engines, which may be the product of collusive conduct, inhibits estate agents switching, strengthening the harm from a lack of interoperability and

impeding entry of listing engine providers into property classifieds;

132.3. The shareholding of large estate agents in Private Property through the EAPPC, and the partnership with Rebosa, incentivises continued use of Private Property and impedes third party platforms from securing support and listings from the large agents;

132.4. Multi-year contracts concluded by Property24 incentivise continued use of Property24 and crowd out support for competing platforms.

133. The Inquiry is of the view that the ensuring interoperability is essential to ensure new platforms get access to listings and

is achievable since other listing engines have achieved the same. It should not be costly to implement and could be provided with a short period to make the required changes. The fact that one of the platforms has already indicated it is dropping the R500 fee for incoming listing feeds reflects an acknowledgement that this must go. In terms of the conflicts of interest, the Inquiry is of the provisional view that divestiture of the EAPPC seems necessary to remove the lock in and incentives to locate support in Private Property by the large agencies. The Inquiry does not believe that simply removing directors would achieve that purpose as it still does not change incentives but welcomes submissions in this regard. The Inquiry is also of the view that Rebosa's actions in driving support for a single platform constitutes a prohibited practice under section 4 and should be prosecuted should it not put in place guarantees that provide comfort that such conduct will cease. Prosecution and an administrative penalty on all its members collective revenue would otherwise create the correct incentives not to engage in the conduct.

134. The Inquiry therefore calls for inputs on the following provisional remedies in respect of leading online classified platforms (i.e. Property24, Private Property, Autotrader and Cars.co.za):

- 134.1. *The removal and prohibition on leading classified platforms charging a fee for an incoming listing feed from agents or dealers using third party listing engines, alternatively the Commission to investigate for potential collusive conduct;*
- 134.2. *Leading listing engine suppliers (i.e. including Propdata) or vertically integrated platforms (e.g. Property24 and Private Property) must interoperate with third party platforms to supply listings on request by business users for no fee;*

134.3. *Contracts with business users should permit termination on one month's notice and may not incentivise or bind the business user to contract for a multi-year period, including through the provision of additional benefits;*

134.4. *The divestiture of the large estate agents through the Estate Agents Property Portal Company from Private Property; and*

134.5. *Industry organisations such as Rebosa should refrain from coordinating commercial conduct by its members, such as the investment and/or partnering with particular intermediation platforms, which is likely to constitute prohibited conduct under section 4 of the Act, or alternatively the Commission to investigate such conduct in relation to the Rebosa partnership with Private Property under section 4.*

8.2.3 Food Delivery

135. The Inquiry makes the following provisional findings in respect of food delivery platforms:

- 135.1. *The contracting of restaurant chains by the leading platforms incentivises the chains to focus their support on these platforms, and to bring in their franchisee restaurants, by rewarding restaurant numbers and volumes. This results in a lack of support for competing national and local food delivery platforms by restaurant chains, impeding their ability to enter, expand and compete;*
- 135.2. *Either as a result of the contract incentives, or otherwise, numerous national restaurant chains actively prevent franchisees from contracting with competing national or local delivery platforms that are not approved, limiting them to the leading platforms only;*
- 135.3. *Price parity clauses in the existing contracts of UberEats may result in self-enforcement by restaurants which impede competition from other platforms on the basis of commission fees and lower menu prices.*

135.4. *Predatory conduct as a result of an aggressive promotion and delivery subsidisation strategy has driven out local delivery platforms in areas where they compete. This is in part due to predatory conduct by leading platforms, whereby they fail to recoup their variable costs (including delivery, transactional, platform funded discounts and food losses) in respect of local area markets or specific restaurant chains, has materially contributed to the exit of competitors and inhibits new entry and expansion. However, it is also a direct result of extracting more from business users to subsidise consumers.*

136. Whilst the Inquiry cannot force restaurant chains to deal with specific challenger delivery platforms, one can at least remove the barriers to do so. The first is the contracting and commission negotiation incentives which see chains trying to channel volumes through the main two platforms, starving even Bolt Food of support. The real difficulty it seems is that there may be no explicit contractual provision on volumes but these discussions enter into negotiations, making this extremely difficult to monitor and enforce. One alternative may be that food delivery platforms need to contract each franchisee store separately, but this may also lead to inefficiencies. The Inquiry would welcome suggestions as to alternatives that are more enforceable. One additional remedy, as well as an alternative, is to remove restrictions on the choice of platform for franchisees which is unlikely to degrade the brand as some national chains already allow this, and ultimately the franchisee has the most stake in protecting the brand in their local area. This would be imposing on business users rather than the platform directly, which is to be considered.

137. In terms of price parity, the Inquiry is of the view that even if this is not enforced, it needs to be expressly removed from contracts to

prevent self-enforcement and should not form part of leading platform contracts in the future. Where predation exists, it seems that the main option is to engage in prosecution unless there are remedial actions that can guarantee that it does not occur in future. Prosecution would result in an administrative penalty that would discourage future predation, especially as a repeat offence may be subject to a maximum penalty of 25%.

138. Finally in respect of the business model competition with local delivery, the Inquiry believes the root problem is the lack of transparency to consumers around the surcharges on the menu pricing and the share that delivery platforms take. This is because the national platforms rely on a consumer framing bias whereby promotions are considered to hold more value and the consumer is ignorant to the fact that the menu surcharge is ultimately paying for that, and hence they should be considering the total cost including menu surcharge. If consumers did so, they may find that local delivery platforms are equally cost-effective. Consumers may also be less inclined to support a delivery platform which is exploiting their favourite local restaurant with high commission fees if they were aware, which would provide a basis for local delivery platforms to compete where they charge lower commissions. Hence some transparency on the split that the platform takes from the meal price would be beneficial to competition.

139. For these reasons, the Inquiry calls for submissions on the following provisional remedial action to address food delivery platform competition issues by leading platforms (i.e. Mr Delivery and Uber Eats):

139.1. *Leading food delivery platforms may not contract with national restaurant chains in a manner that incentivises them to limit multi-homing and direct restaurant*

numbers and volumes to the leading delivery platforms only;

- 139.2. *International and national restaurant chains may not restrict their franchisees' choice of local food delivery platform, and must communicate the lack of restrictions to franchisees;*
- 139.3. *Removal of price parity clauses from contracts and communication to all restaurants that they are free to price their menu differently across delivery platforms and their own direct channels;*
- 139.4. *Remedial action to end predatory conduct at a local / regional area level or individual restaurant chain on a temporary or ongoing basis, or alternative the Commission to consider investigation and prosecution of predatory conduct as a suitable deterrent; and*
- 139.5. *Greater transparency to the consumer of either the menu surcharge for each restaurant on the platform relative to their take-away or dine-in menu, and/or the share of meal payment accruing to the delivery platform as opposed to the restaurant.*

8.2.4 Travel and Accommodation

- 140. The Inquiry makes the following provisional findings in respect of leading travel & accommodation platforms (i.e. Booking.com):
 - 140.1. *Wide price parity clauses, including narrow parity provisions, applied by leading platforms impede platform competition through lower commissions and prices, and impedes potential competition from accommodation and travel provider's own direct online booking channels on price, increasing dependency too;*
 - 140.2. *Loyalty schemes of leading platforms leverage important visibility on their platforms to extract discounts from accommodation and travel providers to fund the loyalty scheme, impeding competition from smaller platforms that cannot replicate the same leverage;*

141. The obvious remedy to parity clauses is simply to require their removal but also to ensure that the removal occurs in the contract and that this is clearly communicated to all business users. The latter seems essential as many hotels in the UK were not aware of the change as no communication took place, resulting in continued self-enforcement. Similarly, it seems the obvious remedy to loyalty schemes is to prevent the exclusivity in respect of certain business users as this removes the ability to drive funding from the business users based on preferential visibility, rather than the platform itself. The question for the Inquiry is whether some self-funding restrictions are also required to be certain, and how that may be monitored if it was imposed.

142. For this reason, the Inquiry calls for submissions in respect of the following provisional remedies and recommendations for travel and accommodation platforms:

- 142.1. *The removal and prohibition on price parity clauses, both wide (as applied to competing platforms) and narrow (as applied to the business user's own direct online channel) from contracts with business users, and communication to that effect; and*
- 142.2. *Prohibition on exclusionary loyalty scheme design, including schemes that include only a subset of business users, and which are part or whole funded by business user funded discounts. Loyalty schemes must include all business users and be fully funded by the platform;*

8.2.5 eCommerce

143. The Inquiry makes the following provisional findings in respect of eCommerce platforms:

- 143.1. *Narrow price parity clauses by the leading platform impedes potential competition from the marketplace seller's own direct channel on price, increasing dependency too, and disincentivises sellers from*

price differentiation across eCommerce platforms to the detriment of platform competition;

143.2. *The widespread but declining subsidisation of products through pricing below variable costs has distorted competition with more capital-constrained platforms and is no longer justified for start-up reasons.*

144. As outlined above, the obvious remedy in respect of price parity clauses is to remove them from contracts and communicate that to business users. The Inquiry also considers that the ongoing predatory conduct on certain product lines does need to stop and would recommend prosecution if no remedial actions are identified that can guarantee the end to such conduct, as an administrative penalty would otherwise create the correct incentives not to engage in future.

145. For this reason, the Inquiry calls for submissions on the following provisional remedies and recommendations in respect of leading eCommerce platforms (i.e. Takealot):

145.1. *The removal and prohibition on price parity clauses, both wide (as applied to competing platforms) and narrow (as applied to the business user's own direct online channel) from contracts with business users, and communication to that effect;*

145.2. *Remedial action to end predatory conduct at a product level on a temporary or ongoing basis, or alternatively the Commission to consider investigation and prosecution of predatory conduct as a suitable deterrent.*

8.2.6 Software application stores

146. The Inquiry makes the following provisional findings in respect of software app store platforms:

146.1. *Complete exclusion of competing software app stores and side-loading by*

Apple impedes effective competition for commission fees;

146.2. *The default arrangements of Google Play on Android devices have impeded competition from other android software app stores, and entrenched Google Play as the near monopoly on android devices;*

146.3. *The recently introduced Google Play Points loyalty scheme leverages visibility and customer acquisition on the Google Play store to extract discounts from app developers to fund the loyalty scheme, which cannot be matched by competing stores lacking the leverage of Google Play;*

146.4. *A lack of competition has resulted in excessive commission fees to the detriment of South African app developers, publishers and consumers of apps acquired through the SA storefront requiring in-app payments.*

147. The Inquiry has observed that providing for competing in-app payment mechanisms will not solve the essential concern of high commission fees as other fees are levied. Furthermore, given that Apple will not allow competition and refuses to compromise on security, and Google Play has become entrenched, there needs to be a remedy that either regulates these platforms or successfully takes transactions off the stores altogether so they cannot be monitored and taxed. For this reason, the Inquiry is of the view that either there is price regulation or a complete end to anti-steering provisions which were recommended by the court in the *Epic-Apple* case. The Inquiry invites submissions as to whether anti-steering provisions are adequate as a competition measure to address high commission fees, or whether the regulation of fees is also necessary. The possibility of regulated commission fees is included in the proposed remedial actions for business user exploitation in the next sub-section.

148. In terms of an end to anti-steering provisions, the Inquiry expects that this would involve the

ability for apps to communicate an alternative external payment mechanism and provide a clickable link to make a payment. In essence this is not dissimilar to providing reader apps with the ability to take consumers to their website to subscribe which has been announced by Apple following remedial action in Japan and so should be possible for Apple to extend and Google to follow. This is different to in-app payment mechanisms as the software application stores are unable to monitor transactions concluded outside of the application store and hence will be unable to tax revenue derived in this manner. The Inquiry would still expect the software application stores to generate revenues as there will be a greater ease of transacting through the in-app payment mechanism of the store which will remain attractive to some consumers who perceive the real value offered.

149. In terms of anti-steering, this would provide consumers with an alternative that may involve a lower price but more hassle nonetheless, and therefore may still see some consumers transacting through the software application store in-app payment mechanism where they perceive real additional value. Apps may also not discount fully the commission fee in the alternative website price, as the in-app payment ease also assists in consumer acquisition.

150. The Inquiry would like to hear the views of different stakeholders on this conclusion and if alternatives are proposed, how they will actually work effectively given the conduct of by-passing attempts to bring in in-app payment competition elsewhere.

151. The Inquiry is also considering whether the additional measure of removing the default status of Google Play on Android phones sold into South Africa may be considered a step in the right direction to start breaking the entrenched position. However, the

Inquiry needs to get input on whether it is both feasible and desirable for the Android device manufacturers given the capabilities that may need to be replaced. Choice by the device manufacturer may count less than consumer choice, but that may be no choice at all if Google Play is required for the device to operate.

152. The Inquiry therefore calls for submissions in respect of the following provisional remedies for leading software application stores:

152.1. *An end to anti-steering provisions for all apps, enabling them to communicate an alternative external payment mechanism along with a clickable link to that external payment option;*

152.2. *Prohibition on exclusionary loyalty scheme design, including schemes that include only a subset of business users, and which are part or whole funded by business user funded discounts. Loyalty schemes should include all business users and be fully funded by the platform; and*

152.3. *An end to default arrangements for Google Play on Android devices.*

8.3 Provisional business user competition findings and recommendations

153. The Inquiry makes the following findings in respect of features which impede, restrict or distort business user competition on online intermediation platform competition in South Africa, including the participation of SMEs or HDPs, or where the lack of sufficient platform competition enables the leading platforms to exploit those business users.

8.3.1 Cross-cutting finding

154. The Inquiry makes the following cross-cutting finding in respect of leading platforms in all categories:

154.1. *The lack of transparency over pay-for-position or sponsored ranking distorts consumer choice and ultimately promotes excessive pricing and sale of sponsored ranking, which in turn distorts business user competition as larger users outspend smaller ones. The lack of transparency includes the lack of adequate distinction such as a small 'Ad' in the corner, or the use of terms that consumers would not associate with adverts (such as 'featured', 'premium', 'preferred') and which may actively mislead consumers.*

The Inquiry is of the view that the same remedial considerations that applied to Google Search should also be considered at a leading intermediation platform level. In essence, the prominent labelling of adverts, including an end to misleading labels, is probably essential and the question is whether that alone will solve the problem of both misleading practices but also the incentive to excessively sell visibility. This is applicable to all leading platforms as those that currently do not exploit visibility to an excessive extent would likely do so in future. In addition, the Inquiry believes it is an imperative that the online intermediation platform industry becomes a voluntary member of the Advertising Code of Conduct with an appendix dedicated to its practices in order to draw in all platforms to good practices and provide the basis for an ongoing review of advertising practices as they evolve.

155. The Inquiry therefore calls for input in respect of the following provisional remedies against all leading intermediation platforms (i.e. Apple App store, Google Play store, Takealot, Property24, Private Property, Autotrader, Cars.co.za, Booking.com, Airbnb, Mr Delivery and Uber Eats):

155.1. *Paid results (i.e. results in whole or part based on payments including increased commission fees) integrated into the search results are required to be clearly distinguishable as advertising including (i) both prominent shading and border, (ii) a large, bold and unambiguous 'ADVERT' label in the middle above the impression; and/or*

155.2. *The top (or first) search results screen may only have organic (or natural) search results and any paid results can only appear once the consumer has scrolled down (i.e. paid results may not appear until after the 'fold' on a desktop and the scroll point on a mobile search results page); and*

155.3. *Register with the Advertising Regulatory Board (ARB) to subject their practices to the current Code of Advertising and develop an online intermediation platform specific Annexure of good practices.*

8.3.2 Online Classifieds

156. The Inquiry makes the following finding in respect of online classified platforms:

156.1. *Extreme listing and promotional fee discrimination of up to 300% results in excessive prices and which impedes effective participation by SMEs and HDPs on the platform, restricts them from affording equal visibility on the platform, and more generally impedes participation in the industry through artificially increasing their marketing costs relative to larger rivals.*

156.2. *Excessive pricing and sale of sponsored ranking which distorts business user competition as larger agents or dealers outspend smaller ones.*

157. The Inquiry is of the provisional view that the cross-cutting remedy proposed in respect of the sale of visibility is considered as addressing the second issue, and is not repeated here. In terms of the extreme price discrimination, the Inquiry has considered

whether to prevent discrimination altogether and is currently of the view that this may be disproportionate. However, we welcome inputs in this respect. Rather, the Inquiry is currently of the view that the extent of discrimination needs to be limited and the provisional view is that a limit within the range of 10-15% would allow for differences in relative value whilst not harming SMEs and HDPs, and is more in the range of some travel & accommodation platforms and traditional industries. The Inquiry is also currently minded to consider measuring differences based on the average business user in the lowest and highest volume categories such that there is also some scope to differentiate at both ends. The Inquiry is also of the view that the platforms should implement and stick to a standard rate card rather than engage in bespoke negotiations with large business users as those bespoke negotiations not only exacerbate the extent of discrimination, but also reduce the ability to monitor and enforce remedial actions. However, the Inquiry welcomes submissions on the extent of discrimination that would not result in harm to SMEs and HDPs, and how any use of the average would be desirable, measurable and enforceable. Any discrimination limits would apply to both listing and promotional fees.

158. The Inquiry therefore calls on submissions in respect of the following provisional remedy on leading online classified platforms (i.e. Propert24, Private Property, Autotrader and Cars.co.za):

158.1. *Implement a standardised rate card that complies with a maximum cap on fee differentiation between the average low volume user category and the average high volume user categories, including both listing and promotional fees.*

8.3.3 Food delivery

159. The Inquiry makes the following finding in respect of food delivery platforms:

159.1. *Extreme commission fee discrimination of up to 60% higher for independent restaurants distorts relative pricing and restaurant competition on food delivery platforms as restaurants seek to pass on commission fees in whole or part to consumers through higher menu prices;*

159.2. *Greater platform promotional spend on restaurant chains relative to independent restaurants, and the ability to reduce commission fees in exchange for marketing commitments, similarly distorts competition on the platform through distorting relative pricing and visibility.*

160. The Inquiry has the same view on potential remedies to discrimination in food delivery as in online classifieds, namely a maximum cap on the extent of average discrimination between the smallest independent restaurants and largest restaurant chains. As with online classified platforms, the Inquiry is of the view that this needs to be implemented through a standardised rate card in order to limit bespoke deals that exacerbate discrimination, and which make monitoring and enforcement difficult. In respect of promotional spend, the Inquiry would like to ensure a more equitable spend across the board but realises this may be difficult to actually achieve as it partly depends on consumer takeup of promotions, and even more difficult to monitor and enforce. The Inquiry is therefore inclined to focus on the main source of differentiation, namely that restaurant chains are given the opportunity to exchange commission fees for marketing commitments. This is the source of much of those restaurant chain's promotional spend and so addressing this imbalance may be the most viable approach. However, the Inquiry is interested to hear from stakeholders whether this is sufficient to address the imbalance.

161. The Inquiry calls for submissions in respect of the following proposed remedies for leading food delivery platforms (Mr Delivery and UberEats):

161.1. *Implement a standardised rate card that complies with a maximum cap on fee differentiation between the average low volume user category and the average high volume user categories, including both listing and promotional fees; and*

161.2. *A standardised and equitably rate card offer on the exchange of commission fees for marketing commitments across all restaurants on the platform.*

8.3.4 Travel and accommodation

162. The Inquiry makes the following finding in respect of travel and accommodation platforms:

162.1. *Excessive pricing and sale of sponsored ranking which distorts business user competition as larger accommodation or travel providers outspend smaller ones to achieve more prominent visibility and sales.*

162.2. *Discrimination on commission fees in favour of large hotel chains distorts competition by enabling the large chains to effectively get enhanced visibility for the same standard commission rate paid by smaller hotel groups and individual hotels.*

162.3. *The contractual clause in car rental platforms which allows it or the rental car company to increase prices for last minute bookings may promote collusive outcomes;*

162.4. *Asymmetric payment terms that require the platform to be paid quicker than the business user.*

162.5. *The highest bidder (not necessarily the cheapest) gets the most visible display on MSE's for a given room.*

163. There is a general remedy to address the excessive sale of visibility outlined above and that would seem sufficient to address

the issue in travel and accommodation too. Similarly, the proposal on a maximum cap on discrimination outlined above for food delivery and classifieds would apply in this case too. In respect of the remaining issues, it seems that adjusting or removing any offending clauses from contracts is the only effective remedy. This includes instances where there is claimed non-enforcement which is impossible to monitor and does not address self-compliance by car rental companies or enforcement in future. The car rental platform clause is included despite not identifying them as leading platforms given that it may constitute collusive conduct. Similarly, for metasearch engines the issue of not displaying the cheapest prominently is an important issue and therefore warrants being addressed even if there is no clear leading platform currently but rather a number of platforms that collectively are important to consumers given the level of adoption of metasearch sites.

164. The Inquiry calls for submissions in respect of the following provisional remedies in respect of leading travel and accommodation platforms (Booking.com):

164.1. *Implement a standardised rate card that complies with a maximum cap on fee differentiation between the average low volume user category and the average high volume user categories, including both listing and promotional fees;*

164.2. *The removal of the offending clause on higher last minute prices from contracts with car rental companies, alternatively the Commission to investigate for potential collusive conduct;*

164.3. *Symmetric payment terms for bookings where the option exists for payment through the platform or the hotel; and*

164.4. *Travel metasearch engines should highlight prominently the cheapest option to consumers even if it does not appear first on the ranking.*

8.3.5 eCommerce

165. The Inquiry makes the following finding in respect of eCommerce platforms:

165.1. A range of conduct by Takealot which distorts competition on the marketplace in favour of Takealot Retail, including:

165.1.1. Product gating by Takealot which is not at the supplier's behest, which removes direct sellers on the platform, enabling potentially higher prices or fewer, less generous, promotions to the detriment of sellers and consumers;

165.1.2. The use of seller data by Takealot buyers to inform their own retail offering on the marketplace, expropriates and undermines innovation and risk-taking by marketplace sellers to the detriment of competition and consumer welfare.

165.1.3. The pressuring of suppliers where Takealot is outcompeted, resulting in the raising of price by suppliers or by sellers threatened with non-supply, which distorts competition and raises prices to consumers.

165.1.4. Takealot retail benefits from the use of unsold promotional display inventory, and has a higher acceptance rate for applications to run promotions on the platform;

165.1.5. The Buy Box algorithm favours Takealot as it displays the cheapest in-stock, not cheapest overall, and almost all Takealot Retail is in its warehouse and therefore in-stock, unlike marketplace sellers that have more restricted warehouse space.

165.1.6. Marketplace sellers are not permitted to offer 'unboxed deals' which permit Takealot Retail to clear returned stock and recoup a higher portion of the value.

165.2. Takealot raises marketplace seller rival's costs through the lack of a speedy dispute resolution process in cases where sellers

incur the ongoing costs from a lack of resolution.

166. On the issue of product gating, the Inquiry accepts that some suppliers may have good reason to restrict the seller channels but this should be at their request, and not a unilateral decision by the platform which is unlikely to have the same efficiency rationale. The main issue for the Inquiry is how to monitor this, and currently we believe a reporting requirement to the Commission where this is concluded with a letter from the supplier may be one means to overcome the enforcement problem.

167. On the remaining issues of retail buyer conduct and self-preferencing, the Inquiry is currently of the view that an internal organizational separation is important if self-preferencing and the worst excesses of retail buyers is to be reined in. Internal separation enables the development of a standard interface with retail and marketplace sellers without favouring one by blurring the lines. The list of remedial actions for that separated marketplace operation are small individually and not complex to implement, but collectively should reduce the distortion to competition without prejudicing the platform itself and permit the development of operating procedures to ensure this happens. Similarly, rather than necessarily interfering with the specific terms & conditions, a speedy dispute resolution process is considered important to ensure sellers are not left bearing costs. Where the platform is unable to resolve the dispute timeously, then marketplace sellers should not be left bearing the costs and should be compensated in the interim until there is resolution. The requirement to make the marketplace seller neutral on costs if it is not resolved within the timeframes provides the necessary incentives to undertake a speedy resolution. On retail buyer access to marketplace seller data, an alternative to

prohibiting such access is to ensure that any data which is shared, is equally shared with all marketplace participants (including then data on the own retail product performance).

168. The Inquiry calls for submissions in respect of the following provisional remedies in respect of leading eCommerce platforms (Takealot):

168.1. *Prohibition on product gating except at the behest of the supplier, which must not be actively solicited, with reporting requirements to the Commission where exclusivity occurs;*

168.2. *Internal separation of the retail division from the operation of the marketplace, with own retail treated on an arms-length basis including in respect of the following;*

168.2.1. *A prohibition on retail buyers accessing marketplace seller data, or alternatively providing equal access to data for marketplace sellers;*

168.2.2. *Fair and non-discriminatory treatment in promotion applications;*

168.2.3. *Equality in the treatment of returns and any resale of returns on the marketplace (e.g. through unboxed deals);*

168.2.4. *Removal of algorithm biases, including that of the Buy Box (i.e. to also highlight the cheapest option overall where it is not the Buy Box option);*

168.2.5. *Investigation of complaints in respect of own retail buyer conduct including that in respect of common suppliers;*

168.2.6. *No preferential access to unsold display advertising inventory;*

168.2.7. *Implement a speedy dispute resolution process including a provision to compensate marketplace sellers in the interim where the dispute is not resolved within the timeframes.*

8.3.6 Software application stores

169. The Inquiry makes the following finding in respect of software application platforms:

169.1. *Inadequate software app store competition results in excessive commission fees, reducing domestic app developer incentives and higher pricing of global apps to South African consumers.*

169.2. *Side-loading warnings or restrictions, anti-steering provisions and the lack of in-app payment alternatives prevent business users from bypassing the excessive fees.*

169.3. *A lack of SA-specific curation and the sale of visibility hinders the discoverability of SA apps on the software app stores*

170. The issue of commission fees is potentially addressed by the proposal to prohibit anti-steering provisions on the platforms if this is effective in bringing competition to bear on commission fees, resulting in their reduction to competitive levels. However, the Inquiry is uncertain at this stage if those will be sufficient, and therefore has made a provisional proposal to remedy the high commission fees through a maximum cap. In the event that a regulated commission fee is required, the Inquiry would like to hear what may be considered reasonable within the context of excessive pricing provisions. The Inquiry's preliminary view is that it would be at least as low as 10% which reflects a fee that Google is willing to accept as fair value for ebooks and music streaming to recover its costs over and above transaction processing. The Inquiry is of the view that the remedy in respect of prohibiting anti-steering would also address the side-loading issue and so we do not take that further in the proposed remedial action.

171. The remaining issue is the lack of SA-specific curation and the difficulties of SA apps getting visibility on the SA storefront. The Inquiry is of the view that in addition to SA-specific curation, promotional credits (applicable on any storefront) are low cost but likely effective interventions to improve the discoverability of SA apps on the local storefront and improve the ability to

compete with global developers locally and globally on other storefronts. The precise level of credits needs to be determined such that it is not trivial, and the Inquiry welcomes submissions in this regard as to what is meaningful to ensure discoverability. Investments in local curation and promotional credits are also proportionate to the value that these software app stores derive from the SA market.

172. The Inquiry welcomes stakeholder submissions on the following proposed remedial action for software application stores:

172.1. *The regulation of software app store commission fees for the South African storefront sales at some prescribed maximum;*

172.2. *A requirement to provide SA-specific curation of local apps and discoverability on that basis; and*

172.3. *Free promotional credits for SA apps to be spent on local or foreign storefronts.*

8.4 Provisional findings and recommendations to government

8.4.1 Regulatory oversight of future conduct

173. The Inquiry recognises that three areas of change may necessitate applying certain of the rules above to platforms in the future that they are not applied to now. This includes a) platform categories which the conduct has not emerged to a critical extent currently, such as visibility sales or price discrimination, but may potentially emerge in future, b) albeit unlikely given the competitive dynamics, it is possible that in one or more of the current platform categories a new leading platform may emerge especially if the remedial action is effective, and c) the platform categories identified as immature currently may develop in importance and there may be a need for the leading platforms in those categories

to be prevented from engaging in similar conduct.

174. For these reasons, the Inquiry is considering whether some form of guidelines or regulations are required to ensure consistency in remedial action amongst leading platforms, and to prevent the redundancy of repeating this type of inquiry in the future. If there were to be any such guidance or regulations, it would have to focus on the conduct that is most common across the leading intermediation platforms that mature, and which is on balance of probabilities to be harmful to competition at either level given the lessons from this Inquiry. The Inquiry recognises that the problem with guidelines is that it may not be easy to enforce in the event of non-compliance as it may require prosecution under the abuse of dominance provisions rather than the test utilised in an inquiry. However, the potential challenge with regulations may be under which legislation they fall. The Inquiry is also aware of the issues being raised in respect of the Digital Markets Act in the EU, and so some of the guidance or regulations would have to be at a principle level rather than platform-specific.

175. The Inquiry therefore welcomes submissions in respect of the following proposed recommendation in respect of capturing future conduct in online intermediation platforms:

175.1. *The issuing of Guidelines by the Commission or Section 78 regulations by the Minister or new regulations in terms of other enabling legislation to prohibit certain conduct by leading platforms in online intermediation platform markets, and to permit the ongoing identification and review of leading platforms. In particular, those guidelines or regulations should cover the following aspects:*

175.1.1. A process for the identification and review of leading platform status

175.1.2. Prohibition of the following conduct which has an adverse effect on intermediation platform competition

175.1.2.1. The use of price parity clauses (wide or narrow) or achievement of the same outcome through price quality factors in the SERP ranking algorithm;

175.1.2.2. Restrictions or frictions on multi-homing by business users including exclusivity arrangements, interoperability limitations and multi-year contracting;

175.1.2.3. Loyalty schemes that leverage the leading position of the platform, including visibility on the platform, to get business users to fund the scheme in whole or part.

175.1.3. Prohibition of the following conduct which distorts competition amongst business users and/or results in their exploitation

175.1.3.1. Self-preferencing conduct of any sort;

175.1.3.2. Discrimination in listing, commission or promotional fees against SMEs/HDPs beyond a maximum cap;

175.1.3.3. A lack of adequate transparency over promoted listings as advertising;

175.1.3.4. The excessive sale of visibility through demoting organic results;

175.1.3.5. Permitting algorithm biases that favour one group or another.

8.4.2 Competitive distortions from tax differentials

176. The Inquiry makes the following finding in respect of corporate tax differentials:

176.1. Substantially lower corporate tax rates for global platforms distorts competition and

disadvantages South African platforms where they compete with global platforms.

177. The Inquiry has identified specifically in the context of travel and accommodation that differences in corporate tax rates, and the fact that commission income may be taxed abroad, is capable of distorting competition amongst platforms, and in particular disadvantages South African platforms. There are global initiatives considering how to more equitably tax global technology firms based on income source, which therefore may also reduce the inequality of treatment and the potential for differences to distort competition. However, taxation policy is the preserve of National Treasury and in exercising its decisions on policy will also consider other factors in its design and not just competition issues. For this reason, the Inquiry is of the view that it is appropriate to request that National Treasury consider the competition aspect in examining digital market taxation policies, but not to recommend that changes need to happen.

178. For this reason, the Inquiry calls for submissions in respect of the following provisional recommendation on digital taxation distortions:

178.1. National Treasury to consider the competition distorting effects on digital markets of differing tax rates as one factor in determining how to tax digital content and firms, along with options for more equitable treatment such as a withholding tax.

8.5 Provisional HDP platform and business user findings and recommendations

179. The Inquiry makes the following provisional findings in respect of market features which impede the participation of HDPs at the online platform and business user levels.

8.5.1 Platform level

180. The Inquiry makes the following finding in respect of HDP platforms:

180.1. *The lack of wealth and asset accumulation, along with exclusion from business networks, places HDP entrepreneurs in a materially disadvantaged position to raise pre-seed and seed funding for their startups.*

180.2. *A lack of transformation of the SA Venture Capital industry alongside the lack of mandates to support HDP startups, leaves the HDP entrepreneurs largely excluded from available post-revenue series A, B, C funding.*

180.3. *Government funding aside from that arranged as part of the SA SME Fund, is not focused on digital markets or startups.*

181. Digital markets are the fastest growing segment of economy, and there is a real risk that a failure to ensure greater participation by HDPs will result in growing inequality in future. It is therefore imperative that remedial action is taken now to address the funding gaps that exist for HDPs. The Inquiry is of the view that government should make HDP entrepreneurial funding available that is ring-fenced for digital markets, even if this is a portion of current entrepreneurial funding, as the digital market area is already identified as a priority for government. For the funding allocated, the Inquiry is of the provisional view that the mandate model is preferred because not only does government lack the VC skills, but using a mandate model will actually assist in developing the VC industry domestically which may crowd in other private funding, resulting in spillover effects. The mandate may also be a means to incentivise the transformation of the VC industry which is likely to benefit the discovery and funding of HDP entrepreneurs outside of the mandated funds. The Inquiry is of the view that this should not be the role

of government alone, and large institutional investors, including pension funds and Development Funding Institutions (DFIs), have a societal obligation to do the same given the accumulated disadvantages faced by HDP entrepreneurs and the potential for greater growth if this talent can be harnessed. The question is how this obligation should be translated into tangible commitments that do not undermine other objectives and the Inquiry welcomes submissions in this regard.

182. As such, the Inquiry makes the following provisional recommendations in respect of HDP platform support:

182.1. *Government to make funding available to support HDP entrepreneurs in digital markets, either directly or through DFIs, using the fund mandate model whereby venture capital firms are given a mandate to disburse the funds only to HDP entrepreneurs and with a proportion allocated to seed funding (or incubators and accelerators), and to achieve certain transformation targets of their own.*

182.2. *Commitments from large financial institutions, including DFIs, and large tech companies and corporates to support HDP intermediation platforms either directly or through VC firms with the imposition of mandates on a portion of venture capital funding and demand transformation of the VC funds.*

8.5.2 Business user level

183. The Inquiry makes the following finding in respect of HDP business users:

183.1. *HDP business users are typically SMEs too as newer entrants, and so factors which inhibit SME participation similarly impede HDPs;*

183.2. *The spatial location of discretionary income and tourism facilities in historically white middle class areas itself excludes HDPs*

from vast parts of the online marketplaces as business users

183.3. *A lack of any specific support for HDP business users to overcome the disadvantages faced on the majority of platforms, with only some isolated instance of limited support.*

184. Leading platforms are effectively gatekeepers to most online consumers in each intermediation category, and therefore the Inquiry believes that they attract some obligation to off-set the cumulative disadvantages faced by HDP businesses. The remedial action taken by global platforms in similar contexts that aim to reduce the costs of getting on the platform and marketing their presence in a manner that imposes limited costs on the platforms provides a possible template for SA obligations. Within those remedial actions, the option of identification and discoverability as HDP businesses enables consumers wanting to support HDP firms to do so, but authorisation in cases where business users fear adverse discrimination.

185. As such, the Inquiry makes the following provisional recommendations in respect of HDP business user support:

185.1. *Leading platforms across all categories are required to institute an HDP programme targeted at overcoming barriers to participation, that should include the following minimum components:*

- 185.1.1. *Personalised assistance with platform onboarding;*
- 185.1.2. *Waiver of onboarding costs or fees;*
- 185.1.3. *Fees that are no higher than the best placed business users;*
- 185.1.4. *Credits for platform promotional activity; and*
- 185.1.5. *Identification and discoverability on the platform by HDP designation if authorised by the HDP business user.*

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