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ONLINE INTERMEDIATION MARKET INQUIRY

MAIN PROVISIONAL REPORT

JULY 2022

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OIPMI PROVISIONAL REPORT

CHAPTER 1

INTRODUCTION

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1. INITIATION OF THE ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY

1. The Competition Commission of South Africa ("Commission") formally initiated its Online Intermediation Platforms Market Inquiry ("Online Platforms Market Inquiry", "the Inquiry" or "OIPMI") on 19 May 2021. The Inquiry was initiated in terms of Section 43B(1)(a) of the Competition Act 89 of 1998 (as amended) ("the Act") following market investigations from major international jurisdictions with common global players and several complaints received by the Commission. As a consequence, the Commission has reason to believe that there are market features that may impede, distort, or restrict competition amongst the platforms themselves, and which undermine the purposes of the Act. This includes features that negatively impact the participation of small and medium enterprises ("SMEs") and historically disadvantaged persons ("HDPs").¹

2. THE SCOPE OF THE INQUIRY

2. As set out in Inquiry's Gazetted Terms of Reference ("ToR") published on 9 April 2021 in accordance with section 43B(3A) (4)(a) of the Act. The ToR defines Online Intermediation Platforms as platforms that facilitate transactions between business users² and consumers (or so-called "B2C" platforms) for the sale of goods, services, and software, regardless of whether the transactions are concluded on the platform itself or on the online site of the business user or offline. The ToR also sets out the scope of the Inquiry which includes the following non-exhaustive platform types:
 - 2.1. eCommerce marketplaces;
 - 2.2. Online classifieds;
 - 2.3. Travel aggregators and metasearch;
 - 2.4. Short term accommodation,
 - 2.5. Food delivery,
 - 2.6. Application stores and
 - 2.7. Other platforms identified in the course of the Inquiry.
3. As set out in the ToRs, the scope of the inquiry specifically excludes e-hailing services which were the subject of a previous inquiry, and which intermediate between consumers and gig economy workers rather than business users. Other pure gig economy platforms, intermediating a customer with an individual service provider, are also excluded from the

¹ OIPMI Terms of Reference, Government Gazette No. 44432, 09 April 2021

² "Business Users" are defined as businesses that sell goods, services and/ or software through an online intermediation platform that facilitates transactions between it (the business user) and consumers

ambit of the inquiry. The inquiry does not focus on search and social media more broadly, along with the broader digital advertising ecosystem, except insofar as a) such digital advertising may pose a barrier to competing platforms expanding or business users from participating in the online economy, or b) the extent to which those platforms also offer online intermediation services themselves (such as B2C communication services). The inquiry also does not focus on Fintech platforms except insofar as the role of payment services in facilitating transactions on the online intermediation platforms. Whilst the Inquiry considered how consumers and business data advantages may shape competition in the online landscape, the inquiry specifically excluded broader data privacy issues as part of its scope.

4. The Inquiry issued a Clarification notice on the Scope of the Inquiry following queries from certain platforms contacted by the Inquiry as to whether they fell within the scope. The Clarification Note confirmed that (i) foreign-based online intermediation platforms that have an effect within South Africa are included in the Inquiry scope regardless of whether these platforms have any domestic presence or not, (ii) metasearch engines such as those in travel and shopping verticals fall within the scope of the Inquiry, including those operated by general search engines, and (iii) individual proprietors offering alternative accommodation fall within the scope of the Inquiry.³ The Inquiry also identified and added during the course of 2021 insurance comparator sites and received submissions in respect of news referral platforms in 2022.

5. The ToR also highlighted the objectives of the Inquiry, which are⁴:

5.1.1. Evaluate trends in adoption and use of the different online intermediation platform markets, including the identification of leading platforms across each market;

5.1.2. Evaluate whether any market features, platform conduct and/or contracts and terms of use with business users and consumers are likely to have the effect of raising barriers to entry and reducing competition amongst platforms domestically. These include, but are not limited to, MFN or price parity clauses, exclusive contracting, loyalty incentives, conglomerate leveraging (incl. data and advertising) and predation;

³ See document 'Clarification on the Inquiry Scope' on <http://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>

⁴ OIPMI, ToR, para 2.5 page 5-9

- 5.1.3. Evaluate other barriers to entry and expansion by rival platforms, including but not limited to network effects, capital costs and consumer marketing costs;
 - 5.1.4. Evaluate whether platform conduct, contracts, prices and terms of use with business users are discriminatory or unfair, and the likely effect thereof on consumer choice, competition amongst business users and the participation of SMEs and HDP owned firms. This includes, but is not limited to, the existence of self-preferencing conduct, discriminatory pricing, promotional or pricing restrictions, inflated access pricing and access to / use thereof of business user transaction data.
 - 5.1.5. Evaluate whether the ranking algorithms used by platforms, including any pay for position or promotional opportunities, negatively impact competition on the merits, consumer choice and/or the participation of SMEs and HDP owned business users;
 - 5.1.6. Evaluate any other barriers to entry into online commerce for SMEs and HDP owned firms, including but not limited to marketing costs, technological and product challenges;
 - 5.1.7. Evaluate the extent to which the findings and any identified remedies in respect of core platforms are generalisable across online intermediation platforms;
 - 5.1.8. Determine appropriate remedies where an adverse effect on competition or the purposes of the Act are found as set out in section 43C(3) of the Act.
6. The Inquiry is chaired by Acting Deputy Commissioner and Chief Economist James Hodge and a legally qualified Panel Member, Ms. Doris Tshepe, in accordance with section 43B(2B) of the Act. The Inquiry Technical Teams consists of 12 members led by two principals and has been split into the different platform categories.⁵ The team included a Case Manager⁶ and Administrator⁷ ("the Inquiry Team") and is supported by the Commission's IT and Communications departments⁸.
7. All the Inquiry documents and public submissions are available on the Inquiry website.⁹

⁵ The Travel accommodation Team: Mr Donnavan Linley, Mr. Sivuyise Mtiki and Ms. Aphiwe Nanto. The App Store and Insurance Team: Ms. Raksha Darji and Ms. Phathutshedzo Manenzhe. The Food Delivery and Classifieds Team: Mr. Tshegofatso Radinku and Ms. Siphosethu Tetani. The e-Commerce Team: Ms. Rahma Leuner, Ms. Lumkisa Jordan and Mr. Sthabiso Mkwana, and two Principal Analysts who oversaw the Technical Teams: Mr Itumeleng Lesofe and Mr Hariprasad Govinda. Additional support was provided by Melissa Naidoo, Nhlakanipho Mbhense and Bekithemba Qeqe.

⁶ Ms Noluthando Jokazi

⁷ Ms Nomsa Mokoena with assistance from Ms Zinhle Cele

⁸ In particular, Mr Abram Tiro and Ms Itebogeng Palare

⁹ <http://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>

3. PROCESSES OF THE INQUIRY

3.1 Guidelines for Participation

8. Prior to release of the Inquiry's ToR, the Inquiry published a *Guideline for Participation* for Submission of Technical Data and Analysis documents and the Administrative Timetable in April 2021, which set out the activities of the Inquiry for the prescribed 18 months, it also set out the estimated timelines, contact details and the Inquiry's process for the management of confidential information. In publishing these rules of engagement, the Inquiry sought to ensure transparency and fairness in the process as well as clarity on the process to be followed. Further process documents were published during the Inquiry.

3.2 Statement of Issues and First Requests for Information

9. The initiation and publication of the Inquiry's ToR was followed by the publication of a formal *Call for Submissions* and the release of the Inquiry's Statement of Issues ("SOI") and Eighty-eight (88) first-round Requests for Information ("RFIs") to various online platforms and business users.¹⁰ Seventy-Seven (77) submissions were received in response to the RFIs and 21 comments on the SOI were received in the first round of information gathering. The first set of RFIs and SOI were primarily targeted at getting an initial understanding of some of the market dynamics and the sort of business practices occurring across different online intermediation platform types operating in South Africa.

3.3 Further Statement of Issues and Second Requests for Information

10. After reviewing the initial submissions and comments received from the first round SOI and RFIs, the Inquiry released a Further Statement of Issues ("FSOI") on 17 August 2021, along with further RFIs to market participants. The FSOI was structured around the broad platform categories identified in the original SOI and used the initial observations and insights from the first phase of information gathering to provide some additional focused issue statements for input from stakeholders. This allowed the Inquiry Team to get an even deeper understanding of issues outlined in the SOI and expand on the original issues identified in the original SOI.¹¹ The FSOI delved deeper into identifying issues around

¹⁰ The Inquiry engaged with further stakeholders during its Public Hearings. A list of Appendices of various stakeholders engaged can be found under each Chapter of the OIPMI Report.

¹¹ OIPMI Further Statement of Issues, dated 21 August 2021, para 3

platform trends, platform competition and business user competition and treatment (incl. SMEs).

3.4 Business User Survey

11. The Inquiry released a Business User Survey ("Survey") on its website at its launch on 19 May 2021, which was aimed at soliciting responses from businesses that list on the different platforms. The Survey was targeted at the businesses that have listed on the platforms and aimed to understand their experiences and any particular issues; the extent of platform dependency by the business-users, any restrictions placed on their businesses by the platforms; the perceived fairness of search algorithms (an issue identified at the onset of the Inquiry's initiation) as well as platform terms & conditions that could impact on participation by the business users and their views of any unfair treatment.¹² The Inquiry later contracted an external service provider¹³ to refine the survey instrument and administer it to a broader set of business users across all platform categories. The survey results have been published on the Inquiry website along with this Provisional Report.

3.5 Virtual Public Hearings

12. The Inquiry then held Public Hearings from 2 November 2021 to 08 December 2021. The purpose of the public hearings was to enable the Inquiry Panel and Technical Team to engage directly with Fifty-one (51) stakeholders regarding their submissions and comments in response to the Inquiry's RFIs, SOI and FSOI. The discussions centred around how these platform markets operate, the issues identified by the Inquiry to date and any remedial actions stakeholders considered as necessary to address by the Inquiry in its probe.¹⁴
13. During the Public Hearings, the Inquiry engaged directly with platform senior representatives and directors of business users to debate their submissions and insights. The Inquiry was successful enough to hear views and engage on these issues from both domestic and global platforms. The Inquiry was also able to engage with smaller emerging domestic platforms, on their experiences and challenges, as well as business users across

¹² OIPMI, SOI, para

¹³ RedFlank (Pty) Ltd

¹⁴ All the Inquiry documents as well as public versions of stakeholder submissions are available on the Inquiry's website (<https://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>) along with the Administrative Timetable and the Guidelines for Participation in the Inquiry. Recordings of the public hearings are available on the Commission's YouTube channel.

the full range of platform categories. It engaged with various Associations and Industry Bodies on public and private funding opportunities and possible remedial actions that the Inquiry could consider as part of its recommendations.

3.6 Third Requests for Information and Expert Submissions

14. Following the Public Hearings, the Inquiry issued a third RFI to select stakeholders in response to some of the issues emerging in the virtual public hearings. The Inquiry also called for expert economic and legal submissions to be made by 1 February 2022. The Inquiry received only 4 expert economic reports.

3.7 Virtual In-camera Hearings

15. The Inquiry held virtual in-camera hearings from 23 February 2022 to 4 March 2022, to accommodate stakeholders that required to make submissions to the panel of a confidential nature, and which could not be dealt with adequately through confidential written submissions. The in-camera hearings also included discussion of submissions of an expert economic or legal nature that traversed confidential information in its analysis. Stakeholders were permitted to first make their presentation followed by questions from the Panel and Technical Team.
16. An Appendix of the list of submissions from all stakeholders who participated in the Inquiry process is attached to each chapter of this preliminary report, including meetings, discussions, hearings (both public and in-camera hearings), and written submissions from the stakeholders.

4. STRUCTURE OF PROVISIONAL REPORT

17. This Preliminary Report consists of 9 Chapters, each platform category is assigned its own chapter starting with Travel and Accommodation as Chapter 2, e-Commerce Marketplaces under Chapter 3, Software Application Stores is Chapter 4, Classifieds and Food Delivery Services are assessed under Chapter 5 and 6 respectively, Insurance can be found under Chapter 7, General Venture Capital Funding is Chapter 8, finally a Summary of Findings and Provisional Recommendations is provided under Chapter 9.
18. Each platform category 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) an analysis and findings on factors impacting on platform competition, and (iv) an analysis and findings on factors impacting on business user competition, exploitation and participation of SMEs and HDPs.

19. As set out in the Administrative Timetable, following the release of the Provisional Reports there will be a period of six weeks for the submission of public comments. The Inquiry will review all public submissions and specifically engage all stakeholders materially affected by any provisional findings, remedial actions and recommendations. That process may result in changes to the provisional findings and recommendations. The Inquiry contemplates releasing a final report with findings, remedial actions and recommendations in November 2022.