

ANNEXURE 5

ONLINE CLASSIFIEDS PLATFORMS

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[1. Market delineation and dependency]

1.1. Findings from the Provisional Report

1. The Inquiry found that there has been rapid adoption of vertical online classifieds platforms in real estate and vehicle advertising and business users in those two categories (estate agents and car dealerships) are dependent on established platforms for leads. Evidence collated by the Inquiry revealed that other alternative channels (e.g., print, business users' own websites, horizontal platforms etc...) impose an insignificant competitive constraint on the established classifieds platforms in both categories. Therefore, other alternative channels were not considered to be substitutable with vertical classifieds platforms and, consequently, were excluded in the relevant market.

1.2. Stakeholder submissions: views on market delineation and dependency

2. The Inquiry notes that the small platforms concur with the Inquiry's characterization of the market, including the assessment of market delineation and dependency.¹ The established platforms (Property24, AutoTrader and Cars.co.za) on the other hand disagree with the Inquiry's assessment of market delineation and dependency. The Inquiry also notes that Private Property did not contest the Inquiry's assessment of market delineation but contest the assessment of dependency.² In particular, these platforms argue that:³

- 2.1. The Inquiry's assessment does not consider the viability of the other channels, such as business users' own websites, Facebook Marketplace and Google in the event that the established platforms were to seek to worsen their competitive offerings.⁴
- 2.2. Automotive classifieds platforms in particular are constrained by the other channels, especially the so-called mega dealers such as WeBuyCars and group dealerships own websites.⁵
- 2.3. The Inquiry's dependency concerns appear to rest on the assumption that effective competitive constraints can only be imposed by rival platforms or new entrants that are currently small in scale, and if such rivals become viable alternatives from the perspective of business users. The Inquiry ignores the potential for competitive outcomes to arise from existing effective competition by existing established players in the market.⁶
- 2.4. It is not clear what metric is used by the Inquiry to measure the dependence, whether it is revenue, number of leads, or some other metric.⁷

1.3. Response by the Inquiry to stakeholder submissions on market delineation and dependency

3. The Inquiry's assessment of market delineation and dependency takes into account relevant factors that are considered in defining the relevant market. For example, the Inquiry

1 MyProperty submission dated 24 August 2022. Property Central submission dated 24 August 2022.

2 Private Property submission dated 05 September 2022.

3 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022. AutoTrader submission dated 07 September 2022. Cars.co.za submission dated 08 September 2022.

4 Property24 submission dated 07 September 2022. AutoTrader submission dated 07 September 2022.

5 Cars.co.za submission dated 08 September 2022. According to Cars.co.za, mega dealers and large group dealers have a wide variety of vehicle listings over a broad geographic spread, as well as the funding to invest in the website technology and digital marketing.

6 Property24 submission dated 07 September 2022. AutoTrader submission dated 07 September 2022.

7 Private Property submission dated 05 September 2022.

has considered whether vertical classifieds platforms in automotive and property segments are constrained from both sides of the market (consumers and business users). Further, demand and supply side factors have also been considered. In reaching its conclusion on whether other channels constrain and/or are considered substitutable with property classifieds and automotive classifieds platforms, the Inquiry's Provisional Report considered several factors that would ordinarily be taken into account when defining the relevant market, including the viability of other channels, even in cases of sharp price increases. The Inquiry also relied on case law and the views of the Competition Tribunal on the competition dynamics and interactions between vertical classifieds platforms and other channels. Thus, the Inquiry is of the view that the established platforms' assertions are without merit.⁸

1.4. Demand-side (customer and business user side of the market)

4. In terms of the consumer-side, the Inquiry considered customer journey and preference and noted that consumer prefer vertical classifieds platforms over other channels due to a variety of factors, including convenience and choice (i.e., ability to compare a wide range of properties and vehicle of different models and prices from a single platform). Consumers also prefer the vertical platforms for better consumer experience (i.e., ease of use, site speed, picture quality and search filters).
5. In terms of the business user-side, the Inquiry noted that business users in both property and automotive segments consider vertical classifieds platforms as an important additional sales channel that complements

their existing channels.⁹ Thus, business users do not join classifieds platforms to substitute revenue generated from other marketing channels. The non-substitutability of vertical classifieds platforms by other channels is also supported by several factors. For instance:

- 5.1. Business users in both categories continue to use vertical classifieds platforms despite raising concerns about increasing listing and subscription fees. The Inquiry has demonstrated in the Provisional Report that these increases in listing and subscription fees are significantly above the standard measure of 5-10%.
- 5.2. It would take business users longer periods (in some instances more than a year) to replace revenue generated from vertical classifieds platforms.
- 5.3. The traffic generated by business users' own websites is significantly lesser than the traffic generated by the vertical platforms.
- 5.4. Business users' own websites have their own shortcomings in attracting customers (e.g., the lack of variety and range).

1.4.1. Vertical classifieds platforms are each other's closest competitors in their respective segments

6. The Inquiry noted that established vertical classifieds platforms are the closest competitors to each other in both segments. In Property classifieds, Property24 competes the closest with Private Property and in automotive classifieds AutoTrader and Cars.co.za are the closest competitors. In property classifieds, Private Property is most concerned about its place in the market against Property24, with little concern about other platforms. This is also confirmed by the lengths that Private Property has gone to retain its position against Property24.¹⁰ Property24

⁸ The full detailed assessment is contained in page 10 to 34 of the Provisional Report (chapter 5 – Online Classifieds Chapter).

⁹ Most business users use vertical classifieds together with other channels and list the same stock on all channels.

¹⁰ Private Property submission dated 05 September 2022.

In its submissions in relation to the support from Rebosa and EAPPC shareholding, Private Property argues that the support is necessary for it to be able to compete against Property24.

Government	Percentage
Current government	11
Previous government	12

- Paragraph 298 “Cars.co.za stands out as the key competitor as it is the most like AutoTrader in terms of having a large database as well as a trusted and reputable third-party dealership network”

operating a vertical classifieds platform of a sufficient scale to effectively constrain the established platforms. Some of these barriers include, *inter alia*:

- 11.1. The need to sign franchise estate agents or group dealerships with national footprint.
 - 11.2. The ability to sustain losses for some time (i.e., number of years) whilst operating a zero-rated platform to attract business users.
 - 11.3. Large capital investment required for platform development and maintenance.
 - 11.4. Large investments in marketing to attract consumers.
12. The evidence from all the platforms that made submissions to the Inquiry suggests that sourcing listings from the large business users in both segments is a challenge and cannot be quickly and easily overcome by new entrants.¹⁸ This has proven to be a difficult task even for the small platforms already operating in both segments. There are property classifieds and automotive classifieds platforms that have been in the market for more than a decade and have not been able to secure enough listings to become effective competitors in the respective market.¹⁹ This is despite the established platforms significantly increasing their prices over the years and business users being openly disgruntled.²⁰ Business users have also not shifted to horizontal platforms or to their own websites, even though some of the established platforms have constantly

increased their rates above the inflation rates.²¹ Business users continue to use these channels together with the vertical platforms. This is evidence that even if the established platforms worsen their competitive offering, they are not easily substitutable with the other channels.

13. The Inquiry also notes that all the four established platforms gradually established themselves and none of them was able to build critical mass in a short space of time and without incurring significant costs.²² For instance, in property classifieds it took the leading platforms establishing relations with estate agents in order to secure listings and establish their platforms.²³ The established platforms also invest in traffic acquisition in order to attract consumers and this accounts for a significant proportion of the platforms' costs.²⁴
14. Furthermore, there is no evidence of supply-side entry into the vertical classifieds platforms in both property and automotive segments. The Inquiry is of the view that even large international platforms, operating in other market segments such as Facebook and Google would not easily be substitutes for vertical classifieds platforms. Facebook Marketplace has been operational in South Africa since 2016, but the platform has not been able to displace the established platforms. It has been submitted that Facebook Marketplace is currently not able to

18 Private Property—oral submission from Mr Mwela in the public hearing, 16 November 2021, page 4. Property 24—oral submission from Mr JP Farinha in the public hearing, 16 November 2021, page 37-40. Property Central—oral submission from Mr Jhagaroo in the public hearing, 15 November 2021, Page 24. MyProperty—oral submission from Mr Grové in the public hearing, 15 November 2021, page 5. AutoTrader—oral submission from Mr Mienie in the public hearing, 25 February 2022, page 45. CarFind—oral submission from Ms Viljoen in the public hearing, 17 November 2021, page 21.

19 MyProperty has been in the online classifieds market since 2004 and CarFind launched in 2000 as an online classified platform.

20 See section 4.2 of the Provisional Report (Chapter 5- Online Classifieds Platforms).

21 See section 1.4.3 of the Provisional Report (Chapter 5- Online Classifieds Platforms).

22 Cars.co.za—oral submission from McLroy in the public hearing, 17 November 2021, page 27- 28. Property24—oral submission from Mr JP Farinha in the public hearing, 16 November 2021, page 37-40. Private Property—oral submission from Mr Mwela in the public hearing, 16 November 2021, page 5. Property24—oral submission from Mr JP Farinha in the public hearing, 16 November 2021, page 37-40.

23 Private Property—oral submission from Mr Mwela in the public hearing, 16 November 2021, page 5.

24 Submission by Property24 dated 10 September 2021. Submission by AutoTrader dated 10 September 2021. CarFind—oral submission from Ms Viljoen, 17 November 2021, page 10.

immediately match the offerings provided by vertical platforms in South Africa.²⁵

1.4.3. Mega dealers and group dealerships own websites do not pose a significant competitive constraint on automotive classifieds platforms

15. In relation to the mega dealers and group dealerships own websites, the Inquiry does not consider these to pose a significant constraint on automotive vertical classifieds platforms. Mega dealers and group dealerships make use of both their own website and automotive classifieds platforms as complements. One of the reasons stated by the platforms for their contentions is that mega dealers are able to attract significant traffic volumes to their own websites and they offer a wide variety of vehicle listings over a broad geographic spread, just like the vertical classifieds platforms.²⁶ In the evidence submitted, WeBuyCars seems to attract the highest number of traffic, in excess of 3 million per month. The other mega dealerships and group dealerships cited attract significantly less traffic volumes (less than 400 000).²⁷
16. The Inquiry notes that in the WeBuyCars merger²⁸ the Competition Tribunal held that WeBuyCars, (a mega dealership) operates in the market for guaranteed purchase and sale of used cars. This is a two-sided market, consisting of i) the purchasing and ii) the selling of used cars.²⁹ The Competition Tribunal also observed that WeBuyCars uses its website to buy and sell its stock, and its largest customers are dealerships rather than independent users. It was further observed that WeBuyCars also uses vertical classifieds platforms such as AutoTrader to advertise its stock. The

consumer traffic cited in the submissions is not disintegrated to show that it is solely consumer traffic of prospective independent buyers and given the Competition Tribunal's observation it is likely that WeBuyCars attracts almost the same levels of consumer traffic as vertical classifieds platforms. Therefore, the cited traffic is an unreliable indicator of closeness of competition between classifieds platforms and mega dealers.

17. Furthermore, as stated in the Provisional Report, dealers generally do not compete for business user listings and only list their own stock on their own websites. Although the platforms suggest that mega dealerships have a wide variety of stock, it cannot be as wide as the variety provided by the automotive classifieds platforms, that carry a variety from different business users. As a result, the traffic from automotive classifieds platforms remains significant to mega dealers and group dealers as they list their stock on both channels. For instance, the Competition Tribunal noted that AutoTrader charges the highest price in automotive classifieds platform, however there are mega dealers and group dealers who list with AutoTrader. This evidence indicates the importance of vertical classifieds platforms traffic to those dealerships. This is also in line with evidence submitted by Cars.co.za during the Inquiry's public hearings.³⁰
18. The platforms further contend that they compete with dealerships, as they lose-out on leads from consumers who directly use business users' own websites instead of automotive classifieds platforms. The Inquiry notes that automotive classifieds platform's pricing model is not based on leads, but on stock and most business users duplicate their

25 Submission by Naspers dated 06 October 2021- Response to the FSOI.

26 Cars.co.za submission dated 08 September 2022.

27 Cars.co.za submission dated 08 September 2022.

28 MIH eCommerce Holding Pty Ltd and WeBuyCars Pty Ltd merger case: Case Number LM183Sep18.

29 MIH eCommerce Holding Pty Ltd and WeBuyCars Pty Ltd merger case: Case Number LM183Sep18. Paragraph 179 read with Paragraph 79.

30 Cars.co.za—oral submission from Mr McLlroy's in the public hearing, 17 November 2021, page 5-6. Also see paragraph 70 of the Provisional Report (Chapter5- Online classified platforms).

stock listing on different channels. The Inquiry is also of the view that given the amount of traffic to those channels, the number of leads generated directly from the business users' own websites is unlikely to constrain the automotive classifieds platforms.³¹

1.4.4. The Inquiry's characterisation of dependency is supported by evidence

19. The Inquiry maintains that business users in property classifieds and automotive classifieds are dependent on the vertical platforms and a credible framework for defining and assessing dependency has been explained in the Provisional Report.³² It is also worth noting that the assessment of dependency is based on evidence from different sources (e.g., business users' submissions, platforms submissions and business user survey).
20. From the Inquiry's perspective, business user dependency occurs when, *inter alia*, the online platform is crucial for the commercial success of the business user (e.g. generating more quality leads, which ultimately lead to more sales). As a result of dependency, business users are unlikely to completely switch to other channels and/or platforms (an example is – the case where listing fees increase overtime, and business users continue to use the platforms despite their unhappiness with the increased fee levels). In Inquiry's view, the business users' continued use of the platforms reflects the recognition that property classifieds platforms for estate agents and automotive classifieds platforms for dealerships are indeed crucial to their overall commercial success. Business users of all sizes in both segments invest significantly

in developing and maintaining their websites whilst also listing the same stock on the classifieds platforms for audience reach. This, indicates the significance of the classifieds platforms and the inability to replace the leads generated by the business users from other channels.

21. As already explained in more details in the Provisional Report³³, dependency in the context of property classifieds platforms and automotive classifieds platforms is driven by various factors, including:
 - 21.1. The business users' need to access a wider range of customers to generate quality leads through the platforms.
 - 21.2. The business users' inability to replace sales generated from vertical classifieds platforms from other channels and competing smaller platforms.
22. The established platforms have not provided credible evidence that suggest that the above factors are irrelevant when assessing business user dependency.³⁴ The Inquiry notes that the above factors cannot be assessed individually or in isolation as one factor alone is not a definitive indicator of business user dependency. Thus, the Inquiry considered these factors holistically in reaching its conclusion on dependency.

1.4.5. Factors considered by the Inquiry in market delineation are also taken into account by international competition authorities when defining the relevant product market in online classifieds platforms

31 See page 30 – 32 of the Provisional Report (Chapter 5- Online classified platforms).

32 See page 10 – 24 Provisional Report (Chapter 5 – Online classified platforms).

33 Provisional Report (Chapter 5 – Online Classifieds Platforms) page 16 and page 30.

34 The Inquiry notes that the concept of business user dependency in online intermediate platform is not a novel concept introduced by the Inquiry. Business user dependency on online platforms has been noted, considered and assessed in the EU. For instance, see studies (i) An online survey forming part of the EU's Observatory on the Online Platform Economy (technical paper on differentiated treatment) (ii) European Union's Expert Group for the Observatory on the Online Platform Economy (2021) "Measurement and Economic Indicators" and (iii) European Commission's Staff Working Document Impact Assessment Study.

23. In a merger between two property portals, The Digital Property Group and Zoopla³⁵, considered by the Office of Fair Trading in the United Kingdom ("OFT"), the assessment of the appropriate scope of the product market considered substitutability between property classifieds platforms and:
- 23.1. Print media
 - 23.2. other online advertising channels, including horizontal platforms and estate agent's own websites.
24. There was no suggestion by any platform to the Inquiry that print media could be considered a competitive constraint to online portals. Instead, there are platforms who made submissions that they do not consider print media as a constraint anymore in their operations.³⁶ This is in line with the OFT's finding, that print advertising did not provide an effective constraint on property portals in the United Kingdom. With regard to other online platforms the OFT noted that the majority of estate agents did not consider their own websites as substitutes for property portals. Estate agents advised the OFT that *"portals generated too many enquiries to switch away from them, and that doing so would have a detrimental effect on their ability to gain clients"*.³⁷ OFT concluded that estate agents own website does not form a sufficient constraint on property portals to warrant consideration as part of the competitive assessment. The same approach was adopted by the Competition and Markets Authority ("CMA")³⁸ in another merger between ZPG Plc and Websky Limited.³⁹
25. In relation to horizontal platforms, the OFT noted that vertical property classifieds should be considered as a competitive constraint (and part of competitive assessment) to horizontal classifieds where there is *"sufficiently compelling evidence"* of a competitive constraint.⁴⁰ Having considered all the available evidence, the Inquiry is of the view that there is no compelling evidence to suggest that horizontal classifieds platforms impose a significant competitive constraint on vertical property and automotive classifieds platforms in South Africa.⁴¹
26. The international case precedent that the Inquiry has considered is largely on property classifieds platforms, however the Inquiry understands that automotive classifieds platforms also resemble similar characteristics. Therefore, all the considerations and relevant assessment of competitive constraints in property classifieds platforms are deemed equally relevant in automotive classifieds as well.
- 1.5. What is the relevant product market?**
27. The above factors,⁴² together with guidance from other jurisdictions, were taken into account by the Inquiry in reaching its conclusion that other advertising channels impose insignificant competitive constraint on vertical property classifieds and automotive classifieds platforms. For avoidance of doubt, the Inquiry is of the view that the relevant product markets are:
- 27.1. The market for the provision of online vertical property classifieds services by

35 Anticipated merger between The Digital Property Group Limited and Zoopla Limited ME/5233/11 The OFT's decision on reference under section 33(1) given on 16 April 2012. Full text of decision published 26 April 2012.

36 Property24 submission dated 15 November 2021- Public Hearing Presentation. AutoTrader–oral submission from Mr Mienie in the public hearing, 17 November 2021, page 3.

37 Anticipated merger between The Digital Property Group Limited and Zoopla Limited, ME/5233/11.

38 CMA is the competition regulator in United Kingdom.

39 UK Competition and Market Authority, "Acquisition by ZPG Plc of Websky Limited", Full text of the decision published on 24 July 2017.

40 CMA observed that the "The OFT has taken account of the impact of these specialist portals where relevant and where there is sufficiently compelling evidence of a competitive constraint to the parties as part of the competitive assessment".

41 See page 22-23 of the Provisional Report (Chapter 5- Online Classifieds Platforms).

42 Including those highlighted in detail in the Provisional Report – chapter 5 Classifieds Platforms Chapter, page 9 to 34.

- online property portals, in the property segment; and
- 27.2. The market for the provision of online vertical automotive classifieds services by online automotive portals, in the automotive segment.

1.6. What is the relevant geographic market?

28. The online classifieds platforms market has a mixture of local and national geographic dynamics. For property classifieds platforms, the local dimension arises from the fact that real estate agents provide localised services, as they list and sell properties within a specific geographic (local) area. Even the large estate agency franchises with national footprint have localised offices and representatives in different areas. Similarly, potential house buyers also search for properties in a specific area. Therefore, both business users and consumers are likely to list and substitute portals depending on their geographic reach. From the supply side the local dynamics emanate from platforms competing for consumers. As discussed in the Provisional Report, Google is the main source of traffic for consumers and platforms participate on Google AdWord and bid for consumer attention on keywords. Often platforms also compete for consumers in specific areas by placing a bid on Google AdWord for that particular area. Thus, the platforms also bid for the attention of the consumers who are looking for properties in a particular area.
29. The national dimension also arises from the supply side, in that property classifieds platforms operate nationally, and compete for estate agencies with national footprint to list all their available stock. The platforms also cater for consumers nationally. Currently, all the property classifieds platforms operating in South Africa operate at a national level. Furthermore, the Inquiry understands that even if a platform was to enter the market in a specific region it would still compete with

the national platforms on Google for visibility in order to become an effective competitor even for that specific area.

30. In the Digital Property Group and Zoopla merger, the OFT considered both national and local market dynamics when defining the relevant market.⁴³ The OFT found that estate agents' branches generally list properties only in their local area and "house-hunters" also search for property in a narrow geographic area. Therefore, for potential house buyers and local estate agents there is very little geographic demand-side substitutability for property portals. The OFT further noted that despite the local dimension of the demand-side with limited geographic substitutability, the majority of property portal activity is at a national level.
31. In Automotive classifieds, the platforms cater for the national market. The platforms contract and have a preference for large group dealerships with national footprint. Furthermore, in the WeBuyCars merger it was noted that dealerships have a preference for platforms for their wide geographic reach. Dealerships target both local and national consumers through the platforms. There are consumers who are willing to purchase vehicles from dealerships outside their local area and incur further costs. There are also those consumers who are not willing to incur additional costs and as a result would not search for vehicle outside their local geographic area. Additionally, the same characteristic observed in terms of traffic acquisition in property classifieds platforms is also observed in the automotive classifieds platforms market.
32. In light of the above (acknowledging the presence of local and national dynamics), the Inquiry is of the view that the relevant geographic market should account for both geographic dynamics in both property classifieds and automotive classifieds markets.

43 Anticipated merger between The Digital Property Group Limited and Zoopla Limited, ME/5233/11.

[2. Market structure and competitive dynamics]

Leading Platforms

2.1. Findings from the Provisional Report

33. The Inquiry identified leading platforms from each category and described these as one or two 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. Property24 and Private Property were identified as the leading platforms in Property classifieds platforms. In the automotive classifieds segment, the Inquiry identified AutoTrader and Cars.co.za as the leading platforms. Furthermore, the Inquiry stressed that the conduct of leading platforms can have negative competition implications and harm/impede growth and expansion – innovation.

2.2. Stakeholder submissions: views on leading platforms

34. The established platforms in classifieds platforms (Property24, Private Property, AutoTrader and Cars.co.za) object to being classified as the leading platforms by the Inquiry in their respective categories and question the methodology followed by the

Inquiry in identifying and characterising them as the leading platforms.⁴⁴In this regard, the following concerns have been raised:

- 34.1. The criteria and/or the test used to identify leading platforms is unclear and inconsistent (i.e., no proper assessment has been conducted).⁴⁵
- 34.2. Private Property does not meet the criteria set by the Inquiry to be classified as a leading platform.⁴⁶
- 34.3. There is no apparent provision in the Competition Act which grants the Inquiry powers to classify some platforms as the leading platforms.⁴⁷
- 34.4. It is inaccurate for the Inquiry to contend that the leading platforms have features of dominance when it has not sought to assess whether these platforms meet the requirements for dominance in line with the legislation.⁴⁸
- 34.5. The Inquiry did not provide any guidance for what it meant by predominant, from a market share perspective.
- 34.6. The position adopted by the Inquiry assumes that a firm has a dominant market position, not on the basis of that firm’s individual market position, but on the basis of the collective market positions of two or more firms. Collective dominance cannot be applied in terms of the relevant provisions of the Act.⁴⁹

44 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022. AutoTrader submission dated 07 September 2022. Cars.co.za submission dated 08 September 2022.

45 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022. AutoTrader submission dated 07 September 2022. Cars.co.za submission dated 08 September 2022.

46 Private Property submits that the Inquiry identifies it as a leading platform only on the basis of it being the second largest platforms in a given online classifieds property market, where the largest and dominant firm, Property 24, accounts for the majority of online consumer traffic, with more than 60% market share.

47 Property 24 submission dated 07 September 2022. AutoTrader submission dated 07 September 2022.

48 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022. AutoTrader submission dated 07 September 2022. Cars.co.za submission dated 08 September 2022.

49 Private Property submission dated 05 September 2022.

2.3. Response by the Inquiry to stakeholder submissions: leading platforms

35. The Inquiry maintains that it does not have to establish that any firm is dominant for purposes of a market inquiry. However, the Inquiry is not precluded from making observations regarding the structure of the market, the competitive dynamics and the market position of the established platforms. In the event where evidence suggests that the market position of the established and/or leading platforms bear features of dominant firms (e.g., due to high market shares, barriers to entry and limited constraint from customers), the Inquiry may make such observations.
36. The identification of leading platforms and formulation of remedies that are applicable to leading platforms are aimed at facilitating a fair competitive process rather than distorting competition. This is in line with the Terms of Reference ("ToR") of the Inquiry which identified the need to act pre-emptively to ensure that intermediation platforms 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's provisional summary report also noted that the conduct of leading platforms can have negative competition implications and harm/impedes growth and expansion - innovation.⁵⁰

37. It is worth noting that the Inquiry's approach and objectives is shared by many competition authorities and policy makers globally. For instance, it has been noted in the EU and US that online platforms have become the main vehicle of access to markets. These platforms are characterised by features such as strong network effects, high switching costs and the self-reinforcing advantages of data and increasing returns to scale. These features make online platform markets prone to the winner take-all economics. As a result, many online platform markets "tip" in favour of one or two large companies.⁵¹ In the US, it has been noted that online platforms such as Amazon, Apple, Facebook and Google have come to function as gatekeepers and exploit this gatekeeper power to dictate terms and extract concessions that third parties would not consent to in a competitive market.⁵²
38. Similarly, the EC has noted that the features of online platforms, in particular gatekeepers, lead to increased business user dependency on platforms and bargaining power imbalanced. The EC further argues that these online market features can also enable platforms to behave or impose (unilaterally) unfair practices on business users. These unfair practices can be harmful to the legitimate interests of business users.⁵³ Figure 1 below shows the features of online intermediation platforms that drive unfair practices, as identified by the EC.

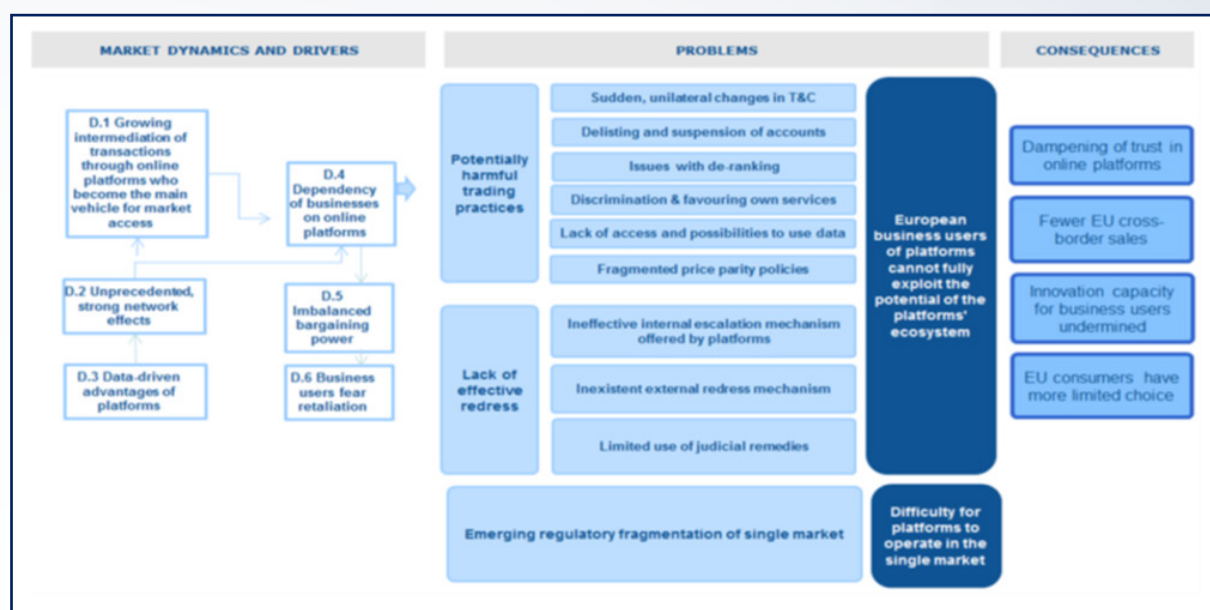
50 See the Inquiry's summary report, paragraph 19 and OIPMI Terms of Reference, 9 April 2021 - paragraph 2.19.

51 See, *inter alia*, (i) Report in the United States by the House of Representative's Subcommittee on Antitrust, Commercial And Administrative Law ("US Subcommittee") into Digital Market Investigation. (ii) Stigler Committee on Digital Platforms, Final Report, September 2019, available at <https://research.chicagobooth.edu/stigler/media/news/committee-on-digital-platforms-final-report> and (iii) European Commission's Staff Working Document Impact Assessment Study.

52 See report in the United States by the House of Representative's Subcommittee on Antitrust, Commercial And Administrative Law ("US Subcommittee") into Digital Market Investigation.

53 Refer to the aforementioned European Commission's Commission Staff Working Document Impact Assessment.

Figure 1: Characteristics of online intermediation platforms that drives unfair practices against business users in the European Union



Source: European Commission's Staff Working Document Impact Assessment Study

39. It is against the above background that the authorities globally have found it prudent to propose interventions (by way of remedies/recommendations/regulations) that are aimed at protecting the competitive process (i.e., making the digital markets more contestable and competitive) from unfair practices of gatekeepers.⁵⁴ It is worth noting that absent remedies /recommendations/regulations aimed at gatekeepers, the market structure and feature of digital platforms (one or two large player market) will become irreversible.

2.3.1. The criteria used to identify leading platform is justifiable and aligns with the Act

40. The Inquiry has identified that in all the intermediation platform categories with a sizeable level of adoption there are one or two leading platforms. The provisional summary report provides guidance on the criteria used to identify leading platforms. For instance,

the provisional summary report states that leading platforms are those which:⁵⁵

- 40.1. Attract the pre-dominant online consumer traffic in their market category, on which business users are relatively dependent already to access online customers.
 - 40.2. Are either entrenched or likely to become entrenched given the observed market dynamics.
 - 40.3. Their conduct (as a result of their market position) can impact on platform competition, business user competition and participation, consumer choice.
 - 40.4. The dependency of business users places them in a position to potentially exploit that market position.
 - 40.5. Have the features of dominance given their position in their markets.
41. It is evident that the Inquiry has considered several factors to identify the leading platforms. These factors clearly align with, *inter*

⁵⁴ See for instance, the European Parliament 'Briefing' document on "Regulating digital gatekeepers - background on the future digital markets act".

⁵⁵ See the Inquiry's summary report, paragraph 19.

alia, the observed structural and competitive dynamics that exists in the automotives and property classifieds platforms markets, respectively. The Inquiry has already presented relevant evidence on the (i) dependency of established platforms, (ii) online customer traffic and level of adoption of established platforms, (iii) high market share of established platforms and barriers to entry and expansion that exist. All these factors point to the established platforms being leading platforms and entrenched in their respective markets.

42. The Inquiry notes that its observation that leading platforms “*have the **features of dominance** given their position in their markets*” (Own emphases) has attracted criticism from some of the established platforms. These platforms submit that this statement implies that the Inquiry has to show that the established platforms are dominant within the meaning of the Act. As already indicated, the Inquiry’s position is that it is not required to establish that any firm is dominant for purposes of the Inquiry. This notwithstanding, there is nothing that precludes the Inquiry from making observations that certain established platforms are or may actually be dominant in their respective markets, especially when there is ample evidence before the Inquiry to support such observations. However, for the purposes of satisfying the criteria for leading platforms, the Inquiry will elaborate on the features of dominance referred to in the provisional summary report. The Inquiry is also of the view that by providing evidence on these features of dominance it will bring the leading platform concept within the realm of the Act.

2.3.2. Leading platforms’ features of dominance

43. It is common cause that the Act in section 7 provides three possible scenarios in relation to the assessment of dominance. Scenario 1: if a firm has 45% market shares in the relevant market, it is considered dominant, and no further assessment is required. Scenario 2: where a firm has 35% market shares, but less than 45%, it is presumed dominant unless it (the firm) can prove that it lacks market power. Scenario 3: where a firm has less than 35% market shares, but the Commission can establish that it has market power, such a firm is considered dominant.
44. The above suggests that in terms of section 7, dominance can be assessed using the firm’s market shares or based on the concept of market power, or both. The Act defines market power as the ability/power of a firm to control prices, or to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers. In other words, a firm has market power if its behaviour in the market cannot be constrained by competitors, its customers or suppliers. For example, if a firm increases its prices significantly and still retains its customers/ customer base despite the fact that its competitors offer lower prices, this may be indicative of market power. Some of the relevant factors considered in the assessment of market power include market shares, entry conditions, and the degree of buyer power from the customers.⁵⁶
45. In Property classifieds, the Inquiry’s assessment of market shares shows that Property24 has a market share of more than 50%⁵⁷, and is therefore considered dominant. Property24’s conduct in the market also shows that the platform has market power. For example, the platform has been able to increase

56 See (i) European Commission (2018). Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (Text with EEA relevance) (2018/C 159/01) and Office of Fair Trade (2004). Assessment of Market Power – Understanding Competition Law.

57 See page 37-38 of the Provisional Report (Chapter 5- Classifieds platforms).

prices by up to 40% annually, independent of its competitors.⁵⁸ Despite its steep price increases, estate agents continue to rely on and use Property24's services. Furthermore, competing platforms that offer services at lower prices and, in some instances, free of charge have failed to effectively constrain Property24 from instituting these steep price increases overtime. Real estate agents own websites have also failed to constrain Property24. Despite estate agents publicly raising concerns regarding Property24's price increases overtime, there is no evidence that suggests that Property24 has lost any significant listing and consequently attractiveness and revenue. Similarly, there is no evidence that suggests that it has lost market share to its competitors. Current evidence suggests that Property24 can behave to an appreciable extent independent of its customers and/or competitors.

46. In automotive classifieds platforms, the Inquiry takes guidance from the Tribunal's findings in the merger case between MIH eCommerce Holdings and WeBuyCar⁵⁹. The Tribunal noted that AutoTrader and Cars.co.za "represent the dominant online platforms for consumers" with market shares of between 30%-40% each. This is in line with the Inquiry's own assessment of market shares which shows that AutoTrader and Cars.co.za are the largest players in the market, constituting a combined 84% share of the market. AutoTrader and Cars.co.za's market share estimates are 47% and 37%, respectively.⁶⁰ The Tribunal also held that the leads generated by the business users from the two platforms cannot be easily replaced and this is shown by the business users' willingness to pay the highest fees on the two platforms. Given this evidence it is

unlikely that the small automotive platforms constrain the established platform's ability to act independently in the market.

47. Over and above the market share and market power assessments, the assessment of competitive dynamics has revealed that the online classifieds platforms market is characterised by high barriers to entry and expansion – which limits the ability of competitors to constrain established platforms.⁶¹ Some of the small classifieds platforms have been struggling to match up and effectively compete with the established platforms for more than a decade.

48. As the United Kingdom's Competition and Markets Authority explains:

"[I]f potential competitors face substantial barriers to entry and expansion, such that the market is no longer properly contestable, then a high market share can translate into market power, giving the platform the opportunity to increase prices, reduce quality or leverage market power to undermine competition in potentially competitive markets and deny innovative rivals the chance to bring new services to market".⁶²

2.3.3. Treatment of Private Property

49. In property classifieds, Private Property is the second largest platform, although smaller than the largest platform, Property24, by a significant margin. Private Property contests to it being classified as a leading platform by the Inquiry. The platform argues that it does not even meet the criteria set by the Inquiry to be identified as a leading platform, as it believes it does not display any features of

58 A detailed analysis of Property24's pricing has been conducted in the Provisional Report. See page 111-121 of the Provisional Report (Chapter 5-Online Classifieds Platforms).

59 MIH eCommerce Holding Pty Ltd and WeBuyCars Pty Ltd merger case: Case Number LM183Sep18.

60 These estimates are based on the number of unique users. See page 39 of the Provisional Report (Chapter 5- Online classifieds platforms).

61 See page 43-53 of the Provisional Report (Chapter 5- Online classifieds platforms).

62 Competition & Mkts. Auth., Online Platforms and Digital Advertising, Market Study Final Report 10 11 (2020) [hereinafter Competition & Mkts. Auth. Report].

dominance, does not attract predominant online consumer traffic and that business users are not dependent on the platform. Private Property further contends that it cannot be grouped with the leading platforms only on the basis that it is the second largest player in property classifieds, when the largest player has a market share of more than 60%.⁶³

50. The Inquiry acknowledges that Private Property is smaller than Property24 with a market share of less than 35%. However, the Inquiry notes that Private Property is also a prominent player in the market. There are unique features that persuaded the Inquiry to lean towards grouping Private Property with the leading platforms.

Private Property benefits from the network effects

51. Private Property is uniquely placed in that it has a partnership with the large national agencies through the Estate Agency Property Portal Company, facilitated by the industry association, Rebosa.⁶⁴ As a result, Private Property has been able to secure, and lock-in, most of the listings with the beneficial network effects that arise from that. Those network effects include the ability to attract consumers because most of the listings are secured, and in turn the ability to draw in the listings of other estate agents given the consumer traffic.
52. The benefits derived by Private Property from the network effects also place them in an advantageous position. In this regard, Private Property is able to offer consumers a wide range of choice of properties in any locality – this position enables Private Property to be an attractive proposition to consumers. On the

other hand, smaller platforms have struggled to secure the listings of large national estate agent (at a large scale or across large number of offices), thus, limiting the smaller platforms' ability to generate network effects that may propel them to grow sustainably. As a result, Private Property does not suffer from this growth impediment.⁶⁵

53. The Inquiry is of the view that the presence of these network effects reinforce Private Property's market position. As correctly pointed out by the OECD *"network effects may spur a self-reinforcing positive feedback loop, i.e., a situation where success feeds success; this is an important factor in strengthening a company's market power and might even create a lock-in effect for its customers"*.⁶⁶ The Inquiry has considered network effects, among other things, as an important element in classifying Private Property as a leading platform.

Private Property has the tools to attract and retain customers

54. Over and above the listings, Private Property is backed by shareholders that are capable of funding the platform and investing the necessary capital in online marketing to drive traffic to the site. It is also able to effectively compete on Google AdWord to drive traffic to its website. Moreover, Private Property remains an important source of customer attention for business users, as it attracts a significant amount (in millions) of consumer traffic. The Inquiry's customer survey also showed there are some estate agents that are highly dependent on Private Property. In the survey, 23% of the estate agents indicated that Private Property contribute 21-50% of

⁶³ Private Property submission dated 05 September 2022.

⁶⁴ REBOSA–Oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 12-14. Private Property–oral submission from Mr Mwela in the public hearing, 16 November 2021, page 24.

⁶⁵ [REDACTED]

⁶⁶ See Organisation for Economic Co-operation and Development (OECD) 2022 "The Evolving Concept of Market Power in the Digital Economy - Note by Germany". Available on: <https://www.oecd.org/daf/competition/the-evolving-concept-of-market-power-in-the-digital-economy-2022.pdf>

their revenue whilst 21% of the estate agents state that Private Property contribute over 51% of their revenue. Other smaller platforms do not enjoy these benefits.

Some of Private Property's practices and/or arrangements influence competitive outcomes in Property Classifieds: linkages and partnerships with Industry bodies and large estate agents

55. Private Property is able to lock-in the listings and marketing spend of large national estate agents. The lock-in occurs because the shareholding by national estate agents in Private Property provides beneficial contract rates to all the national agencies, and which cannot be withdrawn unless collectively they fall below a certain proportion of their listings on the platform.⁶⁷ This incentivises them as a collective to list on Private Property to retain their beneficial rates. As these agencies all list on Property24 as the dominant classified platform, the lock-in limits the ability of other property classifieds to compete for the listings of these national agencies, and to get sufficient critical mass of listings to benefit from network effects.⁶⁸ Thus, competition is impeded because the largest estate agents have actively sought to support Private Property and locked-in that support as a deliberate strategy.

56. For these reasons, Private Property is also determined as a leading platform in property verticals. Moreover, whatever status is afforded Private Property or not, the inescapable fact is that the relationship with the national estate agents does have an effect on competition.

2.4. Conclusion

57. The Inquiry concludes that Property24 and Private Property can be considered as the leading platforms in property classifieds platforms market. In automotive classifieds platforms market, Autotrader and Cars.co.za can be considered as the leading platforms. Further, the Inquiry finds that the identification of leading platforms and formulation of remedies that are applicable to leading platforms are aimed at facilitating a fair competitive process rather than distorting competition. The criteria used to identify leading platforms is justifiable.

67 See Private Property and EAPPC shareholders contracts in submission by Private Property dated 25 January 2022.

68

[3. Platform competition]

Partnership between Private Property and Rebosa

3.1. Findings from the Provisional Report: the relationship between Rebosa, EAPPC and Private Property

58. The Inquiry found that 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 estate agents.

3.2. Stakeholder submissions: The partnership between Rebosa and Private Property

59. The Inquiry notes that the small platforms are in agreement with the Inquiry's findings and reiterated the loss that they suffered, in terms of listings being redirected to Private Property, as a result of the partnership.⁶⁹

60. Rebosa and Private Property disagree with the Inquiry's findings and argue that:

60.1. Rebosa does not in any way co-ordinate its members' commercial conduct and Rebosa does not have a partnership with Private Property.

60.2. Rebosa's recommendation concerning Private Property does not incentivise continued use of Private Property and does not impede any third-party platform from securing support and listings from the large agents. Estate agents can and do make their own commercial decisions in this regard.

60.3. The EAPPC shareholding in Private Property has no bearing on the partnership between REBOSA and Private Property.

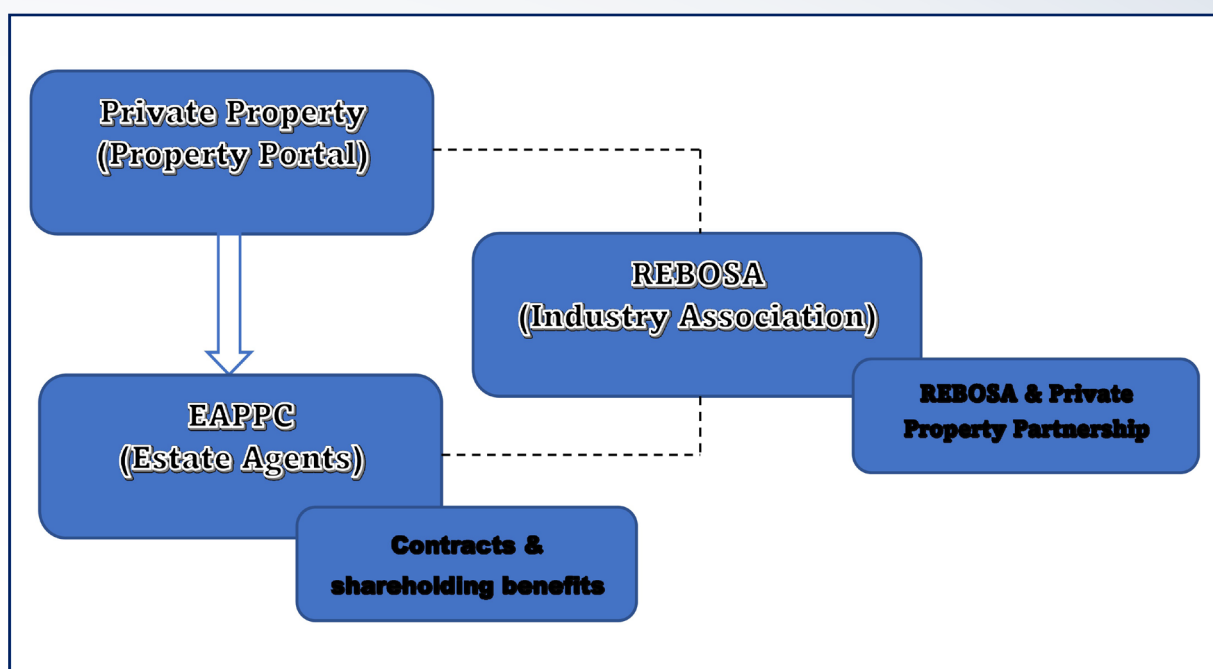
3.3. Response by the Inquiry to stakeholder submissions on the partnership between Rebosa and Private Property

61. The Inquiry considered the submissions by all the stakeholders and also requested additional information from other stakeholders who had not made submissions to the Inquiry before the release of the Provisional Report, including the EAPPC shareholders. Considering all the evidence submitted, the Inquiry is not persuaded of the submissions from Private Property, EAPPC and Rebosa on its provisional finding and still maintains that the partnership results in adverse effect in the property portal market.

62. Figure 2 below provides some background information on the nature of the relationship between Private Property, EAPPC and Rebosa. Background information on this relationship is essential in understanding the incentives involved between various role players and its ultimate impact on platform competition.

⁶⁹ MyProperty submission dated 24 August 2022. Property Central submission dated 24 August 2022. Property Central submission dated 10 September 2022.

Figure 2: Relationship between Private Property, EAPPC and REBOSA



Source: Inquiry's own compilation

63. The relationship between these role players can be summarised as follows:

63.1. Private Property: is a property classifieds platform that offered large national real estate agencies shareholding on the platform in exchange for listings. In this regard, a consortium of large real estate agencies: Estate Agency Property Portal Company ("EAPPC") has shareholding in Private Property.⁷⁰ This shareholding also grants this consortium powers to appoint directors to the board of Private Property. Over and above the shareholding benefits, Private Property has entered into contracts with the EAPPC shareholders. These contracts provide the EAPPC members with, *inter alia*, preferential rates. Moreover, the contracts also contain obligations for the EAPPC

shareholders to promote Private Property in various ways.⁷¹

63.2. EAPPC: is a consortium consisting of mainly several large real estate agents with approximately 12% stake in Private Property. These estate agents list largely with Private Property and Property24. In terms of their shareholding in Private Property these estate agents derive benefits such as (i) shareholding dividends, (ii) appointment of directors and (iii) preferential (discounted) listing rate in exchange for, *inter alia*, listings and promoting Private Property's brand. It is worth noting that the EAPPC shareholders are also members of Rebosa and several of them also sit on the board of directors of Rebosa.

63.3. Rebosa: is an independent, non-profit company ("NPC"), registered with the Companies and Intellectual Property

⁷⁰ Article by Property Professional accessed at <https://propertyprofessional.co.za/2020/08/20/property-portal-shares-available-to-rebosa-members/> accessed 30 May 2022.

⁷¹ For instance, see REBOSA–Oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 12-14. Rebosa stated that as part of the shareholding agreement, these real estate agents also agreed to promote Private Property's brand for a fixed period.

Commission ("CIPC"). Rebosa was established in 2012. According to Rebosa's website it represents the best interests of business owners and principals of small, medium and large estate agencies operating in the residential real estate sector.⁷² Rebosa consists and/or is constituted by estate agents that are actual competitors in their respective relevant market(s). Of relevance to the Inquiry, is the fact that Rebosa (i) played an active and central role in EAPPC shareholding in Private Property – in other words, it facilitated the shareholding of EAPPC in Private Property⁷³ (ii) brands Private Property as the 'portal of estate agents choice' and promotes it at Rebosa events⁷⁴ and (iii) has partnered with Private Property.⁷⁵

64. It is evident from the above description that the following are worth highlighting: (i) EAPPC shareholders benefit from Private Property through their shareholding and contracts, (ii) these EAPPC shareholders are members of Rebosa and some of them also sit on its board of directors and (iii) Rebosa has entered into a partnership with Private Property and recognises Private Property as a 'portal of estate agents' choice. It is worth noting that other competing portals are not recognised in the same light by Rebosa. The Inquiry is of the view that the practice and/or conduct of Rebosa should be assessed within the framework that it:

64.1. is an organisation consisting of competing estate agents;

64.2. Private Property is essentially a supplier of

services (from a value chain perspective)⁷⁶ to competing estate agents; and

64.3. a choice of a supplier and/or a marketing channel for estate agents is a critical commercial decision. In fact, the commercial success of estate agents operations to a certain extent depends on this aspect. Similarly, the ability of an estate agent to independently negotiate better terms with the supplier (i.e., provider of a marketing channel) can confer it with a competitive edge in the competitive process with other estate agents. Therefore, any collective actions amongst estate agents (including through organisations) that undermine this competitive process can have negative implications on competition.⁷⁷

65. Thus, it is important to analyse the broader (potential) implication of the aforesaid relationship on platform competition.

3.3.1. Rebosa's and Private Property relationship: facilitation of shareholding, partnership, and positioning of Private Property as a 'Portal of Estate Agents Choice'

66. The Inquiry's assessment suggests that Rebosa facilitated the shareholding of EAPPC in Private Property, thus, facilitating estate agents commercial interest in a particular property portal. This is supported by evidence from Rebosa's own published report. In this regard, a report from Rebosa's website states that *"Four plus years ago a number of national estate agencies, through the offices of Rebosa, obtained a significant share in*

⁷² <https://www.rebosa.co.za/about-us/>.

⁷³ See report from Rebosa's website: <https://www.rebosa.co.za/rebosa-12-august-2020-report/>

⁷⁴ For instance, see [REDACTED] and Rebosa submissions dated 17 January 2022.

⁷⁵ See an article from Rebosa's website: <https://www.rebosa.co.za/private-property-is-now-the-proud-portal-partner-to-rebosa/> Posted by REBOSA Admin 30 July 2015.

⁷⁶ For instance, an estate agent mandate is to sell and/or rent a property (this become the final product). In executing its mandate, estate agents relies on various marketing channels - i.e., relevant providers of these channels including property portals (thus, property portals are critical input that goes into the final estate agent product).

⁷⁷ It affects competition in many ways such as (i) it takes away the competitive edge that competing estate agents have over each other in the competitive process, (ii) has the potential to create uniform price from the supplier amongst competing estate agents and (iii) has the potential of allocating suppliers if it is agreed amongst competing estate agents which supplier to support.

Private Property...these shares are held by the Estate Agency Property Portal Company (Pty) Ltd ("EAPPC") (Own Emphases).⁷⁸ In Inquiry's view this evidence suggests that Rebosa, an organisation consisting of competing estate agents, played an active and central role in facilitating a commercial transaction by competing estate agents, collectively obtaining shareholding in Private Property.

67. Furthermore, in 2020, Rebosa announced that *"All Rebosa members now have the opportunity to be issued shares⁷⁹ in the EAPPC on the same basis as the founder agencies at no cost. To qualify, members must have a signed advertising agreement with Private Property"*.⁸⁰ The Inquiry understands that the main aim of this share offer is ensure national support by the estate agents for Private Property.⁸¹ Interestingly, the report from Rebosa recognises this shareholding offer as a commercial investment in Private Property by estate agents.⁸² It is unclear to the Inquiry why competing estate agents potential commercial interest and/or investment in a portal should be announced and/or facilitated through an industry body and/or organisation.

68. In terms of Private Property and Rebosa partnership, the Inquiry has evidence suggesting that there is a partnership between Rebosa and Private Property, including an

article that announced the partnership back in 2015, published by Rebosa.⁸³ The article titled "Private Property is now the proud, portal partner to REBOSA" officially announced this partnership. The article also outlines the purpose of the Private Property and REBOSA partnership and key focus areas.⁸⁴ The Inquiry notes that subsequent publications and reports from Rebosa did not deny this 'partnership' nor seek to clarify the contents of the article. Furthermore, there are several articles and press statements where Rebosa reiterates its support for Private Property and advises and/or encourages its members to support the platform.⁸⁵ In its response to the provisional report, Rebosa contends that it has no partnership with Private Property, however, did not provide the Inquiry with evidence that shows that the partnership that was announced back in 2015 is no longer in place. It also appears that Private Property understand its relationship with Rebosa as a "partnership" as referred in their submissions.⁸⁶

69. With respect to Rebosa positioning and/or branding Private Property as the 'the Portal of Estate Agents Choice', Rebosa submits that it advised members that Private Property should be the portal of choice for agents because agents directly and indirectly have significant equity - and therefore have an active and participatory role in making or

78 <https://www.rebosa.co.za/rebosa-12-august-2020-report/>

79 The Inquiry characterises this as a commercial interest and/or investment in a portal.

80 <https://www.rebosa.co.za/rebosa-12-august-2020-report/>

81 See Rebosa

82 The Rebosa report of 2020 states the following with respect to EAPPC shareholding in Private Property: *"The intention was and is to make shares available to all Rebosa members on the same terms that the initial real estate investors made their commitments and investments"* (Own Emphases).

83 See Media Statement by Mark Coetzee, available: <https://www.rebosa.co.za/private-property-is-now-the-proud-portal-partner-to-rebosa/> [Accessed on 23 January 2023]

84 <https://www.rebosa.co.za/private-property-is-now-the-proud-portal-partner-to-rebosa/> Posted by REBOSA Admin 30 July 2015.

85 See Rebosa statement published by Property Professional, available: <https://propertyprofessional.co.za/2020/08/20/property-portal-shares-available-to-rebosa-members/> [Accessed 30 May 2022]. Also see Rebosa statement published by Property Professional, available: Article by Property Professional accessed at <https://propertyprofessional.co.za/2019/03/07/industry-reacts-to-property24-price-increase/> [Accessed on 30 May 2022].

86 Private Property refers to its relationship with Rebosa as a "partnership". See Private Property submission dated 05 September 2022.

influencing decisions.⁸⁷ The Inquiry also understands that Rebosa actively promotes Private Property to its members (i.e., estate agents) during its events.⁸⁸ Rebosa argues that supporting Private Property is only to safeguard against a potentially monopolistic market leader (i.e., views Private Property as a strong alternative). However, it is unclear to the Inquiry why Rebosa's support is limited or exclusive to Private Property. In other words, why the support is to the exclusion of other competing portals in the industry – as this would enhance competition that is necessary to challenge the 'monopolistic market leader' that Rebosa is concerned about.

3.3.2. Rebosa's endorsement and strengthening of Private Property weakens the smaller portals

70. According to Rebosa, it is the largest representative body of real estate agents in the country, with more than 16,000 estate agents as its members and that is more than half the total number of registered, practising estate agents in South Africa.⁸⁹ Importantly, Rebosa also includes all the major estate agency groups amongst its members and therefore its members are likely to hold the majority of listings.⁹⁰ Thus, the Inquiry considers Rebosa to be an influential representative in the industry and property portal market. It is also worth noting that Rebosa represents the 'best interests' of its members. Therefore, it is rationale to expect that its members will view Rebosa's advise and/or announcements as being made in their 'best interest'.
71. Rebosa contends that it did not force its

members to support Private Property, but merely encouraged and/or advised them to support the portal to become an effective competitor to Property24⁹¹ – thus, members viewed this advise as being made in their 'best interest'. Seemingly, Rebosa understands that it has an influence on its members and the intended goal with their recommendation is to strengthen Private Property by bringing in more listings to the portal. Rebosa's mandate is to advance the interest of real estate agents⁹² and it is in the interest of the real estate agents to have a competitive platforms market, with enough alternatives to choose from. While Rebosa's mandate is to safeguard the interests of real estate agents, this cannot extend to influencing the choice of platforms that real estate agents should support. Conduct of this nature by an industry bodies as influential as Rebosa undermines platform competition and has an impact on the ability of other platforms, especially smaller platforms, to compete effectively in the market.

72. Rebosa's determination to strengthen Private Property by encouraging its members to use the portal moves away listings from other portals and weakens them as competitors. In one of the articles by Rebosa, the CEO of the organization did not only encourage continued use of Private Property by real estate agents who were willing to leave the platform, but also disqualified other portals, including possible new portals, by indicating that any real estate agent that moves away from the two leading platforms would risk not getting any consumer attention on their listings.⁹³ It is the Inquiry's view that Rebosa

87 Rebosa submissions dated 17 January 2022.

88 See Rebosa [REDACTED]

89 REBOSA–Oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 31. REBOSA's submission to RSA Parliament in respect of the Property Practitioners Bill accessed at <https://static.pmg.org.za/180904REBOSA2.pdf> on 08 April 2022.

90 See <https://www.rebosa.co.za/about-us/> which lists the Directors, all of which are associated with the major real estate groups.

91 Rebosa submission dated 24 August 2022.

92 See Rebosa website, available: <https://www.rebosa.co.za/about-us/> [Accessed on 06 February 2023].

93 Rebosa statement, available: <https://www.rebosa.co.za/disruption-let-us-face-the-facts-then-plan-the-future/> [Accessed on 30 May 2022.]

should leave such decisions to real estate agents to decide by themselves on which portal to use without any influence from any industry body, including Rebosa.

73. Private Property submits that Rebosa endorsed the portal in order for it to be a credible alternative to the dominant player, Property24, and this was a rational decision by the estate agents to mitigate the exercise of market power by the dominant player.⁹⁴ It appears to the Inquiry that this decision by Rebosa to endorse Private Property was taken without consideration for other platforms, especially smaller platforms, in the market and their ability to compete with both Private Property and Property24. While Rebosa may have endorsed Private Property in mitigation of a possible exercise of market power by Property24, as submitted by Private Property, ultimately it is the responsibility and mandate of Competition Commission to deal with any abuse of market power/ dominance and not of industry body. A decision by an industry body to endorse and/ or support a single player, to the exclusion of other players, is likely to have unintended consequences of distorting competition in the market, as is the case in the current matter.

74. The Inquiry is of the view that the Real Estate Agencies of South Africa ("REASA") and Property24 'partnership and/or joint venture' provide a useful benchmark on the unintended consequences of these kind of relationships in the property portal market. In this regard, Private Property submits that at the same period when Property24 was partnering with REASA, Private Property experienced a decline in listings and the platform also started to fall behind, as Property24 was growing at a significant rate.⁹⁵ Thus, these kinds of relationships have the potential to deprive competing portals listings and consequently, revenue.

3.3.3. Rebosa should not get involved in commercial decisions and/or investments of its members

75. At the onset, the Inquiry notes that Rebosa is an industry body that consists of competing estate agents. Estate agents are expected to compete vigorously and head-on across all geographic spheres: local, regional and national level. It is the Inquiry's view that one of the competitive edges that these estate agents should ordinarily have over each other is the choice of portal (akin to a supplier) i.e., ability to independently negotiate better terms with the portal relative to competitors, and in this case other estate agents. This aspect helps the estate agents to allocate their marketing budget better and possibly generate leads that can be converted into sales. Therefore, the choice of portal and negotiated commercial terms are cardinal in estate agents' competitive process. Furthermore, estate agents' decisions in terms of a choice of a portal (akin to a supplier) to support and decision to investment in a portal should be done independently. Importantly, such important commercial decisions should not be influenced and/or facilitated by an organisation and/or association.

76. It is the Inquiry's view that Rebosa should not be involved in the commercial decisions of its members in any way, including making recommendations on which platform to use. The Inquiry's views in this regard are consistent with the views held by other competition authorities in other jurisdictions. For instance, in 2016 the Competition & Markets Authority in the United Kingdom issued an open letter to estate agents stating that:

"The number and identity of online portals on which estate agents list their properties is an important aspect of competition between estate agents, and the choice of portal should

⁹⁴ Private Property submission dated 05 September 2022.

⁹⁵ Private Property–oral submission from Mr Mwela in the public hearing, 16 November 2021, page 6-7.

be decided independently and not agreed with competitors... If an estate agent discusses with its competitors its commercial intentions or agrees to make joint decisions with them (such as which supplier or portal to go with), this may break competition law.”⁹⁶

77. Over and above the recommendation and/or advise to use Private Property, Rebosa has facilitated the transaction that led to the current ownership of Private Property, including the acquisition of the 12% stake by the EAPPC shareholders.⁹⁷ In 2020 the organisation continued to recruit more of its estate agency members to form part of the EAPPC and gain shares from the portal.⁹⁸ The EAPPC shareholders are competitors and, although they obtained the shares in Private Property free of charge, they earn dividends. Thus, the Inquiry concludes that Rebosa facilitated the investment decisions of competing firms to invest in a particular platform.
78. The Inquiry is of the view that if the estate agents are concerned about the ‘monopolistic’ situation in the market, then they should be encouraging competition in the market and the competitive process by lowering barriers to entry and expansion for all competing players. This can be achieved by making listing easily accessible to all competing players. Clearly, estate agents will benefit from the market that has more than one viable alternative, thus, making listing accessible to all competing portals is a critical step in creating an overall competitive property portal market.

EAPPC shareholding in Private Property

3.4. Stakeholder submissions: EAPPC shareholding in Private Property

79. The EAPPC and Private Property do not agree with the Inquiry’s provisional findings, that the EAPPC shareholding in Private Property leads to adverse effects on competition between property classifieds platforms and submit the following:⁹⁹
 - 79.1. The Inquiry has conducted no factual or economic analysis to demonstrate that the EAPPC shareholders are disincentivised from placing their listings on other property platforms as a result of their shareholding interests in Private Property.
 - 79.2. EAPPC shareholders do not only use Private Property, but also list with other platforms. Therefore, there is no evidence to demonstrate that the EAPPC shareholding in Private Property prevents and/or incentivises estate agents not to support competing property platforms and in particular, results in an adverse effect on competition.
 - 79.3. The shareholding interest which the EAPPC shareholders individually hold in Private Property does not act as a financial disincentive to placing listings on other property portals, which may be attractive to consumers. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
 - 79.4. The EAPPC and its members have no obligation to use services of Private Property. If they choose to do so, they do this individually and independently

96 CMA Open Letter (2016). Available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/517834/Open_letter_to_estate_agents.pdf [Accessed on 04 January 2023].

97 REBOSA article, available: <https://www.rebosa.co.za/disruption-let-us-face-the-facts-then-plan-the-future/> [Accessed on 30 May 2022].

98 REBOSA report, Available: <https://www.rebosa.co.za/rebosa-12-august-2020-report/> [Accessed on 30 May 2022].

99 Private Property submission dated 05 September 2022. EAPPC submission dated 24 August 2022.

- having regard to individual commercial considerations.
- 79.5. The estate agents who hold a shareholding in EAPPC account for less than 35% of the total market for estate agents. Thus, even if all the EAPPC shareholders were incentivised to support Private Property (which is denied), 65% of the market remains contestable for other platforms, and thus there is no “lock in and incentives” to locate support in Private Property by the large agencies.

3.5. Response by the Inquiry to stakeholder submissions: EAPPC Shareholding in Private Property

80. The Inquiry maintains that the EAPPC shareholding in Private Property is a feature that impedes, restricts and/ or distorts competition in the property classifieds platforms market. The Inquiry’s assertion is based on various factors such as the (i) manner in which the EAPPC shareholding in Private Property was obtained – i.e., facilitated by an industry body whose board of directors and members became shareholders in Private Property and consequently (i.e., the industry body) positioned Private Property as a portal of industry choice and the (ii) lock-in effects emanating from the shareholding and contracts benefits enjoyed by the EAPPC on Private Property. For instance, . the obligation for the EAPPC shareholders to list with Private Property, contained in the EAPPC shareholders contracts, limits the appetite of those shareholders from listing with other platforms. In turn, limited listings to the small platforms hinder their ability to compete effectively and expand in the market. The EAPPC shareholding has also resulted in different contracting terms for the shareholders to list on Private Property.

81. The section below, provide a detailed analysis of these shareholding and contract benefits and incentives – including their adverse implications on property classifieds platform market.

3.5.1. The shareholding and contractual benefits enjoyed by EAPPC on Private Property

Shareholding benefits

82. As already indicated, Private Property offered a consortium of large national real estate agencies, EAPPC, shareholding on the platform in exchange for listing with Private Property, though not exclusively. These large national estate agents did not pay and/or buy these shares from Private Property. In other words, national estate agents were offered shares for free, which would enable them to earn dividends from Private Property. As part of the shareholding arrangement, these real estate agents also agreed to, *inter alia*, promoting Private Property’s brand for a fixed period.¹⁰⁰ Therefore, in terms of their shareholding with Private Property, national estate agents derive benefits such as shareholding dividends and appointment of directors.
83. The Inquiry notes that some of EAPPC shareholders (i.e., national real estate agents) have additional direct and indirect shareholding in Private Property (i.e., in addition to the shareholding held via EAPPC). For instance:
- 83.1. A subset of EAPPC shareholders have their own direct private shareholding in Private Property.
- 83.2. In addition, a further sub-set of real estate agencies are, collectively, the majority shareholders in Ooba¹⁰¹, the home loan aggregation service that has a shareholding in Private Property, which has

¹⁰⁰ REBOSA–Oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 12-14.

¹⁰¹ These include Pam Golding, Seeff, Sotheby’s, Harcourts, Wakefields, Jawitz, Maxprop, De Huizenmark and others

increased following the recent Cognition exit. Betterhome, the other home loan aggregator, owns shares in RE/MAX, Tyson, Chas Everitt and Realnet, and a substantial but non-controlling stake in Private Property.

84. These shareholdings provide additional commercial incentives for the large national estate agencies, and their home loan aggregator partners, to continue to support Private Property.

Contractual benefits and obligations on EAPPC shareholders

85. Over and above the shareholding benefits, Private Property entered into contracts with EAPPC shareholders. These contracts provide EAPPC shareholders with benefits such as preferential (discounted) listing rates. Moreover, the contracts and shareholding also contain obligations for the EAPPC shareholders to list and promote Private Property in various ways.¹⁰²

86. The Inquiry's assessment of the EAPPC shareholders contracts with Private Property, which were entered into in 2015, revealed that the platform rewards the EAPPC shareholders for bringing in more listings from their franchise offices. The contracts incentivise and/or require EAPPC shareholders to bring in more listing from the substantial number of their franchise offices in order to enjoy the contractual benefits.¹⁰³

87. Moreover, Private Property's pricing structure for the EAPPC shareholders encourages the shareholders to bring more of their listings to the portal. [REDACTED]

[REDACTED]

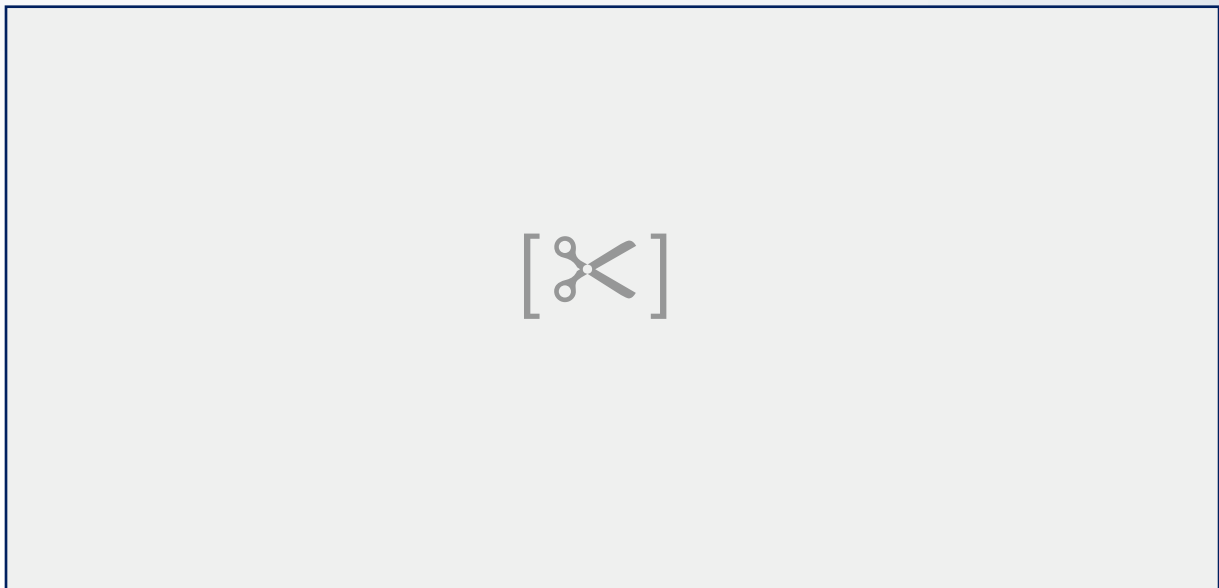
[REDACTED] Table 1 below shows the pricing model which was implemented as part of the EAPPC agreements in 2015.

102 For instance, see REBOSA—Oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 12-14. Re-bosa stated that as part of the shareholding agreement, these real estate agents also agreed to promote Private Property's brand for a fixed period.

103 [REDACTED]

104 [REDACTED]

Table 1: [REDACTED]



Source: Private Property submission dated 28 December 2022.

88. The Inquiry's analysis shows that the EAPPC members were charged significantly lower than the non-EAPPC estate agents.

[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁵
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁰⁶

However, Private Property disagrees with the Inquiry's analysis and argues that currently, there are no favourable terms extended to the EAPPC shareholders and [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹⁰⁷ Private Property submits that this should be evidence that EAPPC shareholders are not charged preferential rates.

89. The Inquiry is however not persuaded by Private Property's argument, that it charges the EAPPC shareholders more than its regular customers. It is improbable that the large national estate agents would maintain their shareholding and contracts in Private Property if they received unfavourable terms, including being charged more than [substantial percentage] [REDACTED] the rates charged to their competitors on standard contracts. The Inquiry understands Private Property's business model to be based on per office model (each office

105 [REDACTED]
[REDACTED]
[REDACTED]

106 Private Property submission dated 28 December 2022.

107 Private Property submission dated 14 July 2023.

of an agency has its own subscription), and therefore its analysis is based on calculations made on per office basis. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Absent substantial evidence to prove that Private Property charges the EAPPC shareholders the same rates as its other customers for standard listings, the Inquiry maintains its view in this regard.

91. Private Property further submits that the EAPPC listing fees have increased by 33% since 2015 to date, whilst still using the same pricing model. However, the Inquiry understands that Private Property has been instituting its annual increases in line with CPI for all their customers. As noted by the Inquiry in the provisional report,¹⁰⁸ Private Property reviews its listing fees on an annual basis and its price increases have been in line with the inflation rate. Furthermore, the provisional report also noted that *“In the recent past Private Property’s price increases*

have not exceeded 8%. Between 2020 and 2021, Private Property did not increase its prices for 22 months. In addition, the platform extended a 25% discount to all its business users for a period of five months, from 1 April to 31 August 2020. This was to give business users a relief, following the impact of Covid-19 on the property industry. In 2021 Private Property enacted a 6% price increase”. The Inquiry’s analysis and observation of Private Property fee escalation overtime have not been disputed.

3.5.2. The EAPPC Shareholding and terms of the EAPPC shareholders’ contracts with Private Property have adverse effects on competition

92. It is common cause that for any property portal to succeed in the market, it needs listings, especially from large real estate agents. The issuing of shares to large estate agents in exchange for their listings is likely to induce such real estate agents to continuously support the portal offering shares and move away listings from other competing portals, especially those that are smaller and can be sacrificed. Since, Private Property is a paid-for-portal and charges a listing fee, the issuing of shares in exchange for listing implies that large estate agents forming part of the EAPPC are in essence committing to spend part of their limited marketing budget on Private Property. Importantly, the shareholding and certain contract clause(s) discourages large national estate agents from switching away and/or moving the marketing spend from Private Property into other competing portals (especially smaller competing platforms). This is due to the fact that the shareholding itself (including contracts) are linked to listings.
93. Moreover, the fact that these national real estate agents stand to benefit from certain exclusive benefits, such as payments of dividends, appointment of directors and

108 See paragraph 343 of the Provisional Report Chapter 5: Classifieds.

preferential listing fees, provides an incentive to continuously support the portal. The unintended consequences of these kind of arrangements is that the support given to the portal offering shares may not necessarily be based on the portal's innovativeness or the competitiveness of its offerings but may be driven by the real estate agents' commercial interest in the portal. The guaranteed support for Private Property by large estate agencies is also likely to make the platform less innovative. Ideally, to promote competition, estate agents should have the ability to choose which platform to use, without being bound by a shareholding and contract incentives and being induced with other exclusive benefits.

94. Below, the Inquiry summarises the adverse effects to classifieds platform commission emanating from EAPPC shareholding and contract with Private Property.

Weakens smaller property platforms: lack of listing, lack of platform attractiveness and loss of (potential) revenue

95. The Inquiry has received submissions from Private Property, arguing that the EAPPC shareholders do not only use Private Property, but also list with other platforms. Private Property argues that the EAPPC shareholders do not have any incentive to only list with Private Property, to the exclusion of other platforms, despite their financial interest in Private Property.¹⁰⁹ Private Property also contends that the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Therefore, the EAPPC shareholders

have no incentive to starve other portals of their listings and risk losing out on the potential exposure from other platforms to protect Private Property.¹¹⁰

96. At the onset, the Inquiry notes that before the formation of Rebosa and the EAPPC, the large estate agents formed a similar body, REASA, and were incentivised by Property24 to support its portal. Private Property admits that the formation of REASA propelled Property24 to become the market leader and moved listings away from Private Property. As a result of loss of listings, Private Property (i) found it difficult to compete (ii) its attractiveness to customers dropped and (iii) affected Private Property entire business model and its ability to make strategic decisions.¹¹¹

97. The Inquiry found that Private Property and EAPPC arrangement has resulted in the loss of listings for smaller competing platforms (i.e., similar effects to that of REASA and Property24 arrangement). In this regard, evidence before the Inquiry, in form of email correspondence, shows that some of the EAPPC shareholders have terminated their contracts for listing on other small platforms in the past, without giving any sound reasons, such as for example, technical difficulties arising from listing with those portals.¹¹² Instead, in some instances, the EAPPC shareholders blatantly state that they are cancelling their contracts for all their offices with the small platforms in order to exclusively list on Property24 and Private Property.¹¹³ As explained, loss of listings or having limited listing makes the platform less attractiveness to the customers. The customer becomes less engaged with the platform and thus impacting on the platform's ability to generate leads.

109 Private Property submission dated 05 September 2021.

110 Private Property submission dated 28 December 2022.

111 Private Property submission dated 05 September 2022. Also see Private Property–oral submission from Mr Mwela in the public hearing, 16 November 2021, page 5.

112 [REDACTED]

113 [REDACTED]

Figure 3: Customer engagement on property portals – July 2021 to June 2023

Engagement ⓘ						+
Metric	property24.com	privateproperty.co.za	propertycentral.co.za	property360.co.za	myproperty.co.za	
Monthly visits	13.70M 🏆	4.796M	71,320	6,195	38,685	
Monthly unique visitors	3.040M 🏆	1.660M	46,410	< 5,000	24,129	
Visits / Unique visitors	4.51 🏆	2.89	1.54	1.66	1.60	
Deduplicated audience BETA	2.290M 🏆	1.335M	43,051	< 5,000	21,405	
Visit duration	00:07:56	00:07:59 🏆	00:01:45	00:00:43	00:01:50	
Pages per visit	11.26 🏆	9.19	2.97	1.42	3.59	
Bounce rate	34.91% 🏆	36.08%	53.53%	71.98%	58.71%	
Page Views	154.2M 🏆	44.09M	211,632	8,824	138,989	

Source: Similarweb

98. It is apparent from Figure 3 above that there is generally lack of customer engagement on smaller property platforms. The Inquiry is of the view that this is due to limited and/or lack of listing. As a result of lack of listings, customer that visit smaller property platform website (i) visit fewer pages, (ii) spend less time on the platform and have (iii) higher bounce rate. Although, Private Property and Property24 monthly customer visits significantly differs, customer level of engagement with the two platforms are high and comparable. This is due to the two platforms having more or less the same number of listings.

99. The Inquiry is of the view that these benefits provide an incentive for the EAPPC shareholders to continue using Private Property and ultimately exhaust their budget on the leading platforms. A majority of the EAPPC shareholders list most of their stock on Property24 and Private Property. It has been submitted by various stakeholders to

the Inquiry and in various articles by estate agents that Property24 is an important source of leads, and it would be difficult for any estate agent to compete effectively without listing on the portal.¹¹⁴ It is therefore not unexpected that the EAPPC shareholders would also list on Property24. The Inquiry has also established that there are EAPPC shareholders with franchise offices that list their stock on other small platforms, however, this is to a limited extent and those shareholders spend less than [5-15]% of their portal listing budget on small platforms.¹¹⁵ Estate agents list on platforms according to their marketing budgets.¹¹⁶ The incentives and the obligations on the EAPPC shareholders to list most of their stock on Private Property leaves less of the budget for the EAPPC shareholders to spend on other portals.

100. The contracts between the EAPPC shareholders and Private Property a

¹¹⁴ REBOSA–oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 27. MyProperty–oral submission from Mr Grove in the public hearing, 16 November 2021, page 6. Property Professional dated (2020). Available: <https://propertyprofessional.co.za/2020/11/12/property-portals-you-get-what-you-pay-for/> [Accessed on 13 May 2022].

¹¹⁵

¹¹⁶ REBOSA–oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 27. 0800Properties–oral submission from Mr Manning in the public hearing, 16 November 2021, page 14.

117 The exclusive benefits that Private Property derives as a result of the EAPPC contracts give the portal more exposure than other portals do not have access to. In turn, this has a negative impact on other portals, especially small platforms, whose ability to grow and expand is constrained.

3.6. Inquiry's provisional remedy: EAPPC shareholding

101. To address the concerns identified by the Inquiry with regard to the relationship between Private Property, Rebosa and EAPPC, the Inquiry made the following provisional remedies:

- 101.1. Rebosa should refrain from co-ordinating 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 Competition Act, or alternatively the Commission to investigate such conduct in relation to the Rebosa partnership with Private Property under section 4 of the Competition Act.
- 101.2. The EAPPC shareholders should divest from Private Property

3.7. Stakeholders' submissions on the remedies: relationship between Private Property, EAPPC and Rebosa

102. All the affected parties (Private Property, EAPPC, EAPPC shareholders and Rebosa) by the Inquiry's provisional remedy in this regard are of the view that they are inappropriate and argue as follows:¹¹⁸

102.1. It is not appropriate for the Inquiry to in essence deal with an issue as a complaint,

but with a lower threshold under the auspices of the Inquiry.

- 102.2. Remedies such as that of divestiture can only be recommended where there is entirely clear-cut evidence and where there are no alternative remedies, as such a remedy can have implications for parties' constitutional rights.
- 102.3. It is not clear if the Inquiry has taken a principled decision that estate agents could no longer have shareholding in online platforms in general but appears to want to confine this approach to Private Property.
- 102.4. It is not clear what the factual or economic basis for a far-reaching divestiture remedy of this kind is, apart from the suggestion that Private Property is a leading platform.

103. Over and above the comments from the stakeholders directly affected by the Inquiry's remedy, the Inquiry received comments from the small platforms arguing as follows:

103.1. The established platforms have greatly benefitted from the support of business user formations such as REASA, Rebosa and the EAPPC. The small platforms, especially the HDI firms also deserve the same support, and the Inquiry should include it in its remedies, for the same structures to be mandated to support the small platforms.¹¹⁹

3.7.1. Divestiture is the appropriate remedy for the EAPPC shareholding concerns

104. The Inquiry has demonstrated in the Provisional Report and in the discussion above that it is undesirable for EAPPC members, who are large real estate agents, to hold shares in the second largest property portal, as a collective given the impact this has on competition. Having considered all the submissions, the

117

118 Private Property submission dated 05 September 2022. Rebosa submission dated 24 August 2022. EAPPC submission dated 24 August 2022.

119 Property Central submission dated 24 August 2022.

Inquiry is still of the view that divestiture is the appropriate remedy to effectively address the competition concerns that arise from EAPPC shareholding in Private Property. Both the EAPPC and Private Property did not provide the Inquiry with any alternative remedies that could possibly address these competition concerns. The Inquiry is of the view that there is a compelling case to demonstrate that the shareholding of EAPPC in Private Property is a feature that impedes, restricts and/or distorts competition in the market. As long as the EAPPC shareholders continue to hold shares in Private Property, the shareholders will continue to have an incentive to collectively protect the portal.

105. The Inquiry also notes that the investment by the EAPPC in Private Property was not a pure commercial investment by individual estate agents but a collective decision, facilitated by an industry body consisting of competing estate agents. Investments borne of such circumstances are likely to raise competition concerns.

3.7.2. Platforms should compete in a fair environment

106. The Inquiry appreciates the difficulties faced by the small platforms and the possible losses incurred by the platforms as they struggled to secure listings, over a period of time, as a result of the partnerships. The Inquiry also appreciates that online platforms by their nature are characterized by network effects which may make it difficult for the small platforms to quickly gain scale and catchup to the leading platforms. However, it is a well-known proposition in competition law that the role of competition regulation is to protect the competitive process and not competitors.¹²⁰ There are several small property classifieds platforms that are competing for market shares, and singling

out only one firm to get support from the industry body will yield no different results than what the Inquiry currently seeks to remedy. It is not in the interest of competition to single out a platform that should be championed and backed by business users, when there are other platforms that may be facing similar challenges in the market.

107. Likewise, the act of singling out and protecting one of the competitors in the market by business users, especially business users with control over substantial listings such as large estate agents, is likely to send a signal to potential entrants who may eventually be discouraged from entering the market. It has also been demonstrated that in online platforms, when a market is contestable, innovative disruptors can become effective competitors. For example, this is showcased by the entry and growth of Cars.co.za in the automotive classifieds market. Accordingly, it is important to ensure that the property classifieds platforms market is as contestable as possible to encourage the effective and meaningful participation of all players, including small property portals.

3.8. EAPPC shareholders contracts with Private Property

108. The Inquiry also explored a possibility to include an additional remedy in its final report and remedial actions for the termination of the EAPPC shareholders contracts and requested comments from the EAPPC shareholders and Private Property as the affected parties. The Inquiry proposed the following remedy:

- 108.1. The termination of the listing contracts between the EAPPC shareholders and Private Property for the standard contracts within 1 month of the release date of the Inquiry's final report.

¹²⁰ Maureen K Ohlhausen and John M Taladay (2022), *Are Competition Officials Abandoning Competition Principles?* Journal of European Competition Law & Practice, Volume 13, Issue 7, Pages 463–472, <https://doi.org/10.1093/jeclap/lpac033>.

3.9. Stakeholder submissions: EAPPC shareholders contracts with Private Property

109. The Inquiry received submissions from Private Property and some of the EAPPC shareholders. All these parties were against the Inquiry’s proposed remedy and submitted as follows:
- 109.1. Private Property is neither a dominant player nor a leading platform in online property classifieds platforms market. Therefore, the Inquiry’s remedies are misdirected.¹²¹
- 109.2. The Inquiry did not take into account the context in which the EAPPC shareholders and Private Property entered into these contracts and has also failed to consider the market dynamics of the online property classifieds platforms market.¹²²
- 109.3. The Inquiry’s proposed remedies in relation to divestiture of the EAPPC from Private Property and the termination of the EAPPC shareholders’ contracts are drastic and yet not based on any evidence of adverse effects on competition.¹²³
- 109.4. The Inquiry failed to establish that the conduct it is concerned about is not an “ordinary incident of competition”.¹²⁴
- 109.5. The lock-in effect of the EAPPC contracts insinuated by the Inquiry is based on speculations and as a result the Inquiry’s remedies in this instance are based on “speculative hope” that they would facilitate more competition without any empirical evidence.¹²⁵

- 109.6. The EAPPC shareholding is not the direct cause of limited expenditure on small platforms by EAPPC shareholders. Estate agents prefer to list with platforms where they are likely to generate leads and the small platforms have been unable to generate the necessary traffic to cater to the need for leads by the estate agents.¹²⁶
- 109.7. The contract clauses that the Inquiry is concerned about, relating to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], have not been enforced by Private Property. Therefore, the Inquiry’s concerns are baseless. The Inquiry should rather order the removal of the offensive clauses instead of contracts termination.¹²⁷
- 109.8. Termination of the EAPPC contracts would affect the shareholders and their franchisees. EAPPC shareholders are largely big estate agencies with several franchised offices. Therefore, immediate termination of the EAPPC contracts is impractical.¹²⁸
- 109.9. Immediate termination of the EAPPC shareholders contracts will adversely affect competition in the property classifieds platforms market and could lead to the market tipping in favour of the dominant platform.¹²⁹

3.10. Inquiry’s response to stakeholders’ submissions: EAPPC shareholders contracts with Private Property

121 [REDACTED]
122 [REDACTED]
123 [REDACTED]
124 [REDACTED]
125 [REDACTED]
126 [REDACTED]
127 [REDACTED]
128 [REDACTED]
129 [REDACTED]

110. The Inquiry has already addressed most of the above comments from stakeholders. In this section the Inquiry address those submissions that raise unique issues.

3.10.1. The terms of EAPPC shareholders contracts are linked to the shareholding and are intended to promote Private Property at the expense of competition.

111. The Inquiry notes that the EAPPC shareholders contracts with Private Property were entered into after EAPPC obtained shareholding in Private Property. Therefore, the contracts are as a result of the EAPPC shareholding in Private Property. The reasons provided by Private Property and the EAPPC shareholders for seeking to retain these contracts also suggest that the shareholding aids the platform to retain its current market position. The impact of the EAPPC shareholders' contracts with Private Property are discussed in section 3.5.2 of this annexure. It has been submitted to the Inquiry that if the EAPPC shareholders divest from Private Property and immediately terminate their contracts, the shareholders would likely cease to list with Private Property and move to the must-have platform and the market would tip towards the dominant platform in the market.¹³⁰ These submissions are made against the contentions by the same stakeholders that there are no benefits derived by the EAPPC shareholders from Private Property through these contracts and they do not induce the shareholders to continue using the portal.

112. Inquiry is of the view that these submissions support its view that the EAPPC contracts have a lock-in effect and induce the shareholders to continue using Private Property. If this was not the case, there would not be any plausible need for such contracts

and the EAPPC shareholders would continue using Private Property at their own discretion even without any beneficial terms.

113. It is worth noting that the Inquiry's proposed remedial actions in relation to the EAPPC shareholding do not seek to restrict the EAPPC shareholders from listing with Private Property or any other platform. The proposed remedial actions seek to transition the EAPPC shareholders to standard contracts with non-preferential commercial terms that impede, restrict and/ or distort competition, and have an adverse effect on, among others, small platforms. The clauses that seek to differentiate EAPPC's commercial terms from other customers of Private Property are the basis for the Inquiry's current concerns. Transitioning the EAPPC shareholders to the standard contracts will achieve the same results, with no exclusive terms and conditions.

114. In their submissions the stakeholders further contend that the small platforms would not be able to compete in the market without the required Google spend.¹³¹ It is the stakeholders' view that termination of the EAPPC shareholders contracts is unlikely to result in any effective competition outcomes when the small platforms are still faced with the hurdle of limited financial resources to spend on Google. The Inquiry is opposed to these suggestions. As illustrated in the provisional report, acquisition of listings is the first crucial step in the growth process for online classifieds platforms.¹³² Platforms display content on Google and absent listings the platforms do not have content. It has also been submitted that platforms with more listings stand a better chance of appearing in Google's organic results. The Inquiry is therefore of the view that any feature that impedes the ability of other platforms to attain

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132 See section 2.3.4, page 51-53 of the Provisional Report (Chapter 5 - Online Classifieds Platforms).

listings, also impedes the small platforms' ability to compete effectively in the market.

115. The Inquiry has considered the submissions on the possible effects of the abrupt termination of contracts between Private Property and EAPPC shareholders, on their business operations. The Inquiry is persuaded that this remedial action may have unintended consequences.¹³³ The Inquiry also took into account submissions from the affected parties suggesting that the issue of the EAPPC contracts is linked to the proposed divestiture.¹³⁴

Outright refusal to syndication software

3.11. Findings from the Provisional Report: Outright refusal to syndication software

116. The Inquiry found that 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. The Inquiry identified Property24, Private Property and PropData as the largest suppliers of listing software engines for real estate agents.

3.12. Stakeholder submissions: Outright refusal to syndication software

117. Private Property and PropData had no comments on this finding. Property24 is the only platform that has a differing view and submits that the Inquiry's finding is conceptually flawed for the following reasons¹³⁵:

117.1. Access to listing software is rather "a nice to have" and not a critical tool for platforms' ability to compete.

117.2. The Inquiry did not conduct any systematic analysis of the proportion of business users that have a preference of listing through the software, or the extent of that preference to conclude that lack of access would lead to lessening of competition.

117.3. Platforms have an alternative in Prop Data for syndication software, as it is the largest supplier of the software and business users are not dependant on Property24 and Private Property.

3.13. Response by the Inquiry to stakeholder submissions: outright refusal to syndication software

118. Syndication software refers to estate agent listing management cloud-based software which enables estate agents to capture their property listings across a variety of competing property portals through a single access point. Estate agents subscribe and contract with the syndication software providers to be able to upload their listings to all those platforms whose API is integrated with their service provider of choice. Figure 4 below shows one of the syndication software providers management systems. From the management system shown in the Figure 4, estate agencies have a choice to select platforms on the list and select the expiry date of their listings for each platform from a single point.

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135 Property24 submission dated 07 September 2022.

Figure 4: Syndication Management System

Source: Property Central submission 21 January 2022.

119. In the provisional report, the Inquiry noted the importance of listings for any platform to effectively compete in the market and the impact of lack or limited access to the listings on platforms’ ability to grow. To arrive at its conclusion on the adverse impact of limited access to syndication software on platform competition, the Inquiry considered evidence on the importance of listings, especially from large estate agencies with national footprint, and the importance of syndication software on the platforms’ ability to compete. In addition, the Inquiry considered the competition dynamics in the syndication software market and the importance of access to Prop Ctrl and Fusion on platforms’ ability to compete effectively in the market. The Inquiry has not received any convincing additional evidence which suggests that its finding in this regard is incorrect.

3.13.1. Lack of access to syndication software hinders the small platforms’ ability to compete

120. In the Provisional Report the Inquiry noted evidence by the small platforms which consist of, among others, email correspondence between the small platforms and estate agencies, including national franchises.¹³⁶ The evidence shows that estate agents disregard some platforms, depending on whether they can list using their chosen syndication software supplier. Syndication software is even more important for the large estate agents who list a wide range of stock over a large geographic area.¹³⁷

121. The evidence further shows that efforts by the small platforms who have no access to the syndication software by the leading suppliers, PrpCtrl, Fusion and PropData to attract large business users have failed.¹³⁸ The evidence shows that small platforms who have no access to the syndication software by the leading suppliers, PrpCtrl, Fusion and PropData, have tried what the established platforms suggest are alternatives to syndication software, such as manual listing, but still failed to retain estate agencies.¹³⁹ Instead, the lack of access to listing software has led to severe loss in listings, including those of estate agencies who disregard platforms that have no access to their preferred syndication software supplier.¹⁴⁰ For instance, there is a platform that previously had access to one of the leading syndication software that lost significant [redacted] from its business users when the leading syndication software supplier selected to discontinue its feed to the platform.¹⁴¹ This

136 [redacted]
137 [redacted]
138 See page 86-99 of the Provisional Report (Chapter 5 – Online Classifieds Platforms).
139 [redacted]
140 [redacted]
141 [redacted]

sufficiently demonstrates the significance of syndication software for estate agencies and ultimately their appetite to list with certain platforms. It is the Inquiry's view that this evidence negates Property24's submission that access to listing software is "a nice to have" and not a critical tool for any platforms' ability to compete effectively in the market.

3.13.2. Access to syndication software by all the suppliers is important for platforms

122. Syndication software suppliers compete for estate agents to contract with them and not for platforms. Essentially, it is the estate agents that have alternatives between the syndication software providers and not the platforms. The Inquiry is not aware of any estate agents that make use of multiple syndication software, and it is the platforms' ultimate goal to have all the estate agents listing with them. Therefore, it is crucial for the platforms to have access to all syndication software suppliers. According to Private Property, PropCtrl and Fusion have 15% and 20% market share in the provision of syndication software, respectively.¹⁴² Property24 estimates PropCtrl's market share to be even higher than Private Property's estimates, at 42%.¹⁴³ Any platform that would have access to PropData and not have access to PropCtrl and Fusion would have access to 35% of the market and lose out at least on another 35% of the market.

123. The importance of having access to all syndication software providers is also proven by the fact that the established platforms are accessible through most of the syndication software, over and above their own. Therefore, any suggestion that a platform could possibly be able to effectively compete in the market with access to only

one syndication software, even on the basis that it is the leading provider, is incorrect. There also seems to be no significant technical difficulties with extending access to the smaller platforms for the syndication software providers. Following the Inquiry's release of the Provisional Report, one of the leading syndication software providers extended access to one of smaller platforms, with no difficulties.¹⁴⁴

3.14. Inquiry's provisional remedy: outright refusal to syndication software

124. To remedy the competition concerns in relation to the outright refusal of access to syndication software the Inquiry recommended that 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.

3.15. Stakeholders' response on the provisional remedy: outright refusal to syndication software

125. Amongst the leading syndication software providers Property24 and Private Property submit that the Inquiry's provisional remedy in this regard is inappropriate for the following reasons:¹⁴⁵

125.1. If Property24 provides syndication to third party platforms for free, that would logically likely lead to the foreclosure of third-party providers that do not have any other monetisation strategies.¹⁴⁶

125.2. To the extent that the Inquiry persists with the provisional recommendation to feed-out listing data to all third-party platforms that request a feed, it can only be

142 Private Property public hearing presentation dated 16 November 2021.

143 Property24's public hearing presentation dated 16 November 2021

144 PropData opened access to Property Central.

145 Property24 submission dated 07 September 2022.

146 Property24 submission dated 07 September 2022.

appropriate if platforms are permitted to charge a reasonable fee to cover the costs related to the API integrations.¹⁴⁷

125.3. The Inquiry has not reflected the nature and extent of the adverse effect on competition that it is seeking to remedy, nor has it assessed if there are any other less restrictive remedies to address the alleged adverse effect on competition against which this remedy is directed.¹⁴⁸

126. All the three leading syndication software providers (PropData, Private Property and Property24) submit that if the Inquiry persists with its provisional remedy, it must consider that interoperability with third-party platforms will only be feasible with certain conditions, such as:

126.1. The request for interoperability will be granted only if it is made by at least 100 business users who wish to list with a particular platform.

126.2. Any development, operational and maintenance costs incurred in ensuring interoperability and maintenance of links between the syndication software providers and a third-party platform are to be contributed to by the third-party platform.

126.3. Third-party platforms must procure appropriate skills, such as senior software developers and support staff, to illustrate that it can appropriately manage the feed.

3.16. Inquiry's response to stakeholders' submissions: Outright refusal to syndication software

127. The importance of listings and the harm to competition as a result of limited access to syndication software for small platforms is adequately ventilated in the provisional report¹⁴⁹ and the removal of a significant barrier to expansion of small platforms cannot

be moderated. The Inquiry is of the view that there is no other less restrictive remedy that could possibly address the effects of limited access to syndication than what it has proposed. The Inquiry has sought to lessen the burden of the proposed remedy on the syndication software providers by placing the responsibility of the development costs on the classified platforms wishing to interoperate. There also has not been any compelling justifications by the syndication software providers for failure to interoperate. In the current digital age, interoperability is facilitated through Application Programming Interfaces (APIs) that can be developed by a syndication software at limited costs. Furthermore, in automotive classifieds and travel and accommodation there are no difficulties with interoperability, and this is indicative this practice is a norm and is not overly difficult to implement.

128. Property24 is the only platform that seems to suggest that the Inquiry's proposed remedy would have negative outcomes. The other syndication software providers, including those that Property24 anticipates would be negatively affected, have indicated that they are in agreement with the proposed remedy. The proposed remedy for open access to syndication is intended to aid small platforms to have access to listings. The small platforms agree that open access will promote the use of their portals by business users and ultimately promote platform competition.¹⁵⁰

3.17. Free access to syndication will promote competition without negatively affecting other syndication software providers

129. Property24's position suggests that the platform charges for syndication to promote competition, so business users continue using the other third-party syndication

147 Property24 submission dated 07 September 2022.

148 Private Property submission dated 19 June 2023.

149 See page 96-103 of the provisional report (Chapter 5- Online Classifieds Platforms).

150 MyProperty submission dated 24 August 2022. Property Central submission dated 24 August 2022.

software providers.¹⁵¹ The Inquiry has not been provided with any cost justifications to necessitate the charges for syndication. Furthermore, the Inquiry also understands that the other third-party syndication software providers also provide other technological solution services to business users and charge a single fee for all their services.¹⁵²

130. The Inquiry is not aware of any syndication software provider that solely relies on syndication fees for revenues and is therefore not persuaded that there could possibly be any harm caused by the removal of the syndication fees. For example, PropData is one of the syndication software providers that are not vertically integrated but provides syndication alongside other technological services. The entity confirmed to the Inquiry that it charges a single fee of between R440-R516 per month for all its services, including development and maintenance of business user websites (which is the entity's core business), syndication services and paid campaigns on social media platforms.¹⁵³ [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED].¹⁵⁴ It is also worth mentioning that the leading platforms in property classifieds also compete with Prop Data in adjacent markets for the provision of other technological solution services and also charge business users for such services separately. Therefore, the Inquiry is of the view that the removal of syndication fees is unlikely to negatively affect any of the players in the market in favour of the other.

3.18. Conditions should not be used as constructive refusal for access to syndication software

131. The syndication software providers contend that there should be conditions put in place for them to allow syndication to all platforms. The entities are of the view that a request for syndication should come from business users who wish to list on a particular platform for it to be considered for integration onto their software.¹⁵⁵ Private Property further puts a condition that for any platform that seeks to integrate with Fusion there must be 100 business users that requests the service.¹⁵⁶ However, as indicated in the provisional report, conditions of this nature are cumbersome for small platforms and could serve as a strategic barrier to hinder their ability to acquire listings and expand in the market. It is the responsibility of any property platform that wants to make inroads into the market to make such requests, and not that of business users. Moreover, it is the property classifieds sites that must be integrated into syndication software. Business users have no incentive to make such requests since they already list with the must have platforms.
132. The syndication software providers further argue that open access is likely to come with its own challenges as API integration with all platforms is not as simple as the Inquiry might have suggested.¹⁵⁷ Moreover the entities argue that the removal of syndication fees will lead to a further burden of costs for ensuring compatibility of their software and third-party platforms' APIs. Property24 and Private Property submit that syndication software providers should be allowed to charge or shift

151 [REDACTED]

152 Meeting between the Inquiry and MyProperty, 27 September 2021. Meeting between the Inquiry and Prop Data, 2 June 2022.

153 Meeting between the Inquiry and Prop Data, 2 June 2022.

154 [REDACTED]

155 Private Property submission dated 05 September 2022. [REDACTED]

156 Private Property submission dated 05 September 2022.

157 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022. [REDACTED]

[REDACTED]. Property24 submission dated 07 September 2022.

the burden of the API integration related costs to the platforms.¹⁵⁸ In addition to the burden of costs the entities also seek to put conditions on third-party platforms to acquire highly skilled personnel, with specific qualifications and experience.

133. The Inquiry is of the view that these conditions would likely become insurmountable barriers for small platforms, who currently charge low to no fees for listings from business users. The small platforms are also unlikely to be able to recover the costs of the prescribed requirements from business users, without losing attractiveness. The Inquiry however also accepts that it should be the responsibility of each third-party platform to ensure seamless integration with the syndication software providers' API even if the third party syndication software providers have the main responsibility to ensure that their API is open for all platforms.

Constructive refusal to syndication software

3.19. Findings and remedies from the Provisional Report: Constructive refusal to syndication software

134. The Inquiry found that the R500 levy 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.
135. To address these concerns the Inquiry proposed a removal and prohibition on

leading classified platforms charging a fee for incoming listing feeds from agents or dealers using third party listing engines, alternatively the Commission to investigate for potential collusive conduct.

3.20. Stakeholder submissions: constructive refusal to syndication software

136. The leading property classified platforms did not make any substantial submissions on the Inquiry's findings except suggestions that the Inquiry has mischaracterized the agreement between Property24 and Private Property.¹⁵⁹ With regard to the provisional remedy, Private Property indicated that it has no objections removing the in-bound fee¹⁶⁰, whilst Property24 raised concerns and warned the Inquiry of possible unintended consequences should the Inquiry proceed with its provisional remedy.¹⁶¹ The platforms contend as follows:

- 136.1. The agreement entered into between Private Property and Property24 does not constitute collusive conduct.¹⁶²
- 136.2. It is inappropriate for the Inquiry to effectively require a substantial operational change in exchange for not recommending an investigation into alleged collusion.¹⁶³
- 136.3. Removing the in-bound interface fee will have financial implications for the leading platforms and would most likely lead to degradation of the feed-in service offerings.¹⁶⁴
- 136.4. Removing the in-bound fee would discourage use of third-party syndication software service providers and may disincentivise business users from using smaller platforms. This may, in turn,

158 Property24 submission dated 07 September 2022. Private Property submission dated 05 September 2022.

159 Private Property submission dated 05 September 2022. Property24 submission dated 07 September 2022.

160 Private Property submission dated 05 September 2022.

161 Property24 submission dated 07 September 2022.

162 Private Property submission dated 05 September 2022. Property24 submission dated 07 September 2022.

163 Property24 submission dated 07 September 2022.

164 Property24 argues that the in-bound interface fees cover the costs of maintaining, supporting and developing the feed-in service as well as the costs of migrating customers between the various third-party syndication software.

disincentivise potential new platform entry.¹⁶⁵

137. The Inquiry notes that the other syndication software providers indicated that they fully agree with the Inquiry's findings in this regard and are in full support of the Inquiry's provisional remedy.¹⁶⁶ The entities submit that the removal of inbound fees will give smaller real estate businesses the freedom to switch between service providers of choice, without being penalised in fees.

3.21. Response by the Inquiry to stakeholder submissions: constructive refusal to syndication software

138. In the Provisional Report the Inquiry indicated that the agreement between Private Property and Property24 may be as a result of collusive conduct. In other words, the Inquiry made an observation that the agreement and/ or arrangement between Private Property and Property24 give rise to a reasonable suspicion that there may be collusive conduct and, accordingly, this may require further investigation by the Commission. There is nothing that precludes the Inquiry from making such an observation, particularly when there are reasonable grounds upon which the observation is based. For avoidance of doubt, the Inquiry did not at any point suggest conclusively or make a finding that the two platforms had engaged in collusive conduct, in contravention of the Competition Act.

139. The Inquiry notes that both Property24 and Private Property submit that the Inquiry has omitted some crucial evidence that shows that the platforms introduced the levy on different dates and each party determined the levy independently.¹⁶⁷ However, when probed further, both parties did not provide any evidence on factors taken into consideration when determining the levy. Put differently, Property24 and Private Property could not explain how they arrived at the R500 levy. Nonetheless, the main concern that the Inquiry seeks to address is the adverse effect that arises as a result of the levy and there is no compelling evidence by the platforms to persuade the Inquiry that the levy is necessary for interface to occur.

3.21.1. There is no reasonable basis for platforms to charge an inbound-interface fee for listings from third-party syndication providers.

140. In the Provisional Report, the Inquiry noted that there are no compelling reasons for Property24 and Private Property to continue charging the inbound interface fee to business users. Private Property indicated that it had no difficulties removing the levy and [REDACTED] Property24 on the other hand argues that the inbound fee is necessary for the platform to cover its costs for maintaining, supporting and developing the feed-in service as well as the cost of migrating customers between the various third-party syndication software.¹⁶⁸ The platform therefore submits that removing the inbound fee would compromise its feed-

165 Property24 submits that with this recommendation, estate agents would be able to make use of Property24 and Private Property's syndication software to (i) feed out to smaller platforms; and (ii) will not incur a cost to feed listings to the other. If syndication software providers or smaller platforms charge an inbound fee to estate agents, estate agents are unlikely to accept this cost as they face reduced costs by only using Property24 and Private Property (even if there is a degradation of these offerings).

166 [REDACTED]. Entergral submission dated 24 August 2022.

167 Private Property submission dated 05 September 2022.

168 Property24 submission dated 19 January 2022. Property24 argues that feed-in operations require maintenance and ongoing development work as the API is adapted to accommodate changes to the Property24 portal. This requires substantial human capital investment from the Senior Operations Team. In addition to human capital costs, the platform also charges the levy for contingency planning to cover the cost and investment required to migrate customers back to PropCtrl or other systems, should the new vendor not succeed in the long-term (in order to substantiate the substantial investment required to establish, maintain and service the feed).

in service offering. The Inquiry is however not persuaded that these costs are unique to Property24. As noted in the Provisional Report, in automotive classifieds business users are free to use any service provider and feed to any platform of their choice, without incurring any additional costs, such as inbound levies. Even AutoTrader, Property24's sister company, does not charge inbound interface fees to business users using third-party syndication software.¹⁶⁹

141. It is the Inquiry's view that the costs of inbound interface should form part of the platforms' costs items and not a standalone, as receiving listings is the largest part of the platforms' operations. Further, the Inquiry does not agree with the suggestion that a platform incurs such high interface related costs for each business user monthly; no contrary evidence has been placed before the Inquiry in this regard. From its engagements with various stakeholders, the Inquiry understands that integration between a platform and syndication software API is established once, and, as a result, the switching costs for those business users switching from PropCtrl to other syndication providers should be a once off cost. Moreover, considering Property24's profit margins, the Inquiry is not persuaded that Property24 would struggle to cover the costs it claims to incur for the inbound interface when other platforms with significantly lower margins do not charge the same levy.

3.21.2. The removal of the interface levy is unlikely to adversely affect small platforms

142. Property24 warns the Inquiry of unintended consequences that could arise with the

removal of the inbound interface levy. The platform contends that if the smaller platforms were to introduce the same levy whilst the established platforms are dropping it, business users would not have any incentive to use those platforms and stick to the established platforms.¹⁷⁰ The majority of small platforms forego profits by charging significantly low fees to no fees at all to attract a sufficient critical mass.¹⁷¹ It is therefore not plausible to suggest that once the leading platforms drop the inbound fees, the small platforms could possibly introduce the same levies when they have been operating at a loss for more than a decade.

143. Furthermore, it appears that the small platforms fully appreciate that the established platforms are a must have for business users.¹⁷² Accordingly, it is unlikely that any of the small platforms would raise the costs of using their platforms and attempt to exploit business users. Indeed, the Inquiry has not seen any evidence which suggests that small platforms intend to introduce the inbound interface fee in the near future. In addition, as alluded to in the Provisional Report, the removal of the inbound fee will support the use of third-party syndication software providers and lower the costs for business users.¹⁷³ The other syndication software providers stated their support for the Inquiry's provisional finding and agree that the provisional remedy is appropriate to address the adverse impact of the inbound fee on their ability to compete.

Multi-year contracting

3.22. Findings and remedies from the Provisional Report: multi-year contracting

¹⁶⁹ [REDACTED]
¹⁷⁰ Property24 submission dated 07 September 2022.
¹⁷¹ Property Central—oral submission from Mr Jhagaroo in the public hearing, 15 November 2021, page 12. [REDACTED]
¹⁷² MyProperty—oral submission from Mr Grove in the public hearing, 16 November 2021, page 6. [REDACTED]
¹⁷³ See page 93-100 of the Provisional Report (Chapter 5 – Online Classifieds Platforms).

144. The Inquiry found that multi-year contracts that offer a package of services at beneficial rates, such as those concluded by Property24 with business users incentivize continued use and crowd out support for competing platforms.

145. As a provisional remedy, the Inquiry proposed that 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.

3.23. Stakeholder submissions: multi-year contracting

146. The Inquiry did not receive any submissions regarding its findings on long term contract. With regard to the provisional remedy the Inquiry received the following submissions from Property24:¹⁷⁴

146.1. Property24's Subscription Agreement already allows estate agents to terminate the subscription agreement on one month's written notice

146.2. The business user is free to elect to take up the Subscription Package

146.3. The Inquiry's recommendation is highly inconsistent with the procompetitive objectives of lowering the listing costs for business users.

147. The small platforms are in agreement with the Inquiry and submit that this remedy would allow real estate businesses the freedom to switch between portals.¹⁷⁵

3.24. Inquiry's response to stakeholder submissions: Multi-year contracting

148. Having considered submissions from stakeholders, the Inquiry still holds the view that the multi-year contracting by established platform is a feature that impedes competition, as the contracts lock-in the business users for long periods of time whilst also committing their spend on the established portals. The proposed remedy seeks to grant business users the liberty to seamlessly terminate their contracts with platforms as they wish, at any given time of the year. The lock-in effect of Property24's and Private Property's multi-year contracts is elaborated in the Provisional Report and there has been no substantial evidence from the stakeholders that disprove the Inquiry's analysis.¹⁷⁶

3.25. The multi-year contracts lock in a significant proportion of the market

149. The Inquiry understands that Property24's Package Subscription has a fixed term until March 2023, with an annual opt-out option in February each year.¹⁷⁷ Business users who are subscribed to Property24's Package Subscription can only opt-out on one month's written notice only once per year. Between 2019 and 2021 the uptake of Property24's Package Subscription has been increasing, from less than [50-100] to more than [250-350], locking in more customers annually.¹⁷⁸ The growth in Property24's Package Subscription customers is shown in the Figure 5 below.

¹⁷⁴ Property24 submission dated 07 September 2022.

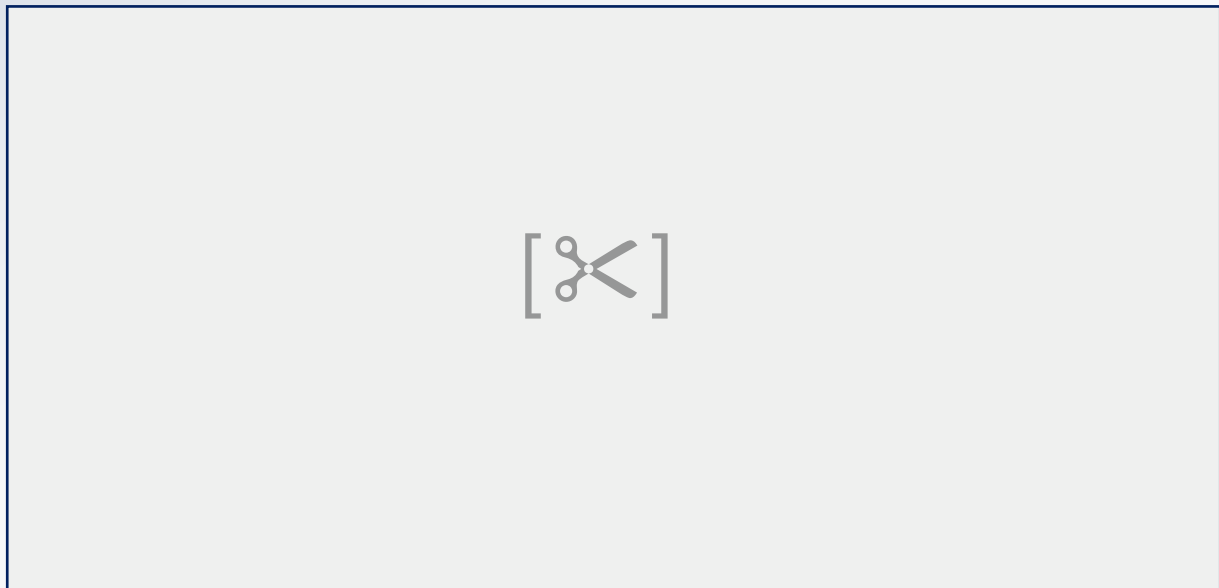
¹⁷⁵ Entegral submission dated 24 August 2022. Property Central submission dated 26 August 2022.

¹⁷⁶ See page 106-107 of the Provisional Report (Chapter 5 – Online Classifieds Platforms).

¹⁷⁷ Property24 submission dated 30 June 2021.

¹⁷⁸ [REDACTED]

Figure 5: [REDACTED]



Source: Property24 submission dated 07 September 2021

150. On Private Property, the platform has contracts with the EAPPC shareholders that have exclusive benefits for an indefinite period [REDACTED]. When first entered into in 2015, [REDACTED]. The evidence in the Inquiry's disposal suggests that there have been very few terminations over the years¹⁷⁹ and there are currently [15-25]¹⁸⁰ estate agencies, representing [5000-15000] estate agents.¹⁸¹ These include the largest estate agencies in the country and constitute approximately 34% of the registered estate agencies.¹⁸² [REDACTED]

151. The benefits of discounted rates in the multi-year contracts create a loyalty-inducing effect, especially for the must-have platforms as they reduce the cost and cost escalations of using those platforms for eligible business users for extended periods of time. Given the number of business users who are induced and locked-in through these contracts, the Inquiry is of the view that this conduct impedes competition in the market. The minimal termination in both the Package Subscription contracts for Property24 and EAPPC contracts for Private Property is suggestive of this effect. The Inquiry also understands that extending discounts to business users does not require an obligation for long-term contracts. Platforms have in the past extended discounts to their existing customers for a certain period, on an equal basis without changing their existing contracts or entering into new contracts.¹⁸³

179 [REDACTED]

180 [REDACTED]

181 Private Property submission dated 28 December 2022.

182 According to Rebosa there were more than 32000 registered estate agencies in South Africa in 2018. <https://static.pmg.org.za/180904REBOSA2.pdf>.

183 In 2020 Private Property extended a 25% discount to all its business users for a period of five months, as a form of relief from the impact of Covid-19 on the property industry. Private Property –oral submission from Mr Mwela in the public hearing, 16 November 2021, page 26-28.

[4. Business User Competition]

Price differentials and exploitative prices

4.1. Findings from the Provisional Report: Price differentials and exploitative prices

152. The Inquiry found that the leading platforms in automotive and property classifieds differentiate their fee structure based on volumes, and as a consequence smaller estate agents and dealers pay higher per-lead or per-listing prices compared to larger estate agents and dealers. The Inquiry found that these differentials are substantial in percentage terms and result in prices that are excessively high. The Inquiry is of the view that such differentials have a material negative impact on the ability of SMEs and HDPs to participate or compete effectively in their respective markets.

4.2. Stakeholder submissions: Price differentiation

153. The leading platforms contest the Inquiry's finding in relation to price differentiation and argue as follows:

153.1. The Inquiry did not conduct the necessary assessments as prescribed in the legislation under section 8(1)(a), section 8(3) and section 9 of the Act.¹⁸⁴

153.2. The impact of the observed price differentials on the ability of smaller business users to participate and/or compete effectively is significantly

overstated by the Inquiry. Listing fees constitute a small proportion of business users' potential earnings and therefore are unlikely to be hindered by the differentials to compete.¹⁸⁵

153.3. An accurate framework to evaluate price discrimination should include an evaluation of the likely impact of differentials on the ability of smaller business users to participate effectively but the Inquiry's assessment does not provide insights into the impact of such differentials on business users' costs or margins.¹⁸⁶

153.4. While the Inquiry seeks to contend that larger estate agents are charged a lower per listing fee than smaller estate agents, it does not consider whether the fees which are charged to even the smaller estate agents are reasonable, and neither does it consider whether those per listing fees have any appreciable impact on the ability of a smaller estate agent to compete against a larger well established estate agent in relation to selling property.

4.3. Response by the Inquiry to stakeholder submissions: discriminatory pricing

154. The leading platforms do not contest the presence of price differentials in their pricing models but contest the extent of the effects of such differentiation. The platforms also did not provide any compelling cost or any other justifications for such differentials. As a result, the Inquiry is still of the view that the

184 Property24 and AutoTrader submit that the Inquiry cannot seek to make findings of abuses of dominance in circumstances where (i) it has not established dominance; and (ii) it has not satisfied the legal requirements to prove that an abuse of dominance in contravention of the Act has occurred, irrespective of the powers granted to it in terms of Chapter 4A and section 43C of the Act.

185 Submission by Property24 dated 07 September 2022. Submission by AutoTrader dated 07 September 2022. Submission by Private Property 05 September 2022.

186 Property24 and AutoTrader submit that while price differentials do exist on a per unit basis in both AutoTrader's and Property24's pricing model, they are unlikely to be capable of impeding the effective participation of smaller estate agents and dealers.

price differentials are a market feature that impedes business user competition.

4.3.1. The assessment conducted by the Inquiry is sufficient to identify price differentials as a feature that distorts business user competition

155. The submissions by the platforms seem to suggest that the Inquiry's finding is misplaced, given that the Inquiry did not conduct the assessment required under Chapter 2 of the Act in abuse of dominance investigations. However, as alluded to in the Provisional Report, the Inquiry is not required to establish contraventions of Chapter 2 of the Act and thus apply various tests relevant to proving such contraventions. Indeed, the Inquiry has not made any finding to the effect that any of the leading platforms has engaged in conduct that contravenes section 8(1)(a), 8(3) or 9 of the Act. Instead, the Inquiry sought to determine whether there is any feature or features in the provision of online vertical property classifieds services and in the provision of online vertical automotive classifieds services that impedes, restricts or distorts competition. Accordingly, the submission that the Inquiry ought to have conducted assessments prescribed under sections 8(1)(a), 8(3) and 9 of the Act, for purposes of this Market Inquiry, is misplaced.
156. The established platforms did not provide any additional evidence to the Inquiry on costs justification for the price differentials, except for Cars.co.za. The platform furnished the Inquiry with additional evidence on costs of providing their services to different business users, seeking to prove that it is more expensive to service smaller business users than larger business users, and therefore the price differentials are justified.¹⁸⁷ However, the Inquiry is not entirely persuaded by

Cars.co.za justifications, as it overestimates the costs of servicing smaller platforms. For instance, the platform allocates costs for administration and credit control personnel and business managers as though there is dedicated personnel for the Flexi Package business users. The Inquiry acknowledges that the platform requires such personnel to operate efficiently, however, the Inquiry does not accept that these are unique to smaller business users or that the costs for such personnel are an adequate justification, warranting such levels of price differences between small and large business users.

157. As alluded to in the Provisional Report, the Inquiry accepts the arguments by the platforms that it is important to have the larger business users and there is relatively more value, in terms of listings, that is brought by larger business users. As a result, the platforms seek to retain larger business users by offering them lower rates. However, the Inquiry has not been persuaded that the extent of the differentials is warranted or is directly proportional to the value that is brought by larger business users. For instance, there has been no attempt by the platforms to prove that larger business users have 300% more value than smaller business users or that it costs the platforms 300% more to service smaller business users relative to larger business users, to warrant such levels of price differentials.

4.3.2. Higher listing fees for smaller business users limit their budget for other platforms and VAS

158. Evidence submitted to the Inquiry suggests that business users set marketing budgets and accommodate listing fees in their marketing budget.¹⁸⁸ Business users decide on how best to allocate the budget across various channels

¹⁸⁷ Cars.co.za submission dated 08 September 2022.

¹⁸⁸ 0800Properties—oral submission from Mr Manning in the public hearing, 16 November 2021, page 9.

with the aim to balance the budget across various advertising means.¹⁸⁹ Furthermore, the marketing budget is a proportion of other operational costs for business users. There are other major expenses in running an estate agency and car dealership over and above listing fees, such as people costs, property related costs, technology costs and other advertising channels, amongst other things.¹⁹⁰ As such, the contention by platforms that listing fees constitute a small proportion of business users' earnings from their commissions disregards the other expenses incurred by business users.

159. Property24 and AutoTrader argue that listing fees constitute no more than 0.94% of real estate agencies commission and no more than 2% of dealership commission fees, respectively.¹⁹¹ The platforms further argue that a decrease in listing fee differentials would be unlikely to appreciably enhance the participation of small business users. For instance, for a business user retaining 8% margin after all expenses, the elimination of the price differentials would increase the business user's margin by 1.5 percentage points and reduce the business user's costs by around 1.6%. This is similar to Private Property's submissions, [REDACTED]. All these estimations are based on hypothetical scenarios with limited evidence from business users with lived experience.

160. Although the platforms would like to consider listing fees as a small proportion

of the business users overall costs, evidence from business users suggests that listing fees account for the largest proportion of their marketing budgets, amongst print, outdoor and digital advertising. For example, in property classifieds, for some large estate agencies portal fees account for more than 30% of their marketing budgets¹⁹², whilst for smaller agencies they account for 90% of their marketing budgets,¹⁹³ most likely driven by the differential in fees by the property portals. Given that business users have finite resources and advertise according to their marketing budgets and the importance of listing portals for audience reach, larger business users who get preferential fees have more budget to spend on other advertising campaigns than smaller business users, as is evident from the difference in proportional spend on the portals.

161. Furthermore, the Inquiry's analysis of data from established platforms shows that higher fees levied on smaller business users constrain their ability to make use of Value-Added Services, whilst larger business users capitalise on the benefits associated with value-added services.¹⁹⁴ The evidence also shows that higher listing fees for smaller business users exclude potential business users from using the platforms. For instance, following the publication of the Inquiry's Provisional Report Cars.co.za decreased its Flexi Package (a package for business users listing 20 vehicles and less) fees by 24%.¹⁹⁵

189 [REDACTED]

190 [REDACTED]

191 Submission by Property24 dated 07 September 2022. Submission by AutoTrader 07 September 2022.

192 [REDACTED]

193 [REDACTED]

194 See Chapter 5- Online classifieds platforms, page 132- 136 of the Provisional Report.

195 Cars.co.za submission dated 08 September 2022.

196 In property classifieds, there are small business users who are unable to list with all the established platforms, although they may wish to, due to the higher listing fees. This was also highlighted by one of the small estate agencies indicating that Property24's discriminatory pricing may make it difficult for new agencies, without any financial backing, to list on the portal, especially HDP agencies.¹⁹⁷

162. Given that listing fees come out of finite resources from business users' marketing budgets, the higher fees levied on smaller business users compared to larger business users deny the smaller business users the opportunity to compete on an equal footing with the larger business users on the platforms.

4.4. Stakeholder submissions: excessive pricing

163. The leading platforms contest the findings of the Inquiry and criticise the methodology used by the Inquiry to come to its findings.¹⁹⁸ The platforms argue as follows:

163.1. The assertion by the Inquiry that some platforms charge excessive prices, based on their profitability is fundamentally flawed and unreliable.¹⁹⁹

163.2. The Inquiry made its findings based on a comparison of prices by different platforms without accounting for differences in pricing models, and differences in audience reach.

163.3. The Inquiry's analysis neglects some significant complexities that are associated with online markets, which are typically characterised by initial loss-making periods, significant innovation and risk-taking behaviour, and profits that are derived from intangible assets.

4.5. Inquiry's response to stakeholder submissions: Excessive pricing

164. The submissions from Property24 largely contest the basis on which the Inquiry made its finding and argue that no proper assessment was undertaken to conclude that they charge excessive prices.²⁰⁰ As indicated in the preceding section, the Inquiry is not required to undertake an abuse of dominance analysis conducted under Chapter 2 of the Act. It is sufficient for the Inquiry to identify features of a market that impede, restrict or distort competition. In this case the Inquiry made an observation that the leading platforms extract high fees from smaller business users who contribute a substantial proportion of listings but lack bargaining power. These high fees make it possible for leading platforms to earn excessively high levels of profits, which are unjustifiable and earned at the expense of smaller business users. It is this conduct, coupled with discriminatory fees, that impedes, restricts, or distort competition as it puts smaller business users at a competitive disadvantage. The submissions from the platform seems to suggest that the Inquiry could have only arrived at its finding after

196

197 Property Professionals dated (2020), available: <https://propertyprofessional.co.za/2020/03/05/how-long-can-property24-increase-rates-in-this-way/> [accessed on 23 February 2022]. 08000Properties—oral submission from Mr Manning in the public hearing, 16 November 2021.

198 Property24 dated 07 September 2022. Private Property submission dated 05 September 2022. AutoTrader submission dated 07 September 2022.

199 Property24 submission dated 07 September 2022. Property24 argues that the Inquiry's analysis of profitability goes no further than to calculate an operating margin for each of Property24 and Autotrader. The Inquiry has also not sought to consider what levels of profits would be considered suitable in this context, it instead simply asserts that the operating profits of Property24 and Autotrader are "high" in isolation, with no reference to any benchmark for what profits would look like in a competitive setting. Property24 is of the view that their profits are in line with those observed by similar businesses active in competitive markets in other jurisdictions and do not indicate the existence of excessive pricing or profitability.

200 Property24 submission dated 07 September 2022.

conducting the prescribed tests under Chapter 2 of the act. However, that is not a requirement for market inquiries. In any event, if the Inquiry were to conduct the Chapter 2 tests argued for by the leading platforms, the outcomes of such tests are likely to point to contraventions of sections 8(1) and (3), and 9(1)(a)(ii) of the Act.

165. In the preceding section the Inquiry has detailed the impact of the price differential on the affordability of the platforms for small business users. In the Provisional Report the Inquiry had identified Property24 as a standout platform in terms of its ability to wield its market power to charge exorbitant prices and ultimately earn the highest profits in the market. This section addresses the comments from Property24 on the Inquiry's observations.

4.6. Property24's is exploiting its market power by increasing and charging estate agents exorbitant prices

166. As already indicated, Property24 market share is well-above 50%.²⁰¹ Therefore, it can be considered dominant in the relevant market. It is worth noting that the Act clearly states that "A firm is dominant in a market if - it has at least 45% of that market". Furthermore, Property24's pricing conduct and practice also support the assertion that it is dominant and has market power. In this regard, Property24 has been able to implement significant price increases overtime without facing any effective constraint from estate agents and competing platforms. The following observations are worth highlighting to reflect Property24's degree of market power and entrenchment:

166.1. Over the period 2017 to 2021 in terms of for-sale subscription, Property24 has

consistently increased fees by double-digit percentages annually. In 2017 and 2018 some business users experienced a 15% to 25% increase (depending on leads category) while in 2019, some customers experienced significant price increases ranging from 32% to 48%. The double digits price increases (with 15%-26% for some customers) persisted in 2020 with estate agents experiencing some sort of a relief with 8.2% price increases only in 2021.²⁰²

166.2. The above fee increases should be viewed within the context that over the same period (2017 to 2021) (i) the inflation rate in South Africa ranged from 3% to 5% (ii) Private Property (the second largest property platform) has been maintaining its price increases in line with the inflation rate.²⁰³ In the recent past, Private Property's price increases have not exceeded 8%. In fact, between 2020 and 2021, Private Property did not increase its prices for 22 months - the platform extended a 25% discount to all its business users for a period of five months, from 1 April to 31 August 2020.

167. Ordinarily, the above scenario suggest that in a competitive market where the number one ranked platform faces effective constraints from its rival (second placed platform), one would expect that it will lose share of the market, significant customer base and subsequently revenue, especially if it persist with high price increases whilst its closest rival is not increasing prices for some extended periods and/or even offering price reduction/discounts. However, this has not been the case for Property24 - in other words, the platform has not lost any share of the market and revenue to its rival, Private Property. As indicated during the public hearings (e.g., REBOSA and 0080

201 See page 37-38 of the Provisional Report (Chapter 5- Classifieds platforms).

202 For rental listings, Property24 price increases have ranged between 8% and 16% over the past five years. For 2017&2018, Property24 increases for most leads category customers were at 15%, for 2019/2020 was 10% and 2021 was at 8%.

203 Private Property –oral submission from Mr Mwela in the public hearing, 16 November 2021, page 26-28.

Properties evidence) and several Property Professional articles, numerous estate agents (large and small) have publicly expressed their dissatisfaction with Property24 and how the portal is becoming more unaffordable.²⁰⁴ However, despite these concerns, estate agents continue to allocate a significant portion of their marketing budget towards Property24. These estate agents have not substituted Property24 with any competing portal and/or their own website or other marketing channels. The Inquiry is of the view that there is sufficient evidence that suggests that Property24 has market power and has exploited it by charging estate agents exorbitant prices.

4.7. Property24's comparator analysis: price and profitability comparator

168. The Inquiry has conducted additional analysis into the financial performance of Property24 to establish whether the platform is generating returns persistently higher than they would have if they were operating in a more competitive market. In this regard, the Inquiry has conducted the following analysis:²⁰⁵

- 168.1. Comparing Property24's prices with its nearest competitor and determining whether Property24's prices are high relative to its competitor and the extent.
- 168.2. Comparing Property24's operating profit margin with its closest rival and firms that face competitive constraint. Again, if Property24's profitability is high relative to other platforms, then it is necessary to determine the extent.
- 168.3. Comparing Property24's Return on Capital Employed ("ROCE") with the relevant

benchmark – Weighted Average Cost of Capital ("WACC").

4.7.1. Complexities associated with identifying a suitable global comparators in digital markets: Property24's choice of comparators are unsuitable

169. The Inquiry notes that Property24 has identified what it considers relevant comparators in other jurisdictions and compared its ROS with these comparators. In essence, Property24 argues that its average ROS overtime is lower than these comparators in property classifieds platforms from other jurisdictions. The Property24 choice of comparators includes: Idealista in Spain, Rightmove and Zoopla in the United Kingdom.²⁰⁶

170. As indicated under leading platform assessment, online platform markets are characterised by features that make the markets prone to the winner take-all economics – with many online platform markets tipping in favour of one or two large companies. This phenomenon has been identified in the US and EU whereby online markets are dominated or collectively controlled by one or two platforms. In the US these dominating platforms have been labelled as gatekeepers whilst in the EU are referred to as leading – what is important to note is that these platforms (individually or collectively) wield power to dictate terms and extract concessions that third parties would not consent to in a competitive market.²⁰⁷

171. Therefore, comparator of online platforms in other jurisdictions becomes a complex task especially when it is carried-out against

204 REBOSA–oral submission from Mr Le Roux in the public hearing, 29 November 2021, page 27. 0800Properties–oral submission from Mr Manning in the public hearing, 16 November 2021, page 14. Article by Property Professional (2020), available: <https://propertyprofessional.co.za/2020/11/12/property-portals-you-get-what-you-pay-for/> [Accessed at 13 May 2022].

205 The Inquiry notes that the comparator analysis and conclusion based on it requires some level of value judgement.

206 Property24 submission dated 07 September 2022.

207 See report in the United States by the House of Representative's Subcommittee on Antitrust, Commercial And Administrative Law ("US Subcommittee") into Digital Market Investigation.

platforms that might be considered leading (e.g., number one and number two ranked firms) in their own jurisdiction. The main concern is comparing against a platform(s) that are also exploiting their market position can lead to misleading results – in other words, you maybe comparing against firms that are both earning exorbitant profits. Therefore, a choice of a comparator platform in other jurisdiction must be supported by robust evidence that shows the suitability of such a comparator. In this regard, Property24 has failed to provide sufficient evidence to support its choice of a comparator.

172. Evidence before the Inquiry suggests that Rightmove and Zoopla have some degree of power to dictate terms in the United Kingdom's property classifieds market. Therefore, the possibility that these platforms also generate their profits from charging exorbitant prices and face limited competitive constraint cannot be ruled out. The Inquiry's assertion is based on the following context:

- 172.1. In the United Kingdom, Rightmove is the leading property classifieds platform, by a significant margin, followed by Zoopla. The two platforms account for approximately 80% of the market. In the Zoopla and The Digital Group merger, the OFT estimated Rightmove's market revenue share at [45-55] % and Zoopla's at [20-30] % (post-merger).²⁰⁸
- 172.2. The prices charged for listings by the two platforms to estate agencies have also

been a matter of contention in their market. In 2021 Rightmove informed its customers of its decision to enact price increases of up to 60% for estate agencies in 2022, depending on the geographic area of their listings.²⁰⁹ The inflation rate for 2022 in the United Kingdom was 10%.²¹⁰ This was not a once off occurrence. Rightmove has been instituting above-inflation price increases even before 2022. For instance, in 2014 Rightmove increased its listing fees by 10%, from an average fee of £607 per estate agency branch to £671, whilst the inflation rate dropped from 2.29% to 1.45% during the same period.²¹¹

- 172.3. On the other hand Zoopla charges slightly below the leading platform. In 2021 Zoopla charged an average of £6300 per estate agency branch²¹² and instituted an annual increase of 7.5% in 2022, 1.5% above the inflation rate.²¹³ Although Zoopla's increases have not been as aggressive as those instituted by Rightmove, estate agents are equally disgruntled by the fees charged by both platforms.²¹⁴
- 172.4. In retaliation to what the estate agencies in the United Kingdom perceived as high prices by the two leading platforms, in 2015 a consortium of real estate agencies established its own property portal, OnTheMove to compete with Rightmove and Zoopla.²¹⁵ However, the estate agencies have not been able to exert sufficient countervailing power to dismantle the duopoly of the two platforms, even through their own portal.

208 Anticipated merger between The Digital Property Group Limited and Zoopla Limited ME/5233/11. Available: <https://assets.publishing.service.gov.uk/media/555de2e840f0b669c400003d/digital-zoopla.pdf> [Accessed 24 March 2023].

209 Marc da Silva (2021), *Rightmove explains why agents face price hikes – again*. Available: <https://propertyindustryeye.com/rightmove-explains-why-agents-face-price-hikes-again/> [Accessed 24 March 2023].

210 Rate Inflation available: <https://www.rateinflation.com/inflation-rate/uk-inflation-rate/> [accessed on 24 March 2023].

211 Art Patnaude (2015), *U.K. Property Website to Challenge Dominant Duo of Zoopla, Rightmove* Available: <https://www.wsj.com/articles/u-k-property-search-battle-lines-drawn-1421926006> [Accessed on 24 March 2023].

212 Surewise, Available: <https://www.surewise.com/storage-insurance/articles/advertise-zoopla-rightmove-and-primelocation/> [Accessed on 24 March 2023].

213 Marc da Silva (2021), *EYE NEWSFLASH: Agents face Zoopla fee hike* Available: <https://propertyindustryeye.com/eye-newsflash-agents-face-7-5-zoopla-fee-hike/> [Accessed 24 March 2023].

214 Marc da Silva (2021), *Rightmove explains why agents face price hikes – again*. Available: <https://propertyindustryeye.com/rightmove-explains-why-agents-face-price-hikes-again/> [Accessed 24 March 2023].

215 Mike Delprete (2020), *Millions More Buyers A Real Estate Portal's Competitive Advantage*. Available: <https://static1.square-space.com/static/57b1c75aebbd1abcdecf8171/t/5e5fd21cd54dc439f414843a/1583338014280/Millions-More-Buyers.pdf> [Accessed 27 March 2023].

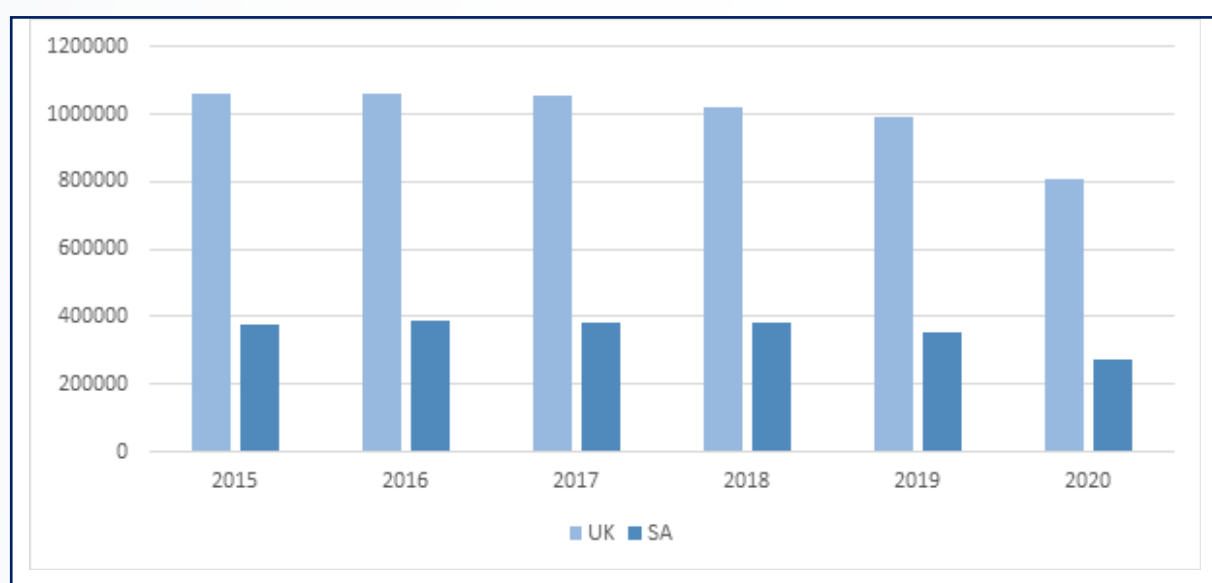
172.5. Similarly, Idealista in Spain is also the leading platform in the three countries where it operates in Europe²¹⁶ and has been the dominant platform for more than 20 years in its native market, Spain.²¹⁷ The platform has also been experiencing exponential growth over the years. In 2019 Idealista's revenue grew by 156.3% on a year-to-year basis.²¹⁸

these jurisdictions have different consumer base, preference and taste, audience visit stats, number of house purchases, average disposable income, GDP per capita - all these affect the consumer journey and decision to search and ultimately purchase a house. In terms of the business user-side, these jurisdictions differ in terms of listings, business users base.

173. Based on the above evidence, it appears that Property24 might have compared its ROS with international platforms that are in the same market position (i.e., platforms that faces limited constraint and/or operating in a market that is not as competitive). Furthermore, Property24's approach in its choice of a comparator fails to take into account the prevailing market conditions in different jurisdictions - this can be in terms of the characteristics of business users and customers. From the consumer-side,

174. In terms of customer-side, the property market in the United Kingdom is larger than the market in South Africa. Since 2015 the number of properties sold in the United Kingdom has been more than double the number of properties sold in South Africa, which indicates the variance in size of the market in the two jurisdictions. Figure 6 below shows the number of properties sold in South Africa in comparison to United Kingdom.

Figure 6: Number of properties sold in SA vs UK



Source: Inquiry's own compilation²¹⁹

216 Harvey Hancock (2020), *Infographic: Top Property Portals of Western Europe 2022*. Available: <https://www.onlinemarketplaces.com/articles/infographic-top-property-portals-of-western-europe/> [Accessed 28 March 2023].

217 AIM Group (2019), *Idealista: The quiet giant slowly consolidating its leadership in Spain*. Available: <https://aimgroup.com/2019/11/14/idealista-the-quiet-giant-slowly-consolidating-its-leadership-in-spain/> [Accessed 28 March 2023].

218 Juillet Vendredi (2020), *EQT picks up Idealista for €1.3bn*. Available: <https://www.leadersleague.com/en/news/eqt-picks-up-idealista-for-e1-3bn> [accessed 24 February 2023].

219 SA data sourced from Property24, available <https://www.property24.com/property-trends>. UK data sourced from all Agents. Available: <https://www.allagents.co.uk/number-of-properties-sold/>.

175. In terms of business users, in 2020 Property24 had no more than [4500-5500] business users²²⁰, whilst Zoopla had 20000²²¹ and Idealista had about 40000 across Southern Europe.²²² Another indicator of the size of these platforms is traffic acquisition. All the

platforms that Property24 sought to compare its profits with attract almost double the traffic that Property24 attracts. The traffic statistics for the 4 platforms from November 2022 to January 2023 are shown below in Figure 7.

Figure 7: Traffic statistics for Property24, Zoopla, Rightmove and Idealista

Engagement ⓘ				
Nov 2022 - Jan 2023 🌐 Worldwide 📱 All traffic				
Metric	property24.com	zoopla.co.uk	idealista.com	rightmove.co.uk
📅 Monthly visits	15.62M	27.54M	46.62M	84.47M 🏆
👤 Monthly unique visitors	3.636M	9.752M	12.65M	19.71M 🏆
👤 Visits / Unique visitors	4.30 🏆	2.82	3.68	4.28
👤 Deduplicated audience BETA	2.803M	7.736M	10.28M	14.90M 🏆
🕒 Visit duration	00:07:47	00:06:17	00:08:07	00:08:21 🏆
📄 Pages per visit	10.89	5.63	20.59 🏆	18.00
📈 Bounce rate	34.79%	37.36%	33.61%	28.81% 🏆

Source: SimilarWeb²²³

176. In light of the above, the Inquiry is of the view that the other platforms that Property24 identified for the comparator assessment are not a suitable benchmark.

4.8. Price per listing comparison of Property24 and Private Property

177. The price comparison conducted by Property24 provides useful information on the extent of price difference between Private Property and Property24. In its critic of the Inquiry's pricing assessment, Property24 argues that the Inquiry has not

taken into account the differences between its pricing method and that of Private Property.²²⁴ Accordingly, Property24 sought to undertake its own comparison assessment using data from their own customers and computed estimates of the price that the same customers would have paid for the same number of listings on Private Property. The comparison assessment by Property24 revealed that:

177.1. Property24's prices are higher than Private Property's, especially on for-sale listings. For instance, a business user with [250-

²²⁰ Property24 submission dated 10 September 2022. In 2020

²²¹ Ben Salisbury (2021), *Zoopla now has almost 20,000 customers*. Available <https://aimgroup.com/2021/12/10/zoopla-now-has-almost-20000-customers/> [accessed 24 February 2023].

²²² Juillet Vendredi (2020), *EQT picks up Idealista for €1.3bn*. Available: <https://www.leadersleague.com/en/news/eqt-picks-up-idealista-for-e1-3bn> [accessed 24 February 2023].

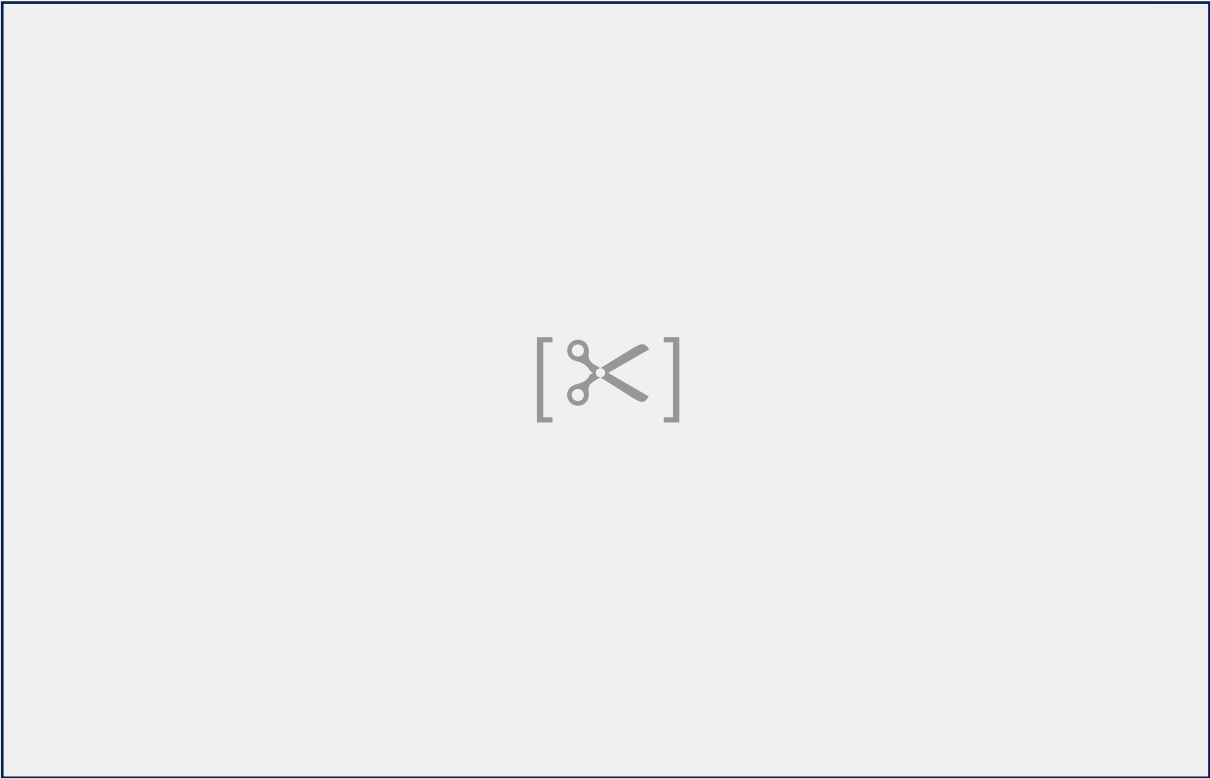
²²³ Similarweb, available: https://pro.similarweb.com/#/digitalsuite/websiteanalysis/overview/website-performance/*/?webSource=Total&key=property24.com,zoopla.co.uk,idealista.com,rightmove.co.uk [Accessed on 23 February 2023]

²²⁴ Property24 submission dated 07 September 2022.

350] for-sale listings on Property24 is charged [R20.00-R30.00] whilst a business with the same number of listings is charged [R5.00-R15.00].²²⁵ Property24's price is [200-300]% higher than Private Property's price for [250-350] for-sale listings.²²⁶ For rental listings, a business user listing [250-350] listings is charged [R15.00-R25.00] on Property24 whilst a business user with the

same listings is charged [R5.00-R15.00] on Private Property.²²⁷ Property24's price are [100-150]% higher than Private Property's price for [250-350] rental listings.²²⁸ A comparison of Property24 and Private Property's prices is shown in the Figure 8 below.

Figure 8: [REDACTED]

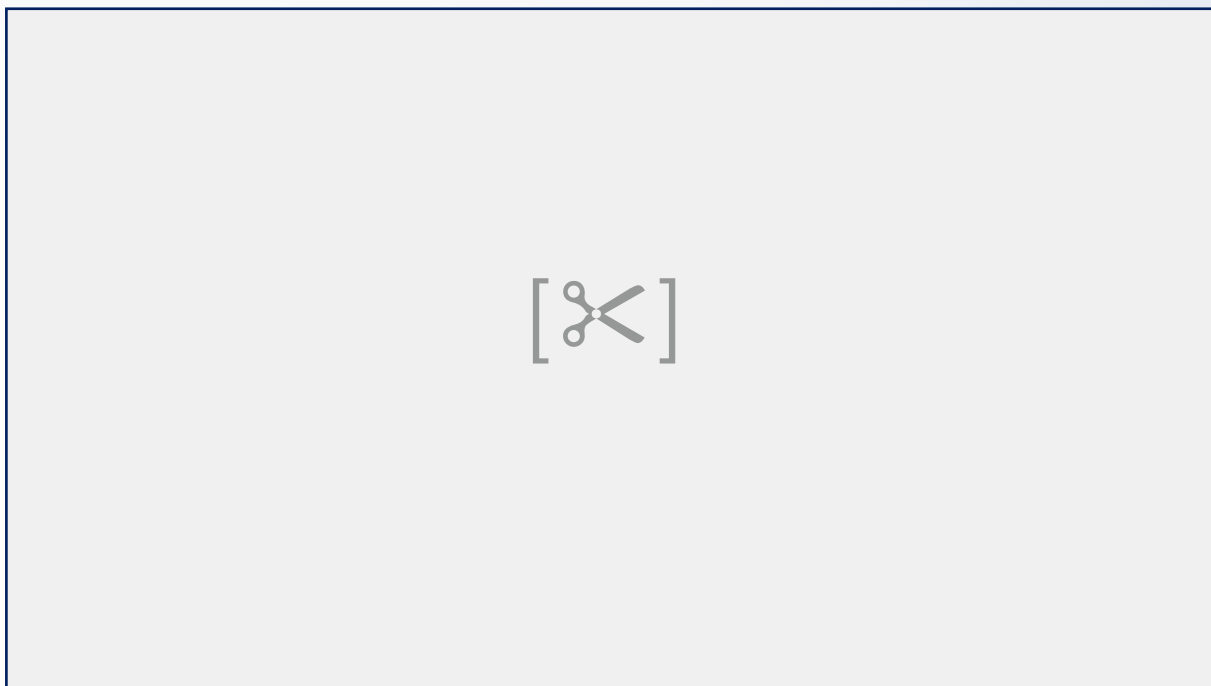


Source: Property24 submission dated 07 September 2022.

225 [REDACTED]
226 [REDACTED]
227 [REDACTED]
228 [REDACTED]

Figure 9 below shows the comparison of Property24 and Private Property's prices, in percentage terms.

Figure 9: [REDACTED]



Source: Property24 submission dated 07 September 2022

4.9. Property24's highly profitable

178. The Provisional Report noted that the exorbitant prices charged by Property24 have enabled the platform to be spectacularly profitable, significantly above its competitors. For instance, the Provisional Report noted that:

[REDACTED]

[REDACTED]

179. The Inquiry does not seek to suggest that Property24's margins should be in-line with that of Private Property. The Inquiry accepts that Property24 can generate higher levels of profitability relative to its competitors (this is what firm essentially strive for) – however, the concern arise when it generate levels of profitability that are significantly higher than that of its profitable rival. Furthermore, Private Property although a distant number two in the market has some element that makes it a relevant benchmark that can be used in the interpretation of Property24 results:

- 179.1. Private Property remains the only closest competitor to Private Property in property classifieds.
- 179.2. Private Property has a healthy market share [20% -30%].
- 179.3. On average Private Property has been profitable overtime in some years reflecting healthy margins of [REDACTED].
- 179.4. Private Property has extensive knowledge of the market and experience in transitioning into online.
- 179.5. From the business user-side, both platforms have more or less same business users and listings (mix of national and independent estate agents) whilst from the consumer-side they target the same consumers in fact majority of consumers that visit one portal site goes to the other.²²⁹
- 179.6. Ultimately, both platforms face the same market conditions and compete for the same type of estate agents and consumers.

180. The Inquiry has also observed that during the period of double digits price increases discussed above, Property24's sister company AutoTrader generated operating profit margins that are considerably lower than Property24. [REDACTED]

[REDACTED] In Inquiry's view this observation can be explained by the fact that AutoTrader faces effective constraint from Cars.co.za whilst Property24 is able to exploit its position and earn highest level of profits.

4.9.1. Return on Capital Employed comparison against relevant benchmark (Weighted Average Cost of Capital)

Rationale for ROCE and WACC approach

181. The Inquiry notes that the operating profit margins (as presented above) are useful and relevant in the profitability assessment. However, margins have shortcomings especially in high asset investment sectors. For instance, in sectors with high asset investment (or asset base) and low operating costs, margins will tend to be high – thus, inappropriately neglecting investment in capital. Thus, the cost of financial capital investment is not reflected in margin analysis – which is why a Return on Capital Employed ("ROCE") assessment is more complete and useful for businesses with sufficient assets to make the measure of capital meaningful.²³⁰ Furthermore, ROCE can be compared against an objective benchmark, the WACC, which is a widely used benchmark for returns on an investment.²³¹

²²⁹ See Figure 5, page 16 of the Provisional Report (Chapter 5 Online Classifieds Platforms)

²³⁰ See the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK. Appendix D: Profitability of Google and Facebook (non-confidential), paragraph 12. Available on the link: <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>.

²³¹ See (paragraph 274) the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK. https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf . In terms of WACC is important to note that it is essentially the minimum return required on an investment or asset to satisfy the owners and creditors.

Guidance from CMA on Facebook and Google profitability

182. In line with the aforesaid, CMA's profitability assessment of Google and Facebook has noted the following with respect to ROCE and WACC:²³²

182.1. CMA stated that ROCE for the Alphabet Group's (Google) total business has been around 30% or above (for the past 9 years) and concluded that ROCE is and has been consistently higher than the benchmark WACC of 9%.²³³

182.2. With respect to Facebook, CMA emphasised WACC for the large digital platforms is at around 9% and Facebook's ROCE in 2018 of 51% indicates that Facebook has been generating profits comfortably in excess of its cost of capital.²³⁴

183. Interpreting, *inter alia*, the above ROCE and WACC results in the main report,²³⁵ CMA noted the following key points:²³⁶

183.1. Profitability of both Google and Facebook has been well above what is required to reward investors with a fair return for many years. In 2018 the CMA estimated that the cost of capital for both Google and Facebook was around 9%, compared to actual returns on capital of over 40% for Google and around 50% for Facebook. The CMA indicated that it would expect these excess profits to be shared more freely with consumers in a more competitive market.

183.2. Both Google and Facebook are highly profitable. The CMA's analysis

demonstrated that both companies have for many years been earning profits that are substantially higher than any reasonable estimate of what it would expect in a competitive market.

183.3. The levels of profit earned by the firms are above that required to repay investors; they are so high that any reasonable adjustments to reflect the points made in the responses do not materially change the conclusions that the profits are indicative of the ability to exploit market power.

Property24's ROCE and WACC assessment

184. It is important to highlight and summarise the guiding principle of this assessment. The guiding principles emanate from CMA's (i) profitability assessment of Google and Facebook and (ii) conclusions drawn in the Main Report (as highlighted above):

184.1. In digital markets dominated by one or two players (e.g., Google and Facebook in their respective markets), a dominant platform with ROCE that is over 30% higher than the calculated WACC raises several signals that can be interpreted as:

184.1.1 Profitability that is well above what is required to reward investors with a fair return.

184.1.2 Reflecting a firm that is highly profitable and earning profits that are substantially higher than any reasonable estimate of what is expected in a competitive market.

184.1.3 As profits that are indicative of the ability of a firm to exploit market power.

232 See the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK. Appendix D: Profitability of Google and Facebook (non-confidential), Available on the link: <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>.

233 WACC was estimated to be 9% - estimation was based on the comparison of other companies listed on NASDAQ (i.e., American Stock Exchange Based in New York City) that within the same sector as Alphabet Group - a range of 9-10% was viewed as fair by CMA. See paragraph 21 and 22 of CMA Report referred above.

234 See paragraph 104 of CMA Profitability Report referred above.

235 See the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK. https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf.

236 See (i) page 8, paragraph 12 (ii) page 42 and (iii) page 68, paragraph 2.80 of the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK (Main Report). https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf.

185. The Inquiry has sought to compare Property24's ROCE and WACC. The Inquiry's approach in this regard is as follows:

185.1. Approach to ROCE: has been considered and calculated by other competition authorities as (i) dividing EBIT (earnings before income and tax) by the value of capital that is employed in the relevant business. The actual investment in capital is the cash spent on buying assets used to generate revenue,²³⁷ (ii) capital employed is generally calculated as total assets excluding cash and marketable securities²³⁸ minus current liabilities. The Inquiry has calculated Property24's ROCE by dividing its operating profit (before interest and tax) with capital employed. Capital employed is calculated by taking total assets minus current liabilities. All the information is based on Property24's financial documents and no adjustment were made by the Inquiry. Although, the Inquiry made no adjustments, it is worth

noting that a case can be made for the total assets as reflected in Property24's financials to be adjusted downwards (thus reducing the value of capital employed) - in this regard, there are some assets not necessarily used in generating operational cash flows of Property24 that are accounted for in the total assets (these assets can be excluded) and Goodwill that can also be excluded from the asset base.

185.2. Approach to WACC: the Inquiry has relied on Property24's documents to determine the relevant WACC. This includes any WACC that might be reflected in their financials and/or any calculation conducted internally by Property24 in determining the WACC. The Inquiry notes that this approach has resulted in different WACC being presented and considered, however, the use of any WACC does not change the findings of profitability assessment.

The results of Property24's ROCE and WACC are reflected in the Table 2 below.

Table 2: Property24's ROCE and WACC

Profitability measures and benchmark	2022	2021	2020	2019	Average Overtime

Source: WACC is based on Property24's submissions and documents dated 23 September 2022 whilst ROCE is calculated.

186. It is evident from the above table that Property24's ROCE has been consistently above . Property24's ROCE is significantly higher than the calculated WACC, 30% that

was observed by CMA in Google. In fact, Property24's ROCE is significantly above that calculated by CMA for Google and Facebook. Property24's ROCE is also significantly above WACC (more than that of Google and

237 See the Competition and Markets Authority in the UK's market study into online platforms and the digital advertising market in the UK. Appendix D: Profitability of Google and Facebook (non-confidential), paragraph 8. Available on the link: <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>.

238 Assets have been defined as Total assets less current liabilities, less cash and marketable securities, which have been excluded in order to reflect the asset base attributable to the business, rather than the choice of financing policy.

Facebook). [REDACTED]
[REDACTED]

187. The above observations are based on a more conservative approach (unadjusted assets approach). As indicated above, the Inquiry is of the view that the total assets for Property24 should be adjusted downwards on the basis of, *inter alia*, the treatment of Goodwill and treatment of assets not necessarily generating operational cashflow for Property24. If these adjustments are carried, Property24's ROCE increases by a significant rate. Examples of why adjustments are necessary includes (using 2022 financials):

187.1. The total assets is [REDACTED]. The Inquiry is of the view that a case can be made for the following as reflected in Property24's financials [REDACTED]
[REDACTED]
[REDACTED] to be excluded in the determination of operating assets relevant for capital employed calculations.

187.2. The Inquiry's reasons are as follows:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²³⁹

188. The Inquiry notes that although it has made no adjustments, the profitability results of Property24 remains in that even on unadjusted basis:

188.1. Profitability of Property24 is well above what is required to reward investors with a fair return.

188.2. Property24 is highly profitable and earns profits that are substantially higher than any reasonable estimate of what is expected in a competitive market.

188.3. Property24's profit levels are indicative of the ability of a firm to exploit market power.

4.9.2. Innovation, risk taking and initial loss making

189. Property24 also argues that the Inquiry's assessment of profits neglects the possibility of historical investments, significant innovation and risk-taking behaviour. However, the platform did not attempt to quantify any of the variables that it contends the Inquiry should have considered when assessing its profits. Furthermore, as indicated in the Provisional Report Property24 has not had any injection of capital from Naspers and this was also confirmed by the platform in the public hearings.²⁴⁰ Therefore, there is no compelling evidence to persuade the Inquiry that there might be any significant variables that it did not consider which may render its assessment and observations on Property24's profitability inadequate.

4.10. Assessment of Property24's justifications for high fees and profit levels: value, innovation and initial loss-making

190. Property24 argues that the difference in its prices reflects the difference in value that customers derive from its portal in comparison to Private Property's portal. The platform further argues that in 2020 Property24 generated [200-300]% more leads than Private Property and it should be expected that the platform charge per-listing prices that are higher by as much as [200-

239 See observation by CMA (paragraph 110) in assessing Facebook profitability where it stated that "However, we are also aware that Facebook's asset base includes £11 billion of goodwill that Facebook has on its balance sheet as a result of the purchase of WhatsApp. We do not consider that this acquisition was necessary to operate a social media platform and therefore this balance has been excluded from our analysis. Given that this exceeds the £3.7 to £7.5 billion estimates of the investment required to create the core functionality of a social media network, the net impact would be to increase ROCE".

240 See page 144 of the Provisional Report (Chapter 5- Online classifieds platforms).

300]%.²⁴¹ Property24 is of the view that its price differences are still within reason, even in the case of estate agents that advertise a high number of listings, where the price differentials are the most pronounced, as they are no greater than the lead differentials between the two platforms.

191. As indicated in the Provisional Report, the Inquiry is not persuaded by Property24's stance that its prices are directly proportional to the value derived by the business users from its portal. The platform quantifies the value derived by the business users from its portal based on the number of leads generated and consumer traffic. However, the platform's prices have been increasing exponentially, whilst the leads generated have not been increasing at the same rate. In 2018 and 2019, the number of for-sale leads generated from Property24 decreased by [5–15] % and [1–5] %, respectively. In 2020 Property24 saw a positive growth of [15–25] % in for-sale leads. For rental listings, the portal has been experiencing growth over the years – ranging from [5 –15] %. If the platform measures the value of its portal based on leads, its prices should have at least increased at the same levels.

192. Furthermore, the Inquiry notes that Property24 does not seek to provide any justifications on significant costs differences between its portal and that of Private Property to account for the price difference. The Inquiry is of the view that costs should be the main determinant of prices for the platforms and the costs of running Property24 are not significantly different from Private Property's operating costs. The argument by Property24, that the price differences reflect the difference in value derived by business users from its portal, measured by the number of leads and consumers traffic, without any consideration for costs proves the point that the platform possess market power and finds more opportunities to extract excessively

high listing fees as business users become more dependent on their portal. For instance, if Private Property lost some of its market share and generated even lesser leads, whilst Property24 generated more leads, Property24 would find increased market share as an opportunity to increase its prices. It is for these reasons that the Inquiry is not persuaded by the platform's justification of the significant price differences in comparison to its closest competitors.

4.11. Inquiry's provisional remedy: price differentiation and excessive pricing

193. To address the competition concerns relating to price differentiation and excessive pricing the Inquiry recommended that platforms implement a standardized 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. The Inquiry's provisional view was that the extent of discrimination needs to be limited and 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.

4.12. Stakeholder response to the provisional remedy: price differentiation and excessive pricing

194. The Inquiry received comments only from one platform on this provisional remedy. All the other platforms sought to argue that the Inquiry's finding is inaccurate and did not attempt at persuading the Inquiry to change its provisional remedy in their submissions, until the Inquiry held in-camera meetings with the platforms. During the In-Camera meetings the platforms made submissions on what would be the appropriate limits for their platforms, given their individual operations.

241

Private Property is the only platform that contested the Inquiry's provisional remedy, arguing as follows:²⁴²

- 194.1. It would not be appropriate for the Inquiry to impose a price regulation remedy in circumstances where it has not shown that the alleged price discrimination has had any adverse effect on competition.
- 194.2. Competition authorities are not price regulators, and the aim of competition law and economics is not to dictate to firms how to price to customers, but rather to ensure that a conducive environment is created which allows for efficient competitive market outcomes.
- 194.3. To impose such a remedy on property platforms could have dire consequences for competition in a market where Private Property is the only real competitive constraint on the dominant property platform, Property24.

[REDACTED]

4.13. Inquiry's response to stakeholders' submissions on the provisional remedy: price differentiation and excessive pricing

195. The Inquiry has brought enough evidence to identify the price differentiation by the platforms as a feature that impedes competition in the respective markets. The Inquiry is legally obligated to provide remedies for all the issues it identifies as anti-competitive features of the market, including price differentiation and excessive pricing, without being a price regulator. The Inquiry did not impose any standard rate cards on the platforms, but merely called for comments and submissions on what would be the appropriate level of variation between different customer segments,

given the suggestions on the value of large business users for classifieds platforms. Therefore, the Inquiry is of the view that this is still an appropriate remedy to address price differentiation and exploitative pricing by the leading platforms.

4.13.1. Price differentiation and excessive pricing are not conducive for the growth and expansion of small business users

196. Private Property's submission seems to suggest that the extreme price differentials identified by the Inquiry in classifieds platforms are necessary to keep the market at its current state, with limited competition. However, as demonstrated by the Inquiry in section 4.3 of this annexure, the current pricing mechanisms by the leading platforms limit the smaller business users from using other platforms and other marketing channels, to get maximum exposure. The Inquiry is of the view that achieving competition of any kind in the market should not be at the expense of smaller platforms. It is therefore inappropriate to suggest that the price differentials should be maintained in order to maintain Private Property's position in the market.

197. Further, as pointed out by Private Property, the Commission has a responsibility to promote competition. The Inquiry's recommendation seeks to promote competition by affording small business users equal opportunities to compete with the large business users without being differentiate against. Addressing the price differentiation and excessive pricing would also have pro-competitive outcomes even for platform competition as more business users would have enough budget to list with different platforms, including small platforms. Thus, maintaining the current pricing in property classifieds in order for Private Property to maintain its current position in the market

242 Private Property submission dated 07 September 2022.

would be equivalent to protection of a competitor over competition.

198. Furthermore, Private Property's sentiments seems to suggest that the platforms are only kept in the market by the large business user, with less value brought by the small platforms, hence the need to have favorable terms limited to the large business users. However, as indicated in the provisional report, whilst the Inquiry accepts that it is important to have larger business users on the platforms, the Inquiry is also of the view that it is also important to have small business users. Smaller agencies and dealers collectively bring a substantial portion of the total number of listings, and often are disproportionately more represented in smaller cities and towns which provides the platforms with geographic reach and scale.²⁴³ Therefore, the current differences in prices are not justified. For instance, the Inquiry has not seen any evidence that seems to suggest that large business users bring up to 300% more than the small platforms. The Inquiry made its provisional remedy and called for comments in order for stakeholders to make submissions on the appropriate levels of differentiation, that would mirror the difference in value, without hindering the small platforms' ability to compete in a conducive environment.

[REDACTED]

Sale of sponsored ranking

4.14. Findings from the Provisional Report: Sale of sponsored ranking

200. The Inquiry found that there is excessive sale of sponsored ranking by classifieds platforms and business users are charged excessive prices for Value Added Service ("VAS"). This sale of visibility distorts business user competition as larger agents or dealers outspend smaller ones.

4.15. Stakeholder submissions: Sale of sponsored ranking

201. Property24, Private Property and AutoTrader are the main players that have products that affect ranking on their platforms. Cars.co.za does not have any product that affects ranking, but only has a product that affects the appearance of listings on its portal. The sale of visibility on Private Property is also not as aggressive as it is on Property24 and AutoTrader. As a result, Property24 and AutoTrader are the only platforms that made submissions to the Inquiry in relation to this provisional finding and they do not agree with the Inquiry for the following reasons:

- 201.1. The uptake of VAS on AutoTrader is substantial among smaller dealers compared to larger dealers. Thus, if the uptake of VAS is considered an indicator of business users affordability, the available evidence does not support the view that VAS products are materially less affordable for smaller dealers.²⁴⁴
- 201.2. In property classifieds promoted listings are used in a strategic manner and the

²⁴³ See page 135-137 of the Provisional Report (Chapter 5- Online classifieds platforms).

²⁴⁴ [REDACTED]

costs of promoting only a portion of a given estate agent's listing can be spread across its full portfolio of properties. Therefore, it is unnecessary for smaller business users to apply VAS products to all of their listings in order to compete effectively with larger business users.

201.3. The approach adopted by the Inquiry to assess the use of VAS by different business user categories on Property24 is inappropriate. The correct approach is to consider the proportion of listings that are promoted within different size categories instead of the proportion of total promoted listings accounted for by estate agents of different sizes.²⁴⁵

4.16. Inquiry's response to stakeholders' submissions: Sale of visibility

202. The Inquiry's conclusion that VAS products are more affordable to larger business users than smaller business users is largely drawn from the fact that the platforms extend the same pricing structure applied for standard listings to the VAS products. Small business users face further discrimination in addition to the discrimination in standard listing fees. The submissions from AutoTrader and Property24 seek to convince the Inquiry that VAS are equally used by all business users, without addressing the main concern, which is price differentiation by the platforms in the sale of VAS. In addition, the evidence from both platforms is in fact contrary to assertions about reduced use by smaller business users, as outlined in the effects section.

4.17. There is no plausible justification for the price differentiation in VAS products by the platforms

203. In the Provisional Report the Inquiry assessed the platforms' pricing models for VAS products and identified pricing differentials of up to 300% in these products as a competition concern.²⁴⁶ The platforms focused on persuading the Inquiry that the VAS products are equally used by all business users, without any justification for some business users to be charged double the prices that the largest business users are charged for the same service. As noted in section 4.3 above, the price differentials impede the small business users ability to spend on other marketing tools and channels, affecting their ability to compete with the larger business users that are left with a larger budget even after spending on the same services from the leading platforms.

204. The Inquiry is not persuaded that the same level of usage of VAS, as suggested by the platforms, is an indication of affordability of the VAS products, but rather an indication of market power. The platforms did not provide any cost justifications for the price differences, which indicates to the Inquiry that the pricing of VAS is possibly not based on costs incurred by the platforms. Business users value listing on the leading platforms and also seek the maximum on the benefits of being on such platforms. The Inquiry is of the view that the small business users also prioritize getting maximum visibility on the platforms as the large business users on the important platforms, even at an additional cost, limiting their ability to spend on other marketing channels.

²⁴⁵ Property24 argues that bigger business users use more VAS as they have more stock listed on the platform and therefore this does not give an indication of whether or not VAS are more affordable to a certain category than the other.

²⁴⁶ See page 110-130 of the Provisional Report (Chapter 5- Online classifieds platforms).

[5. Cross-cutting issues]

205. In the Provisional Report the Inquiry found that some practices and competition distortions are common across all the platform markets considered by the Inquiry. The Inquiry therefore made some cross-cutting recommendations, applicable to the leading platforms in the different segments, including those in property and automotive classifieds markets. These issues are discussed below.

Transparency over pay-for-position

5.1. Findings from the Provisional Report: transparency over pay-for-position

206. The Inquiry found that there is a general lack of transparency by the platforms over sponsored listings as platforms often do not identify sponsored results from organic results. This lack of transparency 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.

5.2. Stakeholder submissions: transparency over pay-for-position

207. Over and above the submissions addressed in section 4.16 of this Annexure, suggesting that large business users do not outspend the smaller business users, the Inquiry received one more submission in this regard. Private Property submits as follows:

207.1. The Inquiry has no basis to impose a remedial action in relation to transparency,

when it has not demonstrated any adverse effect on competition that arise as a result of lack of transparency in relation to property portals.²⁴⁷

5.3. Inquiry's response to stakeholders' submissions: transparency over pay-for-position

208. In the provisional summary report the Inquiry adequately sets out the basis for its preliminary findings in this regard. Furthermore, the impact of lack of transparency in online adverts on consumers is widely documented even from other jurisdictions. For example, the European Commission has expressed a view that where there is lack of transparency in paid search, consumers ordinarily expect natural search results to be included and ranked based on relevance to their search queries and not based on payment by third party traders.²⁴⁸ In the provisional report, the Inquiry noted that the promoted listings have a material impact on the performance of the listings, in property classifieds platforms i.e., promoted listings get more attention from consumers.²⁴⁹ The evidence submitted to the Inquiry also shows that smaller agencies make less use of promoted rankings on the platforms. This is further exacerbated by the embedded price discrimination by the platforms on both standard and promoted listings. Therefore, the lack of transparency in paid search distorts competition and in particular impedes or restricts the competitiveness of SMEs and HDPs (many of which are SMEs) in the market.

²⁴⁷ Private Property submission dated 19 June 2023.

²⁴⁸ European Commission. 2016. Commission Staff Working Document: Guidance on the implementation/ application of directive 2015/29EC on unfair commercial practices. p.120.

²⁴⁹ See page 150-151 of the provisional report (Chapter 5- Online classifieds platforms).

5.4. Inquiry's provisional remedy: Transparency over pay-for-position

209. To address the concerns on lack of transparency, the Inquiry took a view that its provisional remedies for transparency on Google should also be applicable to classifieds platforms, including the following remedies:

- 209.1. 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
- 209.2. 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
- 209.3. 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.

5.5. Stakeholder submissions on provisional remedies: transparency over pay-for-position

210. Generally, the responses by the platforms sought to suggest that classified platforms are somehow different and have made suggestions on what would be most fitting for classifieds platform. The suggestions by the platforms include the following:

- 210.1. All the listings on classifieds platforms are advertisements and therefore labels such as "Ads" may mislead consumers. The platforms would prefer to use words such as "Promoted" or "Sponsored".

210.2. There are industry associations that are part of the ARB. The platforms are more willing to be part of the ARB through their industry associations.

211. The Inquiry welcomes the suggestions by the platform as they are not at the extreme opposite of the Inquiry's remedies and ultimately achieve the similar outcomes.

HDP Participation

212. The Inquiry observed that there is a general lack of transformation in online platform markets and there is also low representation amongst business users on the intermediation platforms. The Inquiry made provisional findings on HDP participation at both platform level and also at business user levels.

5.6. Findings from the Provisional Report: HDP participation

213. At platform level the Inquiry found that a general 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. This is exacerbated by lack of government targeted funding for online platforms and lack of transformation in SA Venture industry, which leaves the HDP entrepreneurs largely excluded from available post-revenue series A, B, C funding.

214. At business user level the Inquiry found that there is a lack of dedicated support for HDP business users to overcome the disadvantages faced on the majority of platforms, with only some isolated instance of limited support. The Inquiry also found that HDP business users are often newer entrants in their respective markets, and therefore factors which inhibit SME participation similarly impede HDPs.

5.7. Stakeholder submissions: HDP participation

215. In classifieds platforms, there is only one HDP owned platform that participated in the Inquiry, Property Central, and it is the only platform that made submissions regarding the Inquiry's findings in relation to HDP support. Property Central submits that it appreciates the accuracy of the Inquiry's understanding of the barriers and challenges faced by HDP platforms.²⁵⁰ The issues identified by the Inquiry also affect HDP entrepreneurs in classifieds platforms.

216. In relation to HDP business user issues, the Inquiry received an objection only from Private Property. The platform submits that

████████████████████
████████████████████
████████████████████

████████████████████.²⁵¹ The other platforms acknowledged the challenges faced by SME and HDP business users and reiterated their commitments to support HDP business users.²⁵²

5.8. Inquiry's provisional remedy: HDP participation

217. To promote HDP participation at platform level, the Inquiry made the following provisional remedies:

217.1. 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.

217.2. 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.

218. For HDP business user participation the Inquiry recommended that leading platforms across all categories institute an HDP programme targeted at overcoming barriers to participation, that should include the following minimum components:

218.1. Personalised assistance with platform onboarding;

218.2. Waiver of onboarding costs or fees;

218.3. Fees that are no higher than the best placed business users;

218.4. Credits for platform promotional activity; and

218.5. Identification and discoverability on the platform by HDP designation if authorised by the HDP business user.

5.9. Stakeholder submissions on provisional remedies

219. At platform level the Inquiry did not receive any objections on the proposed remedies to promote HDP participation. However, Property Central is of the view that the Inquiry's remedies are not sufficient to accelerate HDP platforms to catchup with the established platforms and become effective competitors.²⁵³ The platform suggests the following additional remedies:

250 Property Central submission dated 26 August 2022. Property Central submission dated 07 June 2023.

251 Private Property submission dated 19 June 2023.

252 Property24 submission dated 07 September 2022. AutoTrader submission dated 07 September 2022. Cars.co.za submission dated 08 September 2022.

253 Property Central submission dated 10 September 2022. Property Central submission dated 07 June 2023.

- 219.1. REBOSA and Prop Data should support Property Central to their clients;²⁵⁴
- 219.2. Syndication software providers to promote Property Central to the top of the list of platforms that a business users can feed its listings to, as a default setting; and
- 219.3. The established platforms be prohibited from copying and emulating any of HDP platforms' new and upcoming features to allow them the time to benefit financially and in terms of brand recognition from their innovations.²⁵⁵

220. On HDP business user related provisional remedies the Inquiry received an objection from Private Property. The other platforms indicated that they already have programmes in place to support HDP business users and it would be illogical for those platforms to discontinue their current programmes in order to comply with the Inquiry's remedies. The platforms would rather improve their existing programmes to match the standards set by the Inquiry. The Inquiry notes that Private Property also made similar contentions, that it is in the process of implementing its own programme, however it rejects the Inquiry's proposed remedial action.²⁵⁶ Private Property submits as follows:

[REDACTED]

5.10. Response by the Inquiry to stakeholder submissions: HDP participation remedies

Platform level

221. On promotion of HDP platforms the Inquiry has addressed the calls for it to make a recommendation to industry associations to support a single firm and the potential outcomes of such a recommendation under section 3.7.2 of this Annexure. Similarly, recommending that Prop Data support a single platform is likely to have anticompetitive outcomes and serve as a barrier to the growth and expansion of other small platforms in the market.
222. With regard to the prohibition of established platforms from copying other platforms' innovation, the Inquiry is unable to propose a remedial action in this regard as this issue does not appear to fall within the scope of this market inquiry.

Business user level

223. In the Provisional Summary Report the Inquiry highlighted a lack of transformation in online intermediation platforms.²⁵⁷ In online classifieds most of the HDP businesses are newer entrants and fall within the SME category. Therefore, the conduct that impedes, distorts, or restricts the ability of

254 Property Central is of the view that the effects of REBOSA's conduct to exclusively promote Private Property to its members has harmed its ability to compete and tilted the scale towards Private Property whilst Property Central struggled to attract business users as a result. Similarly, the platform contends that Prop Data damaged its reputation to business users when it refused to add Property Central on the platforms that its software feed to. Property Central contends that promotion by the two entities will go a long way in undoing some of the reputational damage and to compensate for their costs and loss of time.

255 Property Central contends that the established classified platforms face limited competition in the market and as a result have become less innovative. The platform further submits that the established platforms are in a far stronger position to appropriate smaller platforms' upcoming new features and monopolise any recognition and financial benefit they would gain from the new features and innovations that they would have release.

256 Private Property submission dated 05 September 2022. Private Property submission dated 19 June 2023.

257 See page 41 of the Provisional Summary Report.

SMEs to compete in their respective markets, as identified in the report, affects a large portion of HDP business users. The Inquiry identified and demonstrated the impact of price differentiation on small estate agents and dealerships on their ability to compete in their respective markets.²⁵⁸

224. Over and above the impact of differential pricing, the Inquiry also observed that SME 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. The Inquiry is of the view that it has sufficiently demonstrated the hurdles that are faced by HDP business users in classifieds platforms and, accordingly, remedial action in this regard is justified.

225. The Inquiry accepts that the platforms have more knowledge about their respective markets and are better suited to understand the needs of their customers, including HDPs. The Inquiry also took into consideration other factors such as differences in profitability levels of different platforms and resolved that each platform should set-up or improve its existing HDP programme, to fit the needs of its business users, without the Inquiry setting the industry standards. The programmes should be targeted at independent HDP business users and seek to enhance their participation on the platforms.

258 See page 110-135 of the provisional report (Chapter 5- Online Classifieds Platforms)

APPENDIX A: STAKEHOLDER ENGAGEMENTS

List of all stakeholder engagement after the release of the Provisional Report Comments on the Provisional Report

Submission made by	Stakeholder type	Submission date	Report Reference
Property24	Property Platform	14 Apr 2023	Property24 Submission dated 14 April 2023
Property24	Property Platform	23 May 2023	Property24 Submission dated 23 May 2023
Property24	Property Platform	05 May 2023	Property24 Submission dated 05 May 2023
Property24	Property Platform	30 Sep 2022	Property24 Submission dated 30 September 2022
Property24	Property Platform	07 Sep 2022	Property24 Submission dated 07 September 2022
Private Property	Property Platform	05 Sep 2022	Private Property submission dated 05 September 2022
Private Property	Property Platform	14 Dec 2022	Private Property submission dated 14 December 2022
Private Property	Property Platform	09 Mar 2023	Private Property submission dated 09 March 2023.
Private Property	Property Platform	15 May 2023	Private Property submission dated 15 May 2023.
Private Property	Property Platform	19 Jun 2023	Private Property submission dated 19 June 2023.
Private Property	Property Platform	14 Jul 2023	Private Property submission dated 14 July 2023.
Property Central	Property Platform	26 Aug 2022	Property Central submission dated 26 August 2022
Property Central	Property Platform	11 Sep 2022	Property Central submission dated 11 September 2022
Property Central	Property Platform	07 Jun 2023	Property Central submission dated 07 June 2023
MyProperty	Property Platform	24 Aug 2022	MyProperty submission dated 24 August 2022
AutoTrader	Automotive Platform	23 May 2023	AutoTrader Submission dated 23 May 2023
AutoTrader	Automotive Platform	05 May 2023	AutoTrader Submission dated 05 May 2023
AutoTrader	Automotive Platform	14 Apr 2023	AutoTrader Submission dated 14 April 2023
AutoTrader	Automotive Platform	07 Sep 2022	AutoTrader Submission dated 07 September 2022

Submission made by	Stakeholder type	Submission date	Report Reference
AutoTrader	Automotive Platform	30 Sep 2022	AutoTrader Submission dated 30 September 2022
Cars.co.za	Automotive Platform	08 Sep 2022	Cars.co.za Submission dated 08 September 2022
Cars.co.za	Automotive Platform	22 Jun 2023	Cars.co.za Submission dated 22 June 2023
Cars.co.za	Automotive Platform	15 Jun 2023	Cars.co.za Submission dated 15 June 2023
Cars.co.za	Automotive Platform	06 Jun 2023	Cars.co.za Submission dated 06 June 2023
Entergral	Syndication Software Provider	24 Aug 2022	Entergral submission dated 24 August 2022
Prop Data	Syndication Software Provider	24 Aug 2022	Prop Data submission dated 24 August 2022
Real Estate Business Owners of South Africa	Estate professionals' representative body	24 Aug 2022	REBOSA submission dated 24 August 2022
Real Estate Business Owners of South Africa	Estate professionals' representative body	19 Jun 2023	REBOSA submission dated 19 June 2023
Estate Agency Property Portal Company	Consortium of estate agencies, with a share in Private Property	24 Aug 2022	EAPPC submission dated 24 August 2022
Estate Agency Property Portal Company	Consortium of estate agencies, with a share in Private Property	19 Jun 2023	EAPPC submission dated 19 June 2023
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

In-Camera meetings for comments on the Provisional Report

Firm/Company	Stakeholder type	Meeting date	Report Reference
AutoTrader	Automotive Platform	10 October 2022	AutoTrader–oral submission, 10 September 2022
Cars.co.za	Automotive Platform	12 October 2022	Cars.co.za–oral submission, 10 September 2022
Property24	Property Platform	16 September 2022	Property24–oral submission, 16 September 2022
Property24	Property Platform	10 October 2022	Property24–oral submission, 10 October 2022
Private Property	Property Platform	05 December 2022	Private Property–oral submission, 05 December 2022
Property Central	Property Platform	26 October 2022	Property Central–oral submission, 26 October 2022
MyProperty	Property Platform	25 October 2022	MyProperty–oral submission, 25 October 2022
Prop Data	Syndication Software Provider	26 August 2022	Prop Data–oral submission, 26 August 2022
Real Estate Business Owners of South Africa	Estate professionals' representative body	09 September 2022	REBOSA–oral submission, 09 September 2022
Estate Agency Property Portal Company	Consortium of estate agencies, with a share in Private Property	09 September 2022	EAPPC–oral submission, 09 September 2022

Submissions to RFI's for additional information

[illegible]