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GUIDANCE NOTE
ONLINE INTERMEDIATION PLATFORMS

DRAFT FOR COMMENT

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1. Preface

1. In recent years, several jurisdictions globally have identified certain practices by online intermediation platforms that could raise competition concerns. The European Union's Digital Markets Act (DMA) which came into effect in 2023, specifically identifies a set of rules for gatekeepers¹ in the digital market to ensure that they operate in a fair manner and leave room for contestability.² Similarly, the United Kingdom's Digital Markets, Competition and Consumers Act 2024 (UK DMCC) is a new law that strengthens consumer protections and competition rules in the digital market by enhancing the powers of the Competition and Markets Authority (CMA).³ Other jurisdictions such as the Australian Competition and Consumer Commission (ACCC) are in the process of introducing a framework for mandatory service-specific codes for "designated" digital platforms following the findings from their Digital Platform Services Market Inquiry.⁴ South Korea has introduced guidelines for digital platforms following concerns that their laws may not be sufficiently regulating the digital market.⁵
2. In South Africa, the Competition Commission (Commission) concluded its Online Intermediation Platform Market Inquiry (OIPMI) in 2023. The findings from the OIPMI revealed that online intermediation or business-to-consumer (B2C) platforms engaged in various types of conduct that have the effect of impeding or preventing competition in the online intermediation platform markets. Given the learnings from other jurisdictions as well as the Commission's own findings from the OIPMI, the Commission is of the view that it may be important to provide guidance to online intermediation platforms operating in South Africa. The purpose of the Guidance Note is to provide guidance to leading or the largest platforms in a category on the types of conduct that could be considered harmful to competing platforms or businesses listed on the platform, including small and medium enterprises (SMEs) and businesses owned and controlled by historically disadvantaged persons (HDPs). Online platforms operating in South Africa, particularly leading or largest platforms in a category, that have such practices as part of their business model should consider whether they are necessary and if so, whether there are strong efficiency justifications for such practices as part of their internal compliance.

¹ Gatekeepers are large digital platforms providing any of a pre-defined set of digital services ('core platform services'), such as online search engines, app stores, and messenger services. These platforms have a strong economic position, strong intermediation position and an entrenched and durable position in the market.

² Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA).

³ UK DMCC accessed at <https://www.legislation.gov.uk/ukpga/2024/13/contents>

⁴ See <https://www.accc.gov.au/system/files/digital-platform-services-inquiry-final-report-march2025.pdf>

⁵ See <https://globalcompetitionreview.com/guide/digital-markets-guide/fourth-edition/article/south-korea-kftc-calls-additional-legal-measures-regulate-online-players> accessed 02 October 2024.

3. It must be emphasised that the note provides practical guidance for online intermediation or B2C platforms and is not binding on the Commission, the Competition Tribunal (the Tribunal) or the Competition Appeal Court (the Appeal Court) in the exercise of their respective discretion, or their interpretation of the Act. Further, this Guidance Note may be subject to change in the future based on the experience derived by the Commission in cases involving online intermediation services, as well as the decisions of the Tribunal and Appeal Court.

2. Definitions

4. In this Guidance Note, words and phrases which are defined in the Act have the same meaning herein unless otherwise indicated.
5. Unless the context indicates otherwise, the following words and phrases in this note have the meaning attributed to them as follows:

5.1 **“Act”** means the Competition Act No. 89 of 1998 (as amended),

5.2 **“Business-to-consumer (B2C)”** means businesses that sell products or services to consumers,

5.3 **“Business user”** means a business that uses an online intermediation platform to sell its products or services,

5.4 **“Commercially sensitive information”** includes, but is not limited to:

5.4.1 Pricing – including, but not limited to, prices / discounts / rebates offered to specific clients and planned reductions or increases,

5.4.2 Margin information by product or client,

5.4.3 Financial data,

5.4.4 Cost information,

5.4.5 Information on specific clients and client strategy, including information with respect to the sales volume of clients,

5.4.6 Marketing strategies,

5.4.7 Advertising strategies,

5.4.8 Customer information,

5.4.9 Budgets and business plans, and

5.4.10 Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant products.

5.5 **“Commission”** means the Competition Commission of South Africa,

5.6 **“HDP”** means a historically disadvantaged person within the meaning of the Act,

5.7 “**Online intermediation platforms**” means businesses that operate online that facilitate transactions between business users and consumers for the sale of goods, services and/or software,

5.8 “**SME**” means either a small business or a medium-sized business, as the context dictates.

3. Characteristics of online intermediation platforms

6. A unique proposition of online intermediation platforms is the facilitation of transactions between B2C platforms that has driven growing adoption by both consumers and businesses globally. For the consumer, online intermediation platforms offer convenience as consumers have access to a single aggregator where the consumer can easily search and compare the product and service offerings of a wide range of businesses. Further, consumers also have the benefit of transacting online from anywhere at their convenience. For business users, they offer access to a wide customer base both at a national and international level, as well as the payments, technical and physical infrastructure to conclude the transaction.
7. In addition, online intermediation platforms are two-sided markets that are subject to network effects, where more users on the one side of the platform makes the platform more valuable to the other side. A platform that can deliver the most current online consumer leads and sales is likely to become invaluable to business users. As such, the platform will be able to extract more from the business users to fund its lead in platform development and consumer acquisition. This is the virtuous cycle of scaled platforms and the barrier to expansion for entrants particularly SME and HDP owned firms. The importance in online leads or sales and level of dependency by business users means that scaled platforms can influence competition amongst businesses on the platform or exploit the businesses. This may be through, for instance, their fees, fee structure, ranking algorithms or terms and conditions.
8. Online intermediation platforms may not always set out to influence competition, except in the case of self-preferencing, but this may emerge as a by-product of their monetisation strategy, conduct or outcomes that are features of the market. For example, to maximise fee revenues, the platform may extract more out of those business users with greater dependency and less bargaining power, resulting in a system of discriminatory pricing. Similarly, in monetising visibility on the platform, the platform may effectively favour those businesses with deep pockets to appear at the top of the page. There may also be instances where platforms transfer risks or costs onto their business users as they

continue to drive for greater platform profitability. These features eventually result in a market with only one or two platforms with market power that influence both platform and business user competition.

4. Approach to market definition and determination of market power

4.1 Delineation of online intermediation markets

9. Market definition is typically a starting point to a competition analysis as it provides an analytical framework within which the effects on competition may be assessed. It also enables the calculation of market shares which are widely used as a proxy for the existence of dominance or market power, or the lack thereof. However, for online intermediation platform markets, market shares are not always useful in determining market power. Notably, market definitions are typically static and may not effectively capture the rapidly evolving nature of digital markets. Therefore, it may be more imperative to focus on the competitive assessment which provides a more holistic view of the competitive dynamics in a market rather than a static market definition and market share assessment.⁶ Market definition needs to account for differentiation and closeness of competition given that this will determine the extent of constraint and potential for an adverse effect on competition. Moreover, in conduct assessments the market is itself often informed by the nature of the conduct subject to investigation.
10. Online intermediation platforms may not be the only distribution channel for business users to reach consumers. However, online intermediation platforms offer a unique proposition that differentiates them from other channels, and which has driven growing adoption by both consumers and businesses. The fact that businesses use the platforms in addition to other channels, may be indicative that the intermediation platform's wide and growing consumer sales are not easily substituted.
11. The direct online channel (i.e. websites) of businesses may provide for the convenience of online transacting, however, there are other limitations that make this channel less attractive to consumers and less effective for businesses. The scale generated by online intermediation platforms from aggregating many businesses permits larger budgets to (i) direct market to online customers via internet-based search, (ii) invest in better user interfaces for ease of use, and (iii) to reduce the unit costs per transaction. Further,

⁶ OECD. The Evolving Concept of Market Power in the Digital Economy – Note by the United Kingdom. 22 June 2022.

aggregation also offers consumers the ability to easily compare and discover a wider range of options. As such, the experience of jurisdictions internationally suggests that the direct online channel of businesses may not significantly constrain online intermediation platforms.

12. Traditional 'Brick & Mortar' (B&M) or 'offline' channels are also available in certain categories such as, eCommerce, and may even account for the majority of sales, but the online purchase is typically a different consumer journey to the offline alternative. This is typically where convenience plays a role in the consumer journey and decision-making, as well as offering the benefit of a greater variety of choice. Furthermore, online intermediation platforms are usually the only viable online distribution channel available for SMEs which lack the scale of dominant firms in their industry. As such, even if traditional B&M channels offer constraints from a consumer's side, such constraints may be less prevalent on the business user side where market leadership amongst intermediation platforms may still come with bargaining power in relation to SMEs.
13. This suggests that other intermediation platforms are likely to be the closest competitors to each other for consumers and especially for SME business users that often have no or limited direct online channels, and a smaller traditional B&M customer reach. It is for these reasons that most jurisdictions globally in recent years have identified online intermediation platforms as a distinct market. Even where a broader market is identified, the differentiation in distribution channels means that the primary constraint is from other online intermediation platforms and even if constraints exist on the consumer side, this may be less likely to be the case on the business user side.
14. The cases and research conducted internationally suggests that a distinct market for online intermediation platforms could be considered, unless there is strong evidence to the contrary. One circumstance where a broader market could be considered is where there is an extremely limited user adoption level for online intermediation platforms for a particular B2C service type and the platforms are nascent and sub-scale.

4.2 Market power assessment

15. The literature on digital markets supports the notion that market definition and market shares are not necessarily the most useful approach to determining market power and harm to competition. Cremer et al. (2019) argue that in comparison to single-sided markets, there is less emphasis on market definition and more focus on theories of harm

and identification of anti-competitive strategies.⁷ Hovenkamp has also argued that for digital markets, alternatives to assess market power should be considered.⁸

16. The DMA argues that online platforms can be classified as gatekeepers if they possess certain characteristics such as extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics include very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages.⁹ According to the DMA, such characteristics can confer on the provider of those services a position of gatekeeper as they can lead to a rapid and potentially far-reaching decrease in business user and consumer choice.¹⁰
17. In the context of digital markets, the Commission's market power analysis may extend beyond market shares. The Commission is likely to determine whether a platform has a degree of market power in a particular sector for the purposes of determining dominance under section 7 by considering whether:
 - 17.1 The platform is significant within the online intermediation market,
 - 17.2 The platform is important for business users to reach consumers,
 - 17.3 The platform has the ability to benefit from network effects to grow its significance and importance,
 - 17.4 The platform's ability to adversely affect rival platforms or business users.
18. In assessing these factors, the Commission is likely to consider:
 - 18.1 The size of the platform overall and in relation to the intermediation market,
 - 18.2 The number of business users and the number of consumers,
 - 18.3 The extent of business user dependency,
 - 18.4 The scale and network effects the platform enjoys,
 - 18.5 Platform conduct and observed outcomes,
 - 18.6 The market structure,

⁷ Cremer, de Montjoye & Schweitzer (2019). "Competition Policy for the Digital Era.": Prepared for the European Commission. p. 3-4.

⁸ OECD summary of discussion of the roundtable on market power in the digital economy (June 2022).

⁹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA).

¹⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA).

18.7 Any other relevant features that may show the ability to adversely affect rival platforms or business users.

19. The Commission has observed that in online intermediation markets it is possible for more than one platform to have a degree of market power, especially as platforms may seek to differentiate themselves or where two platforms dominate online transactions collectively.
20. The Commission is also cognisant of the fact that as online intermediation services grow, there may be large global platforms that may enter South Africa and may leverage off their global operations to influence market outcomes in South Africa. In such instances, the overall global size and capabilities of such platforms could be considered when determining whether they qualify as platforms with market power. This is because such platforms may have some degree of market power even as they enter the South African market, and this may result in greater entrenchment following expansion.¹¹

5. Types of conduct that could raise competition concerns in the online intermediation platforms market

21. Given the learnings from international jurisdictions, there appear to be six practices of online intermediation platforms operating in South Africa that could have the effect of preventing or restricting competition. These practices fall into three categories, namely (i) platform-related competition; (ii) competition amongst business users in the context of vertically integrated platforms; and (iii) competition amongst business users impacting on the participation of SMEs and HDPs. These practices have raised concerns in several jurisdictions with competition authorities investigating and prosecuting platforms and/or developing their own guidance, codes of conduct or regulations to promote a more competitive market structure. It is therefore appropriate that leading platforms in SA consider these practices in their internal compliance processes.
22. If platforms are found to be engaging in such practices and found to be harming competition, the platforms would be asked to demonstrate with financial and economic evidence that such practices are essential to the sustainable operation of the platform and necessary substantial future investments in the platform, and that there exist no less anti-competitive alternatives. The Commission could request evidence that extends beyond simple theoretical claims and hypotheses and demonstrate either actual experience of

¹¹ This may be due to their large global presence based on mature and tested business models, proven and more advanced technology, relationships with multinationals operating in South Africa, brand recognition with customers, a portfolio of products and services that can be leveraged and capital backing to sustain losses in the establishment phase.

the platform or others in the industry, or realistic financial modelling. In assessing any sustainability claims, the Commission could consider amongst others, evidence of sustainable platform operations absent the practice by platforms operating in South Africa or other jurisdictions in online intermediation markets.

5.1 Practices that could harm platform-related competition

5.1.1 Price parity clauses

23. Price parity clause refers to the imposition of price conditions by online intermediation platforms on business users that utilize their platforms. There are two types of price parity clauses, namely: narrow and wide price parity clauses. Narrow price parity is a pricing strategy where business users are prevented from offering more favourable terms and conditions, including price, on their own direct channel (website) compared to those offered on the platform. Wide price parity, on the other hand, has a broader imposition as the strategy restricts business users from offering products and services to consumers on more favourable terms and conditions, including price, on other platforms as well as their own direct online channel (website).
24. The imposition of narrow parity clauses prevents business users from offering lower prices on their own channel to the benefit of consumers. This can result in consumers not utilising the direct channel as there are no benefits associated with using this channel. Generally, business users are likely to protect their own distribution channel where the costs are lower and therefore charge lower prices on their own channel relative to third party platforms where they pay commission fees. Wide price parity clauses are often found to be harmful to competition because they prevent business users from setting a lower price to consumers on competing platforms which may adversely affect the entry and expansion of new or smaller platforms. Business users may also be disadvantaged because the competing platforms may charge lower commission fees or target different segments of consumers.
25. Both narrow and wide price parity clauses could have the effect of further entrenching the leading platform's position as they can increase the business users' dependency on the platform. Consumers may become conditioned to using the leading platform as they may expect that all other channels are unlikely to offer lower prices or better terms and conditions. As a result, business users may become dependent on the leading platform for access to consumers. The ability to access lower commission fees on other platforms or price lower on the direct channel is often important to reduce dependency on platforms.

This is particularly where dependency can result in exploitation of business users such as through unfair trading conditions including high commission fees.

26. These concerns have been identified in various jurisdictions with narrow price parity raising concerns as it restricts competition from the business user's direct sales channel.¹² With regard to wide price parity clauses, these are now often considered to be a hardcore restraint where the anti-competitive effects outweigh any potential justification and have specifically been excluded from the exemption category in the European Commission Vertical Block Exemption Regulations.¹³ The concerns raised in several jurisdictions regarding price parity clauses are discussed below.

26.1 On 19 September 2024, the European Union's Court of Justice ruled that Booking.com can no longer include price parity clauses in its contracts with accommodation providers across the European Union. This includes both wide and narrow parity clauses. The Court argued that this practice hinders competition and potentially damages the market for new and smaller players. Specifically, the Court stated that *"It has not been established that price parity clauses, whether wide or narrow, first, are objectively necessary for the implementation of that main operation and, second, are proportionate to the objective pursued by it,"*. With regards to narrow parity clauses, the Court argued that *"Although [narrow clauses] give rise, prima facie, to a less restrictive effect on competition and are intended to address the risk of free-riding, they do not appear to be objectively necessary to ensure the economic viability of the hotel reservation platform."*¹⁴ This decision by the Court of Justice is expected to apply pressure to online intermediation platforms across other industries, beyond travel and accommodation, to remove price parity clauses.¹⁵

26.2 Prior to this decision by the European Union's Court of Justice, the European Union's Digital Markets Act (DMA) which came into effect in 2023 had already

¹² See CMA Vertical Agreements Block Exemption Order, published on 12 July 2022. Available at: https://assets.publishing.service.gov.uk/media/62d57d7fe90e071e7b13109f/VABEO_Guidance.pdf, accessed 04 October 2024. Several other jurisdictions in Europe including Germany, Austria, Italy, Belgium and France have found narrow parity clauses to be anti-competitive and have since banned them.

¹³ Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, Article 5(1)(d).

¹⁴ See <https://www.courthousenews.com/wp-content/uploads/2024/09/booking-german-hotels-ecj-prelim-ruling.pdf> and <https://www.reuters.com/technology/bookingcoms-price-curbs-hotels-may-hinder-competition-eu-top-court-says-2024-09-19/>.

¹⁵ See <https://www.legaldive.com/news/online-price-parity-clauses-at-risk-eu-bookingcom-decision-lodging-other-industries/727688/> accessed 04 October 2024.

included the removal of price parity clauses.¹⁶ In addition, individual Competition Authorities across Europe have been investigating price parity clauses since 2015 and have largely found these clauses to be anti-competitive.¹⁷

26.3 In 2025, following the European Union's Court of Justice ruling, over 10000 hotels across Europe are planning a class action lawsuit against Booking.com for distorting the market over the period 2004 to 2024.¹⁸

26.4 In 2023, the Federal Trade Commission (FTC) and 17 States in the US filed a lawsuit against Amazon for a number of allegations including price parity clauses and alleged that the company is inhibiting the growth of its third-party sellers and causing inflated prices of consumer goods on and off its platform.¹⁹ This case is currently ongoing²⁰, however, an important point to note is that although Amazon in the US, removed price parity clauses from its contracts in March 2019, it did not stop enforcing its price parity expectation on sellers on its platform.^{21 22}

26.5 South Korea's Korea Fair Trade Commission (KFTC) introduced guidelines aimed at online platforms in January 2023. These guidelines include price parity clauses as one of the abusive practices that may restrict competition in the online platform sector.²³

26.6 The ACCC's Digital Platform Service Market Inquiry has recommended a framework for mandatory service-specific codes for designated digital platforms

¹⁶ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA).

¹⁷ Germany, France, Italy, Austria and Belgium have banned price parity clauses.

¹⁸ See <https://antitrustpolitics.com/2025/08/08/hotel-industry-vs-booking-com-a-landmark-legal-battle-over-price-parity-clauses/> and <https://www.theguardian.com/business/2025/aug/07/thousands-of-hotels-in-europe-to-sue-booking-com-over-abusive-practices>

¹⁹ See <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>, accessed 04 October 2024. One of the issues raised is that Amazon does not allow sellers on its marketplace from charging lower prices anywhere else compared to what they charge on Amazon.

²⁰ This case is set down for trial in 2027. See

²¹ See <https://www.wsgr.com/en/insights/ftc-sues-amazon-for-illegally-maintaining-monopoly-power.html#:~:text=The%20complaint%20alleges%20that%20in,product's%20visibility%20and%20sales%20potential> and <https://www.culawreview.org/journal/the-first-federal-attack-on-amazons-monopoly-power-a-conclusive-moment-in-assessing-antitrust-efficacy-in-the-digital-age> accessed 03 October 2024.

²² The findings in this case indicate that there is a need for platforms to clearly communicate to all business users that price parity clauses will not be enforced once they have been removed from contracts.

²³ See <https://globalcompetitionreview.com/guide/digital-markets-guide/fourth-edition/article/south-korea-kftc-calls-additional-legal-measures-regulate-online-players> accessed 02 October 2024.

with targeted obligations to address price parity clauses in contracts with business users.²⁴

27. The learnings from these jurisdictions suggest that price parity clauses both wide and narrow can prevent or restrict competition and that the claimed theoretical rationale for their existence often have little or no efficiency or pro-competitive benefit. Therefore, platforms subject to investigation around price parity clauses will be asked to provide more than simply theoretical claims on their ability to be financially sustainable and to make ongoing investments in the platform to the benefit of business users and consumes. Platforms may need to provide either actual experience or strong financial modelling to support claims that imposing price parity is essential for its financial sustainability and/or necessary material investments in the platform.
28. Platforms typically claim that price parity clauses are necessary to recoup their investment in the platform and associated marketing costs. Platforms argue that without price parity clauses, business users are likely to free-ride, and this may make the online intermediation platform model unsustainable. However, globally, where platforms have removed price parity clauses, it appears that they have remained profitable and continue to grow suggesting that the removal of price parity clauses has not resulted in free-riding.²⁵ Further, evidence from academic literature shows that the removal of price parity clauses with respect to online intermediation platforms in Europe has resulted in price competition.²⁶
29. International evidence such as from the FTC in the US suggests that business users may not be informed that the clause has been removed from their contracts and platforms may still enforce them. Price parity clauses could have a detrimental effect on competition even if they are not enforced by platforms. Platforms should consider avoiding price parity clauses in their contracts with business users regardless of whether they are enforced or not. Further, online intermediation platforms should consider clear and active communication with all business users on their platform should they remove price parity clauses from their contracts. It is also important to communicate with business users the

²⁴ See <https://www.accc.gov.au/system/files/digital-platform-services-inquiry-final-report-march2025.pdf>

²⁵ Global online intermediation platforms operating in countries that have banned price parity clauses have remained profitable and there does not seem to be evidence of significant free-riding in these jurisdictions.

²⁶ Ennis, S., Ivaldi, M., & Lagos, V. 2020. Price Parity Clauses for Hotel Room Booking: Empirical Evidence from Regulatory Change. Available at: https://www.tsefr.eu/sites/default/files/TSE/documents/doc/wp/2020/wp_tse_1106.pdf.

implications of removing price parity clauses on pricing across platforms and business users' own websites. This provides certainty to business users.

30. The concerns regarding narrow and wide price parity clauses appear to arise regardless of the size of the platform as the use of price parity clauses by a multitude of smaller platforms could result in similar effects i.e. a lack of price competition to the detriment of consumers.

Illustrative example

A hotel lists its rooms on several platforms that provide travel and accommodation services as well as its own hotel website. Some of these platforms are large and possess a degree of market power while others are relatively new and smaller in size. Consumers can either book a room on one of these platforms or directly through the hotel's website. If each of these platforms have a rule that prevents the hotel from charging a lower price on any other platform as well as its own website (*wide price parity clause*), the hotel is likely to price uniformly across all channels. This removes price competition as consumers will be faced with the same price across all platforms and the hotel's website.

In another scenario, if each of these platforms allow the hotel to price lower on the other platforms but not on its own website (*narrow price parity clause*), the hotel could become dependent on the platforms as it may not get sufficient bookings on its own website absent a lower price. If so, the hotel is unlikely to price differentiate across platforms and prices will likely remain uniform across all platforms and the hotel's own direct channel.

On the other hand, if the hotel is allowed to charge as it wishes, it may offer discounts on its own website to promote direct bookings, and it may also charge different rates across platforms. This will allow the hotel to grow its own channel as well as introduce price competition to the benefit of consumers.

5.1.2 Interoperability

31. Interoperability is "*the ability to exchange information and mutually use the information which has been exchanged through interfaces or other solutions, so that all elements of hardware or software work with other hardware and software and with users in all the ways in which they are intended to function.*"²⁷ Essentially, it is the ability of two or more systems or components to perform their required functions while sharing the same hardware or software environment.²⁸
32. Interoperability measures can promote competition among digital platforms, by allowing users to preserve network effects on new services, and within digital platforms, by allowing users to mix and match different complementary services from different

²⁷ See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA), Article 2, Definitions.

²⁸ See <https://www.econstor.eu/bitstream/10419/162658/1/880542403.pdf> accessed 18 October 2024.

providers.²⁹ As such, interoperability is an important tool to foster competition and innovation in digital markets. A lack of interoperability may represent a significant and artificial impediment to competition as it reinforces or strengthens the platform's market position.

33. Interoperability is important for competition in the online intermediation platform market. The importance of interoperability in promoting a competitive market structure has been acknowledged by several jurisdictions, with countries either implementing regulations or imposing codes of practice to facilitate interoperability between platforms. These are discussed below.

33.1 The DMA states that, *"The gatekeepers should, therefore, be required to ensure, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features that are available or used in the provision of its own complementary and supporting services and hardware."*³⁰

33.2 Individual European jurisdictions such as Germany have also included provisions in their relevant Acts to address interoperability concerns.³¹

33.3 The UK's DMCC³² requires platforms to not restrict or refuse interoperability to other undertakings.

33.4 The ACCC's Digital Platform Service Market Inquiry has recommended a framework for mandatory service-specific codes for designated digital platforms with targeted obligations to address impediments to interoperability.³³

33.5 In addition, there has also been antitrust cases against platforms with market power for restricting interoperability such as the European Commission's case against Microsoft Corporation by leveraging its near monopoly in the market for

²⁹ See [https://one.oecd.org/document/DAF/COMP\(2021\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2021)5/en/pdf) accessed 18 October 2024.

³⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA). Article 6, paragraph 7.

³¹ German Competition Act section 19a(2)(5).

³² DMCC, chapter 3, Sec. (20)(3)(e).

³³ See <https://www.accc.gov.au/system/files/digital-platform-services-inquiry-final-report-march2025.pdf>

PC operating systems (OS) onto the markets for work group server operating systems and for media players.³⁴

34. Based on the learnings from these jurisdictions, there are certain types of practices that could restrict or prevent interoperability to smaller platforms and/or business users as identified below. It is important to note that the practices listed below do not constitute an exhaustive list.

34.1 Software systems of platforms with market power that restrict the ability for other systems and devices of smaller platforms and/or business users to interoperate freely with their own.

34.2 The restriction of data that limits interoperability.

34.3 The platform restricts consumers from selecting services from its competitors' platforms if it also offers those services.

34.4 The platform charges a fee for access to its interfacing software.

35. Leading or the largest platforms in a category should consider the impact of not allowing interoperability on a fair, reasonable and non-discriminatory manner. Platforms that refuse or restrict interoperability and are subject to investigation would be requested to provide evidence to demonstrate why interoperability is not feasible. This could include amongst others, evidence of regulatory restrictions on interoperability (e.g. consumer privacy and data security) or technical restrictions.

36. Where platforms argue that there are significant costs incurred in allowing interoperability, the platform could be asked to demonstrate that there are no possible means to reduce such costs such as using Application Programming Interfaces ("APIs") that allow for interoperability at reduced costs.

³⁴ European Commission. Press release. Commission concludes on Microsoft investigation, imposes conduct remedies and a fine. 24 March 2004. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_04_382.

Illustrative example

A company owns a large platform with market power that provides a service where healthcare professionals can record and view patients' information creating a digital health record. This allows a patient's healthcare history to be accessed by any healthcare professional that uses the platform. The company also owns a software, which allows users to upload the information from their side onto the platform and requires healthcare professionals to only use their software to upload patient's information. It charges a bundled monthly fee for the use of the platform and software. The company does not allow healthcare professionals to list on its platform using any third-party software. It has no compelling justification to not allow other software companies to access its platform. This lack of interoperability could restrict competition, as it could affect the entry and expansion of other platforms providing such a service as well as other software companies in the market.

5.2 Practices that could harm competition amongst business users in the context of a vertically integrated platform provider

5.2.1 Self-preferencing

37. Some platforms may provide their own products and services on the platform in competition with business users operating on the platform. This could result in self-preferencing where their own products and services receive favourable treatment. The self-preferencing conduct may arise in the form of the platform reserving a better position in terms of ranking, and related indexing and crawling, for its own products and services to the potential detriment of competing business users on the platform. It can also occur through the platform charging a fee (e.g. commission fee) to third parties on the platform but the same fee is not applied to itself or its affiliates on the platform. The platform may either charge a lower fee or not charge a fee at all to its affiliates. This could give the platform an unfair advantage if third parties incur higher costs for providing similar products and services to consumers.
38. It is less common for competition to be distorted if self-preferencing is practiced by small platforms. This is because if the platform is small, business users are less likely to be dependent on the platform and as such the platform is less likely to have an incentive to harm business users on the platform. This is due to business users having the option to leave the platform if such conduct were to occur.
39. The Commission could have concerns with self-preferencing where a platform has market power, as such conduct could potentially distort competition due to the dependence of business users on the platform. If business users are dependent on the platform, the

platform is less concerned about losing sellers from its platform in the face of self-preferencing.

40. International experience suggests that self-preferencing by platforms with market power could impede and distort competition to the exclusion of sellers and/or smaller platforms who may be HDP owned firms. Further, such conduct could raise rivals' costs and deny consumers the benefit of greater choice and innovation. In South Africa where participation by HDPs in online intermediation platforms both as sellers and platforms is limited, self-preferencing practices by leading or the largest platforms in a category could impede the ability of these firms to participate meaningfully in the online sector. The approach taken by several jurisdictions regarding self-preferencing is discussed below:

40.1 The DMA requires that “*vertically integrated gatekeepers do not engage in any form of differentiated or preferential treatment in ranking on the core platform service, and related indexing and crawling, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls*”.^{35 36}

40.2 The UK's DMCC has requirements that prevent designated platforms from engaging in practices such as treating their own products more favourably than those of other business users on the platform.³⁷ The DMCC does however, allow for efficiency justifications if the justifications show that there are substantial benefits that outweigh the negative effects of self-preferencing.

40.3 In January 2025, the CMA opened strategic market status investigations into Apple and Google's mobile ecosystems. One of the issues to be considered in this investigation is self-preferencing by Apple and Google of their own apps and services.³⁸

³⁵ See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA).

³⁶ In addition to the DMA, there have also been *ex-ante* regulations introduced in individual European member states. For example, Germany's amendments to its Competition Act in 2021 addresses self-preferencing practices and allows for the prohibition of such conduct on a case-by-case basis. In addition, there have also been antitrust cases in individual European member states such as the 2021 case against Amazon in Italy. The Italian Competition Authority fined Amazon for leveraging its dominant position in the online intermediation services market to favour the adoption of its own logistics service (FBA) by sellers on its platform to the detriment of rival logistics services providers.

³⁷ See [Digital Markets, Competition and Consumers Act 2024 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2024/11/section/1), accessed 10 October 2024.

³⁸ See <https://www.gov.uk/government/news/cma-to-investigate-apple-and-googles-mobile-ecosystems>.

- 40.4 The ACCC's Digital Platform Services Inquiry has recommended mandatory service-specific codes of conduct for designated digital platforms to prevent anti-competitive conduct such as self-preferencing.³⁹
- 40.5 The KFTC's guidelines in South Korea include self-preferencing as an abusive conduct by online intermediation platforms that may restrict competition in the online sector.⁴⁰
- 40.6 Japan and India have also raised concerns with regards to self-preferencing. Japan has introduced laws to deal with self-preferencing while a bill in India has also proposed measures to address similar concerns.⁴¹
41. Based on the experience from other jurisdictions, self-preferencing conduct by platforms with market power could raise concerns. Some of the types of practices by platforms with market power that could raise concerns include amongst others:
- 41.1 favourable treatment in ranking and related indexing and crawling of own products and services compared to competing products and services of business users on the platform. Ranking in this regard covers all forms of relative prominence including display, rating, linking or voice results and could also include instances where the platform may only communicate one result to the consumer; and
- 41.2 favourable treatment in fees charged to itself and/or its affiliates for providing own products and services on the platform compared to rivals on the platform.
42. Platforms with market power should consider whether any self-preferencing is likely to harm rivals on the platform and to consider whether maintaining a transparent, fair and non-discriminatory approach with regards to the provision of own products and services compared to competing products and services on the platform alleviates any compliance risk.

³⁹ See <https://www.accc.gov.au/system/files/digital-platform-services-inquiry-final-report-march2025.pdf>

⁴⁰ See <https://globalcompetitionreview.com/guide/digital-markets-guide/fourth-edition/article/south-korea-kftc-calls-additional-legal-measures-regulate-online-players> accessed 02 October 2024.

⁴¹ Ministry of Corporate Affairs Government of India, Report of the Committee on Digital Competition Law, 27 February 2024, p 163. JFTC, Market Study Report on Mobile OS and Mobile App Distribution (Summary), February 2023, pp 16–18.

43. Platforms that seek to engage in self-preferencing conduct and are subject to investigation would be required to provide evidence that demonstrates:

43.1 Self-preferencing is required for the platform to innovate and invest both in the platform as well as product and service development. Platforms could be required to show that absent the self-preferencing conduct they are unable to make these investments.

43.2 real consumer benefits arising from self-preferencing such as reduced consumer search costs or materially lower prices compared to rivals' products and services.

Illustrative example

A car rental firm owns a platform offering car rental quotes to consumers from multiple firms including itself. The platform is a large, well established car rental comparator site where multiple firms are dependent on the platform to access consumers for car rental services. If the platform were to reserve a better position for the display of its own quotes such that consumers are always presented with the platform's own car rental quotes in a more favourable manner, it could raise concerns. This is because competing car rental firms on the platform are not presented with the same opportunity to offer their services to consumers which may in fact be better in terms of pricing and other terms of usage. Given the prominent display of the platform's own quotes, consumers may be more likely to select the platform's own offerings as this is the option they view upfront.

5.2.2 Use of competitively sensitive data

44. Platforms that offer products and services in competition with business users on the platform could give rise to potential conflicts of interest. Specifically, concerns could arise where the platform utilises competitively sensitive data of business users to benefit its own competing products and services. Business users tend to invest considerable resources in the development, identification and promotion of products and services that meet the requirements of consumer demands, and this involves significant financial risk and expenditure. In this context, a platform could exploit its access to this sensitive, non-public data, using it to advance its own offerings. For instance, the platform could use such data to identify and capitalise on successful innovations that have already been tested and proven by business users. The improper use of business users' proprietary data to enhance the platform's own products and services could undermine the value of business users' investments and diminish the returns derived from their innovation efforts.
45. Access to business users' sensitive data could create a conflict of interest that may distort competition. The Commission notes that the use of competitively sensitive data by

platforms has been a subject of concern in other jurisdictions as outlined in the following discussion:

45.1 The DMA recognises the potential conflicts of interest, particularly regarding the use of seller data by vertically integrated gatekeepers to benefit their own offerings.⁴² To mitigate the risk of gatekeepers unfairly leveraging their dual role, the DMA mandates that gatekeepers must refrain from using any aggregated or non-aggregated data that is not publicly available to offer services that compete with those of their business users.⁴³

45.2 The UK's DMCC regime addresses the conduct of designated platforms that use their position in relation to the relevant digital activity, including access to data related to those activities, to give preferential treatment to their own products over those of other undertakings. The DMCC further mandates that designated platforms must not use data unfairly.⁴⁴ Additionally, the CMA has investigated antitrust cases concerning the use of seller data by dominant platforms. In 2023, the CMA closed its investigation into Amazon after accepting remedies that prevent the company from using data from rival third-party sellers on its marketplace to gain an unfair competitive advantage.⁴⁵

45.3 In the US, there have been calls for structural separations in cases where dominant platforms compete with other businesses that rely on their infrastructure, in order to address potential conflicts of interest.⁴⁶ The FTC's ongoing case against Amazon filed in 2023, is examining the possibility of implementing structural remedies to solve this concern.⁴⁷

45.4 A bill in India has proposed measures to address the use of non-public data of business users on the platform to compete with those business users.⁴⁸

⁴² See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (*DMA*).

⁴³ See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (*DMA*).

⁴⁴ See [Digital Markets, Competition and Consumers Act 2024 \(legislation.gov.uk\)](#), accessed 18 October 2024.

⁴⁵ See <https://www.gov.uk/cma-cases/investigation-into-amazons-marketplace>, accessed 16 October 2024.

⁴⁶ See [FTC Sues Amazon for Illegally Maintaining Monopoly Power | Wilson Sonsini \(wsgr.com\)](#), accessed 14 October 2024.

⁴⁷ See [FTC Sues Amazon for Illegally Maintaining Monopoly Power | Wilson Sonsini \(wsgr.com\)](#), accessed 14 October 2024.

⁴⁸ See Ministry of Corporate Affairs Government of India, Report of the Committee on Digital Competition Law, 27 February 2024, p 163.

46. To address potential conflicts of interest where a platform competes with business users on its platform, platforms may consider implementing certain measures such as the following:

46.1 prevent all employees, management, board members and executives involved in the provision of the platform's own product and services from accessing competitively sensitive data of rival business users on the platform; and

46.2 introduce compliance programmes to ensure that all employees including management and executives involved in the provision of the platform's own products and services are fully informed that they should not access any form of competitively sensitive data belonging to rival business users on the platform.

46.3 strictly limit the use of rival business users' competitively sensitive data for what is essential to the operation of the platform and ensure that it is not used beyond what is necessary.⁴⁹

47. Data that is aggregated, historical in nature, and made available to all rival business users on the platform in a fair, transparent and non-discriminatory manner is less likely to raise concerns.

5.3 Practices that could be harmful to competition amongst business users relating to the participation of SMEs and HDPs

5.3.1 Differentiated trading terms across business users

48. Online intermediation platforms typically enter into standard contracts with business users, meaning that all business users receive the same terms and conditions for operating on the platform. Standardized contracts are often practical as negotiating differentiated terms with hundreds or thousands of business users can be complex and burdensome. However, there may be instances where platforms offer different trading terms to certain business users based on their business size, geographic presence and/or business classification, even if the services procured are similar or identical. In such cases, platforms may offer more favourable trading terms to certain types of businesses including (i) large business users, (ii) business users with a global market presence, and/or (iii) business users that are corporate entities. This differentiation in terms can be driven by prevailing market conditions rather than any justifiable factors that would normally warrant discrimination.

⁴⁹ See the Commission's guidelines on the exchange of competitively sensitive information.

49. Platforms can sometimes be more inclined to offer favourable terms to larger business users because they have strong brand equity with high volumes of sales, so these businesses are considered lucrative to the platform. As a result, larger business users can possess a degree of bargaining power and secure more advantageous trading terms, while other business users, particularly SMEs and HDPs (designated business users) may not receive the same treatment. The imposition of differentiated trading terms may be reflected through service fees, value-added services, marketing activities or other related terms of trade.
50. The disparity in the treatment of business users could raise competition concerns, as more favourable trading terms afforded to certain business users may enable them to maintain or strengthen their existing strong market position, potentially facilitating further market concentration. This could hinder the expansion of other business users on the platform, albeit that platforms are a means for small businesses to reach national audiences. Such practices could create an uneven playing field making it difficult for smaller businesses to compete effectively. Consumers may be impacted adversely in terms of finding the widest range, lowest prices and best quality of products and services.
51. International experience suggests that the imposition of differentiated trading terms among business users could potentially distort platform competition. The use of differentiated trading terms by platforms with market power have been addressed in various codes of practice and antitrust cases in multiple jurisdictions as outlined below:
- 51.1 The UK's Digital Markets, Competition and Consumers Act 2024 (DMCC) which grants the CMA the authority to impose conduct requirements on designated platforms, mandates that these platforms engage in trade on fair and reasonable terms⁵⁰ and apply non-discriminatory conditions when conducting business with users.⁵¹
- 51.2 The Australian Competition & Consumer Commission (ACCC) is in the process of implementing mandatory codes of practice for digital platforms, having identified that smaller businesses are frequently subjected to unfair and arbitrary treatment by these platforms. The forthcoming code of practice aims to ensure

⁵⁰ UK. Digital Markets, Competition and Consumers Act 2024. Chapter 3, Sec. (20)(2)(a).

⁵¹ UK. Digital Markets, Competition and Consumers Act 2024. Chapter 3, Sec. (20)(3)(a).

fairer and more transparent treatment of small and medium-sized businesses that depend on platforms to engage with consumers.⁵²

52. Examples of differentiated trading terms, amongst others, that could raise competition concerns are listed below. This list is not exhaustive, and the Commission could consider other relevant factors arising from complaints, investigations and market developments:

52.1 The platform charges varying fees (such as service fees, commission, or subscription fees) to different business users utilising its intermediation services. These fee differences may also apply to other payment structures including discounts, promotion fees, onboarding costs and price increases. In effect the platform imposes higher fees to designated business users compared to those charged to larger business users.

52.2 The platform differentiates on the value-added services it provides to business users such as visibility, display advertising, ranking, sponsored listing and promotional placement of product listings on the platform. The platform may offer these value-added services at a lower cost or free of charge to larger business users, or it may select to only offer these services to larger business users, excluding designated business users.

52.3 The platform offers different trading terms to designated business users compared to those offered to larger business users. This may include less favourable trading terms such as unduly long payment periods for designated business users in comparison to the terms offered to larger business users.

52.4 The platform provides additional marketing benefits exclusively to larger business users excluding other business users including SMEs and HDPs. For example, the platform may engage in co-marketing and brand advertising agreements that promote both the platform and larger business users, while similar arrangements are not offered to designated business users.

53. It is advisable that platforms with market power consider treating all business users equally with respect to pricing and other trading terms for operating on the platform, and where not, to consider whether differential pricing and trading terms are likely to be exclusionary.

⁵² See <https://www.accc.gov.au/media-release/consumers-and-small-businesses-to-benefit-from-proposed-new-regulation-of-digital-platforms> accessed 16 October 2024.

54. Platforms that implement differentiated trading terms across business users and are subject to investigation would be required to provide evidence to justify the need for such differentiated trading terms and demonstrate the financial impact on the platform if these are not applied. The platform would be required to show that:

54.1 Applying the same trading terms including price to designated business users as the larger business users would render the platform financially unsustainable; and/or

54.2 Imposing less favourable trading terms including higher prices to the larger business users would result in their departure from the platform making the platform financially unsustainable.

55. While differentiated trading terms typically favour larger business users and could be considered to be detrimental to competition, the Commission is less likely to have concerns with differentiated trading terms that benefit SMEs and HDPs. This approach aims to support the market entry and growth of SMEs and HDPs, therefore fostering competition within the market.

Illustrative example

A food delivery platform charges restaurants a monthly service fee to list its menu items on the platform so customers can order from the restaurant via the platform. The food delivery platform charges national chain restaurants a 10% service fee while a restaurant owned by an SME is charged 15%. The platform provides the same service to the SME and national chain restaurant but bases the service fee solely on the size of the business. If the food delivery platform is not able to provide an objective reasoning for the service fee difference, this discrimination could be considered unfair.

On the other hand, if the food delivery platform offers an SME or HDP owned restaurant a 7% service fee while national chain restaurants are charged 10% and offers promotional benefits to the SME/HDP owned restaurant such as free delivery, the Commission is unlikely to view this as unfair discriminative conduct. Discrimination in favour of SME/HDP restaurants in this instance is likely to facilitate their growth in the market and become effective competitors to national restaurant chains.

5.3.2 Unfair treatment

56. The European Parliament stated that, “*unfair trade practices are practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing. Unfair trading practices are typically imposed in a situation of imbalance by a stronger party on a weaker one....*”⁵³ In the context of digital markets, unfair treatment refers to a

⁵³ European Parliament. Unfair trading practices in the business-to-business food supply chains

platform with market power extracting more from business users, particularly, SME and HDPs who are more reliant on the platform and possess less bargaining power.

57. For business users, particularly SMEs and HDPs, access to a platform may be imperative to the sustainability of their business. Established platforms provide an important avenue for online sales due to the benefits derived from network effects such as a large customer base as well as the brand recognition of the platform. As such, business users, particularly SMEs and HDPs may be highly dependent on these platforms. The dependency of business users on a platform could result in the platform engaging in exploitative behaviour, effectively taking advantage of its strong market position and extracting additional revenue from business users. In this regard, trading conditions which are uniformly applied across all business users could also be considered as unfair, as platforms with market power may be able to impose unfair trading conditions on all business users.

58. The Commission observes that unfair trading terms by platforms with market power have been the subject of codes of practice and antitrust cases in various jurisdictions as outlined below:

58.1 The DMA stipulates that, "*Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper.*"⁵⁴

58.2 In 2021, Japan introduced its *Improving Transparency and Fairness of Digital Platforms Act*, and one of the objectives is for specified digital platform providers to disclose the terms and conditions of provision to ensure fairness in the market and protect business users.⁵⁵

⁵⁴ See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022, Digital Markets Act (DMA), paragraph 62.

⁵⁵ The Act on Improving Transparency and Fairness of Digital Platforms (TFDPA) was established on May 27, 2020, promulgated on June 3, 2020, and enforced on February 1, 2021. Chapter 1. Available at: https://www.meti.go.jp/english/policy/mono_info_service/information_economy/digital_platforms/pdf/1012_001a.pdf.

58.3 In October 2022, the Competition Commission of India (CCI) issued orders against Alphabet having found that they had engaged in unfair conduct.⁵⁶ The CCI found that there was no objective justification for delaying payment to business users (app developers) when the platform received payment within 2 to 3 days of consumers transacting on the platform. The CCI stated that this practice was “...*unfair for the app developers especially small app developers for whom regular and prompt cash flows from their users is critical.*”⁵⁷

59. Some examples of such unfair trading terms that could raise competition concerns are listed below. This list is not exhaustive, and the Commission could consider other factors arising from complaints, investigations and market developments.

59.1 Contracting with business users on trading conditions that are one-sided, onerous or not proportionate to the objective of the contract.

59.2 A transfer of risks or costs onto business users that bear no reasonable relation to the objective of the contract.

59.3 Lack of dispute resolution mechanisms that timeously deal with complaints.

59.4 A requirement for automatic waivers of rights of the business user as a juristic person under the Protection of Personal Information Act, (Act No 4 of 2013) for the supply of products and services on the platform.

59.5 Restricting business users from offering the same goods and services to consumers through means other than the platform.

59.6 Restricting business users from offering their own ancillary goods and services (this refers to products that typically depend on, and are directly related to, the primary good or service in order to function), including through the platform.

59.7 A requirement for business users to exclusively use the platform’s billing system for sales conducted on the platform.

59.8 Imposing steep annual fee increases that are unjustified.

59.9 Multi-year contracts to lock-in business users with no additional benefits.

59.10 A failure to provide the terms and conditions of operating on the platform in plain and intelligible language, especially in respect of:

59.10.1 The grounds for decisions to suspend, terminate or impose any other kind of restriction on business users.

59.10.2 The effects of the terms and conditions on the ownership and control of intellectual property rights and personal data of business users.

⁵⁶ Competition Commission of India. Available at: [Competition Commission of India, Government of India.](#)

⁵⁷ Competition Commission of India. Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021. 2024, pg 129.

- 59.10.3 The main parameters determining the ranking and display of business users on the platform.
- 59.10.4 Changes to the terms and conditions of operating on the platform and the resulting consequences of these changes for the business users.
60. Platforms whose trading terms are subject to investigation would be required to provide strong evidence to demonstrate the need for the trading term. Platforms would be required to show that there are risks or costs created by the business user and that the imposition of the trading term is not an unfair transfer of risk and/or cost onto the business user. Further, the platform would be required to demonstrate that the trading term is essential for the operation of the platform and there are no less onerous alternative trading terms that can be imposed.

Illustrative example

An ecommerce site sells various products on its platform including electronic items such as hair dryers, kettles and irons. The ecommerce site is a large platform with most online sales of electronic goods occurring through this platform. The platform has a returns policy that reimburses customers immediately for products returned at the expense of the seller of that product. The platform does not verify the reasons for the return as the seller bears all costs. Sellers of electronic goods on the platform often find that the product may not necessarily be faulty and would not ordinarily qualify for a reimbursement. Such a policy results in an increase in costs to the seller. This could be considered as an unfair trading condition. It is advisable for platforms to have mechanisms in place to guard against unfairly transferring risks to sellers.

6. Conclusion

61. The Guidance Note aims to provide guidance to leading or the largest platforms operating in different categories in South Africa on the types of practices that could raise competition concerns based on our own experience and that of other prominent jurisdictions. The guidance can assist leading platforms in their internal assessment of compliance risks associated with certain practices. Where platforms do engage in such practices as part of their business model, such compliance risk assessments should consider what potential impact the practices may have on competition and whether the practices are necessary for the platform's operations and if so, whether there are strong efficiency justifications for such practices.
62. It is important to note that conduct identified in the Guidance Note is not exhaustive and will not affect the discretion of the Commission and/or the Tribunal and Appeal Court to consider other conducts on a case-by-case basis.

63. Should market participants be uncertain as to whether their trading terms and conditions may potentially contravene the Act, such market participants should approach the Commission for further guidance.