



***competition*commission**
south africa

**GUIDELINES FOR PARTICIPATION IN THE ONLINE
INTERMEDIATION PLATFORMS MARKET INQUIRY**

APRIL 2021

A. INTRODUCTION TO THE GUIDELINES

1. These guidelines are released pursuant to Chapter 4A of the Competition Act 89 of 1998 as amended (“the Act”) which allows the Competition Commission (“the Commission”) to conduct a *“formal inquiry in respect of the general state of competition, the levels of concentration in and structure of a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm”*.
2. The Commission has initiated the Online Intermediation Platforms Market Inquiry (“OIPMI” or “the Inquiry”) because it has reason to believe that there are market features of online intermediation platforms that may impede, distort or restrict competition; and in order to achieve the purposes of the Act.
3. These guidelines contain the rules of participation that will apply to all stakeholders who wish to participate in the proceedings of the Inquiry. The guidelines seek to provide for a fair opportunity and a transparent process for all stakeholders to effectively participate in the Inquiry. The guidelines will outline who may participate in the Inquiry and how they may submit information; the treatment of confidential information; the administrative activities of the Inquiry; and the powers available to the Commission, among other issues.
4. These guidelines will also be published on the Commission’s website (www.compcom.co.za) and will become effective on the date of publication. The guidelines will however be reviewed from time to time to reflect any best practice that may develop or address any specific issue that arise during the inquiry. The public will be notified of any significant amendments to the guidelines, and the latest version will always be that appearing on the Commission’s website.

B. APPLICATION OF THE GUIDELINES

5. These guidelines only apply to the OIPMI and not to other market inquiries that may be conducted by the Commission under Chapter 4A of the Act. The guidelines must be read in conjunction with the Act and its Rules as well as the Terms of Reference for the Inquiry, none of which are superseded by these guidelines.
6. These guidelines do not bind the Competition Tribunal (“the Tribunal”) and the Competition Appeal Court (“the CAC”).

C. CONDUCT OF THE INQUIRY

7. In terms of section 43B of the Act, the Commission may conduct the Inquiry in any manner, subject to the provisions set out in the Act. The Commission as a public body and creature of statute may only exercise its powers within the confines of the Act. Furthermore, the Inquiry must be conducted fairly and, as far as possible, openly in accordance with the Constitution and administrative law principles.
8. The Commission is committed to the principles of fairness, transparency, and integrity and will conduct the Inquiry in accordance with these principles. The Commission will allow stakeholders fair and reasonable opportunity to provide input into the Inquiry process and its outcomes.
9. The Commission may evaluate the subject matter of the Inquiry through a review of secondary material obtained via information requests, consultations and summons, as required.
10. For the purposes of the Inquiry, the methods that may be used for gathering information may include the following:
 - 10.1 Receipt of **Written Submissions** on the issues identified in the Terms of Reference, including any subsequent Issues Papers published by the Inquiry;
 - 10.2 **Targeted Information Requests** to specific stakeholders;
 - 10.3 **Questionnaires and Surveys** to identified stakeholders or the general public;
 - 10.4 **Research Studies** including research papers, case law, case studies, and literature reviews drawn from a variety of domestic and comparative international sources;
 - 10.5 **Data Reviews** examining data or information gathered during the Inquiry;
 - 10.6 **Direct Consultations** including meetings, and in-depth interviews;
 - 10.7 **Public Consultations** including workshops and seminars;
 - 10.8 **Focus Group Discussions** with the relevant stakeholders;
 - 10.9 **Site Visits** by arrangement with the relevant stakeholders; and
 - 10.10 **Formal Public Hearings** taking into account written submissions by participants in order to provide information to the Commission on the issues to be addressed during the public hearings.
11. The submissions may be hand written or typed. Anyone who is unable to write or type may approach the Inquiry Technical Team for assistance in doing so. All relevant Forms

and documents referenced herein are available on the Commission's website. Anyone who does not have access to, or has difficulty in completing, any of the Forms or documents referenced herein may approach the Inquiry Technical Team for assistance in doing so. The relevant contact details for the Inquiry Technical Team are set out in paragraph 20 below.

12. Section 43B (3)(a) - (e) of the Act regulates confidentiality, the powers of the Commission in the conduct of the Inquiry as well as offences for non-compliance that apply to the Inquiry. In the conduct of the Inquiry, section 49A of the Act empowers the Commissioner to issue summons and interrogate, and to compel the production of books, documents and other objects which have a bearing on the Inquiry. However, section 43B(3)(b) excludes the power to enter and search premises in the conduct of the Inquiry.

D. ACTIVITIES AND ESTIMATED DURATION

13. The Inquiry will be conducted in accordance with the following phases:

- a. Information Gathering;
- b. Analysis of information;
- c. Provisional findings;
- d. Final report.

14. It is expected that the Inquiry will formally commence in May 2021 and be completed in October 2022. The Commission may amend the time within which the Inquiry is expected to be completed by issuing a notice in a government gazette in terms of section 43B (5) of the Act.

E. WHO MAY PARTICIPATE IN THE INQUIRY?

15. The participants in the market inquiry process may include: business enterprises along the digital platforms value chain, other related business enterprises, end-users, government departments, public entities, regulatory authorities, industry associations, and any other stakeholders that may be able to provide information relevant to the market inquiry. In particular, the following participants are encouraged to participate in the Inquiry process:

- a) **Members of the public** – any member of the public (individual or group) that has an interest in the Inquiry or is affected by the subject matter of the Inquiry;

- b) **Firms** – any designated representative of a business that has an interest in or is affected by the subject matter of the Inquiry;
- c) **Organised groups** – organised business fora, labour unions, civil society based organisations, industry bodies or any other bodies or institutions that have an interest in or are affected by the subject matter of the Inquiry;
- d) **Government** – government departments, regulatory authorities, public entities and any other organ of state or statutory body that has an interest in the Inquiry or is affected by the subject matter of the Inquiry.

F. METHODS OF PARTICIPATION

- 16. Anyone wishing to participate in the Inquiry may do so by making a written submission in response to the Terms of Reference or subsequent Issues Papers published by the Inquiry.
- 17. Anyone wishing to make oral presentation, in addition to their written submission, will be required to register in due course as set out below:

Written Submissions

- 18. Anyone making a written submission is expected to provide the information reflected in Form “OIPMI 1”.
- 19. Submissions may be made in any of the official languages.
- 20. The submissions may be hand-written or typed and must be sent to the Inquiry Technical Team by email, post or hand delivered to the following addresses:

Attention: Chairperson of the Inquiry
Online Intermediation Platforms Market Inquiry

Postal Address:

The Competition Commission,
Private Bag x23,
Lynwood Ridge,
Pretoria
0040

Physical Address for hand deliveries:

THE DTI CAMPUS

Block C, Mulayo Building, 3rd Floor

77 Meintjies Street

Sunnyside,

Pretoria,

0002

Email: qipmi@compcom.co.za

21. Submissions that are hand delivered to the above address must be delivered between the hours of 08:30 and 15:30 on weekdays.
22. Anyone wishing to have his or her identity protected must indicate so in the Form "OIPMI 1" and should attach a motivation for the request.

Meetings

23. The Commission may hold meetings with key stakeholders in the market during the course of the market inquiry. The Commission may exercise its discretion to determine which participants these meetings will be held with.

Virtual Public Hearings

24. The Inquiry will hold virtual public hearings which will be open to members of the public. Where appropriate, the Commission may allow some flexibility in the process in order to achieve the desired purpose and to avoid any infringements of the rights of any participant in the hearing.
25. In order to qualify to make oral submissions at public hearings, participants must submit written submissions first in order to provide information to the Commission on the issues to be addressed during the public hearing. Interested participants can indicate their willingness to participate in the public hearings on the Form "OIPMI 1".

26. As the time available for the public hearings is limited, it may not be possible to guarantee that everyone who has expressed their interest to make an oral presentation will be able to do so. The Commission may exercise its discretion to determine which participants may participate in the public hearings in support of their written submission. One of the issues which may be taken into consideration in the exercise of its discretion is the extent to which an oral presentation may help to clarify or resolve any issues raised by the written submissions.
27. A hearing notice detailing the dates and the intended participants on the public hearing will be published on the Commission's website within a reasonable period prior to the hearing. The relevant participants will also receive such notice.
28. There is no charge for making a written submission or for attendance or participation at the public hearings. The public hearings will be conducted mainly in English. However, to cater for the other official languages, an interpretation service will be made available if a request has been made for such a service in the written submission to the Commission or indicated on Form "OIPMI 1".
29. All the Inquiry proceedings will be recorded and all recordings will be the property of the Commission, subject to the provisions of the Act. The Inquiry proceedings will also be transcribed and the transcripts will be the property of the Commission, subject to the provisions of the Act.
30. The Commission may make available a running transcript of the proceedings subject to the requirements of confidentiality and verification.

G. ADMINISTRATIVE RULES FOR VIRTUAL PUBLIC HEARINGS

31. A written submission is a pre-requisite for making an oral presentation at the virtual public hearings. However, parties who fail to register with the Commission prior to the closing date for registration may be permitted to make an oral presentation. This will be subject to time availability and will be at the Commission's discretion.
32. Electronic copies of the visual presentations and/or copies of such material to be introduced at a hearing must be submitted at least five (5) business days prior to the hearing.

33. Each party making an oral presentation will only be permitted to do so once, unless the Commission, in its discretion, determines that a party needs to be allowed a further opportunity at another time.
34. In general, only one representative of a group or entity, either personally or through a legal representative, will be permitted to make oral submissions at the virtual public hearings, other than witnesses the parties wish to call in support of their submissions.

H. CONDUCT OF VIRTUAL PUBLIC HEARINGS

35. At a hearing, the Commission may:
 - a) Require any person to answer questions under oath or affirmation;
 - b) Accept oral submissions from any participant;
 - c) Accept any other information that is submitted by a participant;
 - d) Request further information from the participant; and
 - e) Perform any other act contemplated by the relevant sections in the Act.
36. The public hearings will rely on presentations that include non-confidential information. The confidential information submitted in the written submissions and indicated in the relevant "CC7" form will not be discussed in the public hearing. Rather participants will refer to their written submission indicating the relevant confidential information.

I. SUMMONS

37. The Commission may use its powers in terms of section 49A of the Act to summons persons, including individuals and organisations, to appear before the Inquiry and to produce any relevant book, document or other object specified in the summons.
38. Individuals and organisations summonsed may allow their legal representatives to make representations on their behalf.
39. A representative acting on behalf of any individual and organisation in any proceedings must notify the Commission in advance of the following particulars:
 - a) the representative's name;
 - b) their designation or formal authority;
 - c) their postal address and physical address of employment or business; and
 - d) their an email address and telephone number.

J. HANDLING OF INFORMATION AND DATA

Voluntary disclosure

40. It is the Commission's aspiration to solicit information from parties voluntarily, through written submissions, questionnaires, requests for information, testimony and other such means.

Testimony during hearings

41. Every person giving oral testimony in the virtual public hearings will either be sworn in or required to make an affirmation. Every person testifying should answer any question fully and to the best of that person's ability.
42. Sections 49A (3); 72; 73(2) (d) and (f) of the Act, which relate to the summons procedures; a failure to answer fully truthfully; a failure to comply with the Act by knowingly providing false information to the Commission and wilfully interrupting the proceedings or misbehaving when a hearing is being conducted shall be applicable to all witnesses during the Inquiry proceedings.

Confidential information and information disclosure

43. Information management during the Inquiry is guided and bound by procedures related to confidentiality in Sections 43B (3A), 44, 45 and 45A of the Act and Rules 14 and 15 of the Rules for the Conduct of Proceedings in the Competition Commission ("the Rules") to the extent applicable.
44. Parties have the right to claim confidentiality over any information that is claimed to be confidential in nature. Any confidentiality claim must be supported by a written statement in the prescribed form "CC7". The parties must identify the confidential information and provide a full explanation to the Commission as to why the information is considered confidential. It is important in this regard to bear the following in mind:

- a) Trade, business or industrial information that belongs to a firm, that has a particular economic value and is not generally available to or known by others is entitled to protection as confidential information in accordance with the Act.
 - b) A claim of confidentiality is binding on the Commission during the conduct of the Inquiry, subject to Sections 43B (3A) and 44. If the Commission is of the view that the information is not truly confidential as defined in the Act, it may, at any time, refer the claim to the Competition Tribunal (“the Tribunal”) to determine whether or not the information is confidential
 - c) The Commission may request a party to submit two versions of their submissions: one confidential version for the Commission and the Commission only, and a non-confidential version which omits any confidential information, which may be disclosed to the public.
45. Access to confidential information and/or documents submitted to the Inquiry shall be in accordance with the provisions stipulated in sections 43B (3A) and 45 of the Act and Rules 14 and 15.
46. Where information is subject to a claim of confidentiality, the Commission may with the written consent of the owner of such information, allow specified third parties such as legal representatives and/or independent experts appointed by stakeholders to view and assess the confidential information subject to confidentiality undertakings by the parties concerned.
47. Any party who seeks access to information that is subject to a confidentiality claim may apply in the prescribed manner and form to the Tribunal, as stipulated in section 45 of the Act. Equally, the party with confidentiality claims may appeal an unfavourable ruling at the Competition Appeal Court.
48. The Commission may use confidential information in making decisions, in a manner that does not prejudice a party’s claim to confidentiality as provided for in Sections 43B(3) and 45A of the Act.

K. CONCLUSION OF THE INQUIRY

49. In terms of section 43B (6), the Commission must complete the Inquiry by publishing a report contemplated in sections 43D and 43E, within the time frame stipulated in the Terms of Reference, unless amended in terms of section 43B (5).
50. Prior to publishing its final report, the Commission may periodically publish progress reports to inform the public of the progress and direction of the Inquiry. These provisional reports may be published on the Commission's website. The provisional reports will be available for stakeholders' comments. The Commission will review the comments, and if necessary request further interviews, information or data before finalising the report.
51. In accordance with section 43E, the Inquiry may produce any number of recommendations, including but not limited to the following:
- a) Publication of information to help consumers;
 - b) Encouragement of firms to take voluntary action;
 - c) Promotion of a customer or industry code of practice;
 - d) Recommendations to Government or other regulators on new or amended policy, legislation or regulations; or
 - e) Initiation of further investigations or of immediate enforcement actions against a particular firm or firms.

ANNEXURE B1



competition commission
south africa

REGISTRATION FORM FOR WRITTEN SUBMISSION

Form OIPMI 1

About this form

This is a registration form issued pursuant to the Guidelines for Participation in the Market Inquiry into the Online Intermediation Sector.

The form is to be completed by parties making written submissions and parties wishing to make an oral presentation at a public hearing.

**Online
Intermediation
Platform market
inquiry contact**

Email: oipmi@compcom.co.za

Postal address:

The Online Intermediation
Platform Market Inquiry,
Private Bag x23,
Lynwood Ridge,
Pretoria
0040

Physical delivery:

The Online Intermediation
Platform Market Inquiry,
The DTI Campus,
Mulayo (Block C),
77 Meintjies Street,
Sunnyside,
Pretoria,

**Details of person making submission
(Please print)**

Name and Surname: _____

Name of Organisation or Entity: _____

Contact Details: _____

Physical/Postal Address: _____

Required Details

Does your submission adversely affect any other firm or individual? Please provide details of such firm or individual:

Does your submission contain any confidential information?

If yes, please also file Form CC7

Yes No

Do you require interpretation services?

Yes No

If yes, please indicate language: _____

Do you intend to make oral submissions in virtual public hearings?

Yes

No

If yes, please provide an estimate of the time required for an oral presentation: _____

Main focus of submission:

Summary of the issues: