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ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY

STATEMENT OF ISSUES

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1. INTRODUCTION

1.1. Inquiry Scope

1. On 09 April 2021, the Competition Commission (“the Commission”), published a notice regarding a market inquiry into Online Platforms in South Africa focusing on online intermediation services (the “Online Intermediation Platforms Market Inquiry” or OIPMI). Online intermediation platforms are defined as platforms that facilitate transactions between business users and consumers (or so-called “B2C” platforms) for the sale of goods, services and software, regardless of whether the transactions are concluded on the platform itself, on the online site of the business user or offline. Online intermediation platforms include eCommerce marketplaces, online classified marketplaces, software application stores and intermediated services such as accommodation, travel, transport and food delivery.
2. The scope of the inquiry will specifically exclude e-hailing services which were the subject of a previous inquiry, and which intermediate between consumers and gig economy workers rather than business users. Other pure gig economy platforms, intermediating a customer with an individual service provider, are also excluded from the ambit of the inquiry. The inquiry will also not focus on search and social media more broadly, along with the broader digital advertising ecosystem, except insofar as a) such digital advertising may pose a barrier to competing platforms expanding or business users from participating in the online economy, or b) the extent to which those platforms also offer online intermediation services themselves (such as B2C communication services). The Inquiry will also not focus on Fintech platforms except insofar as the role of payment services in facilitating transactions on the online intermediation platforms.
3. The focus of the OIPMI will be on whether there are any market features which may impede, restrict, or distort competition and/or undermine the purposes of the Act. The purpose of the Act is to promote and maintain competition in the Republic in order—
 - (a) *to promote the efficiency, adaptability and development of the economy;*
 - (b) *to provide consumers with competitive prices and product choices;*
 - (c) *to promote employment and advance the social and economic welfare of South Africans;*

- (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;*
- (e) to ensure that small and medium sized enterprises have an equitable opportunity to participate in the economy;*
- (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons;*
- (g) to detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to [prevent] impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic; and*
- (h) to provide for consistent application of common standards and policies affecting competition within all markets and sectors of the economy.*

4. The inquiry is broadly focused on three areas of competition and public interest, namely
 - 4.1. market features that may hinder competition amongst the platforms themselves,
 - 4.2. market features that may give rise to discriminatory or exploitative treatment of business users, and
 - 4.3. market features that may negatively impact on the participation of SMEs and/or HDP firms.
5. Whilst the inquiry will consider how consumer and business data advantages may shape competition, the inquiry will specifically exclude broader data privacy issues.
6. The full Terms of Reference is available on the Inquiry page on the Commission's website (<http://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>)

1.2. Invitation for written submissions

7. In releasing this Statement of Issues, the Inquiry invites market participants and other interested parties (collectively “stakeholders”) to provide views and information on the operation of online intermediation platform markets in South Africa. The Statement of Issues has a common set of issues and questions for the range of different platforms involved in the online intermediation of goods, services and software. Stakeholders are requested to identify

which platforms or platform types their responses are in relation to or if they are responding in relation to all platforms.

8. The Inquiry encourages stakeholders to provide views on the issues that are most relevant to them, as well as on any other issues the stakeholder considers relevant to the Inquiry even where it is not covered by a specific question. Stakeholders do not have to address every question in this Statement of Issues. Wherever possible, please provide reasons for your views and any evidence available to support your views. Reasons and evidence provide a stronger basis for the Inquiry to take account of the views expressed.
9. You may provide your submission to the Inquiry in the form of a public or confidential submission, noting that the Inquiry is a public process and that, in general, submissions will be placed on the Inquiry's website to allow for public consultation (see section below on Treatment of confidential information). You are encouraged to speak with our team before providing a confidential submission if you have any questions at all regarding the Inquiry's processes for dealing with confidential information.
10. Written submissions to this Statement of Issues should be emailed to qipmi@compcom.co.za by 17h00 on **18 June 2021**.
11. For business users of online intermediation platforms, there is also an online questionnaire on the Inquiry's webpage on the Commission's website (<http://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>). This solicits the views and experiences of business users of online intermediation platforms operating in South Africa. Business users are strongly encouraged to complete the online survey as this provides an important means for their voices to be heard in the Inquiry process.
12. In addition, the Inquiry will also directly contact some market participants to request specific information of relevance to the issues within the scope of the Inquiry.
13. The full Guidelines for Participation in the OIPMI are available on the Inquiry page of the Commission's website.

1.3. Key dates

14. The closing date for submissions on the matters outlined in this Statement of Issues is **18 June 2021**. The same closing date applies to the online survey for business users and the requests for information to specific market participants.
15. Following the analysis of the submissions received on this Statement of Issues, the Inquiry will publish a second Statement of Issues in the week of **9 August 2021** focused on key emerging issues for stakeholders to make submissions. The Inquiry will also conduct further online surveys around emerging issues and further information requests to some market participants. Submissions from the second Statement of Issues should reach the Inquiry by **10 September 2021**, along with online survey responses.
16. The Inquiry aims to conduct online virtual public hearings with stakeholders from **1 to 19 November 2021**. Following the public hearings, the Inquiry may hold direct engagements with particular stakeholders and request further information on issues emerging from the hearings.
17. By the first week of **May 2022** the Inquiry anticipates releasing its preliminary findings and recommendations. The Inquiry will invite submissions on these findings and recommendations by **10 June 2022** before releasing its final findings and recommendations in **November 2022**.

1.4. Treatment of confidential information

18. 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.
19. 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 Inquiry as to why the information is considered confidential.

20. 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.
21. Where information is subject to a claim of confidentiality, the Inquiry 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.
22. Any party who seeks access to information that is subject to a confidentiality claim may apply in the prescribed manner and form to the Competition Tribunal (Tribunal), as stipulated in section 45 of the Act. Equally, the party with confidentiality claims may appeal an unfavourable ruling by the Tribunal at the Competition Appeal Court.
23. The Inquiry 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.

2. BRIEF OVERVIEW OF ONLINE INTERMEDIATION PLATFORMS

24. There has been a significant shift by South African consumers to purchase goods, services or apps online, or simply to do research online before purchasing offline. This shift has been accelerated by the Covid-19 pandemic both domestically and globally. Whilst many brick and mortar stores or businesses have established their own online presence, including capabilities to transact online, a feature of the digital economy is the rise in importance of online intermediation platforms which facilitate transactions between groups of businesses and consumers. Online intermediation platforms include the sale of goods such as through eCommerce marketplaces or lead generation as in online classified marketplaces; the sale of software such as through application stores; and the sale of intermediated services such as accommodation, travel and food delivery.

25. Online intermediation platforms have become important in the digital economy for a variety of reasons, including but not limited to:

25.1. For consumers, these platforms may offer greater convenience as they aggregate the product or service offerings of many business users rather than having to search through their web pages individually. It may also provide discovery of more options than they would otherwise identify. In addition, the platforms may provide far greater ease in undertaking comparisons between these different business user products or services.

25.2. For business users the platforms may provide access to a large customer base, some of which may be unique to that platform, potentially resulting in incremental sales that the business might not otherwise secure through other channels. The platform may also provide a convenient means of concluding online transactions as it takes care of different elements to the transaction such as order specification, payment and even delivery in the case of eCommerce.

25.3. Platforms may also have scale and efficiency advantages over individual online stores. Scale may reduce unit costs if the fixed costs of online systems (e.g. booking systems) and back-end processes (e.g. warehouse & delivery) are spread over a larger number of transactions. Scale may also provide advantages in drawing customers to the platform through larger marketing spend in search, social

media and traditional above the line advertising, and better data on customer behaviour and needs. There are also likely efficiencies in enabling a better matching between buyers and sellers through expanding the exposure of both sides to larger numbers of buyers and sellers.

26. However, these same features may result in some of the online intermediation platforms in becoming entrenched as important mediators of online transactions nationally. In this context, the platform terms, conditions and conduct will shape the online economy, impacting on the opportunities for business users and the choice offered to consumers. Whilst those terms, conditions and conduct may enhance the benefits to business users and consumers, the experience of other jurisdictions also suggests that these have the potential to distort platform and business user competition to the detriment of consumers or particular business user groups such as SMEs. This is particularly the case where there are high or growing levels of consumer adoption of online transactions for particular goods, services and software.

27. The primary focus of the Inquiry is on areas of already high usage or growing adoption by South African consumers which may be important areas of online activity in the foreseeable future.

28. Before delving into the range of issues on which the Inquiry requires submissions from stakeholders, we provide a brief overview of each of these types of platforms and aspects of their respective business models to provide context to the Statement of Issues. The business models provide context to how the platform may be monetised, which in turn shapes the potential issues that may arise. However, it is important to note that there exist a variety of business models and these may evolve over time. The discussion is therefore indicative only of the types of business models in respect of the online intermediation platforms for goods, services and software. The overview covers the extent of adoption in South Africa where available based on recent research.

2.1. The sale of goods (eCommerce and online classifieds)

29. The sale of goods via online intermediation platforms occurs through different types of platforms depending on the business model used, as well as the type of good being sold. For example, eCommerce platforms will typically conclude the transaction on their platform and may arrange delivery to the customer themselves or this may be undertaken by the supplier.

However, this is not currently feasible for products such as automobiles and housing where consumers prefer to inspect first and so platforms rather provide online classified listings to facilitate transactions that are concluded offline. Of course, this may change in future.

(i) *eCommerce marketplace*

30. In terms of the business model applicable to this platform category, eCommerce platforms can simply act as an online retailer, selling goods that they source, warehouse and deliver themselves. For such eCommerce platforms, the monetization of the platform is the same as a traditional retailer, namely the revenue and profit earned is from the sale of a good or service to consumers. The platforms may or may not charge a delivery fee to the customer, may waive the fee for purchases over a certain value or if the customer subscribes to the platform for a monthly fee. These platforms differ from the online offerings of individual suppliers or established brick n mortar retailers insofar as they will typically seek to offer customers a much broader array of products from a large variety of suppliers (even if focused on a specific product category). The value proposition to customers and businesses is therefore different and the platforms seek to offer the type of convenience and scale benefits identified above. Examples in South Africa include Loot, Everyshop, Onedayonly and Red Puppy.

31. The business model for the integrated platforms offering services to third party suppliers in addition to their own supplier sales is to monetise third party sales through a range of fees at each stage of the value chain. The eCommerce marketplace platform may charge marketplace sellers listing, storage and fulfilment fees. There may be a fee charged for receiving items into the warehouse as well as for packaging and delivering the items that have been sold to each customer. In this context, a platform's earns commission from facilitating the transactions and may not take on all the risks themselves. Examples in South Africa include Takealot, Zando, Superbalist, Yuppiechef and BidorBuy.

32. eCommerce platforms, much like traditional retailers, appear to benefit massively from economies of scale which permits efficiency-enhancing and cost-reducing logistics systems such as large distribution centres in key locations across the country. A second potential source of economies of scale and density arises in the delivery component of the business which is distinct to traditional retail. Efficient and cost-effective delivery does depend on a sizeable volume of orders in the same areas which permit multiple packages to be delivered on a single round trip. This may be especially the case outside of the central metro areas

where distances may be larger. Scale and density also provide the basis for another key consumer driver, namely speed of delivery.

33. The need for scale to reduce the unit costs of warehousing / delivery and provide the consumer benefits of greater convenience at low delivery fees means that eCommerce businesses may look to chase growth at the expense of profitability initially. In addition, they may look to expand their product range over time to draw in more and more consumer transactions. Scale is often a reason for offering the marketplace option, as it enables a broader product range and growth off the back of other suppliers.

34. In South Africa, the eCommerce marketplace platform has seen an increase in recent years. This is likely to continue growing due to Covid-19. As illustrated below, on average South African consumers visit pure online retail stores more than 25 million times a month, clicking through 6 pages on average, spending more than 4 minutes per visit.

Figure 1: Online retail visits



Source: The Commission's own compilation of Similarweb and Crunchbase analytics¹

35. Historically (in 2017), research indicated that the most purchased online products in SA was clothing, followed by books, electronics, DVDs, electrical appliances, homeware and the least bought was groceries, with an estimated 57% of South African consumers not purchasing their groceries online.² However, the pandemic has changed the landscape with a shift online

¹ See SimilarWeb and Crunchbase for website analytics. [available online]: <https://www.similarweb.com/> and <https://www.crunchbase.com/> .

² PWC. (2017). SA retailers and consumer goods companies face digital disruption.

across many more product categories, including a big push in online grocery offerings on platforms (such as delivery platforms) and major supermarkets.

(ii) *Online classified listings*

36. South Africa's online classified platforms may be categorised into (i) market specific classifieds platforms (i.e., real estate, job search and automotive), and (ii) general classifieds. The former tend to be business to consumer platforms (B2C) within the scope of the Inquiry, whilst the latter tend to be primarily consumer to consumer (C2C) platforms outside the scope of the Inquiry.

37. Most online classifieds platforms generally offer their core services free of cost to the consumer much like most online intermediation platforms. This is because the willingness of businesses listing on the platform to pay for the platform is typically based on the volume of traffic and unique users.

38. Specialist online classifieds typically seek to monetise the platform through sellers listing and they would typically be charged a listing fee. The level of listing fee between different aggregators may reflect the differences in their consumer traffic, unique users and leads generated. There are however a variety of other ways by which classifieds platforms generate revenue including the following:^{3 4}

38.1. Featured/sponsored listings or Bounce ads: This is generally considered to be the main revenue of classifieds platforms after listing fees. Users pay a certain amount of money to advertise on the platform in exchange for enhanced visibility. Through featured listings, sellers can boost the visibility of their products and thereby get more chances of attracting many visitors.

38.2. Advertising Opportunities: Entrepreneurs can create advertisement accounts and can then allocate advertising spaces on both the home page and product pages in their online classified sites to run advertisements. This can also be charged on a pay per view basis Often the advertisers are complementary products or services

³ <https://medium.com/appcodes-solution/business-and-revenue-model-of-an-online-classifieds-platform-a1c6cfd4ef3c>

⁴ Agriya. 2018. Business and revenue models of classified ad solution – A complete analysis.

to the products being sold on the platform. For instance, car insurance and financing on automotive sales sites.

38.3. Paid banner ads: Sellers are also offered an option to pay and display their product or service as an attractive banner ad.

38.4. Pay fee per lead: When the ads get converted to sales is the most results orientated approach but sometimes difficult to determine.

38.5. Affiliate model: this allows the users to sell their products directly on the classified site instead of directing them to another site using an affiliate link. In this way, the business owners can make a profit with the occurrence of the sale.

39. It appears that South African consumers have widely adopted online classifieds for comparator and purchase decisions in areas such as property and cars. As a result, businesses in these areas have adopted the use of online classified platforms to advertise their product offerings. Per visit, South African consumers spend more time on property classified platforms (such as Private Property, Property24, My Roof, Instant Property, Eazi Real Estate and Property Fox), than in any other classified platform category. However, in terms of pages, consumers visit more pages (i.e., 9 pages on average per visit) in automotive classified platforms (such as Autotrader, Cars.co.za, Automart, Carmag.co.za, Carfind, Surfcars, Cars Africa and SMD)⁵.

2.2. The sale of services (accommodation, travel and food delivery)

40. There is a growing range of services that are being offered through online intermediation platforms. The more established online services with already high levels of consumer adoption include online intermediation platforms for travel, accommodation, travel-related services and activities and food delivery. These are not the only platforms for services of interest to the Inquiry, but given their broad adoption we outline the business models for these below.

⁵ Source: Commission's own compilation of Similarweb analytics

(i) *Travel aggregators and OTAs*

41. Travel aggregators and online travel agencies (OTA) are web-based marketplaces that allow consumers to research and book travel products and services, including hotels, flights, cars, tours, cruises, activities and more, directly with travel suppliers.⁶ In essence, they gather the service offerings of various suppliers and display these offerings on the same webpage such that the customer can compare the different options of various suppliers and make their selection based on price and convenience e.g. the price of flights by different airlines and at different times to a particular destination. Customers can then select their preferred option. This helps the users get an overall picture of the rates and availability across multiple vendors without visiting different websites which is the value add.⁷
42. Travel aggregators, unlike OTAs, typically do not have the capability to allow customers to complete the booking on their website but simply advertise available offerings of various suppliers. To complete the booking and make the payment, aggregator sites may direct customers to the website of suppliers (such as airlines) or OTAs which have booking capabilities. For example, TripAdvisor, CheapOair and Cheap Flights are travel aggregators whilst TravelStart, Flightsite, Agoda and Booking.com are OTAs with their own booking systems. Airbnb also provides bookings but with the focus on short-term rentals from property owners.
43. In South Africa, the main source of revenue for travel aggregators is from the sale of flight tickets. The travel aggregators monetise on a pay-per-click basis not pay-per-acquisition meaning that they are paid by the supplier for each referral and not necessarily a finalised booking. This means that the aggregator is paid regardless of whether a booking is completed or not. In addition, there may be additional costs involved such as upfront flat fees, various service fees and commissions. In contrast, OTAs may typically monetise the platform through actual booking fees or commissions. In addition, some OTAs may also purchase stock and resell that stock earning a wholesale margin but in addition taking on risk itself.

⁶ Expedia. Why do you need an Online Travel Agency (OTA)? [available online]: <https://welcome.expediagroup.com/en/resources/hotel-distribution-strategy-resources-tips/otas-work-use-one>.

⁷ Import.IO. How to Create a Travel Aggregator Website. 2019. [available online]: <https://www.import.io/post/how-to-create-a-travel-aggregator-website/>

44. A survey of 1 050 South African respondents conducted by Statista from 8 May to 8 June 2020 found high levels of adoption in South Africa for travel.⁸ The survey found that the respondents use online bookings mostly for flight tickets (i.e. 33% of the respondents), followed by temporary accommodation (i.e. hotels 28% and vacation apartments 23%) and car rentals 19%.

(ii) *Food delivery*

45. Online food delivery has proved popular as customers enjoy the ease and convenience of their meal being delivered to them within a short space of time. On demand food delivery services also serve as a marketing channel for restaurants to reach a wider pool of customers and generate an additional revenue source, without the costs of expanding their dine-in services.

46. In contrast to the individual restaurant delivery service, the food delivery platforms offer the consumer a large variety of restaurants within a set radius of their home. Whilst the platforms may have hundreds or thousands of restaurants on the platform, the service will typically restrict consumers to a set delivery area around their location. Most delivery services will charge customers a delivery fee, although this may be waived in certain circumstances. Examples of online food delivery service providers in South Africa include UberEats, Mr D Food, Orderin and Bolt Foods.

47. It appears that the main source of revenue for food delivery platforms are fees charged to the restaurants. These may include activation fees (to get listed on the platform), monthly fees for the use of the technology and then a commission on actual food orders. The delivery platforms may also offer opportunities for restaurants to be involved in promotions and improve their display prominence.

48. The food delivery platform also needs to contract in the delivery itself. Different business models exist with some food delivery platforms contracting dedicated delivery drivers on a salaried basis, whilst other platforms will make use of transaction-based payments for successful deliveries by gig economy workers.

⁸ Statista. 2020. [available online]: <https://www.statista.com/forecasts/826528/travel-products-booked-online-in-south-africa>

49. The online food delivery market was estimated at R10.49 billion in 2019 and was forecasted to grow and exceed R17 billion in 2023.⁹ The Covid-19 lockdown has accelerated the shift to online delivery as consumers were prevented from eating in restaurants for a prolonged period, but this may or may not persist beyond the pandemic.

2.3. The sale of software (App stores)

50. A mobile app is a standardized piece of software that has been developed for use on mobile devices.¹⁰ Apps run on a mobile operating system to add extra functionality to a smart device.¹¹ They can be the vehicle for providing content to users, such as games, news aggregation and streaming services, or they can provide convenient and efficient ways for businesses to interact with their customers, as with banking apps and apps used by service providers such as utility businesses.

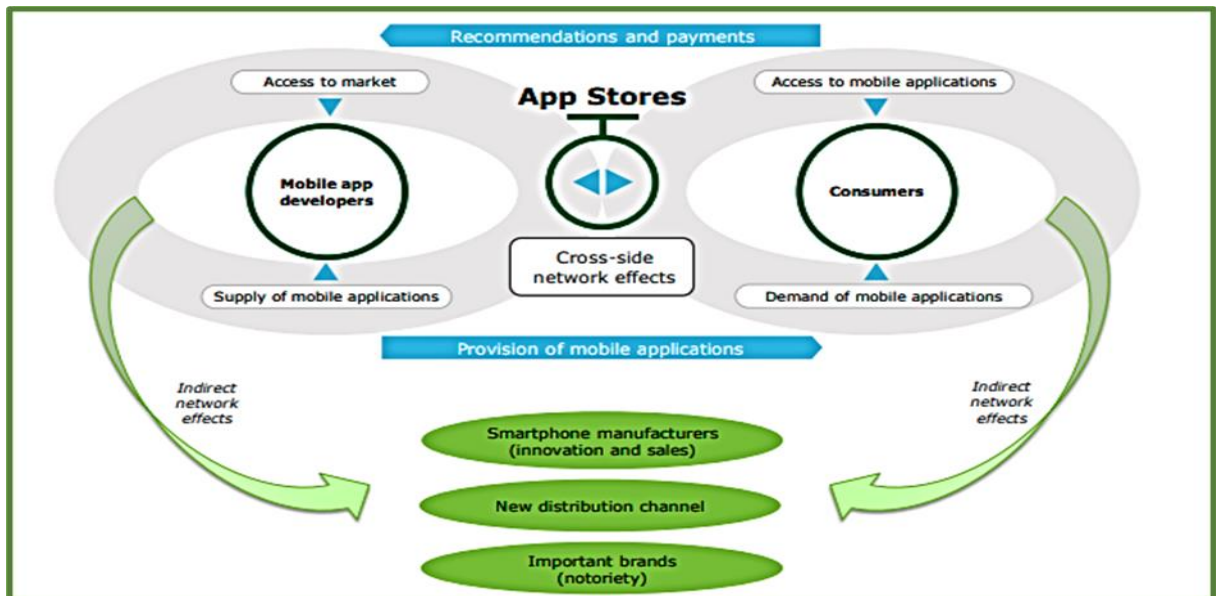
51. App stores are a type of marketplace platform that allow consumers to discover, install, update and remove applications from their devices and for app providers to reach consumers with their content or services. Examples of app stores include Google's Play Store which is available on Android devices and Apple's app store available on Apple devices. As a multi-sided market, the market is subject to both cross-side network effects and indirect network effects, as demonstrated in the figure below.

⁹ Moneyweb. Uber Eats goes local to find its niche in South African food fight. 2020. [available online]: <https://www.moneyweb.co.za/news-fast-news/uber-eats-goes-local-to-find-its-niche-in-south-african-food-fight/>.

¹⁰ Nadler, J. and Cicilline, D. N. *Investigation of Competition in Digital Markets*. US House of Representatives, Majority Staff Reports, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. P. 93

¹¹ ACM. Market study into mobile app stores. 2019. [available online]: <https://www.acm.nl/sites/default/files/documents/market-study-into-mobile-app-stores.pdf>

Figure 2: The Mobile App Market



Source: Microeconomix, 2018¹²

52. App providers follow four pricing methods/models:

- 52.1. Free apps – users of the app do not have to pay for its use. Free Apps that generate revenue do so through the collection and use of user data, and/or by selling advertising space. Traditional or online businesses may also use free apps to direct consumers to shop for goods or services through the app (e.g. eCommerce sites), or to provide services to their exiting clientele (e.g. banks). Free apps may also be offered as a form of marketing where a paid premium option is available with more features or no advertising (the ‘freemium’ business model).
- 52.2. Free apps with in-app purchases – these apps are free to download and use, however, to access additional features ‘in-app purchases’ may be required.
- 52.3. Paid apps – users of these apps are required to make a one-off payment to use or access the app and may also include in-app purchases (e.g. Gaming apps).

¹² Microeconomix (2018). *The App Economic in the United States*. Deloitte. Available at: https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0121-155299.pdf

- 52.4. Subscription apps – users of subscription apps are required to make recurring payments to access or use the app and may also include once-off or in-app purchases (e.g. News or publishing sites, streaming services).
53. App stores may provide developers with an efficient distribution channel for app developers to access a wide market without incurring significant marketing costs.¹³ They may also allow developers to demonstrate trustworthiness, provide an indication of their reputation through reviews and have access to support services provided by the platform, such as a payment management systems.
54. Developers can generate revenue by charging for the download of their app; by having in-app purchases while providing their app for free to increase the number of users; by offering a subscription for the use of their application, which is often used by newspaper apps such as the Economist, where consumers pay a subscription fee to access articles; by displaying advertisements in their app, or by opening a new distribution channel for consumer goods. Mobile app stores charge app developers a commission on the sales of paid apps, app subscriptions and on in-app purchases.¹⁴
55. South Africans have adopted the use of app stores. There are 10.7 million estimated app store users in South Africa and the market is forecasted to amount to USD 45 million in 2020.¹⁵ The most popular app in South Africa is WhatsApp, with 58% of South African smartphone owners using the app as of February 2020, Uber is ranked second with a 50% reach among mobile audiences.¹⁶ In terms of app development, research indicates that there are more than 1300 South African app publishers on Google Play out of all 831 145 app publishers, accounting

¹³ Deloitte. The App Economy in the United States. A review of the mobile app market and its contribution to the United States Economy. 2018. [available online]: https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0048-d-0121-155299.pdf

¹⁴ Nadler, J. and Cicilline, D. N. *Investigation of Competition in Digital Markets*. US House of Representatives, Majority Staff Reports, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. P. 98

¹⁵ Statista. Apps: South Africa. [available online]: <https://www.statista.com/outlook/318/112/apps/south-africa> (accessed 10 October 2020).

¹⁶ Statista. Most popular mobile apps used in South Africa as of February 2020. [available online]: <https://www.statista.com/statistics/1103151/most-popular-mobile-apps-south-africa/#:~:text=The%20most%20popular%20app%20in,percent%20reach%20among%20mobile%20audience> (accessed 10 October 2020).

for 4 224 apps, with an average rating of 4.22 and average of 47.13 thousand downloads.¹⁷ The same research indicates that approximately 16% of released apps by South African publishers are games and the rest are from different categories. In terms of monetization, only 4% are paid apps, 31% include ads, and 6% make use of in-app payment. Only 26% of South African apps are on both Google Play and Apple's app store.¹⁸ The utility apps of major South African companies and financial institutions typically receive the largest downloads as they are free to enable access to the services provided.

¹⁷ 42Matters. South Africa App Market Statistics in 2020 for Android. [available online]: <https://42matters.com/south-africa-app-market-statistics> (accessed 10 October 2020).

¹⁸ 42Matters. South Africa App Market Statistics in 2020 for Android. [available online]: <https://42matters.com/south-africa-app-market-statistics> (accessed 10 October 2020).

3. INQUIRY SCOPE AND RELATED ISSUES FOR SUBMISSIONS

56. The Terms of Reference for the Inquiry sets out eight areas for further evaluation by the Inquiry. This section of the Statement of Issues provides some context to each of those areas of evaluation, and then sets out specific issues that the Inquiry would like submissions on from stakeholders. In addition to these eight areas, the Inquiry also has questions as to the stakeholder making the submissions and whether the stakeholder believes there are areas of inquiry that lie outside the current terms of reference but which warrant evaluation.

57. Given that the Inquiry covers a number of different types of platforms, stakeholders are asked to set out which online intermediation platform type they have focused on in the submission. Where the stakeholder makes submissions on multiple online intermediation platform types, they are requested to indicate where any comments pertain only to a subset of the platforms.

3.1. Stakeholder identity and scope of submission

58. The Inquiry covers a wide variety of online intermediation platforms and seeks submissions from a wide variety of stakeholders, including the platforms themselves, business users of these platforms, consumers, academia, business and non-profit organisations, representatives of civil society, regulators and government. For this reason, the Inquiry requires some information on the stakeholder and the scope of their submission to contextualise the submission and enable potential follow-ups by the Inquiry on any submission made.

59. The Inquiry appreciates that some stakeholders may want their identity to remain confidential. For this reason, stakeholders are asked to indicate if they want their identity to remain confidential or not. Stakeholders indicating a desire for confidentiality of their identity are asked to still provide contact details so that the Inquiry team can engage in any follow up if required.

Questions for stakeholders

- 1) *Provide the name of the firm or organisation, contact person and contact details.*

- 2) *Indicate if you would like your identity to remain confidential (Y/N).*

- 3) *Provide a brief description of the activities of your firm or organisation, and, where applicable, where the firm fits within the value chain for online intermediation (i.e. as a business user, aspirant business user, platform, consumer) or the organisation's interest in online intermediation platforms.*

- 4) *Indicate what specific type of online intermediation platform is the focus of the submission (i.e. intermediation of either goods, services or software, and what particular type of good, service or software) or whether the submission is of a general nature across all platforms.*

3.2. Scope item 1: Evaluate trends in adoption and use of the different online intermediation platform markets, including the identification of leading platforms across each market

60. As mobile smartphone and internet penetration has increased, there has been a significant shift by South African consumers to purchase goods, services or apps online, or simply to do research online before purchasing offline. The Covid-19 pandemic has accelerated this trend as consumers migrated online in lockdown out of necessity and for many that behaviour has persisted due to the convenience and increased trust of transacting online. A review of consumer behaviour online has shown that consumers have switched to digital shopping alternatives with 37% of South Africans saying they are shopping more online which is safer and secure. Post the crisis, 40% of consumers have expressed willingness to keep shopping online. Due to increasing numbers of consumers who are shopping online, the value of online sales also increased multi-fold from an estimated R2.26 billion in 2012 to approximately R61.9 billion in 2020.¹⁹ ²⁰ Satisfaction from online purchases have also been on the rise. For instance, 87% of consumers reported to be satisfied with their purchases in 2012 and this increased to 97% in 2017.²¹

¹⁹ Financial24. (2017). SA e-commerce growing by leaps and bounds. *Financial24*.

²⁰ Akabor N. 2018. Behind SA's online shopping habits. <https://www.businesslive.co.za/fm/fm-fox/digital/2018-09-13-behind-sas-online-shopping-habits/>

²¹ MasterCard. (2013). *South Africans highly satisfied with online shopping-MasterCard survey*.

61. The shift online has not been even across all goods and services, as consumer willingness to transact depends on the type of good or service. The overview of online intermediation platforms above covers some of the more notable areas for online activity in South Africa, but other areas may be starting to grow more rapidly (e.g. online grocery) and may become important in the foreseeable future. The shift online is also not limited to online intermediation platforms as many traditional retailers, product brands or service providers have established their own online presence outside of the online intermediation platforms. Indeed, some of these businesses may have established an online presence prior to the emergence of platforms.
62. The Inquiry seeks to understand consumer shopping patterns on online digital platforms and which types of goods, services and software they purchase online. The Inquiry is interested to know what other areas may be seeing growth in consumer adoption and likely to be important in future.
63. As sales continue to take place through brick n mortar stores, the Inquiry wishes to understand the interaction between online and offline sales, and whether businesses need an online presence in order to compete for certain customers or purchases. Similarly, as online sales may take place through the own web presence of a supplier or service provider, as well as an online intermediation platform, the Inquiry is interested in the interaction between these two channels and whether platforms are important for competing for certain customers or purchases.
64. Even in those areas where South Africa has seen high levels of consumer adoption and the entry of online intermediation platforms, some have grown far more than others. This may be due to the types of products and services offered as well as the business model used by the platform. It may also be due to the platform's early entry into the market and therefore the platform may have benefitted from first-mover advantages. As a result, there may be certain platforms that have developed relative importance as an online channel whilst others may not have achieved traction with consumers and business users.
65. The Inquiry seeks to understand the competitive landscape amongst online intermediation platforms in South Africa across the different goods, services and software. In particular, the Inquiry seeks to understand the pattern of entry, expansion or exit of platforms in each of

these areas, and whether there are any platforms which have become important for business users domestically to reach a particular customer base. The Inquiry also wishes to understand whether those important platforms face growing constraints from emerging platforms, and whether newer platforms are expanding or exiting.

66. Finally, the Inquiry seeks views on how the market power of online intermediation platforms should be determined relative to business users, including when a degree of dependency may exist. For instance, whether this should be based on the share of the platform in terms of the revenue generated or the number of users, the number of transactions concluded on the platform or the number of clicks (views) on the platform.

Questions for stakeholders

Answer in respect of the good, service or software platform that is the subject of the submission:

- 1) *What is the extent of adoption and use of online channels by South African consumers for the relevant good, service or software (no. of consumers, transactions or leads generated, value of sales).*
 - a. *What are the drivers of this adoption and use by consumers, and how fast is it expected to grow in the near future?*
 - b. *Has the online channel become important for business users in reaching consumers and making sales or generating leads, or likely to become so in the near future?*
 - c. *Can the online sales or leads be quickly replaced by sales through physical stores or will closing online channels result in a material loss of customers and sales? Will this change in the near future?*

- 2) *Indicate the relative importance of online intermediation platforms compared to the websites of individual businesses for the relevant good, service or software.*
 - a. *For each of the above routes to market, what is the share of consumers, leads or transactions, value of sales (overall and for an individual business user), and how is this share evolving over time for (i) online intermediation platforms and (ii) websites of individual businesses?*

3.3. Scope item 2: Evaluate whether any market features, platform conduct and/or contracts and terms of use with business users and consumers are likely to have the effect of raising barriers to entry and reducing competition amongst platforms domestically. These include, but are not limited to, MFN or price parity clauses, exclusive contracting, loyalty incentives, conglomerate leveraging (incl. data and advertising) and predation

Scope item 3: Evaluate other barriers to entry and expansion by rival platforms, including but not limited to network effects, capital costs and consumer marketing costs

67. Online intermediation platforms are two-sided markets where the benefit to one side of the market depends on the size of user base on the other side of the market. For example, the benefit to business users on these platforms typically depends on the volume of customers on the other side of the platform which they can access for sales or leads. Similarly, customers are attracted to a platform where the range of business users present provides the range, convenience and comparison benefits associated with platform aggregation.

68. The challenge faced by new platforms is attracting a sufficient critical mass on both sides of the platform in order to be sustainable i.e. to maintain the interest of both consumers and businesses, to generate sufficient scale in transactions to reduce unit costs and generate sufficient revenue to turn a profit. That is why these platforms often emphasise growth over profits initially. In order to develop more users, platforms may subsidise one or both sides of the platform at different points in time in order to get critical mass. This is because the value to either side is low at the beginning in the absence of critical mass, and therefore the platform needs to improve the value through subsidisation.²² For eCommerce platforms using traditional suppliers, this may involve selective discounting of the products to gain consumer interest in the platform.

69. Aside from subsidisation, platforms may also need to invest in raising consumer awareness through advertising (incl. search and social media), business user awareness and onboarding, and putting in place infrastructure to support sales and distribution (physical or information

²² David S. Evans and Richard Schmalensee (2013) The Antitrust Analysis of Multi-Sided Platform Businesses.

technology). This investment requires initial capital funding and further capital as the platform expands until it is profitable. In some instances, third party services may provide a way of reduce the scale of the required investment, converting the expenditure into a variable cost that scales with the operation. For instance, cloud computing may offer a scalable solution to processing and storage needs, or courier services may provide a means for delivery.

70. For some platform markets, entry may not pose significant barriers but there may exist considerably greater barriers to successful expansion to be an effective competitor to other platforms or sales channels. In addition, the expansion challenges may be greater for later entrants than for the initial entrants, merely because a successful scaled platform exists as an option for consumers and business users, have lower unit costs from the scale and where they may have a more pervasive advertising presence. For new platforms, getting a share of voice in advertising may be more costly as a result, and there may be greater difficulties in developing the user or business side of the platform depending on consumer and business willingness to use multiple platforms.

71. The Inquiry is interested to understand the business models for the different types of online intermediation platforms, including how the platform is monetised, what the major costs are, whether these costs can be outsourced to third parties and what strategies are deployed to develop both the consumer and business sides of the market initially. The Inquiry is also interested to understand the barriers faced by later platform entrants in the presence of earlier and more scaled platforms, both for entry and expansion. In this respect, the Inquiry is particularly interested in consumer and business behaviour around the use of one or multiple platforms. More than just whether consumers or business users multi-home (i.e. use multiple platforms), the Inquiry is interested in a greater depth of understanding of their behaviour such as time spent across competing platforms and supplier websites, as well as the willingness to experiment with new platforms.

72. Aside from the fact that later platform entrants may face greater challenges simply because of the mere presence of a scaled platform with high adoption levels, there may also be specific conduct by the leading platform(s) which makes the task of bringing on board consumers or businesses even harder. This conduct need not necessarily have anti-competitive intent, may have a sound business rationale or even been important in getting the platform to scale in the first place. Either way, the question for competition authorities is whether it has some

unintended consequences for entry and expansions of rivals. This includes clauses which may limit the basis for competition amongst platforms such as on price or range. In some cases, it is the combination of particular consumer or business user behaviour online along with conduct that may create difficulties for later platform entrants.

73. The kinds of issues that have been raised by competition authorities in other jurisdictions include the competitive impact of the following types of clauses:

73.1. More favourable treatment by suppliers:- in cases where certain platforms become important to the business users on the platform, this dependency can be used to extract far more favourable rates relative to other platforms and sales channels. For global platforms this may apply to all markets even if the platform is not as significant initially in a particular country. Whilst extracting better rates may be good for consumers, it may also have some long-term unintended consequences. For instance, the Hong Kong Competition Commission ("HKCC") investigated major travel agencies and found that favorable agreements with accommodation businesses undermined competition in the online travel market.²³

73.2. MFN clauses:- The European Commission investigated MFNs in the hotel online booking sector, in partnership with other national competition agencies in the EU. The Commission's concerns pertained to the "parity clauses" in contracts with large platforms which obliged the hotel to offer the same or better room prices as the hotel makes available on all other online and offline distribution channels.²⁴ Whilst the clauses may initially have been placed to prevent free-riding on the advertising generated through the platform, academic research suggests that wide MFNs are associated with higher retail prices.²⁵ MFN clauses have also been found to exist in a range of other platforms such as food delivery.

73.3. Exclusive contracts/loyalty incentives:- exclusivity agreements and incentives that reward promotion and high volumes through a sales channel are not uncommon

²³ South China Morning Post. [available online]: <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3077778/hong-kong-watchdogs-probe-triggers-pledge>

²⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_14_2661

²⁵ Sean Ennis, Marc Ivaldi and Vicente Lagos. 2020. Price Parity Clauses for Hotel Room Booking: Empirical Evidence from Regulatory Change. https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2020/wp_tse_1106.pdf

in many lines of business and in many cases have a clear underlying business rationale. However, in some instances the use of exclusivity clauses can hinder platform competition if it prevents other platforms from offering consumers important products or a critical mass of business users. Similarly, incentives for business users to promote or channel more sales through a platform may limit their desire to list or promote on other platforms. In online markets this may also be the case. For instance, the Competition Commission of India (CCI) found in its market study of eCommerce that there are exclusive agreements between service providers and online platforms, agreements under which certain products are launched exclusively on a single platform and agreements which make platforms list only one brand in a certain product category. In respect of app stores, the House Committee Report in the US also found that Apple does not permit users to sideload apps on iOS devices and these must be loaded exclusively through the Apple App Store.

73.4. Conglomerate leveraging:- there are sometimes efficiencies to offering a portfolio of platforms or related services which lower costs and provide consumer benefits if passed on. Furthermore, competition can be enhanced if platforms or businesses in adjacent markets use their synergies to enter and expand in a new platform area. However, there are also some instances where the portfolio may be used unfairly to advantage the conglomerate over providers of a single platform or smaller portfolio. The most prominent cases in online markets globally have revolved around the alleged leveraging by Google of its search (google shopping case) or android operating system (play store and search case) to favour other businesses in the portfolio. Such leveraging may also be in the form of bundling of platforms or services to either consumers or business users, such as in the case of the House Report in the US on Amazon bundling its products or logistics services with Amazon Prime.

73.5. Predation:- platforms will often make losses in the initial period where they are seeking to build both sides of the platform through subsidies and other investments as outlined above. This is typically not construed as predation. Even for established retail businesses there may be occasional promotions or the use of loss leaders to draw in customers, and the same may take place on online

platforms. For instance, the CCI found deep discounts in eCommerce centred on the alleged below-cost pricing in certain product categories, such as smartphones and electronic appliances on online platforms. However, there may also be cases where it is a deliberate strategy to prevent rival platforms from reaching scale. This may be the persistent pursuit of growth and loss making beyond what is reasonably required, including excessive promotions, or more targeted loss making in certain product categories targeting specialist line rivals.

74. Whether such clauses or conduct hinders competition amongst platforms depends on the market circumstances. Furthermore, even in cases where it does hinder competition, there may be associated efficiencies or benefits which outweigh those impacts. However, even in those cases, there may be less restrictive means of achieving the same benefits without the effect on competition.
75. The Inquiry is interested to understand whether some of these market features and conduct identified above is also part of the South African online intermediation platform landscape, or if there is other conduct or market features that similarly may impact on competition between platforms. If this is the case, the Inquiry is interested to understand the business rationale for the conduct, any efficiencies generated by the conduct, what impacts, if any, it has on competition between platforms and/or other sales channels, and if the clauses are essential for the platforms or if a less restrictive means is available.
76. Finally, the Inquiry would like to understand the experience of different platforms at different stages of expansion, and the track record of entry and expansion of different platforms in the South African market.

Questions for stakeholders

Answer in respect of the good, service or software platform that is the subject of the submission:

- 1) *Explain the business model of the platform, including but not limited to:*
 - a. *The value proposition for consumers and business users*
 - b. *How it generates revenues and what the major cost items are*

- a. *If so, explain what arrangements exist, the rationale for the arrangement, the benefits to the platform and whether it hinders other platforms from securing customers or business users.*

11) *In general, what has been the experience of smaller South African online intermediation platforms competing with established platforms in South Africa?*

12) *Are there any other market features or leading platform conduct which increase barriers to entry for new platforms and/or limit competition between platforms not covered in the answers to the questions above?*

3.4. Scope item 4: Evaluate whether platform conduct, contracts, prices and terms of use with business users are discriminatory or unfair, and the likely effect thereof on consumer choice, competition amongst business users and the participation of SMEs and HDP owned firms. This includes, but is not limited to, the existence of self-preferencing conduct, discriminatory pricing, promotional or pricing restrictions, inflated access pricing and access to / use thereof of business user transaction data

77. Online intermediation platforms have emerged because they offer benefits to both consumers and business users. For business users, they provide a channel to access online customers at a potential scale and cost that they may not be able to replicate alone, especially for SMEs. Furthermore, at the time that a platform is seeking to establish itself, the platform may need to incentivise businesses to utilise the platform when the value derived by the businesses may be low. These factors suggest that at least initially, the share of value from the relationship may be tilted in favour of the businesses using the platform.

78. However, as platforms grow in size and importance for the business user base then there may be scope for changing the terms and conditions over time, including fees and commissions. This may shift the share of value in favour of the platform. Alternatively, platforms may seek to get critical mass from a core set of larger businesses and institute less favourable terms and conditions to smaller businesses from the start, resulting in an imbalance in share of value for those less important users.

79. Platforms aim to typically deal with a large number of business users on the platform, which means that there is a tendency towards uniform terms and conditions of use, including uniformity in the fees and commissions that the platform charges the different types of business users. However, some business users may be more important to the platform in generating scale or attracting consumers, which means there is often an incentive to provide more favourable terms to such business users. These would typically include larger businesses with stronger consumer brands, higher sales volumes and more outlets. It may also include multinational companies with a global presence in the case of global platforms. However, it may also include the products, services or software that the platform itself (or a subsidiary) produces and sells on its own platform.

80. Differences in treatment may be warranted by the particular circumstances in some cases, but they may also distort competition between the business users on the platform and hinder participation by smaller businesses or new entrants. This may be to the detriment of consumers whose choices could be distorted. It is for this reason that such differential treatment has received some scrutiny globally to determine if it is detrimental or not.

80.1. Competition Authorities in other jurisdictions have often placed much focus on the “dual role” played by certain online intermediation platforms as platform operators for the marketplace, and also as sellers, with the incentives to “favour itself” and potentially squeeze the suppliers of goods (self-preference). For instance, this is often the charge levied against Amazon and the European Commission is currently investigating Apple for using its position as ‘gatekeeper’ to affect competition between its own apps and apps from competing providers.²⁶

80.2. However, differential treatment between classes of business users may also have the same effects as self-preferencing and warrant equal attention. This requires an understanding of the nature and extent of differential treatment if it exists, and how this may impact on those with less favourable terms. In the South African context there is also a particular focus on how such factors may impact on the

²⁶ See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1073

participation of SMEs and HDP-owned firms to ensure that these markets offer opportunities for inclusive growth.

81. The Inquiry is interested to understand from business users their perspective of the fairness of the standard terms and conditions on different platforms operating in South Africa, including global platforms. The Inquiry is especially interested in the experience of SMEs and firms owned and controlled by Historically Disadvantaged Persons in the context where they may be more dependent on the platform or lack bargaining power to alter terms and conditions.
82. In so doing, it is important to understand how fairness and unfairness may be more objectively assessed. Unfairness is typically defined to include those terms or conditions which unreasonably transfer risks or costs onto business users; are one-sided in favour of the platform; are onerous or not proportionate (or related) to the objective of the clause. The Inquiry is also interested to get the perspectives of business users on the fairness of the fees and commissions charged by the platforms operating domestically.
83. The Inquiry is interested to understand if the differential treatment of business users is prevalent amongst online platforms operating in South Africa, including but not limited to self-preferencing. If so, the Inquiry seeks to understand the rationale for the differential treatment and its potential impact not only on competition amongst business users, but also consumers and the participation of SMEs and HDP-owned firms. The Inquiry also seeks to understand if differential treatment is in fact necessary for the success of the platform business model, or if there are other ways of making the platform work without the differentiation.

Questions for stakeholders

Answer in respect of the good, service or software platform that is the subject of the submission:

- 1) *Does the platform, or companies owned by the platform, also offer goods or services or software in competition with other business users on the platform? If so, identify them.*
- 2) *Are all platform terms and conditions, including commissions and fees, applied uniformly across all business users operating on the platform (including those with an ownership stake of the platform itself)? If not:*

- a. *Which platform terms and conditions are not uniform or are negotiable?*
 - b. *Indicate what factors influence any variation in the terms across business users and the reasons for the variation.*
 - c. *What impact, if any, does the variation in terms and conditions across business users have on those business users with less favourable terms.*
- 3) *Do any of the platform terms and conditions place restrictions on the pricing of the business user on the platform itself, or how they price or operate on other platforms or in other sales channels? If so:*
 - a. *What is the rationale for those terms and conditions, and are they essential for the successful operation of the platform?*
 - b. *What impact, if any, does this have on competition amongst business users or between sales channels?*
- 4) *Are the platform's terms and conditions operated in a consistent and fully transparent manner? If not:*
 - a. *Identify those aspects of the platform operation which are not fully transparent or consistently applied.*
 - b. *What are the reasons for the lack of transparency or inconsistent application?*
 - c. *What impact does this have on business users or a class of business users?*
- 5) *Do you consider the platform terms and conditions to be fair to business users or a class of business user (e.g. SMEs), or are some considered unfair and are the subject of complaints? Unfairness is typically defined to include those terms or conditions which unreasonably transfer risks or costs onto business users; are one-sided in favour of the platform; are onerous or not proportionate (or related) to the objective of the clause.*
 - a. *For those terms and conditions subject to complaints or considered unfair, provide reasons why you consider them unfair or not.*
 - b. *Are any of these terms and conditions essential to the success of the platform in their current form?*
- 6) *Do you consider the fees or commissions levied by the platform to be fair or not? Provide reasons for your view.*

7) *Are there any other aspects of the platform conduct or terms of use with business users that you consider discriminatory or unfair, or which impact negatively on consumer choice, competition amongst business users and the participation of SMEs and HDP owned firms? Please explain.*

3.5. Scope item 5: Evaluate whether the ranking algorithms used by platforms, including any pay for position or promotional opportunities, negatively impact competition on the merits, consumer choice and/or the participation of SMEs and HDP owned business users

84. Given the vast range of products or services available on online intermediation platforms, the platforms will typically enable a 'search' function to help consumers find the product or service that meets their needs. The search will then return a list of products or services that may be sorted or ranked in a particular order of relevance. The search may take a few different forms, for instance:

84.1. A general search where the customer puts in the search words and a list is returned that matches those search criteria. For example, this is typically an option on eCommerce sites where the potential range of products is vast or on general search engines such as Google.

84.2. A structured menu for search where the customer navigates by type of product or sub-set of products before being presented with a list. For example, eCommerce sites may typically allow customers to search by department and product categories within that department. Similarly, app stores allow users to navigate to types of apps such as types of games or productivity apps before providing a list.

84.3. The use of filters to narrow the search to a reduced list that removes products or services that do not match the customer requirements before returning a list of those that do. For instance, online property classifieds may request factors such as the area, property type, price range and specific requirements (e.g. garage, no. of bedrooms). Similarly, online travel sites may provide details of the flight requirements (e.g. dates) or accommodation requirements which have some

standard search criteria. Online food delivery may provide the options of types of food and restaurants as a search category.

85. A platform algorithm will determine what items fit the search criteria and how to sort or rank the search items in the list provided to the consumer. Again, there may be different approaches to the criteria determining the order in which relevant items are listed:

85.1. There may be a default criteria applied by the platform which may take into account a range of possible factors such as perceived relevance (based on fit with the search word), ratings, price, availability, etc. Such criteria are not necessarily communicated to the consumer and may also include preferential ranking for certain businesses.

85.2. There may be the option for the consumer to determine the listing criteria, such as listing by price (e.g. lowest to highest), most recent, by ratings or relevance. Whilst some of these criteria may be transparently determined, others such as relevance are subject to interpretation and algorithmic design.

86. Where there are long lists of search results, it is widely appreciated that the ranking in which the goods, services or software are listed are likely to impact on consumer views, click-throughs and potentially sales. This is because consumers may perceive the first results to be the most relevant to their search and may not scroll through numerous pages of search lists if there are large volumes of items returned by the search. As a result, it appears that there are benefits to being ranked higher in the list returned to the consumer. Similarly, it is also appreciated that consumers may be more drawn to listings that get more prominence in their display size or position.

87. It is this consumer behaviour that has led many platforms to identify an additional revenue stream through offering business users the opportunity to pay to promote their listing up the ranking or have prominent featured displays within or next to the ranking list (including promotional displays). The price for such ranking promotion or featured display is presumably linked in some way to the additional benefits achieved from doing so. Alternatively, some platforms may use the ranking system or featured display to actively promote their own goods

or services ahead of other businesses where they also offer these on their own platforms (i.e. self-preferencing).

88. The rise of pay-for-position and the potential for self-preferencing has resulted in questions as to whether these practices may result in distortions to optimal consumer choices, reducing the welfare of consumers, but also distortions to competition amongst business users on the platform. In the South African context, the additional question is whether these practices in any way hinder participation by SMEs and HDP-owned business users that may not be able to pay for position or take advantage of other means to promote visibility on the platform.
89. Even outside of the pay-for-position and self-preferencing, the choice of ranking criteria and the weighting applied to it by the platform may impact on consumer choices and the prospects of different business users on the platform. Such criteria may provide consumers with the best response to their needs by incorporating information that consumers would deem relevant to their search. However, such criteria may also inadvertently create biases against certain types of businesses in the process or not be optimally aligned to the consumer search decision tree. For instance, ranking premised on sales or reviews may favour established businesses over new entrants, or global firms over domestic ones. Ranking criteria may also inadvertently favour the platform's own products over third party ones, such as delivery fees where these are waived for own products. Such criteria can empower some business users to work at enhancing their likely ranking in a search to the benefit of consumers, such as providing more product details, but may also promote adverse behaviour such as false reviews.
90. Given the importance of ranking and featured displays, and the fact that ranking criteria may not always be fully transparent to either consumers or business users, the Inquiry would like to understand the ranking criteria used by various platforms including the prevalence of pay-for-position or self-preferencing. The Inquiry also wishes to understand the impact the ranking criteria and practices have on consumer choice, competition amongst business users and the participation of SMEs and HDP-owned firms. Whether these impact on the participation of South African firms more generally on global platforms (such as application stores) is also of interest to the Inquiry.

Questions for stakeholders

Answer in respect of the platform that is the subject of this submission:

- 1) *How important is ranking highly on the online intermediation platforms 'search' function and/or featured/promotional displays to the discoverability and sales of a business user's good, service or software product? Where applicable, provide evidence or experience of increased click throughs or sales associated with better ranking or featured displays.*
- 2) *How transparent is the operation of search ranking to a) consumers and b) business users?*
 - a. *Where applicable, provide the factors that determine the search ranking or featured displays in order of importance, and the rationale for the choice of these criteria.*
 - b. *Outline any consumer or efficiency benefits associated with these criteria over others.*
- 3) *What are the means for business users to impact on their search ranking and generate featured displays?*
 - a. *What means do not require payments and to what extent do these means improve ranking or featured/promotional displays?*
 - b. *For means that involve a payment, indicate the prevalence of pay-for-position or featured listing payments on the relevant platform i.e. how many positions on the first page involve payment, what proportion of business users make use of these and what proportion of revenue does this generate.*
 - c. *What is the extent of SME or HDP-owned firms making use of the different means to improve ranking or featured displays, particularly those requiring payment?*
 - d. *How essential is the pay-for-position for the business users and for platform sustainability?*
- 4) *Are there any features of the search ranking or featured display system that are likely to hinder consumers making optimal choices in their best interests? Please explain.*
- 5) *Are there any features of the search ranking or featured display system likely to disadvantage SME or HDP-owned business users directly or indirectly? Please explain.*
- 6) *Are there any features of the search ranking or featured display system likely to disadvantage South African business users directly or indirectly relative to global brands or business users from other countries? Please explain.*

7) *Are there any features of the search ranking or featured display system likely to disadvantage business users directly or indirectly relative to goods, services or software supplied by the platform itself in competition with third party business users? Please explain.*

3.6. Scope item 6: Evaluate any other barriers to entry into online commerce for SMEs and HDP owned firms, including but not limited to marketing costs, technological and product challenges

91. Online intermediation platforms can provide an opportunity for SMEs and HDP-owned firms to get an online presence without having to build it themselves, and in so doing potentially promote participation in online commerce by these types of firms. Similarly, global online intermediation platforms such as App Stores or global travel intermediaries may provide opportunities to businesses in one country to access a global customer base, potentially promoting participation in world markets.

92. Where platforms seek a broader business user base of smaller companies or from different geographic areas, they may also find solutions to onboard these companies and overcome some of the challenges they would otherwise face. For instance, online delivery companies may provide small retailers or restaurants with tablets with pre-loaded apps to manage orders. App stores provide development toolkits and support to crowd in app developers, and elsewhere in the world Apple has opened App Development Centers to provide practical skills and training to aspirant app developers from that region.

93. However, SME and HDP-owned businesses, or domestic South African businesses in the context of global platforms, may still face other challenges in meeting the listing requirements of the platform in the first place or making full use of the opportunities provided by the platform once on-boarded. For instance, minimum standards set by the platform may exclude many of these businesses, or the lack of support may still pose barriers to onboarding. Once listed, these businesses may lack the skills or resources to take advantage of ways to improve their exposure to customers relative to other businesses on the platform, and in so doing generate few transactions once on the platform. Where the platform has some fixed fees for listing then this may make listing on the platform less profitable for smaller participants generating lower sales volumes, including local businesses on global platforms.

94. In some cases, business users of platforms may still have their own online presence through a website, which may incorporate transaction engines to make online sales. This independent online presence may be seen as complementary to the platform as they may generate leads or sales from different customer groups and at potentially better margins as no intermediary is involved. For instance, many larger travel businesses still have direct booking such as airlines and hotels. However, SMEs and HDP-owned firms may face barriers in developing an independent online presence outside of the platforms, which increases their dependency on the platforms themselves. These may include the technological requirements for online transaction processing (e.g. ordering, booking and payments) or the resources to establish an online or general advertising presence through marketing.
95. The Inquiry is interested in understanding what platforms may be doing to assist SMEs and HDP-owned businesses in onboarding to their platform and exploiting the opportunities that brings, as well as the challenges that remain for SMEs and HDP-owned businesses in doing so. In the case of global online intermediation platforms, the Inquiry is also interested in the challenges faced by South African businesses more broadly and whether there exist support mechanisms to promote participation in world markets. The Inquiry would also like to understand the benefits and challenges faced by SMEs and HDP-owned businesses in establishing an independent online presence.

Questions for stakeholders

- 1) *In respect of the platform that is the subject of this submission, indicate what has been the experience and challenges of SME and/or HDP-owned businesses in:*
 - a. *Listing on online intermediation platforms;*
 - b. *Generating exposure and sales on the platform once listed; and*
 - c. *The extent of support offered by the platform to SMEs and HDP-owned firms specifically in onboarding and generating sales.*

- 2) *In respect of platforms that offer access to a global customer base, indicate what has been the experience and challenges of South African businesses generally, and SME and/or HDP businesses specifically, in:*
 - a. *Listing on online intermediation platforms;*

- b. Generating exposure and sales on the platform once listed; and*
- c. The extent of support offered by the platform to SMEs and HDP-owned firms specifically in onboarding and generating sales, including relative to other countries.*

- 3) *What are the benefits and challenges faced by SMEs and/or HDP-owned businesses in establishing an independent online presence?*
- 4) *Provide any other comments on the challenges faced by SMEs and HDP-owned firms in establishing an online presence or South African businesses establishing a global online presence.*

3.7. Scope item 7: Evaluate the extent to which the findings and any identified remedies in respect of core platforms are generalisable across online intermediation platforms

Scope item 8: Determine appropriate remedies where an adverse effect on competition or the purposes of the Act are found as set out in section 43C(3) of the Act

- 96. The Inquiry is required to make findings as to whether there are market features or platform conduct which impede, restrict or distort competition. In so doing, the Inquiry has a special duty to consider the adverse effects on SMEs and HDP-owned firms. The same applies to market features which may undermine the purposes of the Act. Such purposes are set out in the introduction to the Statement of Issues. Aside from the promotion of competition, the participation of SMEs and the transformation of ownership, the purposes also include the development of the economy, advancing the economic and social welfare of all South Africans, expanding opportunities for participation in world markets and providing consumers with competitive prices and product choices.
- 97. The Inquiry invites stakeholders to determine, based on their submissions made above, if there are any market features which result in adverse effects on any of the following:
 - 97.1. Competition amongst online intermediation platforms operating in South Africa;

- 97.2. Participation by South African businesses in the provision of online intermediation platforms in South Africa (or globally)
 - 97.3. Competition amongst business users on the platforms, and in particular the ability of SME or HDP-owned business users to participate
 - 97.4. Participation by business users on the platforms, in particular SME or HDP-owned business users
 - 97.5. Unfair treatment of business users on the platforms
 - 97.6. Consumers of the platforms, in terms of affecting their choices or price levels.
98. In order to determine appropriate action to take in addressing any adverse effects, the Inquiry would also like to know from the stakeholder whether such market features apply to all platforms operating in the same line of business as the platforms that are the subject of the submission, or just a subset of such platforms. Similarly, whether the stakeholder is of the view that this is a general feature of online intermediation platforms across goods, services and software.
99. Where market features are identified that may hinder, impede or restrict competition or undermine the purposes of the Act, then the Inquiry has a duty to consider action to remedy, mitigate or prevent the adverse effect identified. The scope of such actions include recommendations for action by firms, the Minister or regulators. Recommendations to the Minister may include policy, legislative or regulatory changes.
100. According to section 43D the Act, any remedial action must fulfil the following criteria:
- “(4) Any action in terms of subsection (1) must be reasonable and practicable, taking into account relevant factors, including—*
- (a) the nature and extent of the adverse effect on competition;*
 - (b) the nature and extent of the remedial action;*
 - (c) the relation between the adverse effect on competition and the remedial action;*
 - (d) the likely effect of the remedial action on competition in the market that is the subject of the market inquiry and any related markets;*
 - (e) the availability of less restrictive means to remedy, mitigate or prevent the adverse effect on competition; and*
 - (f) any other relevant factor arising from any information obtained by the Competition Commission during the market inquiry.”*

101. Where the stakeholder has identified any market feature which may have an adverse effect on competition or the purposes of the Act, the Inquiry would like the stakeholder to give thought to what remedies may successfully address that adverse effect and which fulfil the criteria set out above.

Questions for stakeholders

- 1) *Identify any market features which may hinder, impede or restrict competition in the online intermediation platforms that are the subject of the submission.*
 - a. *Identify whether such features are market-wide (i.e. do all platforms in the same line of business exhibit these features) or limited to certain platforms only (e.g. such as those platforms with market dominance).*
 - b. *If market-wide, identify if the adverse effect of such features applies to all online intermediation platforms or is limited to certain platforms only, such as those with dominance.*
 - c. *In your experience, do these market features apply to online intermediation platforms other than those which are the subject of this submission.*

- 2) *Identify any market features which may undermine the purposes of the Act (set out in paragraph 3 of the introduction) in online intermediation platforms that are the subject of the submission.*
 - a. *Identify whether such features are market-wide (i.e. do all platforms in the same line of business exhibit these features) or limited to certain platforms only (e.g. such as those platforms with market dominance).*
 - b. *If market-wide, identify if the adverse effect of such features applies to all online intermediation platforms or is limited to certain platforms only, such as those with dominance.*
 - c. *In your experience, do these market features apply to online intermediation platforms other than those which are the subject of this submission.*

- 3) *Where any potential adverse effect on competition has been identified for the online intermediation platforms that are the subject of this submission, provide a recommendation*

as to an appropriate remedy or suite of remedies that directly addresses the concern identified.

- a. Provide reasons why the remedy is likely to successfully address the concern.*
- b. Identify if there are likely to be any potential unintended consequences from imposing the remedy.*

4) Where any potential adverse effect on the purposes of the Act (set out in paragraph 3 of the introduction) has been identified for the online intermediation platforms that are the subject of this submission, provide a recommendation as to an appropriate remedy or suite of remedies that directly addresses the concern identified.

- a. Provide reasons why the remedy is likely to successfully address the concern.*
- b. Identify if there are likely to be any unintended consequences from imposing the remedy.*

3.8. Submissions as to the scope and issues

102. Whilst the Inquiry has identified the initial scope in the Terms of Reference and the specific types of issues in relation to that scope in this Statement of Issues, the Inquiry would also like to invite stakeholders to identify if there are other features to these online intermediation platforms that warrant an expansion of the scope and/or additional issues to be raised. Stakeholders may also have identified information in relation to the functioning of these platforms that is of relevance to the Inquiry but has not been traversed in the questions above. This last sub-section provides an opportunity for stakeholders to make any additional submissions they believe are relevant.

Questions for stakeholders

- 1) Are there any additional areas of inquiry into online intermediation platforms not contained in the Terms of Reference that you believe are important for the Inquiry to cover as part of its work. If so, identify the specific area of inquiry or issue and the reasons why the Inquiry should include it in the scope.*
- 2) Are there any other features of online intermediation platforms and the participation of business users on those platforms in South Africa of relevance to the Inquiry and which has*

not been traversed in the questions above? If so, please provide details as to the feature and the relevance for the Inquiry.

3) *Are there any other submissions the stakeholder would like to make of a general nature?*