



competition commission
south africa

REMARKS BY THE COMMISSIONER OF THE COMPETITION COMMISSION, MR TEMBINKOSI BONAKELE, ON THE OCCASION OF THE MEDIA BRIEFING ON THE OFFICIAL LAUNCH OF THE ONLINE MARKETS INQUIRY, WHICH WAS HELD VIRTUALLY ON WEDNESDAY, 19 MAY 2021.

Programme Director;

Colleagues from the Competition Commission

Doris Tshepe, whom we announce today as a panel member for the inquiry

Invited guests

Members of the public; and

Representatives of various media houses who have joined us virtually

Good morning.

Programme Director, on 19 February 2021, we communicated to the public our decision to initiate a market inquiry into online markets and invited members of the public to provide comments on the draft Terms of Reference. We received valuable contributions from various stakeholders, which enabled us to finalise and gazette the final Terms of Reference, on 09 April 2021. Today, it is with great delight that we announce the official commencement of the Online Markets Inquiry.

The launch of this market inquiry takes place at a time when online markets are becoming increasingly important as one of the drivers of economic growth in South Africa. In one of his weekly letters, President Cyril Ramaphosa highlights the importance of adopting deliberate and proactive strategies to support the growth of new sectors. The digital sector is indeed one of the Commission's key priorities.

In his budget vote speech yesterday, Minister Panel announced that today Government will be publishing a competition policy. In the policy, digital markets will feature prominently. We welcome the publication of the policy and I looking forward to see its implementation through. This market inquiry is a practical implementation of this policy.

What necessitated the launch of the Online Markets Inquiry?

The Commission has initiated this market inquiry because it has reason to believe that there exist market features, or a combination of features, which impede, distort or restrict competition amongst online platforms, and which may undermine the purposes of the Competition Act. This assessment was made based on, among other things, several complaints that have been lodged with the Commission alleging anticompetitive conduct in some of the online markets.

Online markets have been at the forefront of the global competition law debates in recent years due to the growing importance of digital platforms in the economy and the high levels of concentration in many of these markets. There is a recognition that online markets have some unique features, such as strong network effects and the importance of consumer data, which can drive a potential winner-take-all outcome, creating a dependency for businesses and consumers which can then be exploited. There is also a recognition that normal enforcement tools may be inadequate on their own to address any potential competition distortions observed in these markets.

This has prompted a strong enforcement response from many competition authorities globally resulting in a raft of new regulations to promote contestability and prevent exploitation of both business users and consumers. Reports on the approach to enforcement in digital markets have been released by the EU, UK, US and BRICS countries, and the Commission has done the same. Inquiries into digital markets have been undertaken by the US House of Representatives, the UK's Competition and Markets Authority and Australia to name but a few. In most cases it has been found that online markets have features that stifle competition and create barriers to entry for rival online platforms resulting in regulatory action.

The European Commission (EC) has put in place platform to business regulations to regulate a transparent trading relationship between platforms and the businesses that use them. The EC is also currently debating a Digital Markets Act to regulate platforms seen as gatekeepers to large numbers of consumers, including more stringent measures such as a prohibition of self-preferencing, using business user data to launch competing products against them, terms which prevent businesses offering lower prices on other platforms. There are also provisions to share data with business users on the platform. There have also been legal reforms in Germany, and China has recently announced a policy on their approach to tech platforms and payment systems.

Online markets have become an increasingly important channel for businesses to reach consumers, a trend which has accelerated under the Covid-19 pandemic and which is likely to continue. Online markets provide consumers with the convenience of comparing a wide range of options and then safely purchasing online. For businesses, the online markets offer a ready-made infrastructure to sell online and a means to reach an enormous number of consumers nationally and internationally. The shift to online commerce also means that it is increasingly important for South African businesses, including SMEs and HDP owned businesses, to participate actively in these markets if they are to be part of the global and national economy.

The scope of the Inquiry

The Online Market Inquiry will cover online markets that facilitate transactions between businesses and consumers for the sale of goods, services and software. Online intermediation platforms relevant to this market inquiry include eCommerce marketplaces, online classified market places, software application stores and intermediated services such as accommodation, travel and food delivery.

The Inquiry will focus broadly on three areas of competition and public interest, namely:

- Market features that may hinder competition amongst the online markets themselves;
- Market features that may give rise to discriminatory or exploitative treatment of business users; and
- Market features that may negatively impact on the participation of SMEs and HDP owned businesses.

The Inquiry will not focus on e-hailing services, which were the subject of the Public Passenger Transport Market Inquiry, search and social media platforms broadly, and fintech platforms except insofar as the role of payment services in facilitating transactions on online platforms.

The Composition of the panel and technical team

Programme Director, just like in its previous market inquiries, the Commission is committed to conducting this market inquiry in a fair and transparent manner. I have appointed Mr James

Hodge, who is the Commission's Chief Economist and Acting Deputy Commissioner, to chair the Inquiry.

I have also appointed Ms Doris Tshepe as a panel member of the Inquiry. Ms Tshepe holds a B Proc, LLB and LLM (Tax Law) degrees and specialises in, among others, competition law, constitutional and administrative law, legislative drafting and commercial law. She is an admitted attorney of the High Court and a director of D Tshepe Incorporated. Between 2006 and 2017, Ms Tshepe was a Managing Director at Cheadle Thompson & Haysom Incorporated and a head of the commercial and communication department of that law firm. In the course of her practice, Ms Tshepe has advised a wide range of public and private sector clients, including statutory bodies and various government departments. She has also represented clients at various courts and forums, including the Competition Tribunal, the Competition Appeal Court, the Supreme Court of Appeal and the Constitutional Court.

The panel of the Inquiry will be assisted by a technical team co-headed by Mr Itumeleng Lesofe and Mr Hariprasad Govinda, both employed by the Commission.

Official Commencement and deadlines for the Inquiry

Programme Director, the work of the Inquiry officially starts today, the 19th of May 2021, and will be completed within 18 months, as per the statutory requirements of the Competition Act.

I will now hand over to Mr Hodge who will take you through the Inquiry's detailed timelines and the approach to be followed by the Inquiry in order to meet those timelines.