ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY ("INQUIRY")

SUBMISSION ON FURTHER STATEMENT OF ISSUES ("FSOI")

NASPERS LIMITED AND ITS OPERATING SUBSIDIARIES IN SOUTH AFRICA ("NASPERS")

6 OCTOBER 2021

1. INTRODUCTION

1.1 As indicated previously, Naspers is committed to constructively engaging with the Inquiry. To this end Naspers, and its operating subsidiaries in South Africa (collectively "**Naspers**" for purposes of this submission), have made substantial submissions on the Draft Terms of Reference, the Statement of Issues and have fully cooperated with requests for information ("**RFI's**") issued by the Inquiry.

1.2 Naspers welcomes the invitation to comment on the FSOI, as there are certain elements worth addressing.

1.3 The structure of this submission is as follows:

1.3.1 Naspers' general comments in respect specific themes and concerns raised in the FSOI;

1.3.2 Annexure A: Responses to specific paragraphs of the FSOI; and

1.3.3 Annexure B: Comments on the business user survey.

1.4 This submission should be read in conjunction with previous submissions Naspers has made to the Inquiry.

1.5 It bears emphasis in this regard, that in providing comments on the FSOI, Naspers has only dealt with the issues that call for a response and has sought to avoid unnecessary repetition by commenting on matters dealt with in the initial Statement of Issues ("**SOI**") as well as RFI's sent to the Naspers business units. It should also be noted that not every averment or contention made in the FSOI is dealt with in this submission and this should not be construed to mean that Naspers agrees with those averments or contentions. Additional submissions may be made to the Inquiry in due course.

1.6 We provide an executive summary of Naspers' general comments in respect of the FSOI, before dealing with them in detail below.

2. EXECUTIVE SUMMARY

2.1 The FSOI identifies a range of issues that the Inquiry intends to assess in relation to the nature of competition faced by online intermediation platforms, as well as the relationships between these platforms and the businesses that utilise them. These issues appear to be underpinned by three primary concerns.

2.2 First, many of the issues raised in the FSOI are based on a concern that online intermediation platform sectors are highly concentrated and that, as a consequence, business users and consumers are vulnerable to being exploited by established platforms.

2.2.1 This concern rests on an implicit assumption that high concentration implies that existing competition between established platforms is ineffective, that barriers to entry and expansion are high, and that competition is thus not effective overall.

2.2.1.1 However, in most markets high concentration is not a reliable indicator of the intensity of competition. This is especially true in the context of two-sided platforms that are characterised by multi-homing and positive indirect network effects, i.e. where the barriers to switching between platforms are low, and platforms have particularly muted incentives to worsen their competitive offerings to customers.

2.2.1.2 Indeed, the sectors identified by the Inquiry are generally characterised by at least two major platforms, which compete strongly with one another. The Inquiry also identifies that multi-homing is common practice for business users and customers. At the very least it would be wrong to assume, or conclude without detailed analysis, that existing competition is not effective.

2.2.2 In addition, established platforms face competitive constraints from other sources. These include business users' own websites, and the constraints from newer entrants that have adopted, or could adopt, alternative entry models to those of established players.

2.2.3 Moreover, positive indirect network effects mean that scale makes a platform more valuable to the business users and consumers that utilise it. Thus, it is far from clear that lower concentration in such sectors would necessarily improve consumer welfare or deliver better opportunities for small business users to participate effectively.

2.3 Second, a number of the issues raised in the FSOI are based on a concern that established platforms are more efficient and able to offer higher quality products and services to business users and consumers as compared to newer entrants, and accordingly that newer entrants are not able to compete effectively against established platforms.

2.3.1 Intervening in markets on the basis of certain firms being particularly efficient and/or effective competitors can be risky, as it may result in the loss of existing efficiencies (which benefit both consumers and business users) in an attempt to achieve uncertain and often vaguely defined efficiencies in the future. This is particularly so in dynamic markets such as those in which online intermediation platforms operate.

2.3.2 Such intervention can also dampen the incentives for firms to undertake risky investments that would have the potential to improve their efficiency and/or competitive offerings going forward (to the detriment of both consumers and business users). This can also reduce the likelihood of new entrants undertaking uncertain investments to develop innovative offerings and business models in order to compete with existing firms.

2.3.3 In any event, a finding that established platforms hold an unassailable competitive advantage would in the first instance require a detailed analysis of alternatives available to business users and rival platforms, and cannot be asserted on the basis of high-level information (such as market shares). The FSOI does not provide a detailed economic assessment to this effect.

2.4 Third, the FSOI raises several concerns that the pricing practices and promotional opportunities offered by established platforms may have an adverse impact on the ability of business users that are small and medium sized enterprises ("**SMEs**") and/or owned by previously disadvantaged persons ("**HDPs**") to participate effectively.

2.4.1 Each of the practices identified by the FSOI in this regard has pro-competitive objectives, and is likely to have pro-competitive effects. Moreover, given the interrelated demand from consumers and business users on either side of a platform, is unlikely to be incrementally profitable for platforms to engage in practices that exclude or restrict the participation of a certain groups of business users.

2.4.2 Although the practices identified by the FSOI could, in theory, serve to impede the participation of smaller business users that utilise the platform to generate sales, this will only be the case if certain conditions are met (and, thus, these practices do not represent concerns in and of themselves). It will therefore be important for the Inquiry to assess whether these conditions are met in practice before making findings in this regard.

2.5 We expand on these points in the balance of these documents.

3. SCALE AND COMPETITION

3.1 The FSOI raises a number of concerns that the digital intermediation sectors that are the subject of the Inquiry are served by a limited number of large platforms (i.e. that these sectors are highly concentrated). On this basis, the FSOI raises a concern that that business users, and in particular those that are SMEs and/or HDP-owned, are vulnerable to being exploited by these established platforms.

3.1.1 For example, in regard to food delivery, the FSOI notes that "[d]espite the massive growth in restaurant food delivery, the preliminary evidence suggests there has not been a material change in the number of competitors or market structure [while] Mr D and Uber Eats still account for most of the restaurant delivery through online platforms”.[1]

3.1.2 Similarly, in the case of online classifieds, the FSOI notes that there are only two *“important platforms”* in the two main online classifieds categories (i.e. property and automotive), and that these *“must-have”* platforms have been *“able to raise listing fees substantially”* as a result.[2]

3.1.3 In respect of e-commerce marketplaces, the FSOI notes that “Takealot has a substantial share” of sales, and that “[s]maller third-party sellers appear to be fairly dependent on eCommerce marketplaces”.[3]

3.2 From the outset, these concerns do not appear to consider the full range of the competitive constraints that online intermediation platforms face, and thus the range of credible alternatives available to each of consumers and business users on those platforms.

3.3 In addition, and as we discuss in more detail below, in a number of instances there appear to be certain shortcomings in the economic reasoning presented in the FSOI when considering the credibility of the competitive constraints imposed by these alternatives, while in a number of other instances the FSOI appears to discount the credibility of alternatives without substantive reasoning.

3.4 Furthermore, the concerns raised by the FSOI appear to be underpinned by an implicit assumption that competition between established platforms is not effective, and that effective competitive constraints on established platforms could only be imposed by

1 FSOI, paragraph 48.

2 FSOI, paragraph 65 and 70.

3 FSOI, paragraph 13 and 25.

rival platforms and new entrants that are smaller in scale. However, both of these premises would need to involve a rigorous analysis.

3.5 For example, in most markets high concentration will not imply a lack of effective competition in general. Likewise, the scale of a firm will not, in and of itself, determine the strength of the competitive constraint it is able to exert of rivals. This is because, even if a firm has a high share of supply at a given point in time, it may lose significant business to rivals if it were to seek to raise prices above competitive levels, or otherwise attempt to worsen its competitive offering (for example because of product differentiation, or competitive constraints arising from outside of the market, such as the threat of new entry and expansion). Likewise, a firm with a high share of supply can be effectively constrained by exerting buyer power over suppliers if those suppliers have credible alternative customers, such as firms serving alternative sales channels.

3.6 This is even more relevant in the context of many digital markets, including those that involve digital intermediation platforms, where the constraints acting on large firms that prevent them from exerting market power may be more (rather than less) prevalent.

3.7 In such markets, existing concentration is thus likely to be an even less reliable indicator of the effectiveness of competition. Put simply, a firm's ability to compete effectively in the future may, at best, be only weakly related to its existing share of sales or revenues. In these circumstances, new entrants and innovative rivals have the ability to grow market share rapidly at the expense of larger incumbents, regardless of historical competitive position.

3.8 This is reflected in the fact that so-called "killer acquisitions" have been raised as a particular concern in the context of innovative markets by several competition authorities, including the Competition Commission of South Africa.[4] The concern

[4] Competition Commission of South Africa (7 September 2020). *Competition in the Digital Economy*.

regarding “killer acquisitions” is based, in essence, on the observation that a small, innovative entrant is capable of imposing an outsize competitive constraint on larger incumbent rivals. However, in order for this to be a concern, existing levels of concentration and incumbents’ scale must necessarily be poor indicators of the effectiveness of future competition in such markets.

3.9 In the case of two-sided platforms in particular, including online intermediation platforms, measures of concentration also fail to adequately account for the effect of (i) indirect network effects and (ii) multi-homing on the strength of the competitive constraints faced by two-sided platforms.

3.10 The indirect network effects that occur in the context of the online intermediation platforms are typically positive in both directions, such that demand on one side of the market is positively related to the demand on the other side of the market, and vice versa.[5] Such positive indirect network effects can in turn lead to negative feedback loops if the platform seeks to exercise market power.

3.10.1 In particular, if a platform sought to worsen its competitive offering on one side of the market, this would not only adversely affect demand on that side of the platform, but it would also adversely affect demand on the other side of the platform. As such, an attempt by a two-sided platform to exert market power would, all else being equal, be less profitable than in a one-sided setting.

3.10.2 These adverse feedback effects would be mutually reinforcing, in the sense that a worsening in the offering on side A would not only result in the loss of users on side B, but it would also result in a further indirect loss of users on side A due to the loss of users on side B (and so on).

5 Indirect network effects refer to the fact that demand from one group of customers (e.g. business users) is related to the demand from the other group of customers (e.g. consumers).

3.11 Positive indirect network effects also mean that platform scale can generate significant benefits for the business users that utilise the platform. This is because greater platform scale gives business users access to a larger consumer base, and thus more sales opportunities. Accordingly, where positive indirect network effects are present, the welfare of customers on both sides of the platform may well be greater where there are a few large platforms than where there are a large number of smaller platforms. This runs directly counter to the implicit assumption underlying the FSOI that outcomes would be improved by markets becoming more fragmented.

3.12 Multi-homing necessarily implies that there are low barriers to switching between platforms.[6] This logically will serve to materially limit the ability of a platform to profitably worsen its competitive offering respect of users on whichever side(s) of the platform exhibit multi-homing, even in the face of a single effective competitor.

3.13 In addition, multi-homing can have a significant impact on the ability of smaller platforms to compete effectively with more established rivals. This is because where customers multi-home, smaller players do not need to attract customers away from larger players (i.e. so that they stop using these larger players) in order to grow, benefit from their own network effects, and in turn become more effective competitors to larger players. This can naturally be expected to lower barriers to entry and expansion for platforms, and reduce the chances of a market "tipping" in favour of a given platform.[7]

3.14 Where there is significant multi-homing on both sides of the platform, this constraint will be even stronger as it suggests that users on one side of the platform could still

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6 When customers use more than one platform in a given market, this behaviour is referred to as multi-homing (as opposed to single-homing, where customers utilise only one platform in the market).

7 The experience in the US demonstrates that tipping is unlikely, as a challenger vehicle classifieds platform, Cargurues, has now overtaken the incumbent, AutoTrader in terms of viewership.

access a similar set of customers or sellers if they were to cease to use one of the available platforms. (This is also relevant to countervailing power, as we discuss further below).

3.15 Furthermore, although indirect network effects might imply that groups of customers would need to coordinate with each other to effectively exert countervailing power on incumbent platforms (i.e. so that the platforms to which they switch are able to obtain a large enough listing base to attract consumers), this will clearly not be the case in the presence of significant multi-homing.

3.16 Accordingly, there is little economic basis upon which to assume that concentration, in and of itself, will lead to anticompetitive harm, particularly in the context of two-sided platforms. Equally, there is no clear economic basis on which to conclude that platform scale and concentration will necessarily be to the detriment of business of users. In fact, outcomes for consumers and business users may well be worse in fragmented markets than in concentrated ones, for the reasons explained above.

3.17 As a result (and as is commonly accepted), deconcentration should not be an end in and of itself. Rather that the objective of competition policy should instead be to support the dynamic competitive process. This is because, as noted by the OECD, maintaining and encouraging the dynamic competitive process, will "promote efficient use of resources while protecting the freedom of economic action of various market participants".[8]

3.18 It is therefore also notable that, while the FSOI does not indicate that the Inquiry has assessed the effectiveness of existing competition faced by online intermediation platforms (beyond simply considering the scale of these platforms), a number of the observations raised in the FSOI are at the very least consistent with, and in many

8 OECD (2003). The Objectives of Competition Law and Policy. Page 2.

cases strongly indicate that, established platforms face effective competitive constraints.

3.18.1 In the case of e-commerce marketplaces, the FSOI notes that "*[m]ost eCommerce marketplaces it seems are loss making which may be the result of pursuing growth aggressively*" (i.e. competing aggressively for sales).[9] The FSOI also notes that "*promotions are an important lever for [e-commerce platforms] to draw in consumers*", and that many of these promotions are incentivised and/or funded by the platforms (rather than by business users).[10] In this regard, it is difficult to see why e-commerce platforms would fund promotional activity to attract customers if they did not face effective competition in respect of those customers.

3.18.2 Similarly, in relation to delivery platforms, the FSOI notes that "marketing expenditure is a prominent cost to drive consumers to their platform" and that "many of the promotions are sponsored by the platform itself", suggesting that delivery platform face effective competition for customers.[11] The FSOI also indicates that there is multi-homing by both business users (at least across the two largest platforms) and consumers, which indicates lower barriers to switching.[12]

3.18.3 In respect of online classifieds, the FSOI notes that both consumers and business users multi-home, indicating that there are low barriers to switching

9 FSOI, paragraph 13.
10 FSOI, paragraph 19.
11 FSOI, paragraph 52.
12 FSOI, paragraph 23 and 24.

between platforms.[13] The FSOI also notes that there are at least two major platforms that compete with one another in respect of both of property and automotive classifieds.[14]

3.19 **Additional competitive constraints faced by existing platforms**

3.19.1 **Scale and credible entry and expansion**

3.19.1.1 As noted above, a core implicit assumption underpinning the concerns raised in the FSOI appears to be that established platforms can only be effectively constrained by smaller existing platforms and/or new entrants once such firms have reached a similar scale to the established platforms.

3.19.1.2 For example, in the context of e-commerce marketplaces, the FSOI appears to suggest that since achieving sufficient scale has been important for existing e-commerce marketplace operators to become efficient and profitable, any new entrant would need to achieve similar scale in order to compete effectively with those established marketplace operators (at least while remaining profitable).[15] Similar reasoning appears to underlie some of the concerns set out in respect of delivery platforms and online classifieds as well.

3.19.1.3 However, there are material flaws in this type of reasoning. As set out above, scale is often a particularly poor indicator of the ability of a firm to constrain rivals. Moreover, such reasoning fails to consider that the importance of scale, and how it affects a firm's ability to attract customers and generate profits, will naturally differ across firms that have different

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13 FSOI, paragraph 66-68.

14 FSOI, paragraph 65.

15 FSOI, paragraph 15.

focusses (i.e. have a differentiated offering), entered at different times (e.g. when markets are more or less mature), have different business models and capabilities, or made different technological or strategic choices along the way.

3.19.1.4 For instance, the e-commerce sector has grown out of all recognition over the past decade, and thus economic conditions in this sector (and the prospects for the future development of the sector) differ materially in a number of ways from those that prevailed when e-commerce platforms started operations in the past (at which point such platforms may not have even resembled their current forms).

3.19.1.5 These changes in economic conditions mean that a new entrant today need not necessarily match Takealot's entry strategy in order to compete effectively in this space, and thus scale may be less relevant for a new entrant today than it was for Takealot.

3.19.1.6 Particular examples of new entrants that may be able to effectively constrain established e-commerce marketplaces without first obtaining comparable scale in e-commerce sales to Takealot before it became profitable are existing brick-and-mortar ("B&M") retailers. The offline offerings of these retailers already impose effective competitive constraints on e-commerce marketplaces by providing credible alternatives to both consumers and many business users / suppliers, and B&M retailers are likely to impose an even stronger competitive constraint on e-commerce marketplaces going forward as they leverage existing B&M infrastructure to expand their offerings in e-commerce sales channels.

3.19.1.7 In addition to the numerous B&M retailers that have launched e-commerce retail offerings in recent years, B&M retailers, including Makro and JD Group (Everyshop), have also recently launched e-commerce marketplaces of their own in South Africa by following a different entry strategy to that followed by Takealot. Notably, these B&M retailers have begun operating an e-commerce marketplace without first developing an e-commerce retail offering with significant scale, which was the case with Takealot. This is largely because B&M retailers are able to leverage their existing infrastructure and capabilities to begin fulfilling sales on behalf of business users on an effective and efficient basis, while Takealot first had to develop such infrastructure and capabilities from scratch.

3.19.1.8 While the FSOI suggests that the online offerings B&M retailers may not be able to compete effectively with online offerings of pure e-commerce firms because B&M retailers are at a "cost disadvantage" relative to pure e-commerce firms due to the costs of "legacy B&M stores", this reasoning set out in the FSOI fails to consider the fact that these "legacy B&M stores" generate sales of their own, and presumably generate sufficient revenues through those sales to cover the costs of such infrastructure (otherwise it is likely that such retailers would already have closed their B&M stores). Accordingly, there is no reason to expect that "legacy B&M stores" increase the costs incurred by B&M retailers in respect of online sales relative to costs incurred by pure e-commerce firms. In contrast, B&M retailers are often able to leverage their existing distribution and sales infrastructure in order to compete effectively and efficiently in respect of online sales, without being required to undertake substantial upfront investment in such infrastructure.

3.19.1.9 There are several further examples of firms adopting alternative entry models to those used by established online intermediation platforms and being able to quickly and effectively grow their offerings in competition with more established online intermediation platforms.

3.19.1.9.1 For instance, in respect of grocery delivery, several B&M retailers have leveraged their existing infrastructure and customer base to establish national online delivery services with relative ease (e.g.

Checkers Sixty60, Pick n Pay ASAP, and Woolworths' Dash). Bolt Food leveraged its existing user base in the ride-hailing market to enter into online food delivery services, and Instagram is rolling out its "*Order Food*" button in South Africa, which will enable business users on Instagram to set up an online food ordering service for their business through an Instagram "Food delivery partner".

3.19.1.9.2 It is also possible for aggregators (i.e. sites that scrape listings from other sites and aggregate these listings onto one platform)[16] to establish themselves as classified platforms – as Car Gurus achieved in the America (where it ultimately surpassed the two main vertical classifieds in the market through specific attention to an improved consumer experience). A further example is Indeed, which started its operations as a jobs aggregator site and is now globally one of the largest specialised jobs classifieds platform (which also operates in South Africa).

3.19.1.10 Thus, the available evidence suggests that established platforms face a range of credible competitive constraints from new entrants.

3.19.2 **Competitive constraints from business users' own platforms**

3.19.2.1 The FSOI claims that business users' own websites do not impose a strong competitive constraint on platforms. The primary reasoning it provides for this claim is that business users engage in multi-homing as between their own websites and platforms. In other words, the FSOI asserts that the fact that business users pay to post advertisements for their products on platforms, while also posting those same advertisements

[16] Please note that classifieds platforms are not aggregator sites.

on their own websites, means that the platforms give rise to incremental leads and sales opportunities.

3.19.2.1.1 In particular, in the context of online classifieds, the FSOI states that the only reason business users would have an incentive to pay to list on platforms other than their own websites is that these platforms give rise to leads that cannot be obtained through their own websites.[17]

3.19.2.1.2 Likewise, in the context of food delivery, the FSOI states that restaurants would only incur the cost of operating their own food delivery services while also listing on food delivery platforms if the two options provided access to different sets of sales opportunities.[18]

3.19.2.2 These claims rest on the implicit assumption that accessing different audiences and sales opportunities is the only reason for business users to multi-home. However, in reality there are a variety of reasons why business users may choose to post the same listings on multiple platforms.

3.19.2.2.1 For instance, if the costs of multi-homing are low, then business users may choose to multi-home even if the incremental audience to which they gain access is relatively small. For example, even if prospective buyers tend to browse multiple online classified portals in a particular market, a business user might nonetheless advertise its items for sale on multiple platforms in order to expose its advertisement to as many “eyeballs” as possible. This will

17 See, for example, paragraph 62b of the FSOI.

18 FSOI, paragraph 48.

particularly be so if the cost of advertising on an additional platform is low (compared to the value of the potential sale).[19]

3.19.2.2.2 In addition, business users might choose to multi-home not because they believe it will give them access to a significantly wider audience, but because doing so increases the *intensity* of their advertising. This may create an incentive to multi-home in much the same way as advertisers might wish to advertise on an additional billboard along the same stretch of highway or advertise in multiple advertisement breaks during a given TV show. In these cases, while an additional advertisement might not attract the attention of many incremental "eyeballs", it will increase the exposure of those existing eyeballs to the advertisement in question, potentially increasing the chance of a sale.

3.19.2.3 Accordingly, the mere presence of multi-homing as between business users' own websites and platforms is an insufficient basis to conclude that business users' own websites do not constitute credible alternatives to platforms, or a credible competitive constraint on platforms.

3.20 **Metrics for the assessment of market power of online classifieds**

3.20.1 The FSOI contends that certain online classifieds platforms may have become "must-haves" for business users, and highlights that there may be a number of

[19] The FSOI acknowledges that consumers engage in multi-homing as between different platforms (see paragraph 67). Although the FSOI seeks to underplay the relevance of this multi-homing by stating that consumers only "check" other platforms to test if they have any options, it is important to appreciate that this is the very definition of consumer multi-homing. For instance, if consumers "check" platforms A, B, and C, this means that those platforms have overlapping audiences, and therefore that any of platform A, C or C may generate a lead for a given listing that is posted on all the platforms.

ways to measure the importance of a platform from the perspective of business users. For example, the FSOI states the following:[20]

3.20.1.1 "In measuring the importance of individual platforms, it appears that whilst site traffic is one indicator that is compared, what matters most is the volume and quality of sales leads provided by the platform. Sales leads will flow from the level of consumer engagement with the platform and the number of unique users. Ultimately, market position is also reflected in the price that businesses pay to list on a platform relative to other platforms, so listing price or total revenue is another metric of importance."

3.20.2 A natural starting point in respect of assessing whether a particular platform has must-have status is to identify the most appropriate metric or metrics for evaluating its relative significance. We therefore welcome question 46 of the FSOI, which seeks input on this score.

3.20.3 However, it is important that the Inquiry does not focus its attention on a single metric (as question 46 of the FSOI suggests may be the adopted approach). This is because, while a given metric may be more probative than others in some respects, it may have limitations in others. In particular:

Views / visits

3.20.4 Users of online classified sites face very low barriers to switching from browsing one platform to browsing on another. This means that, in the event that one platform was to seek to deteriorate its competitive offering to users, prospective buyers would be well-placed to simply divert their attention to another site.

3.20.5 In addition, incremental visits to a given platform would not necessarily constitute incremental users to those platforms, given that visits may often be

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[20] FSOI, paragraph 64. Also see paragraph 70.

attributed to returning users. Site visits are therefore likely to provide a misleading indication of the magnitude of the total user base of any given platform (although they may provide a better measure of the intensity of use).

3.20.6 These factors suggest that market shares calculated on the basis of site visits are likely to carry limited probative value and should therefore be treated with caution when attempting to draw inferences regarding platform importance.

Leads

3.20.7 Business users will intuitively be more concerned with the number of genuine potential buyers viewing their products on a particular platform than with the number of people engaging in more general browsing (despite the fact that these two groups would both constitute a source of visits). This provides yet another reason why website visits may not be a reliable indicator of platform importance, and suggests that a more reliable measure would be the number of leads generated by a platform.

3.20.8 However, it should be appreciated that measuring platform importance on the basis of lead generation is still likely to possess potentially significant limitations. In particular, although the generation of a given lead will necessarily involve only one platform, this would not necessarily mean that the business user is reliant on that platform for that lead, particularly in the presence of wide-spread multi-homing and low barriers to switching between different platforms.

3.20.9 For example, an individual seeking to purchase a house might contact an estate agent about a particular house via one platform, but that does not mean that the individual did not browse other platforms and would not have contacted the estate agent about that same house via another platform if the estate agent had not been making use of the first platform.

3.20.10 The implication of this is that, although a business user may generate an appreciable proportion of its leads through a given platform, the presence of consumer multi-homing means that these leads are not exclusive to that platform (or more generally that the leads generated by different platforms are mutually exclusive). The business user might well be able to obtain at least the vast majority of those same leads through other platforms or channels were it to no longer use the platform in question.

3.20.11 Accordingly, while leads may be a better metric for assessing the relative significance of different platforms on the consumer side, they are still likely to be subject to significant limitations and, if anything, can be expected to overstate the extent to which business users are reliant on the platforms in question.

Revenues

3.20.12 The interrelated nature of the demand of customers on each side of the platform means that firms may take differing views on how/whether to earn returns from each side. For instance, one platform might charge more than another to business users, potentially giving it a higher revenue share on that side of the market, while the other platform may opt to keep prices to dealers low in order to maximise listings, and in turn site visits, with a view to deriving more revenues through banner advertising or other forms of on-site advertising. For this reason, the probative value of revenue shares may be limited.

Prices

3.20.13 The FSOI contends that a platform's "must have" status will be reflected in the prices that the platform charges, i.e. that if platform A charges a higher price for listings than platform B, this indicates that platform A is more important from the perspective of business users.[21]

3.20.14 However, the FSOI also appears to claim the relative prices of listings will be informative as regards a platform's market power, i.e. that if platform A charges

21 See the FSOI, paragraph 64.

a higher price than platform B, this indicates that platform A possesses the ability to raise prices above those of platform B.[22]

3.20.15 In this regard, it is important to appreciate that if platforms have audiences of different sizes, the listing products that they offer will not be directly comparable, meaning that it would not be appropriate to compare listing prices directly.

3.20.16 In other words, since the value of a given advertisement from the perspective of a business user will depend on the exposure that the advertisement achieves, a higher price charged by a platform with a larger audience may simply reflect that the audience is larger.

3.20.16.1 By way of example, one would naturally expect it to be more expensive to advertise on a highway billboard as compared to a rural billboard, since the former would likely attract more eyeballs than the latter. However, this would be an insufficient basis to conclude that the owner of the highway billboard possesses significant market power by virtue of a charging a higher price.

3.20.16.2 For this very reason, advertising costs in for example radio or television are often expressed in terms of cost per thousand listeners/viewers.

3.20.17 As set out in more detail below, in practice business users will consider different marketing options available to them (e.g. whether it be different vertical classifieds platforms, or investing in organic or paid search), with a view to maximising the value the receive from the different avenues available to them (i.e. maximising the “bang for their buck”).

22 See the FSOI, paragraph 70.

Profitability

3.20.18 One should also be cautious of drawing market power inferences from a comparison of platform profitability.

3.20.19 This is because there are a host of factors that should be accounted for when assessing profitability, and while many of these are by no means unique to two-sided settings or dynamic markets, they may be particularly acute in such settings.

3.20.20 For instance, it would be important for any such analysis to be grounded in a robust assessment of economic profitability, which, in addition to measuring cashflows, should also take into account the economic value of capital investments and risk (factors that are unlikely to be readily observable through simple accounting measures). That is, it would be insufficient to draw inferences about the existence of market power by taking a snapshot of accounting profitability, because this would not involve a proper consideration of all the relevant costs incurred in order for the firm in question to begin generating profits in the first instance.

3.20.21 Although this is an important consideration in standard one-sided settings, it is an even more critical consideration in two-sided online platform settings given the high degree of dynamism. The fact that a given platform has become profitable will not be indicative of it possessing market power, because the profit it earns may simply be recovering the costs and investments that were incurred while it was loss making (i.e. today's profitable business is yesterday's loss-making business). By the same token, a platform's current lack of profitability would be unlikely to be informative of that platform's potential to become profitable in the future, or to impose a significant competitive constraint on platforms that are currently profitable.

4. ALLEGED COMPETITIVE ADVANTAGES OF ESTABLISHED PLATFORMS

4.1 The FSOI expresses the concern, in various ways, that established platforms are substantially more effective and/or efficient than newer entrants, and can engage in and fund effective competitive strategies that newer entrants cannot, leading to a situation in which those rivals are unable to compete effectively with the established platforms.

4.1.1 For example, in the context of online classifieds, the FSOI states that established platforms may be better placed to invest in marketing efforts, and to generate useful market-related data insights for their customers.[23]

4.1.2 Similarly, in the context of e-commerce, the FSOI notes that "scale will reduce unit costs per transaction, including delivery costs" and that the promotions offered by large platforms may "may reinforce the consumer perception that certain platforms consistently offer the best prices which may result in consumers defaulting to those platforms".[24]

4.1.3 Lastly, in the context of food delivery, the FSOI indicates that large platforms incur losses in order to provide *"excessive promotions"* and that this *"may explain why smaller platforms have not been able to take advantage of the market growth"*.[25]

4.2 As we discuss further in the sub-sections below, there are a number of reasons why the specific issues identified in the FSOI do not provide a clear basis to be concerned that established platforms are such effective and/or efficient competitors that do not currently face, and are unlikely in the future to face, effective competitive constraints

23 FSOI, paragraphs 64, 65, and 70.

24 FSOI, paragraph 15 and 19.

25 FSOI, paragraph 52 and 54.

from newer entrants. However, at the outset it is also important for the Inquiry to appreciate that competition authorities should be particularly cautious about intervening in markets on the basis of certain firms being particularly efficient and/or effective competitors. This is for the following reasons.

4.3 First, intervening on this basis risks of foregoing existing efficiencies, which benefit both consumers and business users (including SMEs) on the platform(s) in question, in an attempt to achieve uncertain and often vaguely defined efficiencies in the long run.

4.3.1 On the one hand, if established platforms are indeed substantially more effective and/or efficient than more recent entrants, then in the short run consumers will accrue direct benefits from a more attractive offering, either through paying lower prices or receiving a higher quality product/service. In turn, this will attract more consumers to the platform, thereby benefiting business users on the platform, including SMEs.

4.3.1.1 For example, the FSOI is concerned that established delivery platforms provide “excessive promotions” to consumers. However, such conduct clearly enhances consumer welfare through lower prices and is also likely to attract more consumers to the platform, to the benefit of restaurants.

4.3.1.2 Similarly, the FSOI is concerned that established online classifieds are better able to generate useful market-related data insights for business users, which clearly enhances the ability of those business users to generate leads through the platform.

4.3.2 On the other hand, if more recent entrants are unlikely to be able to undertake competitive strategies to compete effectively with established platforms, in the long run this could result in adverse outcomes to consumer welfare and business users if established platforms do not face effective competitive constraints (e.g. from one another, as discussed before).

4.3.2.1 However, given the forward-looking nature of such an assessment, the possibility that more recent entrants will not be able to undertake competitive strategies to compete effectively with established platforms is likely to be highly uncertain. This is particularly so in the case of firms that provide innovative services and/or operate according to novel business models, since the types of strategies that more recent entrants may be able to adopt in order to improve their efficiency or otherwise compete more effectively with more established rivals may not be easily identified by competition authorities (or even by newer entrants themselves).

4.4 Accordingly, in order for intervention by the Inquiry on the basis of an efficiency to be warranted and effective, it must be shown with a high degree of certainty that (i) established platforms are not already subject to effective competitive constraints (see above), (ii) established platforms hold a substantial competitive advantage over smaller rivals and prospective new entrants, (iii) rivals and new entrants will be unable to adopt competitive strategies to counteract the competitive advantages of incumbents, and (iv) there are likely to be adverse competitive outcomes relative to the outcomes that would likely have arisen under the counterfactual in which those efficiencies were not achieved by established platforms.

4.5 Where concerns regarding the efficiency of established firms do not meet these criteria, regulation or intervention risks advantaging less efficient competitors at the expense of direct consumer welfare enhancement, and in turn opportunities for business users on the platform, including SMEs.

4.6 Second, regulating firms simply for being efficient and/or particularly effective competitors will likely dampen the incentives for firms to undertake risky investments that would have the potential to improve their efficiency and/or competitive offerings going forward. It would likely also dampen incentives for new entrants to undertake uncertain investments to develop innovative offerings and business models in order to compete with existing firms.

4.7 Such considerations are particularly relevant in the case of firms that provide relatively novel services, based on new technologies and rapidly developing business models and consumer behaviour. This is because the established firms currently providing such services were generally amongst the first firms to begin providing such services (at least in the South African context) and were therefore required to incur material initial and ongoing risks in developing their businesses. Indeed, many of the firms that the FSOI identifies as holding an efficiency advantage over newer entrants are not yet profitable, or have been profitable for only a short period, and thus have not yet had an opportunity to earn a return on those risky investments.

4.8 As a result, intervention on the basis of an efficiency offense that would serve to dampen investment incentives would likely result in a reduction in competition between platforms in the long run, to the detriment of consumers and business users on the platform. It may also make it more difficult for smaller firms or new entrants to obtain financing for novel business models in the future.

4.9 In the sub-sections below we address the specific issues raised by the FSOI regarding the efficiency of established platforms relative to more recent entrants. In each case we show that a proper consideration of the facts does not suggest that established platforms hold an unassailable competitive advantage, and that there are typically a range of strategies available to newer entrants to compete effectively.

4.10 **Advertising**

4.10.1 **Search marketing**

4.10.1.1 The FSOI contends that the scale and profitability of established platforms mean that smaller platforms and other rivals may not be able to compete effectively for online traffic, because they will not be able to match established platforms' expenditure on search advertising (and particularly on Google AdWords). In particular, the FSOI raises a concern that established platforms are able to outspend newer entrants when bidding for paid search placements for relevant key words, and that as a result, newer entrants may be unable to attract sufficient online traffic to their sites.

4.10.1.2 However, while the ability to secure materially more online traffic through search engines could in theory give established platforms a competitive advantage over rivals, this will only be the case if certain conditions are met.

4.10.1.3 First, an implicit assumption underlying the concern raised by the FSOI is that paid search placements are a particularly important source of site traffic relative to organic and direct search results for online intermediation platforms.

4.10.1.3.1 This is clearly an evidential question and cannot be assumed. If platforms can attract significant online traffic through organic search, for instance, then established platforms will not have a material advantage over newer entrants in this regard, even if established platforms are able to secure relatively more traffic through paid search placements. This will particularly be the case if smaller players are able to optimise their SOE structures.

4.10.1.4 Second, the concern raised by the FSOI is implicitly predicated on the assumption that there are only a limited number of important search terms that can be used by online platforms or business users themselves to attract online traffic to their sites, and that established rivals are able to outbid newer entrants in respect of paid placements on those search terms.

4.10.1.4.1 However, if there are a sufficient number of additional search terms that smaller players could identify and use to attract traffic to a site, then newer entrants (or indeed business users themselves) may still be able to attract significant online traffic by bidding on those additional search terms. For example, in the case of online classifieds, a consumer may enter a specific search term relating to a specific region of the country, which means that smaller players, that are active in these particular areas, can bid on particular search terms that are highly relevant to them.

4.10.1.5 Third, a proper consideration of how search advertising works through Google AdWords indicates that scale and profitability will not, in and of itself, lead to a firm being more capable of securing online traffic than its rivals, even if the above two conditions hold (i.e. even if paid search placements are a particularly important source of site traffic, and there are only a small number of search terms that are relevant in this regard). This is for the following reasons.

4.10.1.5.1 Google AdWords are priced on "cost-per-click" basis. Specifically, for a given key word, each potential advertiser submits a bid indicating maximum amount they would be willing to pay for each click they receive on an advertisement displayed when a user searches for that key word.

4.10.1.5.1.1 As a consequence, even if a smaller player were to match the bid of a larger player, that smaller player will not pay the same amount for that key word as the larger player in absolute terms.

4.10.1.5.1.2 This is of course unless both players received the same amount of traffic from that key word. However, if this were the case, the "small player" would no longer be "small", because it would be attracting the same number of site visits as the other (initially larger) rival.

4.10.1.5.1.3 Hence, the cost of bidding for individual search terms is unlikely to act as a material barrier to expansion for smaller players.

4.10.1.5.1.4 This would only be the case if, for some reason, the value of a click is worth less to a smaller player than to a larger player, for instance because the larger player is more effective in converting site visits into sales or leads. However, this is again an evidential question, and cannot be assumed.

4.10.1.5.2 Google allocates more than one advertising slot for a given key word. In general, Google will allocate upwards of three advertising slots for a given search term. Therefore, even if a smaller player does not submit the highest bid for a given key word, this does not preclude it from being able to have an advert displayed for that search term.

4.10.1.5.2.1 It would only be precluded if there were three or more (depending on the number of slots allocated) rival bidders that outbid it, but if this were the case this would imply that any large incumbent would already be facing a number of other competitors. In other words, even if a large platform had a limitless budget, it would only be able to cover one of the available paid positions.

4.10.1.5.3 While the value of players' bids for a given search term will affect the ranking of those players' adverts when a user searches for that term, the ranking of adverts is also based on other factors, including the "quality score" of the player's website. This quality score is based on the relevance to the keyword, quality of the landing page and expected Click-Through-Rate. Thus, through differentiation and innovation, smaller players can still outperform larger players in the ranking of adverts on particular search terms.

4.10.1.6 Therefore, while the ability to secure materially more online traffic through paid search could, in theory, give established platforms a competitive advantage over rivals, in order to assess whether this concern holds in practice it will be important for the Inquiry to undertake an in-depth analysis of (i) the relative importance of paid search advertising for attracting online traffic, (ii) the range of search terms that can be used by players to generate online traffic and whether scale affects a player's ability to identify relevant search terms, and (iii) whether a lack of scale affects a player's ability to build a high quality website and to convert site visits into views/leads.

4.10.1.6.1 That being said, business users use a variety of marketing avenues to advertise their goods and services for sale, that include online classifieds, online marketing (such as Google), own-websites and others, such as out of home media, print advertising etc. Business users have a broader marketing strategy that does not only include online advertising and their decisions are not limited to only using online portals. This is necessary because consumers are likely to consult various sources when browsing to purchase a good or service, including various online sources. It has been observed that consumers are likely to consult online classifieds early on in their purchasing journey in order to assess what product and services are available to purchase and the consumers then collect information that, in many cases, results in those consumers contacting the sellers directly (i.e. not through the classifieds portal where the information regarding a product was initially obtained) when they approach the end of the purchasing journey.

4.10.2 **Conglomerate linkages to media houses**

4.10.2.1 As explained in various previous submissions, Naspers operates a decentralised business model and the business units. Naspers business units do not receive preferential treatment in terms of marketing costs from other Naspers companies merely by virtue of familial relationship. Please refer to the various RFI submission in relation to intra-group contracts.

4.11 **Data**

4.11.1 The FSOI states that online intermediation platforms commonly generate and collect data from users on both sides, namely demand-side data (i.e. relating to the behaviour of prospective buyers on the platform), and supply-side data (i.e. relating to the types and number of listings posted by business users).

4.11.2 The FSOI raises two potential concerns regarding these types of data.

4.11.2.1 The first relates to the ability of platforms to package and sell their data insights to business users as an additional competitive offering, over and above the provision of advertising opportunities.[26] In this regard, the FSOI implies that, if rival platforms are not able to generate and provide similar data products to business users, then this may weaken the competitive positions of these rival platforms.

4.11.2.2 The second concern appears to relate to the ability of larger platforms to use the data that they collect to market to their customers more effectively as compared to platforms that do not generate comparable amounts or quality of data.

4.11.3 In this regard, it is important to appreciate that each of these data applications represents a pro-competitive benefit flowing from normal competition on the merits, where platforms have strong incentives to provide their customers with the highest quality products possible. For instance, if a platform is able to turn the data that it collects into useful market insights, and business users can purchase and use those market insights to enhance their ability to market and sell their own products, then this would clearly be a procompetitive outcome for business users.

[26] See the FSOI, paragraphs 69 and 70.

4.11.4 Accordingly, any inquiry or intervention that focuses on applications of data must properly consider the short-term adverse consequences on consumers and business users in a counterfactual where such applications are more limited (or eliminated altogether). This is especially the case where concerns are speculative, and where the forward-looking nature of the intervention, and dynamic nature of the market, causes the benefits of intervention to be highly uncertain.

4.11.5 As mentioned above, such an assessment should therefore entail a robust economic analysis of whether this aspect of a platform's competitive offering affords it an unassailable competitive advantage, and whether that unassailable competitive advantage is likely to produce adverse outcomes for consumers and business users. In the context of concerns relating to data, this should not only involve an assessment of whether data products and/or applications do in fact materially enhance the attractiveness of a given platform, but also whether other platforms are able to adopt effective counterstrategies.

4.11.6 For instance, if rivals to platform A are able to generate, replicate, or otherwise obtain data that are comparable to the data generated by a platform A, then this would naturally serve to reduce the competitive advantage enjoyed by platform A.

4.11.7 Moreover, larger platforms will not necessarily be better placed to generate attractive / useful applications of data, as the FSOI appears to contend.[27] This is because such a claim rests on the implicit assumption that larger quantities of data will lead to more attractive / useful data applications.

4.11.7.1 However, in reality there may be diminishing returns to data volumes. By way of an example, a platform may be able to generate useful data insights from a comparatively small dataset, as long as that dataset is

[27] See the FSOI, paragraph 69.

large enough to give rise to representative / statistically significant insights. More generally, there may be limited incremental benefits from having even more data points once the dataset being used has reached a certain size, in the sense that more data may not give rise to materially different, and therefore materially more useful, insights. Accordingly, it is critical to understand when such diminishing returns set in, before reaching any conclusion as to the data advantages that may or may not come with scale.

4.11.7.2 In addition, data, in and of themselves, are not useful. Rather, it is a firm's ability to deploy the necessary skillsets to convert data into attractive / useful applications that will determine whether data actually enhance a given platform's competitive position. Since the possession of such competencies does not necessarily correlate with firm size (or may correlate only where firms are very small and no longer correlate once a firm has achieved even a modest scale), and there are unlikely to be material barriers to smaller platforms obtaining these skillsets if they do not possess them already, large platforms will not necessarily be better placed to enhance their competitive offerings through the application of data. In order to conclude otherwise, the Inquiry would need to undertake a detailed analysis.

4.11.8 Notably, in the case of online classified platforms, it is clear in any case that the generation of data insights do not create an unassailable competitive advantage for those platforms that offer data insights. For example, only a very small proportion of vehicle dealers and estate agents purchase data insights from AutoTrader and Property24, respectively. In other words, the business users that purchase these insights do not dominate the business user landscape, which indicates that these products are not critical for business users to participate or compete, and in turn that these products do not create strong or insurmountable incentives for business users to use the platforms in favour of others.

4.12 **Scale and profitability**

4.12.1 The FSOI notes that certain established e-commerce marketplaces and delivery platforms have been willing to accept lower levels of profitability in the short term in order to achieve platform growth. The FSOI, in turn, raises a concern that this may mean that smaller platforms will only be able to compete effectively with established platforms if they are able to secure sufficient capital backing from funders that are similarly willing to accept lower levels of profitability in the short term in order to achieve growth for the platform.

4.12.2 In the first instance, it should be noted that the ability of established platforms to incur lower levels of profitability in the short term in order to achieve higher levels of growth is only likely to harm competition if (i) established platforms are not already subject to effective competitive constraints, and (ii) smaller platforms are not able to secure capital backing that would allow them to pursue a similar growth strategy.

4.12.3 As set out above, there is likely to be effective competition between established platforms, and both e-commerce marketplaces and delivery platforms face a range of additional competitive constraints.

4.12.4 Moreover, the question of whether smaller platforms are able to access capital funding that would allow them to pursue a similar growth strategy to that of established platforms is an issue that the Inquiry should aim to investigate. In particular, this investigation would need to consider why a recent entrant that has a compelling competitive offering would not be able to secure sufficient capital funding to pursue a growth strategy (as distinct from situations where an inability to secure such funding may simply reflect the fact that it would have been unlikely to be an effective competitor even with sufficient capital funding).

4.12.5 In addition, it is important to appreciate that the acceptance of lower profits in order to grow a platform is likely to give rise to substantial efficiencies that benefit both consumers and the business users that utilise the platform. In particular, the acceptance of lower profits in pursuit of growth will typically be associated with lower prices being charged by the platform, the platform providing more promotions to customers, and/or the platform investing to improve the quality of its offering. Such initiatives can be expected to improve not only consumer welfare, but also the sales opportunities available to business users, including SMEs.

4.12.6 Accordingly, the Inquiry should weigh up the potential adverse effects of established platforms growth strategies against the pro-competitive benefits of those strategies.

5. PRICING AND PROMOTIONS

5.1 Price differentials across business users

5.1.1 The FSOI raises a concern that, in respect of food delivery and online classifieds, smaller business users often receive higher prices than larger business users, and this may negatively impact on the "*participation of SMEs and HDP*" business users.[28]

5.1.2 To the extent that differential pricing takes place on these platforms, this is driven in large part by the efficiencies generated by large business users, which benefit both the platform overall and the smaller business users on the platform. These efficiencies arise from the "positive externalities" generated by larger business users, which are a result of the indirect network effects that exist in respect of two-sided platforms.

5.1.2.1 In particular, as set out above, two-sided platforms such as online classifieds and food delivery platforms are subject to indirect network effects, whereby customers on the one side of the platform (e.g. business

[28] FSOI, paragraph 56-57, and 72.

users) benefit from additional users on the other side of the platform (e.g. consumers), and vice versa.

5.1.2.2 As a consequence, indirect network effects give rise to interrelated demand on the two sides of the platform, which in turn give rise to self-reinforcing feedback loops. In other words, conduct that improves the competitive offering on one side of the platform (e.g. business users) will attract more users to that side of the platform, which will in turn make the platform more attractive to users on the other side of the platform (e.g. consumers).

5.1.2.3 Moreover, this positive feedback effect will be self-reinforcing as the subsequent increase in the number of users on the other side of the platform (i.e. consumers) will in turn attract further additional users to the other side of the platform (i.e. business users), and so on.

5.1.3 Indirect network effects are thus an important consideration for the pricing decisions, and other competitive conduct, of two-sided platforms, i.e. because decisions relating to the offering of each side of the platform must also consider the effect on the other side of the platform.

5.1.4 In this regard, it is also important to appreciate that the strength of the indirect network effects exerted by different business users can differ from one user to another based on a variety of factors.

5.1.4.1 For example, in the context of food delivery, the number of new consumers and orders that are generated by a new restaurant listing on a food delivery platform will typically vary depending on, *inter alia*, brand strength and the number and geographic coverage of outlets. Accordingly, larger and/or more established restaurant groups tend to exert a stronger indirect network effect than smaller and/or less established restaurant groups.

5.1.4.2 In turn, this means that larger and/or more established restaurant groups generate relatively higher value to a food delivery platform, both overall and for other restaurants listed on the platform. For example, if a larger and/or more established restaurant lists on a food delivery platform, this is likely to attract new users to the platform who may then also use the platform to order from other, potentially smaller and/or less established, restaurants on the platform. Thus, larger and/or more established restaurants being listed on a food delivery platform can result in smaller and/or less established restaurants making sales that they otherwise would not have made through the platform.

5.1.4.3 The same can be said for online classifieds businesses. In particular, if a larger and/or more established estate agent or vehicle dealer adds significantly to the number of listings an online classifieds platform, this may attract new prospective consumers to the platform or cause users to browse the platform more frequently / with greater intensity. This can, in turn, reasonably be expected to make the platform more attractive to other business users, including smaller business users (and in turn more consumers).

5.1.5 In short, therefore, to the extent that larger business users receive lower prices on two-sided platforms, those differentials may simply reflect the relatively greater efficiencies attributable to larger business users (which also benefit smaller business users).

5.1.6 Notwithstanding the above, as noted by the FSOI, differential pricing could serve to impede the participation of smaller business users that utilise the platform to generate sales. However, this will only be the case if certain conditions are met (and, thus, differential pricing does not represent a concern in and of itself). In particular, in order for differential pricing to impede the participation of smaller business users, the following conditions should hold:

5.1.6.1 First, the higher prices charged to smaller business users should have a material impact on their businesses (either by significantly reducing their margins and/or leading them to charge higher prices and thus lose material sales). This will typically only be the case if the price charged by the platform constitutes a large proportion of the business users' costs (or rather those costs that determine such firms' pricing decisions), as well as a large proportion of potential earnings from a sale.

5.1.6.2 Second, smaller business users' sales made through, or as a result of leads from, the platform in question must constitute a material proportion of those business users' overall sales. This is because, if the platform in question is responsible for generating only a relatively modest number of incremental sales for the smaller business users, then what the platform charges smaller business users (and, indeed, whether smaller business users utilise the platform at all) will not have a material impact on these business users' overall profitability. In turn, this would mean that it is unlikely that differential pricing by the platform would serve to inhibit the ability of smaller business users to undertake investments or expenditures that would improve their competitive offering vis-à-vis their larger rival. In fact, provided those business users make positive gross margins on sales generated by the platform, those sales will still make a contribution to the business users fixed costs and improve their overall profitability.

5.1.6.3 Third, business users should be unable to replace the leads (and in turn sales) generated by the platform in question through other, not substantially less profitable, means. Logically, if there are alternative means through which business users can generate sufficiently profitable sales, then the higher prices charged by the platform in question would not necessarily impede the ability of those business users to participate effectively.

5.1.6.4 Fourth, the profits of smaller business users generated through the platform, under a scenario of differential pricing, should be materially lower than the profits those smaller business users would generate through the platform in question under the counterfactual in which that platform charged uniform prices to all business users. This is particularly relevant given the efficiencies generated by differential pricing described above, as this suggests that uniform pricing by the platform may mean that the platform generates fewer sales overall, including for smaller business users.

5.2 Promotional listing opportunities and search ranking

5.2.1 The FSOI raises a concern that the "pay-for-position" or "promotional listing" opportunities available to business users, as well as other opportunities that allow business users to pay to influence their search ranking on platforms, may impede the ability of SMEs to participate effectively on e-commerce marketplaces, delivery platforms, and online classifieds platforms, if SMEs are not able to match the expenditure of larger business users on such promotional opportunities.[29]

5.2.2 Promotional listing opportunities of this kind could in theory serve to impede the participation of smaller business users that utilise the platform to generate sales. However, this will only be the case if certain conditions are met (and, thus, promotional listing opportunities do not represent a concern in and of itself). In particular, in order for promotional listing opportunities to impede the participation of smaller business users, the following conditions should hold:

5.2.2.1 First, promotional listings should substantially increase the sales / leads generated by business users on the relevant platform, relative to other types of listing on the platform. This is because, if there is not a substantial

[29] FSOI, paragraphs 22, 58, and 73

benefit to business users from promotional listings , then even if smaller business users are unable to take up such opportunities, this is unlikely to affect smaller business users' sales, and thus their ability to participate effectively.

5.2.2.2 Second, the costs of promotional listings should be large relative to the overall costs of smaller business users, as well as relative to the anticipated benefits (i.e. the incremental profits from additional sales brought about by the paid placement). If promotional listings account for a for a small proportion of a business users' overall costs, it is difficult to see how smaller business users would be precluded from making use of such promotional opportunities, and thus how these could adversely impact on the ability of smaller business users to participate. Moreover, even if the costs of promotional listings are large relative to the overall costs of business users, if those promotional listings generate sufficient incremental profits to the business user, then it is difficult to see how smaller business users would be precluded or disincentivised from making use of such opportunities.

5.2.2.3 Third, business users that are unable to make effective use of paid placements must also not be able to deploy effective strategies to enhance their attractiveness of the listings in other ways, for example by improving the quality of their listings through their own efforts (e.g. higher quality photographs and descriptions).

5.2.2.4 Fourth, it is important to consider the relevant counterfactual. This is because paid promotions provide a means through which platforms can offer different quality services to different business users based on the value that different business users derive from the platform. Absent an ability to offer paid placement opportunities, the counterfactual may well be that the platform charges a higher price for standard listings, leaving those business users that do not use (or make more limited use of) paid placements worse off. Alternatively, the platform may reduce the quality of the service it provides to all business users. In either case, it is far from clear that the participation of smaller business users would be improved under such a counterfactual.

5.2.3 In addition, it is important to consider platforms' incentives to provide an unfair or unbalanced treatment to business users, given the interrelated demand from customers on either side. If a platform were to restrict the participation of a certain group of business users, this would reduce the quality of the platform from the perspective of consumers, leading to a reduction in the use of the platform. This would, in turn have a further negative effect of the demand from business users.

5.2.4 Accordingly, it is unlikely to be incrementally profitable for platforms to engage in practices that exclude or restrict the participation of a certain group or groups of business users.

ANNEXURE "A" – RESPONSES TO SPECIFIC PARAGRAPHS OF THE FSOI

1. ECOMMERCE MARKETPLACES

Platform landscape and trends

1.1 Paragraph 9

1.1.1 Paragraph 9(a): The Commission states that the ecommerce marketplace model, where no distribution service is offered, poses risks to a platform in terms of their ability to control the customer experience and that this is managed through service level agreements. This only serves to highlight the advantage to sellers on ecommerce marketplaces that do provide fulfilment services, because they do not have to invest in infrastructure and marketing and manage consumer facing service delivery themselves.

1.1.2 Paragraph 9(b): The Commission substantially downplays the risk in operating a marketplace (such as the marketplace offered by Takealot.com) that also offers distribution services and is clearly of the view that the benefit in this model is mostly to the platform in being able to offer a wider variety of products. The Commission does not appear to appreciate that the benefit to sellers in this model is that they are likely to benefit from the investment risk borne by the marketplace operator without taking on this risk themselves – in other words, sellers are relieved of a highly intensive customer-facing distribution function (not to mention not having to deal with customer care, incur IT costs etc.) and are also only required to comply with certain set service levels.

1.1.3 The Commission also fails to highlight the benefits to the sellers and the considerable infrastructure, marketing and distribution investment made by the platform in order to offer this service to sellers. The Commission does not acknowledge the fact that the service levels in place in this model might be stringent but are also aimed at ensuring a greater and more consistent customer experience is offered (to the benefit of the seller).

1.2 Paragraph 12

1.2.1 The Commission states the following: *"The preliminary evidence suggests that eCommerce marketplaces and pure online retailers have a disproportionate* *share of online sales in most product categories relative to the B&M or supplier online portals."* This is unsurprising because B&M retailers have to date focused largely on their B&M activities, and have been slow in converging with ecommerce, and this should not be indicative of the existence of a separate online market. The continued focus by B&M retailers on their B&M activities is not revealing of any specific benefit to online retailers and rather suggests that B&M retailers understand well that for the time being consumers continue to do the bulk of their shopping in-store. The Commission's suggestion that ecommerce platforms can "potentially outspend B&M stores marketing to online consumers" suggests that the Commission has taken the view that the "online consumer" is a different creature to the consumer that shops B&M retail, which is patently incorrect. It is also not clear what evidence the Commission relies on to suggest that ecommerce retailers may be able to outspend B&M retailers to market to this "online consumer". In any event, as already explained in our main submission, it is not necessarily true in all cases that the ability to source materially more online traffic through search engines will give established ecommerce platform a competitive advantage over rivals. The conditions required for this to be the case are set out in the general comments.[1] It is in any event also not clear whether any of the so-called "strong advantages" of ecommerce retailers versus B&M retailers are advantages at all, or if they are simply the natural outcomes of firms with different strategic focuses, which the Commission indirectly acknowledges at para 12(b). In this respect the Commission's attention is drawn to the marketing spend of large, listed B&M retailers (for example Pepkor) and the returns achieved by B&M retailers despite not being prolific in the online space. The Takealot Group has previously highlighted the increased spend by traditional B&M retailers into developing and marketing their ecommerce platforms (e.g. TFG, Massmart, Mr Price, Woolworths and the Pick n Pay Group). It seems intuitively unlikely that Loot.co.za, for example, has access to more marketing capital than any of these firms. Traditional B&M retailers are increasingly ramping up their total ecommerce presence.[2] It is also not always true that access to capital is required for any platform to be able to compete for online visibility.

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[1] See the section of our main submission in respect of "Search Marketing".

[2] See the latest news concerning Massmart: https://www.moneyweb.co.za/news/companies-and-deals/massmart-in-advanced-negotiations-to-buy-onecart/.

1.2.2 The Commission further considers specific product categories and notes that online retailers have an advantage over B&M retailers in certain categories (such as electronics, appliances, books, sportswear, beauty & health) by being able to offer a wider brand and product range. It is submitted that the ability of online retailers to offer a wider variety of products within product categories (especially product categories that are well-suited for online purchases) is not indicative of a separate market existing either for online retail or for specific product categories.

1.2.3 The Commission states that online retail is becoming an important sales channel and supplier bargaining power is informed by the level of competition between online platforms. It observes that SMEs are likely to have limited bargaining power relative to larger brands. This, of course, would seem logical insofar as supply to an ecommerce retail business is concerned, but it does not follow that SMEs do not have equal access to marketplaces or that they cannot elect to establish their own online presence (despite the marketing and infrastructure investment required). The bargaining power of SMEs will also depend on the number and efficiency of all other alternatives available to them, including other sales channels (such as their own B&M retail stores, selling to traditional retailers or operating their own websites). The importance and attractiveness of these other sales channels will also be informed by the SME seller's products or product categories.

1.3 Paragraph 13

1.3.1 The Commission mentions that Takealot.com has a substantial share of all ecommerce in South Africa and even more so when only ecommerce marketplaces are considered. The Commission should provide an explanation of the data that its observation is based on in order to enable stakeholders to appropriately engage with the FSOI. In the absence of transparency in respect of (i) market definition; (ii) assessment of closeness of competition; (iii) market share data sources; (iv) market share data calculations; and (v) the Commission's preliminary assessment on market shares, stakeholders are not able to engage insightfully with the Commission's preliminary views. Stakeholders are left to "read between the lines" on how the Commission has assessed these very relevant aspects of the market inquiry and speculate in respect of the comments to be made to the Commission to inform is analysis of complex issues.

1.3.2 It should be noted that these are global markets. The digital economy spans across geographic territories and the relevant markets in which South African digital platforms compete are often not simply national in their scope. This is confirmed by the fact that Takealot.com faces competition from the largest ecommerce platform in the world, Amazon (which is building a R4 billion office park in Cape Town),[3] and Africa's largest ecommerce platform, Jumia.

1.3.3 In addition, these markets exhibit low barriers to entry and expansion for global big tech firms. The Commission itself notes that the domestic leader PriceCheck has rapidly been overtaken by Google Shopping since its launch in 2017. Similarly, OLX has faced strong competition in South Africa by global players such as Facebook Marketplace and Gumtree (part of the eBay group of companies) in the online classifieds space. Facebook Marketplace achieved substantial growth, which came at the cost of existing players and could not be matched through any organic growth of the market. MrD Foods already competes with UberEats. These provide examples of big tech's reach and power and their ability to enter the market. Examples of the relative ease with which technology firms are able to enter into new geographic markets, including South Africa, is the competition Takealot.com faces from Amazon and Jumia, as indicated above. .

Platform competition

1.4 Paragraph 14

1.4.1.1 Naspers business units do not receive preferential treatment in terms of marketing costs from other Naspers companies merely by virtue of familial relationship. Please refer to the various RFI submission in relation to intra-group contracts.

1.4.1.2 Naspers further emphasises (as has been previously stated in Naspers' submissions on the SOI) that the Naspers business units do not share information with other Naspers business units. Naspers has a

[3] The FSOI confirms that "*Amazon still has substantial sales into South Africa*…"

decentralised approach to the structure of its companies, a federated data structure and does not have a unified data sharing model for the exchange of data and information between business units. Its businesses operate largely independently of one another, have separately incentivised operational management teams and there are very few dependencies between businesses. This stands in stark contrast to many other global online operators which operate under a centralised management regime, frequently freely sharing data between business units and using the data to grow existing businesses or develop new businesses. For example, the Takealot Group does not share any consumer data with Naspers or any other Naspers Group company.

1.4.1.3 It should be noted, though, that companies in the Naspers Group may share internal business data with other group entities for financial accounting purposes, but this data is completely anonymised. This information is not monetised or utilised in any manner to target consumers for advertising or products. Although the privacy policies of the Naspers Group companies permit the sharing of customer information within the Naspers Group, including personalised information such as cell phone numbers, this information is, in fact, not shared between the companies in the group. The reason for the inclusion of these provisions in the privacy policies is to allow for anonymised consumer data (including cookies, IP addresses and locations) to be made available to Google Analytics (only) for analysing consumer behaviour on an aggregated and anonymised basis (and is not used for targeted online advertising as this is not how ad intermediation works).

1.5 Paragraph 15

1.5.1 The Commission states that scale is important in order to be competitive in the market and to reach scale, platforms may sacrifice profits. However, as already pointed out in our main submission, scale in and of itself is not a particularly good indicator of a firm's market position and its ability to constrain rivals.[4] It is also worth noting that in markets that are dynamic or prone to disruption (such as ecommerce markets), pre-existing scale is not a reliable indicator of either

[4] See the section of our general comments in respect of "Scale and credible entry and expansion".

the effectiveness of existing competition or the likelihood that a small, innovative new entrant will be able to challenge an incumbent. It should in any event be noted that Naspers is not unique in its ability to capitalise its ecommerce retail subsidiaries and to note that other firms, such as Loot.co.za, have competed effectively for longer than Takealot.com without the backing of an investor with the profile of Naspers.

1.5.2 The Commission implies that platforms require deep pockets to fund their losses until they reach scale and that firms without that funding will exit. This contention is not entirely correct.

1.5.3 Even where there is a clearly identifiable market leader, this is not in itself undesirable. There are outcomes where markets remain contestable and potential entrants ensure that the market is competitive, despite only a small number of active firms.[5] Three factors ensure that this is the case by facilitating entry of potential competitors. First, the total number of users in the market is increasing. This makes it easier for potential entrants to compete for users, since new users are not yet locked into existing networks. Second, if changes in user preferences are related between users, potential competitors can easily gain market share by adapting to updated preferences. Third, the existence of local network effects may render tipping less prolonged since less coordination is necessary to switch.

1.6 Paragraph 16

1.6.1 The Commission's interest in platforms offering a wide range of products at competitive rates, and the relationship with suppliers is misguided to the extent that the Commission views this as having an impact on competition. The Commission faces a "chicken/egg" issue with whether a retail offering by a platform provider is necessary to ensure a successful ecommerce platform:

1.6.1.1 Takealot.com's model sought to "build a market (place)" by starting as a retailer and establishing consumer trust in the business, and thereafter making that market, and Takealot.com's brand, available to marketplace sellers. The Commission must recognise that Takealot.com entered into an underdeveloped ecommerce market in South Africa which required it

[5] Tipping: should regulators intervene before or after? A policy dilemma.

to first make investments to establish retail relationships with suppliers and an online customer base – which has only been to the benefit of marketplace sellers who were able to step into a platform with a large audience and enduring consumer trust. Of course, that is not to say that all ecommerce retail businesses will follow Takealot.com or that they must. Ecommerce has evolved since then which means that a new entrant does not necessarily have to follow Takealot.com's strategy;

1.6.1.2 the information available to the Commission shows that some pure marketplace platforms such as Loot.co.za and BidorBuy have been able to compete without having first operated a retail offering or having any retail supply relationships with brand owners. Indeed, brand owners and/or traditional retailers themselves are also able to leverage their existing customer bases and establishing their own marketplace platforms if they so wish, without first needing to make the same investments that Takealot.com did to establish retail relationships and an online customer base for its business. This is the case with, for example, Makro and the JD Group. Accordingly, it is not clear that relationships with brand suppliers have any impact on platform competition;

1.6.1.3 in any case, brand owners and suppliers may have various commercial reasons for preferring to distribute products via resellers rather than on marketplace platforms, which results in the possibility that those brands may not be available on pure marketplace platforms. That is as valid a choice that product suppliers can make for their own businesses, just as it is a pure marketplace platform's choice not to also retail its own products if the platform does not believe that this is required for it to be competitive. The Commission acknowledged a lack of exclusivities on marketplace platforms and so there would seem to be no barriers for any pure marketplace platform from establishing relationships with brand suppliers and signing them up to their pure marketplace platforms, or from establishing their own retail supply relationships with brand suppliers if they so wished.

1.7 Paragraph 17 & 18

1.7.1 The Commission has not identified exclusivity concerns for branded consumer products, however, there are concerns regarding exclusive product launches. On the Commission's own version, these platform exclusivities do not prevent brand suppliers and marketplace sellers from selling the products on their own websites, other marketplace platforms or B&M channels. It would therefore follow that these exclusivities are only relevant to competition between marketplace sellers on the same platform and therefore should not have a bearing on competition between marketplace platforms themselves.

1.7.2 The Commission also notes that platforms use price parity clauses which restrict marketplace sellers from pricing more favourably on their own websites relative to the marketplace platform. These are widely referred to as "narrow" price parity clauses, as compared to "wide" price parity clauses which prevent the marketplace seller from offering better terms on any other sales channel. The Commission raises concern with the potential effects of price parity clauses since such clauses have been considered to have anti-competitive effects elsewhere including travel and accommodation platforms. We assume that this is a reference to wide price parity clauses. Takealot.com only has narrow price parity clauses in place. It is difficult to see what effects, if any, these narrow price parity clauses have for marketplace platform competition. These issues are elaborated on further in various Takealot Group submissions.

1.7.3 The Commission notes that the narrow price parity clauses that it has come across have not been enforced, and then notes that it has not seen any evidence that marketplace sellers understand that these clauses will not be enforced. The Commission does not, however, suggest that it has seen any positive evidence that marketplace sellers do not understand these clauses at all. If it is assumed (as it must be) that marketplace sellers understand the contracts between them and marketplace platform service providers, it stands to reason that marketplace sellers understand that narrow price parity clauses only relate to their conduct on their own ecommerce stores and no other sales channel. It is therefore not clear how the enforcement of these clauses (or a marketplace seller's understanding of this) will assist the Commission in determining the relevance of narrow price parity clauses to marketplace platform competition.

1.8 Paragraph 19

1.8.1 Naspers appreciates the Commission's desire to understand the role of advertising and promotions. It should be understood that lower prices directly benefit consumers. The use of discounting and promotions is not a novel concept in retail, and it is a legitimate, pro-competitive strategy used by all retailers (including B&M retailers). Promotional discounting also clearly enhances consumer welfare through lower prices, and is also likely to attract more consumers to the platform to the benefit of all business users (including SMEs and HDI owned firms) of the platform.

1.8.2 Marketing or advertising improves resource allocation. It improves market transparency by spreading information about products and services. This information helps consumers to compare products and make better choices. Furthermore, it cannot be assumed that high levels of advertising in a market necessarily always constitutes a significant barrier to entry. The literature shows that there are a number of reasons why it might still be expected that there will be effective entry into a market with high levels of advertising.

1.8.3 In fact, there is significant statistical evidence of an enduring positive effect of high levels of industry-wide advertising outlays on the entry of firms hoping to exploit the benefits of such generic advertising. Thus, a high level of industry-wide outlays on advertising can increase the likelihood of entry.[6]

1.8.4 For new entrants, one way of avoiding advertising barriers is to concentrate advertising efforts in a target market (e.g., a smaller geographic area). In this way, small entrants might reach the same level of advertising, only in a target market. Once established, the scope of activities can be extended.

1.8.5 Another strategy would be to seek out a market segment with low advertising elasticity, i.e. a market segment where consumers are hardly influenced by advertising.

1.8.6 Advertising can both be a source and a symptom of differentiation. Advertising contributes to brand identity and has been found to be the primary source of

[6] Harrigan, 1981.

product differentiation in consumer-goods industries.[7] Product differentiation is normally not a barrier to entry; only if the costs of differentiation (design, advertising, etc.) are higher for a new firm than an existing firm.[8]

1.8.7 Based on the above, it is clear the Commission cannot simply assume that high levels of advertising expenditure in a market is a barrier to entry, but must rather investigate the market to see whether it is truly the case.

1.8.8 Marketing spend may also provide insight into the features of the market – specifically if it has tipped or not. If a firm is investing very little in advertising, yet experiencing growth in demand in the short term, it may be an indication of a market that has tipped. On the flipside, this suggests that high advertising expenditure can also be consistent with the market still being highly contestable.

1.8.9 Furthermore, there are no statutory barriers to entry. Some capital expenditure and technical knowledge is required to establish an online business, the level of which will depend on the retailer's strategy and whether or not it intends to grow a local or national footprint. A new online retailer will also require capital for marketing costs, which will also vary depending on the retailer's growth strategy. These will similarly be lower for firms with established reputations, for example, B&M retailers (or other traditional businesses such as banks and telecommunication businesses) with an existing customer base. The capital cost and marketing investment requirements to establish a vertical ecommerce retail store for a small, local business will be considerably lower than those for a national horizontal ecommerce retailer for whom the capital costs are significant.

1.8.10 However, none of these barriers are insurmountable for many firms. We have highlighted the ease with which traditional B&M retailers (such as Wal-Mart owned Massmart, TFG and Pick n Pay group) have been able to leverage their national footprint and existing customer bases to establish national ecommerce retail businesses. Making available an existing ecommerce retail business to third party sellers does not require establishing a new or different business which requires additional investment.

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7 Comanor and Wilson, 1967

8 Stigler (1968).

1.8.11 Moreover, to the extent that venture capital funds are willing to fund innovative ideas even in markets that are already dominated by a platform, entry barriers are not prohibitively high, as new platforms may enter with tailor-made offerings for niche audiences.

Business user competition and treatment (incl. SMEs)

1.9 Please refer to the submissions that have been made concerning the Commission's lack of jurisdiction to consider business user terms and conditions as being fair or unfair. The comments that follow are subject to the reservations that have been set out.

1.10 Paragraph 23

1.10.1 The Commission notes that terms and conditions for ecommerce platforms are largely standardised and, accordingly, cannot be negotiated. It is important for the Commission to note that it would be highly inefficient for ecommerce platforms to negotiate terms and conditions with every single seller. It should be noted that the seller's position is not any different than selling products through other online retailers. Even in the case of other online retailers, the terms and conditions are largely standardised and cannot be negotiated. This is also a significant step to ensuring that larger brands which use marketplace platforms as a sales channel do not leverage their greater bargaining power to negotiate better terms with marketplace platforms than their smaller competitors on the same marketplace platforms.

1.11 Paragraph 25

1.11.1 The Commission is of the view that smaller third-party sellers are dependent on ecommerce marketplaces for online sales, because they cannot afford alternative channels or invest in the marketing necessary to gain an independent presence. Implicit in this acknowledgment is that those risks and investments are taken on by marketplace platforms at no small cost. The Commission identifies certain risks that may be passed on to sellers by platforms but fails to acknowledge that third-party sellers cannot have it both ways – they cannot have affordable access to a marketplace platform's consumer base, infrastructure, marketing and distribution investment without themselves taking any risks at all for the functioning of this supply ecosystem.

Furthermore, the dependence of smaller third-party sellers on ecommerce marketplaces is relative. It may be the case that smaller marketplace sellers are dependent on marketplace platforms for incremental sales (there is significant sales channel multi-homing), but they are unlikely to go out of business without marketplace platforms, particularly if they traded prior to joining a marketplace. This is a particularly important point considering that ecommerce retail was forecast by Euromonitor and Takealot to account for around 2.7% of total retail sales in 2021. In any event, smaller marketplace sellers are not entitled as a matter of inalienable right to access marketplace platforms. These platforms have not been built with public funds, they are not public utilities and if their terms were actually onerous then they wouldn't be so popular with marketplace sellers. Marketplace sellers with existing businesses simply would not have joined or would not have stayed on the platform if it didn't make commercial sense for them to be there.

1.12 Paragraph 26

1.12.1 The Commission indicates a desire for SME/PDI support programmes on platforms.

1.12.2 Naspers has previously made submissions to the Inquiry emphasising the importance of South Africa creating an enabling environment for companies to develop.[9] Central to creating an enabling environment is providing support to South African companies that are attempting to innovate. Further, the Report of the Presidential Commission on the Fourth Industrial Revolution (the "Presidential Report")[10], which recommends that support for Small and Medium Sized Enterprises ("SMEs"), is required to enable SMEs to become globally competitive industrial players. In this regard, the Presidential Report notes that enabling ease of global competitiveness and expansion is essential. Naspers fully supports this recommendation and views Foundry, its South Africa-focused technology SME funding initiative, as a model that achieves this recommendation. Naspers' support for certain findings of the Presidential

[9] See Naspers' response to the Statement of Issues dated 30 June 2021.

[10] Available at: https://www.gov.za/documents/report-presidential-commission-4th-industrial-revolution-23-oct-2020-0000

Report and for the President's call for companies to commit to investing in South Africa resulted in Foundry's R1.4 billion early-stage business funding initiative.

1.12.3 In its efforts to further enable the local investment environment in SMEs, Naspers invested capital into the SME Fund, led by Ketso Gordhan and chaired by Adrian Gore. Most listed companies have contributed to the SME Fund, with Naspers making the largest contribution.

1.12.4 Takealot.com also provides considerable support to all of its marketplace sellers and has focus programmes in place for some; in fact, it has every incentive for every marketplace seller to be as successful as possible on its platform.

1.13 Question 9 – 13

1.13.1 The Takealot ranking algorithms do not self-preference its own offerings. Takealot has no incentives to self-prefer or, for that matter, to prefer any specific manufacturers or brands, as this will decrease the consumer experience and affect traffic to its platforms.

2. DELIVERY PLATFORMS

Platform landscape and trends

2.1 Paragraph 47

2.1.1 The Commission notes that restaurant food delivery is the largest component of online deliveries, and that operators have used their position to expand into different delivery categories. It is stated that there are fewer incidents of the converse happening (i.e., other delivery categories moving into restaurant delivery). Naspers encourages the Commission to consider submissions made by Takealot.com and MrD Food (para 10.29 of Takealot.com's first submission of 2 July 2021) that show various examples of firms in adjacent markets, particularly in Brazil, establishing food delivery services to compete with restaurants and third-party operators. The Commission also does not acknowledge the South African examples of firms in adjacent markets which moved to food delivery (Bolt Food, Instagram, Quench and Nedbank's Avo app) and the ease with which restaurant grocery delivery (Checkers Sixty60, Bottles and Dash) can expand into food delivery. Massmart's intention to acquire

OneCart, a food delivery business, to expand its non-food ecommerce offering is another example.[11]

2.2 Paragraph 48

2.2.1 The Commission states that despite increased demand due to the Covid-19 pandemic, there has not been a material change in the number of competitors or market structure. Further, the Commission is of the view that there are conflicting views on whether or how restaurant own delivery competes with the delivery platforms. It is unclear how the Commission conducted its assessment and reached its conclusions. In the absence of such transparency, it appears that the Commission is reaching certain conclusions despite contrary submissions, data and information being submitted. As detailed in previous Naspers group submissions, there has been new entry into restaurant delivery platforms, including entry from grocery delivery platforms and other platforms. The Commission's assessment of the number of food delivery platforms, their market shares and the impact of increased demand may present incorrect conclusions as the market is dynamic and changing.

2.2.2 It seems that the Commission has not considered whether the incremental increase in order volumes offsets the costs that restaurants pay and that in a world without platforms the restaurants may not have to spend the commission but also will become less efficient and serve fewer meals impacting on employment, drivers and their suppliers. The Commission also does not seem to consider the fact that delivery platforms enable restaurants to greatly out-serve the number of "eat-in" customers that their restaurants can accommodate, and they do not incur the costs of needing to have larger premises and more wait staff.

2.3 Paragraph 50

2.3.1 Consumers benefit greatly from the competition between the platforms to sign up restaurants and draw in consumers. This manifests in the wider variety of products to which consumers now have access, lower prices (particularly as a result of promotions), stable and good platform technology as well as effective and fast delivery (where applicable). Consumers benefit from a convenient and

11 https://www.massmart.co.za/massmart-in-talks-to-acquire-onecart/.

high-quality experience at lower prices than would have been the case absent the competition between the platforms.

2.3.2 The feedback effect further drives the quality of platforms: if consumers are not satisfied with the quality of a specific platform, they will simply switch to one of its competitors. Should that happen, the platform loses the positive feedback effects, making it even more important to retain consumers with a high-quality platform.

2.3.3 With Covid-19 taking away a large number of job opportunities, online delivery is one of the few industries that saw an increase despite lockdown regulations. In addition, deliveries offered jobs in a time when many instead lost their jobs. Drivers can multi-home to further expand their income.

2.3.4 This speaks to the ease of switching between platforms. For consumers, the apps for the different platforms can be downloaded for free, or similarly the websites can be accessed for free, with very little effort needed to switch between platforms and no impediments to multi-homing.

2.4 Paragraph 51

2.4.1 The Commission states that explicit exclusivity clauses with restaurants do not appear to be prominent. Restaurants may multi-home, but there is some resistance – the reason for this not being clear to the Commission but may include fees, reward and commission structures and administrative effort. Further, the resistance to multi-homing is seen as a barrier to entry and expansion as large national chains are not willing to contract with smaller domestic delivery platforms. The Commission has noted some resistance by restaurants to multi-home on food delivery platforms which may stem from various considerations by the restaurants themselves. Importantly, the Commission acknowledges that the platforms themselves have not placed any barriers for restaurants to do so. The existing and larger delivery platforms do not include exclusivity provisions and do not prevent restaurants from multi-homing. It is not the obligation of the existing platforms to incentivise restaurants to contract with smaller domestic delivery platforms.

2.5 Paragraph 52

2.5.1 The Commission notes that consumers also multi-home and this results in increased marketing spend and that the impact of promotions as a form of marketing is not clear, although smaller platforms have indicated that they cannot sustain the "deals" offered by the larger platforms. The Commission speculates that delivery platforms are loss-making for this reason. Setting up a national food delivery platform is only sustainable and can be profitable only with sufficient order volumes, for which promotional discounting may be required to increase site visits and orders. This is a feature of a platform business model in certain circumstances.

2.5.2 The counterfactual – where firms don't discount – is that the platform has lower order volumes, which means fewer restaurants on the platform which then ultimately leads to no food delivery platforms, a patently worse outcome for consumers and SMEs. That being said, it is not inconceivable that smaller platforms can develop locally and obtain scale at local level and then grow regionally or nationally.

Business user competition and treatment (incl. SMEs)

2.6 Paragraph 59

2.6.1 The Commission wishes to assess the fairness of terms and conditions in the business user contracts – especially in respect of risk related to incorrect orders and returns. Naspers is of the view that the Commission simply has no jurisdiction over this subject.

3. ONLINE CLASSIFIEDS

Platform landscape and trends

3.1 Paragraph 61

3.1.1 Online classifieds deal in providing advertising exposure (with the ultimate aim of generating transaction leads) rather than sales, and typically specialise in a particular product category. Traffic appears to be driven by internet research. The Commission is focusing on automotive and property classifieds as important to lead generation for business users (dealerships and estate agents).

The Commission implies that there is concentration in these classifieds markets and would like to understand if there are other growing platforms of relevance. Naspers wishes to state in this regard that -

3.1.1.1 It is undeniably preferable for a classifieds platform to gain the trust of users as a mechanism for seeking to grow its audience. Sometimes this trust has already been established in an adjacent product market. Facebook Marketplace, for example, was able to quickly gain the trust of millions of users for its integrated classifieds platform (precisely because those consumers were already Facebook users). Although Facebook Marketplace has only entered certain product categories, it is gaining prevalence in the automotive and property product categories and it is likely to grow in these areas (although it may not be able to immediately match the offering provided by vertical platforms in South Africa to business users). We do not suggest, however, that it imperative to have an existing user base to establish a classifieds platform.

3.1.1.2 Advertisers and consumers also use alternative methods to advertise and browse for products and services. There is a prevalence of buying groups and sites in communication apps like WhatsApp that are widely used. Furthermore, Facebook Marketplace itself arose from the use of social media users of the platform to create buying and selling groups. Facebook identified the opportunity to enter the classifieds space due to this consumer behaviour and subsequently launched its Facebook Marketplace integrated classifieds offering.

3.2 Paragraph 62

3.2.1 Banner advertising is generally used as part of a classified's monetisation strategy (i.e., to earn revenues). Banner advertising is either placed directly by an advertiser with the relevant website or platform, or banner advertising space is sold via Google to third parties (in which instance Google contracts with the relevant third-party advertisers that utilise the banner advertising space to place their advertisements). Where an advertiser purchases banner advertising on a classifieds platform it usually operates in a related market to the product categories that the vertical classified specialises in. In other words, the banner advertising is not targeted to specific consumers, but rather generally to the consumer base that visits the platform. Where banner advertising space is sold via Google, the platform does not have control over the banner advertising that is shown to a specific user as this is driven by Google's algorithm. The Naspers group does not have the capability or need to replicate Google's targeted advertising algorithm – as this advertising service is effectively offered by Google.

3.3 Paragraph 63

3.3.1 The Commission mentions C2C platforms such as FBM, OLX and Gumtree but notes that it does not have evidence that these platforms are effective substitutes for vertical classifieds. Naspers submits that authorities have considered these issues and found that vertical and horizontal classifieds compete in specific product categories.[12] For example, business users use horizontal classifieds to advertise goods and services for sale in addition to using horizontal classifieds and other marketing avenues. This is true, amongst other product and good categories, in respect of property rentals (including room rental and temporary rentals) where Gumtree, for example, has a substantial presence.

3.3.2 It is not clear if the Commission only excludes C2C listings from its assessment, but it appears that the Commission has not considered B2C listings on horizontal platforms – something that is difficult to quantify. Naspers would caution the Commission from excluding horizontal classifieds to argue that the vertical classifieds are dominant and face little competition and, accordingly, to impose certain restrictions.

Platform competition

3.4 Paragraph 66

3.4.1 Naspers is of the view that it is not correct for the Commission to assert that existing platforms have a greater ability to effectively market their platform offerings (through Google Ads, ATL brand advertising and promotion of apps).

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[12] The Commission posited this broader market definition in the merger involving We Buy Cars Proprietary Limited and this was accepted by the Competition Tribunal. It is worth noting that the European Commission has also ostensibly accepted this broader market definition. See https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848

The ability to market and the availability of capital to do so is not only available to existing operators and new entrants have the ability to undertake the same marketing efforts. Capital is not necessarily required for a small platform to market effectively, however: as explained in the main submission, this is mainly because Google AdWords are priced on a “cost-per-click” basis, which means that even if a smaller player were to match the bid of a larger player for a given search term, that smaller player will not pay the same amount for that key word as the larger player in absolute terms (unless both players received the same amount of traffic from that key word, in which case the “small player” would no longer be “small”).

3.4.2 While new entrants will require investment for marketing, recruiting staff and acquiring infrastructure to fund the business until the classifieds platform can become sustainability profitable, once this funding is obtained, a competitor can be operational in the online market within only 12 months.

3.4.3 Note that it is not necessary for an online classifieds platform to have interests in traditional print media as part of its business offering (e.g., through print advertising) and the relationship between print media and online advertising is a historical one that arose from the need for print media updates to innovate and adjust to the growth, prevalence and importance of the online market.

3.4.4 Technology, obtaining listings, infrastructure and regulatory requirements do not pose significant barriers to entry. The technology to create a classifieds platform is not difficult to build and the classifieds operator should be able to attract listings if it offers a compelling value proposition.

3.4.5 Technical infrastructure is no longer a barrier due to cloud hosting products such as Amazon Web Services and Microsoft Azure. Prior to cloud hosting, substantial investment had to be made into the technical infrastructure as well as the management of the hardware, implementation of security measures and general operation of the infrastructure – which is now all outsourced to the cloud hosting provider, eliminating the barrier.

3.4.6 For example, in the UK www.onthemarket.co.uk (a property classified) was launched very quickly in 2015 and since then has grown to become the third largest property platform in the UK.

3.4.7 As mentioned previously, it is also possible for aggregators (i.e., sites that scrape listings from other sites and aggregate these listings onto one platform) to establish themselves as classified platforms – as Car Gurus achieved in the United States (where it ultimately surpassed the two main vertical classifieds in the market through specific attention to an improved consumer experience). A further example is Indeed, which started its operations as a jobs aggregator site and is now globally one of the largest specialised jobs classifieds platforms (and which also operates in South Africa).

3.5 Paragraph 67

3.5.1 The Commission notes that multi-homing by consumers takes place over certain platforms but does not necessarily include smaller platforms. It is not clear which platforms the Commission included in the assessment, but it is clear from the previous statements that own websites are excluded, which may not be an entirely correct approach.

3.5.2 The existence of significant multi-homing means that the barriers to switching from using one platform to another are very low for both advertisers and browsers. This applies not only to platforms across which consumers already multi-home but also those across which customers do not, since it implies that barriers to multi-homing are low. This factor undermines any potential for an individual platform to exert significant market power. Advertisers on specialist platforms especially (but not exclusively) engage in significant multi-homing across different platforms, and by the ease with which the prospective buyer can browse different websites on the internet.

3.5.3 The existence of significant multi-homing is also likely to further enhance contestability and reduce barriers to expansion and entry, features that are generally accepted to undermine the probative value of market shares even in traditional one-sided markets.

3.5.4 The significant extent of multi-homing by advertisers on specialised platforms is to be expected in light of a number of features of the platforms' business model. In particular:

3.5.4.1 the pricing strategy of most platforms is such that advertisers pay a fixed monthly subscription fee in exchange for the publication of classified listings. Hence, once an advertiser has decided to list at least one listing on a platform, in most cases it faces limited incremental cost of listing more or all of its products;

3.5.4.2 the cost that an advertiser would incur as a consequence of multi-, rather than single-homing is extremely small relative to their revenue earned from the sale of the product;

3.5.4.3 some platforms have implemented their own software innovations to integrate listing directly with their own sites as well as facilitating easy uploading for advertisers to multiple platform sites. This is especially the case in respect of property classifieds. As such, listing with an additional platform is unlikely to be particularly difficult or time-consuming for agents, given that they can make use of a single piece of software to upload onto multiple platforms; and

3.5.4.4 multi-homing is not prevented by any contractual barriers or capacity constraints. The contracts concluded by Property24 and AutoTrader do not contain exclusivity clauses with regard to classifieds listings, and their durations tend to be relatively short (as explained below).

3.6 Paragraph 68

3.6.1 <u>Exclusivity and multi-homing</u>

3.6.2 None of the customers who advertise properties on Property24 are subject to any exclusivity agreements with Property24. Subscription packages or bundles of promoted listings can be cancelled on one month's notice.

3.6.3 Property24's pricing structure has proven to provide value to its paying advertising customers (estate agents). It is estimated that an estate agent would traditionally be spending approximately 10% of their earnings (i.e., from the commissions earned on the sale of properties) on marketing (including print media). Property24 represents a small percentage of that traditional spend and it approximates that it accounts for between 1.5% and 2% of estate agents' earnings – which is substantially lower than the traditional spend by estate agents and far below the global benchmark for marketing spend by estate agents.

3.6.4 None of the customers who advertise their vehicles on AutoTrader are subject to any exclusivity agreement with AutoTrader, and they commonly advertise the same vehicles on a number of different online platforms such as Cars.co.za, Carfind.co.za and Gumtree at the same time. All customers are also entitled to terminate their agreements with AutoTrader on one calendar months' notice.

3.6.5 <u>OLX as a natural experiment for monetisation</u>

3.6.6 OLX started operating in South Africa in 2011. OLX is a successful consumer-to-consumer (C2C) in many other markets, notably across Southeast Asia and Europe.

3.6.7 From commencing its operations in South Africa, OLX has invested significantly in marketing, platform and technology development and initiatives to make its platform more attractive to both advertisers and browsers.

3.6.8 After significant investment, OLX was able to gain a foothold in South Africa and it was able to become an effective rival to Gumtree. Gumtree was OLX's main horizontal classifieds competitor. Gumtree has a slightly longer history in South Africa than OLX, and it is larger in terms of both content and audience.

3.6.9 Despite significant investment, OLX did not achieve enough scale and liquidity to effectively pursue monetisation strategies that would have resulted in it operating profitably and sustainably. A digital business cannot satisfy all of its financial needs through merely monetising its offering – if it does not have enough traction in the market.

3.6.10 OLX's growth was, however, halted by the entry of Facebook Marketplace into the classifieds market in South Africa in 2018. Facebook Marketplace achieved a meteoric rise in the market through substantial and fast paced growth. This growth came at the cost of existing players and could not be matched through any organic growth of the market.

3.6.11 Both OLX and Gumtree saw a substantial decline in both content and audience with the entry of Facebook Marketplace into the market. As mentioned above, Facebook Marketplace was able to leverage the user base from its social network operations to its classifieds offering, as well as data collected from rivals, and quickly grew from strength to strength – now being the largest (by some margin) horizontal classifieds operator in South Africa.

3.6.12 In 2020 the number of listings on OLX was approximately 40% lower than it was three years prior, which is attributable both to competition from Gumtree and the growth of Facebook Marketplace. Horizontal classifieds operating in South Africa face various challenges in attracting users, including a lack of trust in online classifieds platforms in South Africa, which Facebook Marketplace has been able to overcome more successfully than OLX (or Gumtree).

3.6.13 This is a clear example of how the position of an ostensible successful operator does not place it in an infallible position. Competition in the two-sided classifieds markets is fierce and the fate of an operator can turn quickly.

Listing software packages and costs

3.6.14 Property24 offers its PropCtrl Online listing and agency management software that enables professional advertisers to manage stock of sale and rental properties, list directly to Property24 and other websites, receive and process Property24 leads directly in the system, match contact details and properties using it's the matching tool, track marketing activity, maintain a database of potential buyers and tenants, manage property sale deals and keep track of transfer processes and various administrative functions. Listings are either captured directly into the Property24 system using the PropCtrl Online management software or listings are fed into the Property24 system via Application Programming Interface (API) through which computer systems or estate agency owned systems can integrate into the Property24 system. Private owners capture listings through the Manage Online system. Property24 aims to make it as easy and effortless as possible for advertisers to upload their listings to the Property24 platform.

Business user competition and treatment (incl. SMEs)

3.7 Paragraph 71

3.7.1 The Commission notes that classifieds do not necessarily compete with business users on the platform in terms of listings (with the exclusion of Private Property).

3.7.2 Property24 faces competition from various vertical and horizontal classifieds platforms, including Private Property. Private Property is a specialist property platform that is partially owned by various large and other estate agency groups (though a holding entity, Emerging Africa Property Holdings Proprietary Limited (EAHP) (c. 30%)), two bond originators (Betterlife and Ooba (each holding 9.5% in Private Property)) and forms part of the Caxton & CTP Publishers & Printers Limited (Caxton) group (through Cognition Limited, which holds a 50.01% interest in Private Property).

3.7.3 Accordingly, the various estate agents have an interest in one of Property24's main competitors but continue to see the value in advertising on Property24 and engaging in multi-homing – despite having the ability and an incentive to move their listings exclusively to Private Property and then receiving the benefit from increased advertising (and subscription payments) on the platform in which these estate agents have an interest. This competitive threat results in Property24 making continued efforts to improve its platform for both estate agents and potential property purchasers or renters and ensuring that its products and services are priced in a manner that creates value for its users.

3.7.4 If one of the other property verticals improved its user interface and experience, and as a consequence grow their audience, it is highly likely that multi-homing for both advertisers and property buyers would become even more prevalent. This is because the cost of advertising properties on an online platform is extremely economical for estate agencies, particularly relative to value received if the user experience is satisfactory. In other words, Property24 understands well that its market has not tipped, and likely cannot. It is driven to enhance user experience and provide greater value addition because of the ease with which advertisers and browsers can switch, the incentive of the estate agency industry to prefer the platform in which they have a significant ownership interest and the likelihood of third-party platforms bettering their offerings.

ANNEXURE "B" – COMMENTS ON BUSINESS USER SURVEY

1. INTRODUCTION

1.1 The OIPMI has designed two online surveys that are intended to "*[solicit] the views and experiences of business users of online intermediation platforms operating in South Africa*".[1] The use of statistically robust survey results, based on surveys that are designed according to well-established principles that are directed at producing responses that are unbiased and reliable, can provide a useful tool for facilitating objective decision making in a market inquiry process. However, it is widely accepted that if a survey does not conform to such well-established principles of survey design, then the results from those surveys are likely to be unreliable and potentially misleading; little or no evidential weight should be attached to the results from such surveys.[2] [3]

1.2 In this regard, there are a number of aspects of the OIPMI's business user surveys that suggest that the responses to these surveys are likely to be biased and/or unreliable, and will therefore not provide reliable results upon which to base the findings and recommendations of the OIPMI. These issues with the OIPMI's surveys are set out in further detail below, along with suggestions on how each issue could be effectively addressed.[4]

2. BIAS IN RESPECT OF PARTICULAR QUESTIONS

2.1 Survey results may be prone to bias due to the way questions are phrased and/or ordered, which can often skew responses towards a particular outcome. These issues can be particularly relevant in the context of surveys used in competition

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1 FSOI, para 7.

2 CMA (May 2018). *Good practice in the design and presentation of customer survey evidence in merger cases* (the "CMA Guidelines"), page 24, paragraph 3.1. Available at: https://www.gov.uk/government/publications/mergers-consumer-survey-evidence-design-and-presentation.

3 Hurley, S. (2011). The use of surveys in merger and competition analysis. *Journal of Competition Law and Economics, 7(1), 45-68. Available* at: https://academic.oup.com/jcle/article-abstract/7/1/45/750969?redirectedFrom=PDF

4 The discussion of these issues is focusses principally on the contents of OIPMI's second (i.e. most recent) business user survey. However, the OIPMI's two business user surveys are relatively similar in substance (i.e. have questions that cover the same topics, and are phrased and ordered similarly), and the main difference between the two surveys is that he original survey generally allows for more open-ended responses (rather than the selection of responses from a closed list of options) and the first survey asks whether the respondent would like to remain confidential and asks for the name and contact details of the person responsible for completing the survey (while the second survey simply states that the responses are confidential and does not ask for personal details of the respondent). Therefore, the observations regarding the potential sources of biases and/or unreliability in the responses to the survey set out below generally apply across both versions of the OIPMI's business user survey.

investigations, such as market inquiries, given that such surveys often require (or at least request) respondents to make nuanced assessments in formulating their responses to (often hypothetical) changes in specific market conditions, or in relation to contexts or concepts that they do not engage with on a regular basis.

2.2 Indeed, as noted by the United Kingdom's Competition and Markets Authority ("CMA"), survey design in the context of competition law investigations "*requires particular attention to specific (and sometimes small) details to help obtain reliable and valid customer survey evidence*" and that "*bias in response[s] [can be] caused by imprecise or leading question wording, or ordering of questions*".[5]

2.3 As set out in the sub-sections below, the questions contained in the OIPMI's business user surveys are likely to be subject to a number of well-established sources of survey bias. If left unaddressed, these aspects of the survey design will render the responses to the OIPMI's business user surveys biased and unreliable.

2.4 **Availability and anchoring bias**

2.4.1 Availability bias is a form of survey bias that can arise when respondents base their responses upon the evidence that is most readily or easily available to them rather than on the most relevant or accurate evidence.[6] Similarly, anchoring bias can arise when respondents base their responses too heavily on a particular reference point, or "anchor", which is often informed by the first or most recent piece of information they receive on a topic.[7]

2.4.2 Although surveys may invariably suffer from this bias to some extent due to the cognitive heuristics inherent in the way individuals respond to questions, the risk of availability and anchoring bias adversely affecting survey results can be materially increased through survey design.

2.4.3 In particular, the ordering of questions in a survey can mean that the information provided to respondents in earlier questions influences respondents' answers in subsequent questions (and thus results in responses to the subsequent

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5 CMA Guidelines, page 24, paragraph 3.1.

6 Catalogue of Bias Collaboration, Banerjee A, Nunan D. Availability bias. In: Catalogue of Bias 2019: www.catalogbias.org/availabilitybias.

7 Cho, I., Wesslen, R., Karduni, A., Santhanam, S., Shaikh, S., & Dou, W. (2017, October). The anchoring effect in decision-making with visual analytics. In *2017 IEEE Conference on Visual Analytics Science and Technology (VAST) (pp. 116-126)*. IEEE.

questions that differ from those that would be provided if there was an alternative ordering of the questions). For this reason, the CMA Guidelines caution that ""*[i]t is important to carefully consider the order of individual questions […] to avoid influencing answers to later questions by earlier ones*".[8]

2.4.4 Availability and anchoring biases are likely to be a particular issue in respect of Questions 11 to 13 of the OIPMI's second business user survey.

2.4.4.1 Question 11 (which asks about the percentage of the business user's sales/leads that are generated through different channels), provides respondents with a short list of major platforms by platform type (e.g. in the case of delivery platforms the survey lists UberEats, MrD Food, Bolt Food, and "Others"). This may prime the respondent to give more weight to these platforms than (or potentially even to the exclusion of) other platforms or sales channels when answering both the specific question and questions that follow. This effect is exacerbated by the fact that Question 11 includes a catchall category "Others" for platforms that are not listed. This may lead respondents to perceive any unlisted rivals as insignificant.

2.4.4.2 The next two questions in the survey (i.e. Questions 12 and 13) require respondents to opine on alternative sources of sales/leads, which may include options that are not current sources of sales/leads. However, the preceding question may lead respondents' answers to be anchored around the consideration of a limited number of platforms, which may, in turn, mean that respondents to fail to consider all potential sources of sales/leads.

2.4.4.2.1 In respect of Question 12 (which asks how quickly the business user could replace the sales/leads from online platforms with sales/leads through their own website/delivery service or traditional sales channels), this may bias the respondent to overstate how long it would take to replace these sales/leads.

2.4.4.2.2 In respect of Question 13 (which asks about the business user's dependency on the main platform they utilise), this may lead the

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[8] CMA Guidelines, page 25, para 3.4.

respondent to overstate their dependence on the main platform they utilise.

2.4.4.3 In addition, Question 12 asks business users how long it would take them to replace *all* sales/leads from *all* the platforms they utilise through only their own website/delivery service or traditional sales channels. This may prime respondents to give less weight the sales/leads that could be generated through alternative platforms. In turn, this may bias respondents to overstate their dependency on the *main* platform they utilise (as a result of discounting the sales/leads that could be generated through alternative platforms).

2.4.5 Availability and anchoring bias can be addressed by carefully considering the factors that will inform respondents' answers to a particular question, and then ensuring that the ordering of the questions is unlikely to affect or anchor respondents' consideration of those factors.

2.4.6 In the context of the OIPMI's second business user survey, availability and anchoring bias could be addressed by ordering Question 13 before Question 12, and Question 12 before Question 11. In addition, it may be advisable to place these questions non-consecutively and, unless strictly necessary, examples of specific platforms should not be included in the survey questions.

2.5 Acquiescence bias

2.5.1 Acquiescence bias can arise in instances in which a respondent responds to a question in a particular way because, given the way in which the question is phrased, they feel as though should agree to particular answers.[9] An example would be where a respondent feels that if they do not select a particular answer this would reflect poorly on them. Such bias can result in a material skewing of responses in favour of the answers to which respondent feel they should agree. Indeed, acquiescence bias is highlighted by the CMA Guidelines as a particular concern in the context of survey evidence used in competition investigations.[10]

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9 CMA Guidelines, page 26, para 3.11(a).

10 CMA Guidelines, page 26, para 3.11(a).

2.5.2 Acquiescence bias is likely to arise in respect of a number of the questions included in the OIPMI's second business user survey. In particular:

2.5.2.1 Question 20 ask the respondent to indicate if they "*absorb the costs of fees/commission*" or "*pass these costs onto consumers*" (as opposed to simply asking respondents how they account for fees/commission when setting prices on a platform). Respondents may believe it would reflect poorly on them if they indicate that they pass on these costs to customers and thus be more likely to indicate that they "*absorb*" these costs regardless of what they actually do in practice.

2.5.2.2 Question 22 asks the respondent how they price across different sales channels. Respondents may believe that it reflects poorly on them if they do not price "consistently" across channels, and instead charge higher prices for products sold through certain sales channels or platforms. Therefore, business users may be more likely to respond that they charge uniform prices across channels, irrespective of the pricing strategy they adopt in reality.

2.5.2.3 Question 48 asks the respondent if, when a platform terminated further use of their platform by the respondent, certain conditions were met. The first of these conditions asks if there was a "clear violation of the terms and conditions" by the business. Respondents may consider that it would reflect poorly on them to admit that they "clearly violated" the platform's terms and conditions, and thus may be less likely to indicate that this condition was met regardless of whether it was met in practice.

2.5.3 In general, acquiescence bias can be addressed by ensuring that questions are phrased in as neutral a way as possible, and in manner that does not suggest that a particular response is more appropriate than any other response.

2.5.4 Accordingly, acquiescence bias could be addressed in the OIPMI's business user survey by reformulating the way in which these questions are asked. In the case of Question 20, business users could instead be asked how fees/commissions affect their prices, without making reference to the effect of prices on customers. In the case of Question 22, the respondent could instead be asked how they price across platforms and sales channels, as opposed to asking the respondent if they price "consistently". Similarly, a more neutral way of phrasing Question 48 would be to ask the respondent what the reason for the termination of contract was, rather than explicitly asking the respondent if there was a "clear violation" on the part of the business user.

2.6 **Hypothetical bias**

2.6.1 Hypothetical bias refers to a situation in which a respondent may indicate a willingness to change behaviour when given a hypothetical scenario that does not reflect their likely real response to the situation described. As noted by the CMA, questions that pose hypothetical scenarios to respondents "*are inevitably subject to this bias [and] this should always be carefully considered when interpreting findings based on them".*[11]

2.6.2 Hypothetical bias is likely to arise in respect of Question 12 and Question 24 in the OIPMI's second business user survey. In particular:

2.6.2.1 Question 12 requires that the respondent place themselves in a completely hypothetical position where all online platforms are removed and asks the respondent how long it would take to replace sales/leads from online platforms. It is uncertain that respondents will account for all of the relevant considerations underlying this question, and thus that respondents will answer in a way that reflects a realistic outcome. For example, prior to answering the question, respondents may not have considered the steps they could take to replace sales/leads through traditional sales channels, or the actions they could take to increase traffic to their own websites.

2.6.2.2 This issue is further exacerbated by the fact that it is likely that respondents will view sources of sales/leads statically, and thus underestimate the dynamic sources of sales/leads that would be available to them should they stop using a particular sales channel. For example, if a business user utilises two main sales channels which have a significant overlap in customers/audiences, then it would be wrong to expect that all sales/leads generated through the one sales channel would be lost if it stopped utilising that sales channel. This is because, in light of the customer/audience overlap between the two sales channels, it is

[11] CMA Guidelines, page 27, footnote 16.

likely that a significant proportion of those sales/leads could immediately be replaced through the other sales channel.

2.6.2.3 Additionally, the question poses a particularly exaggerated hypothetical situation in which a respondent would need to replace *all* sales from *all* online platforms (rather than just a proportion of sales from just one platform), which makes it even less likely that the respondent will provide a realistic response.

2.6.2.4 Question 24 asks the respondent how they would price across sales channels in the absence of restrictions and (dis)incentives to price uniformly across platforms. However, when making such pricing decisions, business users will likely need to account for a host of factors (e.g. differences in customer demand and price sensitivity across sales channels, the fees/commissions charged by other platforms, and the contract terms of other sales channels) in addition to the pricing restrictions/(dis)incentives of their current platform. It is unlikely that in answering this question, the respondent will account for all such relevant considerations (unless explicitly prompted to do so) and thus is unlikely to give an answer that accurately reflects their likely actual pricing conduct in such a situation.

2.6.3 The bias inherent in hypothetical questions means that such questions should be avoided as far as possible. However, where hypothetical questions are unavoidable, hypothetical bias can be minimised by clearly setting out all of the relevant considerations that are encapsulated in the hypothetical scenario being posed. Hypothetical bias can also be minimised by rooting the hypothetical scenario within the context of the respondents' recent experience (for example, when asking customers questions regarding diversion ratios customers are generally explicitly told to consider the last time they purchased the product under consideration).[12]

2.6.4 Accordingly, hypothetical bias in the OIPMI's second business user survey could be addressed in the following ways.

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[12] CMA Guidelines, page 35, para 3.42.

2.6.4.1 First, the questions that contemplate hypothetical scenarios should prompt business users to consider their sales or pricing decisions over a particular recent time period. For example, in the context of Question 12 respondents could be asked to consider how quickly the sales/leads generated through a platform over the last month could be replaced. The realism of the hypothetical scenario posed under Question 12 could also be improved by asking respondents how long it would take them to replace the sales/leads generated from the main platform they utilise (as opposed to all platforms they utilise). In the context of Question 24, respondents could be asked to consider the prices they set in the past month and how these might have differed if the pricing restrictions or (dis)incentives in place over that period were removed.

2.6.4.2 Second, the questions that contemplate hypothetical scenarios should prompt respondents to consider all of the economic factors that are likely to materially affect firms' decisions in such scenarios. For example, in the context of Question 12, respondents could be explicitly told to consider all of the alternative sales channels and platforms available to them, as well as any overlaps or differences in the customer bases they are able to reach through different sales channels or platforms.

2.6.5 In the context of Question 24, respondents could be told to consider only the existing platforms that they already use (to avoid the case of a "double hypothetical" that involves the business user first hypothesizing taking up a new platform, and then hypothesizing how they might price on that new platform), differences in sales/leads volumes across platforms and sales channels, differences in commissions/listing fees across platforms and sales channels, and the restrictions and disincentives put in place by other platforms and sales channels relative to those put in place by platform under consideration.

2.7 Status quo bias and inertia

2.7.1 Status quo bias refers to an individual's tendency to maintain their current or previous decision or behaviour.[13] A related concept identified in behavioural economics is decision inertia ("inertia"), which refers to the persistence of a

[13] Samuelson, W., & Zeckhauser, R. (1988). Status quo bias in decision making. *Journal of risk and uncertainty, 1(1), 7-59.* Available at: https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.632.3193&rep=rep1&type=pdf

given decision or outcome due to individuals' tendency toward inaction (i.e. tendency to stick to the status quo).[14] Such bias can arise in the context of surveys when respondents default towards answering questions on the basis of maintaining existing behaviour, regardless of whether they would in fact be willing and/or able to change their behaviour in practice.

2.7.2 Status quo bias and inertia are likely to be a particular issue in respect of Question 13 of the OIPMI's second business user survey. Question 13 asks the respondent to rate their dependency on the main platform that they utilise. A respondent may overstate their dependency on a platform if, in considering what alternatives they have to the platform, they overweight the importance of the current set of sales channels/sources of leads that they use and ignore or underweight the potential set of alternatives sales channels they might make effective use of in the event that they stopped using (or reduced their use of) the platform that currently accounts for the largest proportion of their sales/leads.

2.7.3 Similarly to the case of questions subject to hypothetical bias, status quo bias can be addressed by avoiding hypothetical questions (which are generally the type of questions that require a respondent to rely on defaults) as much as possible, and clearly setting out all of the relevant considerations that are encapsulated by the hypothetical scenario. Questions may also contain "warnings" that specifically nudge respondents away from relying on their defaults.

2.7.4 Status quo bias could therefore be mitigated in Question 13 of the OIPMI's second business user survey, by explicitly instructing respondents to consider the factors that are relevant in determining a business user's dependence on a platform when answering the question. For example, the question could be rephrased along the following lines: "*Considering <u>all</u> alternative sales channels <u>(including both your own website, traditional sales channels, and other</u>*

[14] Meyer, R. and Kunreuther, H. (May 2018) *The Ostrich Paradox: Why We Underprepare for Disasters. University of Pennsylvania Issue Brief* Available at: https://riskcenter.wharton.upenn.edu/wp-content/uploads/2019/03/Ostrich-Paradox-issue-brief.pdf See also https://www.behavioraleconomics.com/resources/mini-encyclopedia-of-be/inertia/ [accessed on 21 September 2021].

platforms), how dependent is your business on the platform for generating sales/leads?".

2.7.5 However, it should be noted that there also are a number of issues other than status quo bias associated with Question 13. As discussed in sub-section 2.4 above, Question 13 is likely to be subject to availability and anchoring bias due to the ordering of the questions in the OIPMI's business user survey. As discussed in sub-section 4.1.6 below, "dependency" is inherently a subjective term that is likely to lead to the responses to the question being unreliable. The question is also implicitly based on a hypothetical scenario, but is not contextualised within a respondent's experience, or otherwise made tangible, and is thus likely to be subject to hypothetical bias (see sub-section 2.6 above). It is therefore very unlikely that the responses to Question 13 will be unbiased and reliable.

2.7.6 Moreover, Question 11 (which asks about the percentage of the business user's sales/leads that are generated through different channels) and Question 12 (which asks how quickly the business user could replace the sales/leads from online platforms that they utilise) already ask respondents about the factors that are likely to be determinative of a business user's dependency on a platform. Accordingly, there would appear to be a strong case in favour of disregarding Question 13 altogether.

2.8 Framing bias

2.8.1 Framing bias refers to the way in which decision makers (i.e. respondents) may respond inconsistently to questions of identical substance, based purely on the way the question is framed/posed.[15] It is therefore possible that a question could be framed in a manner that leads respondents to answer in a particular way irrespective of whether that answer is reflective of reality. Indeed, *"[a] well-known difficulty in survey research is that respondents may answer survey*

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[15] Tabesh et al. (2019). *Individual and contextual influences on framing effect: Evidence from the Middle East.* Available at: https://journals.sagepub.com/doi/full/10.1177/0306307019851337. See also https://www.sciencedirect.com/topics/medicine-and-dentistry/framing-bias [accessed 16 September 2021]

questions in ways that are systematically related to arbitrary features of the survey's design, such as the way questions are worded".[16]

2.8.2 A particular issue in this regard is that respondents tend to answer differently when questions are framed in a negative versus a positive way, and tend to weigh losses (negatives) more heavily than gains (positives) in their decision making.

2.8.3 For example, in the case of the second OIPMI's second business user survey, framing bias is likely to be especially prevalent in Question 28. Question 28 asks the respondent to assess whether certain contract terms are "fair" and "clarifies" what is meant by "fair" by providing the respondent with the definition of "*un*fairness" (rather than fairness). This may prime the respondent to base their consideration of the contract terms around "unfairness" and thus lead to a greater number of respondents indicating that contract terms are unfair than would be the case if the question was phrased more neutrally, or if instead the question provided a definition of "fairness".

2.8.4 Framing bias can generally be avoided by formulating questions using more neutral and objective terms, so that the respondent is not influenced to "*express an opinion or fact that is not a proper representation of their views or behaviours*".[17] Providing definitions of terms can also be used to reduce framing bias, although care should still be taken to ensure that definitions are provided in objective terms.

2.8.5 In the case of Question 28, more neutral framing could be achieved by asking whether the business user is subject to contract terms that mean that it is required to bear costs for actions over which it does not have direct control – which is one aspect of the definition of "unfairness" provided in the survey.

2.9 Identification of credible alternatives and restrictive bias

2.9.1 There is a risk that OIPMI's second business user survey will not provide any credible indication of the extent of the competitive constraints acting on existing platforms and/or the set of credible alternatives to an existing platform that are

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16 Goldin, J., & Reck, D. (2015). *Framing Effects in Survey Research: Consistency-Adjusted Estimators.* Available at: https://law.stanford.edu/wp-content/uploads/2016/06/framing-effects-2_25_15.pdf

17 CMA Guidelines, page 26, para 3.10.

available to business users. This is because there is only one question in the survey that asks respondents about the alternative sources of sales/leads to which business users could turn in the absence of the online platform(s) they utilise, but the question in framed in manner that is likely to artificially restrict the set of alternatives to existing platforms

2.9.2 In particular, Question 12 asks the how long it would take a business user to replace *all* sales/leads from *all* online platforms, through their own website and traditional sales channels. However, it is not necessary for a business user's website or traditional sales channels to replace *all* sales/leads currently generated by *all* platforms in order to those alternatives to represent effective competitive constraints to a particular platform. Equally, the survey does not ask business users how easily they could replace sales/leads generated by one platform with sales/leads from another platform, and fails to consider the competitive constraints that existing platforms impose on one another.

2.9.3 Accordingly, the manner which Question 12 is set out is biased in the sense that it is based on an implicit assumption regarding the set and scale of the alternatives that are able to exert credible competitive constraints over platforms (without testing this assumption through the survey). This could be addressed by instead asking respondents their ability to replace a material proportion of sales/leads generated from the main platform they utilise (rather than *all* sales/leads generated through *all* the platforms they utilise). Indeed, this was done to a greater extent in the OIPMI's first survey which also included a question asking the business user if sales/leads from one platform could be easily replaced other platforms used by the business.[18]

2.9.4 In addition, the CMA Guidelines highlight that there is a risk of restrictive bias occurring "*where the question leads the customer to think only of certain options*", and that this bias will arise if there is not "*an explicit encouragement in the question wording to respondents to consider all options*".[19] Thus, in order to provide a credible indication of the set of credible competitive constraints faced by platforms, Question 12 should not only identify all of the potential alternatives available to business users, but should also explicitly tell

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18 This question appears as Question 17 after answering "Yes" to Question 10 in the OIPMI's first business user survey.

19 CMA Guidelines, page 26, para 3.11(b).

respondents to consider all of those alternatives when answering the question. For example, Question 12 could specifically prompt respondents to consider the sales/leads they could generate through their own websites, traditional sales channels, as well as any other platforms or third-parties that they may sell through.

3. SAMPLE SELECTION BIAS

3.1 Irrespective of the structure and content of the survey, there are likely to be inherent biases in the responses of the survey due to selection bias. This is because the survey is relatively long (counting 51 questions in total, with an estimated time to complete of 20 minutes) and has a number of questions that are difficult to interpret (see sub-section 4.1 below). Accordingly, it is likely that the most aggrieved business users will have a greater incentive to respond to the survey (simply because material time/effort is required to complete the survey).

3.2 This means, in turn, that rather than the sample of survey respondents being representative of all business users that utilise a particular type of platform, it is likely that aggrieved parties will be over-represented in the responses. In other words, the survey is likely to be answered by a biased sample of business users simply because of the length of the survey (and not necessarily because it was sent to a sub-set of business users that are more likely to complain, which is the most obvious source of concerns regarding sample selection bias in surveys).

3.3 This issue could be addressed (at least in part) by shortening the business user survey in order to maximise response rates across a types of business users. This is consistent with the CMA Guidelines, which notes that "*[i]f one type of customer is more likely to respond to the survey than another, the achieved sample will misrepresent the population […and], therefore, the survey design should include strategies to maximise the response rate and to minimise the risk of significant non-response bias*".[20]

3.4 Indeed, shortening the business user survey would also likely increase the quality of the survey results more generally. This is because, as noted by the CMA Guidelines, "*[c]are should be taken not to burden the respondent with a survey that is too long*

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20 CMA Guidelines, page 15, para 2.20.

[since] [t]he quality of responses will deteriorate if the questionnaire is too detailed and time-consuming to answer”.[21]

3.5 Apart from outright removing less relevant questions from the survey, one way in which the survey could be shortened is by filtering certain questions so that those questions are only displayed to the respondents to whom the questions are relevant. This is because a number of questions are only applicable to particular groups of business users, but are currently shown to all respondents in the OIPMI’s second business user survey (unlike in the first business user survey which included a filtering function for certain questions).[22]

4. RELIABILITY OF RESPONSES

4.1 Clarity of the questions

4.1.1 In order for a survey to produce reliable responses, as noted by the CMA, “[t]here needs to be consistency in interpretation of the survey questions by respondents to ensure that the views they express are based on a common understanding of the questions being asked. Any scope for ambiguity or confusion in the phrasing of a customer survey question is likely to reduce its evidential weight”. [23]

4.1.2 However, many of the questions in the OIPMI’s second business user survey are worded and/or structured in a confusing manner that makes it difficult for respondents to provide an accurate or appropriate answer. This makes it likely that, unless adequately addressed, many of the responses to the survey will be unreliable.

4.1.3 In order to ensure that the survey results are reliable, it should be considered first, whether respondents are able to understand the question as well as

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21 CMA Guidelines, page 25, para 3.6.

22 In particular, in the second business user survey: Question 7 and 8 apply to accommodation platforms only; Question 9 and 10 apply to eCommerce platforms only; Question 16 applies to Classifieds only; Question 17 applies to meta search only; Question 18 applies to eCommerce, Travel and Apps only; Question 22 applies to respondents who answered 'Neither' to Question 21 only; Question 23 (presumably) applies to respondents who answered 'Restricts', 'Disincentivizes' or 'Both' to Question 21 only; Question 24 applies to respondents who presumably answered 'Restricts', 'Disincentivizes' or 'Both' to Question 21 only; Question 26 applies to respondents who answered 'Yes' to Question 25 only; Question 48 applies to respondents who answered 'Yes' to Question 47 only. Finally, and more generally, if a respondent makes use of no platforms (i.e., Responds 'None' to Question 6 which asks the respondent to indicate which online platforms they make use of), the respondent can still provide answers to all the questions of the survey.

23 CMA Guidelines, page 26, para 3.9.

whether it is likely that the question will be consistently understood in the same way by all respondents; and second, once having an understanding of the question, whether a respondent is able to answer a question in a way that accurately reflects their desired response. This is evidently not the case in many instances throughout the business user survey.

4.1.4 **Incoherent questions**

4.1.4.1 In some instances, the wording and/or structure of a question is likely to make it difficult for a respondent to understand what is being asked. It is therefore likely that the responses given to these questions will be misleading.

4.1.4.2 More specifically:

4.1.4.2.1 Question 14 and 25 ask the respondent if any platforms “require or incentivize” platform exclusivity and promotional activity, respectively. However, whether a platform “requires” exclusivity or promotional activity is clearly very different from whether a platform “incentivizes” such conduct. Therefore, grouping these situations into a single question may mean that respondents are not clear on which the two alternative situations should terms should inform their answers. When analysing the responses to the survey, it will also not be clear how to interpret respondents’ answers (or what the implications of those answers will be for the assessment of competition between platforms).[24]

4.1.4.2.2 Questions 21 asks the respondent to answer “Y/N”, however the available responses are not in “Y/N” format, but rather require that the respondent answers “Restricts”, “Disincentivises”, “Both” or “Neither.” Following this, Questions 23 and 24 begin with “If yes” and presumably relate to Question 21. However, because the answer to Question 21 was not given as a “Y/N” answer, this is ambiguous and may cause respondents to infer Questions 23 and

[24] A similar issue arises in the case of Question 21 which asks if platforms “restrict or disincentivise” differential pricing across platforms and the user's own website. Although the mechanism for answering Question 21 allows the respondent to specify whether the platform “Restricts”, “Disincentivizes”, does “Both”, or does “Neither”, Questions 23 and 24 refer back to Question 21 and group these two terms together.

24 relate to other questions (such as Question 22, which is indeed presented in “Y/N” format). If Question 23 and 24 do indeed follow on from Question 21, they presumably were meant to apply to respondents who answered “Restricts”, “Disincentivises” or “Both” to Question 21 only.

4.1.4.2.3 Question 43 to 46 ask the respondent about the extent to which the terms and conditions they consider unfair (as identified in their responses to Questions 28 to 42) impact different areas of the business. The construction of these questions is both misleading and confusing for the respondent for a number of reasons.

4.1.4.2.3.1 In the previous set of questions (Question 28 to 42), respondents were asked to rank whether they found certain terms to be "fair", "somewhat fair", "not fair" or "not applicable." It is therefore not clear how respondents should take these responses forward to inform their responses to Questions 43 to 46. For example, it is not clear whether conditions that were ranked "somewhat fair" are included in the scope of "terms and conditions you consider to be unfair"

4.1.4.2.3.2 It is also unclear how the responses to these questions can be meaningfully interpreted. For example, if a respondent answers that the impact on “risks borne by the business” is “very large” (i.e. answers "5" to Question 43), it is not clear which term or condition causes this impact, or what this impact is, only that the extent of it is "very large."

4.1.4.3 To avoid confusion and misunderstanding on the part of respondents, questions should be phrased as clearly as possible and ambiguous language should be avoided. For example, in the cases of Questions 14 and 25, separate questions could be posed to ask whether platforms “require” or “incentivize” certain types of conduct by business users. Questions 23 and 24 could be reworded to explicitly state indicate the respondents to which they apply (i.e. which question is being referred to as the question that should be answered “Yes” for Question 23 and 24 to be applicable). Questions 43 to 46 could be linked to specific trade terms identified assessed by respondents in previous questions to allow respondents to more easily identify the impact of those trade terms on their business, and could also be more explicit on the level of “unfairness” identified by respondents in earlier questions that qualifies the respondent to Questions 43 to 46.

4.1.5 **Incoherent response format**

4.1.5.1 In other cases, even when a question is simple enough to understand, the formatting of the survey and available answer options are ambiguous or do not allow the respondent to answer in a way that is coherent or straightforward.

4.1.5.2 In particular:

4.1.5.2.1 Question 11 asks the respondent to provide the percentage of sales/leads contributed by different platforms. However, rather than asking the respondent to list the platforms they use and the respective contributions of these platforms to the business users sales, the survey asks the business user to fill in the contribution to the business users sales from “Major platform A”, “Major platform B”, “Minor platform C”, and “Minor platform D” without explaining how these labels should relate to the specific platforms used by that business users (or indeed, how to differentiate between a “major” versus a “minor” platform). As such, it is not clear that respondents will be able to answer in a manner that can be properly interpreted when analysing the results, or that all respondents will answer in the same manner.

4.1.5.2.2 Question 15 asks the respondent which factors are considered when choosing to use an online platform. While it is likely that many or all of the listed factors will play a role in a business’ decision to use a platform, the survey format allows the respondent to select one option only. This may lead the survey results to overstate the importance of particular factors that inform business users’ decisions to utilise a platform (such as those listed earlier in the list) and understate the significance of others.

4.1.5.2.3 Question 48 asks the respondent if certain conditions were met in the case where a platform has terminated the further usage of a platform. It is possible that multiple conditions would have been met, but the survey only allows the respondent to select one option. Again this may skew the results in favour of certain conditions, such as those listed first.

4.1.5.3 There are two general ways in which the issues raised above can be addressed: either the phrasing and/or content of the question itself should be altered in a way that the answering mechanism aligns with what the question is asking; or the answering mechanism should be changed to align better with the question being asked.

4.1.5.4 In respect of questions where it is likely that respondents may wish to select more than one option when responding (such as Question 15 and 48), the survey should be formatted in a way that allows this to happen. Indeed, this kind of response is already possible for Question 50, which asks about which tools the business user has used to improve their ranking. The issues raised with regard to Question 11 could be addressed by more clearly specifying how the answer template relates to the specific platforms utilised by the respondent.

4.1.6 **Subjectivity and inconsistency across respondents**

4.1.6.1 Finally, some questions will likely lead to inconsistent understanding and responses across business users as the respondent will answer according to their subjective interpretations of the questions.

4.1.6.2 In particular, this applies when responding to a question involves the respondent’s subjective understanding of certain terms and concepts. This occurs in respect of:

4.1.6.2.1 Question 13, which asks the business user about their “dependency" on a platform. “Dependency” is clearly a subjective term, and is not defined anywhere in the survey. Additionally, the scale according to which respondents must rate their dependency on the platform is itself made up of subjective terms - for example, there is no objective way to determine what the incremental difference is between being “dependent” and being “very dependent” on a platform. Thus, both the interpretation of the question itself and the set of available responses is likely to vary across respondents.

4.1.6.2.2 Questions 28 to 42, which ask the respondents to answer questions based on what is “fair” and “unreasonable”. Again respondents are clearly required to reach subjective judgements on the meaning of these terms in answering these questions, and thus the interpretation of the question likely to vary across respondents.

4.1.6.2.3 Questions 43 to 46, which ask the respondent to rank the "impact" terms have on different areas of their business. The scale upon which a respondent must rank this impact includes "none", "small, "moderate", "large" and "very large". However, there is no objective way to quantify these different levels of impact, and respondents are not informed what metric to use to assess “impact” (e.g. sales, profits, etc.). This means that there is no reliable way to compare business users' answers to these questions.

4.1.6.2.4 Question 48, which asks the respondent if certain conditions were met when the platform terminated use of its service. These conditions include a “clear” violation on the part of the business and “adequate” notice provided by the platform. Both terms are open to interpretation by the respondent, and thus respondents are likely assess these conditions differently.

4.1.6.2.5 Question 49, which asks about the “importance of search result ranking” in generating sales/leads. The scale on which users are required to rank the importance is as follows: "1: not important; 2: slightly important; 3: moderately important; 4: important; 5: very important." Like Questions 13 and 43 to 46, such a scale is open to the subjective perception of the respondent. For example, the interpretation of what constitutes “important” versus what constitutes “very important” is likely to be different to each respondent.

4.1.6.3 Questions will likely lead to inconsistent understanding and responses across business users when responding to a question involves the respondent engaging in a hypothetical assessment. This occurs in respect of:

4.1.6.3.1 Question 12, which asks the respondent how long it would take to replace leads/sales.

4.1.6.3.2 Question 24 which asks the respondent how they would price differently in the absence of pricing restrictions/disincentives.

4.1.6.4 To avoid unreliable responses that arise from differences in respondents' understanding and interpretations of questions and response options, subjective language should be avoided in favour of objective terms. The OIPMI could establish clear and objective definitions, measures and indicators for the factors to be assessed in the survey and ask questions and provide response options in terms of those objective definitions, measures and indicators.

4.2 Different survey formats

4.2.1 The reliability of the results from the OIPMI's business user surveys could also be undermined by the fact that two different surveys have been circulated - one that largely requests open-ended responses, and another that requests the selection of one of a number of pre-defined responses - to the extent that the OIPMI seeks to combine the responses from the two surveys two.

4.2.2 There are two main reasons for this. First, it is recognised that respondents may answer open-ended questions differently to more structured questions that provide them with different answers to choose from.[25] Open-ended questions are also generally considered to be more time-consuming to answer and thus onerous on the respondent, which may mean that respondents are disincentivised from providing complete and/or properly considered answers to these questions.[26]

[25] See for example https://www.pewresearch.org/our-methods/u-s-surveys/writing-survey-questions/ [Accessed 16 September 2021]

[26] CMA Guidelines, page 28, paragraph 3.17.

4.2.3 Second, combining unstructured responses with structured ones will likely require subjective judgments in order to codify the former, thus imparting the summarisers' own perceptions and biases into the process.

4.2.4 The risk of such bias being present in the survey results can only truly be addressed by relying only on the results to one of the surveys (although in this case there is a risk that the sample size will be too small to allow for reliable inferences to be drawn from the survey). This bias could also be mitigated to some degree by only considering the results from questions that are asked in exactly the same way across surveys (i.e. where the only difference between the surveys is the manner in which the respondents answers are recorded, and not the phrasing of the question itself), but even here this is likely to still be problematic.