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TO: THE COMPETITION COMMISSION OF SOUTH AFRICA
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JOINT SUBMISSION BY THE SOUTH AFRICAN NATIONAL EDITORS' FORUM, THE PRESS COUNCIL OF SOUTH AFRICA, THE ASSOCIATION OF INDEPENDENT PUBLISHERS, MEDIA MONITORING AFRICA, THE FORUM OF COMMUNITY JOURNALISTS, AND SOS SUPPORT PUBLIC BROADCASTING COALITION ON THE PROPOSED TERMS OF REFERENCE FOR THE MEDIA AND DIGITAL PLATFORMS MARKET INQUIRY

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INTRODUCTION

1. The South African National Editors' Forum (SANEF), the Press Council of South Africa (Press Council), the Association of Independent Publishers (AIP), Media Monitoring Africa (MMA), the Forum of Community Journalists (FCJ), and SOS Support Public Broadcasting Coalition (SOS) (collectively the "submitting parties") welcome the opportunity to make submissions on the draft Terms of Reference (ToRs) for the Competition Commission's Media and Digital Platforms Market Inquiry (MDPMI).
2. We note that the growth of digital platforms in recent years has had a detrimental effect on traditional revenue streams for news media organisations. As a result, we appreciate the importance of this process to create an efficient and fair market in which diverse and alternative routes for the sustainability of journalism can be pursued. We are of the view that the MPDMI has the potential to play an important role in creating a fair, transparent, and accountable environment in which public interest journalism, and the news media organisations which sustain it, can thrive.
3. We note that regulatory and legislative processes to interrogate the interaction between digital platforms and news media organisations have been initiated in several jurisdictions, including Australia,¹ Canada,² the European Union,³ and the United Kingdom.⁴ We are of the view that South Africa has an important role to play in establishing such investigations on the African continent and setting a precedent of accountability over the digital platforms in "global south" and "global majority" countries.⁵
4. Our submission is structured as follows:
 - 4.1. First, we provide a brief overview of the submitting organisations.
 - 4.2. Second, we focus on **section 2** of the draft ToRs and highlight the need for the MPDMI to ensure that the critical public interest nature of the news media is the point of departure. Additionally, we discuss the need for a fully inclusive process that addresses and advances the diversity of the news media sector in South Africa, and we advance an appropriate definition for "news media organisations".
 - 4.3. Third, we focus on **section 3** of the draft ToRs and argue for the inclusion of the

¹ Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021 (accessible [here](#)).

² See the Canada Online News Act which is currently at its second reading in the Senate (accessible [here](#)).

³ European Commission sector inquiry into e-commerce (accessible [here](#)) and see, for instance, Article 15 of the European Union's (EU) 2019 Copyright Directive (accessible [here](#)) on issues related to copyright of news media content.

⁴ Competition and Markets Authority, 'Online platforms and digital advertising: Market study final report,' (2020) (accessible [here](#)).

⁵ 'Global majority' is a term that refers to countries of predominantly traditionally marginalised ethnic groups. It arose as a term to challenge the normativity of a white-majority, Euro-centric perspective and has come to be used interchangeably or as an alternative to 'developing countries.' Rosemary Campbell-Stephens, 'Educational Leadership and the Global Majority: Decolonising Narratives,' (2021) Springer Nature. p. 8–9, 57–58 (accessible [here](#)).

operation of the AdTech industry within the scope of the MDPMI, alongside the importance of interrogating the effects of generative AI. Thereafter, we emphasise the relationship between the digital platforms and the best interests of the child, and we note the impacts of disinformation and its relevance to this Inquiry

- 4.4. Fourth, we make submissions on participation by the submitting organisations in the MDPMI process.
5. These are dealt with in turn below.

OVERVIEW OF SUBMITTING ORGANISATIONS

South African National Editors' Forum

6. The South African National Editors' Forum (SANEF) is a non-profit organisation whose members are editors, senior journalists, and journalism trainers from across South Africa. SANEF is committed to championing South Africa's hard-won freedom of expression and promoting quality, ethics, and diversity in the South African media. SANEF promotes excellence in journalism through, among others, supporting media freedom, preparing policy submissions and research, and engaging in education and training programmes. SANEF's mandate to protect and promote journalism includes advancing sustainability strategies for journalism.
7. SANEF has worked tirelessly to promote the freedom and sustainability of the press, including, most recently, the publication of several reports that may be of relevance to the MDPMI:
 - 7.1. A research report presenting a series of policy options to promote media sustainability drawn from local, regional, and international comparative practices and examples for further deliberation and debate.⁶ The report noted that the advent of the internet has brought both opportunities and challenges for universal access to public interest journalism. Notably, it has resulted in significant declines in print circulation and advertising revenue that threaten the survival of public interest journalism.
 - 7.2. A position paper on the Sustainability of Journalism and Competition in the Digital Economy,⁷ which reports on the findings of a consultative research project within the media sector in South Africa which finds that interventions aimed at securing payments from technology platforms to news publishers may have short-term benefits but are unlikely to address some fundamental challenges to the sustainability of journalism occasioned by the rise of digital platforms. It also sets out principles for the implementation of regulation in this sector that are aimed at minimising the risks associated with competition approaches adopted in other jurisdictions, most notably in Australia, and ensuring responsible implementation

⁶ Accessible [here](#).

⁷ Accessible [here](#).

in the South African context. This Position Paper was previously submitted to the Competition Commission's Online Intermediation Platforms Market Inquiry in September 2022.⁸

8. For more information about SANEF, please visit: <https://sanef.org.za/>.

The Press Council of South Africa

9. The Press Council is an independent co-regulatory mechanism set up by the print and online media in South Africa to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers, magazines, and online publications, on the one hand, and members of the public, on the other, over the editorial content of publications. It is based on two pillars: a commitment to freedom of expression, including freedom of the media, and to high standards in journalistic ethics and practice. The Council has adopted the South African Press Code to guide journalists in their daily practice of gathering and distributing news and opinion and to guide the Press Ombud and the Appeals Panel to reach decisions on complaints from the public. Member publications subscribe to the Press Council's Code of Ethics and Conduct for SA Print and Online Media.
10. For more information about the Press Council, please visit: <https://www.presscouncil.org.za/>.

The Association of Independent Publishers

11. The Association of Independent Publishers (AIP) is a national organisation working to advance the interests of the local grassroots independent print and online media sector in South Africa. AIP represents 189 small, locally owned media outlets from across the country, including newspapers, magazines, newsletters, and online publications, with a total monthly readership of just over 8 million. Members publish primarily in rural areas and disadvantaged communities, in a diverse range of languages and service a diverse range of interests. AIP equips its members with vital information, training, research, and support to sustain and strengthen independent media in the country. This includes a strong focus on publishers' sustainability in the online environment, including providing technical support for publishers to go online.
12. For more information about AIP, please visit: <https://aip.org.za/>.

Media Monitoring Africa

13. Media Monitoring Africa (MMA) is a not-for-profit organisation, based in South Africa, that advocates for access to information, freedom of expression, and the responsible free flow of information to the public. MMA strives towards encouraging a fair and just society in which the public, media, and the powerful respect a culture of human rights.

⁸ SANEF, 'News: SANEF Calls For Competition Reforms in Support of Journalism Sustainability,' (2022) (accessible [here](#)).

14. Children's rights play a central role in MMA's work, which includes pioneering efforts in meaningful children's participation to empowering children through media and digital literacy workshops, providing editorial guidelines and principles for the reporting of children in the media, and making parliamentary submissions with and on behalf of children.⁹
15. Together with child participants, MMA has developed a Digital Rights Charter that seeks to give effect to an internet that is accessible, safe and empowering, and that advances the development of children in line with their rights and interests.¹⁰ Most recently, MMA released another discussion document, focusing on disinformation through a children's rights lens.¹¹
16. For more information about MMA, please visit: mediamonitoringafrika.org.

The Forum of Community Journalists

17. The Forum of Community Journalists (FCJ) is an independent, non-profit, non-racial, and voluntary organisation (registered as a Section 21 company) striving to promote and express the interests of all journalists employed on a permanent or freelance basis at regional community newspapers and online community publications in South Africa. Representing hundreds of journalists from among the estimated 500 community newspapers across the country, the FCJ takes great pride in their duty to safeguard press freedom as the cornerstone of any healthy democracy. The national management committee (Board of Directors) also comprises a group of volunteers.
18. The FCJ's main mandate is to provide training to its members through initiatives such as regional seminars. Training is provided free of charge and provides opportunities which, under normal circumstances, would not have been possible or affordable for community media outlets.
19. For more information about the FCJ, please visit www.fcjonline.co.za.

SOS Support Public Broadcasting Coalition (SOS)

20. SOS Support Public Broadcasting Coalition (SOS) is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is our primary focus – as the key site of and the institution established to drive public interest broadcasting – SOS also engages in the advancement of community broadcast media in South Africa. SOS is made up of a broad range of civil society organisations, non-governmental organisations (NGOs), community-based organisations (CBOs), community media, independent film and TV production sector organisations and

⁹ In addition to these activities MMA engages in strategic litigation on a range of media freedom and children's rights related issues. MMA also runs a unique post graduate University accredited course on reporting on children.

¹⁰ MMA, 'Children's Rights Online: Towards a Digital Rights Charter' (2020) (accessible [here](#)).

¹¹ MMA, 'Disinformation through a children's rights lens', (2022) (accessible [here](#)).

individuals (including academics, freedom of expression activists, policy and legal consultants, actors, script-writers, film makers, producers and directors).

21. SOS campaigns tirelessly for an independent and effective public broadcaster. We engage with policymakers, regulators, and lawmakers to secure changes that will promote citizen-friendly policy, legislative and regulatory changes to broadcasting and its associated sectors.
22. For more information about SOS, please visit: <https://soscoalition.org.za>.

SUBMISSIONS ON THE DRAFT TERMS OF REFERENCE

Section 2

The public interest role of the news media should be the point of departure

23. As a point of departure, we note the draft ToR's brief commentary on the role of independent journalism and independent public interest journalism as a cornerstone of a healthy democracy in **section 2.1**. However, we take the view that the fundamental importance of the news media sector in enabling democracy through the provision of public interest information to the citizenry should be further emphasised and undergird the background of the ToRs, and the MDPMI itself.
24. The vitality of democracy depends on a free, independent, and pluralistic press, which informs and enables civic life. The news media is therefore framed in terms of its important role within the human rights framework. The right to freedom of expression is enshrined in section 16 of South Africa's Constitution, which protects the right to freedom of expression, including freedom of the press and other media. South Africa's national commitment to the tenet of freedom of expression is joined by the commitments it has made under international law, including article 9 of the African Charter on Human and Peoples' Rights (ACHPR)¹² and article 19 of the International Covenant on Civil and Political Rights (ICCPR).¹³ In 2021, in *amaBhungane v Minister of Justice and Correctional Services and Others*, the Constitutional Court reaffirmed "the constitutional importance of the media in our democratic society" and acknowledged that "[t]he Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of section 16."¹⁴
25. Informing the citizenry is a key role of news media organisations, which, in turn, is crucial to equip citizens with the necessary information and tools to exercise and vindicate their rights. There is, therefore, a crucial nexus to be emphasised between journalism as a public good alongside the need for public interest content to serve social needs, and the sustainability of the news media. Public interest journalism in South Africa has, in recent

¹² African Charter on Human and Peoples' Rights (ACHPR) (1981) (accessible [here](#)).

¹³ International Covenant on Civil and Political Rights (ICCPR) (1966) (accessible [here](#)).

amaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v amaBhungane Centre for Investigative Journalism NPC and Others [2021] ZACC 3 at para 115.

years, further demonstrated its immense contributions to holding the government and the private sector accountable.¹⁵ High-quality, accessible news is a public good, and it directly serves the public interest.¹⁶

26. In 2022, the World Press Freedom Index published by Reporters sans frontières (RSF) found that while South Africa guarantees press freedom and has a well-established culture of investigative journalism, in recent years, journalists have often been subjected to verbal attacks from political leaders and activists.¹⁷ The Index notes that the institution by some media outlets of paywalls has had a negative effect on the accessibility of news.¹⁸ The financial pressures on the news media resulting from the collapse of the print advertising model have only exacerbated these challenges and the ability of the media to fulfil its crucial role in the democratic system.
27. **Resultantly, the public interest nature of the news media sector and its central role in protecting and promoting our Constitution, and enabling a multiplicity of other rights, should be the point of departure of the MDPMI. Specifically, section 2.1 should be developed to further acknowledge the fundamental importance of the media sector and the impact that declining revenues have had not only on the news media sector but our broader Constitutional dispensation. Additionally, section 3.3 should be amended, as proposed in Annexure “A”, to include a further focus on consumers and the news media sector more broadly and to explicitly include a focus on interrogating the use of self-regulatory and related independent mechanisms as a proxy for credibility in determining the prioritisation and foregrounding of content on digital platforms.**

A fully inclusive process should be followed

28. Allied with the above, **section 2** of the draft ToRs makes extensive reference to the submissions of the Publishers Support Services (PSS) to the Online Intermediation Platforms Market Inquiry (OIPMI). While the role of the PSS in informing the MDPMI cannot be gainsaid, there are a multiplicity of news media organisations that are not members of the PSS, including small, local, and community media organisations, who are also impacted by digital platforms. Additionally, the role of South Africa’s public broadcaster, the South African Broadcasting Corporation (SABC), is conspicuously absent from the draft ToRs.
29. In a country as diverse as South Africa — in language, politics, culture, and identities — that faces continuing and persistent inequities in the divides of race, class, and gender, media diversity is a crucial component of media freedom. A diverse media that represents different people and voices helps guarantee that a plurality of viewpoints and interests are

¹⁵ Herman Wasserman, ‘The state of South African media: a space to contest democracy,’ *Publizistik* (2020) (accessible [here](#)).

¹⁶ UNESCO, ‘Journalism as a public good,’ (accessible [here](#)).

¹⁷ Reporters without Borders, ‘Country Profile: South Africa,’ (accessible [here](#)).

¹⁸ *Id.*

represented in the public domain, including those that may not be aired through media that are dominated by mainstream commercial or government influence.¹⁹

30. In 2002, the South African government committed itself to foster media diversity by establishing the Media Development and Diversity Agency (MDDA) “for media development and diversity that is conducive to public discourse which reflects the needs and aspirations of all South Africans.”²⁰ In the 2002 MDDA Position Paper, media diversity is defined as including two dimensions:²¹

- “(i) affordable access by all to the widest range of opinion and information sources, and
- (ii) equitable representation within the media regarding, amongst others, ownership, staffing, audience, language, and format of media.”

31. These echo commitments made in the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa, which provides that:²²

“States shall take positive measures to promote a diverse and pluralistic media, which shall facilitate the promotion of free flow of information and ideas, access to media and other means of communication, access to non-discriminatory and non-stereotyped information, access to the media by poor and rural communities, the promotion of transparency and diversity in media ownership, the promotion of local African languages, content and voices, and the promotion of the use of local languages in public affairs.”

32. Despite this clear imperative, media diversity in South Africa has not yet reached these ideals. The Independent Panel Report on the Inquiry into Media Ethics and Credibility, chaired by Judge (retired) Kathleen Satchwell found that “[o]ligopoly and lack of diversity persist, narrowing the public space for access to information and debate in a socio-political and economic landscape where English and Afrikaans dominate all platforms, paywalls encroach, data is expensive, and online access limited.”²³ The Australian experience has also demonstrated that there is a tendency — unless concerted action is taken to the contrary — for media bargaining code-type models to predominantly benefit large and dominant news publishers at the expense of others.²⁴

¹⁹ Jane Duncan and Julie Reid, ‘Toward a measurement tool for the monitoring of media diversity and pluralism in South Africa: A public-centred approach,’ *Communication: South African Journal for Communication Theory and Research* (2013) (accessible [here](#)).

²⁰ Media Development and Diversity Agency Act 14 of 2002 (accessible [here](#)).

²¹ Media Development and Diversity Agency, ‘Position Paper’, 2002 (accessible [here](#)).

²² Principle 17 of the African Commission on Human and People’s Rights, ‘Declaration of Principles on Freedom of Expression and Access to Information in Africa’, October 2019 (accessible [here](#)).

²³ Kathleen Satchwell et al, ‘Independent Panel Report: Inquiry into Media Ethics and Credibility’, (2021, updated in April 2021) (accessible [here](#)).

²⁴ For example, the Chair of the ACCC was quoted as saying that under the Australian Code, news outlets benefit in proportion to their existing contribution to journalism, in other words, in proportion to the number of journalists they employ. Anya Schiffrin, ‘Five competition ministers discuss regulating Big Tech’, (2021) (accessible [here](#)). See also s 5.3 of SANEF’s report on competition in the digital economy (accessible [here](#)).

33. As such, it is imperative that the MDPMI consider the importance of an inclusive process that meaningfully acknowledges the existing diversity of the South African news media sector, including the public broadcaster and the array of small, local, and community media organisations, and that aims to support and advance diversity in the sector. This is critical to achieving the purposes of section 2(c) of the Competition Act 89 of 1998 (Competition Act).
34. It must be noted that systems in which news publishers are rewarded or benefitted in proportion to their existing online traffic have the potential to perpetuate existing inequalities in the news media sector and to continue to prevent a successful transition to digital for small, local, and community media organisations. Additional checks and balances may need to be put in place to ensure that such publishers are able to benefit from any proposed initiatives, which may also include an independently-operated fund for public interest media.
35. Concerningly, the draft ToRs make no mention of the SABC. The SABC plays a critical role in reaching and informing a majority of South Africans about information that affects their lives. SABC News is the second largest online news platform in South Africa,²⁵ with a clear public-interest mandate, and is a major employer of journalists in the country. Unlike many public broadcasters in other jurisdictions that rely primarily on state funding, the SABC is uniquely reliant on commercial revenue and has also felt the devastating effects of a loss of advertising revenue in recent years.²⁶ Consequently, we hold the view that the SABC should be included within the scope of news publishers to be considered by the Inquiry.
36. **As a result, section 2 of the draft ToRs should be amended to recognise the diversity of South Africa’s news media sector, including recognising the fundamental role of the SABC and small, local, and community media organisations in ensuring that a plurality of viewpoints and interests are represented in the public domain. Additionally, section 3.1 of the draft ToRs should be amended, as proposed in Annexure “A”, to make express reference to the SABC and small, local, and community media organisations to ensure that all necessary stakeholders in the South African news media sector are encouraged to participate in the MDPMI, and inform the remedies that it may determine appropriate.**

All relevant news media “organisations” should be recognised

37. In addition to promoting inclusivity, and as a fundamental principle informing this Inquiry, the MDPMI must recognise that not all news media is created equal and that news media organisations may face different challenges as a result of reliance and / or dependency on digital platforms. Central to this recognition is the definition the draft ToRs adopt for “news media businesses.”
38. **The draft ToRs refer to “news media businesses” as “[companies] that produce and publish news content which include news publishers, news agencies, and any other**

²⁵ Reuters Institute, 2021 Digital News Report (2021) (accessible [here](#)).

²⁶ SABC, ‘SABC Tables 2021/22 Annual Report,’ (2022) (accessible [here](#)).

business that provides news media sources.”²⁷ The definition does not include a source or reference. It is important that the MDPMI adopt a broader definition of the news media to foster participation and ensure a plurality of viewpoints. This may be achieved by inserting “or organisation” after the words “company” and “other business” in the pre-existing definition.

39. These additions are important. In terms of the Community Broadcasting Services Regulations, 2019, only non-profit entities may register as community broadcasting service licensees.²⁸ Many other small, local, and community media organisations also operate as non-profits and others, although technically a “business”, may not consider themselves as such, given the public interest nature of their work. Equally, some news publishers that do not currently pursue a commercial aim may have been prevented from doing so by uncompetitive features of the market, while playing crucial roles in publishing public interest news and relying as heavily on traffic referral and digital advertising supplied by digital platforms to obtain grant funding and donations. This minor textual reframing will lead to broader participation and more meaningful outcomes for the MDPMI, and it aligns more directly with the definition adopted by the Australian Competition and Consumer Commission in its Digital Platforms Inquiry.²⁹

Section 3

AdTech must be included in the scope of the ToRs

40. The draft ToRs specify that “the scope of the inquiry will exclude AdTech Supply Side Platforms (SSPs), Demand Side Platforms (DSPs) and intermediary Ad Exchanges (AdEx) used to surface digital advertising on the South African news media websites or apps,” because the detrimental effect of concentration in that market “is not limited to news media companies alone and therefore is best approached on a holistic basis either through investigation or another inquiry such that any remedial action has a market-wide impact.”³⁰
41. We are of the view that the advertising technology sector (AdTech), including AdTech SSPs, DSPs, and intermediary AdEx, cannot practically be excluded from the scope of the draft ToRs without compromising the MDPMI’s ability to meaningfully address the current challenges in the news media market.
42. The main objectives of the MDPMI include to “evaluate whether market features distort competition for advertising revenue”³¹ and to “evaluate whether the commercial relationship between news media businesses and relevant digital platforms is

²⁷ Competition Commission, ‘Market and Digital Platforms Market Inquiry Terms of Reference,’ (2023) at fn 2 (accessible [here](#)).

²⁸ Community Broadcasting Services Regulations, 2019, s 4(a) (accessible [here](#)).

²⁹ Australian Competition and Consumer Commission, ‘Digital Platforms Inquiry,’ (2019) at s 1 (accessible [here](#).)

³⁰ Competition Commission, ‘Market and Digital Platforms Market Inquiry Terms of Reference,’ (2023) at 3.2. (accessible [here](#)).

³¹ Id at 3.4.2.

characterised by imbalances in bargaining power.”³² Such objectives cannot be met without investigating the operation of the AdTech industry, for two reasons:

- 42.1. The bargaining over the use of and referral to news content is inextricably intertwined with the operating features of the AdTech industry. The draft ToRs note that the “direct access that platforms have to consumers makes the use of these platforms by businesses, such as those in news media, critical and unavoidable.”³³ Bargaining over the use of news content and referral to news media websites is also affected by the dominance that those same platforms have within the digital advertising industry,³⁴ which exacerbates these concerns by amplifying the dependency and imbalance in bargaining power between them and news publishers.³⁵ The lack of transparency over advertising algorithms and processes that these platforms control adds to the opacity faced in terms of algorithms for content referral.³⁶ Digital platforms’ dominance in both digital advertising and gatekeeping access to consumers leaves news publishers struggling to access enough referral traffic *and* it impedes their ability to gain a sufficient share of advertising revenue in a relatively small market with low levels of purchasing power. It is these two intimately connected issues that give rise to the market distortions that restrict competition, and we maintain that they cannot be effectively investigated or addressed in isolation.
- 42.2. While it is true that the concerning consequences of market features in the AdTech sector extend beyond the news media industry, the news media sector is uniquely and particularly affected by concentration in AdTech. Although exact figures are not readily available, it is estimated that advertising makes up a substantial proportion of the annual revenues of news publishers, particularly and increasingly digital advertising.³⁷ Arguably, there are few, if any, other sectors that are both so fundamentally important to the public interest and simultaneously so

³² Id at 3.4.3.

³³ See ACCC (2019). “Digital Platforms Inquiry – Final Report”. Available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>; CMA (2020), “Annexure S: the relationship between large digital platforms and publishers”. Available at: <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report>

³⁴ For example, research has estimated that Google’s share of different elements within the stack, including in SSPs and DSPs, ranges between 40% and 90%. Filippo Lancieri, ‘How Google and Facebook Made Digital Advertising Markets Increasingly Opaque to Protect Their Dominance,’ ProMarket (2020) (accessible [here](#)).

³⁵ The Competition and Markets Authority (CMA) of the United Kingdom (UK) found that a high market share held by Google and Facebook (now Meta) in the digital advertising industry, together with a number of mutually reinforcing characteristics of the market, created “unassailable incumbency advantage” in digital advertising in the UK with serious negative consequences for the sustainability of news media in the country. CMA above n. 4 at p. 11.

³⁶ The Australian Competition Commission found, in its Digital Platforms Inquiry Final Report, that “there is a lack of transparency in the pricing of services used to facilitate automated or programmatic online display advertising... [which] means that both advertisers and websites lack visibility over pricing. They do not know what proportion of advertiser spend goes to ad tech services versus how much goes to the purchasing of advertising inventory.” P. 199 (accessible [here](#)).

³⁷ Bronwyn Plantinga, ‘South African entertainment and media outlook: 2012-2016: Chapter 8: Newspaper Publishing,’ Price Waterhouse Cooper, (2016) (accessible [here](#)); and Guy Berger and Marius Dragomir, ‘Mapping Digital Media: South Africa,’ (2012) (accessible [here](#)).

heavily dependent on advertising revenues. As such, any potential regulatory interventions made with the aim of “[evaluating]... the importance of digital revenue sources for news media companies”³⁸ without considering these dynamics are likely to be insufficient in dealing with the existing competition challenges.

43. It must be further noted that, inherently, the AdTech industry relies on the monetisation of human attention. This has led to two dual crises affecting journalism: i) the rise of a global epidemic of mis- and disinformation that capitalises off the incentives created for shocking, sensational, and outrageous content online, and ii) the proliferation of what has been termed “surveillance capitalism,”³⁹ a system in which the widespread collection of personal information drives markets based on predicting and monetising human behaviour. This has serious, indirect implications not only for the flow of information to electorates and the citizenry but also for trust in media and the credibility of information in the news eco-system in general. Digital platforms have a responsibility to support and promote credible news content that is an antidote to the misinformation that is an inherent feature of the models they have developed. Further, digital platforms’ control over the personal information harvested is an important contributing factor to their overall competitive advantage in the market for news. It is vital that the MDPMI consider the emerging international consensus on data transparency between new publishers and digital platforms as a central component of resolving competitive barriers in the market.⁴⁰
44. Although we acknowledge that the present Inquiry may be unable to make recommendations extending across the entirety of the AdTech industry, we nevertheless argue that the Inquiry must be empowered to evaluate the consequences of the dominance of certain digital platforms in the AdTech stack on the surfacing of digital advertising for news media websites and apps.
45. We maintain that, as currently formulated, the objectives of the MDPMI already encompass the consequences of dominance in the digital advertising industry on news publishers. **As such, we propose a minor amendment to section 3.2 of the draft ToRs to remove the exclusion of AdTech SSPs, DSPs, and AdEx from the scope of the Inquiry, noting that this AdTech stack should only be included in the scope of the MDPMI insofar as it is relevant to the digital news publishing market. We also propose the inclusion of a new sub-section 3.4 drafted in similar terms to section 3.4.5. (We note that this proposal suggests the same scope restrictions introduced for generative AI in section 3.4.5., which too may be over-broad if not narrowly circumscribed.)**

³⁸ Competition Commission above n. 27 at 3.4.2.

³⁹ A phrase coined by sociologist Shoshana Zuboff to describe the new, modern form of capitalism prevalent in today’s society that “unilaterally claims human experience as free raw material for translation into behavioural data.” (see [here](#)).

⁴⁰ See, for example, the recommendations of page 16 of the UNESCO report ‘Letting the Sun Shine In: Transparency and Accountability in the Digital Age,’ (2021) which stated that “Regulators should reflect on these principles as the basis for incorporating transparency provisions in future regulatory initiatives.” (accessible [here](#)).

The effects of generative AI should be fully interrogated

46. We welcome the decision of the Competition Commission to include the use of generative artificial intelligence (AI) and other new technologies in the scope of the MDPMI. In addition to the potential consequences on the flow of traffic to news publishers and the unauthorised use of news content for training such algorithms, these technologies raise three concerns of relevance to the news media sector:
- 46.1. The lack of transparency as to where and how these tools are developed and used creates challenges for understanding their potential effects on the health of information ecosystems and, in particular, the provision of public interest journalism. Unless systems are proactively put in place to monitor the consequences as such tools become increasingly prevalent across a wide range of industries, there is a risk of overlooking the potentially devastating impacts on a news media sector already battered by the digital transition and the COVID-19 pandemic.
- 46.2. Generative AI, in particular, poses serious risks with regard to the creation and propagation of misinformation that undermines the news media sector. Already, ChatGPT, the generative AI system developed by Open AI, has been accused of fabricating a sexual harassment complaint against a prominent law professor⁴¹ and of mistakenly naming a whistleblower as the accused in a bribery scandal.⁴² Systems for holding news media accountable for the information they put in the public sphere have been developed progressively and painstakingly over many years. In South Africa, this has resulted in a robust self-regulation system that has, for the most part, proven itself capable of holding news media accountable for the information put into the public sphere. At present, there are no comparable mechanisms for generative AI systems that are developed through opaque, proprietary processes driven by unrepresentative private companies based predominantly in the United States, Europe, and China. This produces a system of impunity for the amplification — at enormous, automated scale — of misinformation in the digital era. Credible, accountable news media is a critical part of any proposed solution to this challenge, and the digital platforms developing and propagating these technologies must be made to not only include news media in discussions about the deployment of such tools but also to provide financial and other necessary support to news media to enable society to adapt to the new era of AI without compromising the provision of credible news.
- 46.3. The use of algorithms for the curation of content online has already proven itself problematic in terms of contributing to the development of so-called “filter bubbles” which isolate online consumers into personalised information ecosystems with consequences for social cohesion and common perceptions of

⁴¹ Pranshu Verma and Will Oremus, ‘ChatGPT invented a sexual harassment scandal and named a real law prof as the accused,’ (2023) Washington Post (accessible [here](#)).

⁴² Reuters, ‘Australian mayor prepares world’s first defamation lawsuit over ChatGPT content,’ The Guardian (2023) (accessible [here](#)).

reality.⁴³ Generative AI has the potential to exacerbate such trends. Simultaneously, some uses of generative AI undermine individual agency in the choosing of different news sources and remove a news consumer's ability to distinguish between different sources based on perceived credibility. Such tools may risk creating the perception of a 'single source of truth' of the news when, in reality, the credibility of information is highly nuanced.

47. **As a result, we support the inclusion of generative AI in the scope of the ToRs and look forward to the opportunity to provide further submissions to the MDPMI in this regard.**

Emphasis should be placed on mis- and disinformation

48. Two further related points should inform the context in which the MDPMI will engage with the news media sector. In addition to what is submitted above, mis- and dis-information and the best interests of the child are relevant to this Inquiry. The news media sector is facing multifaceted challenges in the form of the scourge of mis- and disinformation as well as political interference that undermine its ability to inform the public and, conversely, the trust that the public has for news publishers.⁴⁴ As such, **public interest media that have committed themselves to the self-regulatory system that holds publishers to high standards of quality and accuracy must be the primary beneficiaries of competition regulation.** We, therefore, hold that credibility must form a central component of the MDPMI's investigations. Existing and effective self-regulatory mechanisms can be simply leveraged in this regard in that membership of either the Press Council or the Broadcasting Code of Conduct for South Africa (BCCSA) should be a criterion for measuring the credibility and, therefore, the contribution to the public interest, of news publishers.

The rights of the child should be central to the Inquiry

49. We also note that children are particularly vulnerable to the deleterious consequences of digital platforms on news media. Developing generations of informed and well-adjusted children requires the provision of a diversity of media that includes news that is tailored towards children in accessible, digestible, and responsible formats and that reflects their perspectives and voices. The sustainability of quality digital news is critical for the younger generation of digitally-savvy consumers.
50. In this regard, the Convention on the Rights of the Child provides children with the right to freedom of expression, which includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."⁴⁵ It further recognises the

⁴³ GCF Global, 'How filter bubbles isolate you,' (accessible [here](#)); and Uthsav Chitra and Christopher Musco, 'Analyzing the Impact of Filter Bubbles on Social Network Polarization,' (2020) (accessible [here](#)).

⁴⁴ UNESCO, 'Finding the funds for journalism to thrive,' (2022) (accessible [here](#)).

⁴⁵ Article 13.

important function performed by the mass media and the need to ensure that children have access to information and material from a diversity of national and international sources.⁴⁶

51. We thus call on the MDPMI to take into consideration the particular needs of children in considering the news media market, including the effect of mis- and disinformation on children, who tend to be more digitally active than previous generations without the benefit of education on how to protect and defend themselves against problematic content. In addition, and as previously noted, the digital advertising industry is driven by the widespread collection of personal information and resultant profiling, a practice which often does not distinguish between adults and children, despite the particular sensitivity of children's personal information.
52. **It should be noted that in all actions concerning children, the best interests of the child must be a primary consideration. Given the central role played by digital media, including news, in the modern development of children in South Africa, the best interests of children should be kept forefront in the Inquiry.**

REQUEST TO PARTICIPATE

53. Subject to the rules of procedure that the MDPMI may adopt, the submitting organisations hereby request to participate in the MDPMI, including through the filing of further written submissions, the presentation of oral submissions, and the ability to otherwise engage as fully as possible with the MDPMI, in accordance with sections 43G(1)(A) and / or 43G(g) of the Competition Act.

CONCLUDING REMARKS

54. SANEF, the Press Council, AIP, MMA, FCJ, and SOS look forward to further engagements with the MDPMI and we remain available to assist the MDPMI as this process develops.

**SANEF, the Press Council, AIP, MMA, FCJ, and SOS
Johannesburg, 20 April 2023**

⁴⁶ Article 17.

ANNEXURE A: PROPOSED AMENDMENTS TO THE TERMS OF REFERENCE

Footnote 2 (in section 2.4)	Footnote 2 in section 2 should be amended as follows: “News media businesses refers to a company <u>or organisation</u> that produces and publishes news content, which includes news publishers, news agencies, and any other business <u>or organisation</u> that provides news media sources.”
Section 3.1	Section 3.1, in the relevant part, should be amended to read as follows: “... The news media sector includes news publishers and broadcasters, <u>including the South African Broadcasting Corporation (SABC) and small, local, and community media organisations</u> ...”
Section 3.2	The third paragraph of section 3.2, starting with “The scope of the inquiry will exclude”, should be deleted.
Section 3.3	The word “businesses” should be replaced throughout section 3.3, and a further subsection should be added as follows: “... <u>(iii) the implications of the dependency on digital platforms by news media organisations on consumers, on the sustainability of the news media sector, and on the provision of credible news content as a public good to consumers.</u> ”
Section 3.4.4	Section 3.4.4 is to be amended with the following addition after the existing text: “ <u>and the effects of this on public access to credible news content as a public good.</u> ”
(New) Section 3.4.5	A new sub-section should be introduced pertaining to the AdTech stack, which may be drafted as follows: “ <u>Evaluate whether Adtech Supply Side Platforms (SSPs), Demand Side Platforms (DSPs) and intermediary Ad Exchanges (AdEx) used to surface digital advertising on websites or apps of the South African news media sector will impact on the adoption and competition considerations in 3.4.1 to 3.4.4.</u> ”

ENDS.