



competition commission
south africa

Media Statement

For Immediate Release

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REMARKS BY THE COMMISSIONER OF THE COMPETITION COMMISSION DORIS TSHEPE, ON THE OCCASION OF THE LAUNCH OF THE FINAL ONLINE INTERMEDIATION PLATFORMS MARKET INQUIRY REPORT ON MONDAY, 31 JULY 2023 AT THE DTIC CAMPUS IN PRETORIA.

Welcome

- The Minister of Trade Industry and Competition, Mr Ebrahim Patel,
- Members of the press
- The Chairperson of the Online Intermediation Platform Market Inquiry, Mr James Jodge
- Deputy Commissioners and employees of the Commission
- The Online Intermediation Platform Market Inquiry team

Introduction

Today, the Competition Commission is publishing the Online Intermediation Platforms Market Inquiry Report and handing over the report to the Minister.

As you may recall, the Inquiry commenced in May 2021. It focused on the platforms that facilitate transactions between businesses and consumers for the sale of goods, services, and software. Its scope was vast and included eCommerce marketplaces, online classifieds, price comparator services, software application stores, and intermediated services such as accommodation, travel and food delivery. It also included search engines given their role in directing traffic to these platforms. It included not just South African firms but also the large global platforms that operate domestically.

The completion of this market inquiry is a momentous occasion in itself, particularly in this case as it is the first inquiry under the amended legislation and the first to delve into the increasingly important digital economy.

Market Inquiries

A market inquiry differs to the usual enforcement activity of the Commission, which typically focuses on addressing intentional anti-competitive conduct of dominant firms aimed at excluding rivals or exploiting customers.

A market inquiry is an inquiry into the general state of competition in a market and seeks to identify if there are any features that impede, restrict or distort competition. Those features include, in addition to individual firm conduct, how the market structure, business models, supplier behaviour, and outcomes may be adversely affecting competition. In other words, a broader set of features may influence competitive outcomes even if that is not the intent of the firms in the market. In this way, market inquiries seek to improve competition to the benefit of consumers and the businesses served by those markets.

In addition, an inquiry must have regard to the impact of the adverse effect of competition on SMEs and historically disadvantaged persons. It should also consider features that affect the ability of national industries to compete in international markets. Both of these have been of particular relevance to the current online intermediation platform market inquiry.

The Commission has been undertaking market inquiries for the past 15 years, but the amendments to the Competition Act that came into effect in 2019 brought important changes to the market inquiries provisions. Of significance, is the ability of the Commission to make decisions, rather than recommendations, to address any findings on features which adversely affect competition. The amendments in fact impose an obligation on the Commission to achieve a comprehensive solution to any adverse findings, ensuring that any actions taken to remedy the adverse effect are also reasonable and practicable. Given these new powers, provision is also made for an appeal to the Competition Tribunal for parties affected by any remedial actions who may disagree with the finding or remedies.

The Online Inquiry

The selection of online platforms for the first inquiry under the amended Act was based on several factors.

First, the selection reflects the growing importance of the digital economy. The selection of intermediation platforms specifically, reflects their importance in the real economy, impacting the growth of business activity and jobs in South Africa. Intermediation platforms facilitate transactions between consumers looking for convenience in buying goods and services online, but also businesses seeking to reach those consumers. As indicated, this inquiry has covered eCommerce, food delivery, classifieds, travel bookings, and software apps.

Second, the global and domestic concern that digital platforms are inexplicably concentrated already or prone to tipping in that direction, and that competition law has failed to adequately maintain competition in digital markets. Whilst this is true for global markets, domestic digital markets are less mature and so early intervention was seen as a means to try to sustain competition as these markets matured.

Third, the additional concern of potential exclusion from digital markets, at two levels. One, is whether national digital platforms will be able to compete and thrive against global behemoths, especially in areas where they have been first movers at a national level. For instance, travel platforms or delivery. Two, whether those that were excluded and disadvantaged from the traditional economy historically, face a similar fate in the digital economy.

Fourth, online markets lend themselves to a market inquiry process. In digital markets, it is precisely the combination of market features such as network effects and business models, alongside the conduct of platforms, that adversely affect competition. A market inquiry is better placed to investigate and address this ecosystem and market features, and to determine comprehensive rather than piecemeal remedies that will enhance competition.

As a result, and fairly unique in digital market enforcement, the Inquiry scope included not just features that may restrict competition between platforms, but also features that may have an adverse effect on competition between the businesses using those platforms, in particular SMEs and historically disadvantaged businesses.

Process

The inquiry process has been extremely thorough for what is a broad range of markets.

It involved an initial two rounds of extensive information requests from platforms operating in these areas along with submissions on a statement of issues, as well as a survey of businesses using these platforms, prior to holding public hearings in November 2021. Those hearings incorporated testimony and questioning of leading platforms, challenges, and the businesses using those platforms over a four-week period.

This was followed by further information requests before the submission of expert economic and legal reports prior to closed confidential hearings over a two-week period. More information requests followed.

The Inquiry team then released a provisional report in July last year. This Report put out a preliminary view of the findings based on the evidence provided at the hearings and included potential remedial actions that may address those findings.

Subsequent to the release of the provisional report, stakeholders were given the opportunity to make submissions. Furthermore, the inquiry continued to actively and extensively engage all those stakeholders beyond those submissions, seeking additional evidence and holding numerous meetings with each. The purpose was to ensure that the final findings are robust and the remedial actions reasonable and practicable.

This has necessitated a lengthier process than that which was anticipated, but it has resulted in sound findings and appropriate remedial actions. This is reflected in the fact that numerous provisional findings have been dropped on further interrogation of evidence, and a substantial number of remedial actions altered.

Closing

I was appointed as a panel member on this inquiry prior to being appointed commissioner. This has afforded me the opportunity to have a detailed first-hand experience of the work of the inquiry, but also to observe the work of the inquiry team and the interactions with stakeholders.

The Commission would like to thank the Inquiry team ably led by James Hodge, the two leaders of the technical team Mr Itumeleng Lesofe and Dr Hariparsad Govinda, and the case manager Ms Noluthando Jokwazi for the very high standard of work done on this inquiry and for bringing it to a successful conclusion. Moreso, I would like to congratulate them for pushing boundaries and blazing a trail for others. Not only have they been the first to navigate the operation of an inquiry under the new legislation but have also had to consider the evolution and business models of digital markets in a developing country context. There has been considerable interest globally in this inquiry and rightly so. The analysis and outcomes of this inquiry will resonate beyond our borders.

Lastly, I would also like to thank the many stakeholders for the manner in which they have participated in the inquiry, in particular those that chose to constructively engage on the issues, to reflect on the impact of their business models and to seek practical and reasonable remedies even where they did not necessarily agree.

I now hand over to the Inquiry Chair, James Hodge, to take you through the final findings and the resultant remedial actions.

Thank you.

[ENDS]

Issued by:

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