Competition policy in South Africa towards exploitative abuse by digital platforms[1]

Wawa Nkosi[2]

Abstract:

This paper explores South Africa's approach to regulating exploitative conduct by digital platforms, focusing on excessive pricing and price discrimination. It begins by discussing the global convergence in competition policy, highlighting how jurisdictions like the EU actively address abuses of market power, whereas the US tends to be more cautious, prioritizing innovation over regulation. The core analysis centers on South Africa's Online Intermediation Platforms Market Inquiry (OIPMI), which scrutinized digital platforms such as e-commerce marketplaces and online classifieds. The analysis focuses on the findings related to prices charged to smaller businesses, both from an excessive pricing and a price discrimination perspective. The focus falls on the complexities of the analysis required and the particular challenges raised by the digital world.

[1] This paper is a version of one chapter in my draft PhD dissertation. Please do not cite without contacting the author.

[2] PhD candidate, Centre for Competition Law and Economics, Stellenbosch University. E-mail: nkosiwawa@gmail.com

1. THE EVOLUTION OF COMPETITION POLICY TOWARDS EXPLOITATIVE PRACTICES: GENERAL TRENDS

In recent years, there has been a noticeable global convergence in competition law, with a heightened focus on addressing concerns of abuse of market power by dominant undertakings in digital markets. Generally, exploitative practices encompass practices such as excessive pricing, discriminatory pricing, or the enforcement of unfair trading conditions by dominant undertakings. The resolution of these abuses largely hinges on the determination of benchmark competitive prices. Given the challenges inherent in this process, exploitative practices, specifically excessive pricing, have long been a subject of contention, and their interpretation and application vary considerably across different jurisdictions. This variance arises from several factors, including the substantial burden of proof necessary to substantiate such cases, apprehensions about the potential repercussions of excessive market regulation, and differing priorities or perspectives among competition authorities (Botta and Wiedemann, 2019; OECD, 2020). For instance, the European Union (EU) prohibits exploitative abuses of dominance under Article 102 of the Treaty on the Functioning of the European Union (TFEU). However, as the discussion below demonstrates, the EU has historically shown reluctance in prosecuting cases under Article 102, with European National Competition Authorities (NCAs) being notably more active in this regards. South Africa's policy regarding exploitative abuses closely aligns with that of the EU, but the enforcement or application of these rules is more prevalent in South Africa. In contrast, the United States (US), as it generally refrains from banning excessive pricing and tends to be cautious about addressing pricing-related abuses of dominance. This approach is motivated by concerns related to potentially stifling innovation and overregulation[3] (Bell et al., 2004).

One sector where exploitative conduct, particularly excessive pricing, has received significant attention is the European pharmaceutical sector. In September 2016, the Italian NCA fined the pharmaceutical company Aspen EUR 5.2 million for exploiting its dominant market position

[3] In *Verizon Communications Inc. v. Law Offices of Curtis V. Trinco, LLP* the Supreme Court emphasised that US antitrust law does not condemn the exercise of Monopoly power: "the mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices at least for a short period is what attracts business acumen in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct."

through the imposition of unfair pricing for essential medications in Italy, thereby harming consumers and potentially limiting access to vital medications (European Commission, 2019a). Similarly, in December 2016, the United Kingdom's NCA determined that both Pfizer and Flynn had leveraged their respective dominant positions to enforce unfair pricing strategies for phenytoin sodium capsules, a medication prescribed for epilepsy treatment and manufactured by Pfizer in the United Kingdom (European Commission, 2019a). Both companies had imposed unjustifiable price hikes on the essential drugs. In 2021, the EU Commission conducted an investigation into Aspen Pharma for suspected excessive pricing. This marked the EU Commission's first commitment decision in the pharmaceutical sector regarding excessive pricing. Aspen proposed commitments primarily focused on lowering the prices of its products to alleviate competition concerns (European Commission, 2021). The decision led to immediate price decreases of over 70% for specific medicines, viewed by some as finally addressing longstanding questions about assessing excessive pricing (Marinova, 2023). Such cases have sparked public debate due to their implications for drug prices and healthcare costs.

Similarly, the energy industry has also been the subject of much scrutiny from European competition authorities for exploitative conduct, particularly excessive pricing. Once again, European NCAs have been notably proactive in addressing unfair pricing practices in energy markets, surpassing the European Commission's efforts. The Danish NCA penalised Elsam for withdrawing capacity in western Denmark's electricity market, while the Italian NCA accused ENEL of colluding to manipulate prices in Sicily. Additionally, NCAs investigated cases like E2 in Denmark and closed investigations into Scottish Power and Scottish Southern Energy in the UK due to lack of evidence. Electricity distributors, including ENTEGA and RWE in Germany, have also faced sanctions for excessive pricing (Parcu et al., 2017). These cases highlight the collective efforts of NCAs in combatting excessive pricing in energy markets. Although the European Commission's involvement in excessive pricing cases has been limited, one notable case involved the sanctioning of E.ON for exploitative conduct at the wholesale level. German incumbent, E.ON deliberately withheld its available generation capacity during specific high-demand periods of the day, aimed at increasing the electricity wholesale price and thus profiting from the artificially high prices. The European Commission sanctioned E.ON,

requiring it divest approximately 5,000 MW of its generation capacity (European Commission, 2008).

Trends that have led to the increased prominence of exploitative abuse concerns

Despite the European NCAs taking the lead on sanctioning exploitative abuse cases, concerns about exploitative abuse have gained prominence in various jurisdictions in recent years. This increased prominence can be attributed to three trends: the response by competition authorities to the Covid-19 pandemic, increased concerns around rising concentration and markups, and the exploration and implementation of new tools for assessing competition policy.

First, the Covid-19 pandemic and associated policy concerns around price gouging led several competition authorities to at least consider excessive pricing enforcement related to what was called essential goods. South Africa was an early and active exponent of the use of excessive pricing provisions, providing for a truncated legal process and more stringent benchmarks for assessing excessive pricing (Boshoff, 2021). Beyond South Africa, Turkey was very proactive in their fight against excessive pricing during the Covid-19 pandemic. In April 2020, before the first case of Covid-19 was even announced, the Turkish government established the *Unfair Price Review Board*, to provide a platform to consumers to submit complaints about excessive pricing practices. By January 2021, 495 companies had been fined a total of 15.5 million Turkish Lira for excessive pricing practices (Yildirim et al., 2024). Although the US and Australia do not have competition laws that prohibit excessive pricing – they implemented price gouging regulations to deal with excessive pricing issues during emergency situations. Australia enacted a regulation that prohibited the resale of essential goods (such as face masks and hand sanitisers) purchased in a retail transaction at mark-ups exceeding 20%. In more than 30 states in the US, price gouging laws prohibit excessive prices for specific commodities during a state of emergency. Portugal, on the other hand, implemented a profit cap of 15% for protective equipment and hand sanitisers (Fung and Roberts, 2021).

The second notable trend that has amplified the discourse surrounding exploitative conduct is the growing concern over the rise in industrial concentration and corporate profit margins

which has resulted in a shift of power towards large firms, potentially enhancing their incentives to engage in exploitative practices.[4]

This debate is underpinned by a wave of research highlighting the erosion of the competitive landscape especially within the US. Broadly, the literature has been dedicated to illustrating the increase in market concentration and the effects thereof, and has attributed this to lax competition enforcement in the country (Grullon et al., 2019; Heller et al., 2023). A seminal contribution to this discourse was made by Jason Furman and Peter Orszag (2018), both economic advisors to President Barack Obama, who demonstrated how the rise in supernormal returns to capital resulting from market power had contributed to rising inequality. This stems from the dual impact that market power has on income distribution – generating higher profits for business owners while imposing higher prices on consumers. Grullon et el. (2019) show that the average increase in concentration levels over the past two decades had reached 90% across more than 75% of US industries. It is argued that the observed surge in mark-ups in the US from the mid-20th century to around 2014 has perpetuated income inequality, as these increased margins imposed on consumers have disproportionately harmed the poor (Ennis et al., 2019). Barth et al.(2014) provide evidence to illustrate that a significant portion of the rise in income inequality is attributed to the dispersion in earning between firms as opposed to within firms. Furthermore, rising concentration levels have also been correlated with diminished productivity, fewer start-up businesses and decreased capital investment (Tepper and Hern, 2018). These and other empirical findings have led the US to consider whether the US's approach to the application of competition law has been too passive.

Several commentators have argued that the original antitrust laws were explicitly introduced to counter monopolisation of the economy based on similar concerns to those discussed above (Ennis et al., 2019). The US Supreme Court has been criticised for approaching and interpreting antitrust laws mainly from a so-called economics perspective and rejecting what some commentators views as the social and political goals enshrined in the law (Salop and

[4] Greenfield et al. (2020) provide a detailed summary of the debate within its historical context, illustrating that this *populist* movement is concerned with the same issues around the market concentration that underpinned US antitrust laws.

Baker, 2015). EU regulators have also became attentive to the increasing levels of industrial concentration, expressing their concerns around the same issues (Heller et al., 2023).

Broadly, it is clear that the concern often is not that firms necessarily engage in exclusionary practices (i.e. harmful practices relative to their rivals) but rather that lax merger control and technological changes have given rise to less competition and hence the ability to charge higher prices. One interpretation is that these concerns point to exploitation that are facilitated by monopolistic positions.

A third notable trend driving a policy interest in exploitative practices has been the emergence of new competition tools to combat monopolistic behaviour and limited competition. Over the past few years we've witnessed a growing reliance on the use of market studies and market inquiries as a tool to investigate and potentially address structural problems that may give rise to exploitative practices. Lancieri and Sakowski (2020) provide a detailed literature review of dozens of market studies and expert reports that have been commissioned over the past five years towards understanding antitrust policy in the digital era. Some key reports include *Competition Policy for the Digital Era* (European Commission. Directorate General for Competition., 2019), which was prepared by academics for the European Commission; *Unlocking Digital Competition* (Furman et al., 2019) prepared by an expert panel for the government of the United Kingdon (UK); as well as the *Final Report of the Stigler Committee on Digital Platforms* (Zingales et al., 2019). Similarly, the South African Competition Commission

In recent years, market inquiries have emerged as a prominent tool in competition regulation, particularly in relation to digital competition policy. For instance, the Australian Competition and Consumer Commission (ACCC) conducted a *Digital Platforms Inquiry* in 2019, followed by an inquiry into *Digital Platforms Markets services.* Similarly, in 2023, the German Competition Act was amended to provide the Federal Cartel Office (Bundeskartellamt) authority to impose behavioural and structural remedies following sector inquiries. Moreover, in the UK, amendments to the Digital Markets, Competition and Consumers Bill which will be enacted in 2024, empowering the Competition and Markets Authority (CMA) with faster and more

flexible market inquiry powers. These developments signify a significant stride towards fortifying the efficacy of market inquiry tools.

These three developments suggest that, contrary to limited historical enforcement (mostly in relation to excessive pricing), enforcement in more recent years and across jurisdictions suggests a greater concern with exploitative conduct. An increased willingness to consider exploitative abuse issues is perhaps clearest when considering the evolution of competition policy towards digital platforms. The next section offers a comprehensive assessment of this evolution.

2. EXPLOITATIVE ABUSE CONCERNS IN DIGITAL COMPETITION POLICY: GENERAL TRENDS

The transformative impact of digital markets on the competitive landscape has been extensively documented. These markets possess distinctive characteristics that significantly alter the pace and dynamics of competition which has led to a growing sense of urgency across jurisdictions for regulators to deal with the increasing market power of large online platforms and the potentially harmful consequences for consumers and business users. The purpose of this part is to illustrate how concerns with exploitative abuse are a key feature in the evolution of competition policy towards digital markets. The section begins with an overview of the features that characterise digital platforms and a description of the associated exploitative abuse concerns that arise for both consumers and business users engaging on digital platforms. This is then followed by a detailed outline of the evolution of digital competition policy in the EU, UK and South Africa.

Features of digital platforms

Digital platforms are best characterised as intermediaries operating in two-sided or multisided markets, where their main objective is to facilitate interactions between two or more distinct "sides" of users, each deriving value from interacting with one another (Hovenkamp, 2019). Digital platforms are typically characterised by strong network effects, strong economies of scale and scope, the crucial role played by data, marginal costs close to zero, and low distribution costs. These features exist in traditional markets as well, however, what sets digital markets apart is that they exhibit a combination of these features at a scale that has never been encountered before. It is understood that the confluence of these features renders them prone to tipping, where the market tends toward a single and very dominant player. And the greater the platform's market power becomes, the deeper the dependence of economic actors on all sides of the market (Bougette et al., 2019).

In markets characterised by two-sided or multisided dynamics, pricing strategies often display skewness, a phenomenon attributed to the influence of indirect network effects. These effects imply that each side's demand for the platform's services is not solely determined by the price but is also linked to the level of participation from the other user group on the other side of the platform (Hovenkamp, 2019, p. 720). As elucidated by Rysman (2009), the intensity of

these indirect network effects significantly influences the pricing structure. The more a member of a customer group values the participation of a member from the other group, the higher the price that customer is willing to pay to access and engage in the market. As a result of this relationship, platforms often charge zero or below cost on one side of the market in order to stimulate participation on that side and charge aggressively on the other side to subsidise the losses from the below-cost side (Mandrescu, 2017). As outlined by Rochet and Tirole (2003), platforms' capacity to engage in such cross-subsidisation between various user groups within a transaction is a distinguishing feature of two-sided markets. This emphasises a significant deviation from conventional markets, where the platform's transaction volume and, by extension, its profitability, are shaped not only by the price paid by the transaction participants but also by how the price is distributed among them. In essence, platforms must make decisions not only about the pricing level but also about the pricing distribution for their services. The implications arising from the pricing structure underscore the complexity associated with evaluating pricing-related abuses.

These features of digital platforms bring about strong incentives for exploitation. The discussion below highlight the key exploitative abuse concerns raised by digital platforms.

Potential exploitation of consumers and business users

The discussion illustrates that the competitive advantage of digital platforms lies in having access to large and high quality data. The data they gather from their users and customers is a pivotal asset in fuelling predictive models capable of probabilistically determining preferences and purchase behaviours. This allows firms to improve products and services, but this data can also be exploited to for targeted advertising and personalised pricing (Geradin and Katsifis, 2022). Since platforms often offer services to consumers for "free", they have strong incentives to collect a vast amount of data from users so that they can generate revenues on the advertising side of the platform. This excessive data collection raises concerns around consumers' privacy. This has also highlighted questions whether competition law should sanction excessive data collection as an abuse of dominance, and what role privacy considerations should play in competition law (Buiten, 2021). The Bundeskartellamt's Facebook case was a prime example of potentially "excessive data collection", however that was not their approach, instead the Bundeskartellamt did not attempt to prove that the data collection was excessive but instead argued that the conduct harmed users directly by losing

control of their data. In both the EU and developing country jurisdictions like South Africa, data protection regulations are increasingly stringent, aiming to safeguard users' privacy and prevent exploitative practices related to data handling. Competition policy enforcement can complement data protection efforts by addressing concerns about data monopolisation.

Second, from a business user perspective, exploitative conduct can also manifest in the relationships between digital platforms and business users that rely on these platforms to reach customers. For instance, digital platforms may impose unfair terms and conditions, exorbitant fees, or restrictive contractual practices on businesses using their services. In some cases, platforms may use their dominant position to extract valuable data from businesses or favour their products over those of competitors. Strengthened competition policy enforcement can help prevent such exploitative behaviour, ensuring that businesses have fair and transparent terms while maintaining healthy competition in the digital marketplace.

3. EXPLOITATIVE ABUSE CONCERNS IN DIGITAL COMPETITION POLICY: JURISDICTIONAL OVERVIEW

This section provides an alternative lens on the evolution of policy towards exploitative practices by digital platforms, by separately evaluating the EU, the UK and South African jurisdictions.

3.1. Evolution of Digital Competition Policy in the EU

The past decade has witnessed a substantial increase in concerns regarding the size and market dominance of major digital platforms in Europe. This is exemplified by the EC's actions in the high-profile digital market cases, with many of them centring around Google. In June 2017, the EC imposed a €2.42 billion fine on Google in the Google Shopping case for abusing its dominance in the market for online search by systematically demoting rival comparison shopping services in its search results to advantage its own service (European Commission, 2017). In 2018, the EC went further, levying it's largest antitrust fine (€4.12 billion) ever against Google. This fine was the consequence of Google's actions in abusing its dominance by imposing unlawful restrictions on manufacturers of Android mobile devices and mobile network operators. These restrictions were aimed at strengthening and expanding Google's

position in the web search market (European Commission, 2018). Continuing this trend, in March 2019, Google faced another substantial fine of €1.49 billion in the Google Search (AdSense) case. This fine was imposed due to Google's abuse of its market dominance in the online search advertising intermediation market. Google had been imposing restrictive clauses in contracts with third-party websites that prevented Google's competitors from placing their search adverts on these websites, further solidifying its control in this market (European Commission, 2019b).

The concern over the market dominance of large digital platforms was not limited to Google; it extended to other industry giants like Facebook and Amazon. For instance, in April 2019, the Italian Competition Authority (ICA) launched an investigation into Amazon for discriminatory practices on its platform, providing exclusive access to Prime and other Amazon services to commercial customers who delivered their goods using Amazon's logistics services in lieu of other independent logistic service providers (Italian Competition Authority, 2021).

These cases serve as prominent examples that illustrate the primary concerns and theories of harm associated with digital markets' abusive practices. It is from these concerns that the development of competition law in the context of digital markets has originated. It is evident that the EU's concerns have primarily revolved around exploitative conduct by large digital platforms.

As European authorities regulated digital markets, their initial concern pertained to the potential threat these markets posed to the integrity of the Single European Market (SEM)[5]. Certain practices adopted by digital platforms, such as geoblocking, resulted in disparities in consumer access to digital services and pricing based on geographical location. This meant that consumers' access to digital services and prices were based on a user's geographical location. Some platforms even engaged in varying pricing strategies across different EU member states, thereby impeding cross-border competition and perpetuating price discrimination. It became apparent that the presence of differing national regulations, technical standards, and legal frameworks impeded the flow of digital services data, and goods

[5] The Single European market of the European Union is a single market in which goods, services, capital and persons can move around the EU almost as freely as within a single country. (Directorate-General for Communication (European Commission), 2020)

across member states. This situation led to elevated costs and reduced efficiency for businesses operating across multiple countries, raising concerns about market segmentation and the erosion of principles related to free and equitable competition. In response to these challenges, the European Commission launched the Digital Single Market (DSM) strategy in 2015, comprising a comprehensive suite of initiatives aimed at dismantling these barriers and promoting a unified digital market that encouraged cross-border interactions and expansion.

It is widely acknowledged that a critical feature of online platforms is that they often constitute the main entry points for businesses to access markets. Even though platforms and businesses are dependent on one another to operate their respective services, platforms typically have a superior bargaining position in relation to their business users. This has resulted in an imbalance between the interests of platforms and businesses (Graef, 2019). The exploitative potential of online platforms, as demonstrated by the cases discussed above, arises from this power imbalance between platforms and businesses and led authorities to introduce new legislation to protect small businesses in their dealings with digital giants. In July 2020, the EU implemented the Platform to Business (P2B) regulation, focusing on fairness and transparency in the relationships between online platforms and businesses using their services. The regulation specifically targets potentially harmful business practices, including exploitative terms and conditions, to promote a level playing field and protect smaller businesses from potential abuses of market power by dominant platforms, which may not be adequately addressed by EU competition law (Graef, 2019).

The continued process of regulatory renewal in the EU towards addressing the challenges related to the market power held by large online platforms culminated in the proposal of two key pieces of legislation in December 2020; namely, the Digital Services Act (DSA) and the Digital Markets Act (DMA). The DSA outlines the rules and responsibilities of digital intermediaries, and their content moderation practices, aimed at limiting the spread of illegal content online and creating a safe and secure online environment. Whilst the DMA, a sector-specific approach, focuses on ensuring contestable and fair markets in the digital sectors where *gatekeepers* are present. According to the DMA, a large online platform qualifies as a gatekeeper when it provides an important gateway between business users and consumers – whose position can grant them the power to act as a private rule maker, and thus create a

bottleneck in the digital economy. The DMA defines a series of obligations that gatekeepers need to respect, including prohibiting gatekeepers from engaging in certain behaviours such as self-preferencing and limiting data portability.

The objective of the DMA is to ensure that markets where gatekeepers are present are and remain contestable and fair, irrespective of actual, likely or presumed effects of the conduct of a given gatekeeper (Digital Markets Act, preamble 11). While Articles 101 and 102 TFEU remain relevant to the conduct of gatekeepers, their scope is limited to specific instances of market dominance and of anti-competitive conduct. Hence, the Commission's view is that the existing antitrust regulation is inadequate in effectively addressing the challenges posed by the conduct of gatekeepers, which may not necessarily align with the traditional concept of dominance. Additionally, competition law enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case-by-case basis. Inspired by some specific enforcement proceedings that took place over the years, the DMA offers an ex ante approach to preventing anti-competitive practices by dominant platforms (Cappai & Colangelo, 2021). Ex ante regulatory frameworks like the DMA should, in theory, have the capacity to facilitate faster changes in business conduct when compared to the lengthy stages of intervention typically associated with competition law enforcement.

3.2. Evolution of Digital Competition Policy in the UK

Like their European counterparts, the UK has undertaken a parallel journey by implementing new regulations to address the distinct aspects of digital markets. For the UK, this regulatory transformation finds its origins in the "Furman Report" of March 2019, a comprehensive study by the Digital Competition Expert Panel for the UK government (Furman et al., 2019). The report laid out recommendations for fostering a pro-competitive regime and outlined an approach to regulate digital markets effectively. The key regulatory concern that emerged from the report was the excessive concentration in digital markets. The report highlighted that where competition did exist, it primarily revolved around the five major companies, namely; Google, Amazon, Facebook, Apple, and Microsoft. Similar to the EU's case, the report revealed that online platforms often serve as crucial market channels or gateways for other businesses, enabling these large firms to act as gatekeepers between companies and potential customers.

Once again, it is evident that the main concerns pertaining to digital markets is potential exploitative practices.

The report identified three distinct forms of power wielded by these platforms: first, the ability to control access and impose high fees; second, the capacity to manipulate rankings or prominence within their platforms; and third, the authority to control and shape reputations. Consequently, the main concern identified in the report revolves around large digital firms that possess a specific “strategic market status” (SMS) (Dunne, 2022).

The report ultimately recommended the establishment of a Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA), envisaged as a driver of the pro-competition regime. These recommendations were well-received by the CMA, which supported the establishment of the DMU.

In July 2019, the CMA published a new Digital Markets Strategy, reflecting both an enhanced commitment to tackling digital market problems and an acknowledgement of the particular enforcement challenges that it faced in this era. The strategic aims encompassed the CMA’s then existing activities and beyond; including the adaptation of existing competition enforcement tools to the particular issues raised by digital markets.

The aim of the DMU would be to implement a digital platform code of conduct aimed at the activities of digital platforms that have ex-ante designation of strategic market status. Ultimately the DMU was established in April 2021, on a non-statutory basis, with a focus on preparing for a new regulatory regime for digital firms.

The findings of the Furman report, the introduction of the DMS, and EU’s advancements mentioned above resulted in the UK Government introducing the Digital Markets, Competition, and Consumers (DMCC) Bill (Bill 294 of 2022-23) on April 25, 2023. The Bill introduces significant reforms to the UK’s consumer, digital markets, and competition regimes. Specifically, concerning digital markets, the Bill empowers the CMA's DMU to enforce a new ex ante regulatory regime for firms in digital markets that have “significant market status”. The core elements of this framework encompass three aspects: (1) enforceable conduct

requirements grounded in the principles of fair trading, open choices, and trust and transparency; 2) targeted pro-competitive interventions in which the DMU will focus on addressing the root of the perceived market power within SMS firms to ensure a competitive landscape; and 3) a mandatory and suspensory merger reporting requirement for intervention in SMS merger cases applying to SMS firms for all deals meeting certain (lower) thresholds.

This ex ante approach is similar to that taken by the European Commission, except in the EU their approach is sector specific. Once again, the emphasis on regulating large digital platforms underscores the central concern in the UK, which primarily revolves around the potential for exploitation by these major players in the digital arena.

3.3. Evolution of Digital Competition Policy in the South Africa

South Africa, has also undergone significant shifts towards digital markets. Notably, several global tech giants such as Google, Facebook, WhatsApp, YouTube, and Twitter, have established strong positions in the domestic digital economy as well, particularly in search engine and social media markets. In recent years, the country has also witnessed the growth in e-commerce, with several traditional stores venturing into the online space, while Takealot has emerged as a dominant player in this market. Furthermore, the financial sector has not been left behind, with the big four banks (ABSA, FNB, Standard Bank and Nedbank) already holding significant positions in the financial technology landscape with emerging competitors like Capitec, Tyme Bank and Discovery Bank increasingly making their presence felt.

Recognising the potential for future prosperity that the digital economy may offer, it also introduces various challenges. The main concern as emphasised by the South African Competition Commission (SACC), revolves around the possible emergence of a new era of global concentration and increased marginalisation of local businesses in developing countries (Competition Commission, 2020). Similar to other jurisdictions, in September 2020 the SACC drafted a report title *Competition in the Digital Economy,* as a first step towards scrutinising whether South African competition policy was adequate to tackle the challenges brought on by digital markets. The report outlined the SACC's intended approach to digital markets as well as highlighted the broader regulatory environment required to extract maximum benefit

from the digital economy. After comments from the public were incorporated a second version of the report was released in November 2020.

The report identified similar features of the digital economy as discussed above, that warrant a novel approach to competition regulation. These encompass; 1) rapid and responsive innovation; 2) a tendency towards concentration which stems from first-mover advantage, data accumulation, network effects, and exclusionary conduct; 3) empowered consumers coupled with the ease of entry in some secondary and tertiary levels of digital markets; and 4) the accelerated pace of change which calls on regulators to constantly monitor developments and adjust. In response to the perceived under-enforcement of competition laws within digital markets over the past decade, the report proposes various proactive regulatory measures aimed at preventing the emergence of a new era of global market concentration and ensuring fairness in the digital economy. The emphasis is on proactive regulation to promote fairness and prevent potential harm to small businesses, aligning with the priorities outlined in EU regulations. Recognising the 'tipping' nature of digital markets and swift dominance of single large platforms, the Commission advocates for pre-emptive actions to protect competition and prevent the exclusion of small businesses. This may involve intervening to prohibit behaviours that are deemed anti-competitive in other jurisdictions (Oxenham et al., 2022).

The report presents a comprehensive analysis of the different forms of potential harm to competition and key concerns arising within digital markets. Drawing insights from past cases handled by the Competition Authorities and existing literature, the analysis spans across the distinct dimensions of competition regulation: merger control, cartel conduct, and abuse of dominance. For each dimension of competition regulation, the report outlines the Commission's intended strategic actions to effectively address the identified competition issues.

From an *Abuse of Dominance* perspective, the Commission's report believes that outside of globalised search and social media digital markets, there exists a more open and contestable digital space in South Africa. Based on the evidence from more developed jurisdictions, the Commission is of the view that there is room for entrenchment and concentration within

digital markets which would reduce contestability and would be difficult to reverse. The Commission's strategy to preserve the current contestability of domestic digital markets is to proactively regulate domestic digital markets. This involves the following strategic actions; mapping of the digital landscape of South Africa, proactive conduct investigations, the development of guidelines for key areas of abuse to enhance the toolkit to account for specific features of digital markets, and the institute market inquiries into digital markets.

Following from the recommendations, the South African Competition Commission launched the Online Intermediation Platforms Market Inquiry (OIPMI) in May 2021. OIPMI represents one of South Africa's most significant strides in regulating competition within digital markets to date. The report underscores the Commission's legitimate concerns about features of digital markets that may impede, distort, or restrict competition. Furthermore, these features could hinder the attainment of the objectives, including the participation of small and medium enterprises (SMEs) and historically disadvantaged persons (HDPs) in these markets (OIPMI Final report, 2023). We delve deeper into the findings of OIPMI in the subsequent sections. The Commission considers market inquiries to be effective mechanisms for addressing practices that may limit or prevent competition. In the subsequent sections of the paper, we will delve extensively into the scope and findings of the market inquiry.

3.4. Recent abuse of dominance enforcement in digital markets in South Africa

This section outlines the recent abuse of dominance cases related to digital markets in South Africa. Table 1 below illustrates that the Abuse of Dominance concerns in relation to digital markets were mainly around exclusionary conduct. It is only in the online intermediary platforms market inquiry that the Commission raised substantive concerns related to exploitative conduct. This that have been considered in South Africa prior to the market inquiry raised concerns around exclusionary conduct by digital platforms.

Table 1: Abuse of dominance cases in digital markets in South Africa

Case or Inquiry	Theories of Harm	Outcome

Entelligence vs Google South Africa (2008)	The complainant alleged that Google's actions, amongst which it withdrew access to Google AdWords, that would jeopardise its ability to provide services to a major client. It was alleged that these actions amounted to requiring and inducing another market player not to deal with the complainant, but to deal directly with them in contravention of section 8(1)(d)(i) of the Act. This was alleged exclusionary conduct by GoogleSA.	The allegation was dismissed because the complainant was a small player and the conduct of Google was unlikely to result in substantial lessening or prevention of competition in the relevant market.
Metered Taxi Industry vs Uber (2015)	The complaint by the metered taxi industry alleged that Uber was (i) conducting unfair business practice as it secured partnerships with multinational companies that have exposure to its client base and ultimately giving it unparalleled market access (ii) predatory pricing (charging below-cost rates) to the detriment of metered taxi operators. This complaint related to alleged exclusionary conduct by Uber.	The initial findings of the Commission indicated that Uber driver-partners were not setting prices below their operational costs. Additionally, it opted not to pursue the case due to the complaint being filed within a year of Uber's launch in South Africa, and it was deemed improbable to prove any anti-competitive effects.
Complaint against Bluespec (2017)	The complainant alleged that through its Dreamtech App, Bluespec can influence the decision on who tows the motor vehicle from the accident scene. This complaint related to exclusionary conduct by Bluespec.	The case was, however, closed due to lack of evidence of exclusionary conduct.
GovChat vs Facebook (2020)	The theory of harm was that Facebook's (the owner of Whatsapp) attempt at off-boarding GovChat constituted exclusionary conduct in contravention of section 8(1)d(ii) and section 8(1)(c) of the Act. This case had an exclusionary concern.	The Tribunal granted the interim relief, preventing the removal of GovChat from the Whatsapp platform, pending the outcome of the Commission's investigation into GovChat's complaint against *Meta, Whatsapp* and *Facebook South Africa.* The Commission completed its investigation and refered the matter to the Competition tribunal for presecution. The outcome of the case is still pending.
Online Intermediation Platforms market inquiry (2021)	Theories of harm related to exploitative conduct, such as discriminatory pricing and excessive pricing in the online classifieds and online delivery platforms markets. These actions are purported to constitute	Since this was a market inquiry, several remedial actions were introduced to ensure that platforms reduced their price differentials as well as

	contraventions of section 8(1)(a), 8(3), 9(1)(a)(i) and 9(1)(a)(ii).	prioritised the effective participation of small business users on these platforms.

Source: Adapted from Competition Commission of South Africa (2020)

4. EXPLOITATIVE THEORIES OF HARM RELATED TO ONLINE INTERMEDIATION PLATFORMS: THE SOUTH AFRICAN CASE

An overview of the Online Intermediation Platforms Market Inquiry

The focus of the South African inquiry is on *online intermediation platforms*. This is of relevance to the ongoing global debate surrounding digital markets, which predominantly revolves around platforms that facilitate online transactions between business users and consumers.

As extensively explained in the literature, digital platforms are considered to have strong incentives to exploit consumers and business users because of the distinct features (such as network effects and their two-sided nature) enable them to extract more from business users and fund their lead in platform development and customer acquisition. The Commission pinpoints the inherent differences in bargaining power between these platforms and business users which allow scaled platforms to influence competition dynamics amongst businesses operating on the platform or even exploit these businesses. This influence can manifest through a variety of mechanisms, including the fees, the fee structure, ranking algorithms, and terms and conditions. The Commission's assertion is that platforms might not explicitly intend to influence competition, barring instances of self-preferencing. However, this could emerge unintentionally as consequences of the platforms' monetisation strategies and underling business models. The market features result in a bifurcated market with one or two scaled platforms that influence both platform and business user competition.

The inquiry focused on investigating four areas of competition and public interest, namely: 1) market features that may hinder competition amongst the platforms themselves; 2) market features that may hinder competition amongst business users or undermine consumer choice; 3) market features that give rise to exploitative treatment of business users; and 4) market features that may negatively impact on the participation of SMEs and/or HDP firms

The inquiry differentiated between scaled platforms that hold prominent positions within each of the selected categories of online intermediation platforms and the remaining participants in these markets. The designation of certain platforms as “leading platforms” is based on their demonstration of characteristics typically associated with a dominant firm (establishing dominance is not necessary for conducting market inquiries). Consequently, the outcomes of the inquiry, as well as the subsequent remedial actions, are primarily directed towards these leading platforms and firms operating in those markets.

Online intermediation platforms were defined as platforms that facilitate transactions between business users and consumers (or so-called “B2C” platforms) for the sale of goods, services and software (Terms of Reference, 9 April 2021). The scope of the inquiry includes eCommerce marketplaces, online travel agencies, food delivery, app stores, property classifieds and automotive classifieds, along with the role of Google Search in shaping B2C platform competition. The choice of this area for the online inquiry was that these platforms affect real business activity across a wide range of the economy (OIPMI Final 2023). Digital advertising was included, as far as it may pose a barrier to platform or business user competition, and the extent to which those platforms also offer intermediation services. The inquiry also included foreign domiciled platforms whose virtual presence and activities have an effect within the country on domestic customers or businesses listed on their platforms. E-hailing services were specifically excluded as they were subject of a previous inquiry and as well as other pure gig economy platforms (Competition Commission Terms of Reference, 2021).

The inquiry identified the following platforms as leading platforms in their respective platform categories:

Leading Platforms	**Platform categories**
Apple App store and Google Play	Software app stores
Takealot	eCommerce
Property24 and Private Property	Property Classifieds
AutoTrader and Cars.co.za	Automotive Classifieds
Booking.com and Airbnb	Travel and accomodation
Mr Delivery and UberEats	Food Delivery

Google search	General Search

Amongst these platform categories, the vertical classifieds platforms specialising in property and automotive classifieds, as well as online food delivery platforms were the markets in which the exploitative abuse was identified.

The significance of the South African market inquiry

A significant finding emerging from the South African market inquiry, distinct from other jurisdictions, is the uncovering of exploitative practices by leading online intermediation platforms. While instances of abuse of dominance concerning digital platforms have primary focused on exclusion (*Google Shopping* (2017), *Android* (2018) and *Qualcomm* (2018)), the South African inquiry shed light on instances of exploitation. It is noteworthy that the EU and other jurisdictions are yet to decide cases involving platform exploitation, thus highlighting the important contribution of the South African inquiry in addressing this aspect of digital competition policy.

Another crucial aspect highlighting the relevance of the case study is that it provides insights on digital competition policy from a small, developing country perspective. In smaller markets, which are often prevalent in many developing countries, competition authorities have historically placed more emphasis on exploitative theories of harm. This is primarily due to the presence of economies of scale and substantial barriers to entry, which increase the likelihood of dominant firms operating without effective regulation. Consequently, these dominant entities can engage in practices such as excessive pricing and price discrimination. This is the case in the South African economy, which is characterised by concentrated industries and an economy skewed to resource-based and capital-intensive production due to previous exclusionary policies (Klaaren et al., 2017).

Excessive pricing is arguably the most contentious area of competition enforcement in many jurisdictions. There are diverse views on the need for intervention by competition authorities in dominant firms' pricing of products and services, particularly in relation to traditional markets (Evans and Padilla, 2005; Ezrachi and Gilo, 2009; Motta and de Streel, 2006; Roberts, 2008). The divergence in approaches to excessive pricing in traditional markets can partially be explained by the nature of the markets in the different jurisdictions. Different countries'

choices regarding excessive pricing reflect decisions about the relative balance between risks of over- and under-enforcement in the context of their unique economic challenges and conditions. In large markets like the US and the EU, the likelihood of a single firm acting independently without constraints from the threat of new entry is low. Conversely, in smaller economies such as South Africa, faced with dominant firms and where there are barriers to entry, it is possible for firms to extract high rents from their dominant positions. These smaller markets often exhibit higher levels of industry concentration due to the imperative of achieving economies of scale. However, it is important to note that the unique characteristic of digital markets is their tendency towards increased concentration and ease of monopolisation, a phenomenon not confined to small markets. Such concerns are now pervasive across all jurisdictions where digital platforms operate. Therefore there is valuable insights to be gleaned from jurisdictions like South Africa, which have previously prosecuted exploitative conduct.

An important theme in the discourse around digital competition policy has been that of the protection of smaller business users and the preservation of contestability of markets. The South African market inquiry makes an important contribution to this discussion since one of the key goals of the inquiry is to identify market features that may negatively impact the participation of SMEs and HDP-owned firms. This is aligned with the EU's Platform to Business (P2B) regulation which specifically targets potentially harmful business practices, including exploitative terms and conditions, to promote a level playing field and protect smaller businesses from potential abuses of market power by dominant platforms, (Graef, 2019). The Terms of Reference for the Online Intermediation Platforms Market Inquiry explicitly cautioned against the risk of 'irreversible concentration' inherent in digital markets, and so the actions taken by the Commission in the Inquiry were aimed at ensuring that digital markets are contestable and create opportunities for the entry of SMEs and HDP firms. With the proliferation of digital markets, similar objectives have gained prominence globally. It has become increasingly apparent that digital markets possess unique characteristics that can expedite the establishment of entrenched market dominance. Consequently, other jurisdictions worldwide have acknowledged the importance of preserving market contestability and promoting the growth of smaller enterprises within the digital marketplace.

Furthermore, another reason for considering the South African market inquiry is the extent of intervention following the findings if the inquiry. For example, this could be of particular value to countries like Germany, which have recently integrated market inquiries into their regulatory toolkit with the intention of imposing remedies. Insights gleaned form the remedies imposed in South Africa could offer potential avenues to consider for authorities intending to use similar tools.

In the following, we provide a summary of the key theories of harm related to exploitative conduct identified in the South African Online Intermediation Platforms Market Inquiry. The focus here is on theories of excessive pricing and price discrimination. The inquiry revealed that the concerns around excessive pricing and price discrimination were in the online classifieds markets (specifically, online automotive classifieds and online property classifieds) and the online delivery platforms market.

5. EXPLOITATIVE THEORIES OF HARM: EXCESSIVE PRICING ON DIGITAL PLATFORMS

5.1. Introduction

We begin by analysing the Commission's findings of excessive pricing, as identified in relation to online property and automotive classifieds platforms. The Commission's market inquiry determined that the pricing practices of the leading online automotive and property classifieds platforms would constitute an excessive pricing contravention. The Commission's assessment of the pricing models employed by both leading platforms in the automotive and property classifieds markets revealed that prices to various categories of business users differed based on the volumes of listings they bring to the platforms. The Commission's allegation of excessive pricing hinges on its apprehension about the magnitude of differentiation among business users – it was found that the magnitude of price differentiation reached up to 300%. The novel aspect of the excessive pricing theory of harm lies in its close association with the price discrimination claims asserted by the Commission. The Commission concludes that the degree of price discrimination leads to significantly higher fees for smaller business users compared to their larger counterparts. Moreover, the profit margins derived

from the smaller business users fall within the realm of excessive pricing. The excessive pricing concern is specific to smaller business users.

The remainder of the section takes the findings of the commission in the market inquiry as a case study to explore how excessive pricing can be assessed in online platform markets. It's crucial to bear in mind and qualify the assessment below by acknowledging that the findings pertain to a market inquiry, exempt from the typical sections on price discrimination and excessive pricing outlined in the South African Competition Act. Nonetheless, the following discussion scrutinises the approach considering these sections, as the Commission asserts the applicability and relevance of their findings even within the traditional provisions of the Act.

The crux of the discussion lies not in questioning the accuracy of the overall finding, but rather in scrutinising the appropriateness and thoroughness of the approach employed to arrive at these conclusions. In what follows, we provide an outline of the excessive pricing provisions under South African competition law. This is followed by a detailed description of the commission's evaluation of the excessive pricing in the market inquiry as well as the remedial actions. The section is concluded with an analysis of the Commission's approach to assessing excessive pricing.

5.2. Excessive Pricing Policy In South Africa

The findings in the inquiry are subject to the relevant excessive pricing provisions outlined in Sections 8(1)(a) and Section 8(3). Section 8(1)(a) prohibits a dominant firm from charging excessive prices to the detriment of consumers or customers. In the initial version of the Act, an excessive price was to be established based on the concept of "economic value", which was later clarified and defined through subsequent legal precedents. The revised Act removes this concept and instead in Section 8(3) outlines crucial factors to be taken into account when establishing a benchmark competitive price and assessing whether a price is considered excessive compared to this competitive price. These factors encompass: (i) the analysis of price-cost margins and various profitability measures, (ii) an examination of the respondent's historical pricing in other markets and over time, (iii) a scrutiny of prices and profits generated by comparable firms within competitive markets, (iv) the duration of pricing at the identified level, (v) a consideration of the structural aspects of the relevant market, including market

share, contestability, barriers to entry, and any historical or current advantages not stemming from the respondent's commercial efficiency or investment, and (vi) a consideration of any regulations set forth by the Minister of Trade, Industry, and Competition, especially those addressing the calculation and determination of what constitutes excessive pricing.

The next section provides a summary of the excessive pricing findings in the South African Online Intermediation Platforms Market Inquiry and evaluates the assessment conducted by the Competition authorities.

5.3. EXCESSIVE PRICING THEORIES OF HARM AND REMEDIAL ACTIONS IN ONLINE CLASSIFIEDS

5.3.1. Excessive Pricing ToH: online classifieds

The Commission's excessive pricing theory of harm in respect of online property and automotive classifieds platforms is intricately tied to its assertions of price discrimination, explored in greater detail in a subsequent section. The Commission's finding is that for a subset of business users – the focus of the price discrimination claims – the prices levied upon them by the leading platforms in these markets fall within the realm of excessive pricing, in contravention of section 8(1) of the Competition Act.[6]

In the online property classifieds market, Property24 has been identified as the leading platform, with a market share exceeding 50%, which clearly meets the criteria for dominance.[7] Within online automotive classifieds, Autotrader and Cars.co.za are the leading platforms with market shares of 40-50% and 30-40%, respectively. The Commission presented evidence demonstrating that agents and dealers heavily rely on online classifieds for leads, underscoring their essential role for estate agents and auto dealers. For instance, in the property sector, it was estimated that approximately 70-80% of leads originate from vertical classifieds, with only 10-20% coming from agents' own websites and less than 10% from horizontal classifieds.[8]

In these markets, the fee structure for listing on online classifieds relies on the volume of listings that agents and dealers contribute to the platforms. The pricing details are outlined on

[6] OIPMI Final Report and Decision, para 230
[7] OIPMI Final Report and Decision, para 205
[8] OIPMI Final Report and Decision, para 202

standard rate cards, clearly presenting the monthly fees corresponding to various categories of listing volumes and in the case of property classifieds also based on the value of the properties[9]. The Commission considered the extent of the price differentiation between smaller and larger business users to be exorbitant and lacking reasonable justification from a cost perspective.

The Commission's analysis of the online classifieds platforms fee structure

In establishing its theory of harm, the Commission considered the fee structure of the online automotive and property classifieds platforms. Using AutoTrader's 2021 rate card for Gauteng as a reference[10], listing 20 vehicles incurs a cost of R6180.86 per month, whereas listing 350 vehicles costs R24726.62 per month. On a per-car basis, this means that the smaller dealer would be paying approximately 341% more than their larger counterpart. Conducting a similar exercise for the property classifieds market, it is revealed that listing 10 properties that are valued at R1.3 million rands or less would cost R46.30 per property compared to R8.49 per property if the business user has 1500 properties of the same value listed. This amounts to the smaller business user paying up to 445% more on a per listing basis compared to the larger user.

Another set of services provided by the online classifieds platforms are value-added services (VAS), these are marketing services that enhance the visibility of their listings by either ranking them higher or advertising them as "premium" listings. These services are also priced using a similar pricing structure that discriminates based on volumes of listings. There are several marketing packages offered to business users, each providing distinct levels of visibility for their listings. For instance, AutoTrader's *Premium Listings* package guarantees business users placement on the coveted first page of the platforms search results. It's claimed that listings under this package may experience up to four times more views. Following this, there are *Featured Listings*, positioned on the first page just below Premium Listings. It is purported that business users utilising this package could see an increase of up to 30% in views. Additionally, *Standout Listings* empower business users to enhance their advertisements with more images, thereby making their listings more prominent. According to AutoTrader's pricing for

[9] Refer to the Appendix.
[10] Refer to Table 3 in the Appendix.

Value-Added[11] in Gauteng, when calculated on a per car basis, it's evident that listing 20 cars using the premium package would cost R249.95 per car, whereas listing 120 cars would bring the cost down to R166.66 per car. This reveals that the smaller dealer may end up paying nearly 50% more than the larger dealer to advertise their listing on the platform.

The inquiry concluded that in both classifieds markets small business users were paying a disproportionately higher rate per listing compared to larger property agencies and car dealerships. This theory of harm unveils a novel dimension, in that the Commission identifies excessive pricing as applicable mainly to a specific subset of consumers that are within the same service, connected to the discriminatory pricing structure. The Commission is of the view that this conduct is as a result of the bargaining power held by classifieds platforms, enabling them to demand significantly higher fees from smaller agents and dealers, thereby bolstering their excessively high profits.[12] The Commission's view is that these fees are designed specifically to support excessive levels of profits, rather than costs and value. The Inquiry revealed that Property24's conduct in particular was consistent with market power, marked by persistent fee hikes over the 2017 – 2020 period, exceeding inflation rates, without the loss of estate agents, while maintaining exceptionally high profits.[13] The Commission concluded that the disproportionately higher fees imposed on these smaller business users in both online property and automotive classifieds platforms not only resulted in excessive profitability (especially in the case of Property24) but also amounted to a violation of excessive pricing under section 8 of the Act.

5.3.2. Remedial action

It was decided that the remedial action would target SMEs and HDPs, as the violation of excessive pricing primarily affected agencies and dealers with lower volumes of listings. According to the Commission, the evidence pointed to substantial harm to both platform access and the adoption of value-added products which impedes marketing efforts and visibility, and in turn impedes competition.

[11] Refer to Table 4 in the Appendix
[12] OIPMI Final Report and Decision, para 231
[13] OIPMI Final Report and Decision, para 205

Using the existing rate band structure, the inquiry determined that, in the case of property classifieds, agencies with 30 or fewer listings for sale or 10 or fewer listings for rental properties would be designated as SMEs. For automotive classifieds, dealers with 20 or fewer listings would fall under the SME category.

Firstly, the remedial action outlined in the inquiry mandates that the leading platforms (AutoTrader and Property24) must introduce a Small Independent Business Package tailored for SME agencies or dealers. This package should be priced at no more than 10% higher than the average rate charged to all other agencies or dealers.

Secondly, the inquiry has determined that additional support is necessary for Historically Disadvantaged Persons (HDPs) due to unique challenges arising from market dynamics and historical exclusion. Consequently, Property24, AutoTrader, and Cars.co.za are obligated to implement HDP programs that incorporate specified features[14] aimed at mitigating some of the disadvantages faced by HDP agents and dealers in their pursuit of visibility and leads on the online classifieds platforms.

5.3.3. Evaluation of the Commission's excessive pricing approach

It is commonly acknowledged that the assessment of excessive pricing is fraught with numerous practical difficulties, with the main challenge being the determination of an appropriate benchmark competitive price. As detailed earlier, the Commission's determination of excessive pricing in the online classifieds market rests on two primary arguments. Firstly, the Commission established that the dominant platforms, Property24 and Autotrader, wield considerable market power. This is evident in their ability to engage in exorbitant price discrimination, with Property24 consistently raising prices beyond inflation without a corresponding loss of customers. Secondly, the Commission's examination of the leading platforms' operating margins led to the conclusion that these margins were excessively high, falling within the realm of excessive pricing.

[14] Such as no cost personalised training on getting started on the platforms, no cost workshops and consultations with experts from the platform, free enrolment, discounted advertising and access to VAS

Addressing excessive pricing is familiar territory for South African Competition Authorities. The way the Commission conducted its investigation illustrates the application of its conventional approach in assessing the conduct of online classifieds platforms. However, this serves as our point departure when evaluating the South African approach. It has been widely acknowledged in the ongoing discourse on assessing the abuse of dominance in digital markets that traditional economic evaluations may not seamlessly apply to these digital landscapes. We begin by elucidating the pricing structure of online classifieds markets, recognizing its significance in shaping the framework for evaluating pricing contraventions.

Benchmark competitive prices

The Commission's determination that prices in the online property and automotive classifieds markets were deemed excessive stemmed from the application of two key frameworks. In the case of Property24, the main argument revolved around the observed price increases which exceeded inflation across their various listing fees and VAS packages. This signalled the exercise of market power, implying that the prices were excessive. The other argument which applied to both online automotive and property classifieds was based on the extent of discrimination which resulted in smaller business users paying exorbitantly higher fees (at a per listing level) compared to the larger business users. While this perspective may hold merit, a notable and essential aspect absent from the analysis is the establishment of a competitive benchmark price.

The absence of a robust examination of competitive benchmarks is a critical gap in the analysis. It is important to determine whether prices, even after the increases, remain within the realm of what is considered competitive in the market. If the prices are deemed competitive despite the increases, it suggests a different interpretation than if they significantly surpass what is considered competitive in the market.

Furthermore the monetisation strategy of online platforms is characterised by an initial phase of setting low prices to entice customers onto the platform. Subsequently, at a later stage, prices begin to escalate. Failing to account for this dynamic aspect of market development which is an inherent characteristic of digital platforms overlooks a fundamental dimension of how these markets evolve and monetise over time. Incorporating a nuanced understanding

of the gradual shift in pricing strategies is vital for a more accurate appraisal of the market dynamics.

Making the assumption that price increases, even those surpassing inflation rates, automatically indicate an exercise of market power is flawed. The crucial consideration lies in determining whether, following such price adjustments, the prices are expected to significantly surpass competitive levels. In regard to online classifieds the Commission did not support their conclusion by comparing the prices charged by Property24 and Autotrader to the prices of rivals on a like-for-like basis. By considering the different pricing models and adjusting them so that they could be comparable, it would have provided for a more robust analysis, in order to avoid overenforcement[15].

Relevant costs

As discussed in the above section, the pricing dynamics of online platforms introduce inherent complexities, as the pricing on one side is influenced by the need to cover the costs of providing access on the other side, creating a delicate balance. The value attached by participants on both the subsidising and subsidised sides plays a crucial role in shaping the platform's pricing scheme. Evaluating whether a price is excessive on the subsidising side necessitates an analysis that considers the overall platform costs minus subsidies. More crucially, non-price factors affecting users' willingness to engage with other sides of the platform must also be considered. This intricate assessment is further complicated by the diverse pricing schemes of competing platforms, each reflecting distinct balances in the perceived value of interactions (Mandrescu, 2017).

Typically excessive pricing cases are brought against large established firms in mature markets. As excessive pricing resorts under provisions dealing with abuses of dominance, it typically necessary to prove that the firms hold market power, and mature markets may have fewer players with less dynamic rivalry. At least in developing countries, several digital platforms and related markets may not yet be mature. This poses a challenge, as the typical model entails

[15] Bostoen (2019, pg278)

lower prices initially, to build network effects, followed by higher prices subsequently to monetise the platform product. Pricing behaviour may well differ substantially.

The second challenge is the multi-sided nature of platform markets which creates multiple additional challenges for arriving at a representative price. Platform economics dictate that the ultimate 'price' is a combination of prices on multiple sides. Indeed, a core insight that high prices on any side is misleading in terms of concluding market power, as prices may be particularly low or zero on other sides – depending on the type of network externalities. One will have to make a choice about which sides to analyse.

6. EXPLOITATIVE THEORIES OF HARM: PRICE DISCRIMINATION ON DIGITAL PLATFORMS

6.1. Introduction

The Inquiry raised significant concerns about price discrimination, specifically regarding its impact on SMEs and HDPs. As mentioned above, one of the four focus areas of the inquiry was to pinpoint market features that may negatively impact on the participation of SMEs and HDP firms. In this case the inquiry found that price discrimination was prevalent in the online automotive and property classifieds markets, as well as online delivery platforms markets,

The overarching finding regarding price discrimination in the Inquiry pertains to the magnitude of the price disparities between business users. The Commission found that smaller property agents and car dealers paid significantly higher fees (up to 300% more) for listing on classifieds platforms compared to their larger counterparts. In the online delivery market, the Commission found that smaller independent restaurants faced charges that were 50-60% higher than the larger restaurant chains. The primary concern, as highlighted by the Commission, is that these price differentials in both the online classifieds and online delivery markets cannot be justified from a cost perspective. The Commission asserts that the price differentials are driven by the relative bargaining power of the leading platforms over smaller business users. Consequently, these pricing practices distort competition and impede the ability of SMEs and HDP firms to compete effectively in these markets, in contravention of section 9(1)(a)(ii) of the Competition Act.

The second concern relates to price discrimination in value-added services (VAS) and the effect of online automotive and property classifieds' pricing regime on the adoption of VAS by SMEs and HDPs. VAS encompass marketing products and services provided by platforms to enhance the visibility of users' listings and promote their offerings. The Commission argues that the differential pricing in listings, coupled with the use of differential pricing for VAS, and the bespoke marketing agreements between larger business users and the platforms, result in elevated marketing costs incurred by SMEs and HDP firms. Consequently, this hampers their ability to adopt these essential growth-related initiatives (VAS) due to affordability constraints. This concern falls under the category of 'extra-competition' issues, which the Commission deems as barriers to the growth of SMEs and HDP firms.

The third concern specifically pertains to the differential treatment of business users in relation to platform funded promotional spend. It was uncovered that delivery platforms have a bias towards restaurant chains relative to independent restaurants in regards to platform-funded promotional spend.

Price discrimination has received relatively limited attention in the global debate and discussions around competition enforcement in digital markets. Instead, discussions regarding the interaction between online platforms and business users have predominantly revolved around related concerns within the broader concept of 'differential treatment,' with self-preferencing being a prominent example. Graef (2019) extensively explores three categories of differentiated treatment[16] on online platforms, offering an in-depth analysis framework to assess the potential abusive nature of such practices under Article 102 TFEU. Graef (2019) states that there is a growing perception that differential treatment by platforms, whether it involves self-preferencing or providing preferential business terms to certain entities, gives rise to competition concerns. The author points out that the criteria and legal standards for evaluating the anticompetitive nature of such behaviours is considerably ambiguous. Given the increasing importance of matters pertaining to differential treatment, it becomes apparent that the approach adopted by South African competition authorities in dealing with price discrimination will play a pivotal role in scrutinising price discrimination within the

[16] pure self-preferencing, pure secondary line differentiation, and hybrid differentiation

domain of online platforms. It's worth noting that the prevailing focus has primarily centred around self-preferencing, with relatively less emphasis on price discrimination.

In the subsequent sections, we will present an overview of South African price discrimination policy. Following this, we will provide an in-depth exposition of the theories of harm associated with price discrimination as identified in the Inquiry, as well as the remedial actions. This will be followed by a critical assessment of the Commission's overall approach.

6.2. Price discrimination policy in South Africa

Section 9(1)(a)(ii) of the Competition Act, which was introduced as part of the 2019 amendment, prohibits a dominant firm from engaging in price discrimination *if it is likely to have the effect of impeding on the ability of SMEs or firms owned by HDPs, to participate effectively*. Under the South African law "participate" entails the ability of or opportunity for firms to sustain themselves in the market. This new provision complements the longstanding provision found in section 9(1)(a)(i), which has always been a part of the Act. Under section 9(1)(a)(i), dominant firms are prohibited from engaging in price discrimination if it is determined to have t*he effect of substantially preventing or lessening competition*. Importantly, under section 9(1)(a)(ii), the law does not require the demonstration of actual effects; it is sufficient to establish a violation when such effects are deemed probable. This means that when comparing section 9(1)(a)(i) to 9(1)(a)(ii), the latter requires a lower standard of proof than the former.

The Price Discrimination Guidelines offer an analytical framework for evaluating price discrimination under section 9(1)(a)(ii). This involves (i) establishing whether the seller holds a dominant position in the market, (ii) verifying that the purchaser falls within the category of either SME or an HDP firm, (iii) clearly outlining the differential treatment between SME or HDP firms and other firms not falling within this designation, (iv) assessing whether the goods or services in question are equivalent, (v) determining whether the differential price relative to other purchasers impedes the effective participation of firms in the designated group of purchasers, and (vi) an evaluation of whether there is a justifiable reason for the discrimination, such as cost-based considerations, for instance.

The determination of the last two steps can present significant challenges. Evaluating whether the price difference impedes the effective participation of designated groups and assessing whether there is a justifiable reason for the discrimination can be complex and involve a range of economic, legal, and market analysis. Authorities may need to consider various factors, including market dynamics, cost structures, competitive effects, and potential impacts on SMEs and HDP firms.

To determine whether South African competition rules are sufficiently robust in order to address price discrimination by a dominant firm, we evaluate the Commission's application of the Competition Act to digital markets.

6.3. PRICE DISCRIMINATION THEORIES OF HARM AND REMEDIAL ACTIONS IN ONLINE CLASSIFIEDS

6.3.1. Price discrimination ToH in online classifieds

The Commission's theory of harm in respect of online property and automotive classifieds platforms revolves around the use of price discrimination based on volume of listings that agencies or dealers contribute to the platforms. The finding is that this practice impedes and distorts competition in online classifieds, particularly to the detriment of SMEs and HDP agencies and dealers.[17]

The nature of pricing in these markets is such that cost of listing properties and vehicles on these platforms decreases as the number of listings increase and is reflected on their standard rate cards.[18] The Commission's provisional report provides a detailed explanation of the pricing regime used by Property24. Property24 offers its business users a variety of subscription packages based on the volume of listings and the values of the properties being advertised as shown in the appendix.[19]

The Commission took particular issue with the *extent* of the discrimination, where it uncovered that price differentials exceeded 300% on the standard rate card and were even

[17] OIPMI Final Report and Decision, para 237
[18] OIPMI Final Report and Decision, para 229
[19] Chapter 5 of the PR, para 285

more substantial for customised discounts provided to national dealer groups and agencies, who were offered even more significant discounts.[20] The Commission found that for members of the Estate Agency Property Portal Company (EAPPC)[21], Private Property offered discounts of around 70-80% and other leading platforms offered discounts of around 20-40%. The investigation revealed that the degree of discrimination varied among different classifieds platforms, and the most extreme forms of discrimination could not be adequately justified by cost considerations. Notably, the parties involved did not make an effort to provide evidence to substantiate these discrepancies based on cost. Some platforms argued that larger agents or dealers, by bringing more listings, contribute more value to the platform. However, the Commission contends that the variations in discrimination levels indicate the absence of an objective, value-based pricing model. Instead, it seems that relative bargaining power plays a pivotal role in driving these price disparities.[22]

The Commission's concern was that smaller businesses, which advertise fewer listings and consequently generate fewer leads, end up paying significantly higher prices per listing or per lead in terms of percentage than their larger counterparts. This constitutes price discrimination against SMEs and HDPs in terms of section 9(1)(a)(ii) of the Competition Act.

6.3.2. Effect of differential pricing on uptake of value-added services by SMEs and HDPs

In these markets, it is a common business practice for business users to utilise value-added services (such as *featured* and *premium* listings), these are marketing services that enhance the visibility of their listings by either ranking them higher or advertising them as "premium" listings. The Commission contends that the effect of the price discrimination on smaller agents and dealers, including HDPs, is that small businesses find themselves with limited budgets to allocate towards additional marketing activities such as value added services. Consequently, these high subscription fees severely restrict small business users from fully capitalising on the benefits associated with value-added services. This situation is exacerbated by the fact that small business users also face significant discrimination in their purchase of these value-

[20] OIPMI Final Report and Decision, para 231

[21] Large national agencies are members of this Company, facilitated through the Industry association, Rebosa. OIPMI Final Report and Decision, para

[22] OIPMI Final Report and Decision, para 231

added services. The combination of discrimination on both fronts results in reduced adoption by SMEs and HDPs.[23]

In sum, the Inquiry has determined that the discrimination in listing and promotion fees impedes and distorts competition in online classifieds, particularly to the detriment of SME and HDP agencies and dealers. Thus, concluding that HDP agencies and dealers face further impediments to effective participation and competition on the platforms.

6.3.3. Remedial Actions

The Inquiry has established specific benchmarks for categorizing SMEs on property classified platforms and automotive platforms. For property listings, agencies with 30 or fewer leads or listings for sale properties and 10 or fewer listings for rental properties will be considered SMEs. In the automotive sector, agencies with 20 listings will be used as the benchmark.

As part of the recommended actions, the pricing structure for SME agencies and dealers should transition to being, on average, no more than 10% higher than the average pricing for all other agencies and dealers. The Commission acknowledges that additional support measures are necessary for HDPs due to the unique challenges they face, stemming from market dynamics and historical exclusion. Property24 is required to introduce a Small Independent Business Package for business users with 30 leads or fewer. This package must be priced, on average, at a per-lead level no higher than 15% above the average of all other business users with more than 30 listings. This includes value-added services and branded or stand-out listings. The price difference must further decrease to 10% within 18 months. Autotrader must introduce a Small Independent Business Package for business users with 20 listings or less within 6 months. This package must be priced, on average, at a per-lead or listing level within 15% of the average of all other business users with more than 20 listings, including value-added services and branded/stand-out listings. The difference must reduce further to 10% within 18 months. Cars.co.za is required to price the Flexi and Dynamite packages at a weighted average cost per listing that is no more than 15% higher than the weighted average for the Blue, Red, and Green Packages. This pricing differentiation should decrease to 10% within 18 months.

[23]

Furthermore, the Inquiry has given scope for leading platforms to suggest HDP programs tailored to address competition barriers. This may result in variations across platforms, but HDP agents and dealers can benefit from multiple platform support simultaneously. These programs will undergo periodic reviews for relevance and effectiveness. Property24, Autotrader, and Cars.co.za must introduce HDP programs within three months.

6.3.4. Evaluation of the Commission's approach in online classifieds

Within the context of evaluating digital competition policy, the ongoing debate regarding competition policy in digital markets has centred on whether existing frameworks are adequate or if novel theories of harm are necessary. When it comes to price discrimination, the Commission's approach has been to assess the pricing behaviour of online classifieds and delivery platforms using the established tools of South African competition policy. The Commission's conclusions regarding price discrimination revolve around two pivotal concerns. Firstly, the Commission raises significant concerns about the magnitude of the discrimination. Secondly, it emphasises that this discrimination cannot be substantiated or justified from a cost perspective. This remainder of the discussion offers an evaluation of the Commission's application of the law, with the goal of highlighting the aspects that may introduce novelty to the digital market landscape, while also considering the elements of the approach that require further re-evaluation.

Comparison of business users

The Commission's analysis is based on a comparison of the per-unit price paid by small business users (estate agents and dealers) to the per-unit fees paid by the largest business user (estate agents and dealers). Similarly, in its assessment of the uptake of VAS, the Commission compares the uptake by small business users to business users in the highest volume brackets. Where it finds that such differential are significant (in percentage terms), the Commission contends this has adverse effects on small business users. This approach therefore implies that it is only the large business users that are able to participate effectively and assumes that small business users could only participate effectively if they were to pay the same prices as the largest business users. In the Commission's provisional report, they provide no evidence that it is only the largest business users that participate effectively. In

reality, this is highly unlikely to be the case, given that a substantial portion of business users that are not the largest are evidently also able to participate effectively.

In other words, even if one assumes that (i) the largest business users obtain the lowest prices and make the greatest use of VAS, and that (ii) small business users pay per unit prices that are substantially higher and make significantly less use of VAS compared to the largest business users, it is highly unlikely that small business users would need to obtain the same lowest prices or achieve the same highest usage of VAS in order to participate effectively. Indeed, were they to do so, this would in fact place them in a better position than the bulk of other business users who are already participating effectively.

The implication of this approach is that it is likely to overstate the adverse effects on small estate agents and dealers and an intervention that is focused on narrowing differentials between the smallest and largest business users may be disproportionate if such an intervention in fact goes beyond what is required to ensure that small business users can participate effectively against the bulk of business users.

Notion of a competitive *disadvantage*

In the Inquiry, particularly in the online property and automotive classifieds case, the establishment of a competitive disadvantage and distortion to competition seems to be determined presumptuously. The South African Competition Act does not require proof of the actual deterioration in the competitive situation. A more thorough analysis of the disadvantages faced by SMEs could have enhanced the understanding of the specific circumstances contributing to the conclusion that the conduct has indeed distorted competition. The Commission had the opportunity to assess the impact of the conduct on the costs or profits of smaller players.

Remedies versus intended consequences

It is important to consider whether intervention would significantly address the existing imbalances that hinder the effective participation of SMEs and HDP firms. Otherwise, there is a risk that the interventions would not be effective in achieving the stated objectives, and they

could potentially have adverse effects on the competitive dynamics of the markets. The Commission's analysis, as it stands, focuses on assessing price differentials in isolation, but it could gain valuable insights from a more thorough examination that takes into account the following aspects: Firstly, it should consider how the price of a listing relates to the overall costs incurred by business users. Secondly, it should evaluate whether these differentials, encompassing both listing prices and promotional aspects, hold significant relevance when compared to the majority of business users. This nuanced analysis requires a contextual understanding of the differentials, assessing them in the context in which they manifest, rather than as isolated, standalone components. Such a comprehensive approach would yield a more accurate picture of the competitive landscape and the impact of these differentials on businesses.

The existence of price differentials on online classifieds platforms should not, in itself, be considered a major obstacle to the participation of smaller businesses. This remains true even when these variations are significant in percentage terms and are present on platforms deemed essential for participation. Similarly, concluding that such differentials impede smaller businesses solely because they cannot be justified by cost differences or the value they provide to the platform would be oversimplified.

Any intervention should ensure the maintenance of dynamic efficiency and competition to ensure that incentives for market misconduct and anticompetitive conduct strategies such as artificial entry barriers are eliminated.

6.4. PRICE DISCRIMINATION THEORIES OF HARM AND REMEDIAL ACTIONS IN ONLINE FOOD DELIVERY

6.4.1. Price discrimination ToH in online food delivery

The Commission’s theory of harm in respect of online food delivery platforms revolves around the extreme commission fee discrimination between restaurant chains and independent restaurants. The Commission finds that this pricing regime impedes and distorts competition in food delivery, particularly to the detriment of SMEs and HDP restaurants.

In the online restaurant food delivery platforms market, UberEats and MrD Food are the leading platforms with a combined market share estimated to be around 80-90%, with each passing the dominance threshold. One crucial operational decision made by delivery platforms concerns the level of commission fees imposed on restaurants. Restaurants are broadly categorised as either *restaurant chains* or *independent restaurants*, with restaurant chains further divided into *international* or *local chains*. The Commission finds that both leading platforms differentiate significantly in the commissions they apply to restaurants, with independent restaurants being subject to higher charges.[24] The Commission reported that the mid-2022 data showed discrimination ranging between 30-45% based on the average per category, with independent restaurants facing charges 50-60% higher.[25] The Commission's other concern revolved around agreements between restaurant chains and leading platforms, wherein restaurant chains would commit to run promotions on the platform and promote the partnership with the platform in exchange for reduced commissions[26]. This practice effectively exacerbates the price disparities between independent restaurants and restaurant chains. Their analysis of financial reports showed that these commission differences were not justified by cost variations, and neither of the leading platforms attempted to make such claims.

The Commission determined that the extent of fee differentiation was based on the relative bargaining power over independent restaurants and the willingness to exercise that bargaining power. Furthermore, the Commission has determined that approximately 70% of the restaurants they surveyed have opted to transfer a portion or the entirety of the commission fees imposed by platforms to consumers through increased menu prices. The Commission contends that this practice has had a detrimental effect on the relative pricing between independent restaurants and chains on these platforms. Consequently, it has made independent restaurants menus less attractive to consumers and has adversely affected their competitiveness. The Commission concludes that the commission fee structure results in a distortion of competition and impedes on the ability of SME and HDP restaurants' to compete effectively.

[24] OIPMI Final Report and Decision, para 272
[25] OIPMI Final Report and Decision, para 272
[26] OIPMI Final Report and Decision, para 255

6.4.2. Effect of commission fees on marketing

The Commission found that higher commission fees make promotions on platforms more costly and less likely. The ability to reduce commission fees in exchange for marketing commitments by chains distorts competition on the platform through distorting relative pricing and visibility.[78]

6.4.3. Non-price discrimination – platform funded promotional spend

Linked to the previous discussion with respect to marketing. The inquiry revealed a bias favouring restaurant chains over independent restaurants in terms of platform-funded promotional expenditures. UberEats prioritised international chains over domestic or independent chains, this was because its default ordering was geared towards high volume restaurants. However, following criticism in the provisional report, Mr D Food shifted its focus towards independent restaurants. UberEats bias was also found to decrease during the course of the inquiry.

The findings highlight the important role that advertising and promotions play in the expansion of restaurants on online delivery platforms.

6.4.4. Effect of Commission fee discrimination on platform competition

Another significant finding from the Inquiry is that the Commission asserts that the differences in commission fees directly impacts on the competitiveness at the platform level. The Commission argues that the leading platforms' ability to impose commission fees significantly higher than those of local delivery platforms, sometimes reaching twice the amount, is a key factor enabling these leading platforms to consistently employ aggressive promotional strategies and subsidize their delivery services. Moreover, it is elucidated that the monetary profit generated by independent restaurants typically amounts to twice their portion of orders on the leading platforms. In a particular instance, the net profit derived from independent restaurants even surpasses the overall platform profit, despite incurring losses elsewhere.

6.4.5. Remedial actions

The remedial actions in this case are also targeted towards SMEs and HDP firms. The Inquiry requires UberEats to implement a Standard Tiered Commission Fee Rate Card that will provide

independent restaurants with a choice of commissions and services to choose from. This tiered Commission structure will give independent restaurants with limited bargaining power some flexibility to accommodate different food delivery strategies. Mr D Food is required to provide a promotional rebate to independent restaurants by reinvesting 1.5% of sales of these independent restaurants into discounts and promotional spend on the MR D Food platform. In addition, Mr D Food must provide a R500 monthly advertising credit to qualifying independent restaurants for 12 months each. Both leading platforms are also required to implement HDP programmes.

6.4.6. Evaluation of the Commission's findings and approach

Within the context of evaluating digital competition policy, the ongoing debate regarding competition policy in digital markets has centred on whether existing frameworks are adequate or if novel theories of harm are necessary. When it comes to price discrimination, the Commission's approach has been to assess the pricing behaviour of online classifieds and delivery platforms using the established tools of South African competition policy. This section offers an evaluation of this approach, with the goal of highlighting the aspects that may introduce novelty to the digital market landscape, while also considering the elements of the approach that require further re-evaluation.

Non-transaction versus transaction platform

A key difference between the findings in online classifieds and the online delivery platforms is that the online delivery platform market is a transaction platform where the prices are transferred to end users.

7. Appendix

Table 2: Property24 for sale subscription monthly fees from 2017-2021

Number of For-Sale Leads	For-Sale Rates	
	2017	2018
1 - 10 leads	R 350	R 370
11 - 30 leads	R 915	R 1 055
31 - 50 leads	R 1 435	R 1 650
51 - 250 leads	R 1 950	R 2 240
251 - 500 leads	R 3 240	R 3 890
501 - 750 leads	R 3 600	R 4 320
751 - 1000 leads	R 4 200	R 5 250
1001 - 1500 leads	R 4 800	R 6 240
More than 1500 leads	R 5 520	R 7 730
Value-based model introduced		

For Sale Leads	≤ R1.3m	R1.3m - R2.5m	R2.5m - R4m	R4m - R7m	> R7m
2019					
1 - 10 leads	R 400	R 410	R 420	R 435	R 450
11 - 30 leads	R 1 120	R 1 155	R 1 190	R 1 225	R 1 260
31 - 50 leads	R 1 690	R 1 740	R 1 790	R 1 845	R 1 900
51 - 150 leads	R 2 475	R 2 550	R 2 625	R 2 705	R 2 785
151 - 250 leads	R 2 950	R 3 040	R 3 130	R 3 225	R 3 320
251 - 500 leads	R 4 125	R 4 250	R 4 380	R 4 510	R 4 645
501 - 750 leads	R 4 990	R 5 140	R 5 295	R 5 455	R 5 620
751 - 1000 leads	R 5 800	R 5 975	R 6 155	R 6 340	R 6 530
1001 - 1500 leads	R 7 200	R 7 415	R 7 635	R 7 865	R 8 100
More than 1500 leads	R 9 980	R 10 280	R 10 590	R 10 910	R 11 235
2020					
1 – 10 leads	R 428	R 444	R 462	R 488	R 515
11 – 30 leads	R 1 232	R 1 282	R 1 334	R 1 388	R 1 444
31 - 50 leads	R 1 893	R 1 970	R 2 050	R 2 140	R 2 234
51 – 150 leads	R 2 822	R 2 933	R 3 058	R 3 196	R 3 341
151 – 250 leads	R 3 393	R 3 542	R 3 698	R 3 869	R 4 049
250 – 500 leads	R 4 744	R 4 951	R 5 175	R 5 410	R 5 665
500 – 750 leads	R 5 739	R 5 988	R 6 256	R 6 544	R 6 854
750 – 1000 leads	R 6 670	R 6 961	R 7 272	R 7 606	R 7 964
1000 – 1500 leads	R 8 496	R 8 883	R 9 298	R 9 749	R 10 235
More than 1500 leads	R 11 776	R 12 315	R 12 897	R 13 524	R 14 196
2021					
1 - 10 leads	R 463	R 480	R 500	R 528	R 557
11 - 30 leads	R 1 333	R 1 387	R 1 443	R 1 502	R 1 562
31 - 50 leads	R 2 048	R 2 132	R 2 218	R 2 315	R 2 417
51 - 150 leads	R 3 053	R 3 174	R 3 309	R 3 458	R 3 615
151 - 250 leads	R 3 671	R 3 832	R 4 001	R 4 186	R 4 381
251 - 500 leads	R 5 133	R 5 357	R 5 599	R 5 854	R 6 130
501 - 750 leads	R 6 210	R 6 479	R 6 769	R 7 081	R 7 416
751 - 1000 leads	R 7 217	R 7 532	R 7 868	R 8 230	R 8 617
1001 - 1500 leads	R 9 193	R 9 611	R 10 060	R 10 548	R 11 074
More than 1500 leads	R 12 742	R 13 325	R 13 955	R 14 633	R 15 360

Source: OIPMI Provisional report Chapter 5 Online Classifieds Platforms, page 112

Table 3: Property24 rental Subscription fees from 2017-2021

Rental Listings	Rental Fee				
	2017	2018	2019	2020	2021
1 - 10 slots	R 155	R 175	R 195	R 215	R 233
11 - 20 slots	R 285	R 325	R 360	R 400	R 433
21 - 50 slots	R 615	R 710	R 780	R 870	R 941
51 - 100 slots	R 1 150	R 1 325	R 1 460	R 1 610	R 1 742
More than 100 slots	R 11.5	R 13.2	R 14.5	R 16	R 17.3

Source: OIPMI Provisional report Chapter 5 Online Classifieds Platforms, page 113

Table 4: AutoTrader's standard rates for 2018-2021

Listing Fee				
2018				
Vehicle Limit	20 Vehicles	60 Vehicles	120 Vehicles	Above 120 Vehicles
Gauteng	R 4 999	R 9 999	R 14 999	R 19 999
Inland	R 3 999	R 7 999	R 11 999	R 15 999
Coastal	R 2 999	R 5 999	R 8 999	R 11 999
2019				
Vehicle Limit	20 Vehicles	60 Vehicles	120 Vehicles	No limit
Gauteng	R 5 399	R 10 799	R 16 199	R 21 599
Inland	R 4 319	R 8 639	R 12 959	R 17 279
Coastal	R 3 239	R 6 479	R 9 719	R 12 959
2020				
Vehicle Limit	20 Vehicles	60 Vehicles	120 Vehicles	250 Vehicles
Gauteng	R 5 831	R 11 663	R 17 495	R 23 327
Inland	R 4 664	R 9 330	R 13 996	R 18 661
Coastal	R 3 498	R 6 997	R 10 496	R 13 996
2021				
Vehicle Limit	20 Vehicles	60 Vehicles	120 Vehicles	350 Vehicles
Gauteng	R 6 180.86	R 12 362.78	R 18 544.7	R 24 726.62
Inland	R 4 934.84	R 9 889.8	R 14 835.76	R 19 780.66
Coastal	R 3 707.88		R 11 125.76	R 14 835.76

Source: OIPMI Provisional report Chapter 5 Online Classifieds Platforms, page 125

Table 5: AutoTrader's Value-Added Packages rates 2020

Standout Listings- Gauteng					Standout Listings- Inland				Standout Listings- Coastal			
	2018	2019	2020	2021	2018	2019	2020	2021	2018	2019	2020	2021
20 Vehicles	R749	R809	R849	R926	R599	R647	R699	R741	R499	R485	R524	R555
60 Vehicles	R1 499	R1 619	R1 748	R1 853	R1 199	R1 295	R1 399	R1 483	R899	R971	R1 049	R1 112
120 Vehicles	R2 249	R2 429	R2 623	R2 780	R1 799	R1 943	R2 098	R2 224	R1 349	R1 457	R1 573	R1 667
above 120	R2 999	R3 239	R3 498		R2 300	R2 591	R2 798		R1 799	R1 943	R2 098	
350 Vehicles				R3 708				R2 966				R2 224
Featured Listings- Gauteng					Featured Listings- Inland				Featured Listings- Costal			
20 Vehicles	R1 249	R1 349	R1 457	R1 544	R999	R1 079	R1 165	R1 235	R749	R809	R874	R926
60 Vehicles	R2 499	R2 699	R2 915	R3 090	R1 999	R2 159	R2 332	R2 472	R1 499	R1 619	R1 748	R1 853
120 Vehicles	R3 749	R4 049	R4 373	R4 635	R2 999	R3 239	R3 498	R3 708	R2 249	R2 429	R2 623	R2 780
above 120	R4 999	R5 399	R5 831		R3 999	R4 319	R4 664		R2 999	R3 239	R3 498	
350 Vehicles				R6 181				R4 944				R3 708
Premium Listings- Gauteng					Premium Listings- Inland				Premium Listings- Coastal			
20 Vehicles	R4 999	R3 239	R5 831	R6 181	R3 999	R4 319	R4 664	R4 944	R2 999	R3 239	R3 498	R3 707
60 Vehicles	R9 999	R6 479	R11 663	R12 363	R7 999	R8 639	R9 330	R9 889	R5 999	R6 479	R6 997	R7 417
120 Vehicles	R14 999	R9 719	R17 495	R18 545	R11 999	R12 959	R13 996	R14 835	R8 999	R9 719	R10 496	R11 126
above 120	R19 999	R12 959	R23 327		R15 999	R17 279	R18 661		R11 999	R12 959	R13 996	
350 Vehicles				R24 727				R19 781				R14 835

Source: OIPMI Provisional report Chapter 5 Online Classifieds Platforms, page 126

References

Barth, E., Bryson, A., Davis, J.C., Freeman, R., 2014. It's where you work: Increases in earnings dispersion across establishments and individuals in the U.S. Work. Pap. 20447 Httpwwwnberorgpapersw20447.

Bell, R., Greenfield, L., Kayne, V., Kolasky, W., Lowe, J., Melamed, D., Mueller, T., Stoeppelwerth, A., 2004. Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP.

Boshoff, W.H., 2021. South African competition policy on excessive pricing and its relation to price gouging during the COVID-19 disaster period. South Afr. J. Econ. Suid-Afr. Tydskr. Vir Ekon. 89, 112–140. https://doi.org/10.1111/saje.12268

Botta, M., Wiedemann, K., 2019. Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision 10.

Bougette, P., Budzinski, O., Marty, F., 2019. Exploitative Abuse and Abuse of Economic Dependence: What Can We Learn From an Industrial Organization Approach? Rev. Déconomie Polit. 129, 261–286.

Buiten, M.C., 2021. Exploitative abuses in digital markets: between competition law and data protection law. J. Antitrust Enforc. 9, 270–288. https://doi.org/10.1093/jaenfo/jnaa041

Competition Commission of South Africa, 2020. Public comment - Competition in the Digital Economy Report.

Directorate-General for Communication (European Commission), 2020. Single market. Publications Office of the European Union, LU.

DMA, 2022. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 oncontestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU)2020/1828, OJL 265.

Ennis, S.F., Gonzaga, P., Pike, C., 2019. Inequality: A Hidden Cost of Market Power.

European Commission, 2021. Summary of Commission Decision of 10.02.2021 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.40394 - Aspen).

European Commission, 2019a. Update on Competition Enforcement in the Pharmaceutical Sector (2018-2022). Publications Office, LU.

European Commission, 2019b. Commission Decision of 20.3.2019 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement (AT. 40411 - Google Search (AdSense)).

European Commission, 2018. Commission Decision of 18.7.2018 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement (AT.40099 – Google Android).

European Commission, 2017. Summary of Commission decision of 27 June 2017 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement (Case AT.39740 — Google Search (Shopping)) (notified under document number C(2017) 4444).

European Commission, 2008. Summary of Commission Decision of 26.11.2008 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Cases COMP/39.388 - German Electricity Wholesale Market and COMP/39.389 - German Electricity Balancing Market).

European Commission. Directorate General for Competition., 2019. Competition policy for the digital era. Publications Office, LU.

Fung, S.S., Roberts, S., 2021. The economics of potential price gouging during Covid-19 and the application to complaints received by the CMA (Working Paper series, University of East Anglia, Centre for Competition Policy (CCP) No. 2021– 02). Centre for Competition Policy, University of East Anglia, Norwich, UK.

Furman, J., Coyle, D., Fletcher, A., McAuley, D., Marsden, P., 2019. Unlocking digital competition. Report of the digital competition expert panel.
Furman, J., Orszag, P., 2018. 1. A Firm-Level Perspective on the Role of Rents in the Rise in Inequality, in: Guzman, M. (Ed.), Toward a Just Society. Columbia University Press, pp. 19–47. https://doi.org/10.7312/guzm18672-003
Geradin, D., Katsifis, D., 2022. Strengthening effective antitrust enforcement in digital platform markets. Eur. Compet. J. 18, 356–405. https://doi.org/10.1080/17441056.2021.2002589
Greenfield, L.B., Lange, P.A., Callan, N., 2020. Antitrust Populism and the Consumer Welfare Standard: What are we Actually Debating? ANTITRUST LAW J. 83.
Grullon, G., Larkin, Y., Michaely, R., 2019. Are US Industries Becoming More Concentrated?*. Rev. Finance 23, 697–743. https://doi.org/10.1093/rof/rfz007
Heller, P.C., Laurer, R., Mellsop, J., 2023. Is lax enforcement of antitrust policy to blame for an increase in market power? Concurr. Compet. Law Rev.
Hovenkamp, E., 2019. Platform Antitrust. J. Corp. Law 44, 714-- 752.
Italian Competition Authority, 2021. Amazon, Press release, 9 December 2021 [WWW Document]. URL https://en.agcm.it/en/media/press-releases/2021/12/A528
Klaaren, J., Roberts, S., Valodia, I. (Eds.), 2017. Excessive pricing under the spotlight: What is a competitive price?, in: Competition Law and Economic Regulation in Southern Africa: Addressing Market Power in Southern Africa. Wits University Press. https://doi.org/10.18772/22017070909
Lancieri, F.M., Sakowski, P., 2020. Competition in Digital Markets: A Review of Expert Reports. SSRN Electron. J. https://doi.org/10.2139/ssrn.3681322
Mandrescu, D., 2017. Applying EU Competition law to Online Platforms: The Road Ahead.
Marinova, M., 2023. Unmasking excessive pricing: evolution of EU law on excessive pricing from United Brands to Aspen. Eur. Compet. J. 0, 1–25. https://doi.org/10.1080/17441056.2023.2280329
OECD, 2020. Abuse of dominance in digital markets.
Oxenham, J., Currie, M.-J., Van Der Merwe, C., Muller, J., 2022. Competition and Digital Markets: State of Play in South Africa. J. Eur. Compet. Law Pract. 13, 500–508. https://doi.org/10.1093/jeclap/lpac040
Parcu, P.L., Monti, G., Botta, M. (Eds.), 2017. Sanctioning excessive energy prices as abuse of dominance are the EU Commission and the National Competition Authorities on the same frequency?, in: Abuse of Dominance in EU Competition Law: Emerging Trends. Edward Elgar Publishing, pp. 169–184. https://doi.org/10.4337/9781785367625
Rochet, J.-C., Tirole, J., 2003. Platform Competition in Two-Sided Markets. J. Eur. Econ. Assoc. 1, 990–1029. https://doi.org/10.1162/154247603322493212
Rysman, M., 2009. The Economics of Two-Sided Markets. J. Econ. Perspect. 23, 125–143. https://doi.org/10.1257/jep.23.3.125
Salop, S.C., Baker, J.B., 2015. Antitrust, Competition Policy, and Inequality. SSRN Electron. J. https://doi.org/10.2139/ssrn.2567767
Tepper, J., Hern, D., 2018. The Myth of Capitalism: Monopolies and the Death of Competition. John Wiley & Sons.
Yildirim, E., Koç, T., Güzel, Y., 2024. Excessive Pricing at the Covid-19 Pandemic: Big Data Insights From Consumer Complaints. SAGE Open 14. https://doi.org/10.1177/21582440241228699
Zingales, L., Morton, F.S., Rolnik, G., 2019. Stigler Committee on Digital Platforms - Final report.