IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT CASE NUMBER:

CC CASE NUMBER: 2022OCT0048

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA	APPLICANT
and	
THE JOHANNESBURG STOCK EXCHANGE LIMITED	RESPONDENT

FILING NOTICE

TAKE NOTICE that the Applicant herewith files the following documents:

1. CT1 Form;
2. Notice of Motion
3. Founding Affidavit

DATED at **PRETORIA** on THIS 01ST DAY OF OCTOBER **2025.**

COMPETITION COMMISSION

Building C, DTI Campus

77 Meintjies Street

Sunnyside

Pretoria

Tel: (012) 394 3200

Ref: 2022Oct0048

E-mail: BakheM@compcom.co.za

Mfundon@compcom.co.za

TshegofatsoK@compcom.co.za

VioletM@compcom.co.za

TO: **THE REGISTRAR**

Competition Tribunal,

1st Floor, Mulayo

The DTI Campus,

77 Meintjies Street

Sunnyside

Pretoria

Tel: 012 394 3300/55

Fax: 012 394 0169

E-mail: ctsa@contrib.co.za

Registry@comptrib.co.za

AND TO: **WEBBER WENTZEL**

RESPONDENT'S ATTORNEYS

90 Rivonia Road,

Sandton

Johannesburg,

2196

Tel: +27 (0) 11 530 5000

Ref: R Wilson / G Lodolo / T Lane / 06 June 2025 / 3058697

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Terrence.Lane@webberwentzel.com

competition**tribunal**
SOUTH AFRICA

Form CT1(1)

About this Form

This form is issued in terms of section 50 of the Competition Act and Rules.

This form is to be used only for a referral by the Competition Commission.

Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:
(a) a concise statement of the grounds on which the Complaint is opposed;
(b) the material facts or points on which the respondent relies;
(c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.

An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.

Please see Competition Tribunal Rules 14 though 19.

Form continues on Page 2.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

Date: 1 October 2025

To: the Registrar of the Competition Tribunal, and:

(Name of respondent and [if applicable] other participants :)

THE JOHANNESBURG STOCK EXCHANGE LIMITED (JSE)

Concerning:

(Complaint name and Commission file number:)

2022OCT0048

From: the Competition Commission

The Competition Commission alleges that the Respondent contravened the provisions of the Competition Act, section 8(C) and 8(1)(c) by engaging in the following prohibited conduct:

(Concise statement of the alleged prohibited practice:)

The complaint concerns an alleged contravention of sections 8(c) and 8(1)(c) of the Competition Act No.89 of 1998, as amended ("the Act") in that the Respondent has engaged in exclusionary conduct as described in the founding affidavit, that has anti-competitive effects, from at least 2017 and the exclusionary conduct is ongoing.

competitiontribunal
south africa

Form CT1(1)
Page 2
About this Form

- This form is issued in terms of section 50 of the Competition Act.
- This form is to be used only for a referral by the Competition Commission.
- Unless this is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.
- If the answer raises only a point of law, it must set out the question of law to be resolved. Any other answer must be in affidavit form, setting out in numbered paragraphs:
  (a) a concise statement of the grounds on which the Complaint is opposed;
  (b) the material facts or points on which the respondent relies;
  (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the Complaint Referral.
- An allegation of fact set out in the Complaint Referral that is not specifically denied or admitted in an answer will be deemed to have been admitted.
- Please see Competition Tribunal Rules 14 through 19.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 012 3943300
fax: 27 012 3940169
e-mail: ctsa@comptrib.co.za

Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

1. An Order declaring that the JSE has contravened section 8(c) and 8(1)(c) of the Competition Act, 89 of 1998, in that it has engaged in exclusionary conduct, described in the founding affidavit, that has anti-competitive effects, from at least 2017 and the exclusionary conduct is ongoing;

2. Interdicting and restraining the JSE from engaging in such exclusionary conduct;

3. Ordering the JSE to take such remedial steps as are necessary to remove the exclusionary conduct and to restore conditions of effective competition, including, but not limited to:

   3.1. The amendment of the rules of the JSE to ensure adequate interoperability of the Broker Dealer Accounting System ("BDA system") in the equity exchange market where such interoperability is needed to facilitate cross-platform trade including access to broker data necessary for effective risk management and effective competition in the market;

   3.2. Amendment of the rules of the JSE to ensure that the current Matched Principal Trade type ("MP Trade") is developed to include off book transactions; whilst still being able to generate a single contract note; and;

   3.3. Amendment of the rules of the JSE to develop a reverse MP trade type in order to allow 100% trades on the JSE/BDA platform to be executed, cleared and/or settled on the A2X platform.

4. Imposing an administrative penalty against the JSE in terms of section 59 of the Act, up to 10% of the JSE's annual turnover in South Africa;

5. Granting such further and/or alternative relief as the Tribunal may consider appropriate;

☐ This referral is to proceed as a consent proceeding.

☑ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

BUKHOSIBAKHE MAJENGE - CHIEF LEGAL COUNSEL

Authorised Signature:

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT CASE NUMBER:

CC CASE NUMBER: 2022OCT0048

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA APPLICANT

and

THE JOHANNESBURG STOCK EXCHANGE LIMITED RESPONDENT

APPLICANT'S NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicant, the Competition Commission, hereby refers a complaint to the Competition Tribunal ("Tribunal") against the respondent, the Johannesburg Stock Exchange Limited ("JSE"), for an order in the following terms:

1. An Order declaring that the JSE has contravened section 8(c) and 8(1)(c) of the Competition Act, 89 of 1998, in that it has engaged in

exclusionary conduct, described in the founding affidavit, that has anti-competitive effects, from at least 2017 and the exclusionary conduct is ongoing;

2. Interdicting and restraining the JSE from engaging in such exclusionary conduct;

3. Ordering the JSE to take such remedial steps as are necessary to remove the exclusionary conduct and to restore conditions of effective competition, including, but not limited to:

3.1. The amendment of the rules of the JSE to ensure adequate interoperability of the Broker Dealer Accounting System ("BDA system") in the equity exchange market where such interoperability is needed to facilitate cross-platform trade including access to broker data necessary for effective risk management and effective competition in the market;

3.2. Amendment of the rules of the JSE to ensure that the current Matched Principal Trade type ("MP Trade") is developed to include off book transactions; whilst still being able to generate a single contract note; and

3.3. Amendment of the rules of the JSE to develop a reverse MP trade type in order to allow 100% trades on the JSE/BDA platform to be executed, cleared and/or settled on the A2X platform.

4. Imposing an administrative penalty against the JSE in terms of section 59 of the Act, up to 10% of the JSE's annual turnover in South Africa;

5. Granting such further and/or alternative relief as the Tribunal may consider appropriate;

TAKE NOTICE FURTHER that the affidavit of **MARLON DASARATH** together with the annexures thereto, will be used in support of this complaint referral.

TAKE FURTHER NOTICE that if you intend opposing this application you are required to serve an answering affidavit on the Applicant within ten (20) days of service of this application and file same together with proof of service with the Tribunal.

DATED AT **PRETORIA** ON THIS 1st DAY OF OCTOBER 2025.

COMPETITION COMMISSION
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TO: **THE REGISTRAR**
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AND TO: **WEBBER WENTZEL**
RESPONDENT'S ATTORNEYS
90 Rivonia Road,
Sandton
Johannesburg,
2196
Tel: +27 (0) 11 530 5000
Ref: R Wilson / G Lodolo / T Lane / 06 June 2025 / 3058697
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Gina.Lodolo@webberwentzel.com
Terrence.Lane@webberwentzel.com

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT CASE NUMBER:

CC CASE NUMBER: 2022OCT0048

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA APPLICANT

and

THE JOHANNESBURG STOCK EXCHANGE LIMITED RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

MARLON DASARATH

hereby declare, under oath, as follows:

DEPONENT AND AUTHORITY

1. I am a senior analyst in the Market Conduct Division of the Competition Commission of South Africa ("Commission"), the applicant in this matter. The Market Conduct Division is responsible for, *inter alia*, the investigation of complaints relating to alleged abuse of dominance by firms. I am duly authorised to depose to this affidavit and to bring this application on behalf of the Commission.

2. I am an inspector appointed by the Commissioner of the Competition Commission ("Commissioner") in terms of section 24(1) of the Competition Act No 89 of 1998, as amended ("Competition Act"). I was part of the Commission's team that investigated the complaint forming the subject-matter of this affidavit and hereby referred for adjudication. A copy of my certificate of appointment as an inspector, duly signed by the Commissioner, is attached hereto and marked as annexure "**MD1**".

3. The facts relating to this referral and the conduct of the Commission's investigation fall within my personal knowledge, save where otherwise stated or appears from the context, and are to the best of my knowledge and belief true and correct. The facts relating to the merits of the complaint forming the subject-matter of this affidavit are based on the Commission's investigation of the complaint in this matter and are to the best of my knowledge true and correct.

4. Where I make legal and economic submissions in this affidavit, I do so on the advice of the economists and legal representatives of the Commission, as the case may be, which advice I believe to be correct.

THE PARTIES

5. The Applicant is the Commission, a regulatory body established in terms of section 19(1) of the Competition Act, as a juristic person with its principal place of business at Block C, Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria.

6. The Respondent is the Johannesburg Stock Exchange Limited ("JSE"), the largest stock exchange in Africa. The JSE is an exchange licensed in South Africa in accordance with the Financial Markets Act, 19 of 2012 ("FMA") and has its principal place of business at One Exchange Square, Gwen Lane, Sandown, Johannesburg.

JURISDICTION

7. The Competition Tribunal adjudicates competition matters, in accordance with the Competition Act and has jurisdiction throughout the Republic of South Africa. The Tribunal has jurisdiction to adjudicate this matter:

   7.1. Firstly, the JSE's conduct, and its economic activities are within the Republic of South Africa, alternatively, such conduct has an effect in the Republic of South Africa as contemplated in Section 3(1) of the Competition Act.

7.2. Secondly, it concerns a contravention of the Competition Act falling within the exclusive jurisdiction of the Tribunal as contemplated in Section 62(1)(a) of the Competition Act.

PURPOSE OF THE AFFIDAVIT

8. This affidavit is made in support of a referral by the Commission of a complaint against the JSE in terms of section 50(1) of the Competition Act read with Rules 14(1)(a) and 15 of the Rules for the Conduct of Proceedings in the Competition Tribunal. The complaint that is the subject of this referral is as described fully below and was received by the Commission on 26 October 2022. The complaint deals with, amongst others, the alleged contravention of section 8(1)(c) of the Competition Act, which is the subject of this complaint referral.

9. The complaint referral broadly concerns the allegation that the JSE, as a dominant incumbent firm in the listing and trading of equities, is engaging in exclusionary conduct as envisaged by section 8(1)(c) of the Competition Act. It is alleged that the JSE's conduct has raised barriers to growth and expansion of new entrants, such as A2X (Pty) Limited ("A2X" or "Complainant"), thereby constraining their ability to compete effectively in the market.

10. Although A2X has managed to enter the market, it is alleged that the impugned conduct also functions as a barrier to entry for potential new entrants, while entrenching and/ or protecting the JSE's dominant position.

11. The JSE is one of the exchanges in South Africa licensed to operate in the primary market and has a long and established record in this regard. There are two other licensed exchanges in South Africa that offer a primary market, namely the Cape Town Stock Exchange (previously 4AX) and the Integrated Exchange (previously the Equity Express Securities Exchange). These two exchanges have a different settlement model to the JSE, namely pre-trade risk managed rather than the Trade Plus 3 settlement model of the JSE.

12. Should a company want to raise capital by listing its shares for the first time, it is required to do so through one of these three exchanges (in the form of an Initial Public Offering (IPO)). The issued shares that now sit in the public domain can then be freely traded by investors, using authorised users (referred to as brokers) in the secondary market of an authorised market infrastructure, where the JSE is also active.

13. A2X is a secondary trading venue, providing a competing trading platform to the JSE, trading in shares already issued/ listed on the JSE in the primary market. As a secondary listing exchange or trading venue, A2X is only able to list and trade shares that are already listed on the JSE, in the primary listing exchange or trading venue. This means that, for an instrument to be listed and

traded on A2X, it must have first been listed on the JSE or one of the other local primary exchanges, or an international exchange.

14. As will be noted below under market definition, A2X competes directly with the JSE for the same secondary market business, with the same member brokers, clients and product and consequently operates on the same basis as the JSE, that is on a Trade plus three-day settlement cycle.

15. A primary market operator, such as the JSE, is responsible for the ongoing primary regulation of the issuer of shares or equities, even though the company's shares may now also be listed on A2X in the secondary market.

16. Essentially, provided the issuer is in good standing on the primary market operator, it is deemed to be in good standing on, and in compliance with the A2X listing requirements, as a secondary exchange, subject to complying with a number of minor additional requirements imposed by A2X in terms of the A2X listing requirements. This aligned to the JSEs secondary listings model. The JSE has in excess of 70 companies listed on this basis.

17. This complaint referral pertains to the JSE's continued engagement in exclusionary conduct, which includes relying on entrenched procedures and rules to create and maintain operating conditions that restrict A2X from effectively competing with it, rather than competing on price, innovation, and/or quality of output.

18. At the core of these rules and procedures is the JSE's Broker Dealer Accounting System ("BDA system"). The JSE deploys two mechanisms to

carry out its exclusionary strategy:

18.1. The JSE is enforcing the mandatory use of its BDA system and raising barriers to the cross-platform trade on A2X through direct and indirect refusal to make the BDA system sufficiently interoperable with A2X systems; and

18.2. The differential treatment in the processing of different trade types in favour of the JSE. This conduct is carried out by the JSE through the following:

18.2.1. Refusal to combine off-book and on-book trades originating on A2X, to achieve a single contact note, for common clients, for execution and conclusion on the JSE platform – whilst it allows for same for itself (in breach of its own rules and directives); and

18.2.2. Imposing requirements and restrictions on its brokers in respect of reverse Matched Principal Trades (MPT) originating on the JSE platform to be executed and concluded on the A2X platform. The requirements and restrictions create an overly complex, inefficient and ineffective process which results in brokers electing not to use the reverse MPT process. The same restrictions and requirements do not apply to the MPT process for trades conducted on A2X platform and transferred via the MPT process to the JSE.

19. The exclusionary conduct of the JSE that is the subject of this complaint referral has endured from at least 2017 and is ongoing.

20. This affidavit is structured into two parts, namely Part A and Part B. In Part A I deal with the industry overview and the investigation which forms the basis of this complaint referral. This includes the following:

20.1. The Industry Background;

20.2. The Value Chain;

20.3. The Regulatory Environment;

20.4. The Trading Process;

20.5. BDA System;

20.6. The Complaint and Investigation; and

20.7. The Basis of the Commission's referral.

21. In Part B I will proceed to deal with the material facts and points of law relied upon by the Commission as grounds for this complaint referral under the following topics:

21.1. Market definition;

21.2. Market shares and dominance;

21.3. Abuse of dominance;

21.4. Exclusionary conduct:

21.4.1. Enforcing the mandatory use of its BDA system and raising barriers to the cross-platform trade on A2X by refusing to make the BDA system sufficiently interoperable with A2X systems;

21.4.2. The differential treatment in the processing of different trade types in favour of the JSE. This conduct is carried out by the JSE through the following:

21.4.2.1. Refusal to combine off-book and on-book trades originating on A2X, to achieve a single contact note, for common clients, for execution and conclusion on the JSE platform – whilst it allows for same for itself (in breach of its own rules and directives); and

21.4.2.2. Imposing restrictions creating an unnecessarily and overly complex, inefficient and ineffective process which results in brokers electing not to use the reverse MPT process.

21.5. Anti-competitive effects of each of the conduct of the JSE, individually and cumulatively;

21.6. Absence of efficiency justification of the conduct of the JSE;

21.7. Conclusion; and

21.8. Relief sought.

PART A

Industry background

22. Financial markets can be defined as the institutional arrangements, mechanisms and conventions that exist for the issuing and trading (i.e., buying and selling) of financial instruments. They provide infrastructure that brings together buyers and sellers of securities, thereby creating trades.

23. The JSE operates within the capital markets segment of the financial services industry, which plays a central role in facilitating the flow of capital between issuers and investors. Capital markets enable the raising of funds, allocation of financial resources, and trading of securities. Essentially, a stock exchange is a marketplace where stocks, bonds and other securities are bought and sold.

24. The JSE is the largest stock exchange in Africa, with an estimated market capitalisation exceeding R21.8 trillion as at September 2025. It was founded in 1887 during the first South African gold rush, reflecting the historical significance of mining in the country's economy. Over time, the JSE has evolved into a sophisticated, fully electronic exchange.

25. The JSE became a member of the World Federation of Exchanges in 1963 and underwent demutualisation[1] in 2005, listing itself on its own exchange to

[1] Demutualisation is the process where a mutual organization, owned by its members (like policyholders or members of a cooperative), converts into a company owned by shareholders.

operate as a for-profit company on 5 June 2006. Today, the JSE is the largest stock exchange in Africa and is within the top twenty (20) of the largest stock exchanges in the world by market capitalisation.

26. A stock exchange is a specific type of financial market, a regulated marketplace where stocks, bonds, and other securities are bought and sold. The JSE facilitates both the primary market, where companies raise capital by issuing new securities, and the secondary market, where investors trade existing securities. This dual function supports corporate financing and investment liquidity.

27. Only authorised users, also referred to as brokers, are permitted to trade directly on the JSE's platform. These entities must be juristic persons and must meet strict regulatory and financial requirements for admission. Once authorised, brokers may execute trades either on behalf of clients (e.g., individual investors, pension funds, asset managers) or for their own proprietary accounts.

28. The trade process is sophisticated and designed to ensure market integrity and investor protection. Orders are placed by brokers indicating the quantity and price of the securities to be bought or sold. A stock exchange, such as the JSE, would then through its post trade risk management process manage the clearing and settlement process accordingly. This process helps mitigate the risk of failed trades.

29. In this broader ecosystem, brokers serve as vital intermediaries, linking investors to the capital markets. As will be seen later in this affidavit, this

complaint referral makes a distinction between a broker who is only active on one exchange (i.e. on the JSE only), and a broker who is active on more than one exchange (i.e. where they are authorised users on both A2X and the JSE), referred to as a Common Broker.

The value chain

30. As I have noted in paragraph 11 to 15 above, the equity/stock market can be delineated into primary and secondary markets.

31. The primary market is where securities are created by an issuer listing on the primary market and subsequently regulated in terms of an exchange's listing requirements and the provision of the Companies Act. By listing shares, companies gain access to investors' money which they use to fund growth or operations.

32. The secondary market is where previously issued shares/stocks are resold. The secondary market consists of buyers and sellers (which are the brokers trading for their own account or for clients). In this secondary market, brokers execute, buy, and sell orders for already-issued securities (like shares listed on the JSE).

33. The JSE and A2X are direct competitors as secondary equity listing exchanges in South Africa. However, the primary market and secondary

market are not to be conflated with primary trading venue and secondary trading venue.

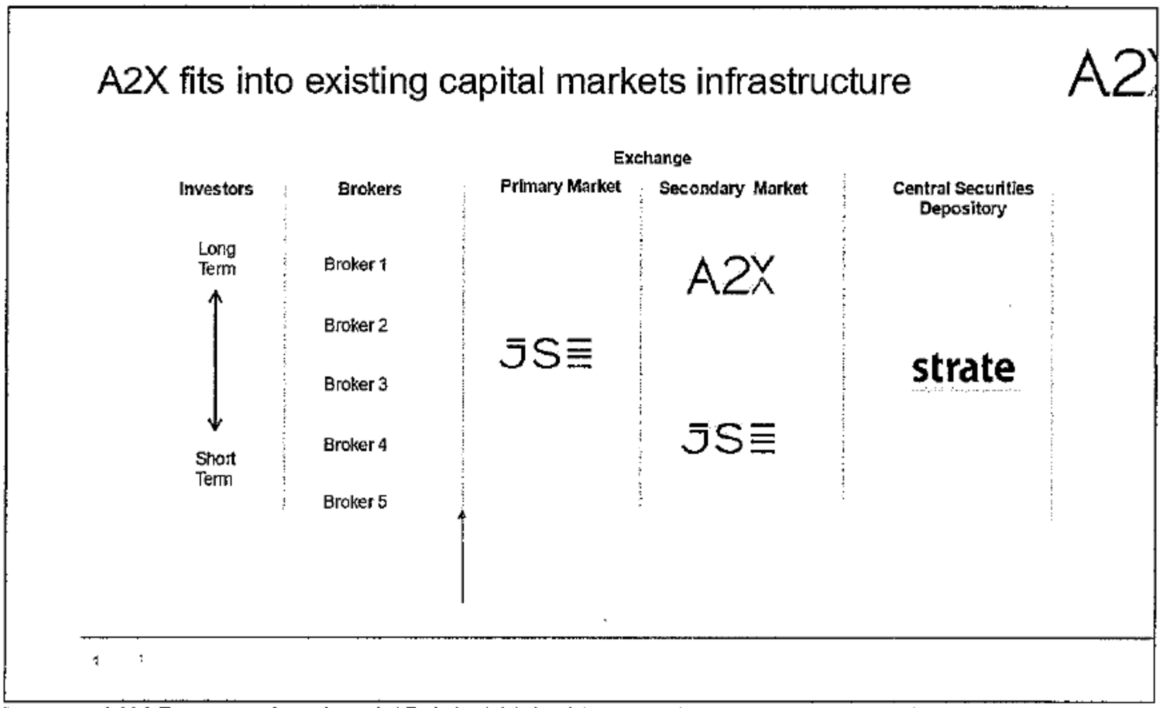
34. The primary market refers to the issuing and listing of shares of companies whereas the secondary market refers to the trading (selling and purchasing) of already issued and listed shares. A secondary trading venue is only trading in shares which are already listed and trading on the primary trading venue.

35. The exchange itself (like A2X or the JSE) need not have any securities but it simply provides infrastructure that brings together buyers and sellers of securities, matches orders between the two and thereafter facilitates the conclusion (i.e. the clearing and settlement) of the transaction.

36. This complaint referral is confined to the operation of the secondary market, namely, the trading of already issued and listed shares, with a specific focus on the trading, clearing, and settlement of securities (or shares) already in issue and listed on the JSE.

Figure 1 below summarises the value chain for trading in stocks in the secondary market.

Figure 1 – Value chain in which South African Exchanges operate.



Source: A2X Presentation dated 15 July 2024 with amendment by the Commission

37. Moving from left to right, investors issue orders to member brokers to either buy or sell stocks. The member brokers then execute such orders either on the JSE or A2X or at both but on varying volumes depending on a complex calculation of price, costs and benefits of executing the orders at either or at both exchanges. Strate is a central depository of all securities when trades have been completed.

38. To become a member of an exchange, an entity needs to fulfil various requirements set by the exchange, as well as, where applicable, pay the requisite membership fee (A2X does not impose a membership fee). Examples of member brokers are firms such as; SBG Securities, UBS South Africa, Investec Markets, RMB and Morgan Stanley.

39. Brokers are the parties which buy and sell securities on an exchange (and may be regarded as the main customers of, or users, of the exchange). The A2X and JSE exchanges can only be accessed by its authorised users i.e. their respective brokers.

40. Brokers either buy and sell securities for their own account (proprietary), or institutions like pension and hedge funds, in which case they are 'institutional brokers.' In addition, they may also buy and sell securities for retail accounts (an individual client transacting in a personal capacity for his/her own personal benefit), in which case they then regarded as 'retail brokers.' A2X only services institutional brokers, whilst the JSE services both institutional and retail brokers.

41. Once an exchange facilitates a trade, i.e. it was able to match buyers and sellers of a particular share, it needs to be cleared and settled. Clearance and settlement of trades refer to the risk management post trade process with the end result being that the seller receives the purchase consideration from the buyer, and in return the ownership of the shares is recorded as changing from the seller to the buyer. It takes a period of three days from the date of trade for the clearing and settling of a trade to be completed.

42. The registry of shares is the Central Securities Depository. In South Africa, there are two such registries, known as Strate[2] and Granite Central Securities Depository (Pty) Ltd ("Granite"). Granite has at this point not been able to

[2] Strate is owned by the JSE (44.547%), the four major South African Banks [ABSA Bank (12.679%), FirstRand Bank Ltd. (12.679%), Nedcor (14.996%), Standard Bank (14.996%)] and Citibank (0.103%).

break into the market to provide Central Securities Depository services. The financiers that facilitate payments between buyers and sellers in exchange for the change in the registration of the shares on Strate, are known as Central Securities Depository participants and are mostly made up of the large banks.

The regulatory environment

43. The JSE and A2X function both as a licensed exchange and a Self-Regulatory Organisation. This means it has delegated authority to set and enforce rules for its listed entities and authorised users (such as brokers), while itself being subject to regulation by the government. Specifically, the JSE is licensed under section 8 of the Financial Markets Act, 19 of 2012 (FMA) and is regulated by the Financial Sector Conduct Authority (FSCA), South Africa's dedicated market conduct regulator.

44. As the regulator, the FSCA ensures that the JSE and A2X comply with the FMA, and other applicable financial legislation. While the FSCA does not prescribe specific systems or procedures, it requires that exchanges such as the JSE and A2X, maintain adequate measures to safeguard the integrity, transparency, and fairness of their trading platforms. This forms part of the FSCA's broader mandate to promote efficient financial markets and enhanced consumer protection.

45. Although the FSCA has statutory oversight, much of the day-to-day regulation and market supervision is delegated to exchanges themselves. As a result, the JSE and A2X play a frontline regulatory role in overseeing trading activity

and enforcing compliance with their own respective rules and listing requirements, as mandated by section 10 of the FMA. These rules, once approved by the FSCA, govern, among other things:

45.1. The conditions under which securities may be listed or delisted,

45.2. The disclosure obligations and governance standards required of issuers and issuer agents, and

45.3. The conduct and obligations of authorised users operating on the exchange.

46. This dual regulatory model gives the JSE the autonomy to design and implement its regulatory framework, subject to FSCA oversight. Importantly, the FSCA retains the power to investigate and intervene where it deems the conduct of an exchange to be unfair or contrary to market integrity. Market participants may also report such conduct directly to the FSCA for investigation. However, the FSCA does not have jurisdiction to investigate contraventions of the Competition Act. Contraventions of the Competition Act fall within the domain of competition authorities.

47. The FMA was promulgated in 2012, replacing the Securities Services Act of 2004. The FMA continues to provide the core legal framework governing all licensed exchanges in South Africa.

48. As part of a Self-Regulatory Organisations' responsibilities, the JSE and A2X are also tasked with regulating its brokers. This includes setting rules around disclosure, conduct, and compliance as conditions of membership. I am

advised that these requirements are essential to maintaining trust in the trading platform and align with the FSCA's mandate to uphold the integrity of licensed financial markets.

The Trading Process

49. The trading process is extensive. The process begins with an authorised user of an exchange (i.e. the broker) being given an instruction by the asset manager, for example, to purchase a certain quantity of a particular firm's shares e.g. Sasol. Whilst different brokerages operate with different systems, this instruction and the execution thereof is processed through automated proprietary systems, which serve as decision matrices. Such systems are known as 'algorithmic stacks.'

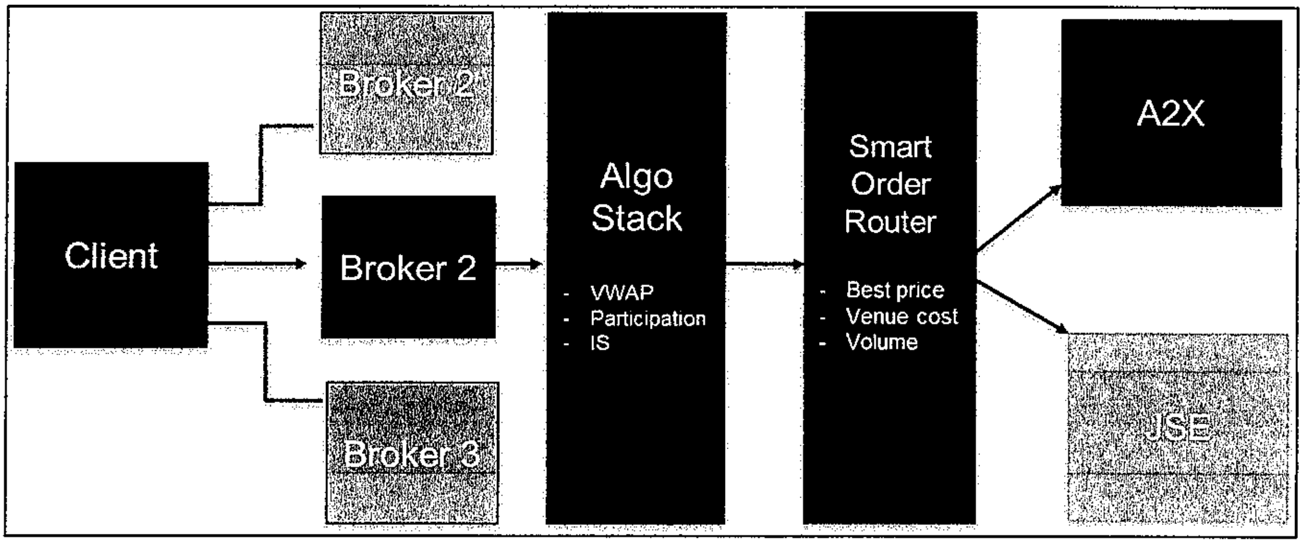
50. Where a broker is only active on one exchange e.g. only on the JSE, the process of determining where to purchase a stock is simple, the broker only has one option. Where a broker is a Common Broker i.e. where they are authorised users on both A2X and the JSE, the determination becomes more complex.

51. It may be that a share is priced differently on each exchange, as well as, at varying quantities at the different prices on each respective platform. Further, given the difference in transaction fees between the two exchanges, it may prove more cost effective ultimately to transact on one exchange, even if the share price is notionally higher on that same exchange.

52. To manage this complexity, Common Brokers use 'Smart Order Routers' which can either be internally developed or third-party programs which facilitate the selection and creation of trades across the two platforms/exchanges.

53. Figure 2, below, depicts the process followed by Common Brokers to determine the most optimal trade:

Figure 2 - Flow diagram from instruction to determining the optimal trade.



Source: A2X Presentation dated 15 July 2024

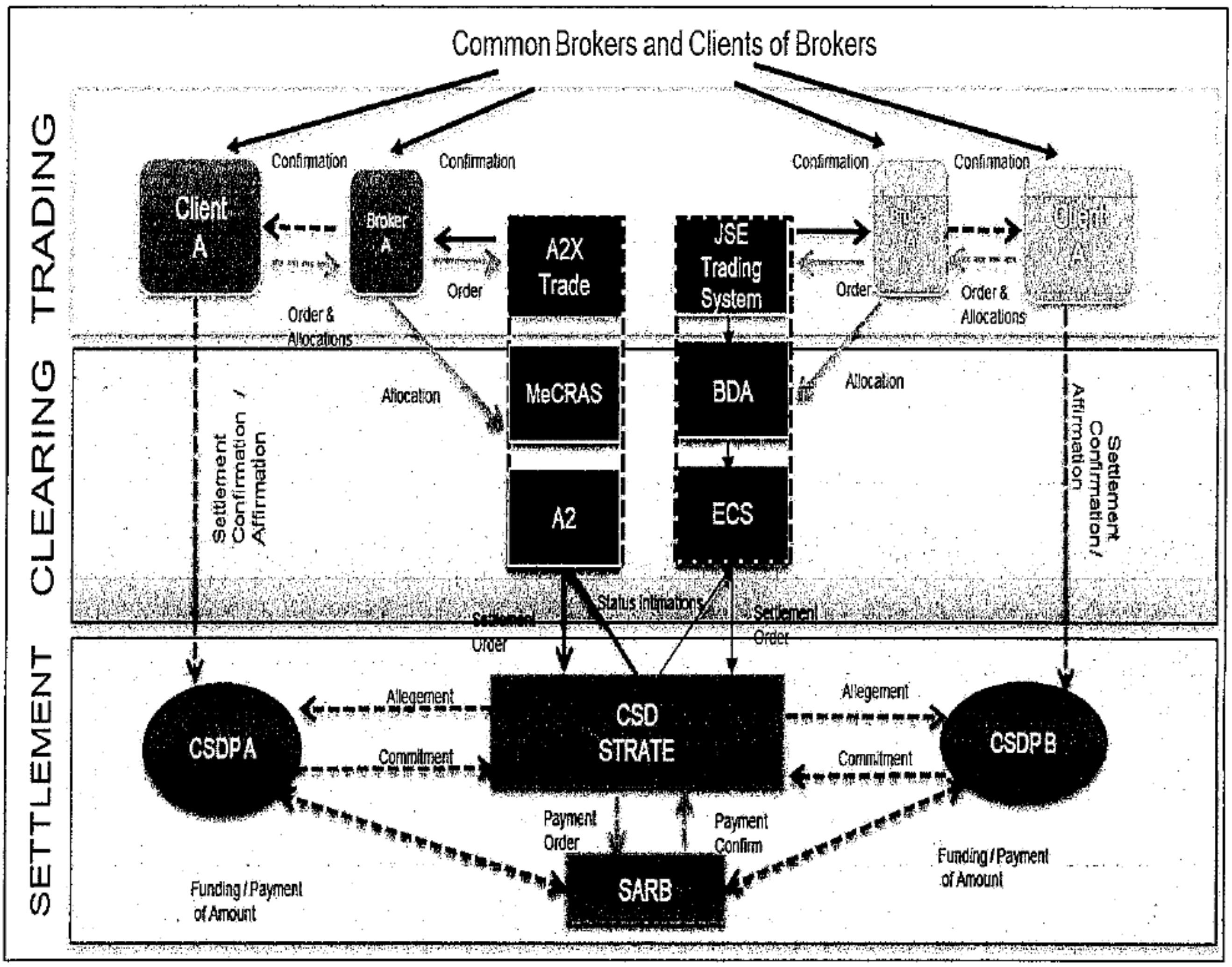
54. In Figure 2 above, the flow of an instruction is traced from a client to a broker, through their internal system, then taken through a Smart Order Router that is set by the Common Broker based on its requirements, and subject to those settings, determines the optimal combination of shares, prices and volumes of a trade to complete the instruction (or part thereof) from the client. This may take the form of purchasing all the required shares either on A2X only, the JSE only, or a combination of both, which is the most likely scenario. The Smart Order Router process is an automated one which commences with the

inputting of the order and thereafter, the resultant trade on one or both exchanges, as per the setting on the Smart Order Router.

55. It is important to note that the orders placed on the respective exchange(s), may only be component parts of the larger instructions initially received by brokers. In completing one broader instruction, it may be that brokers are required to execute several orders on the system throughout any one day.

56. The exchange's trading engine then determines and facilitates the matching of the buy and sell orders. The trade is executed when order matching occurs, and a trading fee is levied for the execution of the trade. Thereafter, the trade is 'cleared,' as per Figure 3, below:

Figure 3 – Details behind the trading, clearing and settlement of an equity transaction.



Source: Commission's illustration based on A2X presentation of 15 July 2024

57. Once trades are matched, where trading for clients the "Deal Allocation" process is started where settlement orders are created and sent to Strate and the client's Central Securities Depository participants (Banks).

58. Clearing is the preparing of the settlement order and risk management process between trading and settlement. Based on the terms of the transaction, clearing prepares the settlement order to ensure that the obligations related to that transaction will be discharged through the exchange. This includes determining the number or value of cash equities of

each kind to be transferred by or on behalf of the seller and the monies to be paid by or on behalf of the buyer.

59. Importantly, in terms of legislation, each exchange is obliged to clear its own trades. Neither exchange can legally nor practically clear a trade conducted on the other exchange. To facilitate the clearing process, each platform has its own system. The JSE has the BDA and ECS systems; whilst A2X has MeCRAS and A2C (the A2X clearing module) systems.

60. In the final step, the settlement order is settled. Settlement constitutes the completion of the transaction. Once the trade is cleared, settlement involves discharging the obligations arising from the transaction i.e. the actual transfer of ownership of securities and money.

61. However, before the completion of the transaction, settlement also involves a risk management process that is designed to ensure that the trade settles by the end of the T plus 3 settlement process, ensuring that the seller has the securities, and the buyer has the money. The exchange rules provide the relevant team responsible for ensuring settlement to risk manage the process. They have certain powers to achieve this through calling for margin/collateral during the settlement period or rolling of settlement to a later date to allow for the parties to be in a position to settle.

The JSE Broker Dealer Accounting System ("BDA System")

62. The BDA system is a back-office accounting and deal management system operated and maintained by the JSE. In terms of the JSE's directives, all

transactions effected by brokers must be recorded on the BDA system. To facilitate the clearing process, each platform has its own system. As pointed out above, the JSE has the BDA and ECS systems; whilst A2X has the MeCRAS and A2C systems. These systems are depicted in the mid-section of the diagram in Figure 3 dealing with clearing.

63. According to the JSE, the BDA is a mandatory system with three main functions:

63.1. Post-trade deal and risk management;

63.2. Market regulation; and

63.3. Broker accounting.

64. Its primary purpose is to ensure that the financial position of a member firm, as reflected in its accounting records, is visible to the JSE daily. Other crucial functions of the BDA system include monitoring the safeguarding of clients' assets by member firms and ensuring that the JSE has sufficient confidence in the accuracy of each member firm's financial position, as all member firms' financial records are maintained on a single system to which the JSE has access.

65. The BDA system is a mainframe software system that users can log into to access their financial records and account history. It shows both investor accounts and member firm accounts, tracking all their activities across all the JSE trading platforms. It includes client information, deal management, settlement status, position reports, risk management, corporate actions, etc.

66. Brokers are mandatorily required to use the BDA system to capture and process all aspects of trades conducted on the JSE. According to the JSE, the mandatory use of the BDA system ensures that accurate and reliable information is fed into its "Capital Adequacy System."

67. Operated by the JSE's Market Regulation Division, the Capital Adequacy System extracts each broker's financial records from the BDA system daily and, amongst other processes, performs an automated calculation of each broker's regulatory capital position to determine if each broker can meet its settlement and other financial obligations.

68. Accordingly, the BDA enables the JSE to mitigate risk of non-settlement because it establishes certainty about the regulatory capital of each firm through each broker's accounting records. It also provides absolute transparency and that enables the JSE to be able to clear transactions.

69. Smaller member brokers also use the BDA for their own record keeping, reporting and internal control processes while larger brokers (e.g. in banking groups) currently have their own supplementary accounting systems that they can use to provide certain information to the JSE to fulfil its capital monitoring function.

THE COMPLAINT INITIATION AND INVESTIGATION

70. On 26 October 2022, the Commission received a complaint from A2X, against the JSE for alleged contraventions of section 8(1)(c) of the Act.

71. A2X alleged, *inter alia*, that the JSE has engaged in various forms of exclusionary conduct, aimed at, or alternatively having the resultant effect of raising barriers to the uptake of, and trade on A2X, including, retaining the BDA system as a mandatory system for trading on the JSE and continually undermining efforts to remove or mitigate these barriers.

72. The complaint documents are attached hereto and marked as Annexure **"MD2."** Also attached hereto and marked as **Annexure** "**MD3 A – MD3 F"** are extension certificates which, combined, extended the period of investigation of this matter until 31 October 2025.

73. The Commission's investigation, including an assessment of the JSE's actions in the market over time and the impact of such actions on A2X's business (measured by various metrics), indicates that the JSE engaged in exclusionary conduct which includes:

    73.1. Enforcing the mandatory use of its BDA system and raising barriers to the cross-platform trade on A2X through refusing to make the BDA System sufficiently interoperable with A2X systems.

    73.2. The differential treatment in the processing of different trade types in favour of the JSE. This conduct is carried out by the JSE through the following:

73.2.1. Refusal to combine off-book and on-book trades on one note to be cleared and settled on the JSE platform (due to BDA) when said transactions originate from the A2X platform; and

73.2.2. Imposing requirements and restrictions on its brokers in respect of reverse Matched Principal Trades (MPT) originating on the JSE platform to be executed and concluded on the A2X platform.

74. The Commission's investigation has established that, as a result of the above-mentioned exclusionary conduct of the JSE, there has been an adverse effect on the common brokers' willingness and/or ability to trade on A2X.

75. The investigation found that the JSE has objected to and/or hindered measures that could potentially allow for greater interoperability between the two platforms. Furthermore, the Commission's investigation has established that the above-mentioned exclusionary conduct by the JSE has hampered A2X's growth and its ability to compete in the relevant market.

76. I am advised that in terms of section 50(3) of the Act, the Commission may refer some particulars of the complaint and not others. In this case, the Commission is referring the particulars of the complaint relating to the JSE's exclusionary conduct in the secondary market in South Africa.

THE BASIS OF THE REFERRAL

77. This complaint referral relates to the exclusionary nature of the JSE's conduct which has hampered and/or prevented A2X's growth and expansion in the market and the anti-competitive effects arising from such conduct. More specifically, this is the conduct set out in paragraph 73 to 73.2.2 above.

78. The JSE's exclusionary conduct constitutes a contravention of section 8(c) and 8(1)(c) of the Act. Section 8(c) covers the period before the Competition Amendment Act 18 of 2018 and section 8(1)(c) covers the period after the commencement of the Competition Amendment Act. I am advised that the Competition Amendment Act did not change the legal requirements of section 8(c) but simply changed the numbering to 8(1)(c). For purposes of this referral affidavit, the reference to section 8(1)(c) includes the previous section 8(c) of the Act. In what follows below, are the material facts and points of law in support of this complaint referral.

PART B

MARKET DEFINITION

79. I am advised that the relevant market for purposes of this complaint referral consists of two components: a product component, which describes all those products and/or services which are regarded as interchangeable

or substitutable (the product market), and a geographic component which describes the area in which the market participants operate (the geographic market).

The relevant product market

Substitutability of various securities

80. I am advised that different securities, such as equities, bonds, and derivatives, constitute separate markets. These markets differ, among other things, in terms of the time required to settle trades, which is why they operate on distinct trading platforms with separate clearing and settlement systems.

81. I have also explained that an exchange licensed to list and trade only in equities, cannot offer trading in other types of securities without first obtaining the necessary approval from the Financial Sector Conduct Authority ("FSCA") to amend its license accordingly.

82. From the demand-side, investors tend to be specific about the securities they want to invest their capital in and see various securities as complementary rather than substitutable with each other. Therefore, a separate product market exists for trading in equities which is distinct from other securities. This referral is concerned with the market for the trading in equities in the secondary market in South Africa.

Substitutability between primary and secondary markets for equities

83. Furthermore, I am advised that the equity or stock market itself can be delineated into primary and secondary markets. In essence, the secondary market involves transactions between buyers and sellers (through brokers), and the proceeds from the sale of shares in this market accrue to the seller (i.e. the investor), rather than the original issuer of the shares.

84. Importantly, I have been advised that the JSE is active as both a primary and secondary market, whilst A2X is only active in the secondary market. That is, both the JSE and A2X overlap directly and are direct competitors in the secondary market in South Africa. However, if a company has not been initially listed on the JSE or any other primary marketplace recognised by A2X, it cannot be listed in the secondary market and/or trade on A2X.

85. Accordingly, in this current complaint referral, the relevant product market is the market for trading of equities in the secondary market, as this is the only security and market in which both the JSE and A2X are both active i.e. where there is direct overlap of activities, and in respect of which there are no alternative competing product types.

The relevant geographic market

86. I am advised that the relevant geographic market is national. This is informed by the fact that the JSE requires its members to have physical and operational presence in South Africa.

DOMINANCE AND MARKET SHARES

87. Section 7 of the Act provides as follows:

A firm is dominant in a market if –

(a) it has at least 45% of that market;

(b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have market power; or

(c) it has less than 35% of that market but has market power.

88. Part B of the Act dealing with abuse of dominance of the Act, only applies to firms with an annual turnover or asset value at or above R5 million.

89. I am advised that the JSE is dominant in secondary exchange market for the listing and trading of equities in South Africa, as set out in section 7 of the Act, with its market shares being in excess of 45%.

90. The JSE is a dominant firm in the relevant market, as its market share, using various measures as set out below, is significantly higher than the +45%

benchmark for dominance as set out in Section 7(a) of the Act, without the need for further proof of market power.

91. Table 1 below shows the relative market shares of the JSE and A2X based on their respective revenue figures for the FY2020 to FY2024. The Cape Town Stock Exchange and the Integrated Exchange have not been accounted for because their respective market shares were found to be extremely negligible.

Table 1 - Estimated market shares of the equity exchange market by revenue (FY2020 – FY2024)

JSE Limited	**FY24 Revenue (Rm)**	**FY23 Revenue (Rm)**	**FY22 Revenue (Rm)**	**FY21 Revenue (Rm)**	**FY20 Revenue (Rm)**
Equity Market Trading	444	443	509	517	493
Post Trade Services	920	883	884	854	822
Total	**1364**	**1326**	**1393**	**1371**	**1315**

A2X Limited	**FY24 Revenue (Rm)**	**FY23 Revenue (Rm)**	**FY22 Revenue (Rm)**	**FY21 Revenue (Rm)**	**FY20 Revenue (Rm)**
Equity Market Trading	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Post Trade Services	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Combined	**FY24 Revenue (Rm)**	**FY23 Revenue (Rm)**	**FY22 Revenue (Rm)**	**FY21 Revenue (Rm)**	**FY20 Revenue (Rm)**
Equity Market Trading	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Post Trade Services	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Market Shares (%)	FY24	FY23	FY22	FY21	FY20
JSE	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
A2X	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source – Commission's calculations

92. From the table, based on revenue, the JSE is by far the market leader with an average market share of [redacted] over the period FY2020-FY2024. During the same period, A2X's average market share was less than [redacted]

Value of trade

93. The JSE calculates its market share as exceeding [redacted] based on the value of all stocks traded. In 2023 it saw a marginal decline from [redacted] to [redacted]

Number of listings

94. The table below shows the relative market shares of these only two secondary equity exchanges in South Africa based on their respective number of listings as of 30 April 2024.

95. From the table, based on the number of listings, the JSE is by far the market leader with a market share of 62% as of 31 December 2024 with A2X's, market share being 38% in this regard.

Table 2 - Estimated market shares of the secondary equity exchanges by number of listings as at 31 December 2024

Exchange	Number of listings	Percentage
A2X	184	38%
JSE	290	62%

Source – Teams construction on available data.

Market Capitalization

96. The table below shows the relative market shares of the JSE and A2X, based on their respective market capitalization as of October 2024. From the table, based on the market capitalization, the JSE is by far the market leader with a market share of approximately R21.2 trillion as at 31 December 2024 with A2X having companies listed with a respective market capitalisation of approximately R10.8 trillion in this regard.

Table 3 - Estimated market shares of the secondary equity exchanges by market capitalization as at 31 December 2024

Exchange	Market Capitalization (R)	Percentage
A2X	10.8 trillion	33%
JSE	21.2 trillion	67%

Source – Teams construction on available data.

97. Considering the above, I am advised that the JSE's dominance in the relevant market has remained relatively stable throughout the assessment period.

98. I am further advised that the JSE is dominant in the market for secondary equity exchanges in South Africa, as set out in section 7 of the Act, by virtue

of its market shares being in excess of 45%, irrespective of the metric being used.

99. I am advised that the annual turnover of the JSE, based on its annual financial statements, is above R5 million.

ABUSE OF DOMINANCE

100. As pointed out above, the JSE engaged in exclusionary acts which constitute contraventions of section 8(1)(c) of the Act.

101. An "*exclusionary act*" is defined in Section 1 of the Act as '*an act that impedes or prevents a firm from entering into, participating in or expanding within a market'*.

102. Section 8(1)(c) of the Act provides as follows:

> *"8. Abuse of dominance prohibited.*
>
> *1) It is prohibited for a dominant firm to—*
>
> *...(c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gain;"*

103. Other than dominance, which has been dealt with above, I am advised that to sustain a section 8(1)(c) contravention, the following elements must be met:

e

103.1. The respondent must be engaging in an **exclusionary act**;

103.2. The exclusionary act must have an **anti-competitive effect**; and

103.3. The exclusionary act must **not have technological, efficiency or other pro-competitive gains** outweighing the anticompetitive effects of the exclusionary act.

104. Given the JSE's dominance, as outlined above, the sections that follow set out the material facts and points of law demonstrating the abuse of this dominance. I am advised that the resulting anti-competitive effects substantially outweigh any technological, efficiency, or other pro-competitive justifications that might be advanced.

THE EXCLUSIONARY ACT/ CONDUCT

105. The Complainant, A2X, is a licensed securities exchange in South Africa, which was founded in 2014, was licensed as a stock exchange by FSCA in April 2017 and began operating in October 2017. A2X is a secondary listing exchange and competes with the JSE as an alternative trading venue.

106. Since its entry into the market for secondary equity exchanges, the JSE, which is a dominant firm in the market, has undertaken a variety of conduct which has prevented or impeded A2X's ability to grow and expand in the market. The conduct centres around the following:

106.1. The JSE is enforcing the mandatory use of its BDA system and is refusing to make the BDA System sufficiently interoperable with A2X systems, preventing A2X from accessing important broker data/information impacting on A2X's ability to operate efficiently.

106.2. The differential treatment in the processing of different trade types is in favour of the JSE. This conduct is carried out by the JSE through the following:

106.2.1. Imposing onerous requirements and restrictions on its brokers in respect of reverse Matched Principal Trades (MPT) originating on the JSE platform to be executed and concluded on the A2X platform. The requirements and restrictions create an overly complex, inefficient and ineffective process which results in brokers electing not to use the reverse MPT process. The same restrictions and requirements do not apply to the MPT process for trades conducted on A2X platform and transferred via the MPT process and concluded on the JSE; and

106.2.2. Refusal to combine off-book and on-book trades originating on A2X, to achieve a single contact note, for common clients, for execution and conclusion on the JSE platform - whilst it allows for same for itself (in breach of its own rules and directives)

107. The JSE has engaged in these various interrelated forms of exclusionary conduct, each of which independently and cumulatively constitutes a contravention of section 8(1)(c) of the Competition Act.

108. The conduct of the JSE, the material facts about which are set out below, either individually or in combination, represent an ongoing refusal to enable seamless interoperability, by, inter alia, preventing access to critical common broker data, the asymmetric enforcement and /or the selective implementation of its own rules, to prevent competitors from effectively competing against the JSE, thereby preventing the contestation of and entrenching its position in the market as the *de facto* monopoly.

109. By engaging in one or a combination of the conducts at different points, the JSE has engaged in exclusionary act(s) that have affected A2X's ability to expand and compete effectively in the market.

The mandatory use of the BDA system and refusal to make the BDA system sufficiently interoperable with A2X system.

110. Brokers trading on the JSE are strictly required to use the BDA system to capture and process all aspects of their trades executed on the JSE. As the BDA system is the brokers' main system which integrates to their bank and custody accounts, A2X needs to create entries on BDA to ensure that the broker balances daily.

111. The JSE justifies this requirement on the basis that it ensures accurate and reliable information is fed into the Capital Adequacy System, which is critical for risk management and regulatory compliance.

112. However, this mandatory use has significant anti-competitive consequences. Brokers who seek to join A2X, or trade across both the JSE and A2X (known as "common brokers") are forced to use multiple, incompatible systems. This requirement imposes substantial operational costs on brokers who must record and process trades separately on each platform.

113. Generally speaking, if brokers, especially the smaller and Historically Disadvantaged Individuals, cannot efficiently access a cheaper platform that has competitive pricing and fees because over and above the cost of the mandated BDA system, they cannot afford the installation and running costs of another system, ultimately missing out on the benefits and the savings they could have enjoyed being on multiple platforms.

114. This market is already dominated by international brokers who are able to access far more international liquid markets and for local brokers, the inability to seamlessly trade across platforms, puts them at an even greater disadvantage.

115. While larger brokers often mitigate these challenges by installing their own front-end accounting systems to interface with the JSE's capital monitoring functions, smaller brokers lack such resources. The excessive costs and operational complexity of maintaining multiple systems effectively precludes

smaller brokers from using the A2X platform and/ or create significant barriers to their entry and participation.

116. The JSE's refusal to facilitate interoperability or share the relevant data forecloses a key input necessary for effective competition, namely, complete, real-time information on brokers' positions. Such conduct impedes A2X's ability to compete efficiently and/or on relatively equal footing.

117. To facilitate operability between the two platforms, A2X has formally requested access from the JSE to specific broker data from the BDA. The information required by A2X mainly consists of information submitted by the broker, and loaded into the BDA, which includes, custody holdings, buy and sell transactions, trade allocations across platforms, and allocation status.

118. Access to this data would enable the A2X to:

(a) Link trade allocations to executions on the A2X;

(b) Assess brokers' true risk exposures holistically across both markets; and

(c) Reduce unnecessarily high margin and capital requirements that arise from isolated risk management.

119. The JSE has refused to provide interoperability or share the requested data, maintaining a structural barrier that restricts A2X's ability to compete effectively.

120. According to the JSE's own submissions to the Commission, the visibility of broker data is critical in managing the daily settlement risks on an exchange, especially in protecting investors against losses.

121. It is imperative to know what securities are held by the broker or cash funded by covered sales (for proprietary positions) to be able to cover the trades they have introduced to the market across JSE and A2X for their own account. Further, the exact status of each non-controlled client settlement order, at every point along the settlement cycle and insight/ visibility into whether the Central Securities Depository participants has committed is important in order to avoid failed trades.

122. This is especially important because the exchanges collect collateral (or 'margin') from a broker to cover settlement risk which could be offset with further visibility of the data on BDA. The JSE collects this collateral if certain milestones in the settlement cycle are not timeously met and will use the collateral to cover any losses that arise from a delayed or failed trade. Therefore, a holistic view of the position of common brokers trading across both A2X and the JSE is not only cost effective for brokers but also critical to risk management.

Anti-competitive effects on A2X

123. The JSE's conduct forces A2X to risk manage brokers in isolation, leading to inflated capital requirements and higher operational costs. This increases the

cost of trading on A2X, reduces brokers' incentives to trade there, lowers its liquidity, and ultimately depresses A2X's revenues and market viability.

124. This exclusionary effect limits A2X's ability to compete, entrenching the JSE's dominant position.

125. For brokers, the JSE's refusal to share data and enable interoperability results in duplicative capital and operational costs, effectively "double collateral," when trading across platforms. This diminishes cost-efficiency and disincentivises brokers from using A2X, especially small brokers who face disproportionately high compliance burdens when they have to consider trading on both platforms, with their preference thus remaining to rather trade on the larger platform, the JSE.

126. This reduction in competition harms market efficiency, reduces customer choice, and raises overall costs in the trading ecosystem.

Conclusion on the mandatory use of the BDA system and refusal to make the BDA system sufficiently interoperable with A2X system.

127. The mandatory use of the BDA system, combined with the refusal to enable interoperability or share essential broker position data, constitutes an exclusionary conduct by a dominant firm, the JSE.

128. It forecloses A2X from competing on equal terms and reduce the attractiveness to brokers of trading on A2X's platform, particularly smaller

brokers. This conduct entrenches the JSE's dominance and undermines competition, in contravention of section 8(1)(c).

The differential treatment in the processing of different trade types

129. I have been advised that in practice, and as is common internationally, brokers routinely execute multiple trades throughout a trading day to achieve best execution for their clients, often splitting orders across more than one platform.

130. Historically, and in South Africa these multiple trades could only be conducted on one platform (the JSE). However, with A2X's entry into the market, it became conceivable that some of the multiple trades may be conducted on one platform and some on another.

131. Before proceeding to set out the basis of this conduct of the JSE under this section, it will help to delve briefly into the history of interactions between the JSE and A2X in relation to interoperability issues that affected the operations of A2X.

132. It should be noted that ultimately, the conduct of the JSE, as set out below, stems from the JSE's hoarding of the BDA systems' interoperability but does constitute a separate conduct, portraying a scenario where A2X is met with the JSE's self-created obstacles and A2X tries to work within the context of the BDA system in order to get brokers to port easily with A2X.

133. In an attempt to deal with the interoperability issues raised above, A2X introduced a manual process, sending the JSE the brokers settlement and capital positions of common brokers at the end of each day, which reduced these effort costs.

134. However, the BDA still blocked seamless cross-platform trades, as it prevented generating a single contract note for trades executed across both platforms.

135. In a second attempt, A2X introduced an A2X allocation process called the Facilitated Allocation Process to address this, but it was stopped after the JSE lodged a complaint to the FSCA, which found that A2X contravened the FMA and the JSE's rules and that it must cease its conduct. Under the Facilitated Allocation Process 'regime,' the following would occur, in order to create a single contract note for trades executed across both platforms:

135.1. Common Brokers could trade across exchanges for their non-controlled clients (i.e. fund and asset managers);

135.2. At the end of the day, a Common Broker would import the position traded on the JSE into the A2X's MeCRAS system and allocate to the non-controlled client as a single contract note. In essence over allocating the trades on A2X;

135.3. MeCRAS would then create entries in BDA to reflect the allocations done on A2X; and

135.4. A2X would clear and settle the allocations done to the non-controlled clients and existing over/under allocations on the brokers stock accounts.

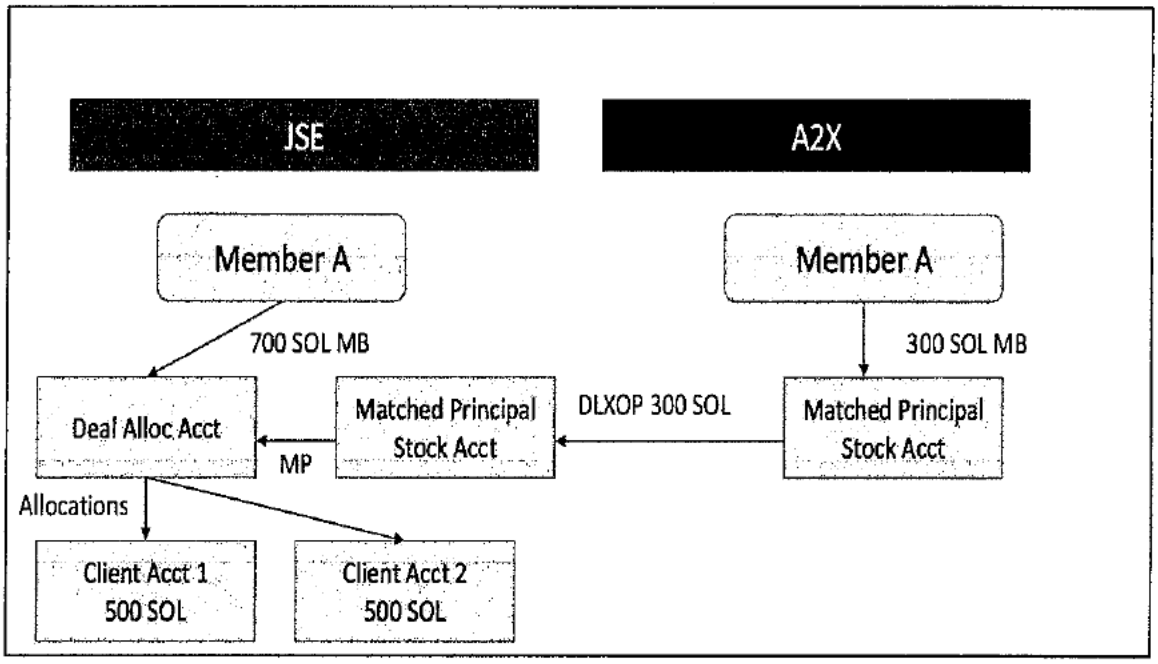
136. I am informed that when A2X introduced the Facilitated Allocation Process, which allowed for cross platform trade between the platforms, the level, volume, and value of trade on the A2X platform increased. However, when the JSE objected to this process and notified brokers that the process ran contrary to its rules, the volume and value of trade decreased substantially on A2X.

137. Subsequent to the above attempts to overcome what still remains interoperability issues, both parties and interested parties met and agreed (facilitated by and through the FSCA) to the Matched Principal Trade type (MP Trade) to replace Facilitated Allocation Process and to resolve the issue, but JSE's restrictive interpretation of this trade type continues to limit A2X's potential business.

138. The MP trade entails a member firm executing a separate back-to-back trade on the JSE to the trades originally executed for a client on A2X. As a result, a single settlement instruction and contract note can be (and is) issued.

139. The below figure illustrates how an MP trade is executed for a single order of, say, 1000 Sasol Limited ordinary listed shares (SOL) across the two platforms.

Figure 4 – Illustration of an MP Trade



Source: A2X Presentation

140. Currently all MP Trades are being executed, cleared, and settled on the JSE only (whilst the reverse is not allowed) even if all shares traded are found 100% on the A2X platform, thereby prohibiting the reverse MP trade type in favour of A2X.

141. This essentially means that the asymmetric MP Trades solution has cost implications for brokers if such broker intends to execute a trade on both exchange platforms.

142. Although the JSE has, over time, allowed partial interoperability through various mechanisms, the slow pace of adopting interoperability has had marked effects on the ability of common brokers to trade across both platforms, which then directly impacts on the level of trade on the A2X platform, and thereby A2X's expansion in the market.

143. I submit that even though the solution was found with the introduction of MP Trades for creation of a single contract note, the conduct of the JSE in its interactions with A2X, through this period, also serves to outline the lengths at which the JSE is prepared to protect its dominance.

144. Moreover, brokers are placed at a disadvantage by essentially forfeiting the cost benefits of executing trades on both the JSE and A2X and settling on A2X. This is because, in terms of pricing or fees associated with trading, the JSE charges a fee at different levels of a single trade (i.e. a fee at transaction level, at the clearing level and per trade at the BDA level), while A2X charges a single fee for the value of a trade on MeCRAS.

145. Now, I turn to set out the particulars of the differential treatment conduct of the JSE that hinder the expansion of A2X in the secondary exchange market. I will start with the refusal to allow reverse MP Trades and end with refusal to combine off-book and on-book trades on one note for equities.

Refusal to allow Matched Principal Trade to be booked on A2X (Reverse MP Trade)

146. I am advised that although the JSE's Rules and Directives allow for a MP Trade to be booked through A2X (reverse Matched Principal Trade), the account structure requirement and processes have prevented this from taking place. This issue is foreshadowed in Figure 4 above.

147. For a broker to use the reverse MPT (JSE to A2X), the JSE requires the broker to open an additional separate proprietary account with a new (second)

account number for a client to facilitate the reverse MPT. I have been advised that the client account number is a unique identifier used throughout the trading, allocation, and settlement process and that the creation of a second account would add an unnecessary complexity, and as result additional costs and risk to the reverse MPT process.

148. To elaborate:

148.1. The account number is included in the original parent order message sent by the client (asset manager) to the member broker for execution.

148.2. This enables the client to be able to track, in real time, the execution of the order by receiving real time fills of all child executions against the parent order.

148.3. Further, a broker's risk management system used to monitor each client's market exposure is also built around the client's account number.

149. To "break this chain" as it were, by requiring the broker to interpose a new second account number for the same client to facilitate a reverse MP Trade is not feasible or a workable solution.

150. In addition to the unworkable complexity of the JSE requirement to a second account to facilitate the reverse MP Trade, it also has a further consequential negative impact, in that even if a second account was a workable solution, it

would require a broker to select upfront which exchange it wishes to allocate a single note on.

151. However, this is only known at the end of the day, once a broker receives its execution fills from both markets and then looks to allocate in the most capital efficient way to minimise margin calls or Capital Adequacy and/or as requested by the end client.

152. Contrastingly, for a reverse MP Trade from A2X to the JSE, A2X structured the MP Trades differently, as follows:

152.1. The brokers can use the existing client's suspense account (also known as a Deal Allocation Account which is treated as a matched principal stock account on A2X for this purpose.

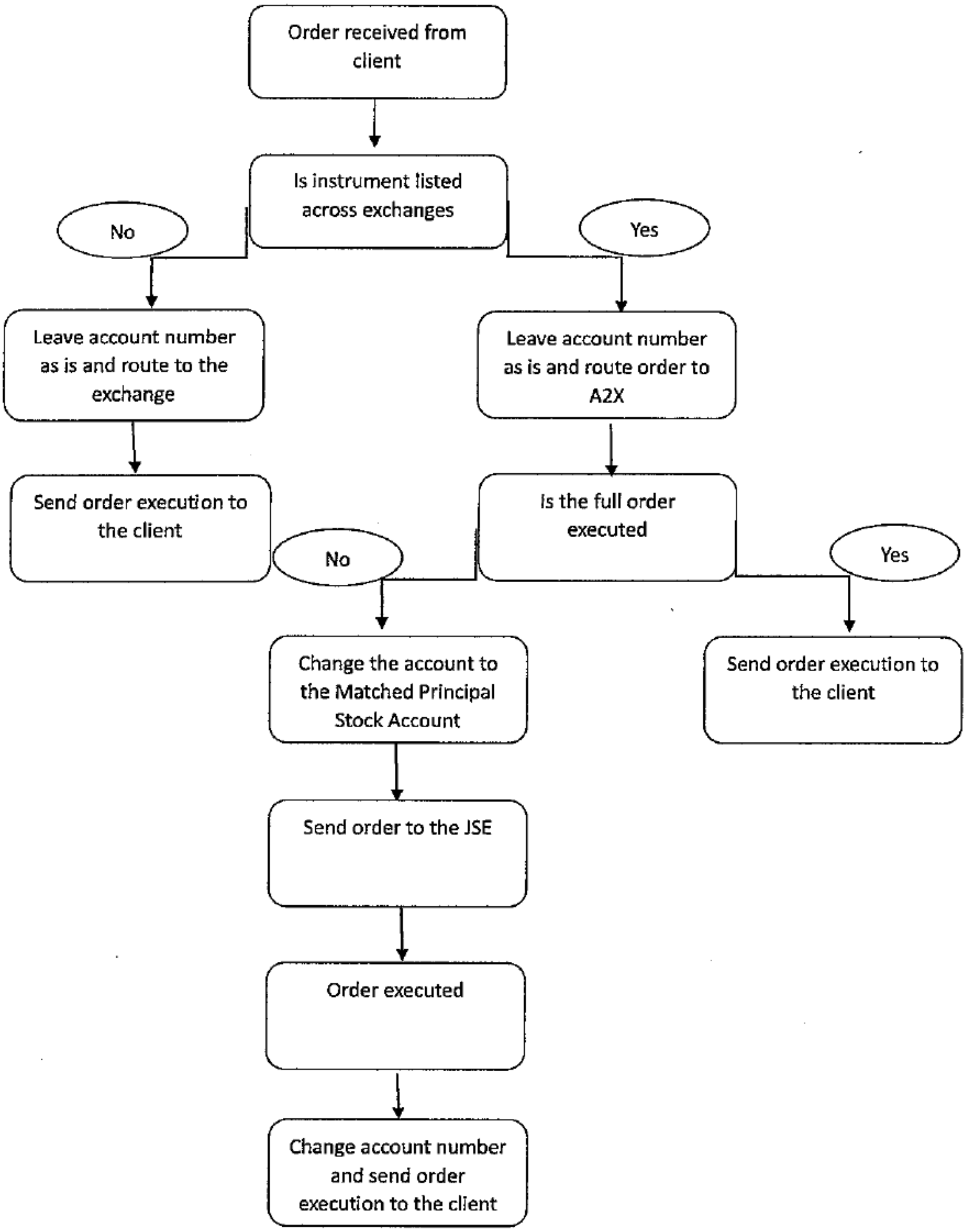
152.2. This alleviates the impractical and complicating step of having to open a second client account with a different account number.

152.3. Brokers processes the allocations to clients' accounts on the JSE via BDA.

153. I am advised that this in no way increases risk to the exchanges or members as each exchange needs to clear the transactions executed on their respective exchange.

154. To further illustrate the difference in the two processes, the JSE process is illustrated on the left branch of the diagram (from "no") and the A2X process is illustrated on the right branch of Figure 5 below (from "yes"):

Figure 5: An illustration of the different processes involved in executing a reverse MP Trade on the JSE vs on A2X.



Source: Submission from A2X.

Anti-competitive effects on A2X

155. The reverse MP Trade as proposed by the JSE is overly complicated and not practical. This results in lost trading revenue for A2X and lost allocation revenue in respect of MP Trades as the brokers elect to trade on A2X and process the MP Trade through to the JSE as opposed to electing to trade or trade partially on the JSE and processing the reverse MP Trade to A2X.

156. I am advised that an analysis of A2X trading data, over time (2017-2024), which captured the (monthly) total number of trades on the A2X exchange, was used to monitor trends in the data indicated that, where the JSE objected to (or hindered) measures to ensure for (or allow for greater) interoperability between the two platforms, this had an adverse impact on a common brokers' willingness and ability to trade on A2X. The A2X trading data can be made available, on request, to the legal representatives and experts of the JSE subject to appropriate confidentiality undertakings.

157. This creates a barrier for the ability of brokers to trade seamlessly across the JSE and A2X platforms in their search for best execution and prices. The brokers refrain from using the reverse MPT because of its complexity and would need to structure their trades in a way that avoids the need to perform a reverse MPT on A2X.

158. Figure 6 below shows the impact of JSE's conduct on A2X trade values.


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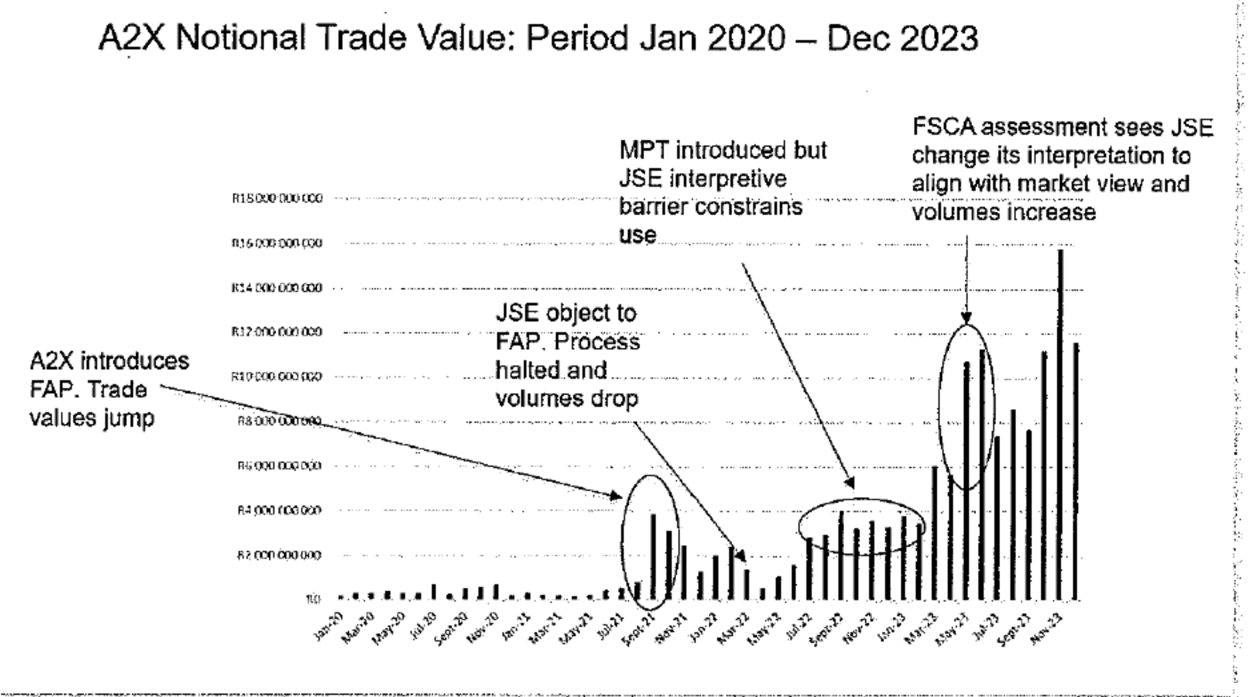
Figure 6: Impact of JSE's conduct on A2X trade values from 2020 to 2023



Source: Submission from A2X.

159. The conduct of the JSE has effectively created a barrier for clients trading across markets and prevents them from leveraging the full value of their infrastructural investment in A2X. In addition, brokers cannot freely allocate shares on A2X and are not able to derive the benefit of the substantially lower allocation costs on A2X.

160. Trading data provided by A2X reflects that, between February 2022 and June 2022, the monthly value of trade on A2X declined rapidly in March '22, only bouncing back in June 2022, after the introduction of the MP trade type.

Conclusion of refusal to allow reverse MP trades

161. The JSE's conduct has hampered and/or prevented A2X's expansion in the relevant market. This can be seen from the growth of trade on A2X that was observed following the JSE's relaxations to allow for greater interoperability through a more encompassing use of the MP trade type.

162. I am advised that it is on this basis that exclusionary conduct on the part of the JSE, has had the anti-competitive effect of hampering A2X's growth, since its entry into the relevant market. It is submitted that A2X's growth would have been significantly higher had it not been for the alleged conduct, which has had a negative impact on A2X's ability to reach its "break-even" point;

163. There has been significant product innovation including the introduction of processes and new trade types by A2X in its attempt to compete against the JSE, including the Facilitated Allocation Process and MP Trade type. More importantly, these processes and trade type (although not perfect) have been able to provide brokers with the ability to trade across multiple platforms whilst at the same time be able to generate a single contract note for asset managers; and

164. There is still currently a high (and prohibitive) cost to brokers to use the alternative means in order to accommodate the JSE's system, which has had a disproportionate negative effect on middle to smaller tier brokers relative to the more established large top tier brokers. It is estimated that moving away from this system would result in a saving of approximately R224 million for the

market.

165. I have been advised that there are significant cost savings that are likely to be realised should A2X be able to sustain itself in the relevant market and ultimately become an effective competitor to the JSE due to A2X's fees currently being lower than that of the JSE.

The asymmetrical treatment of on-book and off-book trades

166. I have been advised that the JSE does not treat the processing of different trade types in the same manner that it does for itself, versus trades from or traded on A2X. More specifically, the JSE combines off-book and on-book trades for clearing on its BDA system but does not do the same when off-book and on-book trades are coming from A2X, to be cleared on the BDA system.

167. The JSE's rules define "ring-fencing" as "*the process in terms of which linked deliveries and receipts which emanate from off-book trades are separated and distinguished from deliveries and receipts which emanate from transactions in the central order book of the JSE equities trading system.*"[3]

168. Essentially, the definition makes a distinction between trades that are executed through the central order book of an exchange (on-book trades) and bilateral agreements outside this structure (off-book trades).

[3] [Extract taken from the Definition section of the JSE's Rules and Directives]

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169. Further, I have explained that on-book trades are trades undertaken through the central order book of an exchange that comply with the transparent and fairness requirements set out in the rules of price/time preference.

170. On the other hand, off-book trades" are bilaterally agreed trades that are transacted outside of the exchange structures and not on the central order book, however, parties have an obligation to report off-book trades to an exchange.

171. For a trade to qualify as an off book it must comply with the set of criteria specified by the specific exchange. From a risk perspective, on-book and off-book trades are managed differently. On-book trades are risk managed via Capital Adequacy and margin, while off-book trades are not risk managed and are not subject to Capital Adequacy and margin.

172. As noted above, to qualify as an off-book trade the trade must comply with certain criteria around what constitutes an off-book trade and size which are set out in the rules and directives of an exchange. These trades do not need to be subjected to the checks and balances of the anonymous central order book and are merely reported to the exchange.

173. In the situation that the two contracting parties are known to each other, where an off-book trade is incapable of being settled, the specific trade can be ring fenced and cancelled without impacting on other trades transacted on the central order book.

174. This contrasts with parties that matched anonymously through the exchange central order book where the counterparty is not known and therefore are risk managed according to the rules and directives of the exchange. That is, they form a part of a cluster of anonymous trades for settlement.

175. Therefore, if a trade in the cluster cannot be settled, the settlement authority of the exchange assesses the group of trades in that batch of trades and will pick an equal and opposite trade / trades and the failed trade (or trade that cannot be settled)[4] will then be actioned in a way that is the least disruptive to the cluster.

176. If blended on-book and off book trades were permitted to be included in the category of trades that could be included as an MP trade, the blended trades would be risk managed by risk managing the core trades done on the exchange, i.e, guaranteed trades would still be risk managed accordingly.

177. The JSE's Rules and Directives are drafted in a way that, from a risk perspective, differentiate the two trade categories. The intention is to ring-fence JSE central order book trades from JSE off book trades when processed through the BDA system to the clients account.

178. I have been advised that in practice, these two types of trades are blended by the JSE to facilitate ease of allocation to clients. The JSE has permitted this practice in contravention of its own Rules and Directive.

[4] Trades typically fail when (a) the seller executes a trade to sell shares (or 'stock') but does not have the shares to settle the trade; or (b) the buyer executes a trade to buy shares but does not have the funds to settle the trade.

179. The point to emphasise is that the JSE does not extend its liberal interpretation allowing for the blending of on and off-book trades where an MP trade is booked on the JSE.

180. While the JSE has no issues (risk or otherwise) with contravening its own rules and directives when it comes to transactions not involving A2X, it uses this issue as a mechanism for restricting A2X's ability to compete on a level playing field when brokers wish to use the same process for A2X related trades. This has a severely limiting impact for brokers trading across markets.

Anti-competitive effects on A2X

181. A2X faces a competitive disadvantage due to JSE's differing treatment of on-book and off-book trades in clearing processes. The JSE's exclusion of A2X off-book trades from the MP trade process forces brokers to trade more on the JSE. Brokers cannot leverage their investments in A2X infrastructure due to the prohibition on blending trades.

182. As per the JSE MP trade rules, only on-book trades transacted can included as an MP trade. A2X's off-book trade types are precluded by the JSE from the MP trade process. Consequently:

    182.1. Brokers elect not to use A2X at all as the JSE exclusion of the off-book trades from the MP trade results in the inability to generate one brokers note with a blend of on-book and off book trades as permitted by the JSE in contravention of its own rules and directives.

182.2. Brokers are forced to trade less on A2X and more on the JSE despite the direct (fee) and indirect (price improvement when trading) cost savings.

182.3. Brokers have invested large sums of money on implementing infrastructure to trade on A2X and cannot leverage the said investment due to the JSE prohibition of the blending of off- and-on-book trades in the form of an MP trade.

<u>Conclusion on on-book trades and off-book trades</u>

183. Substantial activity takes place in off-book trades. For the period starting in January 2025 to August 2025, off-book trades accounted for [redacted] of the JSE total trade activity. The inability of the broker to blend the said A2X off book trades with on-book trades is materially prohibitive.

184. The brokers elect not to utilise A2X off book trade types as the MP Trade does not allow for the inclusion of the said off book trades and in that way prevents the ability of issuing of one note for the client.

185. The JSE's conduct, in this instance, is yet another instance of exclusionary conduct in contravention of section 8(1)(c).

Cumulative anti-competitive effects of the entirety of the conduct of the JSE

186. The conduct of the JSE has, not only, significantly hampered the growth of A2X but also its level of liquidity, which is of vital importance to asset managers and brokers (customers), in the market and such would have been significantly higher than was the case given the potential forgone growth in terms of volume of trade, number of trades and the number of new listings on the platform. This would have enabled A2X reach its break-even point on a monthly (and sustained) basis.

187. [redacted]

188. [redacted]

189. [redacted]

190. From the above, I submit that the JSE's conduct has hampered A2X's growth,

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has severely impacted in A2X's ability to "break-even" and, thereby, has had a significant impact on its ability to be an effective competitor in the relevant market.

191. This position is illustrated in earlier months/years before the introduction of the MP Trade in June 2022 and more so in the latter years, especially after the "second iteration" of the MP Trade in February 2023. A2X's value of trading on its platform was significantly higher, albeit still below its breakeven point.

NO EFFICIENCIES

192. I am advised that there are no cognisable efficiency justifications which outweigh the anticompetitive effects of its exclusionary conduct and that the onus is on the JSE to demonstrate such efficiency justifications.

CONCLUSION

193. Considering the above, it is important to note that A2X, as a competing platform provides services at a lower fee structure at the benefit of the brokers and in turn, to the benefit of the brokers and customers. A2X, as an alternative trading platform and competitor also provides the latest technology to assist brokers to navigate the system and facilitate the selection and creation of trades and ultimately complete the instruction from the client.

194. The JSE continues to engage in an anti-competitive strategy aimed at stifling the growth and expansion of A2X. I have demonstrated that the JSE, through

more than one form of exclusionary conduct, all independently and cumulatively, contravened section 8(1)(c) of the Competition Act.

195. Firstly, by enforcing the mandatory use of the BDA system without ensuring interoperability with A2X and/or alternatively, showing an unwillingness to accommodate the interoperability of the two platforms. Moreover, by refusing to share essential broker data through the BDA system, it has continued to impede the growth and expansion of A2X by withholding access to critical information necessary for effective risk management and to effectively compete in the market.

196. This conduct has resulted in the brokers being forced to prefer one platform over the other, foregoing possible cost savings due to the duplication of processes and dilution of cost benefits. Together all these practices exclude an equally efficient rival, distort competition, and entrench the JSE's dominant position.

197. Secondly, as a Self-Regulatory Organisation, the JSE has also continued to apply its rules selectively allowing itself to deviate from its own rules while strictly enforcing the same rules against A2X, through the MP trades. This asymmetric enforcement advantageously positions the JSE to the detriment of A2X, its sole rival.

RELIEF SOUGHT

198. The Commission seeks the following relief against the JSE in terms of the

Notice of Motion to which this affidavit is attached.

198.1. An Order declaring that the JSE has contravened section 8(c) and 8(1)(c) of the Competition Act, 89 of 1998, in that it has engaged in exclusionary conduct, described in this affidavit, that has anti-competitive effects, from at least 2017 and the exclusionary conduct is ongoing;

198.2. Interdicting and restraining the JSE from engaging in such exclusionary conduct;

198.3. Ordering the JSE to take such remedial steps as are necessary to remove the exclusionary conduct and to restore conditions of effective competition, including, but not limited to:

198.3.1. The amendment of the rules of the JSE to ensure adequate interoperability of the Broker Dealer Accounting System ("BDA system") in the equity exchange market where such interoperability is needed to facilitate cross-platform trade including access to broker data necessary for effective risk management and effective competition in the market;

198.3.2. Amendment of the rules of the JSE to ensure that the current Matched Principal Trade type ("MP Trade") is developed to include off book transactions; whilst still being able to generate a single contract note; and

198.3.3. Amendment of the rules of the JSE to develop a reverse MP trade type in order to allow 100% trades on the JSE/BDA platform to be executed,

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cleared and/or settled on the A2X platform.

198.4. Imposing an administrative penalty against the JSE in terms of section 59 of the Act, up to 10% of the JSE's annual turnover in South Africa;

198.5. Granting such further and/or alternative relief as the Tribunal may consider appropriate;

DEPONENT

Signed and sworn to before me on this the ...... day of October 2025 at Sandton; the deponent having acknowledged that he knows and understands the content of this affidavit, that he has no objection to taking the prescribed oath and that he considers the prescribed oath to be binding on his conscience.

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
SANDTON
2025 -10- 02
KLIENTE DIENSSENTRUM
SANDTON
SUID-AFRIKAANSE POLISIEDIENS

COMMISSIONER OF OATHS

competitioncommission
south africa

Notice CC 22

This notice is issued in terms of section [illegible] of the Competition Act.

Section [illegible] of the Act reads:

When an inspector performs any function in terms of this Act, the inspector must:

a) be in possession of a certificate of appointment issued to that inspector in terms of subsection [illegible]; and

b) show that certificate to any person who is affected by the exercise of the functions of the inspector and requests to see the certificate.

Contacting the Commission

The Competition Commission
Private Bag X23
Lynnwood Ridge
Pretoria 0040
Republic of South Africa
Tel: [illegible]
Fax: [illegible]
Email: [illegible]

Appointment of Inspector

Date: 1 July 2010

To:

Name of Inspector: Marlon Dasarath

I hereby appoint you as an inspector to perform functions in terms of the Competition Act 1998, effective for the duration of your employment at the Competition Commission

Name and Title of person authorised to sign on behalf of the Competition Commission:

Shan Ramburuth, The Commissioner

Authorised Signature:

This form is prescribed by the Minister of Trade and Industry in terms of section 21 (4) of the Competition Act 1998 (Act No. 89 of 1998).

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competitioncommission
south africa

Form CC 1

About this Form

This form issued in terms of section 49B of the Competition Act.

This Form must be completed to the best of your ability, and submitted to the Competition Commission for consideration of your complaint.

If this complaint is lodged by a person other than individual, please provide contact details of the person authorised to discuss the complaint.

This form is a public record. However, the attached description of conduct, and other information relating to this complaint is not part of the public record unless the Commission refers the complaint to the Competition Tribunal. You have a right to identify information that you believe is confidential by completing Form CC 7 and submitting it with this Form.

Complaint

To: The Competition Commission

From:

A2X PTY LIMITED

Concerning:

JSE LIMITED

Description of the Complaint:

Contravention of section 8 and /or 9 of the Competition Act.

Please attach to this form any relevant documents, as well as a typed statement describing the conduct that is the subject of this complaint, including

- the names of each party involved in the conduct;
- the dates on which the conduct occurred;
- a statement indicating when and how you became aware of the conduct, and
- any other information you consider relevant.

Is the conduct continuing? Yes

2022Oct0048

RECEIVED
By MmboswobeniN at 7:25 am, 10/27/22

Name and Title of person authorised to sign:

Gary Clarke, Head of Legal and Regulation of A2X:

Authorised Signature:

Date: 21 October 2022

For Office Use Only:	Commission file number:	Date filed:
	____________________	______________

This form is prescribed by the Minister of Trade and Industry in terms of Section 21 (4) of the Competition Act 1998 (Act No. 89 of 1998).

A2X MARKETS

STATEMENT DESCRIBING THE CONDUCT THAT IS THE SUBJECT OF THE COMPLAINT SET OUT IN FORM CC1

Complainant:	A2X PTY LIMITED
Party involved in the conduct:	JSE Limited
Dates on which conduct occurred:	Ongoing
When and how the complainant became aware of the conduct:	From the date that A2X commenced with its business on 6 October 2017 and thereafter, it has encountered the behaviour complained of. Specific dates have been included in the note below where required. In addition, the Authorised Users of A2X have advised representatives of A2X of the conduct complained of and which has been verified by A2X.

1. BDA as a mandated system

As A2X is a secondary listings model, all its authorised users (member brokers) are all also authorised users on the JSE.

The JSE has historically mandated a back-office system for all authorised users. This system is known as the Broker Dealer Accounting system (BDA).

BDA is a closed system which the JSE mandates all its members to use.

BDA is a legacy system of the past when authorised users once owned the JSE and agreed to the use of a single system to enable efficiencies and consistency of data. The BDA system was developed some 30 plus years ago and originally largely catered for deal management, portfolio management and accounting for the authorised users' transactions executed on the JSE. The JSE has over time added additional functionality to the system. Given its age, BDA is a mainframe system. It is cumbersome, has an old green screen front end, and resources to maintain and enhance it are increasingly scarce.

The JSE has been demutualised since 2005 and yet it still mandates the use of the system 17 years later arguing that BDA is core to the risk management of the authorised users by the JSE.

JSE was also quoted in an open forum around 2015 that they were going to make the BDA system non-mandatory only to reverse that decision a few months later with no explanation. We believe this decision reversal is a direct response to A2X as a competitor and an attempt to perpetuate its monopoly.

It is also worth noting that the BDA system generates a material amount of revenue for the JSE which we believe introduces a conflict of interest between the commercial and regulatory responsibilities of the JSE as a listed company – R351m out of total revenue of R2,365 million in the 2021 financial year.

JSE authorised users are mandated to use BDA to capture and process all aspects of trades conducted on the JSE including trading activity in other instruments like bonds, on exchange derivatives as well as OTC derivatives. This system is extensive and includes, client information, deal management, settlement status, position reports, risk management, corporate actions, etc.

The mandating of the system is exclusionary as:

- It is closed system and a forced cost on authorised users that creates a hurdle for authorised users looking to transact across markets in the pursuit of best execution;
- alternative systems are readily available - most large authorised users with local private client operations already have parallel systems (which are used because they have more functionality, and span all asset classes and geographies in which the business operates) in place, but are required to also use BDA and duplicate their reporting daily resulting in additional time, resources and costs;
- Whilst larger authorised users are in a better position to bear the cost of using multiple systems, the cost of implementation and ongoing usage cost precludes smaller authorised users from implementing a second system to process A2X transactions when same could be done on BDA and therefore they cannot afford to connect and transact on A2X;
- **The use of multiple systems is not cost effective and results in duplication of effort as well as complex processing when essentially the use of the mandated system would provide the functionality required with a single system. The result is in effect a negative inducement for authorised users not to transact on A2X;**
- **The JSE cannot mandate its members to use the BDA system and then prohibit them from using the said system to integrate A2X trades (same authorised users, product and clients) in the pursuit of appropriate risk management, best execution and addressing market needs.**

Other factors to consider, BDA is:

- the third largest revenue stream for the JSE with the consequent conflict of interest between its commercial and regulatory responsibilities; and
- old technology which is restrictive and unstable at times and arguably poses the largest single point of failure systemic risk to the South African financial markets.

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- Old technology and scarce, expensive development skills mean the JSE is always reticent to make any enhancements to BDA. This restricts innovation and progress in the market, pace of which is effectively controlled by the JSE.

The JSE has over time attempted to justify the mandatory status of BDA on the basis that it constitutes a risk management tool and that it mandates the use of the system in order that it can have a full view of the authorised user's business including financial and client information.

A2X believes that the JSE required information amounts to nothing more than authorised user input in the form of data, the provision of which data to the JSE can be achieved by the authorised user providing the JSE with access to the prescribed information, as it does with other information not retained on BDA. The information is capable of being retained by the authorised user on a system of their choice, with the said data being reported into the JSE system as and when required. In addition, an authorised user can, if it determines it to be commercially viable and appropriate, continue to use the BDA system as its system of choice if that's what the authorised user wishes.

As stated above, the JSE cannot mandate its members to use the BDA system, with the consequent accrual of in excess of R250m annual revenue, and then prohibit them from using the said system for other business.

2. A2X Transactions treated differently to other transactions to the prejudice of A2X with no reason for the differentiation

Whilst not specifically included in the JSE Rules, practices have developed over the last number of years, prior to the licensing of A2X, where authorised users have dealt with certain trade activity and booked it in a particular way on BDA.

These practices are (in respect of non-A2X transactions), and have been in the past when the JSE was the only exchange, been deemed to be permissible by the JSE.

Common A2X and JSE authorised users have attempted to use the equivalent procedures to assist with trading, allocations and reporting for transactions conducted across A2X and the JSE. The JSE has, <u>only insofar as they are intended to be used for A2X related transactions</u>, prevented these practices and labelled them as not being permissible.

In the context of the common authorised users being mandated to use the BDA system, this behaviour of not permitting them to use long standing acceptable practices nor allowing them access to BDA to consolidate their A2X transactions is prejudicial and detrimental to both the common authorised users and A2X.

Example 1: the ability of an authorised user to trade a client order in to a "Deal Allocation" suspense account (DA) on BDA and then at the end of the day, move a portion or possibly all the trade to the authorised user's "Stock Account" to facilitate the booking of a Swap, CFD or Option Delta trade. However, when requested to utilise the same process to enable an authorised user to move client A2X trades in to its stock account (as they are entitled to do for Swap, CFD and OD trades) to facilitate the booking of one note on A2X, this is positioned as being against the spirit of JSE rules and is prohibited.

Example 2: Another example, is the aggregating by authorised users of on-exchange and off-exchange transactions on BDA when booking out to client accounts, which is permitted by the JSE. However, when an authorised user wants to move an off-book trade executed on A2X via the MP trade mechanism to enable them to book a single note to the client, the JSE prohibits this activity.

3. **JSE using their position of dominance to restrict authorised user participation on A2X**

Authorised users of A2X are also authorised users of the JSE and they still conduct in excess of 95% of their trading activity on the JSE. As a result, the authorised users are forced to obey any directives made by the JSE. This is specifically directives used to block the authorised user from effectively and efficiently trading across both A2X and the JSE out of fear of falling foul of the JSE. This is despite the directives not being backed up with enforceable rules or provisions but rather the JSE using its dominant position to essentially coerce authorised users not to trade on A2X or make it very difficult to do so.

The JSE remains their main regulator in respect of the bulk of their trading activity and any deemed non-compliance by the JSE can have severely negative implications for an authorised user in so far as its interaction and transacting on the JSE is concerned. In this way the JSE uses its dominance to continue to impede and restrict the ability of authorised users to trade on A2X.

4. **JSE and A2X agreement – JSE restricting the authorised user use of the MP trade to the detriment of A2X**

A2X fits in to the existing market structure ecosystem and offers an additional platform on which shares can be secondary listed and transacted. A2X secondary lists shares that have a listing on the JSE and has joint member authorised users. A2X trades are settled via Strate.

It is important to highlight that the licence granted to A2X requires an issuer to be listed on the JSE (and specified other exchanges) for A2X to secondary list the issuer.
A2X's licence includes an approved infrastructure to clear. This was necessary as there are no independent clearers in the SA market (same structure as the JSE). The SA market is unique in this way.

International and local wholesale investors (the buy-side) have and continue to exert pressure on their authorised users to achieve best execution in the SA equity market. This is aligned with best international practise (as well as draft regulation in SA) and requires the authorised user to look across markets (JSE & A2X) to transact in the best interest of their clients. The authorised user is required to consider aspects such as best price, available liquidity and cost of execution amongst others to fulfil this obligation.

In doing this, an authorised user is likely to transact across both A2X and the JSE when executing an order on behalf of a client.
However, the unique structure of SA's clearing infrastructure, with each market required to have its own infrastructure to clear, makes it challenging for an authorised user to provide one aggregated broker's note at an average price to the client.

The buy-side requires one aggregated note at an average price because:

- This is standard practise;
- They have system limitations which makes generating a separate contract note for trades conducted on A2X and trades conducted on the JSE expensive, impractical and inefficient; and
- It introduces unnecessary complexity.

A2X solved for this problem by introducing the "Facilitated Allocation" process (FAP). This enables an authorised user to achieve best execution and book one aggregated note to its client. It also enables uploads of required entries into the JSE mandatory BDA system.

A2X embarked on this approach and solution as the JSE has on all occasions that A2X has pursued an initiative, unsuccessfully objected to the said initiative, with the consequent lengthy delays for A2X. Whilst the JSE has continually motivated that its objections are in the interests of protecting market integrity, the said actions have proven to be nothing more than a subterfuge for it sustaining its stranglehold on exchange business is South Africa.

The JSE sent a letter of objection to the FSCA stating that the FAP solution was unlawful. A2X countered by submitting that the practice was not prohibited by governing statute as the statute is silent on this point.

On the back of the JSE submission, FSCA instructed authorised users to stop using the FAP pending resolution of the issue. Thereafter various solutions were explored by A2X and the MP trade was identified as best way forward.

A2X and JSE engaged with affected authorised users on the use of MP trade as a solution and presented to a FSCA organized industry workshop held on 29 March 2022.

The proposed solution was supported by all affected market participants with the new MP rule for A2X and the JSE being drafted by the respective exchanges and released for comment, consulted on, and approved as is required by the FMA. Unfortunately, this was not the end of the issue.

The JSE has adopted a conservative and limiting interpretation of the solution which is the MP trade.

The A2X and market participants consensus is that provided the authorized user has attempted to trade on both markets, this constitutes a cross market trade and the fact that the entire trade took place on A2X or the JSE is irrelevant

It is worth highlighting that there is a possibility, albeit remote, that a scenario may occur where 100% of the shares to be transacted execute on one market and zero shares on the other. A2X does not believe this is relevant in determining whether the MP trade solution can be used. That is: provided the authorized user attempts to execute on both markets, it is irrelevant that all or a portion of that order execute on one exchange or the other as the entire order was executed at the best price albeit available and accessed on one market. This is specifically relevant as the authorised user must set up its systems as highlighted in the A2X and market participants consensus paragraph above, despite having no foresight of where or on what market the trades execute.

The JSE view is as follows

- An execution can only be considered a cross market trade if at least 1 share has been executed on the JSE;
- In the scenario where an authorised user trades 100% of the order on A2X, it is NOT a cross market trade and needs to be allocated on A2X and not using BDA. Similarly, the reverse is true

As highlighted above, to use the MP trade, the preparatory process is that an authorized user is required to choose up-front and prior to transacting, on which exchange to allocate the single contract notes. It then sets-up its account structure accordingly.
Authorized users make use of Smart Order Routers (software that sits between A2X and the JSE and routes the authorized user's order to the market with the best price) to transact at best price and will only know the split of trade between the two exchanges after the order is completed.

This may lead to an extreme scenario whereby 100% of the order is executed on A2X and 0% on the JSE (or vice versa). Based on the JSE's restrictive and self-serving interpretation of the MP trade, the order must then be booked out on the exchange on which the 100% execution took place.
This creates unnecessary complexity as the authorized user has set up their accounts upfront to enable them to trade across markets and allocate on one exchange but the trade spilt between exchanges only becomes apparent post execution.

Furthermore, in the event a broker had chosen upfront to allocate on A2X and then landed-up trading 100% on the JSE and 0% on A2X, under the JSE interpretation the trade will then need be moved from the MP account to the clients DA account, which is not permissible under the JSE current interpretation.

Again, based on the JSE's interpretation, all authorized users are required to set-up dual post trade systems to deal with the scenario where there is a 0% / 100 % execution. The effect of implementing two systems to cater for this unlikely scenario is exclusionary and outweighs the technological, efficiency and pro-competitive impact of the solution.

In fact, it goes against one of the agreed "Required Features of a Solution" that was included in the pack that was presented to the market, namely that "The solution must be cost-effective for the market participants". Being forced to have 2 systems is diametrically opposed to this requirement - page 3 of presentation JSE/A2X Cross-Market Trading and Settlement

A2X Concern

The required dual structure process which the JSE is obligating authorized users to put in place is not practical, nor cost efficient. The 0% v 100% execution has the same risk profile as a 1% v 99 % or 50% v 50% trade execution split and the JSE's insistence on the dual structure achieves nothing but unnecessary complication. It also frustrates A2X's ability to compete through creating hurdles for common A2X and JSE authorized users to access and transact on the A2X infrastructure. In addition, it is a large deterrent to other JSE authorized users wishing to participate on A2X, particularly the international and smaller authorized users who have one existing system (BDA) which has the functionality to process the A2X trades and do not want to commit additional people resources nor incur the expenses to set up a second system. The impact of this is that the consequent ramp-up of trading that would occur with additional authorized users, particularly the international ones, will not occur.

Quantification of impact of JSE exclusionary behaviour on A2X

In quantifying the impact of the JSE obstructive and anti-competitive behavior, A2X looked at two examples in which challenger exchanges were licensed and competed against the incumbent by offering an alternative trading platform for securities that have a listing on the incumbent national exchange.

The two examples are:
1. Chi-X Europe (UK stocks) – launched in October 2007;
2. Chi-X Australia – launched in October 2011.

It is important to highlight that in both these jurisdictions market authorities first released a regulatory framework that supported a multi- exchange environment and set rules to ensure the markets operate freely, fairly and safely. They dealt with key issues such as cross listings of the same share between exchanges, common broker members and the need for interoperability within the capital market structure.

In Europe, it was the Markets in Financial Instruments Directive (MiFID) while in Australia, the Australian Securities and Investment Commission (ASIC) introduced Market Integrity Rules (MIR).

In South Africa, despite the FSB having issued 4 new exchanges licenses in the period 2016 to 2018, no such regulation has yet been released.

In quantifying the impact of the JSE's obstructive behavior on A2X, we have specifically stripped out the regulatory component of not having an enabling framework in place.

Step 1:
The following graph shows the market share of Chi-X Europe and Chi-X Australia in the first 5 years of launching.

As can be seen, both entities captured between 15% and 20% within a 3- year period of go-live.

In comparison, A2X's market share as a percentage of total activity, 5-years after launching, remains [redacted] Stripping out the impact of not having an "admit to trade" model in SA (regulatory impact of not have a MiFID or MIR in place) and using only the stocks listed on A2X in each year, A2X's market is [redacted] A material portion of the difference between the international experience and A2X is a direct result of the JSE obstructing interoperability at the post-trade level – namely by mandating the use of its closed system, BDA, and not enabling common authorised users to use BDA for trades transacted on A2X.

[redacted]

Step 2:

We compare A2Xs actual revenue over the 5-year period to international experience using three scenarios. These are:

- Low road scenario = 50% of the average of Chi-X Europe and Australian experience is used;
- Middle road scenario = same market share as the average of the two exchanges; and

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- High road scenario = 120% of the average of the two international exchanges.

[redacted]

Actual A2X Revenue compared to the three market share scenarios of the 5 year period – being the first 5 years since launch:

[redacted]

Step 3: Quantifying the impact.

[redacted]

[redacted]

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Impact on ability to raise capital

It is also worth highlighting that as a consequence of the JSE's behaviour and its impact on A2X revenue and the delay in achieving sustainable profitability, the ability to raise capital from shareholders is becoming more difficult.

[redacted]

An outcome where A2X would not be in a position to continue as a result of funding constraints would play directly into the JSE's hands and result in it re-securing its position as a sole service provider monopoly. A failure by A2X, given the progress it has made to date despite the JSE's behaviour, would also be a large deterrent to any future potential competitor with the result that the financial markets would be precluded from the benefits of competition that are clearly demonstrable in other jurisdictions.

In conclusion

A2X believes the following urgent interventions are required:

- **Step 1:**
  - Access to BDA be made available to common A2X and JSE authorized users in a way that facilitates efficient and effective interoperability between the markets and allows the said users to utilize BDA in a way where there is no discrimination between the processing of authorized users' A2X transactions and other authorized users' transactions; and
  - The JSE to take all such steps and actions, including revising JSE rules and directives where required, to facilitate this outcome.

  Given the material impact of the status quo on enabling true competition, suggest necessary steps and actions to be taken within three months.

- **Step 2:**
  - o A2X's post trade system be authorized to undertake the allocation and clearing of all listed instruments transacted on either of the two exchanges, in which the existing MP trade mechanism is used, and NOT limited to securities with a listing on both markets. This will be an important step in a move towards a non-mandated BDA environment in which brokers can choose any available and conformed post-trade system.

  Given the material impact of the status quo on enabling true competition, suggest necessary steps and actions to be taken within three months.

- **Step 3:**
  - o the use of BDA be made non-mandatory with authorized users having the choice to select a system or combination of systems provided that the system/s comply with certain reasonable industry agreed minimum requirements.

  Suggest that JSE be required to provide 6 months' notice to authorized users of the change to non-mandatory status of BDA.

A2X
26 October 2022

BACKGROUND INFORMATION – COMPETITION AUTHORITY

A2X

Introduction

A2X is the second largest securities exchange in Africa, with a combined market capitalisation of R5,3 trillion. As at 20 September 2022, it has a total of 71 securities available for trade.

Founded in 2014 the exchange is eight years old (commenced trading in October 2017) and was established as an alternative trading venue.

The Financial Markets Act of 2012, promulgated in 2013 (FMA), changed existing legislation in South Africa and allowed for the licensing of new stock exchanges, with an objective of opening markets to the benefits of competition.

The exchange is licensed and regulated by the Financial Sector Conduct Authority (formerly the FSB) and the Prudential Authority (South African Reserve Bank).

A2X is licensed as an exchange and is subject to the same legislation and regulation as a conventional exchange, like the JSE.

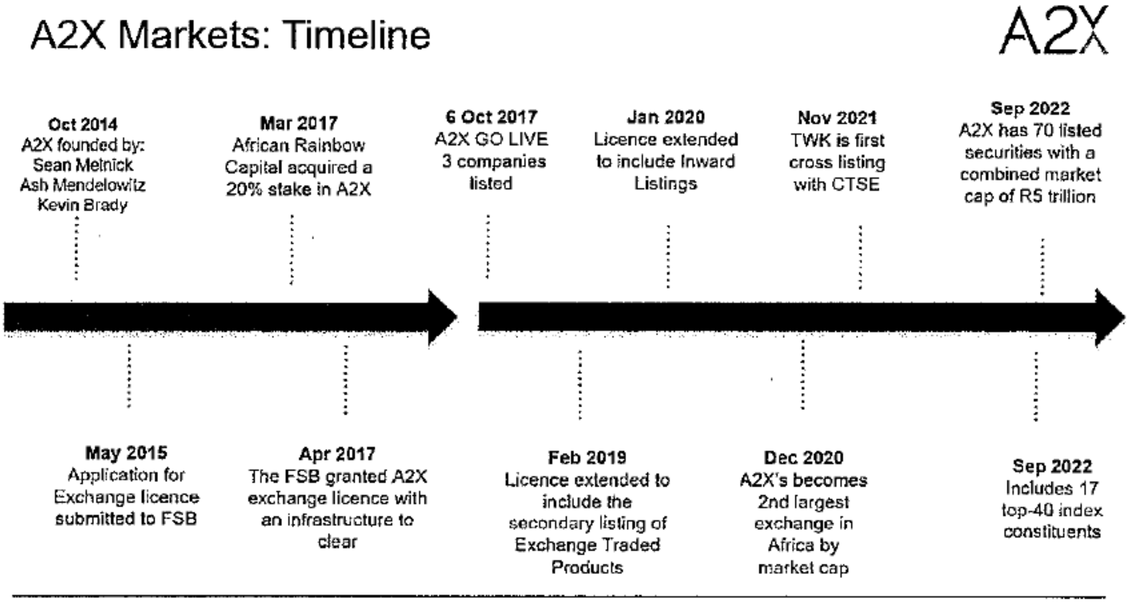
In terms of the FMA, A2X is licensed to secondary list and trade the following products:

» Shares in public companies listed on an exchange in SA;

» Exchange Traded Funds and Exchange Traded Notes listed on an exchange in SA; and

» Shares in public companies listed on a non-South African internationally approved exchange.

See below timeline for an understanding of the A2X journey to date:



An experienced team from across the financial services and technology industries run the exchange. Their experience, combined with cutting-edge technology, stable systems and an agile environment enables A2X to provide the market with an efficient and cost-effective trading venue.

A2X is owned by a small group of founding shareholders including African Rainbow Capital Financial Investments, Avant Garde, Absa, management, and staff.

The value propositions

A secondary listing on A2X provides investors with the benefit of an additional platform to transact in a company's shares, attracts additional liquidity, lowers exchange fees and results in narrower spreads and the price improvement is significant.

The broader benefit is to the market as a whole, with all competitive exchanges requiring to be more cost conscious, client centric and innovative with the end user being the ultimate beneficiary. Competition has been proven to be good for all industries.

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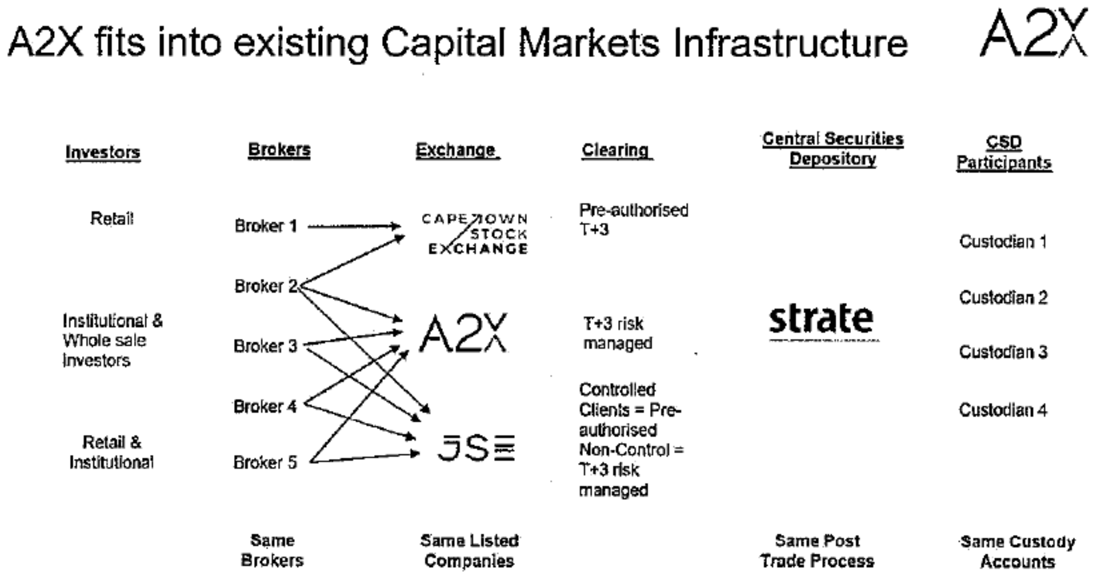
As a new market offering with no legacy systems, A2X is able to run a lean cost structure.

How does the A2X model actually work?

A2X is licensed to operate as a secondary listing venue, that is: in order for an instrument to be listed and be traded on A2X, it must have a listing on the JSE, another local exchange or an international exchange. That exchange is responsible for the ongoing primary regulation of the issuer even though it is also listed on A2X. Essentially, provided the issuer is in good standing on the primary exchange, it is deemed to be in good standing on, and in compliance with the A2X listing requirements. A2X is in substance an alternative trading venue.

Consequently, A2X and the JSE have common listed listed instruments, common authorized users/brokers and common investors with the settlement of the transactions on both exchanges taking place on the appointed central securities depository, Strate.

A2X fits within the existing capital markets infrastructure – see below:



A2X has based its model on the multilateral trading facility (MTF) model introduced successfully in Europe following MiFID. Research internationally has shown that the most successful first competitor model to the traditional stock exchange is the MTF model (referred to as an Alternative Trading System or simply ATS in the USA). As stated, A2X has based its model on the MTF and sees this as the best opportunity to properly and successfully compete with a business that has been in existence for almost 140 years. The MTF model was put in place to give entities a chance to compete against exchanges which have been in existence for decades as accepted monopolies. For a start-up exchange to compete by listing one issuer at a time is extremely challenging. For example, there were in the region of 23 unsuccessful attempts to compete with the London Stock Exchange prior to MiFID and the introduction of the MTF model to assist new entities competing on a more level playing field. There are currently several competitors who trade up to 40% of volumes with the consequent benefits for investors.

To summarise, the A2X model is:

- **To Offer choice** – of venue to trade shares (local and foreign listed) and ETPs.
- **Using high performance proven technology** – licenced from Aquis Exchange in the UK
- **At materially reduced fees** – >50% reduction in the end-to-end cost of transacting
- **Innovation –** introduce new order types to the SA market to help unlock liquidity
- **Simple to secondary list on A2X** – no cost, risk or additional regulatory burden
- **Creates real benefits for the industry** – both direct and indirect savings

The benefits that A2X has brought to the South African market through competing in the stock exchange space is limited when compared to international markets. The reasons for this are twofold:

- the JSE as a long-standing dominant single service provider has acted in a way that has made it very difficult for common authorised users to use the services of A2X;
- The South African regulatory environment, whilst allowing for competition between exchanges does not create a regulatory environment that facilitates competition.

The lack of regulatory standards the compel exchanges to interoperate in a meaningful way to achieve a level playing field for new entrants.

MP3A

competition commission
south africa

CONFIRMATION OF AGREEMENT IN TERMS OF SECTION 50(4)(a) TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LTD v JOHANNESBURG STOCK EXCHANGE LTD - CASE NUMBER: 2022OCT0048

I, Gary Clarke, do hereby agree in terms of Section 50(4)(a) of the Competition Act 89 of 1998, as amended, to extend the investigation period in respect of the above referred case up to and inclusive of the **26 October 2024.**

Signed on this 18 day of October 2023 at Johannesburg

Duly Authorised Representative of the Complainant

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competitioncommission
south africa

CONFIRMATION OF AGREEMENT IN TERMS OF SECTION 50(4)(a) TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LIMTED v JSE Limited 2022OCT0048

I, Gary Clarke, authorised representative of the Complainant, A2X (Pty) Ltd, do hereby agree in terms of Section 50(4)(a) of the Competition Act 89 of 1998, as amended, to extend the investigation period in respect of the above referred case up to and inclusive of the **31 January 2025.**

Signed on this __14___ day of October 2024 at Cape Town

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Duly Authorised Representative of the Complainant

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competition commission
south africa

CONFIRMATION OF AGREEMENT IN TERMS OF SECTION 50(4)(a) TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LIMTED v JSE Limited 2022OCT0048

I, Gary Clarke, authorised representative of the Complainant, A2X (Pty) Ltd, do hereby agree in terms of Section 50(4)(a) of the Competition Act 89 of 1998, as amended, to extend the investigation period in respect of the above referred case up to and inclusive of **30 April 2025.**

Signed on this 29 day of January 2025 at Sandton

Duly Authorised Representative of the Complainant

MD3D

competitioncommission
south africa

CONFIRMATION OF AGREEMENT IN TERMS OF SECTION 50(4)(a) TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LIMTED v JSE Limited 2022OCT0048

I, Gary Clarke, authorised representative of the Complainant, A2X (Pty) Ltd, do hereby agree in terms of Section 50(4)(a) of the Competition Act 89 of 1998, as amended, to extend the investigation period in respect of the above referred case up to and inclusive of **31 July 2025.**

Signed on this 8 day of April 2025 (month & year) at Sandton (place)

Duly Authorised Representative of the Complainant

MD3E

competitioncommission
south africa

CONFIRMATION OF AGREEMENT TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LIMTED v JSE LIMITED – REF CASE NUMBER 2022OCT0048

I, Mr. Gary Clarke, authorised representative of A2X (Pty) Ltd, do hereby agree to extend the investigation period in respect of the above referred case up to and inclusive of **01 ~~OCTOBER~~** September **2025.**

Signed on this 28 day of July 2025 (month & year) at Cape Town (place)

Duly Authorised Representative of the Applicants

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competition commission
south africa

CONFIRMATION OF AGREEMENT TO EXTEND THE PERIOD REFERRED TO IN SECTION 50(2) OF THE COMPETITION ACT 89 OF 1998, AS AMENDED

A2X (PTY) LIMTED v JSE LIMITED – REF CASE NUMBER 2022OCT0048

I, Mr. Gary Clarke, authorised representative of A2X (Pty) Ltd, do hereby agree to extend the investigation period in respect of the above referred case up to and inclusive of **31 OCTOBER 2025.**

Signed on this 27 day of August 2025 (month & year) at Plettenberg Bay (place)

Duly Authorised Representative of the Applicants

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