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COMPETITION LAW ALERT

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"This field is required" - Commission's further statement of issues seeks to fill gaps in the Online Intermediation Platforms Market Inquiry

In May 2021, the Online Intermediation Platforms Market Inquiry (OIPMI) was officially launched in the effort to address the features of online intermediation platform markets, which may hinder competition. By June, the first round of information gathering was completed, following various responses from the public to an initial Statement of Issues.

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In May 2021, the Online Intermediation Platforms Market Inquiry (OIPMI) was officially launched in the effort to address the features of online intermediation platform markets, which may hinder competition. By June, the first round of information gathering was completed, following various responses from the public to an initial Statement of Issues.

It’s not clear whether the onerous nature of the requests for information, the short time period to respond, a general reluctance from stakeholders to put their heads above the parapet, or just the inherent complexity of the markets being studied is to blame, but a number of gaps in the Commission’s understanding of certain key factors led to the publication, on 17 August 2021, of a further Statement of Issues (FSOI).

The scope of the OIPMI remains the same: delving into business to consumer online platforms (including eCommerce marketplaces travel and delivery platforms, online classifieds, as well as app stores) and seeking to uncover features that may restrict platform competition, or undermine the fair treatment of the businesses that use these platforms to list and sell products.

The FSOI contains a useful summary of initial observations and insights gleaned from the first phase of information, and sets out several specific questions for further input from market participants and other stakeholders. Although some

parties can expect correspondence from the Commission requesting a response, all stakeholders are encouraged to assist by making submissions on a voluntary basis.

Business users of platforms (i.e. those using platforms to sell their products) are also invited to complete an online questionnaire (available through the Commission’s website via www.compcom.co.za/online-intermediation-platforms-market-inquiry/), which provides an opportunity for entrepreneurs reliant on platforms to air any concerns, especially given that the Commission’s own efforts are focused on interrogating platform providers. This time the Business Questionnaire is structured to be much shorter in comparison to previous versions, to secure more responses.

Below, we highlight some of the observations emerging from the Inquiry to date, and the aspects that it still seeks a better understanding of.

eCommerce Market Places

The Commission’s preliminary evidence indicates that eCommerce marketplaces and pure online retail platforms have a disproportionate share of online sales compared to “bricks and mortar” stores with an online offering or supplier online portals. Questions are being asked to understand reasons for this. Some of the early domestic entrants failed to scale in line with the overall online market growth including the accelerated growth in online traffic spurred on by the COVID-19 pandemic. In fact, the Inquiry has noted

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that some domestic players experienced a drop in customer volumes. Most eCommerce marketplaces are loss-making which may be as a result of pursuing growth aggressively or falling behind in the competition to do so.

The Inquiry has also observed that some platforms make use of price parity provisions which require third party sellers to price their products no less favourably on the platform relative to their own or other sales channels. The FSOI seeks to understand the implications of these, as they have been considered as potentially hindering competition in (for instance) travel platforms.

The FSOI also seeks to understand the role of promotions and discounting; as well as the relationship between a platform’s own-retail offering and those of third-party suppliers on the platform.

In line with prevailing policy on protecting small and black-owned businesses, the FSOI looks to understand the extent of participation by historically disadvantaged persons and SMEs, while noting that many eCommerce platforms do not appear to have any specific support programmes on place to promote participation by SMEs and HDPs.

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Delivery Platforms

Noting that food delivery (both groceries and restaurants) has increased under the Covid-19 pandemic, further information is sought regarding the differentiation in commissions charged by delivery platforms to different business user segments. For instance, the Inquiry has noted that independent restaurants are typically charged substantially higher commissions relative to fast-food chains. This may impact the barriers faced by SMEs and HDP-owned restaurants.

Travel and Accommodation Platform Service

So far, the Inquiry has distinguished between online travel agencies (OTA) and metasearch engines (MSE) where the latter directs traffic and generates leads rather than facilitating transactions. It has also noted that international platforms compete strongly in the South African domestic market.

Issues flagged for further consideration include: the prevalence and importance of bundled or and multiple offers on travel platforms; whether the use of search engine marketing practices favour larger, global platforms over smaller, domestic players; and the dynamics of promotions and discounts and their impact on search rankings.

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The Inquiry has also noted concerns about potentially unfair terms and conditions contained in business user contracts, such as the timing of payments made by the platforms to the accommodation providers; deposits payable by accommodation providers to secure the commission payments; and stringent rules in the case of over-bookings and cancellations by travellers that require the accommodation provider to bear the costs.

The FSOI also covers questions regarding the extent of transformation of the tourism industry, and particularly the share of HDP accommodation and travel experience providers.

Online Classifieds

The Inquiry has identified automotive and property as two key areas where online lead generation is increasingly important and where leading positions may entrench incumbents. The FSOI raises the question of whether other categories might be gaining importance in the online space.

Differential treatment of SMEs or HDPs has also been flagged for further inquiry.

App Stores

In line with increasing scrutiny abroad, the FSOI proposes to spend more resources in understanding this category of platform. For example, questions are raised regarding preferential access to a device’s Application Programming Interface, as well as the impact of a limited number of app stores on commission levels and listing fees. The Inquiry also wants to understand any particular barriers faced by local app developers on these global platforms.

Submissions

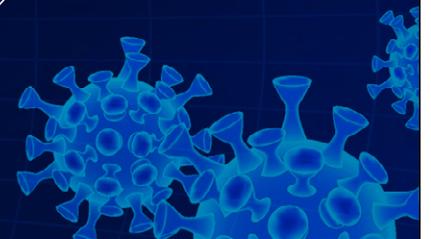
The FSOI provides platform owners, participants and anyone with an interest in the digital economy with a further opportunity to make submissions to help shape the trajectory and findings of the OIPMI.

Written submissions to the FSOI should be provided by Thursday, 23 September 2021.

Chris Charter and Aubrey Mazibuko

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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