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Media and Digital Platforms Market Inquiry (MDPMI)

PROVISIONAL REPORT

NON-CONFIDENTIAL

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a growing, deconcentrated and inclusive economy

Inquiry Panel and Team Members

PANEL:

James Hodge (Chair)
Paula Fray

TECHNICAL LEADS

Noluthando Jokazi
Donnavan Linley
Phathutshedzo Manenzhe

PROJECT ADMINISTRATOR

Mbali Masango

RESEARCH ASSISTANTS

Ezile Njisane
Ntwanano Chauke

TECHNICAL TEAM

Aphiwe Nanto
Sivuyise Mtiki
Lumkisa Jordan
Chandré Prince
Kuhle Majola
Keitiretse Moota
Noojehan Khaki
Ororiseng Maseng
Phakamani Tunyiswa



SUMMARY OF PROVISIONAL FINDINGS AND REMEDIES

1. SEARCH

1.1. Provisional Findings

1. The provisional findings on search and personalised feeds are as follows:
 - 1.1. Google’s monopoly position and the unequal bargaining position of the media means there has not been an equitable share of value between Google and news publishers in South Africa both historically and currently. This inequity has materially contributed to the erosion of the media in SA over the past fourteen years and will continue to do so unless remedied. The Inquiry has used a variety of measures to determine the additional value extracted by Google search annually from publishers, or value destroyed through conduct that promotes zero-clicks, resulting in a range of estimates from R300m-R500m for 2023. The value will be higher today. The value will also be higher if Google AdTech and SERP/feed YouTube referral benefits are included, but the Inquiry has considered remedies for AdTech and YouTube below which should address the inequity in that market.
 - 1.2. The unequal bargaining position has resulted in an inequitable sharing of user data and insights between Google and news publishers.
 - 1.3. The Google algorithm distorts competition between news media organisations insofar as it a) over-represents global news media in SA for search and Top Stories, b) under-represents vernacular and community media, and c) over-represents subscription publishers. Furthermore, Google appears to self-preference YouTube links on the SERP and Discover feed relative to links to third-party video providers, including SA news broadcasters. These issues are exacerbated by SEO requirements for the algorithm and for core updates to the algorithm where there is insufficient transparency on how the media will be affected and how to avoid traffic loss.
 - 1.4. AI-powered search is likely to cause an even greater extraction of value by search engines from news publishers unless a) news publishers have the option to opt-out of AI summaries, and b) technological choices are made that ensure referral traffic to news publishers is not degraded by these tools.
 - 1.5. Microsoft Bing has the potential to become more relevant to news publishers in future given the outcome of the US case against Google and its relationship with OpenAI. This will make its approach



to search, and AI-powered search, more impactful on the media in future.

2. The conduct identified has an adverse effect on competition through:
 - 2.1. Competition for advertising revenue and consumer data by throttling referral traffic and denying the user data to enable better ad targeting. Evidence of the effect includes the high levels of zero-clicks for news queries, the declining share of 3rd party referral traffic and the limited data sharing.
 - 2.2. An imbalance in bargaining power that enables the extraction and monetization of news media content, distorting competition for news content distribution and monetization. Evidence of the effect includes practices designed to extract news content from the media and the higher value derived by search engines for news content relative to the media itself.
 - 2.3. Distorting competition amongst news media through degrading the prominence of SA media relative to foreign, community and vernacular media relative to mainstream English media, and paywalled media relative to the public

broadcaster and other advertising-led media. Evidence of the effect includes the higher levels of impressions despite lower CTRs for foreign over SA media, mainstream English over community and vernacular media and paywalled media over free media.

- 2.4. Distorting competition for news broadcast video distribution and monetization by degrading news and broadcaster website sources relative to YouTube. Evidence of the effect includes the higher levels of impressions despite lower CTRs for YouTube over SA media websites.
3. As a result, the conduct has an adverse impact on the quality and consumer choice of SA news media, particularly the diversity of media through SME and HDP-owned media that offer community and vernacular media along with the public broadcaster. Harm to the quality and diversity of media, along with the plurality of voices and the ability for citizens to get news in their home language, undermines citizen's Constitutional rights and hence the adverse effect is considered substantial.

1.2. Provisional Remedies

4. The provisional remedies are designed to form the basis for further debate and engagement. The Inquiry has mostly focused on addressing the source of adverse competitive outcomes and setting out the more competitive outcomes it would like to see, being open to different mechanisms to achieve those competitive outcomes. Our remedies are broadly informed by the need to compensate the news publishers directly for a period to rebuild, innovate and strengthen the news industry, including its capability to generate

revenues in a digital environment. This is essential given the historic erosion of revenues by Google that has left the media in a weak financial and operational position. Data-sharing forms part of empowering news publishers to generate revenues.

5. A bargaining solution only is unlikely to remedy the issues and the large print media have in any event failed to reach an agreement despite negotiations with Google whilst other media organisations such as the public broad-



caster have been excluded from negotiations altogether. The Inquiry has therefore determined the range for the remedial value which can be imposed or act as a guide for further negotiations between the media and Google. The Inquiry has also felt the need to set out how such funds may be dispersed given the divergent interests in the media and concerns that outcomes may favour the established large media in a market where media concentration already exists. Lastly, the Inquiry seeks to overcome the other problem with bargaining models, namely that solutions are found for the underlying structural causes of the imbalance in value and how referral traffic can be grown to bring the value more closely into balance. However, the Inquiry sees the value in facilitating current and future bargaining between the media and search engines as this may permit a negotiated outcome in the range identified by the Inquiry in lieu of its imposition, and the opportunity to bargain over future issues that may arise, including the evolution of AI-powered search.

6. There is a value inequity which must be addressed, and in the short-term this is best done through payment into a media industry fund. These funds elsewhere have been linked to either content volume or journalist numbers, either way favouring the large mainstream media at risk of undermining media diversity and plurality. Some countries have offered subsidies in a manner that privileges smaller media over legacy to improve diversity. Needs also differ materially, as some of the larger media already benefit from the 'winner-takes-most' subscription outcomes in the market and the corporate broadcasters and local 'knock & drop' may be less existentially impacted than mainstream and community print, along with the public broadcaster. It is therefore imperative that any dispensing of funds takes into account needs and the promotion of media diversity and plurality.
7. As the inequity in value exchange is a product of search design choices which have resulted

in less referral traffic, the value that search engines provide to news publishers, then there is an opportunity for search to make different choices and rebuild that referral traffic to enable a more equal value share without the need for indefinite transfers. Referral traffic can be monetised at higher rates by the news media which is why it is ultimately preferred to a share of lower-value ads on the platform, including as compensation or as other monetisation options on the platform. In essence, a proposal to fix the competition problem rather than simply compensate for the negative outcome. If this opportunity is not taken, then the option remains for a permanent digital tariff or levy to compensate for the negative outcomes in lieu of fixing them. The same applies to the choices that are made with AI-powered search which is in its infancy. Those choices can enhance traffic and revenue generation for news media or not, and the aim is to incentivise the former to ensure a fair exchange of value, failing which a digital tariff or levy is the only option.

8. As Microsoft Bing has the potential to become more relevant in the future, recommendations rather than remedies are proposed for its traditional search design, but binding remedies are proposed for its AI-powered search given its relationship with OpenAI, the dominant Chatbot.
9. The provisional remedies recommended by the Inquiry are as follows, with a recommended implementation period of 6 months:
 - 9.1. Google to compensate the SA news media for the additional value extracted annually of R300-500m. The compensation can include funding support for projects that build digital news capabilities with the objective of improving revenue generation, but the majority of funding must be transfers to support and strengthen journalism. Administration costs are for Google's account.

News media and broadcasters are eligible if they predominately service the SA market, report on current issues or events of public significance for South Africans at a local, regional or national level and adhere to the regulatory oversight by the Press Council or BCCSA. The public broadcaster must be included in the compensation. The compensation for individual news publishers should consider weighting based not only on relative content levels, but also relative needs and contribution to media diversity and pluralism in SA. A potential option is to split the fund into three, where a third is dispensed on content levels, a third on relative needs and a third on contribution to media diversity. The compensation must be in place for at least 3-5 years.

9.2. During this period Google must put in place measures and make search engine design choices that seek to build referral traffic to fully compensate the SA news publishers for the value deficit of [R300-R500m] (adjusted for future search revenues) through sufficient ad-generating clicks, or other revenue streams on search. Potential options to increase SA media referrals include removing bias against SA media in favour of foreign media and YouTube, enhancing the ease of following SA news media on Discover, improving search for community and vernacular media, optimizing snippet lengths to promote click throughs, and an SA news filter on the SERP. Identifying and addressing reasons for zero-clicks would contribute to options available. Potential options for other monetization options include launching the Google News Showcase and copyright payments. It is highly likely that some of the additional value and traffic over time may be generated from implementing some of the other recommendations below.

- 9.3. Google to provide news publishers with enhanced user data and insights to compensate for the imbalance in user data access, subject to POPIA requirements. POPIA compliance should not prevent sharing, and options for anonymised data or news users to provide consent should be made available where necessary. Proposals include aggregated data on audience demographics, interests, psychographics and shopping intent along with more granular but anonymized data for different sections of the news website or app.
- 9.4. Google to put in place search engine related measures to reduce the over-representation of foreign media, address the under-representation of vernacular and community media, reduce the over-representation of subscription media, and address the over-representation of YouTube videos relative to SA news broadcaster video links on Google's SERP (following news-related queries) and the Discover feed. It is proposed that impression share more closely align with observed CTRs for content as a means to avoid bias. It is recommended that Microsoft Bing ensure the development of its search engine avoids these outcomes.
- 9.5. Google to provide dedicated SEO support for SA news publishers to assist with responding to core updates timeously to avoid traffic disruptions. This should include pre-emptive assessments of the likely impact of core updates and how to ameliorate traffic disruptions.
- 9.6. Google and Microsoft to negotiate annual contributions to the oversight institutions, namely the Press Council and BCCSA.
- 9.7. Google and Microsoft to allow for news publishers to opt-out of AI summaries on search results on their own search engines, Chatbots and those of third parties that use API access to their



- search index. Those that choose not to opt out should benefit from a 1% digital tariff or copyright levy on content used by the AI LLM to provide an AI summary.
- 9.8. Google and Microsoft to support an independent programme to educate SA news publishers on AI opt-out options and assistance in putting it in place where requested. The support of other AI companies for this initiative is contained in the AI remedies.
 - 9.9. Google and Microsoft to put in place measures and design choices to ensure that AI-powered search does not result in any reduction in referral traffic from news-related search queries in SA or provide alternative monetization options in lieu of referral traffic. Proposals would include contracting with SA news media for training data and grounding AI summaries, more prominent source listings and measures to promote user clicks.
 - 9.10. It is recommended that a 5-10% digital tariff or levy on digital advertising revenues is imposed if the search engines (i.e. both Google and Bing) fail to implement the remedial actions identified above. These revenues should then be placed in a Media Industry Fund to be distributed to the news media based not only on relative content levels, but also relative needs and contribution to media diversity and pluralism in SA. The public broadcaster must be included in the compensation.
 - 9.11. Exemption for the news media in SA to negotiate collectively with search engines to find resolution to current or future issues (including implementation issues) that threaten the equitable share of value for news content on condition that collective negotiations are inclusive of all media (or their representatives) including broadcasters, the public broadcaster and community media.
10. Some of the media have proposed compensation for historic inequities in the value exchange with Google. This should be considered, and the Inquiry welcomes further submissions on this proposal. Our preliminary view is that if the remedies outlined above are implemented in good faith to rebuild the industry and provide for long-term sustainability through improving the referral revenue from search then historic compensation may be of less relevance. However, were there to be a non-cooperative position adopted by the search platforms that continues to leave the media industry in a precarious position then pursuing historic compensation may be more appropriate. There is also the option of employing a hybrid of ensuring long-term sustainable solutions and offering some historic compensation.

2. SOCIAL MEDIA

2.1. Provisional Findings

11. The provisional findings on social media are as follows:
 - 11.1. Meta, YouTube, X and TikTok each dominate their particular social media mechanism and have large consumer use in SA with the ability to adversely affect the news media in SA. However, YouTube and Meta are the largest from a digital advertising perspective that warrants



particular focus on their conduct. TikTok is likely to become more important in digital advertising as they improve monetization of an already large consumer base. Whilst smaller, X is an influential platform given its role for breaking news and public debate. South African consumers value news content on social media platforms which they actively visit more regularly for news and where they actively choose to follow the accounts of news organisations and their journalists/presenters.

11.2. YouTube

11.2.1. YouTube has considerable market power as an aggregator of long-form video content where users go to search and view video content, cementing this position using Google search's dominance to direct the majority of search queries generating video results to YouTube. News has considerable value for YouTube, much like the search engines which it mimics, establishing itself as the platform to watch authoritative and breaking news on its various news verticals which it monetises through in-video ads and increasingly interstitial ads in the feed.

11.2.2. Its market position results in an inequitable bargaining outcome as news media need to place their content on YouTube to reach the audience but are rewarded with a 55% share of low-value in-video programmatic ads, in contrast to the full share of higher value ads on their own platforms if traffic was referred instead. The option of higher-value ad sales on YouTube is available in theory but not practice as the news media have no meaningful direct sales and YouTube itself competes with targeting by channel.

11.2.3. Many are excluded from the YPP programme altogether due to the eligibility criteria. There is also a lack of transparency over the payments made by YouTube.

11.2.4. The public broadcaster is particularly affected by YouTube, making public interest broadcasting in vernacular languages far less financially sustainable.

11.3. Meta

11.3.1. Facebook is the most used social media platform as a primary source of news and the value bargain has been that the news media provides content and this creates referrals for the news media which they can monetise with higher-value digital ad inventory.

11.3.2. However, the deliberate deprecation of public content and follower posts more generally since 2018, and news more specifically since 2021, on Meta, along with the deprecation of posts with links to keep users on their platforms distorts competition for digital advertising and distorts the value share arrangements with the news media. It also undermines consumer choice which is to have news content available on their feed, including credible news which users have made a deliberate decision to follow on social media.

11.3.3. Opportunities to monetise on Meta are also limited with a similar low revenue share for in-stream video ads and of lower value than monetisation on news websites and broadcasts.

11.4. X

11.4.1. X has deliberately deprecated posts with links to keep users on their platform and starving the news media of referral traffic.



11.5. TikTok

- 11.5.1. No evidence has been put forward to indicate that TikTok deliberately deprecates news content.

11.6. YouTube, Meta, X and TikTok

- 11.6.1. The incentive to drive engagement on social media has resulted in the promotion by the social media algorithms of more sensationalist and provocative content, and an unwillingness to completely remove mis- and dis-information. This algorithmic bias distorts competition on the platform for selection and ranking, placing the news media at a disadvantage given their focus on credible news reporting. It also undermines efforts to counter the negative impact of misinformation with credible news content, as credible news is surfaced less in the feed.

- 11.6.2. News media also bears a cost of fact-checking mis-information spread on social media and yet are not compensated by social media for this role. Social media benefits from the regulatory oversight to ensure credible news but does not contribute to those institutions. These effects are particularly harmful to children who lack the digital literacy skills.

- 11.7. The inequity in bargaining position means that less data is shared on those users that engage the news media content on social media. This places the news media at a competitive disadvantage in competing for digital advertising with social media platforms, as user data enables better targeting.

- 11.8. Social media would appear to have an advantage over news websites insofar as MNOs offer Facebook Basic Mode, Free Basics and discounted social me-

dia bundles to consumers, incentivising them to seek information through social media rather than direct to news websites. As these are commercially negotiated arrangements, the news media should collectively engage with the MNOs and ICASA on the potential for zero-rating SA news media websites or offering discounted data bundles to access those sites. Such engagements might identify alternative arrangements that benefit both parties.

12. The conduct identified has an adverse effect on competition through:

- 12.1. Competition for advertising revenue and consumer data by throttling referral traffic and denying the user data to enable better ad targeting. Evidence of the effect includes the substantial reductions in referral traffic from Meta through deprecating credible news and, along with X, deprecating posts with links.

- 12.2. An imbalance in bargaining power that imposes uncompetitive and untransparent levels of monetization shares for the news media content on social media platforms, particularly YouTube. Evidence of the effect includes the low levels of revenue shared despite the large number of video views, the lower revenue shares relative to more competitive content creator areas (like gaming and influencers), lack of transparency on detailed revenue generation and sharing.

- 12.3. Distorting competition for user attention and monetization between credible and regulated news media content and unregulated, untrusted sources of misinformation through algorithmic promotion of sensationalist content and outrage over factual news reporting. Evidence of the effect includes documented rises in algorithmic bias to sensationalist content, the admitted and visible



deprecation of credible news content and the shift to community notes and users to police misinformation with admitted results of more misinformation.

- 12.4. Distorting competition for news broadcast video distribution and monetization by degrading news and broadcaster website sources relative to YouTube. Evidence of the effect includes the higher levels of impressions despite lower

CTRs for YouTube over SA media websites.

13. As a result, the conduct has an adverse impact on the quality and consumer choice of SA news media, particularly an adverse effect on credible news media that supports the realization of citizen's Constitutional rights to be informed and active members of a democracy which makes the adverse effect substantial.

2.2. Provisional Remedies

14. The provisional remedies are designed to form the basis for further debate and engagement. The Inquiry has mostly focused on addressing the source of adverse competitive outcomes and setting out the more competitive outcomes it would like to see, being open to different mechanisms to achieve those competitive outcomes. The difference between search and social media is that users make news queries in search and so the volume of news is driven and controlled by users, whereas with social media the platform largely determines the content of the user feed and so it is less within user control.¹ The difference means that social media is able to reduce the volume of news unlike search, which has important implications for remedy design.

15. The recent tactics of social media platforms have been to starve the news media of referral traffic, the value it offered in return for the content. The preferred outcome is that referral traffic is restored given the higher value ads that the news media can generate on referral traffic, rather than monetisation on those platforms with low-value ads. For YouTube where users go to watch content, an outcome where news can monetise more and at

higher rates is likely the preferred outcome, along with fixing search at the referral stage. Improved data sharing is complementary insofar as it strengthens the ability of news media to monetise that traffic better. Whilst fixing the competition issue is the preferred route, if this opportunity is not taken then the only feasible remedial action would be to compensate the news media for the negative outcomes emanating from the conduct of social media. The best tool would be a tariff or levy on digital advertising as this would avoid the unintended consequences of the 'pay for news' remedy that has resulted in some platforms removing news media altogether. At this stage there is no evidence that TikTok has deprecated news media content or diverted traffic, but its data sharing falls short of the equitable arrangement and it too is implicated in efforts to stem misinformation.

16. On misinformation, best practice within the industry tends to be ensuring that likely misinformation is not actively promoted on the platform and a range of strategies used to identify likely misinformation (by either fact-checkers or community notes). Platforms tend to allow followers to receive likely misinformation posts but this is problematic where

¹ Users may be able to shape the feed through following pages or individuals, but the social media platforms still determine the importance of followed pages and therefore ultimately control the content.

individuals have millions of followers which then reshare to their own followers, as identified by the MIT study. Rather than dictate how platforms detect likely misinformation, the Inquiry is of the view that introducing a level of liability for actively promoting misinformation is the best means to ensure the platforms choose effective means of doing so, including identifying what is likely misinformation. This should be alongside a policy of not amplifying misinformation, including through promoted posts. Promoting credible sources of news has to be part of the solution too. The Inquiry is of the preliminary view that this is best achieved through legislation and/or regulation rather than remedial orders as the Commission is not in a position to police misinformation on platforms. Legislation with regulatory support is a more robust means to ensure enforcement.

17. The provisional remedies recommended by the Inquiry are as follows, with a recommended implementation period of 6 months:

17.1. YouTube

- 17.1.1. To extend the YPP to all news media in SA that wish to join, adjusting eligibility criteria if necessary and engaging in a deliberate on-boarding programme.
- 17.1.2. To increase the revenue share for news media and broadcasters to at least 70% for programmatic advertising.
- 17.1.3. To adopt strategies designed to enhance the ability of news media to monetise at the higher levels necessary to compensate the value from the media on its platform, including ensuring direct sales of advertising on their content accounts for the majority of ad sales. Other monetisation options can be proposed but may include a share of interstitial ads on news verticals or paying for a curated news vid-

eo service much like Google News Showcase.

- 17.1.4. To provide greater levels of transparency over the payments made to news media and broadcasters, including a breakdown of advertising spend received on their channels, views that generated revenue, average CPMs and a breakdown of deductions made to what is received by the news media and broadcasters.

17.2. Meta

- 17.2.1. To cease deprioritising SA news media posts with links in the home Feed algorithm and ensure that the organic reach of SA news media posts with links is on average similar to the organic reach of SA news media posts without links.
- 17.2.2. To cease deprecating news content in SA and to restore the Facebook referral traffic for SA news media through algorithm changes that result in an 100% increase in SA news media referral traffic, or to match peak referral traffic to the news media in the past eight years. Algorithm changes could potentially include reversals of changes designed to deprecate news content on Meta such as improvements to organic reach or reach amongst followers in addition to not deprecating posts with links.
- 17.2.3. To open the in-stream video ad monetization option to all news media that wish to join with a deliberate on-boarding programme
- 17.2.4. To increase the revenue share of news media and broadcasters for in-stream videos to 70%.

17.3. X

- 17.3.1. To cease deprioritising news media posts with links in the For You and

Latestfeed algorithm and ensure that the organic reach of SA news media posts with links is on average similar to the organic reach of SA news media posts without links.

17.4. YouTube, Meta, X and TikTok

- 17.4.1. To provide news publishers with enhanced user data and insights to compensate for the imbalance in user data access, subject to POPIA requirements. Options for news followers to provide consent should be made available where necessary. Proposals include aggregated data on audience demographics, interests, psychographics and shopping intent along with more granular but anonymized data for different sections types of posts.
 - 17.4.2. To partner with the media on fact-checking to prevent misinformation and to provide for some compensation mechanism for fact-checking by the media.
 - 17.4.3. To make an annual financial contribution to the Press Council and BCCSA, which may vary based on relative revenues generated in SA.
 - 17.4.4. To make an annual financial contribution to national programmes for digital literacy of children, which may vary based on relative revenues generated in SA, and provide easier tools to report and block content.
- 17.5. The introduction of a 5-10% digital advertising tariff or levy on platforms that fail to implement the above remedies, or which deprecate news in the future.
- 17.6. A recommendation to the Department of Communications and Digital Technology (DCDT) to amend the ECTA to introduce liability for online platforms

where they allow harmful content and amplify misleading content through their algorithms, or where misinformation reaches a certain threshold of users through follower accounts (e.g. over 10,000 followers). Additionally for the ECTA to be amended to introduce a provision requiring platforms to adopt a policy of pro-actively removing harmful content and not providing an algorithmic boost to misinformation, including a prohibition on promoted posts or ads that contain misinformation.

- 17.7. An exemption for the news media to collectively engage in negotiations with MNOs around the zero-rating or data discounting of news website access for mobile subscribers, or to engage ICASA on potential regulatory interventions to level the playing field with social media.

18. It has been suggested that there is a form of historic compensation for past conduct where anti-competitive conduct has been found. This should be considered and the Inquiry welcomes further submissions on this proposal. Our preliminary view is that if the remedies outlined above are implemented in good faith to rebuild the industry and provide for long-term sustainability through improving the referral revenue from social media then historic compensation may be of less relevance. However, were there to be a non-cooperative position adopted by the social media platforms that continues to leave the media industry in a precarious position then pursuing historic compensation may be more appropriate. For instance with Meta there has been a clear deprecation of news with measurable drops in referral traffic. There is also the option of employing a hybrid of ensuring long-term sustainable solutions and offering some historic compensation.

3. GENERATIVE ARTIFICIAL INTELLIGENCE

3.1. Provisional Findings

19. The provisional findings on AI Chatbots are as follows:

19.1. In SA, OpenAI's ChatGPT, Meta AI, Google's Gemini and Microsoft's Co-pilot will have the largest collective impact of all AI products on the news media due to their extensive distribution through standalone sales and partnerships, social media, Android devices and desktops respectively.

19.2. The AI developers have already benefited from SA news media content in the training and development of their AI Foundational Models and Chatbots. This is likely to be a small fraction of the total training dataset based on information currently available to the Inquiry, even if news media globally is a more important source of training data. However, it may be a large proportion of non-English SA official language content that may be used for certain AI capabilities such as translation.

19.3. The South African news media continues to provide access to AI web crawlers to scrape their website content for training purposes, and as a result appears either ill-informed or ill-equipped to protect their content from AI web crawlers due to the opt out rather than opt in requirements. Restricting access places SA news media in a better position to negotiate content deals with AI developers, whilst still providing access for public interest GenAI projects that deploy their own web crawlers.

19.4. Archival material is the next frontier of training data but accessing this material will require AI developers to conclude content deals as this material is

not available on the public Internet. This gives media companies an opportunity to share in the value generated by AI companies from their content. However, the existence of many data sources means that the news media is unlikely to extract a fair value individually and there is a risk of only a few selective deals with one or two large media companies occurs to the exclusion of independent media. This may adversely affect media diversity and plurality, albeit the public broadcaster has one of the larger archives but just not text-based. There is also a risk that intermediaries such as YouTube that store content adjust their terms such that they are able to use news media content for Google's AI training and do content deals with third parties whereby they monetise and not the news media whose content is stored.

19.5. It is now fairly certain that news queries will be an important use case for AI Chatbots, as it has been for search. However, like search, the manner in which AI Chatbots summarise news queries and provide limited source links is unlikely to result in much shared value through referral traffic to the news websites. News websites have no real scope to opt out of AI Chatbot search given it is currently provided by Google and Bing search index APIs. Content deals are one means to extract value, but it is not apparent that any SA news media is of the size to attract interest from AI companies and even if one or two did, this does not assist the full diversity of news media in the country. The likelihood of favouring content, and hence sources,

from those global media companies for which content deals have been struck, further reduces the potential for referral traffic from AI Chatbots even if SA media wished to opt into being used in those summaries.

- 19.6. On the design choice and referral of traffic, Meta AI offers a thumbnail and a link which, depending on what the user clicks on, either takes the user directly to Google Search or Bing or the website of the news media.
20. The conduct identified has an adverse effect on competition through:
 - 20.1. The unfair use of news media content to develop LLMs and Chatbots that now compete to inform consumers on news queries and monetise that consumer traffic. Evidence of the effect is the actual use of news media to develop models and to respond to news queries on Chatbots, along with the limited referral traffic that AI summaries provide.
 - 20.2. An imbalance in bargaining power that enables the extraction of news media content for responding to news queries by linking traditional search indexing to AI summaries, and adopting an opt-

out approach to crawling for both AI training and user queries which most news media is uneducated or incapable of, rather than an opt-in approach. Evidence of the effect is the practices themselves and the limited number of news organizations in SA that make a conscious decision to either opt-out or not.

- 20.3. Distorting competition amongst news media through degrading the prominence of SA media relative to contracted foreign media. Evidence of the effect includes the contractual provisions to make use of the contracted news media as the preferred source for news query grounding.
21. As a result, the conduct has an adverse impact on the quality and consumer choice of SA news media, particularly the diversity of media through SME and HDP-owned media that offer community and vernacular media along with the public broadcaster. Harm to the quality and diversity of media, along with the plurality of voices and the ability for citizens to get news in their home language, undermines citizen's Constitutional rights and hence the adverse effect is considered substantial.

3.2. Provisional Remedies

22. The provisional remedies are designed to form the basis for further debate and engagement. The Inquiry has mostly focused on addressing the source of adverse competitive outcomes and setting out the more competitive outcomes it would like to see, being open to different mechanisms to achieve those outcomes. The concerns around adverse competitive outcomes are similar to that of AI-powered search insofar as the likelihood of limited shared value through referral traffic given the design of AI summaries, and the limited ability

to opt out of both training and search web crawling. For this reason, the remedial actions do mirror those for AI-powered search in the main. This common concern may be exacerbated in the context of AI Chatbots if referral traffic is biased to publishers with whom content deals have been struck.

23. These issues on training data and AI summaries are being resolved commercially through in many cases through content deals with large global media companies. This market



solution is optimal as it permits for negotiated compensation to the media for its content use in a context where determining fair value is particularly complex. The Inquiry has therefore sought to shape remedies that promote these commercial solutions rather than imposing specific value transfers on AI companies. There is a need to at least permit collective negotiation of content deals across SA media to improve the bargaining position to extract fair value and to ensure more inclusive training and content deals with AI companies. This may not preclude individual deals but should be inclusive if the strength of many is to be used to conclude more favourable outcomes. However, where the attempts to prod AI companies to negotiate with the SA media fails, then digital levies may be inevitable as a solution to the exploitation of SA news content for private gain by AI companies.

24. The provisional remedies proposed by the Inquiry for public comment are as follows, with a recommended implementation period of 6 months:

- 24.1. Where YouTube does content deals either within Alphabet or 3rd party AI companies, it is required to inform the Commission of such deals and to provide an equitable share of the revenues from those deals with the SA news content providers based on their share of YouTube content forming part of those deals. Alternatively, YouTube may not sell SA news media content to Alphabet companies or 3rd party AI companies without the permission of the SA news media companies and a negotiated share of the proceeds from those deals.
- 24.2. Google, Microsoft, OpenAI and Meta to allow for SA news publishers to opt-out of AI summaries on search results on their AI Chatbots.
- 24.3. OpenAI and Meta (along with Google and Microsoft cited above) to support an independent programme to educate

SA news publishers on AI opt-out options and assistance in putting it in place where requested.

- 24.4. Google, Microsoft, OpenAI and Meta to put in place measures to ensure that there is no over-representation of global news media for which content deals have been concluded at the expense of SA media. One proposal is for the AI companies to conclude SA deals and to ground SA user news queries using content from the SA media.
- 24.5. To the extent that OpenAI and Meta develop their own search web crawlers, these need to offer SA news media the ability to separately opt out of the training for their models.
- 24.6. Google, Microsoft, OpenAI and Meta to put in place measures and design choices to ensure that AI-powered search provides significant referral traffic from news-related AI Chatbot queries in SA. or provide alternative monetization options in lieu of referral traffic. Proposals would include contracting with SA news media for training data and grounding AI summaries, more prominent source listings and measures to promote user clicks. For Meta AI, this includes removing the links to Google Search and Bing and replacing them with direct website links to only the news media sites. It is recommended that a 5-10% digital tariff or levy on revenues is imposed if the AI developers fail to implement such measures and AI Chatbots result in minimal referral traffic.
- 24.7. Exemption for the news media in SA to negotiate collective content and training data agreements with AI companies, conditional upon the inclusion of the public broadcaster and smaller independent and community media in any collective negotiations.



4. DIGITAL ADVERTISING TECHNOLOGY

4.1. Provisional Findings

25. The provisional findings on the AdTech Stack are as follows:

25.1. Google has established a super-dominant position in the entire AdTech stack value chain in SA. This has been achieved through acquisitions and entrenchment strategies, many of which are ongoing, with the foundation being control over the supply-side inventory through GAM. The dominant position across the stack now benefits from strong network effects, where websites choose Google supply-side to access quality advertisers and advertisers choose Google demand-side to access quality inventory. This network effects make it difficult for competitors to dislodge Google products even with better performance and/or pricing, because it is access to quality advertisers and inventory that are of greater importance.

25.2. The entrenchment strategies currently in place that adversely affect competition include a) GAM additional ad server fees to publishers on bids from 3rd party SSPs, b) GAM providing AdX with the winning 3rd party SSP bid as a floor price, c) AdX additional ad server fees to publishers using 3rd party ad servers, d) information sharing and close integration across Google products and e) YouTube exclusivity for DV360. The result is not just exclusion of rivals, but also that fees are higher than in a competitive market.

25.3. There is insufficient transparency on advertising pricing and deductions for SA publishers relative to the EU.

25.4. The news media are placed at a user data disadvantage by Google sharing

data across its products but not with the websites themselves. The news media is further hindered by the asymmetry of data and information being provided with limited programmatic advertiser information to target advertisers for direct sales whilst at the same time DSP targeting practices that include targeting their own website inventory.

25.5. Vernacular news media are placed at the additional disadvantage by Google not prioritising ad reviews in SA vernacular languages and then self-imposing a complete prohibition on ads in these languages on their AdTech. This undermines the ability of vernacular news media to generate revenue given the dominant position held by Google AdTech.

26. The conduct identified has an adverse effect on competition through:

26.1. The suppression of competition from alternative ad servers, SSPs and DSPs throughout the AdTech value chain which reduces the news media share of programmatic advertising spend. Evidence of the effect includes the absolute dominance and continued entrenchment of Google throughout the AdTech value chain as a result of the practices despite higher fees than competitors in certain cases.

26.2. Promoting programmatic sales in competition to direct sales through information asymmetry and lack of data sharing practices. Evidence of the effect includes the gradual rise of programmatic advertising as a share of news media inventory and the degradation of direct sale CPMs. This impedes the ability of

news media to generate sufficient revenues and undermines their sustainability.

- 26.3. Distorting competition amongst news media for digital advertising through the prevention of advertising campaigns in local vernacular languages. Evidence of the effect is the current unwillingness to permit vernacular advertising.

27. As a result, the conduct has an adverse impact on the quality and consumer choice of SA news media, particularly the diversity of media through SME and HDP-owned media that offer vernacular media along with the public broadcaster. Harm to the quality and diversity of media, along with the plurality of voices and the ability for citizens to get news in their home language, undermines citizen's Constitutional rights and hence the adverse effect is considered substantial.

4.2. Provisional Remedies

28. Google AdTech has been the subject of antitrust remedies by the FCA, most of which have been rolled out globally but with some unjustified exceptions given that the same conduct that is being remedied occurs globally. Given the SA market uses the same Google AdTech tools and is even more dominated by Google, this conduct harms competition in the SA market. Google AdTech is also currently the subject of an antitrust case in the US and an investigation in the EU. It would seem that in both cases the remedial actions targeted include some form of structural remedy to break the hold of Google on the AdTech market, along with other behavioural remedies. Given the finding that Google AdTech is now entrenched and benefits from strong network effects, structural remedies have a strong appeal but are unlikely to be workable if pursued in an SA context alone given the small market size. However, should structural remedies be pursued in these other markets then implementation in SA becomes workable given the scale of the remedy across markets, and desirable given the super-dominance Google AdTech has in SA across the whole value chain. As such, Google should implement globally whatever remedial actions, if any, stem from these cases to ensure countries like SA benefit too. The Inquiry has identified its own set

of remedies that directly address the findings and which should be practical to implement in SA.

29. The provisional remedies proposed by the Inquiry for public comment are as follows, with a recommended implementation period of within 6 months:
- 29.1. Implementation in SA of remedies 5A and 5B of the Autorité de la Concurrence ("FCA") Decision 21-D-11 dated 7 June 2021. These remedy the findings in respect of AdX being provided with the winning bid of 3rd party SSPs and AdX charging 3rd party ad servers an additional ad serving fee.
- 29.2. Implementation in SA of any structural remedies implemented by Google emerging from the EU and US cases against Google AdTech, including remedies undertaken for settlement purposes.
- 29.3. GAM to cease charging publishers an additional 5-10% fee for bids by 3rd party SSPs.
- 29.4. GAM, DV360 and Google Ads to continually provide news publishers with information on the volumes of impressions purchased by different advertisers.



- 29.5. Google to implement the DMA remedies on price data transparency for news publishers.
- 29.6. Google to end DV360 exclusivity for YouTube.

- 29.7. GAM and DV360 to reduce fees for programmatically serving direct advertising.
- 29.8. Google AdTech to permit ads in vernacular SA languages by either investing in the language capabilities or adjusting its policies on ad reviews.

5. GOVERNMENT AND BUSINESS

5.1. Provisional Findings

30. The provisional findings for the news media's relationship with government and business are as follows:

- 30.1. The news media has public good qualities which means it provides positive externalities to SA citizens and business which it is unable to recoup, resulting in less news coverage than what is socially optimal. Given the importance of that public good for human rights and sound democratic governance, it is socially desirable to support the news media to recoup those positive externalities.
- 30.2. The media has proposed certain tax and spend commitments from government and business to address the public good benefits derived by citizens and business. As the Inquiry only has powers to make recommendations in this regard, it is preferable that the media, which is already organized, en-

gage government and business organisations directly on these proposals to ensure there is no delay in negotiating potential options that might offer the media relief. This includes support for the self-regulatory bodies such as the Press Council and BCCSA.

- 30.3. There is an opportunity for a collective media industry fund and collective advertising sales across community media which may improve direct advertising sales and sustainability.
- 31. The inability of the media to collectively organize to raise industry funds and for community media to sell collective advertising inventory due to potential contraventions of the Competition Act has the effect of diminishing pro-competitive initiatives that would serve the public interest and promote the Constitutional rights of citizens.

5.2. Provisional Recommendations

32. The recommendations are limited to actions by the Commission to support collective industry funds and community national adver-

tising sales given the finding that the media organisations can engage directly with government and organised business around their



proposals for media support to avoid delays in seeking that support. This is in the context where the Inquiry can only make recommendations and not binding remedies in respect of such proposals, and therefore would simply delay the process that could begin now.

33. The provisional remedies proposed by the Inquiry for public comment are as follows, with a recommended implementation period of 6 months:

33.1. An exemption for community media to establish a mechanism to collectively sell advertising across the different local publications to offer a national audience.

33.2. An exemption for the news media organisations to establish industry funds that will enable industry-level donations that provide support to the news media and self-regulatory bodies based on need. This can include donations, funding of projects or training and equipment support. The news media organizations can establish and operate the fund, with the proviso that there is industry consultation on the principles for funding and transparency of decision-making.



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south africa





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Telephone Number: +27 (012) 394-3200 / 20

WhatsApp / SMS Line: +27 (0) 84 743 0000

Email Address: ccsa@compcom.co.za

Physical address: The DTI Campus, Mulayo (Block C), 77 Meintjies Street, Sunnyside, Pretoria

www.compcom.co.za



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