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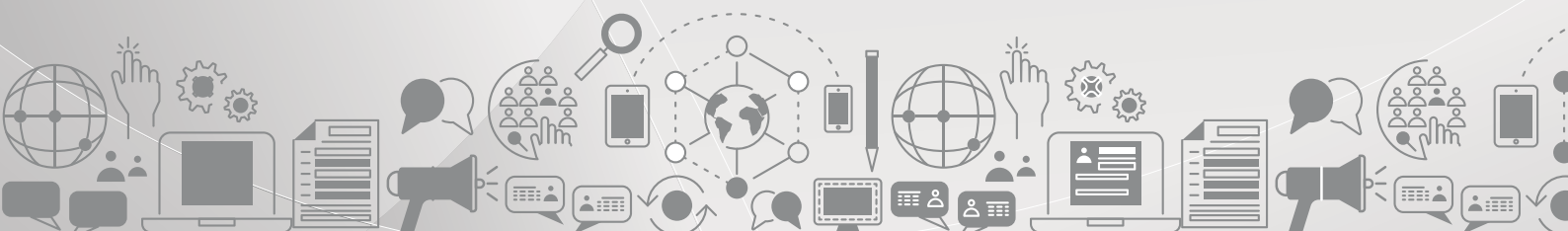


Media and Digital Platforms Market Inquiry (MDPMI)

PROVISIONAL REPORT

NON-CONFIDENTIAL

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a growing, deconcentrated and inclusive economy

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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 broadcaster 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 media 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

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.

tend to allow followers to receive likely misinformation posts but this is problematic where 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 video 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 publishers 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 Copilot 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, engage 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 advertising 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 provisor that there is industry consultation on the principles for funding and transparency of decision-making.

PROVISIONAL REPORT

1. INTRODUCTION

1. The Competition Commission formally initiated the Media and Digital Platforms Market Inquiry (the "Inquiry" or "MDPMI") on 17 October, 2023 in terms of section 43B(1)(a) of the Competition Act 89 of 1998 (as amended) ("the Act"). An Inquiry was initiated because the Commission has reason to believe that there exist market features in digital platforms that distribute news media content, the AdTech markets that facilitate digital advertising, and the AI services that use and display news media content, which impede, distort or restrict competition, or undermine the purposes of the Act, and which have material implications for the news media sector of South Africa. This includes features that adversely affect consumer choice, media diversity and media organisations that are small medium enterprises ("SMEs") or owned by historically disadvantaged persons ("HDPs").
2. The Scope of the Inquiry is set out in the Terms of Reference ("ToR") published on 15 September, 2023. The Inquiry is broadly focused on the following areas of competition and public interest, namely:
 - 2.1. Market features that may distort competition for advertising revenue between news media organisations and digital platforms, and whether these are affected by imbalances in bargaining power.
 - 2.2. Market features of those digital platforms that may distort competition amongst news media organisations for online distribution and advertising revenue;
 - 2.3. The impact of generative AI tools of digital platforms on the above.
 - 2.4. Market features of AdTech that may distort competition, affecting the level, price and share of advertising revenue to news media organisations.
 - 2.5. The impact of the above on the quality and choice of news content to consumers, and on SME and HDP owned news organisations.
3. The scope of the inquiry includes general search engines such as Google and Bing; social media platforms such as Meta and X (formerly Twitter); news aggregation platforms such as Google News; video sharing platforms such as YouTube and TikTok; DSPs and ad networks such as Google Ads and Display & Video 360; ad servers and ad exchanges such as Google Ad Manager and AdExchange, and generative AI such as OpenAI's ChatGPT and Google's Gemini.
4. All Inquiry documents and public submissions are available on the Inquiry website.¹ Since initiation, the key Inquiry processes and proceedings to date have been as follows:
 - 4.1. Release of the Statement of Issues ("SOI") for public comment (17 October, 2023);
 - 4.2. Issuing a first round of Requests for Information (RFIs) and business user survey (October 2023);
 - 4.3. Release of the Further Statement of Issues (FSOI) for public comment (18 December, 2023);
 - 4.4. Issuing of second round of RFIs and refined business user survey (December 2023);

1 <https://www.compcor.co.za/media-and-digital-platforms-market-inquiry/>



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- 4.5. Public hearings and follow-up RFIs (March 2024);
 - 4.6. Receipt of expert reports and in-camera hearings (July 2024).
 5. The Provisional Report includes annexures setting out additional detailed evidence and findings on each of the sections covered in this report. This report should be read in conjunction with the annexures.
 6. The Inquiry has been tasked with identifying market features that may impede, restrict or distort competition. The Inquiry is also tasked with including a particular focus on SME and HDP participation. The analysis summarised below, and outlined in more detail in the annexures, has informed the provisional findings of the Inquiry.
 7. In setting out these findings, the Inquiry notes that the relevant test in an Inquiry is simply whether a market feature has an adverse effect on competition, including regard for the impact on SMEs or HDPs, rather than that there is a substantial prevention or lessening of competition. The findings contain market features with varying effects on competition or the purposes of the Act, some small and others substantial. Ultimately that differentiation is reflected in the types of remedial action proposed, where a feature that has a more limited adverse effect may attract limited action, relative to a feature with a more substantial effect that may require more substantial action. In considering the proportionality of the interventions, the Inquiry has also considered the extent to which constitutional rights are likely to be impacted, and where this is the case, the harm is considered more substantial.
 8. These findings are provisional, based on the evidence collected and analysed to date by the Inquiry, including the oral evidence in public and in-camera hearings. In setting out the provisional findings, the Inquiry calls for comments and any further evidence by all parties affected by the findings, as well as those affected by the adverse effects on competition and participation. Such comments and evidence may be in dispute or support of particular findings, including the effect of the conduct or market feature. The Inquiry will make any final findings only after reviewing the further comments and evidence put forward in the next phase of the Inquiry.
 9. The legal framework for the Commission to act in respect of any findings of the market inquiry is set out in sections 43C, 43D and 43E of the Act. More specifically:
 - 9.1. Section 43C of the Act (Matters to be decided at a market inquiry) subsection 3 states that where an adverse effect on competition is decided, then the Commission must determine the action to take in terms of section 43D, and whether to make recommendations to the Minister, regulatory authority or affected firm to take action to remedy, mitigate or prevent the adverse effect. Subsection 4 requires that the Commission should seek to achieve as comprehensive a solution as is reasonably practical.
 - 9.2. Section 43D of the Act (Duty to remedy adverse effects on competition) subsection 1 states that the Commission may take action to remedy, mitigate or prevent the adverse effect on competition, which may include a divestiture subject to a Tribunal order, as per subsection (2). Subsection (3)

requires that the decision on remedy must be consistent with the findings of the report and subsection (4) requires that any action must be reasonable and practical, taking into account relevant factors listed under the subsection. These include the nature and extent of the adverse effect on competition, the remedial action and the relation between the two, the likely effect of the remedial action on competition, and the availability of a less restrictive means to remedy the adverse effect on competition. In addition, the typical standards for competition law remedies are that they should have the ability to be monitored and enforced.

- 9.3. Section 43E of the Act (Outcomes of market inquiry) subsection 1 further identifies that report may include recommendations to the Minister for new or amended policy, legislation or regulations, as well as recommendations to other regulatory authorities. Subsection (3) further indicates that, based on information obtained in an inquiry, the Commission may initiate a complaint against a respondent.
- 9.4. Section 43E(4) requires that before the completion of any inquiry, the Commission informs any person materially affected by any provisional finding, decision, remedial action or recommendation of the market inquiry, and calls for comments from them.

10. The Inquiry sets out in each section the provisional actions and recommendations to address the provisional findings, in line with the legal framework. These actions and recommendations only apply in respect of South African operations, for both global and domestic companies. In addition, the Inquiry has also considered the approach and efficacy of remedial action imposed by other jurisdictions for similar findings, and sometimes in respect of the same

platforms. In many cases, the Inquiry has set out a range of options that may achieve the purpose of ameliorating the feature that has an adverse effect on competition or SME/HDP participation, in order to signal that submissions should not be in respect of a single option.

11. In setting out the provisional actions and recommendations, the Inquiry calls for comments by all parties affected by the proposals, as well as those affected by the adverse effects on competition and participation. Such comments may include perspectives on the necessity for remedial action at all, the proportionality of the proposed remedy to the identified market feature, the efficacy of the remedy proposed (including the potential for bypass), the likelihood of unintended consequences, and most importantly, alternative proposals for remedies to achieve the same purpose, which may be evaluated by the Inquiry.
12. Following the release of the provisional reports, there will be a period of six weeks for the submission of public comments. Affected parties will also receive a version where their own confidential information is unredacted. The Inquiry will review all public submissions, and directly engage stakeholders affected by any provisional findings and recommendations. That process may result in changes to the provisional findings and/or recommendations.

2. NEWS MEDIA AND DIGITAL ADVERTISING MARKET CONTEXT

13. It is common cause that the news media play a critical role in ensuring the right to freedom of expression and promoting democracy, through informing citizens and holding institutions to account. It is also common cause that the news media in SA is in severe financial difficulty, as the shift to online consumption has seen an erosion of the traditional advertising revenues, the main source of funding for the news media.² The decline in revenues has seen newsrooms shrink, bureaus shut and

a number of print titles close, creating news deserts and negatively impacting the ability of the news media to fulfil its societal role. Even the public broadcaster, tasked with public interest journalism and ensuring citizens get news in their own language, faces a funding crisis. It is also common cause that neither search nor social media platforms themselves generate news content and thus are not in a position to replace the loss of news media journalism in SA.

2.1. The news media

14. The South African Constitution enshrines media freedoms as a cornerstone of democracy, through Section 16: Freedom of Expression. This section guarantees:

14.1. Freedom of Speech: The right to express opinions without fear of censorship.

14.2. Freedom of the Press: Protection for journalists to report without undue influence or interference. These protections enable the media to act as a watchdog over government and private sector actions, ensuring accountability and transparency.

15. The media is thus fundamental to South Africa's democracy, serving as both a catalyst for civic engagement, as well as a mechanism for holding power to account. This role has been consistently affirmed by the Constitutional Court, which recognises

the media's "constitutional importance" in informing citizens of salient public information and investigating abuses of power. As outlined in *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others* (2021), the Constitutional Court emphasised that, "[t]he Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of section 16." Informing the public is not just a function of the media, but a constitutional responsibility essential for equipping citizens with the information necessary to exercise their rights and actively participate in governance.³

16. The news media is a vital institution that extends far beyond delivering breaking news. It serves as a public good, promoting informed citizenship by providing information on a wide array of topics, including politics,

2 SANEF, Google, Meta and Microsoft public hearings
3 SANEF Public Submission

economics, culture, science, lifestyle, and more. Beyond its role in disseminating information, the news media fosters public debate, promotes civic engagement, and provides a platform for diverse voices. It holds powerful individuals and institutions to account, acting as a watchdog for democracy. Additionally, it entertains, educates, and connects communities, contributing to cultural and social cohesion while equipping citizens to make informed decisions in their personal and public lives.

2.1.1. News media landscape

17. Today, South Africa's media landscape reflects both its rich history and ongoing challenges. While it includes a mix of traditional outlets such as newspapers, radio, and television alongside digital platforms, the sector faces significant financial pressures, declining revenues, and operational hurdles. Furthermore, the concentration of media ownership limits diversity, and the shift to digital has disrupted traditional business models, leaving many outlets struggling to adapt and survive.
18. South Africa's news media is characterised by its range of platforms and ownership types, catering to the diverse needs of its population through private, public, and community media. Newspapers remain a critical source of information despite declining circulations, offering in-depth investigative journalism on political, economic, and social issues. Television and radio dominate as popular news sources, with the public broadcaster providing news in all official languages. Community radio stations play a crucial role in rural and under-served areas, delivering hyperlocal news and ensuring representation for marginalised communities.⁴ With a rapid shift toward online platforms, digital news outlets are increasingly significant, offering

immediate access to breaking news. Social media platforms have further transformed how news is consumed, particularly among younger audiences. Despite its diversity, media ownership in South Africa reflects a global trend of consolidation, with a small number of companies dominating across platforms.

19. The mandate of South Africa's public broadcaster, the SABC, is distinct from other broadcasters due to its responsibilities outlined in legislation, such as the Broadcasting Act of 1999 and the Electronic Communications Act of 2005. These laws, along with regulatory oversight from ICASA, the Broadcasting Complaints Commission of South Africa (BCCSA), and the Press Council, define the SABC's role in delivering inclusive, high-quality, and accessible public service content. Key elements of the SABC's news mandate include:
 - 19.1. Providing news in all 11 official South African languages to ensure inclusivity across all provinces.
 - 19.2. Offering news content without paywalls or subscription fees, ensuring universal access.
 - 19.3. Delivering low-bandwidth content for audiences with limited internet access, particularly those relying on zero-rated platforms.
 - 19.4. Upholding public trust by producing accurate, dependable news in line with its public service obligations.
20. South Africa's media content is overseen by two key bodies: the Press Council of South Africa and the BCCSA. The Press Council oversees print and online media ethics, and the BCCSA addresses complaints related to broadcasting content. Together, these bodies play crucial oversight roles in upholding

4 There are over 160 community radio stations with more than 8m listeners, delivering over 20,000 local news stories every week. NCRF public hearing.

media ethics, protecting press freedom, and ensuring responsible journalism and broadcasting practices.

2.1.2. News media content

21. There has been much debate in the Inquiry submissions and hearings about what constitutes news content. These debates have arisen in large part around how one measures the volume and consumption of news content on the different digital platforms. In that context, there has been the incentive for the digital platforms to limit what is considered news content, as this would reduce the perceived importance thereof. For instance, platforms have at times referred to ‘hard news’ or ‘public interest journalism’ as a subset of what the news media produces. In other cases, what appear to be fairly inclusive definitions are put forward, but the measurement does not live up to those definitions. For instance, Meta defined news articles as content about current events and other timely information which follows journalistic standards, such as citing sources and having a byline,⁵ but measured news content as the content of organisations registered with its News Page Index.⁶ Google incorporated all content from domains where news accounted for at least 20% of the content.
22. For the purpose of this Inquiry, news content comprises all the content produced by news media organisations that ascribe to the journalistic standards of the media, including that of verification.⁷ The news media does not restrict itself to ‘hard news’ or ‘public interest journalism’ only, but produces content covering all aspects of society, be it politics, the economy, education, health, the arts, entertainment, sport, food, technology, etc. Most of this content is current and timely, but

not all of it, as the news media will also seek to entertain, educate, set societal agendas, and investigate. As the Inquiry incorporates news broadcasters, the content is not just articles with by-lines, but all content types produced by a news organisation and its journalists, including video, live feeds, blogs and social media postings.

23. The variety of content works not only to serve the broader societal role of the news media, but also helps to attract a broader audience, increase the attention of that audience, and provide greater scope for advertising inventory and revenue to support some of the less commercial reporting of the media, such as public interest or investigative journalism. As the commercial model of the news media is contingent upon the full variety of content, the Inquiry is concerned with how all this content is distributed through search and social media, and the opportunities for generating advertising revenue against this content.
24. Even for radio and television broadcasters where news may make up a smaller proportion of overall content, news continues to play an important role as a driver of traffic and viewership/listenership online. Radio is the most trusted source in South Africa, and listeners will look for news on radio websites, with presenters often setting the news agenda for the day on breakfast radio.⁸ For instance, Kagiso Media estimates that c.30% of the online traffic it receives is based on news, with news ranking as the number two reason for listeners to tune in, and for this reason it has a team of experienced journalists. Much of talk radio content naturally revolves around news, but even non-talk stations state that much of the presenter engagements with each other and the audience are based on news

5 Meta RFI 1.

6 See the discussion in the social media section

7 Arena submission

8 Primedia public hearing. EWN has a stackable reach of 36m with 4m subscribers and 14.3m page views monthly.



events.⁹ The provision of news is generally an obligation under their licensing conditions and the use of state spectrum, given its public good nature.

2.1.3. News as a public good

25. Journalism as a public good refers to its role in serving the public interest by safeguarding democratic institutions and empowering citizens to make informed decisions. Not all journalism fits this definition, but public interest journalism specifically contributes significant societal, individual, and economic value.¹⁰

26. In its submission, SANEF noted that, *"informing the citizenry is a key role of news media organisations, which, in turn, is crucial to equip citizens with the necessary information and tools to exercise and vindicate*

*their rights. There is, therefore, a crucial nexus to be emphasised between journalism as a public good alongside the need for public interest content to serve social needs, and the sustainability of the news media. Public interest journalism in South Africa has, in recent years, further demonstrated its immense contributions to holding the government and the private sector accountable. High-quality, accessible news is a public good, and it directly serves the public interest."*¹¹

27. As highlighted by the public submission of the Daily Maverick, the work of investigative journalists on the State Capture era revealed widespread corruption, leading to societal benefits valued in the trillions of rands. Despite this immense value, public interest journalism faces severe financial sustainability challenges, underscoring a market failure.

2.2. The shift to online consumption

28. Globally, the news media is undergoing rapid changes due to technology, shifting business models, and the rise of social media. Like much of the world, South Africa is experiencing a shift towards digital news. That shift has significantly disrupted the traditional business models of the news media, as traditional advertising revenue sources decline without being replaced fully by digital advertising. This has required the news media to look at other revenue sources, but these are typically limited in a developing-country context.

2.2.1. Changes in consumption patterns

29. In SA there has been a significant shift to consuming news online as the population becomes increasingly connected to the Internet, reaching c.75% of the population in 2024.¹² According to the Reuters Institute online survey, 87% of South Africans get their news online, 71% from social media, 62% from television, and 25% from print.¹³ As the majority of the population access the Internet through their phones, Reuters Institute found that 87% of those accessing news online do so through their phones.

9 Kagiso and YFM public hearings. In addition, it was stated that there is considerable engagement on hyper local news.

10 Reuters Institute public hearing.

11 SANEF SOI submission

12 As of January 2024, South Africa had 45.3 million internet users – an increase of about 1.8 million users compared to the previous year.

13 Reuters Digital News Report 2024, pg 163 available at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/south-africa>

30. The shift to online consumption has also changed consumption patterns. Whereas consumers would have traditionally gone direct to their print, radio or television news provider, online consumption increasingly happens on search and social media, or is intermediated by these digital platforms. The Inquiry's survey revealed that only 1.2% of the population's main online source for news was not through these online platforms, with only 41% of this 1.2% going directly to the news websites as their main online source.¹⁴ Platforms like Facebook, YouTube, TikTok and X are now primary sources for news, especially among younger audiences, blending news with entertainment and user-generated content. The Inquiry survey showed that 77% of the population have social media as their main online platforms source for news, with 18% using search and 4% personalised feeds.
31. How news is consumed is changing too, with a growing demand for instant news alerts and live coverage as consumers increasingly access news through their mobile devices, which are constantly with them. Consistent with this, the Inquiry survey reveals that the majority of users access news multiple times per day,¹⁵ taking 'informational breaks' from work or in downtime during the day. The Reuters Institute points to video becoming a more important source of online news, especially with younger audiences. The main locus of news video consumption is online platforms (72%), rather than publisher websites (22%), increasing the challenges for media around monetisation and connection.¹⁶
32. Given the shift to news consumption through social media, consumers are also turning to non-traditional sources for news content other than the mainstream media, such as smaller alternative news media or journalists, personalities and celebrities, politicians and activists, as well as ordinary people.¹⁷ This has resulted in a proliferation of misinformation online which has served to erode trust in the media, with Reuters finding that only 57% of South Africans, 'trust most news most of the time'.¹⁸ Misinformation and attacks on the credibility of the media, along with a range of other factors such as negative news and the sheer volume of news now available online, has resulted in growing news avoidance and news fatigue globally.¹⁹ The Reuters Institute found that 40% of South Africans surveyed were 'worn out' by the amount of news, up from 28% five years ago.
33. The online shift has not spared the broadcasters either. Growth of smart TVs and smartphones, lower data costs and loadshedding all contributed to the decline of linear television and appointment viewing, and the rise of YouTube.²⁰
34. As content and audiences moved online, this has resulted in a decline in print circulation and broadcaster viewership. For the print media, daily newspapers have seen print circulation decline by 66% in the five years from 2018 to 2023,²¹ with a decline of 55%, including weekend papers.²² The corporate local newspapers have not experienced much decline, in large part due to the 'knock

2.2.2. Decline in traditional advertising revenue

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- 14 Inquiry survey report slides 12-13
 15 Inquiry survey report slides 22-24
 16 Reuters Digital News Report 2024, pg 12-14 available at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/dnr-executive-summary>
 17 Reuters Digital News Report 2024, pg 14-16
 18 Reuters Digital News Report 2024, pg 25
 19 Reuters Institute Digital News Report 2024 pg 26-27. See also <https://reutersinstitute.politics.ox.ac.uk/news/five-things-news-media-can-do-respond-consistent-news-avoidance>
 20 Group M public hearing
 21 ABC Daily Newspaper Circulation Q3 2018 & 2023, Caxton RFI 1
 22 Compiled based on RFI 1 submissions of Media24, Caxton, Arena Holdings and Mail & Guardian.

and drop' business model where they are delivered free to households, along with advertising inserts that pay for the publication. For broadcasters, the total TV audience has declined by 20% from 2019, whereas for news broadcasts specifically there has been a decline in viewership of c.40%.²³

35. The decline in circulation and viewership would naturally cause a decline in the print advertising revenues, as these are based on reach and the rate card. Print advertising revenue across the three large publishers has declined by 38% in the five years from 2018.²⁴ On the broadcast side, the SABC has seen a decline in its total advertising revenue of 47% since its peak in 2016.²⁵ The public broadcaster is highly dependent on advertising revenue as only 4% of its total revenue comes from government, and a further 18% from the payment of television licence. The decline in advertising revenues has prompted the SABC Bill, recently withdrawn, which aimed to find a sustainable funding model over the next three years.

2.2.3. Challenges in the digital advertising market

36. The shift to online consumption and digital advertising has not been able to replace the level of traditional advertising revenues that the news media and broadcasters were capable of commanding from their print, radio and television audiences. Whilst digital advertising rates could match those of traditional media twenty years ago, the explosion of online content²⁶ and the use of advertising-based business models by search and social media has seen online advertising inventory explode, causing digital advertising

rates to plummet. As the Mail and Guardian put it, when they started online they received millions of Rands for thousands of views, and now they receive thousands of Rands for millions of views.²⁷ The news media can still command a premium for direct online sales relative to programmatic advertising, but the blended rate has declined as advertisers shift to programmatic advertising. As a result, whilst the online audiences of the SA news media are growing rapidly and digital advertising revenue growing, the losses in traditional advertising revenues between 2018 and 2023 were 4 to 5 times higher than the gains in digital advertising and subscription revenues.²⁸

37. However, the other challenge in building digital advertising revenues is that users are mostly intermediated by the search and social media platforms that compete with the news media for digital advertising, while exercising a degree of control over directing traffic to their websites. In this way, the digital platforms exacerbate some of the market disruption through conduct that adversely affects the news media - the focus of this Inquiry and the sections that follow.

38. Whilst the Inquiry can address some of the conduct of the digital platforms that adversely affect the news media, the fundamental market disruption is irreversible, and necessitates that the news media re-examine their business models - to find a more sustainable financial operating model that can support quality journalism.

39. The National Community Radio Forum (NCRF) also highlighted the specific challenges community media face in competing

23 Broadcasting Research Council (BRC), eNCA RFI 2 and estimated from a graph in the FTI Expert Report submitted as part of the SABC RFI 1
24 Compiled based on RFI 1 submissions of Media24, Caxton and Arena Holdings
25 FTI Expert report submitted as part of the SABC RFI 1
26 Reuters Institute public hearing.
27 Mail and Guardian public hearings
28 RFI 1 submissions of Media24, Caxton, Arena, SABC, Moneyweb and Daily Maverick

for advertising revenue, amid the digital transformation. Digital platforms, with their targeted advertising capabilities, and larger media conglomerates dominate the market, leaving community media struggling to secure advertising income. Innovative strategies to overcome this – such as localised advertising or sponsored content tailored to community needs – also face significant hurdles, as economic constraints in disadvantaged areas limit local businesses’ ability to invest in advertising, even with customised packages.²⁹

2.2.4. Challenge of non-advertising revenue sources

40. Media revenue, traditionally split between advertising and sales, has evolved into more diversified models, with income coming from a myriad of sources. In addition to advertising, reader revenue has become a significant stream for some in the mainstream media, including subscriptions, memberships, sponsored content and paywalls. Other sources include grants and donations, content licensing and syndication, branded events, affiliate marketing, merchandise sales, and educational offerings such as courses and training.
41. In South Africa, non-advertising revenue sources face several challenges, reflecting broader structural and socio-economic issues. The country consistently ranks among the most unequal countries in the world, as measured by the Gini coefficient, and is reflected in unequal access to resources, including media. As noted by the Association of Independent Publishers (AIP), most South Africans cannot afford subscription-based news models, limiting the potential for reader revenue through paywalls or memberships. While grants and donations can provide vital support, these are often insufficient or short-term in nature. Additionally, philanthropic funding is less developed, leaving public interest journalism at risk or targeted at bigger, more sustainable media houses.³⁰
42. Media outlets with a public interest mandate and which cannot charge for content or offer sponsored content, such as the public broadcaster, face significant challenges in sustaining their operations. Without subscription or paywall revenue, they rely on advertising – or grants – that are declining, leading to restrictions in their ability to invest in high-quality journalism. Similarly, hybrid subscription models are often unfeasible, as residents in poorer communities prioritise essential expenses over media subscriptions.
43. The Reuters Institute Digital News Report 2024 highlights that, across a basket of 20 wealthy countries, only 17% of the survey respondents paid for any online news, but it was surprisingly high for South Africa at 30%. The Reuters survey found that there was a general reluctance to pay for news, in part due to many free options. Amongst those not paying currently, most indicated they would not pay for news, and others only willing to pay a few dollars a month. Amongst those who pay, Reuters found that most people will only subscribe to one news source, and this results in a ‘winner takes most’ outcome, as consumers gravitate around one or two national news brands.³¹ This also plays out at a global level, with a few of the global news brands, such as the Financial Times, New York

29 NCRF public hearing

30 AIP public hearing

31 Reuters Institute Digital News Report 2024, pg22-24 and 163

Times and the Guardian, securing the bulk of international subscriptions/membership, resulting in record revenue figures.³²

44. This trend is evident in SA too, as News24/Netwerk24 is winning the subscription game with over 200,000 subscribers³³, with Arena and Daily Maverick (membership model) a distant second with under 50,000 digital subscribers/members each.³⁴ Many who do subscribe to News24 do so at heavily discounted rates, which is consistent with the findings of the Reuters Report.

45. The inability to charge also affects who has access to verified news. While free content ensures inclusivity for audiences who cannot afford subscriptions, it also creates disparities in the quality of information available. Wealthier audiences may access premium, well-resourced journalism, while those relying on free platforms might be exposed to less reliable content – especially from social media or poorly moderated spaces. This divide exacerbates the inequality in access to verified news, leaving underserved communities in news deserts – vulnerable to misinformation and unable to fully engage in informed civic participation.

2.2.5. Growing digital distribution costs

46. At the same time that revenue is shrinking due to the shift online, the news media is simultaneously facing higher digital media costs. Given the changing consumption habits, the mainstream news media is now under pressure to provide constant updates on breaking or trending stories, and live commentary of key events. The shift to social

media means that content needs to be repackaged to be suitable to the different formats, and there is greater pressure to offer video content, even for the traditional print media. As the digital platforms become important intermediaries for the news media to reach consumers, there is a need to invest more in search engine optimisation, and social media strategies to drive visibility and reach into those audiences. Whilst for the print media there are cost savings from reduced print runs, this is not the case for broadcasters, where digital costs are an addition.

47. The need to invest in digital skills and infrastructure, to build online audiences and monetise them, creates particular problems for community media, which typically lack the resources to build or hire in these skills. In fact, many community media lack a website, preferring to build their social media presence, as this is easier – given that the tools are designed for the public to post content. The digital skills and infrastructure gap has been recognised by the AIP, and it has started offering limited support to a few of its members.³⁵

48. Misinformation and disinformation pose significant challenges to public good media, undermining trust in reliable journalism and distorting public understanding of key issues. Investment in fact-checking, verification and media literacy campaigns is often borne by news media, to the benefit of those who engage without accountability. This imbalance strains already limited resources in public interest journalism, further challenging its sustainability.

32 See for instance for the Financial Times, https://pressgazette.co.uk/media_business/financial-times-revenue-profit-2023/, for the New York Times <https://www.nytimes.com/2024/11/04/business/media/new-york-times-earnings.html> and for the Guardian <https://www.niemanlab.org/2023/07/the-guardian-keeps-growing-internationally-in-both-revenue-and-journalism/>

33 <https://www.businesslive.co.za/bd/companies/telecoms-and-technology/2024-12-09-paywall-subscriber-growth-not-enough-to-save-media24s-interim-earnings/>

34 Arena RFI 1

35 AIP and Med8 public hearings. The AIP received 68 applications for the digital initiative but chose only 15 due to fund shortages.

2.3. Impact of the online shift on the media

49. The market for attention and advertising has significantly impacted the news industry, with publishers competing not only among themselves but also against external players, such as large tech platforms. The attention economy prioritises engagement, often driven by strong emotions, leading to the amplification of extreme views in order to attract audiences. At the same time, as quality journalism has become increasingly difficult to monetise, fewer resources are being invested in investigative, on-the-ground reporting.³⁶

50. The shift to digital media has presented considerable challenges for community media. While the sector is diverse and cannot be treated as a single entity, many community media outlets face similar struggles, albeit from varied perspectives. Restricted by limited digital access and skills, community media also face competition from social media platforms, where their stories may be copied and shared without proper attribution.³⁷

2.3.1. Shrinking of the news media

51. Reducing revenues has necessitated large-scale cost-cutting by the news media, focused in particular on staffing costs - as these are a fixed overhead - rather than variable cost, which adjusts to the revenue decline. Strategies to reduce staffing costs have taken many different forms, with most news media using a combination of these strategies:

51.1. First, a reduction in journalist numbers. In under six years, Arena Holdings' newsroom staff has been nearly halved, dropping from 455 in June 2017 to 260 in February 2024 across titles like

Sunday Times, Business Day, Sowetan, Daily Dispatch, The Herald, and Financial Mail. Arena was not alone, with Media24, Independent Newspapers and other media all reporting similar challenges. Even the Daily Maverick, the digital native that has grown into the print space, recently announced a 10% cost reduction, including staff retrenchments.

51.2. Second, the closure of bureaus internationally and in less populated regions domestically, by the broadcast media, particularly the public broadcaster.

51.3. Third, through increased casualisation of journalists. All news media reported an increase in the use of freelancers who are paid per article, and which then converts fixed staff costs to variable costs.³⁸

51.4. Fourth, the juniorisation of the newsroom. Senior journalists cost the news media much more than junior staff, and so where numbers are still needed to report on events, newsrooms have replaced senior staff with junior journalists - to reduce essential staff costs - with fewer senior journalists left to run the newsroom.

51.5. Fifth, spinning off specialist units as independent non-profits, which then syndicate the content to survive. This has been the case with AmaBhungane and Bhekisisa, which originated in the Mail and Guardian.³⁹

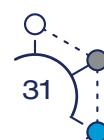
52. Reductions in staff costs negatively impact the overall quality and coverage of news

36 Daily Maverick Public Submission

37 Submission by SANEF, the Press Council, AIP, MMA, FCJ, SOS, and the GIBS Media Leadership Think Tank on the Statement of Issues of the MDPMI - 14 November 2023

38 Moneyweb public hearing. Moneyweb indicated it employed 2 full time journalists and had 19 regular freelancers.

39 SANEF public hearing



reporting. The public hearings provided significant evidence on how this has occurred.

- 52.1. Remaining staff are now expected to produce more content each, because despite shrinking newsrooms, the demands for content have increased. For instance, Arena published nearly 20,000 articles in the first two months of 2024, attracting an average of 10.2 million visitors across its news websites during the same period, despite having halved its news staff.⁴⁰ Whilst some digital tools have improved productivity, quality reporting is still labour-intensive, and ultimately the quality and depth of reporting must suffer from this trend.
- 52.2. Coverage also suffers, as there are limits to what the remaining staff can do. Newsrooms increasingly need to prioritise their reporting each day, with many stories that would previously have been reported increasingly left unreported.⁴¹ This particularly impacts coverage of smaller metros and secondary cities, where news bureaus are cut – or where travel and time costs push the stories down the list of priorities.⁴²
- 52.3. Casualisation and juniorisation erode the journalistic skills base of the industry, with many senior journalists seeking opportunities outside of the news media out of necessity. This erodes capabilities in key areas such as investigative or financial journalism, where experience is even more important. Juniors spend time

developing their trade and networks, becoming useful only with increased experience.⁴³

- 52.4. Community and regional media have been the training ground for young journalists, and their closure threatens the pipeline of on-the-job trained journalists.⁴⁴
53. For many, cost-cutting was not enough and the news organisations were forced to close their doors. This has affected regional and local community newspapers more than the national papers, and weekend editions have also suffered. Just before the public hearings, Arena announced the closure of the Herald Weekend Post and the Daily Dispatch Weekend edition.⁴⁵ In its submission, Caxton noted that producing local news requires a commercially viable business model. In areas too small to sustain such operations, local newspapers are disappearing, with potentially catastrophic consequences for consumers and democracy.⁴⁶ Others are publishing when they have advertising revenue, leading to an ad-hoc existence.⁴⁷
54. However, even the mainstream media is not immune to closures, but sometimes these take the form of closing the print editions and moving the newspaper to online only. For instance, Media24 announced the closure of its print editions of Rapport, City Press and Daily Sun – to focus on online – but it also closed Beeld and the online editions of Volksblad and Die Burger, to fold the readership into its Afrikaans online news Netwerk24.⁴⁸ As the

40 Arena public hearing

41 Media24 public hearing

42 Mail and Guardian public hearing

43 Moneyweb and Daily Maverick public hearings

44 SANEF public hearing

45 <https://www.heraldlive.co.za/news/2024-02-09-weekend-post-to-close-but-watch-out-for-the-weekender/>

46 Caxton public hearing

47 AIP public hearing

48 <https://www.businesslive.co.za/bd/companies/2024-06-18-media24-confirms-newspaper-closures-are-on-the-cards/>

mainstream media retreats to the metro areas, so community media have had to step up and play their role in the communities which they serve.⁴⁹

2.3.2. Erosion of the public good

55. As the news media represent a public good, the shrinking and closure of newsrooms across the country naturally undermines the ability of the news media to fulfil this role adequately. The result is less oversight of democratic institutions and business, and ill-informed citizens less capable of participating meaningfully in democracy, inundated with false and deliberately-shared disinformation campaigns.

56. This is especially the case in rural and disadvantaged communities, where community media struggle to survive, and which are then either left without reliable news sources - or where there are fewer resources for producing high-quality, locally relevant and public interest journalism. This reduces access to essential information for under-served communities, widening the information gap. Community media often serve as a platform for local voices and accountability. As they decline, opportunities for citizens to engage with local governance and hold power to account diminish, eroding trust in democratic institutions and public accountability. Submissions during the public hearings argued that the dysfunction at the municipal level of government is causally linked to the weakening of community media. At the same time, broader societal understanding of those communities and the issues they face is also undermined by a lack of reporting. For instance, the water crisis in

the Eastern Cape was unreported for weeks by the national media, which instead focused on the crisis in Cape Town.⁵⁰

57. The weakening of regional and community media, along with the public broadcaster, has detrimental effects on media diversity and the plurality of voices.⁵¹ Those silenced are mostly the voices from disadvantaged or fringe communities, which lack the purchasing power to support a more diverse media representing their perspectives. The trend to a 'winner takes most' outcome amongst the mainstream media similarly reduces media diversity, as it drives greater concentration in the media. As those winners rely on the paying audience and corporate donations, the dominant discourse in the media increasingly reflects the perspectives of the wealthier class and business.⁵² At the same time, the societal inequality gap then extends to news and information, as wealthier communities can access better-resourced verified news sources behind paywalls, while poorer communities rely on open platforms.

58. It is common cause that search and social media platforms are intermediaries for internet or posted content, and as such do not produce content themselves. As a result, the decline in the traditional news media will not be replaced by content from these platforms, and will therefore be a net loss to the public good.⁵³ Moreover, the press has typically played the role of providing not just what citizens want to know, but what they need to know. The shift to online consumption, where users either search for what they want to know or are given a feed based on their interests, means that citizens have less exposure to what they need to know.

49 AIP in-camera session

50 IFPIM public hearing

51 AIP public hearing

52 IFPIM public hearing

53 Google and Meta public hearings

3. Search and News Verticals

59. Search engines have become the portal to the open web, the place most consumers start when they have a query of any sort to be answered from the vast content available on the public internet, including news queries. The search engine is central to the journey

users embark upon, directing them to answers on the search page, and to affiliate or 3rd party websites. The strong intermediary position means they shape competition with news publishers for advertising value, and between news publishers.

3.1. The Search Engine Business

60. The value proposition of search engines is to assist users to navigate and retrieve information from the open Internet. Users turn to search engines with a particular query intent because they 'want to know', 'want to go', 'want to buy' or 'want to do'.⁵⁴ Search engines compete based on overall search quality, trust and reputation. Search quality includes latency, indexing (incl. breadth and speed of indexing), ranking algorithms, and the user interface.⁵⁵ Trust is built on returning accurate and authoritative information, whilst reputation reflects the brand affinity. To do this, a search engine needs to return helpful results across all types of queries.⁵⁶ The quality of search is improved through using the data and insights from user engagement across all queries, as the algorithms are broadly applicable, albeit with some differences around specific topics (or 'verticals') to improve results.

61. Search engines build an index of the Internet using web crawlers, which continuously crawl the open web to discover new websites and capture changes to websites. Once a web crawler has captured the content copies of the internet webpages, this information is indexed, by storing and organising it into large databases in accordance with the relevant formats.⁵⁷ What the index enables is for search engines to return responses quickly to user queries as they draw the information from the index - instead of the entire open web using algorithms.

62. Search engines are offered free to consumers, with the revenue model built around the sale of digital advertising, predominantly for search queries with commercial intent. Whilst a narrow set of 'want to buy' queries may drive the vast majority of revenue, the search engine is only able to secure these profitable queries because of its overall general search

54 In essence, most searches are because people are seeking knowledge and information, to go somewhere nearby, to research and purchase something or get advice on how to do something. See <https://www.thinkwithgoogle.com/marketing-strategies/app-and-mobile/win-every-micromoment-with-better-mobile-strategy/>. There are variants on this categorisation but 'know' and 'do' are constants. For example, another categorisation is split into get information (know), take an action (do) or have an experience (enjoy) [X]. SEO marketing companies often categorise as navigational (go), transactional (do) and informational (know) search queries. See <https://www.webfx.com/blog/seo/types-of-search-queries/> Navigational searches are where users are looking to find a specific website and make up c.12% of all search queries.

55 [X]

56 [X]

57 https://static.googleusercontent.com/media/www.google.com/en//support/enterprise/static/gsa/docs/admin/current/gsa_doc_set/quick_start/quick_start.pdf

value proposition, which habituates users to start their search journeys on search engines.⁵⁸ There are alternative specialist search websites for commercial verticals like shopping and travel, and so general search needs to retain users for these profitable searches through not only offering their own commercial verticals, but also relying on the brand and trust established through all other queries.⁵⁹ This is self-evident from the investments made by search engines in improvements to non-commercial search, which constitute 80% of search queries.⁶⁰ If these had no value to the search engine, then it would cease to make such investments. The benefit is that, if users start their journey on general search, they then use it to make the commercial search queries too – and there is an opportunity to direct users to their commercial verticals, rather than specialist search rivals.⁶¹

63. Whilst search engines do have an incentive to ensure people find what they are looking for, this does not always equate to an incentive to end a query with clicks to the open web. If the user can find the answer on the search results page (SERP) itself, or on a related property (e.g. Google Hotels, YouTube) then the search engine has still fulfilled its purpose

of satisfying the user query. Retaining the user on the SERP or related properties has the additional benefit of habituating the user to the search engine, enabling it to attract commercial search queries or intermediation fees (e.g. Subscribe with Google).

64. Search is dominated by Google, which has an effective monopoly position globally and in SA, where it constitutes c.95% of the search market.⁶² Google has monopolised mobile search in part through its default status on Android and iOS phones,⁶³ and in SA most citizens access the Internet through their mobile devices. Microsoft Bing is the only real alternative, with mostly a desktop rather than mobile user base, given the desktop focus of the Windows operating system. Bing’s algorithm also powers other search engines such as Yahoo and Ecosia. Bing has the potential to grow in future and become more relevant, in large part depending on the choice and success of remedial actions imposed in the US against Google (that may end its default status on iOS and Android devices).⁶⁴ Bing has been strengthened in the era of AI-powered search, given the strong relationship between Microsoft and OpenAI, the dominant provider of Generative AI Chatbots.

3.2. News on Search

65. The debate around news and search engines has been largely framed by the question of whether news brings value to search, and, if

so, what is that value? The evidence provided to the Inquiry supports the proposition that news has particular value to search engines.

58 A general search engine is “the first place that you can turn to” and “a place that you go to for the vast majority of your informational needs”. Memorandum Opinion in USA v Google LLC, Case No.20-cv-3010(APM) para 33 available at https://www.pacermonitor.com/view/VZTUTSQ/UNITED_STATES_OF_AMERICA_et_al_v_GOOGLE_LL_C__dce-20-03010__1033.0.pdf?mcid=tGE3TEOA

59 [X]

60 Memorandum Opinion in USA v Google LLC, Case No.20-cv-3010(APM) para 37-8

61 The Online Intermediation Platform Market Inquiry identified issues of self-preferencing by Google on commercial search verticals more generally. See <https://www.compcom.co.za/online-intermediation-platforms-market-inquiry/>

62 This is the case for search volumes, unique visitors and daily active users.

63 https://www.pacermonitor.com/view/VZTUTSQ/UNITED_STATES_OF_AMERICA_et_al_v_GOOGLE_LL_C__dce-20-03010__1033.0.pdf?mcid=tGE3TEOA

64 <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2024/pr24-59-Google.pdf>



Whilst there may be limited ads placed on the SERP in response to news queries relative to commercial queries,⁶⁵ news is an important use case for search that builds its overall value proposition, which enables search engines to secure commercial search queries. News is also used extensively to build personalised feeds, which do directly generate paid ads for the search engines.

3.2.1. News is an important use case

66. Microsoft submitted that it, "has, as a general matter, included a news vertical and other news-related features in its search engine because it helps attract and retain users. It is well-known that searching for news and current events is an important use case for search engines, and many users use search engines for this purpose. Indeed, almost all search engines include a news vertical of some type, as it is more or less expected by users at this point."⁶⁶ Bing's predecessor included a news vertical on its launch in 2006, and has had one ever since. A vertical describes the topic or content classification, and aside from news there are other verticals (e.g. shopping).

67. The stated preferences of users in the Inquiry focus groups and consumer survey⁶⁷ are consistent with the importance of news as a use case, along with internal research by search engines.

67.1. The Inquiry survey results indicate that 22% of respondents used search or personalised feeds as their main platform to find and view news content.⁶⁸ Many reasons were offered for accessing news through a search engine, but most prominent was that

it is easy to access and convenient (78%), they can access breaking news (49%), and they can access news stories when they have time (38%). Trust also featured prominently as an explicit reason (24%), but also through the use of search engines to confirm news stories found elsewhere (21%).⁶⁹ The issue of trust in Google and news websites comes through in the focus groups, where people said they use the search engine to validate headlines and snippets they see on social media, and to verify and do deep dives into specific stories.⁷⁰

67.2. Research by search engines is also consistent, identifying amongst the 'to know' need, both for getting updates on news and verifying information as quite specific to news and accounting for [10-15%] of respondents in a US survey.⁷¹ The top reasons could equally have elements of news importance, as they were to check a fact or learn more about a topic.

67.3. The Inquiry survey results indicate that the majority of respondents (66%) actively seek out news on the search engine once or more times per day, exceeding that of the passive consumption of news through search (53%). The focus groups brought out that access is mostly through mobile phones,⁷² and that people will consume news in the mornings, evenings and in free moments throughout the day. Online platforms were more flexible to use, as and when people have time.

65 Microsoft Bing RFI 1

66 Microsoft Bing RFI 2 Q19.1

67 Inquiry focus groups and survey available on the Inquiry website

68 Inquiry Survey Report slide 12

69 Inquiry Survey Report slide 17

70 Inquiry Focus Group Observations topic 2

71 [X]

72 This is consistent with Similarweb data where 83% of news media web traffic is on mobile phones.

68. The importance of news as a use case is reflected in the fact that the news vertical was also one of the first verticals launched by Google in 2002, aimed at providing up-to-date and breaking news for which there was a strong user need.⁷³ This suggests news content has contributed to the development of the search engines themselves. The news vertical on Google consists of a Top Stories carousel that is launched for current news-related queries, and where there are sufficient relevant, fresh and authoritative articles on current events.⁷⁴ Older stories may appear in the search results below the carousel. The carousel has thumbnails for stories which appear before the news text results, and the ability to click on 'more news' which takes the user to the news tab. The news tab sits on top of the SERP as a filter which can be selected to focus on only the news results related to the search query, or where users are taken when they click on 'more news.' The news tab appears for all search queries, reflecting its near universal relevance to most search queries.
69. Bing has a similar news vertical, consistent with its submission that this is expected by users. The Bing news carousel also focuses more on recent news articles in response to a news-related query, but would also seem to go further back in time for relevant articles if there are no relevant recent articles.⁷⁵
70. The investment in news verticals by search engines is designed to take advantage of the engagement and trust that it builds for the search engine. Consistent with this, the Inquiry survey established that the presence of news increases the usage of and builds trust in search engines.
- 70.1. The Inquiry survey found that the impact of breaking/trending news specifically resulted in users accessing their preferred platforms more regularly (47%), doing so with the intention of consuming news (37%), and staying on their preferred platform for longer (43%).⁷⁶
- 70.2. Consistent with this behaviour, 70% of those who mostly use search engines to access news stated that they would use the platforms less if news were not available (much less at 37%), or not at all (11%).⁷⁷
- 70.3. The survey found that 59% of search engine users felt credible news sources built trust in the platform, consistent with internal search engine research.⁷⁸ The presence of credible and trustworthy news on the search and feed platforms was seen as reducing the spread of misinformation, by 61% of search users.⁷⁹ News therefore supports developing one of the three pillars of search engine competition, and search would appear to have built trust based on credible news sources - as many users reported going to search to precisely check the validity of stories they had seen elsewhere, like on social media.
71. The revealed preferences of users, as opposed to the stated preferences in surveys, are particularly informative, much like search engine investments, and are reflected in the statistics around the actual news consumption on search. The share of queries that are news-related provides the most useful measure of the importance of news as a use case for search

73 <https://blog.google/products/news/building-google-news-everyone-retrospective/>

74 Google Search RF12 Tranche 1, p. 34. See also <https://www.google.com/search/howsearchworks/how-news-works/>

75 <https://www.webpronews.com/bing-launches-news-carousel-feature-for-bing-news/>

76 Inquiry survey report slides 82. These results are consistent with similar questions reported in the survey report on slides 96, namely on whether users access the platform more regularly and spend more time.

77 Inquiry survey report slide 85

78 Inquiry survey report slide 97

79 Inquiry survey report slide 106

by users, more so than share of impressions. This is because users start a search session with the intent to have a query answered, and search engines aim to satisfy that need. The multitude of impressions surfaced are all aimed at responding to that single query, and the volume of impressions and how they are counted may be sensitive to the type of query.

- 71.1. Search engines have stated that it is difficult to determine what is a news-related query, given that news is difficult to define precisely. However, a non-controversial starting point is the number of times the Top Stories or News carousel is surfaced in response to a query, because in these instances it is the search engine itself which has determined that the query is news-related.
- 71.2. In SA, the Top Stories Carousel is surfaced for [5-10%] of all Google search queries,⁸⁰ whereas the News Carousel is surfaced for [10-15%] of all Bing search queries.⁸¹ In both cases, the news-related share of queries is higher for search on mobile devices, relative to desktop. For Google this under-represents the actual share of news-related queries, because the Top Stories carousel is only surfaced

for current news stories and not older ones. The Bing News carousel may provide a more representative share, as it can surface older news articles in response to what it determines is a news query. Using Similarweb data, the percentage of overall outgoing search traffic to news media websites from 'google.com' and 'google.co.za' was 12.2%⁸² over the 6-month period May to October 2024,⁸³ with 16.6% for mobile search and 6.2% for desktop search.⁸⁴ While this observation reflects traffic flows, it is also reflective of news query shares on the SERP, considering the congruence of CTRs between news publisher results and general results on Search.⁸⁵ This midpoint value is consistent with various data points observed by the Inquiry,⁸⁶ and is consistent with the Bing share of news queries.

- 71.3. A more expansive view of the importance of news would be to consider the share of queries where there is at least one news impression surfaced in response on the SERP, and hence where news is considered by the search engine to have contributed to answering the user query. For Google, it is estimated that [20-30%] of queries

80 Google Search RFI 3 Q4.1 and Annexure Q4

81 Microsoft Bing RFI 3 Annexure V

82 Own calculations based on average monthly traffic to news publishers using Similarweb's "news and media" web category. Here organic search accounts for 43.62% of traffic to news media websites, which collectively had 172m monthly visits, and Google accounts for an estimate 95% of organic search. Therefore outgoing traffic to news media websites = 43.62% (organic search) x 172.8m (monthly visits) x 95% (Google's share of organic search) = 71.6m. This is divided by total incoming monthly visits to 'google.com' and 'google.co.za' (collectively 585.2m in traffic) over the same period. Therefore, news media's outgoing traffic of Google Search's total incoming traffic = 71.6m/585.2m = 12.2% over the period.

83 The assumption here is that each unit of incoming traffic to 'google.com' and 'google.co.za' corresponds to a user query, and therefore this query results in referral or "outgoing" traffic to a news media website. Therefore, 12.2% of queries on Google Search result in traffic going to news websites when considering Similarweb data.

84 People mostly access news on their mobile phones and mobile's prevalence for news is proportionately higher than other types of search queries. For example, on google.com, 64.5% of traffic was on mobile (35.5% on desktop) but within the "news and media" web category mobile traffic via organic search accounted for 83% of news media traffic (desktop accounted for 17%). Based on observations using Similarweb.

85 CTRs were [3-4%] for both the 32k list provided by Google and the Inquiry's own curated list of news publishers within this list on average. Backlinko (2023) notes that the average CTR for overall search is 3% per organic result. See: Dean (2023). We analysed 4 million Google Search Results: Here's What We Learned About Organic Click Through Rate. Backlinko. Available: <https://backlinko.com/google-ctr-stats> (accessed 28 August 2024).

86 Another data point and observation is the value attributable to Google's AdTech revenues from news media ad inventory which also falls within the [10-15%] range, more specifically [3-4%]. The Inquiry was able to backward-engineer the value that news media attains from Google referrals, to estimate news publishers' representation of Google's AdTech revenues.

included at least one news impression, whereas no estimate is available for Bing.⁸⁷

72. Search engines argue that news is simply one of a range of content for which it needs to provide accurate information in response to a query, and is not different or special relative to other content categories. The evidence suggests otherwise. However, what also makes news different is that it too is advertising-funded like the search engine itself, bringing it into competition for advertising. News also has public good properties, and implicates numerous constitutional rights. This is in contrast to other content providers that monetise leads through commercial sales (e.g. books, travel, clothing), or have different funding models (e.g. journal subscriptions or government funding). As news builds trust for search engines, they indirectly benefit from the institutions that provide regulatory oversight of the news quality and standards, namely the Press Council and BCCSA.

3.2.2. News is used to build personalised feeds

73. A feature that has emerged across search engines is the integration of a personalised feed on the search page when the app is opened. On Google this is called Discover, and on Bing it is effectively the MS Start feed that is presented to the user. The personalised feed is a form of 'queryless search' to allow the user to discover content that matches their interests.⁸⁸ In essence, the personalised feed is a play by the search engines to get a larger slice of the attention economy - by developing a 'social media style' feed and enabling passive scrolling of results, and is built on the existing indexed open web content and user data held by search engines. The user data from their recent search activity,

user data from interactions with other non-search properties, and stated preferences by users determines the user interests. Content related to those interests is then sourced from the web index to populate the feed, for Google, whereas MS Start will contract with specific news sites to show their content within an MSN environment. As with social media, the revenue model is to place ads within the feed. MS Start will share revenue from ads where an article is surfaced in MSN, but not ads within the feed.

74. Google Discover has got traction in the SA market, given it has the advantage of being a default app on Android phones, and for most phones it is surfaced when the user swipes right on their home screen. Discover has millions of daily active users (DAU) who access it multiple times a day.⁸⁹ Ads currently appear every 6 impressions, and monetisation is gradually building but is currently well below that of search.⁹⁰ MS Start is built into the Windows Desktop - where most of the usage arises - given the smaller Bing presence on mobile. As a result, it has less than 100,000 DAUs.

75. News, and other content from news organisations, is a significant contributor to the content and success of the personalised feeds. News is important in the attention and engagement economy because it has the following properties: it is current, frequent, timely, and relevant. It is also a universal interest across all consumers, and therefore is the foundation for most users.

75.1. In the attention and engagement economy, the objective is to make a personalised feeds part of a person's usage routine. Personalisation of content is one critical success factor.

87 Google Search RFI 1, Annex 3.1

88 [REDACTED]

89 Google Discover RFI 3. Discover had [REDACTED] DAU in May 2024

90 Google Discover RFI 3 and RFI 4. Revenue is c.[REDACTED] p.a.

Search engine research shows news content is another factor, as it drives frequency and delivers on quality content. User-behaviour research shows that phones are prominent for accessing news, as they are always with the person.⁹¹ Typically, people will check the news multiple times a day, checking the phone when they are on a break or taking short informational breaks between tasks.⁹² This is frequently to get updates on news items as [10-15%] of queries are repeat, where [20-30%] of these are to get updates.⁹³ The presence of reputable news organisations contributes to the perception of content quality, and builds trust.⁹⁴

75.2. The Inquiry survey results are consistent with the research done by search engines. The top reasons for those accessing news online the most through personalised feeds include both the ease of access and convenience (72%), and that it recommends news relevant to their interests (56%). Other prominent reasons include accessing breaking news (53%), and accessing when they have time (31%). The majority of users of personalised feeds access the feed one or more times per day, both actively seeking news (59%), and passively consuming it (60%).

75.3. The Inquiry survey found that the impact of breaking/trending news specifically resulted in users accessing the personalised feed more regularly (52%). They do so with the intention

of consuming news (53%), and stay on their preferred platform for longer (40%).⁹⁵ Consistent with this behaviour, 84% of those that mostly access personalised feeds for news stated that they would use the feed less if news were not available (much less at 44%), or not at all (10%).⁹⁶ As with search engines, 60% of personalised feed users also felt the presence of credible news built trust in the feed, and 80% felt that having credible and trustworthy news on the feed reduced the spread of false and inaccurate information.⁹⁷

75.4. The importance of news and other quality lifestyle content from news organisations, in creating habituation into people's routines, is reflected in the content shown on personalised feeds. An analysis by the Inquiry of the top 1000 domains that appear in Google Discover (accounting for [70-80%] of total impressions) shows that media companies make up [80-90%] of the top 50 domains, and content from news media organisations constitutes [50-60%] of total impressions.⁹⁸ YouTube itself constitutes the top domain, with [10-15%] of Discover impressions, and the SA broadcasters SABC, eNCA and Newzroom Africa made up [5-10%] of those impressions. This estimate is consistent with the Hamilton (2023) study.⁹⁹

75.5. Google's own estimate, based on the 32,000 domains (32k domains) it broadly associates with news but

91 [X]. Inquiry Focus Group Observations, theme 2.

92 [X]. Inquiry Focus Group Observations, theme 2.

93 [X]

94 [X]

95 Inquiry survey report slides 83. These results are consistent with similar questions reported in the survey report on slide 100, namely on whether users access the platform more regularly and spend more time.

96 Inquiry survey report slide 85

97 Inquiry survey report slides 101 and 106

98 [X]

99 Hamilton (2023). Search Engine Journal. 2023. How To Succeed In Google Discover. Available online: <https://www.searchenginejournal.com/google-discover/361142/> [accessed 1 October 2024].

considers 'over-inclusive,' is that [40-50%] of content comes from those 32k domains.¹⁰⁰

- 75.6. Google's high level content tags for Discover content indicate that hard news, local news and entertainment news collectively accounted for [20-30%] of content in mid-2023, reducing to [10-15%] in 2024, or [15-20%] if categorised content only is considered.¹⁰¹ This suggests news was more important in getting early traction with the Discover feed, given that interest in news is near universal across users, but its role may reduce over time as the feed becomes more personalised - to incorporate the other narrower interests of users. However, what this measure fails to account for is the full range of quality content provided by the news media, which extends far beyond hard news to include sports, entertainment and lifestyle. This broader set of content features strongly in the feed, and is part of the overall package of content produced by media organisations to support its overall mandate around news. This is why the domain-level measures above are more accurate in reflecting the contribution of the news media industry, rather than narrowly-defined news.
- 75.7. MS Start began as a news service before being transitioned to a personalised feed, but it remains heavily weighted to news content.

3.2.3. Users engage the news on the SERP or Feed

76. A concern expressed by news publishers is that their content is being consumed on the search platform without resulting in referral traffic, resulting in benefit to the search engine and not the content creator. This debate often centred around the role of snippets in potentially satisfying the user's need for news information, and resulting in no click to the news website and no revenue earned. Google has stated that the snippet improves click-through-rates (CTRs), relative to no snippet. News media also plays an important role in grabbing the attention of users, in the form of smartphone notifications, where SA news publishers drive [20-30%] of all notification clicks onto the Search platform, accounting for millions of clicks monthly, with CTRs for SA news publishers being roughly double the average notification CTR.¹⁰²
77. The Inquiry Survey has sought to shed some light on the issue of snippets and consumer behaviour. The results suggest that both news publishers and Google are correct.
- 77.1. The survey found that users more frequently scrolled through and read the headlines and snippets on search engines and feed, more occasionally reading only the headlines, or not even fully doing so.¹⁰³ This indicates that people frequently consume the snippet information on search and feeds.
- 77.2. In terms of click behaviour, the survey found that users more frequently clicked on a news article after having read the headline and snippet, and more

100 [X].

101 [X]. Categorised content excludes content tagged as 'Unknown.'

102 Own calculations based on data submitted in Google RFI4 response, Annex A.

103 Inquiry Survey Report slide 28. The result was fairly consistent for search across other strata such as age, location and language. For personalised feeds it was more mixed.

occasionally having read the headline only.¹⁰⁴ It would seem the reason for this was that the headline and snippet were seen as useful to help determine whether to read the full article (66% search engine and 65% feeds), or spark their interest to read it (43% search and 59% feeds).¹⁰⁵ Evidence from countries where snippets were removed from news impressions indicates a drop in traffic to news sites.¹⁰⁶

77.3. These survey results indicate that people do consume news on search, through reading the snippets and not clicking through. The top reason for not clicking through on a news story was that the headline and snippet provided enough information (53% of respondents for search and 50% for personalised feeds).¹⁰⁷ Aside from getting enough information from the snippet, another prominent reason for not clicking through was that users did not have time to read the full article (23% for search and 36% for feeds). The substitution of reading snippets instead of the full story is reflected in the number of respondents citing that headlines and snippets are a convenient (38% search, 47% feeds) or time-efficient (34% search, 33% feeds) way to view news, or to avoid paying for news (19% search, 23% feeds). Of course, for many it was also that the story did not interest them (50% for search and 64% for feeds).

78. These results are consistent with behaviour on news media apps,¹⁰⁸ and the manner in which people read print newspapers. The difference is that the news media would earn add revenue from the app feed or newspaper, which is not the case when that consumption takes place on search or personalised feeds.

79. These results are also consistent with the growing share of 'zero-clicks' on Google search, and the declining share of clicks to the open web as opposed to Google's own properties. Analysts have identified that Google is increasingly becoming a 'walled garden' - insofar as its strategies promote users either finding what they need on the SERP itself (c.37% of queries), resulting in no clicks to the open web, or clicking through to one of Google's other properties such as YouTube, Maps, Images, News or other (c.24-28% of clicks, or 10-12% of total queries, as only c.41% of queries result in a click).¹⁰⁹ c.22% of search queries result in another search query. The implication is that only c.36-7% of search queries result in a click to the open web, and almost half now end on Google search or another Google property.

80. The 36% proportion represents a 33% decline in the share of organic clicks to the open web, from 54% of search queries in 2016.¹¹⁰ Put differently, organic clicks would be 50% higher if the search environment of 2016 had remained in place. The Inquiry estimates that organic clicks would be c.79% higher if this trend is projected back to the peak of digital revenue for the news media, in 2011. If every query that did not result in a query refinement

104 Inquiry Survey Report slide 38.

105 Inquiry Survey Report slide 64/65

106 Google SOI and RFI 3 Annex 29.1 and 29.2. The range varies from [5-10%] for Czech Republic to [20-30%] for Austria. However, it is not clear whether this was in part a result of a drop in news queries.

107 Inquiry Survey Report slide 49

108 Media24 public hearing.

109 The range is based on the difference between US and EU search outcomes. <https://sparktoro.com/blog/2024-zero-click-search-study-for-every-1000-us-google-searches-only-374-clicks-go-to-the-open-web-in-the-eu-its-360/>

110 <https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/>

resulted in a click, then the number of click referrals would be 117% higher than the current number.¹¹¹

81. Google provided data on the number of queries that surfaced Top Stories, the 32k sites and the SA news media (separately) that resulted in no clicks, search refinement, clicks to Google properties, and clicks to 3rd party websites.¹¹² The data is relatively consistent with the 36% figure, based on studies above, with only [30-40%] of Top Stories queries resulting in a click to 3rd party websites and [40-50%] for SA news media.¹¹³ The same exercise of determining the likely increase in referrals to 3rd party websites were the number of zero clicks and referrals to Google products diverted to 3rd parties, resulting in an estimated increase of [130-140%] for SA news media, and [190-200%] for Top Stories. This is a result of Google strategies to keep traffic, with news video content largely going to YouTube rather than news websites and snippets/verticals, resulting in consumption on the SERP for many queries.
82. The proportion of clicks to the open web is consistent with actual click behaviour on the SERP for news-related queries, based on the average CTR for the Top Stories carousel of [5-10%], and for news impressions more generally of [0-5%] where 10 impressions follow the carousel.¹¹⁴ Moreover, the stagnation of organic clicks to the news media overall in the past 3 years (based on Similarweb data) despite growth in search query volumes in SA is consistent with this trend of a declining proportion of clicks to the open web, and more consumption of query results on Google search or its properties.

83. For Google Discover, it is more complicated as not every session may result in a news impression, and the user may not have a strong interest in the news impression that is shown. However, news impressions do make up a sizeable share of the Discover feed, and Discover is meant to present content based on the revealed and stated preferences of the user. For Google Discover, only [50-60%] of sessions result in a click to a 3rd party website.¹¹⁵ For Google News, as with Discover, it is more complicated to assess, given that users will scroll through a list compiled by Google where there are top stories but also personalisation options. Google News DAU click on [0-5] articles per day. Where users enable notifications, these represent another prompt for users to potentially click through to the story. Notifications on Google News and Search realise CTRs of [0-5%], but this is higher for SA news organisations at [5-10%].¹¹⁶
84. The Inquiry also notes that the view held by some in the media that a c.5% CTR for their impressions means 95% of the value is held by the search engine, is also not correct. This is because in response to a user query the SERP provides alternative sources to answer that query, and the user may select to click on one amongst those. The problem identified above is that the user often clicks on none of them, as their query is answered by the snippet or by another Google property (e.g. YouTube).

3.2.4. Content engagement provides data

85. Search engines build user profiles based on their search history and content engagement, including search and engagement with news media content. One use for that

111 This is calculated as 78%/36%, where 78% is the share of queries that do not result in a query refinement and 36% is the share of queries resulting in a click to a 3rd party website.

112 Google RFI 4 Annex A

113 This is based on a list of 439 news media and broadcasters

114 Google RFI 3 Annex 5 and 6

115 Google RFI 4 Annex A

116 Google RFI 4 Annex A

data is to design and improve their products and services, including increased personalisation.¹¹⁷ Product and service improvements benefit consumers but also benefit the search engines, as they create greater levels of engagement with search, building its role in the usage routine of users. The other use for the data is to sell advertising. Whilst search ads are driven predominantly by the query itself, with little personal information aside from location, this is not the case for personalised feed ads and display ads sold by Google on its other properties (YouTube), and on 3rd party sites. It is the greater ability to target advertising through the rich data sources that provides search

(and personalised feeds), which provides an edge over 3rd party web publishers.

86. Data gathered on the consumer engagement with news media content, both hard news but also the wider variety of sports, entertainment and lifestyle content, is likely to provide some benefit to search engines. From a product improvement perspective, this includes the news vertical and personalised feeds. Whilst it is likely correct that news interests may have a limited role in ad sales, the wider variety of quality content, including lifestyle, financial advice and entertainment content, is likely to find more application in interests driving ad sales.

3.3. Imbalance in bargaining power

87. The expert economic paper prepared at the request of Google argues that the current arrangements, whereby search engines and news publishers have not charged each other for value created, *"is consistent with well-functioning markets and fairness."*¹¹⁸ Aside from the issue that the authors take a very narrow conception of value for the search engines, namely ads on SERPs with news results, a fundamental problem with this approach, as highlighted in the panel engagement with the expert, is that it ignores the fact that Google is a monopolist.¹¹⁹ A monopoly market structure on one side of the negotiating table does impact on the fairness of the exchange of value in the outcome. Hence the findings of competition regulators such as the ACCC that there is a market distortion requiring correction.¹²⁰ This is also evident from the difference in

outcomes, where Google is forced through regulation to negotiate with news publishers (as a collective, with the threat of arbitration), resulting in payments to news publishers and not the current market outcome. Of course, that has still occurred under information asymmetry, another factor known to impact bargaining outcomes.

3.3.1. Hobson's choice

88. Google states that the news media have a choice as to whether they want their content to be indexed by the GoogleBot webcrawler and, if so, whether to permit a snippet or not, and the snippet length. Google then proceeds to argue that because the news media have a choice, they must be getting sufficient value from the relationship, given that they choose to be indexed and to provide a snippet.

117 <https://policies.google.com/privacy?hl=en-US#infocollect>

118 Nilausen and Padilla (2024). *The Value Exchange Between Search Engines And News Publishers*. Pg 4 Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4833985#:~:text=Any%20assessment%20of%20fairness%20must,they%20help%20them%20for%20free.

119 Jorge Padilla in-camera discussion

120 <https://www.accc.gov.au/about-us/publications/digital-platforms-inquiry-final-report>

89. However, as the media voiced in the public hearings, this is really no choice at all – given the position of Google in search, and the use of search by consumers for news that has been habituated over time. For any single news organisation, were it to elect not to appear in Google Search index, then it can only lose traffic it currently gets – as consumers will continue to query news on Google and other news organisations will appear in the results and secure the traffic – as news organisations do report on similar matters. Google’s bargaining position is strengthened not only by its market position, but also by competition amongst news organisations to secure the traffic that comes from Google.

90. The same logic applies to snippets. Even though snippets result in many users reading the snippet only and not clicking through, if the subset of users that do click through are more likely to click on impressions with snippets, then withholding a snippet simply results in that traffic moving to a competitor that provides a snippet. Again, there is only a downside for news organisations.

91. Their weak bargaining position is exacerbated by another feature of the news media: the media is predominantly advertising-funded in large part out of an obligation to keep news accessible to all, given its critical role in keeping people informed and able to exercise their democratic rights. This is particularly the case with community media and the public broadcaster, where charging for access is simply not an option given that much of their audience is incapable of paying. The public broadcaster goes further by stating that it has an obligation to make its news available to the citizens through whatever distribution channel they are consuming news.¹²¹ The

dependency on traffic to fund their operations means that the news media simply cannot afford to lose whatever traffic they currently get from search, even if they are not getting the full value for their content. The bargaining position for news media is weak because there is no credible threat of severing access, enabling a ‘take it or leave it’ approach by Google.

3.3.2. Imbalance in value

92. Google and their expert paper start from the premise that the allocation of value is fair under the status quo, where neither party pays each other – because the value accruing to Google is limited to the ad sales on SERPs with news content, which Google estimates at less than R35m in revenue for Google in 2022 – and publishers benefit from referral traffic, estimated by Google as R370m, based on an estimated 600m referral clicks in 2022 in SA.¹²²

93. However, if the value to Google is much greater than this, as set out above, then the only logical conclusion is that the ‘no charge’ outcome cannot be fair. This conclusion is also more consistent with the market dynamics, whereby Google has a search monopoly and news publishers have no choice but to be indexed by Google, given consumer search behaviour on news, and the ecosystem of news verticals that Google has built. The conclusion that the value exceeds ad revenues on news queries is also consistent with outcomes where Google has been forced to bargain with the news media, with negotiated amounts well above the revenue from ads served on news queries only. Indeed, the agreement with the AIP, for R114m over a 3-year period,¹²³ exceeds the R35m per annum estimate of ad revenue.¹²⁴

121 SABC public hearings

122 Google. Public Hearings presentation slides, 12 March 2024, slide. 61.

123 <https://aip.org.za/2024/11/25/aip-google-launch-major-local-news-support-fund/>

124 [3<]

94. Many parties in the public hearings have referred to the FehrAdvice Switzerland behavioural study as a model for determining the value share, which estimated a 35% share of search revenue where, *'the media content makes a value contribution'*.¹²⁵ The FehrAdvice report used a particular methodology to arrive at its estimate, using the proportion of informational search queries (estimated at 50% of queries) and the proportion of people that stated they preferred search with news content, based on being asked to search for up-to-date information in three thematic areas (politics, society and the economy).¹²⁶ The PSS has also made submissions on the specific value accruing to SA news publishers, based on this study.¹²⁷ Google and its expert have made submissions on the FehrAdvice paper, stating it is not a reliable method to determine the value of news to Google,¹²⁸ and accordingly not a methodology usable for SA.¹²⁹
95. The Inquiry agrees with the FehrAdvice report that the value of news is what news contributes to the overall search engine business. However, the share of news-related search queries as set out in the previous subsection is a more accurate measure of where media content makes a value contribution to the search engine, because it reflects where media content is actively fetched to answer the user query, rather than a selection of user queries. However, the Inquiry notes that an overlooked aspect of the FehrAdvice report is the estimation of an 11.6% greater 'willingness to pay' for search engines with news, which provides a different measure of the value of news that can be useful.¹³⁰ This broadly aligns with the share of news queries on search, and is certainly closer than the 35% used elsewhere by the study.
96. The PSS has made other submissions on the value accruing to SA news publishers from Google, based on a 15% profit share of advertising revenue lost since the peak year for ad revenue for each publication.¹³¹ The Inquiry has identified numerous issues with this approach, most prominent amongst them that it is not only Google to whom they have lost revenue, and the total loss of revenue itself cannot be used to conclude on the effect of any conduct.¹³² The zero-click outcomes on Google discussed above seems to be a more accurate measure of the loss of traffic stemming from the intermediation of Google, given that users have gone to Google with a news-related search query and been kept on Google, or directed to its own properties rather than to a news website.
97. The PSS has also estimated a potential value for SA news publishers from Google based on various proportions of total publishing costs, or total payrolls costs. This is apparently based on estimates that the deal in Australia equated to roughly 30% of total publishing costs.¹³³ Google disputes these calculations too.¹³⁴ Whilst bargaining outcomes might be informative of relative value that Google wishes to retain from news, hence being

125 FehrAdvice (March 2023) *"The value of journalistic content for the Google search engine in Switzerland"*, pg 38. Available: https://fehradvice.com/wp-content/uploads/2023/04/2023_04_21_study_journalistic_value_google_en.pdf

126 Ibid pg. 16

127 PSS in-camera presentation slide 9.

128 Padilla and Nilausen (2024). *The Value Exchange Between Search Engines and News Publishers*. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4833985#:~:text=Any%20assessment%20of%20fairness%20must,they%20help%20them%20for%20free. [Accessed 16 August 2024].

129 Google Search submission 17 January 2025

130 This is based on the Inquiry's estimate when adjusting for those users who wish to have news on Search.

131 PSS in-camera presentation. More specifically, the PSS take the advertising revenue in a previous peak year (2011-2014), inflate that revenue to 2022 Rands using the annual CPI, subtract the actual advertising revenue in 2022 to determine lost revenue, and then apply a 15% profit margin against lost revenue to calculate value lost to Google.

132 These are similarly identified by Google. Google Search submission 17 January 2025

133 PSS in-camera presentation slides 5-8. No basis has been provided for this estimate.

134 Google Search submission 17 January 2025

willing to make an offer when forced to negotiate, the specific exercise has issues. In Australia, both Google and Meta contributed, which means the amount cannot be ascribed to Google alone.¹³⁵ In addition, if the issue is how much value in terms of ad revenue has been transferred, then looking at the share of ad revenue would seem more logical than share of publisher cost. This has been estimated to be around 4% of Google local search revenue for Australia and the UK, 1.7% for Canada, and 4.1% of France's total Google revenues.¹³⁶ However, this also depends on the value that the media brings to Google in each country, and these deals have occurred under information asymmetry, so the Inquiry is unable to determine what that is relative to SA.

98. The Inquiry is not persuaded by the estimates of either Google, which concludes the current outcome is fair but has made offers in the millions to some in the industry, or the PSS (representing some large news publishers), which estimates annual payments due to the news media of R1.3bn. It is maybe unsurprising that, in the context of a negotiation, the two parties have started with vastly polar positions. In contrast, Google and the AIP have concluded an agreement for a Digital News Transformation Fund of R114m over three years.
99. The print news media that were part of the PSS have proposed the ACCC bargaining model, with greater information transparency and an arbiter where no settlement is agreed. Whilst allowing for collective bargaining by the media can be seen as a potential solution

to an inequitable bargaining problem, certain problems with this model have become evident, illustrated in part by the PSS's own failure to reach a negotiated outcome with Google.

- 99.1. First, information asymmetry plagues any negotiations, and this is self-evident in the PSS engagements with Google. The PSS has sought information from Google through PAIA requests, but these have been denied. The information asymmetry has seen the PSS forming high estimates whilst enabling Google to make low-ball offers,¹³⁷ resulting in too much distance between the parties to find agreement. Under the proposed bargaining model, this would then require an arbiter, which might as well be the Inquiry, given its ability to get information from all parties and so overcome the information asymmetry problem. Whilst the AIP did conclude an agreement with Google, this too was done under information asymmetry, and so it is probable that it is tilted in favour of Google. This type of solution has been proposed in legislative processes with no information-gathering powers and therefore no ability to estimate shared value based on evidence, whereas an Inquiry has such powers.
- 99.2. Second, one of the critiques of the ACCC's News Media Bargaining Code is that bargaining disproportionately favours larger media houses, relative to smaller news publishers such as

135 Google Search submission 17 January 2025

136 <https://www.poynter.org/business-work/2024/why-google-and-meta-owe-news-publishers/> and <https://www.adnews.com.au/news/exclusive-how-much-are-google-and-facebook-paying-for-news-in-australia>. Government of Canada (2023). Canada Gazette, Part I, Volume 157, Number 35: Regulations Respecting the Application of the Online News Act, the Duty to Notify and the Request for Exemptions. Available: <https://www.gazette.gc.ca/rp-pr/p1/2023/2023-09-02/html/reg1-eng.html>

137 Google offers exceeded their own estimate of R35m which indicates an implicit acceptance that the value to Google exceeds the value of ads served against news queries only.

community news.¹³⁸ Rasmus Nielsen of the Reuters Institute for the Study of Journalism noted during the Public Hearings that, “some of the most sort of talked-about recent policy initiatives around the world are essentially using collectively binding decisions to double down on the winner-takes-most dynamic by using the power of public policy to further reward the few winners in the news publishing space, while doing very little for other actors, especially new entrants.”¹³⁹ The PSS comprises the largest print media, and they estimate they constitute 80% of the media revenues, and therefore 80% of the value to be transferred. The negotiations have excluded all broadcasters, including the public broadcaster, which service the majority of the country with news in their home languages. Given the disparate interests across the media, it is unlikely that an agreed approach that promotes media competition alongside diversity and plurality of voices will emerge independently.

99.3. Third, the bargaining approach has only yielded negotiations on sharing of value, but has done nothing to address the underlying causes of that imbalance in value, that may in fact offer an alternative solution to annual transfers and make them redundant – if this brings the value exchange into balance. These causes include the rise of zero-clicks and the impact on referral traffic for the media, the traffic loss from core algorithm updates, and certain

algorithmic biases that penalise SA media, or segments of SA media. This is where a competition authority can look to address the underlying structural causes of the imbalance.

100. Moreover, as there have already been attempts at negotiation between the parties, without a positive outcome or the inclusion of the public broadcaster, it seems necessary for the Inquiry to undertake the estimation process, to either impose a remedial outcome or guide any further negotiations.¹⁴⁰

101. Estimating value to both sides is a difficult but necessary exercise. The Inquiry has produced estimates based on a few different methodologies, which help get a better sense of the orders of magnitude of the value accruing to both Google and the news media.

102. Google argues that the value accruing to the news media from referrals from search should be recognised. The estimates for these are as follows:

102.1. Google states that it sent c.600m referrals to the SA news media in 2022, with an estimated value of R370m in ad revenue (based on the estimates of a Deloitte study in 2019).¹⁴¹ It is evident that this is an over-estimate of value, as it implies a CPM for digital advertising of R617, which is far in excess of what the news media achieves of [R100-R150] even for direct sales. The origin of the over-estimate is that the Deloitte study was of European news media, which most

138 Media Reform Council (2023). Making Big Tech pay for news: the Australian media bargaining code will not solve the crisis in journalism. The paper states that “the most dominant Australian media companies have secured profitable deals with Facebook and Google, with Rupert Murdoch’s media empire having benefitted the most, after having intensely campaigned for the Code on the pages of their papers”. Available: <https://www.mediareform.org.uk/blog/making-big-tech-pay-for-news-the-australian-media-bargaining-code-will-not-solve-the-crisis-in-journalism> (accessed 10 December 2024).

139 Nielsen Rasmus at Reuters Institute for the Study of Journalism during the Public Hearings, dated 13 March 2024, page 95 – 96.

140 [X].

141 Google presentation at the public hearings

likely achieve higher CPMs relative to SA, and it was from 6-7 years ago, with CPMs declining substantially over time, and the Rand depreciating for any exchange rate conversion.¹⁴²

102.2. The Inquiry has undertaken an estimation based on the actual digital advertising revenue received, and the share of 3rd party referral traffic originating from Google (i.e. the value that news media derives from referral traffic). This has been challenging, given the inconsistency in reporting by the media. The Inquiry has therefore done the following estimation:

102.2.1. The Inquiry used financial information from the media that made submissions on their digital advertising revenue,¹⁴³

102.2.2. These revenues were then adjusted for the share of their individual website traffic that comes from Google referrals,

102.2.3. This total was then extrapolated to the revenue of the top 70 SA news sites on Google, based on clicks using the 62% collective share of clicks of the media we have digital advertising revenues for,¹⁴⁴ and

102.2.4. Extrapolating from the top 70 SA news sites to include the long tail of smaller media, using the fact that the top 1000 news sites on Google account for [90-100%] of the clicks from the top 32k news sites.

102.2.5. Adjusting the referral traffic to eliminate the share of navigational queries, where the user has intent to go to the news site but uses search to quickly get the URL. This is estimated at [10 - 15%] by Google.¹⁴⁵

102.2.6. This exercise results in an estimate of c.R200m in 2023.¹⁴⁶

103. The Inquiry has also estimated the value of lost referral traffic to the news media, based on queries that result in zero-clicks and referrals to Google Properties. This is in essence the potential value to the media destroyed by Google through its conduct, which includes referring traffic to its own properties such as YouTube, and providing more information on the SERP (snippets and verticals) to reduce the need for users to click through to 3rd party websites. This is informed by the estimated loss of organic traffic from 2011, and the loss of all queries resulting in a zero-click or referral to Google properties, as set out in the previous subsection.

103.1. If news media has suffered the same decline in organic clicks as extrapolated from 2011, then absent the Google strategy to keep traffic on Google or its properties, the news media would have an additional 79% of referral traffic (or R158m in referral revenues) based on the Inquiry estimate of 2023 referral revenues of c.R200m.

103.2. Alternatively, if each news-related query resulted in a click to a news site, excluding query refinements, then the news media would have

142 Google state that the referral traffic is likely an underestimate (Google Search RFI 4), which may be the case, but the problem lies in the value ascribed to the referral traffic, which is a gross over-estimate.

143 The includes Media24, Arena, SABC, Caxton, Daily Maverick, Mail and Guardian, Moneyweb and Maroela Media.

144 Google Search RFI 3 Annex Q5

145 Google Search RFI 2, Tranche 2, p.32.

146 The Inquiry notes that some clicks are sent to paywalls which may have the potential to reduce digital ad revenue. However, in such instances the news publisher can still surface a display ad whilst blocking the content, and Google deliberately does not factor in paywalls in its algorithm, and hence is a product of Google's conduct.

an additional [130-140%] in referral traffic, or [R260-R280m] in referral revenues.

103.3. This exercise does not include Discover or Google News, and is therefore an underestimate. The exercise of determining the value lost from users reading the snippet on search or feeds, instead of the full article, is far more complex for a personalised feed such as Discover, MS Start or Google News. This is because the story may not be of interest to the user, and hence they would not click through regardless. However, for Discover and MS Start there is also revenue earned from a user's browsing of the feed, and this may be lost from user's otherwise browsing the news website or app.

103.4. The estimate does not include the traffic lost to foreign news media, due to their over-representation in Google search, as discussed in the next sub-section.

104. For Google search, the value of news is set out in the previous section, and can be estimated using the share of news-related search queries to annual revenues.

104.1. The share of news queries on Google Search, at 12.5%, the mid-point of the [10-15%] share, which is informed by:

104.1.1. the [10-15%] share of Bing queries, where the News Carousel was surfaced, a more accurate estimate relative to the Google Top Stories share of [5-10%], as the Bing share applies to all news and not just trending current news;

104.1.2. the 12.2% news media outgoing traffic as a share of Google incoming queries traffic, as a proxy for news share of queries on Google itself, which is consistent with the Bing share;

104.1.3. While not specifically the share of news on Search, when applying the Fehr paper, the net willingness-to-pay for Search with news content with news, the Inquiry estimated this to be 11.6% for Switzerland. This value is likely higher when adjusting for South Africa.¹⁴⁷

104.2. For Google Discover, a c.50% share of feed impressions, informed by the [50-60%] share of news domains in the Discover stream as estimated by the Inquiry, along with the Hamilton study.

104.3. Applying these methodologies to Google Search and Discover revenues for 2023, the Inquiry reaches an estimate of the news value to Google search¹⁴⁸ and Discover of [R800m-R900m] in 2023.

104.4. These estimates do not include the estimated [R100-200m] of additional value that Google derives from YouTube revenue share for news video referrals (from the SERP and Discover feed), as well as the AdTech fees applied to all ads surfaced on news websites from the search referral traffic. This value increases to [R200-300m] when one accounts for AdTech revenues earned by Google for all traffic to news publishers.¹⁴⁹ These are dealt with by the Inquiry separately, and subject to their own remedies.

147 30% of South Africans in the Reuters Institute survey indicated that they pay for online news as opposed to their Swiss counterparts at 17%. Reuters Institute (2024). Digital News Report 2024. p. 109 & 163.

148 This value was [R<] in 2023. [R<] (Google RFI4, tranche 1).

149 Again, when one reverse engineers the estimate of AdTech revenues earned by Google from news publisher inventory, it falls within the range of [10-15]% of Google's total AdTech revenues.

105. It is apparent that the value derived by Google from the relationship with the news media far exceeds that derived by the news media, and Google's conduct around zero-clicks destroys potential additional value for the news media. If this were to be an equitable relationship, then the value would be shared equally. There are a few ways that one might consider an equitable shared value outcome.

105.1. First, one could consider the total value of [R1bn-R1.1bn] from the relationship, consisting of the Google value of [R800-900m] and the news media value of R200m, and determine an equitable 50% share¹⁵⁰ of [R500-R550m] each. As the media value currently is at R200m, this indicates that an additional [R300-350m] in value be transferred by Google, to realise an equitable share for both.

105.2. Second, one could include into the total value assessment above the [R160-R280m] in potential value to the media destroyed by Google through its zero-click conduct. If this conduct ceased, then the total value derived for both parties would be [R1.16-R1.39bn], with an equitable share to the media of [R580-R695m], or a transfer of [R380-R495m] by Google in the current context, where the conduct is ongoing. Of course, if the conduct ceased and the media did derive the additional [R160-R280m] in value from additional clicks and referral traffic, then the imbalance in value with Google would be reduced, resulting in lower transfers.

105.3. Third, one could look simply at an equitable share of the value that Google earns from news content, in line with how the FehrAdvice has conceptualised the value-share along with certain academics,¹⁵¹ which would place the estimate at [R400-R450m].

105.4. Fourth, benchmarking to some of the deals done in other jurisdictions, and the claims as to the share of revenue, would place the estimate at [R200-R300m] on Google SA search revenues, or [R300-R400m] on all Google SA revenue, albeit these are based on bargaining under information asymmetry, rather than deals derived from evidence.

106. Aside from an equitable revenue share, any bargaining relationship is likely to include other forms of value sharing. One likely source of value share is that of user data, given that news publisher content gives rise to user insights on Google, and user data has value in the sale of digital advertising. It is the view of the Inquiry that if there was greater bargaining parity between Google and news publishers, it is likely that there would be a greater level of user data sharing negotiated, as that is the only way to share the value given it is hard to place a monetary value on it.

107. Google uses its global presence to contract for South African advertising revenue from Google Ireland, a more 'tax efficient' jurisdiction where Google historically paid only 12.5% tax, but now pays 15%. This is still well below the SA corporate tax rate of 28%, and of course it denies the SA public the benefit of tax on revenues earned in SA. Whilst there is an effort within the OECD to distribute globally some of the tax on revenue

150 The 50/50 split reflects a balance of bargaining power, reflective of a platform monopoly on the one side and a media collective bargaining position on the other side of the bargaining table.

151 Dr Anya Shriffrin public hearing and Dr Holder et al (2023) Paying for News: What Google and Meta Owe US Publishers. This also reflects the views of the Brattle Group.

earned by multinationals in countries where they do not pay tax, this effort is unlikely to yield substantial direct benefits for SA from global tech firms like Google.¹⁵²

108. Whilst not directly linked to the value imbalance with the news media in SA, it is informative to understand the loss of value to the country from the tax arrangements of Google, and how this compares to redistribution of value to the news media. Google earned [R6-R7bn] in search revenues in SA in 2023, and a further [R2-R3bn] on YouTube and AdTech.¹⁵³ Globally, Google made a 35.2% operating margin on the Google Services business in 2023, which incorporates search, YouTube and AdTech, along with subscriptions, platforms and devices.¹⁵⁴ This translates to an operating profit on the Google SA business of [R2.8-3.5bn]. If tax on these profits was paid in SA, this would constitute tax revenues of [R790-R990m] in 2022 - and even just the tax difference to that paid in Ireland, i.e. the tax savings for Google from its current tax arrangements, would be [R370-R460m]. Going forward, there is the potential for a digital tariff, as the moratorium on digital tariffs at the WTO may expire in March 2026.¹⁵⁵ If that were the case, then a 5% tariff on Google's revenues would equate to [R400-R500m], or roughly the tax savings made by Google and the value imbalance with the news media.

3.3.3. Transfer of risks and costs

109. The consideration of the exchange of value and the bargaining outcome is not limited to 'price factors' alone, but includes how risks and costs are allocated across parties. There is evidence before the Inquiry to indicate that Google has been able to leverage its

monopoly position to transfer some of the risks and costs of improving its own search business to the news media, because of the importance of a high ranking on Google for search traffic.

110. Google has a strong interest in ensuring that its search product performs well for users, to make it attractive to enter the web through search. This includes ensuring the service has low latency, provides enriched content, and delivers high quality content in response to queries. Whilst Google itself will invest in its product performance, it is also able to transfer some of these costs to websites - through setting the ranking parameters to promote behaviour which supports search performance. As websites, including news media sites, value ranking on search, this will prompt their own investments to support search performance. This category of investments is generally captured under Search Engine Optimisation (SEO) efforts by websites, to attain high rankings and benefit from more traffic from Google.

110.1. Many of the larger news media organisations have submitted that SEO efforts impose a cost on their operations, in large part due to the continuous changes to the ranking algorithm. Google submits that daily small changes have no discernible effects, but core updates can significantly re-weight a website's quality score and ranking, and are released several times per year.¹⁵⁶ These may require SEO adjustments to be made to prevent traffic loss, a risk transferred to news publishers. Google does communicate core updates prior to their release,

152 [3<]

153 Google Search RFI 4, Google YouTube RFI 1 Google Search RFI 4, Google YouTube RFI 1

154 Google Services earned an operating income of \$95,858m on revenues of \$272,543m, an operating margin of <https://www.sec.gov/Archives/edgar/data/1652044/000165204424000022/goog-20231231.htm>

155 WTO Ministerial Decision, Work Programme on Electronic Commerce on 2 March 2024 (WT/MIN(24)/38).

156 Google RFI 1

but the news media cite a lack of transparency over core updates, which can result in the loss of traffic - at substantial cost to the news media in lost revenue. Google disputes the lack of transparency and cites the need to prevent gaming of its algorithm, but it is apparent that publishers are not always clear on how they may be affected, and need to have invested in SEO capacity to respond even if they do understand. This then places smaller media in particular at the mercy of core updates to the algorithm.

110.2. An illustrative example raised by the Publisher Support Services (PSS), representing a number of mainstream media, is the Accelerated Mobile Pages (AMP) format.¹⁵⁷ This

was made a requirement by Google to appear in the Top Stories carousel, to enable pages to load faster in support of an enhanced browsing performance. The pre-loaded pages have less inventory space to facilitate faster loading time, restricting the ability to monetise the content. AMP has been replaced with Core Web Vitals (CWV), which similarly imposes restrictions that impact on the ability to serve responsive ads.

111. The transfer of risks and costs associated with SEO places smaller news publishers at a particular disadvantage, given their inability to invest in SEO. This has implications for competition on the search engine, as discussed next.

3.4. Competition amongst news organisations on search and personalised feeds

112. Apart from shaping competition and value-sharing outcomes between search and news publishers in general, the search engine is also in a position to shape competition between news publishers, given its large intermediary role for news queries and directing of those queries to individual news publishers.

3.4.1. The ranking algorithm

113. The ranking algorithm determines what search results to return, and how they are ranked, based on the responsiveness to the query. Search engine algorithms rely on hundreds of ranking factors to assess the relevance of all the indexed pages. The same underlying algorithm is used across queries, but some factors may be weighted

differently for news-related queries. Broadly, the main factors are:¹⁵⁸

113.1. Relevance:- the match to the user query and user interaction data for the same queries.

113.2. Quality:- the freshness and trustworthiness of the content, and the reputation and expertise of the website,

113.3. Location and language settings.

113.4. Usability:- compatibility with different browsers and devices, and page load times.

114. For news queries, the algorithm would put more weight on the following:

157 PSS OIPMI submission 18 February 2022

158 Google RFI 1 and Microsoft Bing RFI 1

- 114.1. Prominence:- is a news story prominent on the website, is it cited by others, and is there original reporting?
 - 114.2. Authoritativeness:- the expertise, trustworthiness and authoritativeness of the site, including whether other sites link to the website, and whether people value the source for similar queries.
 - 114.3. Freshness, particularly if looking at current news.
 - 114.4. Registration and additional criteria are typically required, to appear in news verticals on search engines.¹⁵⁹
115. Apart from language and location, the general search algorithms do not use personal information as a factor in returning relevant results. However, for personalised feeds such as Discover, Start and Google News, user interests, both stated in preferences and revealed through search and click history, do play a role in the ranking algorithm. Whilst some factors are not expressly included as factors, they may still influence the results if they correlate with factors that are included. For instance, Google indicates that the snippet is only relevant where required for special features, but if it correlates with CTR then it may influence through user interaction factors. Similarly, beliefs or political ideology may correlate with preferences revealed from clicks in personalised feeds.
116. The focus on authoritativeness as a factor in search generally, and emphasised in news particularly, does mean search has far less of a misinformation problem relative to social media. The survey evidence is consistent with this, as more people trust news on search

engines (24% vs 7% on social media), fewer do not click through due to not trusting the source (21% vs 35% for social media) and more people go to search to confirm news stories seen elsewhere (21% vs 11% for social media).¹⁶⁰

3.4.2. Local vs Foreign

117. Globally, there is the emergence of a few international publishers that have been winners in the digital era, such as the prominent broadcasters (BBC, CNN, Al Jazeera), subscription-based global papers (New York Times, Financial Times, Guardian), or syndicated newsrooms (Reuters, AP). These international news media will report on international news stories, but they will also report on significant South African national news stories. Google states that no specific search factor gives international publishers a systemic advantage, and a single factor out of hundreds is unlikely to tip the scales consistently.¹⁶¹ However, the ability to consistently make large investments in SEO does provide a systemic advantage to international publishers, a factor known to enable domination of the SERP.¹⁶² Anecdotal evidence was given in the public hearings of the additional benefit of a closer relationship to Google by international publishers.¹⁶³
118. The Inquiry review of news impressions on search suggests that foreign media have considerable prominence on Google, even though the level of user engagement may be lower than for the SA press.
- 118.1. Top Stories, where there are more requirements to feature, has the highest share of foreign news impressions at [70-80%], but lower CTRs (user engagement) than SA

159 On Microsoft Bing these criteria include newsworthiness, originality, authority and readability. For Google, transparency criteria include news article bylines, information on authors, publishers and the publication.
 160 Inquiry Survey Report slides 16, 18, 49 and 50
 161 Google in-camera RFI submission.
 162 [36]
 163 International Fund for Public Interest Media (IFPIM) public hearing.

news impressions, and so only accounts for [50-60%] of clicks.¹⁶⁴ CTRs for local news media are effectively double that of foreign media on Top Stories.

- 118.2. On search more generally, based on the top 200 websites from Google's list of 32k news-related domains, foreign news media accounts for [40-50%] of impressions, but only [30-40%] of clicks. The Inquiry estimates, using Similarweb data on traffic sourced from Google, that foreign media account for 37% of clicks. The lower proportion of clicks relative to impressions indicates a lower level of engagement with foreign relative to domestic media. Like Top Stories, CTRs for local news media are effectively double that of foreign media.
- 118.3. On Google Discover, SA news media has [70-80%] of impressions, with fairly similar CTRs to foreign media. As Discover is personalised to stated and revealed preferences, rather than driven solely by the search ranking algorithm, this indicates that SA user preference is for more domestic news media. This is also more consistent with the Reuters Institute digital news survey, where SA news sites dominate the top online news brands for weekly direct usage.¹⁶⁵
- 118.4. Similarweb data on organic search news traffic indicates that the SA news media share relative to foreign news media has declined, being within the c.60-70% range between September 2021 and September 2023, and has since been within the c.55-65% range thereafter to date.

119. The high impression share but lower CTRs for foreign media in search and Top Stories, along with the higher share for local news in Discover, where SA user preferences impact on the feed, suggest that foreign media is over-represented on Search and Top Stories for SA users. This may not be the intent of search engines but rather the outcome of algorithm design, such as a failure to give sufficient weight to SA user interactions for SA news-related search queries. That over-representation would seem to be negatively impacting on traffic to SA news media, given the declining share trend and the role that prominence on the SERP has on user behaviour over time. Furthermore, lower CTRs of foreign media on Search and Top Stories is indicative of less engagement, where rising foreign media on Google's SERP suggest a trend to lesser efficiency. The over-representation of foreign media is therefore adversely affecting competition between local and foreign media, and is inefficient.

3.4.3. Vernacular and Community Media

120. The ability to receive news in your own language is a critical element of realising constitutional rights underpinned by news. Being informed of developments in your local community is another essential element to exercising democratic rights at a municipal level. However, on search platforms, vernacular and community media have little traction. For vernacular media, this is largely the result of the limited language capabilities of search engines. Google fairly acknowledges that this is an area where it needs development, with currently only English, isiZulu and Afrikaans supported on search, and plans to extend to Xhosa.¹⁶⁶ However, for non-English languages more support is still required, as identified by isiZulu publications and acknowledged by Google. For English-based community

164 Own calculations from Google Search RFI 3 Annex Q6.

165 Reuters Institute Digital News Report 2024, pg. 163

166 Google RFI 3 tranche 1.

media, the inability to invest in the website and SEO makes a lower quality scores a more likely reason, whereas for vernacular community media there is the combination of both language, website quality and SEO.

121. Whilst Google indicates that almost all search queries in SA are in English, this is most likely the outcome from its inability to support African languages in the past. There is demand for search platforms to provide news in local African languages. The Inquiry survey established that South Africans are more likely to access the platform if news is available in local languages (13% for search and 21% for feeds), and spend more time on the platforms when news is in local languages (21% for search and 24% for feeds).¹⁶⁷ This is consistent with traffic data, which shows vernacular and community media predominantly sourcing referrals from social media rather than search.

122. The language shortcomings of search places vernacular news organisations at a material competitive disadvantage relative to their English counterparts, in part reflected in the fact that people are conditioned to query search engines in English, not in their home languages. This is reflected in traffic data. For instance:

122.1. The Citizen, an English daily, receives 45% of traffic from organic search.

122.2. Isolezwe, an isiZulu weekly, receives 26% of its traffic from organic search, but 64% of this is branded search (i.e. navigational, based on the website name).

122.3. Maroela Media, an Afrikaans online site, receives 18% of its traffic from organic search.

122.4. Mpumalanga Mirror, a community newspaper, gets no organic search referral traffic.

123. However, where vernacular media does surface on search, the CTRs are much higher than the English media, indicative of higher levels of engagement – and the desire of South Africans to get news in their home language. For instance, for local news sites overall, CTRs are [0-5%], whereas for Isolezwe, Maroela Media, son.co.za and Netwerk24, the CTRs are [5-10%].¹⁶⁸ Similarly, for Discover, the average CTR for local news sites is [5-10%], whereas Maroela Media, son.co.za and Netwerk24 had CTRs in the [10-15%] range.¹⁶⁹

124. This applies to a much greater extent to the public broadcaster too, as the largest provider of vernacular news across all official languages to the population. The impact on competition also implicates constitutional rights, and negatively impacts media diversity and plurality in SA. The concentration of news impressions on search is evident from a 0.70 Gini coefficient for just the top 200 news sites, which would be higher if all news sites were included. The same is true for Google Discover, which has an even higher Gini coefficient of 0.80, based on the top 270 news sites.

3.4.4. YouTube and video content

125. Increasingly, consumers are turning to video content for news, part of a general shift in consumer behaviour towards audio and video content. Search engines will often surface a video unit within a news-related search if there is relevant video content. For Google search, the proportion of video impressions is [5-10%] of all search impressions.¹⁷⁰ Video content will also form a larger part of the personalised feed, such as Google Discover, where video impressions

167 Inquiry survey report slides 97 and 101

168 Calculated CTRs using Google data (Google Search RFI3, Annex Q5)

169 Isolezwe did not feature in the data that was provided. (See data in Google Discover RFI3, Annex 12)

170 Google RFI 3 Annex Q25



and clicks constitute [20-30%] of total impressions and clicks.¹⁷¹

126. Given the growing popularity of video content, the ranking and referral behaviour of search for news-related video content has a growing impact on traffic to news websites. An inescapable fact is that YouTube, owned by Google, is the beneficiary of the vast majority of video impressions, and hence also video click traffic from search to pages on YouTube.

126.1. For the year ending May 2024, a YouTube video appears on page 1 for [20-30%] of all Google search queries, and [5-10%] of all page 1 organic impressions on Google search in SA. In contrast, a non-YouTube video appears on page 1 for [10-20%] of all Google search queries, and [0-5%] of all page 1 organic impressions. For page 1 organic video impressions overall, YouTube accounts for [80-90%] for all Google search results in SA.¹⁷²

126.2. For news-related queries where the Top Stories Unit was triggered in SA in the same period, YouTube accounted for [80-90%] of video impressions on page 1, and along with TikTok, Facebook and Instagram, accounted for [90-100%] of video impressions. The statistics for share of clicks in the same period are the same. In that same period, video impressions and clicks from the top broadcasters in SA had a share of [0-5%].¹⁷³

126.3. On Google Discover, for the past year YouTube accounted for [60-70%] of all video impressions and clicks, and [10-15%] of total impressions and clicks.¹⁷⁴ For non-YouTube video content, SA news media had a share of [5-10%] on Discover.¹⁷⁵

126.4. Experiments conducted by searching on Google for publishers that loaded nearly identical content on YouTube and competing video platforms revealed that YouTube was first in the video carousel over 80% of the time. SEO advice is that marketers should upload their video to YouTube if they want to surface in Google search results.¹⁷⁶

127. YouTube video impressions will reflect different content pages on YouTube, including the pages of SA news media. For instance, within YouTube content surfaced on Discover, the domestic news broadcasters and online media have a share of [5-10%] of page impressions and clicks.¹⁷⁷ The news media may also share in the benefit of that referral click to YouTube, if they are part of the YouTube Partner Programme (YPP) which entitles them to a revenue share. However, that share is only 45% of net revenue after YouTube costs, which means YouTube benefits more than the news media for that referral. In contrast, if the impression and click referral is direct to the news media website, then there is an opportunity to earn both banner and in-video display advertising revenue. Of course, as the media company is likely to be using Google Ad Manager (GAM) as their ad server, Google will still get

171 Google Discover RFI 3 Annex 19 read with Annex 12

172 Google RFI 3 Annex Q25

173 Google RFI 3 Annex Q24 and Annex Q25. The video impression share of the SABC, eNCA, News24, Newzroom Afrika and EWN was [X] with the public broadcaster at [X] in the six months to May 2024.

174 Google Discover RFI 3 Annex 20 read with Annexures 12 and 19

175 Google Discover RFI 3 Annex 22

176 Southern (2020). Google Search Allegedly Boosts YouTube Results Ahead of Competitors. *Search Engine Journal* Available: <https://www.searchenginejournal.com/google-search-allegedly-boosts-youtube-results-ahead-of-competitors/374712/> (accessed 16 January 2025).

177 Google Discover RFI 3 Annexure 21

a cut of that revenue too, at c.31% of gross revenues, plus the 45% of net revenues that YouTube takes.¹⁷⁸

128. Google states that there is no explicit algorithm bias that systemically favours YouTube, with the algorithm treating it like any other website, evaluating it on information that other websites can provide too. Google states that YouTube is simply a very popular website, with the most direct traffic and referrals from other search engines.¹⁷⁹ The search algorithm can still play to YouTube's strengths by weighting those factors more, and YouTube is also likely to have advantages in certain search factors because it is part of the Google properties.¹⁸⁰ This seems most probable, given the dominance of YouTube for video content, but even if not the case, that structural dominance is by itself adversely affecting competition for news-related video content.

129. Notwithstanding the argument in the previous paragraph, average YouTube CTRs are lower than average CTRs to third-party news websites on Search and Discover.¹⁸¹ This suggests that click throughs to YouTube on Search and Discover are less efficient than clicking through to third-party news publishers' websites. Similarly, when Top Stories is triggered, video links to third-party news publishers has a CTR that is more than double that of YouTube,¹⁸² yet YouTube impressions surface by a factor of [300-400] times more than SA publisher video link impressions.¹⁸³ While 'Top Stories' is triggered by news-related queries, it seems

unbecoming that so few third-party news publisher video links are surfaced relative to YouTube links, even when the former is far more efficient in terms of click-throughs. A reasonable conclusion is that Google is self-preferencing YouTube links on the SERP, relative to third-party SA news video/broadcaster channels. There is scope to boost the prominence of third-party SA news video/broadcaster channels on the SERP and Discover feed.

3.4.5. Subscription vs ad-based

130. Neither Google nor Bing penalise publishers with paywalls in the search results, as it is not a factor in the ranking. Media with paywalls can have paywalled content crawled for indexing purposes, whilst the paywall remains in place for users. Google states that this practice avoids a negative impact on publishers wishing to paywall, and provides lead-in to promote subscription, whilst still providing a good user experience if the content interests them.¹⁸⁴ It is possible that the paywall does indirectly impact negatively on ranking, through lower CTRs or user interaction with the site (bounce rates).

131. Whilst this practice may avoid a negative impact on subscription publishers, it is relevant to ask whether, in the process, it creates a negative impact on advertising-based publishers seeking to keep their content accessible to the broader public. Only a few subscription publishers are likely to win the subscription game, as those willing to subscribe to multiple news sources is

178 <https://blog.google/products/admanager/display-buying-share-revenue-publishers/>

179 Google in-camera RFI

180 For instance, better indexing and quicker speeds due to integration benefits.

181 On Search average news media CTRs are [3.2%] but average CTRs to YouTube is [2.1%] (data analysed in Google Search RFI3, Annex Q5). On Discover, average news media CTRs are [3.2%] but average CTRs to YouTube is [2.1%] (data analysed in Google Discover RFI3, Annex 12)

182 Average CTRs for ewn.co.za, enca.com, and news24.com video links was [3.2%], whereas the CTR for YouTube was [2.1%] when 'Top Stories' was triggered. (Own Analysis using data submitted in Google Search RFI3, Annex 24).

183 Total impressions for YouTube was [3.2%] higher than ewn.co.za, enca.com, and news24.com video link impressions collectively was when 'Top Stories' was triggered. (Own Analysis using data submitted in Google Search RFI3, Annex 24).

184 Google RFI 2

limited,¹⁸⁵ particularly in SA. Those that do win the subscription game have the advantage of subscription revenues to support their journalistic efforts, along with advertising revenue relative to those pursuing an advertising strategy only. This is likely to then provide an advantage in search, as the SEO and quality ratings can be improved with the additional resources. As paywalls are not penalised, search may then contribute to a growing bifurcation of the news industry, if it directs traffic to subscription publishers and away from advertising-based publishers. This is despite the fact that users do not benefit from the click if faced with a paywall, whereas both the ad-based publisher and user would benefit if they clicked through to an open site.

132. Internationally, we have seen the emergence of a few clear winners (NYT, FT, Guardian) who continue to grow and strengthen, whilst other news media struggle. Domestically, News24/Netwerk24 is winning the subscription game, and attracts substantially more traffic from search engines and personalised

feeds relative to other SA news media.¹⁸⁶ This is all despite the fact that News24/Netwerk24 has a dynamic paywall on most of its content. The risk with such trends is that it could have negative consequences for media diversity and a plurality of voices, if the market becomes too concentrated. At the same time, it is important to have strong publishers to hold democratic institutions to account.

133. The discussion is complicated by the fact that mixed strategies are used by subscription publishers, such as not applying a paywall to some content, giving non-subscribers a limited number of free articles per month, or offering users the option of a free trial period. In addition, some ad-based publishers may look to use an Offerwall for donations, or have a user watch an ad before access to the content, to assist in revenue diversification. However, on the basis that user engagement will be poor when faced with a paywall, the 'no penalising' approach results in an over-representation of subscription media.

3.5. The future of search

134. Search has not escaped the explosion of AI and the race to integrate it into all technology tools. Just before the Inquiry commenced, Bing introduced the AI-powered Bing Chat, later renamed Copilot, and shortly afterwards Google followed with Search Generative Experience (SGE), its own AI-powered search results. Since the Inquiry commenced, AI-assisted search results have evolved in terms of when they are invoked, and how the results are presented. AI Chatbots have also evolved to answer current questions by integrating with search engine indexes through Application Programming Interfaces (APIs), discussed later in the report. There

is little doubt that search will continue to evolve into the future, as AI tools improve and consumer interaction evolves.

135. At the time of writing, Bing Copilot appears as an option on the menu bar of Bing, and users can click on it if they want to make use of Copilot for their query. Copilot is not the default search screen, nor is it invoked in response to a query. For Google, it has taken the direction of integrating AI Overviews into search, which is invoked when Google determines generative responses are useful, and is placed at the top before any search results. Subsequent to launching AI

185 Reuters Institute Digital News Report 2024

186 [38]



Overview, Google quickly moved to reduce the frequency with which it was invoked, and states that it does not aim to invoke AI Overviews for hard news queries.¹⁸⁷ The Gemini Chatbot is distinct. Sources are displayed in the AI-generated results for both AI Overviews and Copilot. Where Copilot has taken information extensively from a source, then the source appears as the user hovers over that text.

136. The news media globally and locally have expressed considerable concerns about how the use of AI for news queries and the provision of summaries may impact on news traffic from search engines. This concern is not unwarranted, given that the AI summaries are far more extensive than snippets, which users already read to get information without clicking through to news websites. The failure of Google and Microsoft to provide even preliminary information on the extent of news queries on Copilot and SGE, and the CTRs of sources cited, alongside AI summaries in general and for news specifically, despite repeated requests by the Inquiry, only confirms those concerns as valid. This is because the only reason for not providing such data is that it shows a material number of news queries on AI-powered search and lower CTRs, than for standard news-related search results. As companies that seek to organise the world's information, it cannot be because they are incapable of measuring and providing the information. Whilst Google has subsequently restricted the use of AI Overviews for hard news, that could well change in future, and so the concerns remain relevant.

137. Most recently, Co-pilot launched a daily news digest which provides a summary of key stories and weather, which can be

listened to. This is a further incursion into a news service that may displace direct traffic to the news sites.¹⁸⁸ The news is provided by Microsoft partners, and as Microsoft Start does share revenue on ads in full articles, it is likely that some revenue sharing is occurring. However, the ads will be at lower CPMs than direct traffic on average, and publishers must share that revenue.

138. Given the concern over AI displacing news traffic, a number of prominent news titles globally have opted out of web crawlers for AI models. However, these opt-outs are for the training of models and their development, but not for search results. Google Extended is a separate command that websites can use to opt out of having their content used to train and improve Gemini. However, Google offers no opt-out for AI Overviews, except to opt out of the search index altogether – which is a Hobson's Choice as that will eliminate all search traffic.¹⁸⁹ This appears to be a deliberate design choice by Google, to prevent websites opting out of AI Overviews. The same applies to Bing, because Copilot summaries are grounded by the contents of the Bing Search Index, whose web crawlers' websites need to allow to crawl if they want to appear in Bing search results.

139. The additional concern is that many AI Chatbots, including OpenAI's ChatGPT and Meta AI, use API access to either or both Google and Bing search indexes to gather relevant information to ground responses to certain user queries, including news-related queries. As such, the impact of Google and Bing web crawling and indexing choices has a contagion effect on Chatbots more generally, including their own (Co-pilot and Gemini).

187 Google RFI 3

188 <https://www.zdnet.com/article/i-got-my-news-briefing-from-microsofts-copilot-ai-this-morning-and-id-do-it-again/>

189 Google in-camera RFI

140. Even if the opt-out mechanism for AI-powered search was offered, the design as an opt-out rather than opt-in means that most news media in SA are likely not making any conscious decision to opt in or not, but are doing so by default. For community media whose websites were prepared by a web page designer and were taught to update the contents, there is also a lack of technical capacity.
141. Given that AI-powered search query summaries represent more of a substitute to clicking through to news websites as a source of news information, this would then

constitute unfair competition. This is because the search engines effectively force news websites to make their content available for AI summaries, by tying permission to general search indexing, and then use that content to compete as a source of news information against those same websites – thereby reducing traffic to the websites. By the same notion, this conduct is also unlikely to constitute fair use of the copyrighted work of the news media, as the purpose is for commercial gain in competition with the copyright holder, which will affect the market value of that work.¹⁹⁰

3.6. Provisional findings and remedial actions

3.6.1. Findings

142. The provisional findings on search and personalised feeds are as follows:

142.1. 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.

- 142.2. The unequal bargaining position has resulted in an inequitable sharing of user data and insights between Google and news publishers.
- 142.3. 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-

190 The SA Copyright Amendment Bill (version B13D-2017) sets out the notion of fair use in section 12A, with section 12A(b) setting out the non-exhaustive set of factors to be taken into account in determining fair use. These include subsection 12A(b)(iii)(bb) ‘the purpose and character of the use including whether it is of a commercial nature or for non-profit research, library or educational purposes’ and 12A(b)(iv) ‘the substitution effect of the act upon the potential market for the work in question’. See https://www.parliament.gov.za/storage/app/media/Bills/2017/B13_2017_Copyright_Amendment_Bill/B13D_2017_Copyright_Amendment_Bill.pdf. This is similar to the US Copyright Act section 107 <https://www.copyright.gov/title17/92chap1.html#107>

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.

- 142.4. 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.
 - 142.5. 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.
143. The conduct identified has an adverse effect on competition through:
- 143.1. 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.
 - 143.2. An imbalance in bargaining power that enables the extraction and monetisation of news media content, distorting competition for news content distribution and monetisation. 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.
 - 143.3. 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.
 - 143.4. Distorting competition for news broadcast video distribution and monetisation 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.
144. 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 as well as 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.

3.6.2. Remedial actions

145. 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.

146. A bargaining solution alone 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 broadcaster 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.

147. 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, and 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.¹⁹¹ 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 & drops’ 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.

148. 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, there is then 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, the proposal is to fix the competition problem rather than simply compensate for the negative outcome. If this opportunity is

191 Reuters Institute public hearing.

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.

149. 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.

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

150.1. 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 predominantly 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 the BCCSA.¹⁹² 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.

150.2. 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, optimising snippet lengths to promote click-throughs, and a SA news filter on the SERP. Identifying and addressing reasons for zero-clicks would contribute to options available. Potential options for other monetisation 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.

150.3. Google to provide news publishers with enhanced user data and insights to compensate for the imbalance in

192 Similar conditions are a feature of the ACCC media bargaining interventions. See <https://www.accc.gov.au/system/files/Final%20legislation%20as%20passed%20by%20both%20houses.pdf>

- 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 anonymised data for different sections of the news website or app.
- 150.4. 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 that the development of its search engine avoids these outcomes.
- 150.5. Google to provide dedicated SEO support for SA news publishers, to assist with responding to core updates timeously, and to avoid traffic disruptions. This should include pre-emptive assessments of the likely impact of core updates, and how to ameliorate traffic disruptions.
- 150.6. Google and Microsoft to negotiate annual contributions to the oversight institutions, namely the Press Council and BCCSA.
- 150.7. 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.¹⁹³
- 150.8. 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.
- 150.9. 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 provides alternative monetisation 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.
- 150.10. 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.

150.11. 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.

151. Some of the media have proposed compensation for historic inequities in the value exchange with Google.¹⁹⁴ 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 consisting of ensuring long-term sustainable solutions as well as offering some historic compensation.

194 Daily Maverick public hearing

4. Social Media

152. Social media is a broad term used to capture digital platforms that enable users to create and share content with virtual communities on the platform. It covers a diverse set of platforms which primarily focus on particular content formats, but which have in common an interface design that includes a user feed, a follow feed, and search capabilities. Unlike the open web, social media platforms are ‘walled gardens’ where the platforms set

‘Community Guidelines’ for content posted to the platform, and design the algorithms that determine what content appears on the user’s social media feed. News has become a feature of all these platforms, but to different degrees, and the platforms’ policies have actively shaped the sources of news that users are exposed to, and how users interact with news on the platforms.

4.1. The social media business model

153. Social media platforms are originally built around the creation and sharing of particular content or social mechanics, including family and friends for Facebook, long-form videos for YouTube, short-text for X (formerly Twitter), photos for Instagram, short-form videos for TikTok, and instant messaging for WhatsApp. As the business model is built on the content posted and shared by users, social media platforms are subject to extremely strong network effects - whereby the more users posting content of interest, the more attractive the platform becomes to other users - who in turn create more content, driving a virtuous cycle of user growth.

wins at a specific mechanic, it’s difficult for others to supplant them without doing something different.”¹⁹⁵ In essence, ‘me too’ platforms that closely replicate existing successful platforms are unattractive to users, because they are the same but lack the scale of content and network of users. The result has been for venture capital to be used to fuel the explosive growth of social media platforms, before focusing on monetisation of that platform.

154. Once a social media platform in a particular content format or social mechanic reaches critical mass, it not only sees explosive growth, but also entrenches itself as the dominant platform for that social mechanic or format. As Mark Zuckerberg observed, “[T]here are network effects around social products and a finite number of different social mechanics to invent. Once someone

155. Amongst the largest social media companies, each is dominant in their format, with some (albeit limited) competitive interaction between them. This is evidenced by the fact that consumers can often make use of all these platforms for different purposes. Meta is dominant in applications around the ‘social graph’ that maps personal connections, YouTube in long-form video, X in real-time public debate, and TikTok in short-form video. However, amongst these four social media platforms, Meta and YouTube are by far the largest in SA, from both a user and digital advertising perspective.

195 FTC v Facebook Inc Case no. 1:20-cv-03590, FTC complaint para 14, extract of email from Mark Zuckerberg to CFO David Ebersman. https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf

156. Monetisation strategies across social media platforms are the same, namely to sell the attention of their users to advertisers and those wanting to reach a wider audience, through promoted posts. Social media platforms are able to gather substantial user data beyond demographics, by observing and inferring psychometric data (interests, attitudes and behaviour) of users through their interactions with content on the platform. This permits social media to engage in highly targeted advertising with literally tens of thousands of detailed categories to choose from.¹⁹⁶ Engagement on the platform is therefore essential for monetisation of the platform, through providing data for ad targeting and by building user numbers, frequency and time on the platform - which increases advertising inventory levels. As Meta candidly stated in its recent annual report, *"The size of our active user base and our users' level of engagement across our products are critical to our success."*¹⁹⁷

157. Driving engagement on the platform is intimately linked to driving content creation on the platform. Encouraging content creation is necessary, because not all users create content, and not all content creators create original, quality content that generates high levels of engagement. Personalisation is also key to driving engagement, and a larger volume of diverse content enables social media to tailor enough content to a wide

variety of individual interests.¹⁹⁸ Social media platforms can promote content creation by providing easy tools for creating and posting content, and by enabling community feedback, which encourages users to post more content. Social media platforms also look to attract professional content providers to post to their platform, in order to build original content on the platform to drive engagement. They do so by providing those content providers with an audience, but in addition will invest in attracting specific content providers through marketing, professional tools and monetisation options. Twitter, in the year before it went private, set out in its annual report the importance of particular accounts in contributing unique and engaging content, stating under business and operational risk factors:

"A number of factors have affected and could potentially negatively affect mDAU growth and engagement, including if:

- *accounts, including influential accounts, such as those of world leaders, government officials, celebrities, athletes, journalists, sports teams, media outlets and brands or certain age demographics, do not contribute unique or engaging content, or engage with other products, services or activities as an alternative to ours;"*

4.2. News and social media

158. News is a feature of all social media platforms, to a greater or lesser extent. Most platforms were determined to play down the presence and role of news, arguing that

users on their platforms are primarily there for entertainment, or engagement with family and friends. However, the one does not preclude the other. News has a presence because

196 See for instance the options on X at <https://business.x.com/en/advertising/targeting> and Facebook at <https://leadsync.me/blog/wp-content/uploads/2018/11/Facebook-Ads-Audience-Targeting-Guide-1.pdf>

197 Meta Platforms Inc. 2023 10-K filing, pg 16. <https://investor.fb.com/financials/sec-filings-details/default.aspx?FilingId=17229405>

198 [3<] in-camera hearing

the majority of people want to be informed and understand the world around them, staying up-to-date as to what is happening, and forming their own opinions.¹⁹⁹ News is something that many people engage daily, including sharing news²⁰⁰ and engaging with others on news stories. It is therefore natural that news emerges as a content category on social media, whether the platform seeks to drive it or not. At different points, most platforms have sought to attract news to promote engagement. As much as news content as a driver of engagement on social media varies across individuals, it also varies across countries.

4.2.1. General observations

159. The Inquiry survey found that social media was the platform used most for news, by 77% of respondents.²⁰¹ This is similar to the Reuters Institute survey, which found in its 2024 report that 71% of SA respondents get news from social media. In both cases, much larger than from other online alternatives. Amongst those that mostly use social media, the top reason for doing so was ease and convenience (77%), along with the ability to access when they had time (40%), offering access to breaking news (42%), a variety of news (25%), and news relevant to their interests (23%).²⁰² Similar themes emerged from the focus groups, where attractive features for social media included instant updates and trending stories, push notifications and personalisation, and the variety of news sources. The multifunctionality of social media, in offering

both news and entertainment, was seen to enhance the overall value of the social media platforms.²⁰³ The Datareportal Digital 2024 Global Overview Report identifies that 'reading news stories' is the 3rd main reason for using social media, cited by 34.2% of respondents globally, with 'seeing what's being talked about' coming in 5th (28.7%). For South Africa, 46.4% said reading news is a main reason for using social media.²⁰⁴

160. In terms of consumption habits, 70% of those choosing social media actively sought news daily or multiple times a day, with an equal proportion also consuming news passively daily.²⁰⁵ Actively going to platforms for news meant that 50% of respondents access platforms more regularly when news is available, with 46% indicating they spend more time than intended because they are consuming news. Roughly a quarter of respondents also follow individual journalists, presenters or reporters.²⁰⁶ Consistent with this behaviour, 69% stated that they would reduce platform usage were news no longer available, with 37% stating that usage would be much lower, but only 7% stating they would no longer use the platform.²⁰⁷

161. Those mostly using social media for news do consume news on the platform. The survey found that the respondents more frequently scrolled through the feed reading both the headline and snippet, with scrolling and reading the headline, or not fully, less frequent.²⁰⁸

199 [36]

200 Reuters Institute Digital News report 2024 states that 51% of South Africans share news on social media, messaging or email.

201 Inquiry Survey report slide 12

202 Inquiry Survey report slide 15

203 Inquiry Focus Group report

204 <https://datareportal.com/reports/digital-2024-global-overview-report> slides 221 and 267. Reading news stories appears 5th for 16-24 year olds and 2nd for 45+ year olds - slide 222.

205 Inquiry Survey report slide 22

206 Inquiry Survey report slide 93

207 Inquiry Survey report slide 85

208 Inquiry Survey report slide 28

- 161.1. Those that do click through did so more frequently after reading the snippet, rather than just the headline.²⁰⁹ The reasons provided were that the headline and snippet were seen as useful to help determine whether to read the full article (72%), or spark their interest to read it (45%).²¹⁰
- 161.2. Equally, the fact that the headline and snippet provided enough information was a prominent reason for not clicking through (48%), along with the lack of time to read the full article (22%).²¹¹ The substitution of reading snippets instead of the full story is reflected in the number of respondents citing that headlines and snippets are a convenient (46%) or time-efficient (37%) way to view news, or to avoid paying for news (23%), and accurately reflected what the news story was about (33%).²¹² Naturally, for many it was also that the story did not interest them (54%), but also for social media concerns over trust in the source (35%). Clickbait (28%) were another reason people did not click through.
162. The public hearings highlighted that social media is also popular due to the prevalence of vernacular and community media. This sentiment emerged in the focus groups too.²¹³ The survey found that people spend more time on social media platforms when community news is available (43%), or when news in local languages is available (19%). Whether people are more likely to access a platform when news is available in local languages is stronger amongst 18-34 year olds (16%), rural (19%), and African home language (16%) respondents. Consistent with this evidence is the fact that more community media have Facebook pages than websites, and often prioritise social media presence due to consumer habits.²¹⁴
163. The large number of followers of news media and journalist/presenter pages on social media is consistent with the survey evidence that users wish to access news on their social media feeds. The SABC radio stations amongst them have almost 9m followers alone - community media organisation Maroela Media has c.580,000 followers, and even small community media documented followers in excess of 50,000 individually.²¹⁵
164. News media, particularly radio, have used social media to generate engagement with their audience, to the benefit of social media platforms, as they drive consumers to use the platform to engage the news media. For radio, presenters will often run competitions or ask for listener views on on-air topics through a social media platform, but despite this, only [0-5%] of community stations generate any money out of social media.²¹⁶ Print and broadcast journalists similarly post breaking news and updates on social media, attracting users to the platforms more frequently to get informed. At the same time, citizens will often use social media to engage with community media, to highlight newsworthy issues in the community.

4.2.2. Meta

165. Meta's current position is that, *"accessing news is simply not the reason why most*

209 Inquiry Survey report slide 39

210 Inquiry Survey Report slide 63

211 Inquiry Survey Report slide 48

212 Inquiry Survey Report slide 63

213 Inquiry Focus Group report

214 AIP public hearing presentation where it showed that 112 members had a Facebook page whereas 104 had a website.

215 SABC RFI 1, Maroela Media, NCRF and Limpopo Mirror public hearings

216 YFM public hearings, NCRF public and in-camera hearings

people use our apps," that their focus is on responding to what users want, and, "for most of our users, that's not news links."²¹⁷ Meta has repeatedly referred to surveys in the public hearings and in-camera hearings, but when pressed to provide these to the Inquiry, Meta has not been forthcoming. This position also stands in stark contrast to their position when launching the Facebook Journalism Project in 2017, where they stated:²¹⁸

"Facebook wants to do our part to enable people to have meaningful conversations, to be informed, and to be connected to each other. We know that our community values sharing and discussing ideas and news, and as a part of our service, we care a great deal about making sure that a healthy news ecosystem and journalism can thrive." (emphasis added)

166. Facebook began actively courting news publishers around ten years ago, launching Facebook Paper in January 2014, an iOS news reader app that provided a different user interface for the news feed, but also the ability to add news sections with curated stories from posts by newspapers, amongst others.²¹⁹ This was Facebook's attempt to create a personalised newspaper. Facebook Newswire was added a few months later, designed to assist journalists find news on Facebook. Instant Articles for publishers was launched in May 2015, designed to rapidly load mobile web articles to enhance the Facebook mobile experience, as "people share a lot of articles on Facebook".²²⁰ Google launched AMP in response to Instant Articles, demonstrating the value of offering a good mobile news experience to both Facebook and Google search.²²¹

167. Even after the major change of the Facebook algorithm occurred in January 2018, reducing 'public content,' Facebook still retained the view that news was important because it was content-users demanded and it created engagement, stating:²²²

"People tell us they come to Facebook to connect with friends. They also say they want to see news about what's happening in the world and their local community. This month, we've announced changes to prioritize posts from friends and high-quality news sources. Today, we're updating News Feed to also prioritize local news so that you can see topics that have a direct impact on you and your community and discover what's happening in your local area." (emphasis added)

168. Facebook argued in the public hearings that they tried news but it provides minimal value, hence the shift in direction based on user surveys and feedback. Meta was challenged to provide these surveys, particularly for South African users but also for Africa. To date, none have been produced despite repeated requests. Meta points to declining use of Facebook for news globally, and that news links constitute less than 3% of what people see on the feed, with [0-5%] for SA. There are clear measurement issues that serve to underestimate news content on the feed, as this is based on publishers registered with Meta's News Page Index only, and it focuses on posts with links, not all posts. But the most obvious problem with citing these figures is that Facebook is actively deprecating news content on its platform, as confirmed by its representatives in the public hearings, so they are a product of the Facebook algorithm. Interestingly, news queries in SA, which the algorithm

217 <https://about.fb.com/news/2023/03/news-industry-reaps-considerable-economic-benefit-from-facebook/>

218 <https://www.facebook.com/formedia/blog/introducing-facebook-journalism-project>

219 <https://techcrunch.com/2014/01/30/facebook-paper/>

220 <https://www.facebook.com/formedia/blog/introducing-instant-articles/>

221 <https://www.theverge.com/23711172/google-amp-accelerated-mobile-pages-search-publishers-lawsuit>

222 <https://about.fb.com/news/2018/01/news-feed-fyi-local-news/>



does not control, are considerably higher than news feed posts.

169. In contrast, the Inquiry has surveyed SA consumers, and of the 77% that use social media the most to find and view news, 84% of respondents indicated that Facebook was amongst their top 3 platforms to find news. Other Meta products also featured, including WhatsApp (46%), Instagram (24%), and threads (3%). The general observations from the survey are therefore representative of Facebook users in SA, namely that users actively go to the platform for news, spend more time on the platform, and consume news snippets - which are convenient, time-efficient and free. The Reuters Institute 2024 survey also identified Facebook as the top social media platform used by South Africans for news (51%), and shows that Facebook's use for news is far more prevalent in SA and Africa more broadly, relative to most developed economies.²²³ On Facebook, over 20m people follow SA news publisher pages, with SABC radio accounting for c.9m alone.²²⁴

170. Whilst the general observations on why people turn to social media for news applies to Meta too, the focus groups also highlighted specific reasons for the use of Facebook. The focus groups identified that, for community news, people often turn to Facebook or WhatsApp groups. Users expressed a desire for news in their own languages, and whilst they go to traditional sources for vernacular news, they also go to Facebook and WhatsApp.²²⁵ Facebook is also popular in rural communities, in part due to its data-free mode,²²⁶ and [70-80%] of Facebook MAU users in SA make use of the basic mode.²²⁷ This is borne out in the higher

traffic share that community and vernacular news media get from Meta, especially relative to search.

171. Meta argues that social media differs to search insofar as news is on media platforms because the news media choose to post, not because it fetches articles from their websites. Whilst it is correct that the news media post content on social media, they do so because there is demand from users for news content on the platform and engagement with that content, and historically Meta has courted the press to post more content. This is evident from the Inquiry survey, which shows social media platform users value news, but also from Meta's own observations on their user needs. If there was no demand or engagement, then the news media would cease to post. That demand and engagement benefits Meta, which is why Meta invested in products and features to make it easier for the news media to post content, and to persuade them to do so through Meta's various news initiatives.

172. However, as social media evolves and builds in AI capabilities, it also needs to accommodate user search queries for general information and knowledge on the platform, beyond simply posts. This is why Meta AI has contracted with search index API services, to enable users to query beyond the platform contents and engage the web. This then places the social media platforms in a similar position to search, and it seems Meta has realised that, unlike its own feed where it can ignore user preferences, with search it needs to be responsive to user queries. News is clearly an important user query, and Meta has already contracted with

223 The use of Facebook for news was the top amongst social media platform across African countries surveyed, at 51% for Morocco, 60% for Kenya and 62% for Nigeria. In contrast, the use of Facebook for news was 17% for the UK, 31% for the US, 32% for Australia and 4% in Japan.

224 Meta RFI 2, SABC RFI 1

225 Inquiry Focus Group report topic 6

226 Inquiry Focus Group report topic 2

227 Meta RFI 4. Basic mode allows up to 20MB of Facebook use per day when a user runs out of data.

Reuters to provide news content in the US for Meta AI.²²⁸

4.2.3. YouTube

173. YouTube has closely followed Google search in how it has approached news content. YouTube has seen news as an important use case, and sought to build specific news verticals on YouTube to enhance the news experience. This includes the News Watch Page (content on a specific story), Breaking News shelf (appears on the homepage during major breaking news events), and Top Stories carousel (appearing when searching for news).²²⁹ YouTube, like Google search, prioritises authoritative news sources in its news verticals, using signals such as channel quality, coverage of current events, and compliance with Google News content policies.²³⁰ YouTube also offers training under the Google News Initiative, to support news organisations in building their video operations, and runs a News Working Group to discuss how to improve the news experience on YouTube. Both obviously benefit YouTube too, as they ensure more video news content on their platform, which drives usage and engagement.

174. These investments have paid off insofar as YouTube is seen as a destination for news, growing in relevance as people increasingly prefer watching video clips. The Reuters Institute Digital News Report of 2024 found that there is a shift to short-form video globally, but which is particularly pronounced in developing countries, with 82% of South Africans using short-form

online news weekly. It found that 23-25% of all age groups identified YouTube as their main online news video platform, similar to Facebook.²³¹ In SA, the Reuters survey found that 47% use YouTube for news, similar to the Inquiry survey finding that, of those citing social media as being used the most for news, 45% cited YouTube as one of their top 3 platforms for news.²³² The Inquiry focus groups found that short video clips were preferred over more time-consuming alternatives like reading lengthy articles, and YouTube was seen as a primary source for news, based on its recommendations and the ability to watch.²³³

175. Whilst YouTube is not classified as a search engine, some see it as the world's second largest search engine, and not without merit, as a substantial share of search sessions are informational rather than entertainment.²³⁴ For the younger generation that prefers video, [90-100%] use YouTube to gather information and knowledge, and for news specifically, they seek to feel informed, understand the world and stay up to date. Given concerns over misinformation, YouTube is seen as the most credible platform to go to for news.²³⁵

176. YouTube estimates that [5-10%] of the impression CTRs on YouTube Homepage relate to channels identified as containing news content, accounting for [0-5%] of total watch time.²³⁶ The share of impression CTRs, or share of videos watched, is more informative of the value of news than watch time, as the latter is influenced by video length.

228 <https://www.reuters.com/technology/artificial-intelligence/meta-platforms-use-reuters-news-content-ai-chat-bot-2024-10-25/>

229 <https://www.youtube.com/howyoutubeworks/product-features/news-information/#top-news>

230 Channel quality is assessed by reviewers using the EEAT criteria, namely experience, expertise, authoritativeness and trustworthiness. YouTube RFI 1

231 Reuters Institute Digital News Report 2024, pgs 12-14

232 Inquiry Survey report slide 14

233 Inquiry focus groups report

234 [X]. <https://searchengineland.com/youtube-ranking-factors-getting-ranked-second-largest-search-engine-225533>

235 [X]

236 Google YouTube RFI 1

4.2.4. X and TikTok

177. X describes itself as, “a real time, global, open, public conversation platform where people can see every side of a topic, discover news, share their perspectives, and engage in discussion and debate.”²³⁷ News has always been a central part of the value proposition of Twitter, used to break news, with the media and journalists contributing to original and engaging content.²³⁸ However, since being taken private and renamed X, considerable cost-cutting of content moderation staff, and the absolutist free speech perspectives of its new owner, it has seen concerns grow over misinformation on the platform - which has seen a decline in people using it for news globally.

178. In SA, the Inquiry survey found that of the 77% of users using social media as their main platform for news, X came in 5th amongst the top platforms used, with 30% citing it

as amongst the top 3 platforms used for news.²³⁹ The Reuters survey found that 19% of respondents used X for news in SA, down from 28% when it was Twitter in 2021.²⁴⁰

179. In contrast, TikTok has been on the rise as a source of news amongst social media platforms. This is a product of its huge popularity, and the shift to news consumption on short-form video. The Inquiry survey now places TikTok 2nd to Facebook at 47% of social media users, alongside YouTube and WhatsApp, whilst Reuters finds that 28% of respondents use TikTok for news in SA. Due to the growing interest in news content on TikTok, news media are putting more of their content on TikTok, whereas previously they would have focused on Facebook and X. Whilst TikTok started as a purely entertainment platform, as it grows and matures, so the content loaded onto the platform has evolved. This is not unlike YouTube.

4.3. Imbalance of bargaining power

180. The social media platforms are immensely powerful in the ‘attention economy’ given their tens of millions of DAU, and the considerable time spent by these DAUs daily on the platforms, ranging from 30-90 minutes per DAU across the different platforms.²⁴¹ They do so without generating content of their own, but rather harnessing user-generated content. As consumers seek to access news through these aggregator platforms, because it is easy and convenient, the social media platforms have enormous power to direct traffic, based on their algorithms. In contrast, the bargaining power of news media is limited, in part because one

media source is largely interchangeable with another when reporting on national events, which means the threat of withdrawing just means the void is filled by a competitor. This is exploited to ensure access to content for free, and the continued ability to make unilateral decisions on content recommender algorithms.

181. Meta is the largest user platform for news, and has deliberately deprecated news content on its platform since 2021 but started to choke organic reach from 2018, forcing news media to promote posts for reach. Meta, along with X, has also deprecated

237 X RFI 1

238 Twitter SEC 10-K filing 2021.

239 Inquiry Survey report slide 14

240 Reuters Digital News Report 2021 and 2024

241 For instance, YouTube has [X] DAU spending [X] per day, or 13.2m hours a day of attention (YouTube RFI 1). X has [X] DAU spending on average [X] per day, or 700,000 hours per day of attention (X RFI 1).

posts with links, which cuts referral traffic. With YouTube the issues are different, insofar as content must be viewed on their platform, thus enabling them to offer poor monetisation of that content without losing news media videos. This harms broadcasters, including the public broadcaster, given that it is a video platform. TikTok is still growing and still trying to monetise its own platform, but there is no evidence currently that it deliberately deprecates news content or hinders monetisation. All these large social media platforms share very limited user data with the news media, undermining insights that would permit more targeted advertising, and benefit from discounted data bundles that incentivise more use of social media for content, including news content.

4.3.1. Meta

182. In January 2018 Mark Zuckerberg announced a major change in the algorithm at Facebook. Citing that, *"feedback from our community that public content -- posts from businesses, brands and media -- is crowding out the personal moments that lead us to connect more with each other,"* the shift was to less public content and more from friends, family and groups.²⁴² The previous year, Facebook had seen a decline in user engagement on the platform, a key indicator of the health of the platform,²⁴³ had indicated that it had been running out of space to put ads in the News Feed, and had been warning of a slowdown in revenue growth as a result.²⁴⁴ The algorithm change was aimed at fixing these problems.

183. The effect of this change was to substantially reduce the organic reach of 'business, brands and media' on Facebook, with estimates of a drop by 35% organic reach on average,²⁴⁵ and a 50% decrease in engagement for the top 500 brands on Facebook.²⁴⁶ Average organic reach per fan was estimated to drop from 2-6% in 2016 to 1.2% in 2018, meaning for every 1000 fans only 12 would see the post. The decline in organic reach compelled businesses to pay to promote their posts, to improve reach, with marketers advising that businesses needed to 'embrace Facebook as a paid channel.'²⁴⁷ The rise in paid content to replace organic was reflected in the earnings of Facebook, which more than doubled, from \$40.7bn in 2017 to \$86bn in 2020, along with net income.²⁴⁸ Compelling more businesses to pay on Facebook is also likely to redirect ad sales from other sources, including those of news publishers. However, as set out above, this change did not necessarily target a reduction in news content, because it created engagement for Facebook users.

184. The 2018 algorithm change was found to reward outrage, with more clicks on negative comments.²⁴⁹ In 2021, following the US election where Meta was accused of spreading misinformation, Meta reduced political content by placing less emphasis on shares and comments on political content – a fix for the outrage problem. Early 2021 was also when the first law to have Google and Meta compensate news publishers was passed in Australia. After eventually agreeing to compensate news companies in Australia, Meta has adopted a strategy to prevent

242 https://web.facebook.com/zuck/posts/10104413015393571?_rdc=1&_rdr

243 <https://edition.cnn.com/2021/10/27/tech/facebook-papers-meaningful-social-interaction-news-feed-math/index.html>

244 <https://www.vox.com/2017/7/25/16021034/facebook-mark-zuckerberg-earnings-q2-2017-preview>

245 <https://www.marketingscoop.com/marketing/the-decline-of-facebook-organic-reach-what-marketers-need-to-know-in-2024/>

246 <https://advidi.com/blog/facebook-policy-updates-what-happened-in-2018/>

247 <https://www.marketingscoop.com/marketing/the-decline-of-facebook-organic-reach-what-marketers-need-to-know-in-2024/>

248 Facebook SEC 10-K 2020 filing. <https://investor.fb.com/financials/default.aspx>

249 <https://www.dailymail.co.uk/sciencetech/article-9997467/Facebook-quietly-changed-algorithm-2018-prioritise-re-shared-material.html>

further contagion by shutting down news entirely in Canada after it passed a similar law, but also reducing news content generally in reaction to the 'pay for news' sentiment. It is not that news has little value to users on the platform, it is that Meta is not willing to share in that value. Given that users are dependent on Meta for the social network, with the barrier to switching extremely large - as it requires moving all your friends and family with you, Meta is in a strong position to retain users even whilst reducing news. However, the move has substantially harmed overall and Facebook-specific engagement with the news media by Canadians, in particular small local community media, albeit that politically orientated groups continue to share news on Meta platforms.²⁵⁰ Following the most recent US election, it seems Meta may reverse this trend, and allow for posts on politics to be in the user news feed.²⁵¹

185. Since 2021 there have been substantial shifts in organic content that users see in their news feed on Meta, effectively eliminating posts from followed pages and those with links to external content. This can be tracked using the Widely Viewed Content Report that reports on content viewed by US users, which Meta has put out quarterly since Q2 2021.²⁵²

185.1. In Q2 2021, 14.3% of posts in the news feed came from pages followed by users, and posts with links constituted 12.9% of posts in total, with 6.6% of the 12.9% being posts with links from followed pages. As for the rest of the posts, 57% were from friends and people followed, and 19.3% from groups joined, or

76.3% from 'connected people' that Facebook sought to place emphasis on in the 2018 algorithm change. Only 8% of posts were unconnected, i.e. content from sources they are not connected to, but recommended by Facebook based on interests.

185.2. By Q2 2024, 0.0% of posts in the news feed came from pages followed by users, and posts with links had reduced to only 3.3%, with none coming from pages followed. There was also a large reduction in posts from 'connected people' to 59.3%, with 43.9% from friends and people followed (original and reshares), and 15.4% from groups. Unconnected content is what grew, constituting 29.6% along with 11.2% for other content, including Events. Meta argues that the rise of unconnected posts is a response to competition from TikTok.

186. The effect of these changes is to substantially reduce organic reach and referral traffic to news publishers (amongst other followed pages). This is because news publishers seek to build a follower base on Facebook and then rely on reaching a cohort of followers to drive organic reach for posts with links, to in turn drive referrals to their website - which is the way in which news media can monetise those audiences and derive any value from the relationship. For instance:

186.1. The Limpopo Mirror saw its Facebook organic reach drop from [15-20]% in 2023 to [0-5%] in 2024.²⁵³ Caxton reported a reach into their followers

250 Media Ecosystem Observatory, Canada. Old News, New Reality: A year of Meta's News Ban in Canada at <https://static1.squarespace.com/static/6450265301129e5dbabfe8a2/t/66c36dba3066f124adb4000c/1724083643261/Meta+News+Ban+Report-08-19.pdf> and When Journalism is turned off: Preliminary findings on the effects of Meta's news ban in Canada at https://static1.squarespace.com/static/6450265301129e5dbabfe8a2/t/6622c8a408f39611294ebdb2/1713555621401/Whenjournalism+is+turned+off_Preliminary+Report.pdf

251 <https://edition.cnn.com/2025/01/07/media/mark-zuckerberg-meta-fact-checking-analysis/index.html>

252 <https://transparency.meta.com/en-gb/data/widely-viewed-content-report/>

253 Limpopo Mirror in-camera presentation

of [5-10%].²⁵⁴ Daily Maverick saw a [30-40%] decline in its reach, and a [70-80%] decline in link clicks from 2023 to 2024.²⁵⁵ Arena identified that referral traffic has declined by [40-50%] from 2018 to 2023, across titles like TimeLive, Business Live, Business Day, Financial Mail, Sowetan Live, Herald Live and Dispatch Live.²⁵⁶ Netwerk24 saw a [5-10%] reduction in referral traffic, while Network24 recorded a [50-60%] decrease in referral traffic between 2021 and 2024.²⁵⁷

186.2. According to Similarweb, overall social media referrals to the news and media sites has plunged by roughly a third, from c.27.5m in the year to September 2022, down to c.18.5m for the year to September 2024. As Facebook is the most substantial source of social media traffic to news sites and other social media, bar X, was growing referrals, this huge drop can be ascribed to Facebook.

186.3. The International Fund for Public Interest Media (IFPIM) estimates that, globally, social media referrals are down 50-80%.²⁵⁸

187. The push for Meta to pay for news would seem to have resulted in unintended consequences, in large part because of the choice of instrument and the choice of strategic response adopted by Meta. As a result of these algorithm changes, SA news media organisations are in the bizarre situation of paying for promoted posts, much like brands, to improve reach and engagement.²⁵⁹ The public broadcaster is not permitted to pay to boost its content, and so it falls behind on how it ranks online.

188. However, the strategy adopted by Meta has negative consequences for digital advertising competition, consumer choice, and constitutional rights. This is because the impact of the algorithm changes on the news media are materially different to that of brands and businesses that Meta pursues for commercial gains.

188.1. Facebook actively courted the news media to build its platform, with the 'bargain' being that it would provide referral traffic as the benefit to news media. Facebook has now substantially reduced the referral traffic, backing away from its side of the bargain. This represents an unfair bargaining outcome.

188.2. The news media also competes with social media for digital advertising inventory, whereas businesses and brands are advertisers. The reduction in organic reach and referral traffic, to displace it with more ad inventory of its own, distorts competition in digital advertising.

188.3. Consumers in SA choose to use Meta platforms for news, and to follow news media on those platforms. Meta has unilaterally and adversely restricted choices for consumers by deprecating news and reducing organic followed posts in the News Feed of users in SA. It has done so purely to profit more from those users, an uncompetitive outcome that does restrict consumer choice.

188.4. The news media performs an important public interest mandate, and promotes constitutional rights. It is particularly important on social media platforms, in countering

254 Caxton in-camera hearing

255 Daily Maverick RFI 4

256 Arena Holdings RFI1

257 Media24 RFI2

258 IFPIM public hearing

259 For instance, NCRF public hearing and RFI 2 media submissions.

misinformation. Facebook's strategy has far more substantial harm, given the negative implications for constitutional rights.

189. Aside from traffic referral, Meta offers limited options for the news publishers to monetise on the Facebook platform itself. By degrading posts with links, Facebook eliminates a more lucrative option for monetisation of traffic on its platform, which in turn provides it with greater bargaining power to limit monetisation or monetisation shares on its platform. News publishers can put branded content in a post and charge the brand, keeping all the revenue for themselves, as Facebook is unable to monitor those transactions. Instant articles, discontinued in April 2023, allowed the news media to sell ads on their content, and retain the revenue or sell unsold inventory on Facebook Audience Network, where Facebook would take a share.

190. The only other revenue share arrangements are for video content, which must be consumed on the platform. Facebook's in-stream video ad monetisation programme limits the eligibility of businesses to be part of the programme. While the larger news publishers submit that they are aware of Meta's in-stream ads,²⁶⁰ smaller publishers are not aware of these offerings,²⁶¹ and they do not participate in it due to, a) a lack of resources and expertise to manage a monetising social media account, b) they do not meet the eligibility criteria and Meta provides insufficient video views to do so, c) low levels of revenue share relative to the cost of producing content, and, d) the non-negotiable terms for revenue share - and a lack of transparency on qualifying earnings. Meta sets the revenue share at

55%, in line with YouTube. However, as discussed next, YouTube's 55% share is not set in a competitive market, and is lower than shares for fan funding, which is set in a more competitive market. This limits what the news media can monetise from video content, which is most relevant to broadcasters, but increasingly the print media too.

4.3.2. YouTube

191. YouTube captures a substantial share of news video traffic. First, as set out in the search section, Google directs the majority of video traffic, including news, to YouTube. In SA, YouTube gets 20% of its traffic from organic search, or roughly 1m videos per day across all content categories, according to Similarweb data. Second, YouTube is itself a dominant video-sharing platform with a substantial news vertical, attracting enormous volumes of direct traffic from SA users, including for news. Third, many news sites use a YouTube player for their videos on their own websites, and YouTube earns revenues on ads surfaced in the YouTube player.²⁶²

192. YouTube operates on a revenue share basis for those creators that are eligible for the YouTube Partner Programme (YPP).²⁶³

192.1. Eligibility for fan funding (membership, super chat and thanks) requires at least 500 subscribers, 3 public uploads, and 3000 watch hours (or 3m short views). The revenue share is 70% for the content creator, net of taxes, refunds/chargebacks and iOS fees.

192.2. Eligibility for ad revenue share requires at least 1000 subscribers, and 4000 watch hours in the past 12

260 Arena Holdings WS2 page 8. Caxton WS2 page 16. Media 24 WS2 page 20. MoneyWeb WS2 page 6 and 7.

261 Maroela Media WS2 page 4. Mpumalanga Mirror WS2 page 1. ITWeb WS2 page 3. Jacaranda FM WS2 page 5. Radio Riverside WS1 page 5. Vukani Community Radio WS1 page 9.

262 YouTube RFI 1

263 YouTube RFI 1

months. Ad revenue share is 55% of net revenue for the content creator, from watch page ads displayed on their video on the watch page.

- 192.3. For shorts views, the revenue share is 45%, based on the share of views from the creator pool allocation. Ads are placed in the shorts feed, and the interstitial revenue from those ads goes into the creator pool, as they cannot be attributed to a single short.
- 192.4. Partners are also permitted, to undertake direct sales for their own in-video advertising, to which they retain 100%.
- 192.5. For YouTube premium, where users pay a monthly subscription for a service with no advertising, YouTube will pay YPP partners a share of subscription revenues based on their share of content watched. However, YouTube premium is not a major feature in SA and Africa, given the lower income levels.²⁶⁴
193. The eligibility criteria do exclude many news organisations that do not focus predominantly on video content, leaving them unable to benefit from the occasional viral video they post on YouTube. YouTube determines the revenue share, and which ad revenue is shared. The basis for doing so is not subject to negotiation, but rather a unilateral decision influenced by YouTube's market position, and the extent to which content creators have alternatives. For instance:
- 193.1. YouTube has increasingly placed interstitial ads on its homepage and search page for long-form content, and yet it does not share this interstitial ad revenue - unlike for

shorts, a product that was responding to the success of TikTok - a strong alternative for short-form video content. YouTube only launched the interstitial creators fund in 2023, albeit it had a temporary fund in place from 2021 to reward shorts.

- 193.2. For fan funding, which has most application in gaming, there was a greater need to be competitive to be accepted in the market by offering a 70% revenue share of fan funding to match Twitch, the largest video game live-streaming site.²⁶⁵ This is despite the higher transaction costs associated with micropayments.²⁶⁶ Whilst content creators need to create engagement to derive fan-funding revenue, for news publishers, using long-form video has the cost of reporting, which in turn creates engagement on the YouTube platform.²⁶⁷ In contrast to fan funding, for long-form video ads, which launched in December 2007 when it was already larger than its three nearest rivals, YouTube's market position to drive volumes of traffic is unmatched, leaving content creators with little alternative, especially so today. This enables YouTube to be the market maker, and set more profitable percentage shares at 55% for the content creator. Overall, YouTube is making healthy profits, with content acquisition costs of [50-60%] and an operating profit of [10-15%].²⁶⁸
- 193.3. Whilst YouTube does permit direct sales of in-video ads in which it

264 Google YouTube RFI 1. It was reported that in 2023 there were [X] premium subscribers in the whole of SSA.

265 [X].

266 [X].

267 [X].

268 YouTube RFI 3. YouTube RFI 2 Annex 25.5 slide 7 shows that cost for YouTube is at a [X] revenue split in favour of creators.

does not share, it also offers directly competing advertising products which can target specific channels, or even videos, at a lower cost.²⁶⁹ As such, direct sales do not seem to be a real feature of the monetisation strategies of the news media and broadcasters.

194. For news publishers which are on the 55% net revenue share, YouTube offers insubstantial revenues relative to the views on the platform.²⁷⁰ In fact, the earnings are so miniscule that one broadcaster indicated that it did not even bother using the monetisation features.²⁷¹ Lack of monetisation is the top priority annually from the news industry engagements with YouTube globally,²⁷² but adjustments are never made because YouTube does not have to, given the lack of alternatives for news publishers. Videos on their own websites will not surface frequently on Google search, and so they follow the advice provided by marketers, namely to place the videos on YouTube if you want discovery on search. In another context, namely Play Store commission fees, Google reduced its fee in recognition of high content costs for streaming services, but this was where it faced litigation from large companies. News broadcasters similarly have high content costs, yet their market position is different.

195. Another reason why the monetisation is not meaningful is the low ad rates on YouTube.²⁷³ YouTube has lower costs because it does not bear the costs of content creation, and so is content with low ad rates. As the platform that shares in all ad revenue generated from videos, YouTube has every incentive to

offer as much inventory as possible, driving down ad rates. However, this strategy is not optimal for the individual content creators, who only share in a small proportion of total views on YouTube and bear the full cost of content creation - which is large for news broadcasters. For instance, on their own websites the news publishers and broadcasters seek to maximise ad revenues by optimally managing rate card levels and inventory.

196. Broadcasters have also raised concerns over the lack of transparency around the payments received from YouTube. In particular, YouTube provides them with a monthly payment but does not provide sufficient underlying information, to determine whether that payment fairly reflects the viewership and ad revenues generated on their content on YouTube.²⁷⁴ This mirrors to some extent the calls for greater transparency on Adtech more generally - to ensure that revenue received does indeed match what advertisers or their agencies have paid - but also more granular details on viewership, CPMs and revenues earned on individual videos.

4.3.3. Other social media

197. X Corp has made a number of changes to its algorithms since being bought and renamed, a number of which have resulted in a substantial reduction in traffic from X to news websites. X Corp first removed headlines from links 'for aesthetic reasons,' albeit this decision was later reversed.²⁷⁵ More directly challenging has been the deliberate move to keep users on its own platform by reducing

269 <https://support.google.com/youtube/answer/2454017?hl=en>

270 SABC and Arena public hearings

271 [3<]

272 YouTube RFI 2 Annex 2.2(1) & (2)

273 Primedia public hearing

274 Arena public hearing. Arena raised the example of receiving 11m views on the Oscar Pistorius trial yet only receiving R54,000.

275 X Corp RFI 3

the exposure of posts with links.²⁷⁶ This was to enable X more opportunities to monetise, rather than allow the websites to compete with X.

198. X does offer opportunities to monetise, including the Amplify programme that shares pre-roll ads on videos, and the ad share programme for X premium accounts, which shares ad revenues from verified users replying to content posted by the account holder. However, Amplify is not available in SA, and the ad share program paid out small amounts monthly in SA across all content creators.²⁷⁷ As with other social media, the low ad rates and limited sharing options make it far more attractive to divert users to your own website rather than monetise on X, and that is what the algorithm now seeks to prevent.

199. For TikTok, its success is more recent and it is still building its ad revenues on its own inventory. As TikTok has started with short-form content, it shows interstitial ads in the feed, and not pre-roll ads in the individual videos. TikTok does not share interstitial ad revenue. However, it has introduced Pulse Premiere, to enable advertisers to link ads directly to high quality content, and to share that ad revenue with the content providers if shown immediately before or after their video.²⁷⁸ TikTok determines who joins the programme, and it is not open to just any content creator. TikTok offers users the ability to give content creators video and live gifts, which are also shared. TikTok also offers users the ability to give content creators Tips, which is facilitated by a third-party service provider, and no fees are charged to creators or users by TikTok. However, this feature is not available in South Africa.²⁷⁹ TikTok does not allow external links on any of its video

content. However, there is no evidence that TikTok has sought to deliberately deprecate news content on its platform to date.

4.3.4. User profile data

200. Just like search engines, social media builds user profiles based on their user information, stated interests and revealed preferences from content engagement, including search and follower activity. One use for that data is to design and improve their products and services, including personalisation of the feed to enhance engagement. The other use for the data is to sell advertising. Unlike search, social media ads are driven by personal information, giving social media the advantage of enhanced targeted advertising.

201. Data gathered on the consumer engagement with news media content, both hard news but also the wider variety of sports, entertainment and lifestyle content, does provide benefits to social media, both in personalisation to enhance general engagement, but also in building a profile to drive ad sales. However, very little of this data on the social media users engaging with news media content is shared, which has less to do with POPIA restrictions and more to do with the inequity in bargaining position, and a desire by social media to maintain its advantage in digital advertising. Were the relationship more equitable, the news media would be in a stronger position to require more insights on those users that engage their content on the platform, and thereby compete more vigorously for digital advertising on their websites and apps, with more targeted user information. This observation applies to YouTube, Meta, TikTok and X equally.

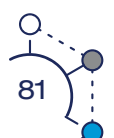
276 https://www.theguardian.com/technology/2023/oct/05/x-twitter-strips-headlines-new-links-why-elon-musk?trk=public_post_comment-text

277 X Corp RFI 2

278 TikTok RFI 1

279 TikTok RFI 2

<https://www.tiktok.com/legal/page/global/tip-terms/en>



4.3.5. Zero-rating and discounted data bundles

202. Social media use has benefited from having their traffic zero-rated on mobile networks, or being the beneficiary of discounted data bundles for use on social media, including WhatsApp. The size and bargaining power of social media has enabled them to negotiate such deals with the mobile network operators (MNOs), where the cost is borne by the MNO, based on the apparent MNO benefits of driving consumer switching, and more consumer traffic volumes.

203. The forerunner for such arrangements was Facebook, with a strategy in developing countries to promote Facebook use through both Basic Mode and Facebook Free Basics being offered by MNOs.

203.1. Facebook Basic Mode allows users that run out of data to have 10-20MB per day to use a text-based version of Facebook as a temporary measure, and once the user purchases more data they move back to full Facebook.²⁸⁰ In the year of launch, Basic Mode peaked at [10-15%] of MAU. Of the Facebook MAU in SA in 2023, [70-80%] make use of Basic Mode on a monthly basis, and the average time spent per DAU on Basic Mode is [60-70%] of the average time spent per DAU of Facebook.²⁸¹

203.2. Facebook Free Basics is an app that is an open platform offering basic services such as health and education content, and Facebook Messenger. Apparently, Free Basics is open to any developer making a submission, as long as the site is not data-rich, through the inclusion of video or

large photos. News24 is present on Free Basics in SA. Free Basics is far less popular than Basic Mode, with only [0-5%] of Facebook MAU using Free Basics.

204. All MNOs offer discounted social media data bundles, where users can purchase a bundle of data to be used on social media only, and some additional data for non-social media use. WhatsApp bundles are most prominent, but offers extend to all other main social media platforms. By reducing the relative price of social media, these discounted bundles incentivise consumers to make greater use of social media platforms to access information, relative to direct channels to news sites. This observation applies to YouTube, Meta, TikTok and X equally.

4.3.6. Tax savings

205. Social media companies, just like search engines, also use their global presence to contract for South African advertising revenue from Ireland, or Singapore in the case of TikTok). Meta earned [R8-R9bn] in advertising revenues in SA in 2022.²⁸² Globally, Meta made a 47.3% operating margin on the Family of Apps business in 2023.²⁸³ This translates to an operating profit on the Meta SA business of [R3.8-4.3bn]. If tax on these profits was paid in SA, this would have constituted tax revenues of [R1.1-R1.2bn] in 2023, and even just the tax difference to that paid in Ireland, i.e. the tax savings for Meta from its current tax arrangements, would be [R490-R550m]. A 5% tariff on Meta's revenues would equate to [R400-R450m], or a little below the tax savings made by Meta.

280 Facebook in-camera presentation

281 Facebook RFI 4

282 Meta RFI 1

283 Meta 10k 2023, pg 125 at <https://investor.fb.com/financials/sec-filings-details/default.aspx?FilingId=17229405>

4.4. Competition on social media

206. Social media's business model is to offer a personalised feed, responsive to the stated and revealed preferences of each individual user. Whilst this may avoid some of the search biases, such as for foreign news over local, it is vulnerable to other biases, such as creating echo chambers. Similarly, the imperative of social media to generate engagement also makes it vulnerable to sensationalist and misleading content. The extent of vulnerability depends on the algorithm design and controls put in place, which tend to differ between social media platforms. In addition, it impacts on content competition on the platform, including the ability of news media to compete with each other, in echo chambers and with misinformation.

207. Meta has a history of algorithmic bias to sensationalist content and outrage, to promote engagement, alongside deprecating credible news content. In contrast, YouTube has sought to position itself as a destination for credible news. Harmful content and misinformation are a problem for all social media platforms, as users post content to their platforms. Policies relating to misinformation do differ amongst social media platforms, with TikTok adopting a policy of making it ineligible for the For You feed, and not amplifying and preventing its eligibility for promoted posts. X has shifted to a more lenient approach, with labelling and abandoning fact-checkers in favour of community enforcement. Meta has started to move in the same direction. Misinformation not only competes with credible news content, but also imposes a cost on the news industry, as they counter false narratives. The Inquiry to date has found no evidence of a bias against community or vernacular media, or SA media in favour of foreign media more generally.

4.4.1. Algorithm

208. All social media platforms have a main feed, a follower feed, and a search function with feed results. There are algorithms for each which need to determine, first, what content to fetch out of millions of posts, and second, the ranking of that content in the feed. In doing so, the algorithms will consider millions of signals and weight them, often deploying machine learning to refine this over time. In general, the primary parameters seek to identify content with the greatest likelihood of *engagement*. This tends to have a personal and community dimension.²⁸⁴

208.1. The first stage is typically determining the likelihood of engagement, based on the user-stated preferences (i.e. stated interests and filters selected), and their revealed preferences through engagement with content historically. Those engagement signals assess the likelihood of engagement (clicking, viewing, commenting, liking, sharing, emojis) based on past engagement such as clicks on similar category posts, cumulative time viewing, post features, past searches, posts shared, scrolled past, how users engage photos and videos, likes, dislikes, etc. For platforms based on a social graph (i.e. Meta and X), consideration will be given to the strength of connection, mutual friends, and the network of accounts they follow. User information on device and account settings, language, country, and device time zone will also be relevant to the selection.

284 Meta RFI 1, X Corp RFI 1, YouTube RFI 1 and TikTok RFI 1

- 208.2. Social media platforms will then also consider community factors, in refining the likelihood of engagement, including signals based on popularity or trending, content engagement by people with similar interests, freshness, and strength of connection.
- 208.3. Platforms will also apply certain heuristics to the selection and ranking, to ensure a diversity of content of interest, such as not too many posts from the same person or topic.
- 208.4. Meta and X, which use a social graph, will include a share of posts from in-network and out-of-network sources, but these are still based on the likelihood of engagement. How much is in or out of network will be determined by the platform algorithm.²⁸⁵ Platforms may also include a little bit of content unrelated to interests, to allow for content discovery.
- 208.5. For the Follower feed, the selection will be limited to posts from accounts followed, but the same signals on likelihood of engagement will then be applied to that subset of content. Similarly, for the search feed, the relevance of the content to the search query will determine the subset of content to which the likelihood of engagement is then applied.
- 208.6. YouTube indicates that the exceptions to personalisation, aside from user location, are their news verticals, namely breaking news, top news,

news watch page, and youtube.com/news.

209. Social media platforms indicate that the algorithm treats all content the same, including the news media content. News media content must therefore compete for its selection and position on the feed.

4.4.2. Echo chambers and the promotion of sensationalism, misinformation and outrage

210. The singular focus of social media algorithms on engagement levels, to determine the selection and ranking of content in the feed, quite obviously brings with it the risk of the algorithm creating echo chambers, and promoting sensational, false and provocative content that generates stronger emotions and engagement. This is also the finding of many academic studies and observed outcomes on social media platforms, cited in numerous submissions.

- 210.1. Echo chambers can develop if a user is exposed to content that they are most likely to engage with. For instance, if a user follows and only engages with right-wing news pages, whilst disliking or scrolling past left-wing news pages, then the algorithm will learn and feed the person more right-wing content. Moreover, the recommender system will actively drive this, as it will find content that the user is unaware of which fits that profile.²⁸⁶ Some studies have found that this may even drive the political views of users more to the

285 For instance, when Facebook reduced public content, it adjusted the algorithm to do so.

286 Brown et al (2022) Echo chambers, rabbit holes, and ideological bias: How YouTube recommends content to real users. The paper used a carefully constructed experiment to separate user behaviour from platform recommendations, finding that the YouTube algorithm pushed people into mild ideological echo chambers, reinforced over time, but not into extremist rabbit holes. Available at <https://www.brookings.edu/articles/echo-chambers-rabbit-holes-and-ideological-bias-how-youtube-recommends-content-to-real-users/>

right (or left).²⁸⁷ Even on TikTok, it is not uncommon for users to express that they are on a particular TikTok linked to specific types of content (e.g. K-pop TikTok). The Inquiry focus group participants recognised that the personalisation can create echo chambers, unless they actively look for alternative sources, expressing concern that this can result in polarisation.²⁸⁸

210.2. It similarly follows that sensationalist and false content may get more engagement, like clicks and shares, because of the nature of the content, including its novelty value. The Inquiry focus group participants indicated that sensationalism in headlines grab users' attention, and baits them into engaging with the story, driving click-throughs if compelling.²⁸⁹ A 2018 MIT study found that false news travel faster and further over social media, relative to credible news.²⁹⁰

210.3. The 2018 Facebook algorithm change has become a case study in how social media algorithms can reward outrage and drive provocative, negative content, including misinformation. To improve engagement on the platform, the 2018 algorithm change sought to reward posts with more comments and emojis relative to likes. However,

negative and polarising posts result in stronger engagement of this type, promoting that type of content and resulting in the press and political parties pivoting to posting more of that type of content.²⁹¹ This culminated in Facebook being accused of spreading misinformation during the 2020 US election, and ultimately making changes to reduce the spread of comments on political content in 2021.

210.4. Already in 2017, Facebook was associated with the spread of hate speech in Myanmar, leading up to when genocidal acts took place, highlighting the use of social media to share with like-minded people inflammatory content through groups and connections.²⁹²

210.5. SA had its taste of social media campaigns to promote division, with Bell Pottinger using a range of fake Twitter accounts to attack critics of the Guptas in 2016.²⁹³ More recently, X was used to harass journalist Karen Maughan, including threats of violence. This is not unusual, and women journalists in particular are often the target of online abuse, silencing their voices as journalists.²⁹⁴

211. Whilst the news media content does create engagement on social media, the Press Code

287 Ribeiro et al (2020) Auditing radicalization pathways on YouTube. The paper found that people who initially consumed Alt-lite and Intellectual Dark Web progressed to Alt-right videos. Also that Alt-right content is not easy to find for first time users and tended to be only reachable through channel recommendations. The authors estimate that about 60,000 people or 26% who commented on alt-lite or intellectual dark web content got exposed to alt-right videos over a period of about 18 months. Available at <https://dl.acm.org/doi/abs/10.1145/3351095.3372879?download=true>

288 Inquiry Focus Group report topic 7

289 Inquiry Focus Group report topic 3

290 Dizikes (2018) Study: On Twitter, false news travels faster than true stories. MIT News. The study found that on Twitter "falsehood diffuses significantly farther, faster, deeper and more broadly than the truth, in all categories of information, and in many cases by an order of magnitude". Available at <https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>

291 <https://www.dailymail.co.uk/sciencetech/article-9997467/Facebook-quietly-changed-algorithm-2018-prioritise-re-shared-material.html>

292 <https://edition.cnn.com/2018/04/06/asia/myanmar-facebook-social-media-genocide-intl/index.html>

293 <https://mg.co.za/article/2017-06-01-guptaleaks-uk-firm-pushed-white-monopoly-capital-agenda-to-save-zumas-reputation/>

294 Media24 and SANEF public hearing

requirements to confirm facts with multiple sources prior to publication, and not engage in sensationalist or false reporting, places the credible news media at a competitive disadvantage in securing more prominence in the social media feed. As the MIT study found, falsehoods and rumours travel further and faster, relative to the truth. The result is not only an adverse effect on competition, but also substantial damage to constitutional rights, as misinformation and polarising content undermine democratic institutions. Social media has also become a tool to spread misinformation and hateful content about the press itself, further undermining constitutional rights as the press is hindered in doing its work, and trust in the press is eroded.²⁹⁵ However, it need not necessarily be this way, as is evident from YouTube, which seeks to promote authoritative news content above engagement metrics in its news verticals. News content also counters the polarising effect of echo chambers, as it promotes a plurality of voices which deepens our understanding of each other, particularly important in a complex society such as SA.²⁹⁶

212. Misinformation on social media is particularly harmful to children, who lack the digital literacy skills to navigate a world of sensationalist and misleading content. This in turn undermines children's rights, as set out in the Constitution but also in the POPI Act. If children are to navigate without violations of their rights, then they do need digital literacy training. Moreover, the deprecation of credible news on social media platforms exacerbates the problem, as there is no easy access to the correct information even if children are more digitally literate. As some harmful content is only blocked once

reported, even children with digital literacy may be harmed.²⁹⁷

4.4.3. Addressing misinformation

213. Early on in the development of the Internet, the US passed the Communications Decency Act (1996), where section 230 protected online platforms from liability for content created by users.²⁹⁸ Similar laws were introduced globally, with South Africa passing the Electronic Communications and Transactions Act of 2002 (ECTA), with chapter XI dealing with the limitation of liability of service providers.²⁹⁹ That chapter removes liability for the mere transmission of information without modification (section 73), and imposes no obligation to monitor (section 78), albeit there is an obligation to take down content that infringes rights or is unlawful (section 77). However, the sheer volume of content posted every second on social media makes the take-down provision largely unworkable as a solution to misinformation, and relies on user enforcement. Whilst the ECTA is not necessarily suited to online content moderation, the White Paper on Audio and Audiovisual Media Services and Online Content Safety does nothing to address this either, and nor does ICASA have powers to regulate online content.³⁰⁰ The Press Code chapter 2 on user-generated content (UGC) and activities takes its lead from the ECTA on liability and take-down provisions, albeit requiring the media to have a UGC policy consistent with the constitution governing moderation and removal of content, can remove content in contravention, and should discourage posting of prohibited content.³⁰¹

295 Media 24 public hearing

296 IFPIM public hearing

297 Media Monitoring Africa public hearing

298 See the recent Congressional Research Service report of the history and case law on section 230 at <https://crsreports.congress.gov/product/pdf/R/R46751>

299 https://www.gov.za/sites/default/files/gcis_document/201409/a25-02.pdf

300 SOS public hearing. See https://www.gov.za/sites/default/files/gcis_document/202307/49052gen1934.pdf

301 https://presscouncil.org.za/wp-content/uploads/2024/08/Press-Code_Eng.pdf

214. The social media platforms have all pursued a similar approach to managing user-generated content posted on their platforms, albeit with differences in details and application.³⁰²

214.1. All platforms have Community Guidelines or Standards which set out what content is prohibited on the platform.³⁰³ This is generally various categories of harmful content. For instance, Meta prohibits hate speech, suicide and self-injury, child exploitation, violent and objectionable content, adult sexual exploitation, bullying and harassment, and privacy violations. For some categories, there are nuanced differences in approach, and platforms may permit labelling of certain content, such as violent or consensual adult content.

214.2. As part of Community Standards, platforms will also typically remove misinformation that can cause physical harm, including medical misinformation or that which undermines democratic processes (e.g. election interference, voter suppression). However, all social media except TikTok permit political advertising, including the paid promotion of political content. TikTok prohibits paid promotion of political content, political advertising, or fundraising by politicians and political parties, including both traditional paid advertisements, or creators receiving compensation to support or oppose a candidate for office. For

platforms that do permit political advertising, generally the Community Guidelines apply in addition to any advertising policies.³⁰⁴

214.3. For misinformation that the platforms do not consider presenting imminent harm, the practice appears to be labelling the content if found to be false, and reducing the spread of that content on the platform. For instance, YouTube will reduce recommendations for borderline content, Meta will reduce its ranking in the feed, and TikTok will make it ineligible for the For You Feed. X Corp only appears to keep harmful content out of its recommender system, not all misinformation.³⁰⁵ However, most platforms will still permit followers of accounts that post misinformation to see such posts.

214.4. For detecting harmful content and misinformation, platforms employ AI tools to review posted content, and human reviewers and fact-checkers to review content referred by the tools and community users. Platforms do employ internal content moderation staff along with external fact-checking organisations. X Corp has pursued a different approach to misinformation which relies on the community to police misinformation by attaching community notes to potentially misleading posts.³⁰⁶ This has the attraction of imposing the cost on the community itself rather than the platform, but concerns have been expressed about its efficacy,

302 YouTube RFI 3, X RFI 3, Meta RFI 3 and TikTok RFI 3

303 For Meta see <https://transparency.meta.com/en-gb/policies/community-standards/>; For X Corp see <https://help.x.com/en/rules-and-policies/x-rules>; for YouTube see <https://www.youtube.com/intl/en/howyoutubeworks/policies/community-guidelines/> and for TikTok see <https://www.tiktok.com/community-guidelines/en/community-principles>

304 See for instance Meta's approach at <https://en-gb.facebook.com/business/help/313752069181919?id=288762101909005>

305 <https://help.x.com/en/rules-and-policies/recommendations>

306 <https://help.x.com/en/using-x/community-notes>

particularly for political posts that may be more divisive.³⁰⁷ Maybe predictably, this has now been followed by Meta for the US market, where the political environment has changed, whilst acknowledging that this will result in users seeing more harmful content.³⁰⁸

214.5. In terms of enforcement, the platforms have generally adopted a warning and strike system that first warns an account for content that violates the Community Guidelines, and if a further violation occurs then proceeds to suspend the account from posting for a period. If the account violates the Community Guidelines numerous times in a set period, then the account will be terminated. The account can be terminated sooner for more egregious violations.

215. Platforms have some incentive to self-regulate insofar as not addressing harmful content may cause some people to leave the platform, some advertisers may do likewise if they consider it unsafe for their brand, and harmful content may invite more stringent regulation by governments. However, at the same time, platforms have an incentive to promote engagement and, as was seen with the Facebook 2018 change, this can benefit from provocative content that may be misleading. Therefore, eliminating misinformation altogether has the potential to reduce engagement and advertising revenue too. The result is light self-regulation, with greater or lesser degrees of tolerance for misinformation, where misinformation is not eliminated as the platforms bear no liability ultimately.

216. A further problem is that the self-regulation is on the terms of the platform, given laws that limit liability, and hence it is for the platform to determine what it considers harmful or not, and the tolerance of misinformation continues. This is inevitably driven by the US-centric ideologies of the corporations and the individuals that lead them, rather than elected officials shaping the laws of different countries. For instance, the SABC complained of its Palestinian coverage being 'shadow banned' on YouTube.³⁰⁹

217. Despite the efforts of some social media to reduce the levels of misinformation on their platforms, users still perceive social media as having a misinformation problem. Internal surveys consistently identify that platform integrity concerns over misleading information and news from untrusted sources are highly prevalent pain points for users, rated with a high degree of severity.³¹⁰ The Inquiry focus groups noted social media as typically containing more fake news.³¹¹ Only 7% of respondents in the Inquiry survey cited that, for social media, they could trust the news on the platform, compared to 24% for search.³¹² Some 35% indicated they did not click through on stories because they did not trust the source.³¹³ The Reuters Institute survey found that South Africa recorded the highest level of concern about fake online news (81%), well above the global average of 59%.³¹⁴ The Inquiry focus group participants expect platforms to implement stricter verification processes and take action against fake news, with some saying that the sharing of fake news should be regulated.³¹⁵

307 <https://www.nytimes.com/2024/07/25/technology/elon-musk-x-community-notes-election.html>

308 <https://www.bbc.com/news/articles/cly74mpy8klo>

309 SABC public hearings

310 [3<]

311 Inquiry Focus Group report topic 8

312 Inquiry Survey Report slides 15 & 17

313 Inquiry Survey Report slide 48

314 Reuters Digital News Report 2024, pg 10. Available at <https://www.digitalnewsreport.org/>

315 Inquiry Focus Group report topic 8

218. The public perception is borne out by evidence of misinformation and harmful content on platforms which they are exposed to. In the public hearings, evidence was submitted around harmful content targeting journalists, particularly female journalists on social media, particularly on X.³¹⁶ Whilst the content may or may not have been amplified by the recommender algorithm, the policy of still making such content available to followers, who themselves may reshare to their own followers, enables the content to spread quickly, in line with the MIT research findings that falsehoods spread rapidly as a result of resharing. Similarly, despite all these policies, it was possible for a deepfake nude of Taylor Swift to go viral across social media before being reviewed,³¹⁷ and for election misinformation from X's owner being viewed more than 2 billion times.³¹⁸ Deepfake content using the logos of SA broadcasters, along with their prominent presenters, were also used to spread misinformation and solicit commercial sales.³¹⁹
219. The question raised in the public hearings was whether enough was being done to prevent the spread of misinformation. Certainly, the platforms face challenges in dealing with the flood of misinformation, exacerbated now by AI. However, they are also highly profitable (or on their way to being so for TikTok), given their digital advertising market share. Profit maximisation does mean that platforms will consider containing the cost of content moderation, with X Corp the more extreme example of firing most of their content moderation employees, and now transferring that cost to the community itself. This threatens to be the direction the platforms may take, with Meta already now following that approach in the US. In contrast, the news media that competes for digital advertising is subject to more stringent standards.
220. In the public hearings, the media made submissions that the spread of mis-and-disinformation imposes a cost on the news media, as they have an obligation to investigate and then dispel the misinformation. This is because followers sent queries through social media, asking whether certain stories were true or not, with the expectation that their trusted news source would inform them either way.³²⁰ This requires resources, and is a negative externality imposed on the media by failures to prevent misinformation. Most social media platforms do contract with fact-checkers but not the media, despite the need for the media to undertake fact-checking of social media stories. They only partner with the media around key political events, such as elections. The spread of misinformation and harmful content against journalists themselves imposes different costs, namely a restriction of their ability to perform the important role of investigating illegal activity, and holding institutions, corporates and individuals to account. This in turn limits constitutional rights.
221. Efforts to prevent the posting and spread of misinformation is an important tactic to reduce misinformation on social media platforms. However, ensuring the presence of credible news sources on the platform is considered an important complementary tactic to address the spread of misinformation, and is an approach that seems to have support amongst South Africans.

316 Media 24 and SANEF public hearings

317 <https://www.cbsnews.com/news/taylor-swift-deepfakes-online-outrage-artificial-intelligence/>

318 <https://techcrunch.com/2024/11/05/elon-musks-false-and-misleading-election-claims-have-been-viewed-2-billion-times-on-x/>

319 eMedia public hearings

320 Caxton in-camera hearings

- 221.1. The Inquiry survey asked about the extent to which respondents agreed that the presence of credible and trustworthy news reduces the spread of false or inaccurate information. For social media users, 59% agreed or strongly agreed, with only 16% disagreeing, and the rest neutral. This position was fairly uniform across age groups, location and language.³²¹ In the public hearings, the media companies similarly expressed agreement with the proposition.
- 221.2. Evidence cited above, for search engines which focus on selecting authoritative news, indicated that consumers went to search to precisely check the validity of stories that they first saw on social media. The Inquiry focus group participants expressed the view that a news story is seen as more reliable if reported across multiple platforms, and they have checked with trusted news channels.³²²
- 221.3. Many organisations submitted to the Inquiry that credible news and its elevation is critical in the fight against mis-and-dis-information.³²³
- 221.4. All platforms except X Corp partnered with the IEC to combat disinformation during the national elections, which included the promotion of access to accurate information as one of the strategies, alongside the identification and removal of disinformation.³²⁴
- 221.5. Credible media sources are also the result of regulatory oversight, and so social media indirectly benefits from

the work of the Press Council and BCCSA in enforcing the press codes.

221.6. Some social media platforms do accept that access to credible news is an antidote to misinformation.³²⁵ However, as noted already, internal surveys highlight that a major pain point for users is the presence of posts in their feed from news sources they do not trust, suggesting that trusted sources of news are more welcome.

222. However, aside from YouTube, which seeks to make authoritative news available through news verticals, this is not a strategy that platforms have used outside of elections. Also, there is a difference between platforms that are neutral on news and, whilst not actively promoting news, also do not degrade news content, and others where the deliberate deprecation of news content may actively undermine the antidote effect.

4.4.4. Local vs foreign media

223. As social media is personalised, it is expected that the news feed would reflect SA user preferences and be predominantly local news. Similarweb data confirms that this is the case, with the local media share of social media referrals at c.70%, and remaining fairly stable around this level for the past 3 years, albeit with some minor monthly variations of maximum +/- 4%. Therefore, even as news referrals have declined substantially, this has impacted both local and foreign news equally. The share of referral traffic that is local news is of a similar value with referral traffic for search and the impression share of personalised feeds.

321 Inquiry Survey Report slides 106 -8

322 Inquiry Focus Group report topic 8

323 MMA and SOS public hearings

324 <https://www.elections.org.za/pw/News-And-Media/News-List/News/News-Article/Electoral-Commission-partners-with-social-media-giants-to-combat-disinformation-in-2024-National-and-Provincial-Elections?a=AISDGvpz75ps1u-sOfX7oimHCQG6/AToNAzCQK374oSg=>

325 [325] in-camera hearing

224. It is only YouTube that does not personalise the news verticals, aside from user location. YouTube uses the same approach as Google search and News, in looking to put forward authoritative news content. It therefore risks the same foreign media bias in its algorithm, except that it is limited to video content. This will need to be investigated further.

4.4.5. Vernacular and community media

225. Based on submissions, social media suffers far less than search in enabling users to discover and consume vernacular and community media. This is because the algorithm is personalised, and returns content that the user has shown a preference for, including media pages that they follow. As a result, more users look for vernacular and community media content on social media platforms, as indicated in the Inquiry survey report. The traffic referral data for vernacular and community media is also more skewed towards social media, particularly Facebook, but this is also a function of poor performance

on search engines, as overall referral traffic remains limited in most cases. YouTube news verticals is probably one exception, as it draws on the Google approach to authoritative news content. However, news is available outside of the news verticals on YouTube, allowing users to select news in their preferred language.

226. In this context, the deprecation of news on Facebook has far more severe effects on vernacular and community news media than on the mainstream media. That in turn has negative implications for constitutional rights, given the importance of people accessing news in their home language, to fully exercise their rights, and the role of community media in holding democratic institutions to account at a municipal level. The public hearings heard submissions that the weakening and closures of community media are correlated with the extent of corruption and maladministration at the municipal level.

4.5. Provisional findings and remedies

4.5.1. Findings

227. The provisional findings on social media are as follows:

227.1. 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, which warrants particular focus on their conduct. TikTok is likely to become more important in digital advertising, as they improve monetisation 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.

227.2. YouTube

227.2.1. 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.

- 227.2.2. 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.
 - 227.2.3. 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.
 - 227.2.4. The public broadcaster is particularly affected by YouTube, making public interest broadcasting in vernacular languages far less financially sustainable.
- 227.3. Meta
- 227.3.1. 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.

- 227.3.2. 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 both competition for digital advertising and 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.
 - 227.3.3. 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.
- 227.4. X
- 227.4.1. X has deliberately deprecated posts with links, to keep users on their platform, and starved the news media of referral traffic.
- 227.5. TikTok
- 227.5.1. No evidence has been put forward to indicate that TikTok deliberately deprecates news content.
- 227.6. YouTube, Meta, X and TikTok
- 227.6.1. 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.

- 227.6.2. 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 required.
- 227.7. 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.
- 227.8. Social media would appear to have an advantage over news websites insofar as MNOs offer Facebook Basic Mode, Free Basics and discounted social media 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.

228. The conduct identified has an adverse effect on competition through:
- 228.1. 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.
- 228.2. An imbalance in bargaining power that imposes uncompetitive and un-transparent levels of monetisation 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), and lack of transparency on detailed revenue generation and sharing.
- 228.3. Distorting competition for user attention and monetisation 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).

228.4. Distorting competition for news broadcast video distribution and monetisation, 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.

229. 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 realisation of citizen's Constitutional rights to be informed and active members of a democracy, which makes the adverse effect substantial.

4.5.2. Remedies

230. 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.³²⁶ The difference means that social media is able to reduce the volume of news, unlike search, which has important implications for remedy design.

231. 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 through 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 an equitable arrangement, and it too is implicated in efforts to stem misinformation.

232. On misinformation, best practice within the industry tends towards 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 individuals have millions of followers, who 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 that the platforms choose effective means of doing so, including identifying what is likely misinformation. This should

326 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.

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.

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

233.1. YouTube

233.1.1. 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.

233.1.2. To increase the revenue share for news media and broadcasters to at least 70% for programmatic advertising.

233.1.3. 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 video service; much like Google News Showcase.

233.1.4. 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.

233.2. Meta

233.2.1. 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.

233.2.2. To cease deprecating news content in SA, and to restore the Facebook referral traffic for SA news media, through algorithm changes that result in a 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.

233.2.3. To open the in-stream video ad monetisation option to all news media that wish to join, with a deliberate on-boarding programme

233.2.4. To increase the revenue share of news media and broadcasters for in-stream videos to 70%.

233.3. X

233.3.1. 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.

233.4. YouTube, Meta, X and TikTok

233.4.1. To provide news publishers with enhanced user data and insights, in order 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 anonymised data for different sections and types of posts.

233.4.2. To partner with the media on fact-checking to prevent misinformation, and to provide for some compensation mechanism for fact-checking by the media.

233.4.3. To make an annual financial contribution to the Press Council and BCCSA, which may vary based on relative revenues generated in SA.

233.4.4. 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 to provide easier tools to report and block content.

233.5. 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.

233.6. 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 proactively removing harmful content, and not providing an algorithmic boost to misinformation, including a prohibition on promoted posts or ads that contain misinformation.

233.7. 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.

234. It has been suggested that there should be 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.

5. Generative Artificial Intelligence

235. Consumer-facing AI Chatbots exploded onto the scene in 2022 with the release of OpenAI's ChatGPT, a generative AI (GenAI) model that caught the public's imagination and became the fastest growing app in the history of the web, reaching 100m users within 2 months of its launch. Since then, OpenAI's large language models (LLMs) have been used to power many AI applications integrated into productivity and other tools. It has also spurred competing GenAI foundational models, with the largest global tech firms all launching their own foundational models. AI has become the new gold rush amongst venture capital (VC), with estimates of \$290bn in VC funding of

AI investments in the past five years, and investment in GenAI companies alone reaching \$21.3bn in 2023.³²⁷

236. The relationship to news media stems from the use of news media content, amongst other content, to train these large language models (LLMs), and the evolution of the chatbots to respond to user queries on current news topics. This in turn raises questions as to the value of news content for training GenAI LLMs, and the potential threat to the news media of further disintermediation, using their content via AI Chatbots in addition to search and social media.

5.1. The GenAI Business

237. The GenAI business is to build foundational LLMs with natural language processing capabilities, which can then be fine-tuned to different applications. One such application is a chatbot which users can engage with to assist with writing, summarising, learning, analysing, coding, etc.³²⁸ The business model has been to offer a free lite version of the chatbot, to enable user trial, and then to sell an enhanced version with more capabilities.³²⁹ OpenAI sells ChatGPT Plus for a monthly fee of \$20, whereas Google offers an AI premium plan offering Gemini Advanced bundled with Gemini in Gmail and other Google applications, 2TB of storage,

and Google One premium plan benefits for R430/month.³³⁰ Meta currently does not have a premium product, but is apparently working on one.³³¹ In contrast, x.AI's Grok has a different business model, as it is bundled with the X premium subscription and does not have a free version. Aside from individual users, GenAI businesses offer enterprise contracts, to make the tool broadly available to users within an enterprise. For OpenAI this includes the option to create customised GPTs, using specific instructions and additional knowledge to serve a specific purpose.³³²

327 World Economic forum. Available: <https://www.weforum.org/stories/2024/05/these-5-countries-are-leading-the-global-ai-race-heres-how-theyre-doing-it/> and EY Ireland: https://www.ey.com/en_ie/news/2024/05/generative-ai-venture-capital-investment-globally-on-track-to-reach-12-billion-dollar-in-2024-following-breakout-year-in-2023

328 OpenAI.2024. Overview. Available online: <https://openai.com/chatgpt/overview/>

329 For example Gemini Advanced is more capable at logical reasoning and analysis, processes more information and is faster than the free Gemini version.

330 Google One. 2024. AI Premium. Available online: <https://one.google.com/about/ai-premium/>.

331 Meta. 2024. Overview. Available online: <https://ai.meta.com/meta-ai/>

332 OpenAI. 2023. Introducing GPTs. Available online: <https://openai.com/index/introducing-gpts/> [accessed 28 November 2024].



238. Another application is to offer the integration of the foundational model capabilities into other products or applications, through API access. This enables features such as virtual assistants or chatbots, where a text (or voice) prompt is sent via API and the text (or voice or image or video) completion is returned by the GenAI model. This is typically charged on a usage basis for the different GenAI features.³³³ Meta AI offers both an API access to its Llama model, but also offers its Llama model on an open access basis to developers.³³⁴
239. Tech firms that have their own AI foundational models will also integrate those models into their own products, to improve their performance and monetise through greater levels of adoption and use. Google and Microsoft have integrated AI into search, as outlined above, and Meta has integrated AI into all its social media platforms. Microsoft, which is invested in OpenAI's for-profit business, has integrated OpenAI models into its productivity tools, and Apple is also integrating OpenAI models into its devices, branded as Apple Intelligence, as part of a distribution arrangement.³³⁵ X Corp has integrated Grok into X, allowing users to have Grok answer questions based on public posts on X.³³⁶
240. AI LLMs are therefore typically monetised in ways other than the sale of advertising using user data, unlike search and social media. However, they are selling knowledge and capabilities, and to the extent that they are integrated into search and social media, may contribute to the traditional means of funding those businesses.
241. It is no coincidence that the largest tech companies are part of the leadership in GenAI, as building and operating models requires considerable supercomputing power and cloud storage, which these tech companies have, to power their existing businesses, and training data which is available from the open web and their existing products. Even OpenAI is in a close partnership with Microsoft, which has an investment in OpenAI's profit-orientated entity and provides it with supercomputing power in exchange for model use, with some competition authorities investigating whether this amounts to some form of control and a notifiable merger.³³⁷ The global tech companies also command most attention on the web, and so distribution through these companies is an important use case for GenAI. Hence the OpenAI deal with Apple.
242. As AI is seen as a transformative foundational technology, venture capitalists and markets have placed huge value on those companies with a leadership position in AI. The latest funding round of \$6.6bn for OpenAI put the company's market value at \$157bn,³³⁸ and the AI chip maker Nvidia was recently propelled to being the world's most valuable company, with a market capitalisation of over \$3trn.
243. In SA, OpenAI's ChatGPT is the largest standalone Chatbot, with the most paid subscriptions, but Meta AI, Google's Gemini

333 OpenAI. 2024. Pricing. Available online: <https://openai.com/api/pricing/> [accessed 28 November 2024].

OpenAI submission by Christ Charter dated 06 December 2023. Written response to RFI 1.

334 Meta. Available online: Introducing Llama 3.2. available online: <https://www.llama.com/>

335 Apple. 2024. Press release: Introducing Apple Intelligence, the personal intelligence system that puts powerful generative models at the core of iPhone, iPad, and Mac. Available online : <https://www.apple.com/newsroom/2024/06/introducing-apple-intelligence-for-iphone-ipad-and-mac/> <https://openai.com/index/openai-and-apple-announce-partnership/>

336 x.AI submission by Derushka Chetty dated 15 January 2024. Written response to RFI 2.

337 Microsoft. 2023. Microsoft and OpenAI extend partnership. Available online:<https://blogs.microsoft.com/blog/2023/01/23/microsoftandopenaiextendpartnership/>

Financial Times. 2023. How Microsoft's multibillion-dollar alliance with OpenAI really works. Available online: <https://www.ft.com/content/458b162d-c97a-4464-8afc-72d65afb28ed>

338 TechCrunch. 2024. OpenAI raises \$6.6B and is now valued at \$157B. available online: <https://techcrunch.com/2024/10/02/openai-raises-6-6b-and-is-now-valued-at-157b/>

and Microsoft's Co-pilot all have extensive distribution through social media, Android devices, and desktops respectively. The integration of their AI models into search and social media platforms means that they

will have a material impact on how the news media content is used and intermediated on their platforms. For this reason, the Inquiry is focused primarily on these AI companies and products.

5.2. GenAI Training and Data

5.2.1. Training

244. GenAI models are trained in two phases. The first phase is called 'pre-training' and develops the base LLM, which can predict the most likely word to come next in a sentence, what word makes most sense in a variety of situations, and to learn the elements of language such as grammar and basic reasoning. LLMs also learn how sequences of words and word connections form ideas, structured thoughts, and associated concepts. LLMs are built on deep learning neural networks with multi-layered interconnected neurons, that each perform basic transformation functions which feed into other neurons that do the same. An LLM contains billions of neurons, each with their own weight. Training data is tokenised – i.e. converted to numerical representation – and shown to the neural network, which adjusts the weights based on predicting the output and comparing to the actual output. The base model consists of a set of predictive weights, and the training data is neither stored nor memorised. LLMs require exposure to trillions of words in this development phase, with scale but also variety important.³³⁹

245. The base LLM is then taken through 'post-training' or 'fine-tuning' – using reinforcement learning with human feedback (RLHF). The post-training teaches the LLM to respond in

ways that are useful and aligned to human values. It also teaches the LLM to predict, reason and solve problems. Post-training uses smaller datasets with ideal answers, through learning from receiving human feedback on the answers the LLM produces. LLMs can be fine-tuned to a variety of different tasks.³⁴⁰

5.2.2. Training data and the news media

246. Given the substantial data requirements for pre-training, a foundational dataset for many AI models has been the Common Crawl, a corpus of petabytes of data collected from the public internet since 2008 with a monthly crawl.³⁴¹ The Common Crawl is not a copy of the entire Internet, and has predominantly English content. South African content is a small part of the Common Crawl, with the .za domain accounting for 6.8m URLs from 130,639 domains, representing 0.26% of the total URLs. However, some SA content falls under the .com (42.5% of URLs) and .org (5.6% of URLs) domains, and so this figure is an underestimate.³⁴² In general terms, it appears that African data has not been a large source of training data for AI historically, resulting in cultural biases of the AI models.³⁴³

247. AI companies will also create their own corpus by scraping the Internet for high

339 OpenAI RFI 1 and RFI 2. Prof. Marivate public hearing

340 Ibid

341 <https://commoncrawl.org/overview>

342 Github (2024). Available: <https://commoncrawl.github.io/cc-crawl-statistics/plots/tld/latestcrawl.html> Note that this website updates statistics on a monthly basis.

343 Prof. Marivate public hearing



quality and diverse content. For instance, GPT-2 was trained on an OpenAI dataset called WebText, using only web pages curated by humans.³⁴⁴ As alleged in the NY Times lawsuit against OpenAI, this training dataset had a significant emphasis on news media website content. As confirmed by Github's list of GPT-2 domains, 5 of the top 10 domains and 23 of the top 50 are news sites. News24 comes in at 730 with 6494 tokens, but no other prominent SA news site seems to feature.³⁴⁵ GPT-3 was trained with 300bn tokens, of which c.62% were from the Common Crawl, c.19% from WebText2, and the remainder from books and Wikipedia.³⁴⁶ No information is available on the domains used in WebText2, but presumably this was also weighted heavily to news content. OpenAI has revealed nothing about GPT-4 training data. OpenAI is not alone, as the Google C4 dataset used to train Bard is reported to have 13% of tokens from news sites.³⁴⁷ Gemini has also used the Common Crawl. The Inquiry has requested the domains and tokens used in the training datasets from the AI companies, to determine how much SA news media content has been used, but the Inquiry has thus far not been provided with that information.³⁴⁸

248. Aside from the Common Crawl, OpenAI, Google and other AI developers have their own web crawlers that collect data from the web, for training their AI LLMs. The AI developers state that their bots adhere to the Robots.txt protocol, which allows websites to opt out of allowing the web crawlers access

to their website. However, the opt-out has typically been announced after their models have been released, and so only applies to future iterations of the model. Yet the prior data scrapped from the websites is presumably still available for training, even if future website content is not available. It has also been reported that AI developers make use of third-party suppliers of data, and these are less scrupulous insofar as ignoring the robots.txt instruction from websites, and even collating information from behind paywalls.³⁴⁹

249. The large social media companies have direct access to content posted on their platforms, and may use this to train their own models and/or sell that data to other AI companies. For instance, Meta uses public social media posts to train their LLM,³⁵⁰ and the OpenAI/ Reddit partnership grants OpenAI access to Reddit's Data API, with the ability to train its model using Reddit posts.³⁵¹ Allegedly, OpenAI transcribed a million YouTube videos for GPT4 training, and Google itself has done the same to train Gemini, whilst also changing its terms of service to allow it to harvest public data across Google properties.³⁵² The use of YouTube videos raises much larger copyright concerns relative to short public social media posts, because entire copyrighted broadcast content is uploaded to YouTube, whereas posts may contain a link to the website where the content sits outside the platform. In particular, the sale and use of YouTube content would undermine attempts

344 <https://openai.com/index/better-language-models/>

345 Github (2024) <https://github.com/openai/gpt-2/blob/master/domains.txt>

346 <https://lambdalabs.com/blog/demystifying-gpt-3>

347 <https://www.washingtonpost.com/technology/interactive/2023/ai-chatbot-learning/>

348 OpenAI has stated that it does not provide a breakdown by geography, but as it sources from domains with geographic indicators (e.g. *.za domains), it must be feasible to extract this information from the training dataset as is the case with Common Crawl.

349 <https://www.theverge.com/2024/6/27/24187405/perplexity-ai-twitter-lie-plagiarism>

350 <https://www.reuters.com/technology/facebook-parent-meta-platforms-working-ai-technology-europe-2024-06-10/>

351 Reddit is an online community network, that allows users to post (i.e., text, links, images, and videos) vote, and comment in communities organized around their interests.

OpenAI. 2024. OpenAI and Reddit Partnership. Available online: <https://openai.com/index/openai-and-reddit-partnership/> [accessed 30 November 2024].

352 <https://www.nytimes.com/2024/04/06/technology/tech-giants-harvest-data-artificial-intelligence.html>

by broadcasters to do content deals with AI companies.

250. The unauthorised use of copyrighted content has been raised by the news media, and some litigation is taking place. The AI developers argue there is no copyright infringement, citing both the data mining and fair use provisions which permit transformative use not in competition with the original producer. They also emphasise that steps are taken to ensure there is no memorisation of training data, to avoid duplication of copyright material in answers, and fair use has enabled the US to take a lead in AI.³⁵³ In contrast, the New York Times, which is suing OpenAI and Microsoft, argues that these companies knowingly violated Copyright Law in the arms race to get more and more data needed to train their models, and companies like Google have adjusted their terms and conditions to harvest more data.³⁵⁴ As noted above for AI-powered search, fair use is typically limited where the content is used for commercial gain in competition with the copyright holder, which AI chatbots increasingly do with AI summaries.
251. AI developers also place emphasis on the need for trillions of words, and the negligible role that any one news website contributes, as well as that the content does not matter to training LLMs, and a news website is of equal use as a Reddit conversation. However, the pursuit of deals with leading global news publishers for their volume of data, for pre-training as they opt out of the web crawlers, strongly suggests a different

conclusion – namely that both the volume and content is particularly useful to AI developers as training data. The value of the news media for training data is not just the archive, but that a substantial amount of new quality content is generated daily. Access to copyrighted material for training purposes has been cited in all press statements in which OpenAI has done publisher deals with the Associated Press,³⁵⁵ Axel Springer,³⁵⁶ Le Monde and Prisa Media,³⁵⁷ the Financial Times,³⁵⁸ News Corp,³⁵⁹ the Atlantic and Vox Media,³⁶⁰ Time,³⁶¹ and Conde Nast.³⁶²

252. The pursuit of news media publisher deals is because the news content is of high quality for training language models, given it is written by professional journalists and edited. Moreover, as the news media complies with press codes, the content will not contain offensive language or harmful content, which must otherwise be extracted from general Internet content, and contains a diversity of contexts, which is useful for AI training. Most news media have a large archive of content not readily available on the website, which offers volume to AI companies.
253. These deals with the large global publishers are likely prompted by their array of publications and substantial archives, which are not accessible through the website. The large publishers are also most likely to have excluded the AI web crawlers from current content, requiring deals to access that copyrighted content. It was reported by the Reuters Institute that, by the end of 2023, 48% of the top news sites had blocked

353 <https://www.regulations.gov/comment/COLC-2023-0006-8906>

354 <https://www.nytimes.com/2024/04/06/technology/tech-giants-harvest-data-artificial-intelligence.html>

355 <https://www.ap.org/media-center/ap-in-the-news/2023/chatgpt-maker-openai-signs-deal-with-ap-to-license-news-stories/>

356 <https://www.axelspringer.com/en/ax-press-release/axel-springer-and-openai-partner-to-deepen-beneficial-use-of-ai-in-journalism>

357 <https://openai.com/index/global-news-partnerships-le-monde-and-prisa-media/>

358 <https://www.ft.com/content/33328743-ba3b-470f-a2e3-f41c3a366613>

359 <https://openai.com/index/news-corp-and-openai-sign-landmark-multi-year-global-partnership/>

360 <https://www.reuters.com/business/media-telecom/openai-signs-content-deals-with-atlantic-vox-media-2024-05-29/>

361 <https://time.com/6992955/time-and-openai-announce-strategic-content-partnership/>

362 <https://www.reuters.com/technology/openai-signs-deal-with-cond-nast-2024-08-20/>

OpenAI crawlers, and half of those were blocking Google AI crawler.³⁶³

254. It is also highly likely that deals with the largest global publishers are designed to blunt copyright infringement lawsuits, as the global publishers are more likely to bankroll such litigation.³⁶⁴ This is a tactic that has been used before by the global tech firms, aiming to silence opposition to questionable conduct. The real risk with this divide-and-conquer strategy is that it further bifurcates the news media market by strengthening the few global publishers that already win at the subscription game, at the expense of smaller publishers that are not compensated for their copyright material. This has dire consequences for media diversity and plurality, undermining constitutional rights.

255. Absent regulatory action, it is unlikely that the South African media will be beneficiaries of these publisher deals. On website content,

because a news site has to actively opt out, which means it requires the knowledge and skills to do so, and the majority of smaller news sites are unlikely to act, exposing their content to AI developers for free. In South Africa, the Inquiry determined at the time of the public hearings that it was only Media24, out of the mainstream media, that opted out of any AI crawlers, doing so with OpenAI, Google and the Common Crawl. The Reuters Institute study cited above also found the results varied significantly across countries, with 79% of top publishers in the US opting out, but only 20% in Mexico and Poland.

256. As publisher deals reveal that news content has value for training and is subject to copyright, then it seems that all publishers should be compensated, as even past models have laid the foundation for commercial success.

5.3. The Chatbot and news queries

257. The Inquiry has sought to understand the extent to which AI Chatbots, distinct from AI-powered search, are used to query and return news media content. The almost uniform response from the AI developers initially was that they do not track how users engage with news on their AI Chatbots, but that it is not a substantial use case, and consumer use is evolving.³⁶⁵ However, that evolution is starting to point strongly to consumers using AI Chatbots for creating and productivity but also to query knowledge - in some ways similar to search, where news content typically features prominently. This is based

on the revealed behaviour of AI developers in adding such features, presumably in response to identified consumer needs.

257.1. When ChatGPT was launched in late 2022, it could only provide information up to September 2021 based on the training data. However, in under a year the AI Chatbots were able to do current web searches for information, by integrating with search engines through APIs. This was initially for ChatGPT Plus, but is now pervasive across Copilot, Meta

363 <https://reutersinstitute.politics.ox.ac.uk/how-many-news-websites-block-ai-crawlers#header--3>

364 <https://theconversation.com/openais-content-deal-with-the-ft-is-an-attempt-to-avoid-more-legal-challenges-and-an-ai-data-apocalypse-229215>

365 OpenAI RFI 2, Meta Public Hearings dated 27 March 2024

AI and Gemini.³⁶⁶ The integration of search engines enables generative AI chatbots to ground their responses to user queries with the information that they source from search engines, which may include news content. Grounding is the process of using LLMs with information that is use-case specific, relevant, and not available as part of the LLM's trained knowledge.³⁶⁷ This helps the generative AI chatbots to address some of the inherent LLM limitations, such as inaccuracies, hallucinations, ambiguous responses and the inability to return responses with topical information due cut-off dates on the data that trained the LLM.

257.2. As news publisher deals have been announced by OpenAI, as set out in detail above, a feature of all deals after the first Associated Press deal has been the inclusion of allowing AI Chatbot users access to the latest journalist content from the publishers, often promising new and interactive ways in which to engage the news content. Where OpenAI leads, others follow and Meta has recently announced a deal with Reuters to provide real-time answers to news queries on Meta AI.³⁶⁸ Google

has signed up News Corp, and is also exploring deals with the news media,³⁶⁹ whilst Perplexity has done publisher deals with Automattic, Der Spiegel, Entrepreneur, Fortune, The Texas Tribune and Time.³⁷⁰ Copilot, through partnerships with Reuters, Axel Springer, Hearst Magazines, USA TODAY Network and Financial Times, draws on news content for the recently launched Copilot Daily feature.³⁷¹

257.3. AI developers are taking Chatbots into a space as potential alternatives to search engines, in which news media content is an important use case. Perplexity was probably the first to position itself as an alternative to search by providing answers to queries, not just source references.³⁷² OpenAI has recently entered the fray, announcing the SearchGPT prototype, seemingly making use of the publisher content that OpenAI has contracted recently.³⁷³ Meta is also apparently working on an AI search engine, to reduce reliance on Google and Bing.³⁷⁴ Microsoft recently launched Copilot Daily, which is a personalised audio briefing with news and weather updates on the Copilot chatbot.³⁷⁵

366 Microsoft Bing Blogs. 2023. Expanding Our AI Partnership with Meta. Available online: [https://blogs.bing.com/search/september-2023/Expanding-Our-AI-Partnership-with-Meta-\(1\)](https://blogs.bing.com/search/september-2023/Expanding-Our-AI-Partnership-with-Meta-(1))

Google. 2024. Gemini API and Google AI Studio now offer Grounding with Google Search. Available online: <https://developers.googleblog.com/en/gemini-api-and-ai-studio-now-offer-grounding-with-google-search/>

Microsoft. 2024. Overview of Microsoft Copilot. Available online: <https://learn.microsoft.com/en-us/copilot/overview>

367 Microsoft. 2023. Grounding LLMs. Available online: <https://techcommunity.microsoft.com/blog/fasttrackforazureblog/grounding-llms/3843857>

368 Reuters. 2024. Meta Platforms to use Reuters news content in AI chatbot Available online: <https://www.reuters.com/technology/artificial-intelligence/meta-platforms-use-reuters-news-content-ai-chatbot-2024-10-25/>

369 Reuters. 2024. Google to pay up to \$6 mln to News Corp for new AI content, The Information reports. Available online: <https://www.reuters.com/technology/google-pay-up-6-mln-news-corp-new-ai-content-information-reports-2024-04-30/>

370 <https://techcrunch.com/2024/07/30/perplexitys-plan-to-share-ad-revenue-with-outlets-cited-by-its-ai-chatbot/>

371 Microsoft. 2024. An AI companion for everyone. Available online: <https://blogs.microsoft.com/blog/2024/10/01/an-ai-companion-for-everyone/>

372 <https://technologymagazine.com/articles/from-500m-to-9bn-charting-perplexitys-soaring-valuation>

373 <https://openai.com/index/searchgpt-prototype/>

374 <https://www.reuters.com/technology/artificial-intelligence/meta-develops-own-ai-search-engine-cut-reliance-google-bing-information-reports-2024-10-28/>

375 Microsoft. 2024. Microsoft Introduces a More Personalized Copilot with Voice and Vision Features. Available online: <https://news.microsoft.com/source/asia/2024/10/09/microsoft-introduces-a-more-personalized-copilot-with-voice-and-vision-features/>

258. The Inquiry survey sought to understand the extent to which South Africans are already using AI Chatbots for news queries, and the likelihood of them doing so in the future. The results confirm that AI Chatbots is already being used extensively for news queries, with 25% of respondents saying they use AI Chatbots frequently to access news, and a further 20% using AI Chatbots occasionally. The survey also confirmed that usage is likely to increase, as 57% of respondents indicated they are likely or very likely to use AI Chatbots to access news in future.³⁷⁶ As the Inquiry survey established that a high proportion of South Africans already feel snippets can provide sufficient information and are a convenient, time-efficient way to consume news that avoids having to pay for it, then it follows logically that a more extensive AI summary is likely to exacerbate the habit of not clicking through. As AI is integrated into more devices, it will be easier for consumers to access and use it, exacerbating the impact on news queries.³⁷⁷

259. As the AI Chatbots currently interface with search index APIs from Google and Bing, it is the web crawler terms of those search indexes that determine if news media content is used in the AI Chatbot summary in response to a user query or not. The AI web crawlers only determine whether a website opts out for training purposes only. As news media websites cannot afford not to be part of the search index of Google, and Bing, if they are to see any referral traffic whatsoever, there is really no choice but to provide access through the back door to the AI Chatbots. Where AI companies develop their own search web crawlers, such as Perplexity, they too may develop practices that limit website choices, such as bundling training and search, or may become important for

websites to offer search crawling even if they refer little traffic.

260. All of the main AI Chatbots provide a summary along with some source links in response to news queries, much like AI-powered search engines. This too is most likely the result of pressure from the news media on the lack of attribution initially, and ongoing litigation. However, as with AI-powered search, the real concern is whether users bother to click through to these sources, given the summary provided by AI, which goes well beyond a conventional snippet that consumers already read instead of clicking through. The Inquiry has asked all the tech platforms with AI-powered search or chatbots to provide the CTRs for source links provided in response to news queries. These companies have stated that they either do not measure CTRs or measure them on news queries, or do not have substantive studies, or the product is not sufficiently settled to offer reliable information. Astonishingly, one company that indicated it had no reliable information continued to state that showing links within the summary was driving higher traffic to publisher websites.³⁷⁸

261. The Inquiry can only draw one conclusion from the evasive behaviour by AI developers in failing to provide the most basic information on CTRs for news query source links, which is that the results confirm the concerns of the news media, and users are rarely clicking through to the news websites where news publishers can monetise that information used in the AI summaries. Web data from Similarweb shows that, of a collective total 137 million traffic visits generated by ChatGPT, Copilot and Perplexity in South Africa, the chatbot only referred 0.3% (i.e., 465 thousand) of traffic to news media.³⁷⁹

376 Inquiry survey report slides 112-113

377 Media24 public hearing dated 5 March 2024, referencing a Salesforce survey.

378 [X] RFI in-camera

379 The data is for the period of January 2024 to October 2024.

The variety of deals with the largest global news publishers is also indicative of the lack of indirect monetisation through referral traffic, and of the need to compensate these news publishers for the content that will be shown by AI Chatbots.

262. A further risk of selective content deals with a few large publishers is that their content is favoured in AI summaries, and any referral traffic that does occur benefits those publishers. One of the reasons cited for the content deals is to ensure a reliable source of information to supplement any existing knowledge, so as to prevent ‘hallucinations’ by the AI Chatbots where false information is provided to the user. If these content deals provide that reliable source, then the AI Chatbots will rely more on those sources for news queries. Whilst no SA-specific

publisher content deals have been done, if these were to occur, then AI Chatbots may similarly favour a specific SA source for news content.

263. As with the compensation for new media training data, the selective deals with the largest global publishers to the exclusion of all others, will further strengthen those large publishers whilst weakening the smaller publishers, and those in developing countries like South Africa. This is because those deals will reduce the litigation of copyright infringement by those publishers capable of bankrolling such litigation. This will reduce media diversity and plurality, particularly the voice from the Global South and marginalised communities.

5.4. Provisional findings and remedies

5.4.1. Findings

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

264.1. In SA, OpenAI’s ChatGPT, Meta AI, Google’s Gemini and Microsoft’s Copilot 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.

264.2. 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.

264.3. 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.

264.4. Archival material is the next frontier for 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 occurring, to the exclusion of independent media. This may adversely affect media diversity and plurality, albeit the public broadcaster has one of the larger archives, which is however 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 themselves monetise, and not the news media whose content is stored.

264.5. 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.

264.6. 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.

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

265.1. 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.

265.2. 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 on or incapable of, rather than an opt-in approach. Evidence of the effect is the practices themselves, and the limited number of news organisations in SA that make a conscious decision to either opt out or not.

265.3. Distorting competition amongst news media through degrading the prominence of SA media, relative to contracted foreign media. Evidence of this effect includes the contractual provisions to make use of the contracted news media as the preferred source for news query grounding.

266. 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 harm to 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.

5.4.2. Remedies

267. 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.

268. These issues on training data and AI summaries are being resolved commercially 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 in the main be inclusive, if the strength of the many is to be used to conclude more favourable outcomes. However, where the attempts to prod AI companies to negotiate with the SA media fail, then digital levies may be inevitable as a solution to the exploitation of SA news content for private gain by AI companies.

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

269.1. 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.

269.2. Google, Microsoft, OpenAI and Meta to allow for SA news publishers to opt out of AI summaries on search results on their AI Chatbots.

269.3. 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.

- 269.4. 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.
- 269.5. 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 data for their models.
- 269.6. 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 monetisation 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.

- 269.7. 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.

6. Digital Advertising Technology

270. Digital advertising technology (AdTech) is the stack of software services that enable the buying and selling of display advertising inventory on websites and mobile apps, including those of news publishers. Every time a user clicks onto a website/app and moves to a different page on the website/app, the AdTech stack determines what display advertising is served to that user. This includes serving inventory that has been

pre-sold directly to advertisers by the news publisher, but also serving programmatic advertising which is sold in real-time auctions to advertisers. The AdTech stack therefore is central to how direct and referral traffic to the news publishers is monetised, with the advertising bids and AdTech fees determining the net revenues earned by news publishers.

6.1. The AdTech Stack

271. The AdTech Stack broadly consists of three components, namely the ad server technology that manages the advertising inventory on a website/app and serves ads to that inventory, the supply-side platforms (SSPs) that sell the inventory on behalf of the website/app, and the demand-side platforms (DSPs) which buy the inventory on behalf of the advertisers. These components must all inter-operate to facilitate the market for digital advertising on the open web, where the demand of advertisers is matched to the supply of websites/apps.

6.1.1. Ad server

272. The ad server is the central piece of software for the publisher website, orchestrating the different inputs and outputs to manage the display advertising inventory on the website/app. In doing so, it will determine what part of the inventory to draw from, and serve the appropriate advertising creative when the user clicks onto the website/app page. This may include the direct sales made by the publisher against reserved inventory, or the programmatic sales done through the SSP.

Direct sales may be done programmatically through a DSP, where the creative is sent to the ad server, or direct with the publisher. The ad server must inter-operate with the SSP to receive programmatic ads, along with the appropriate creative to serve. Historically, the ad server used a 'waterfall' system, to serve the advertising sequentially in descending order of value from reserved through to programmatic, but this has now evolved to a more dynamic approach where programmatic bids can be served instead of reserved sales, if the bid is of higher value. Total daily/monthly inventory is estimated based on historical demand, and so reserved or programmatically guaranteed sales are prioritised - based on outstanding impressions sold and estimated inventory left.

273. The ad server manages the data and inventory from the publisher side, which then forms the basis for its ad serving functions. The ad server is integrated with the website and with the publisher data management system, to provide data on user and website page to the SSP (and onto the DSP) to

inform the bids that are made. It may also provide additional audience data on the website to inform the bidding by DSPs on the impression being served, which it may gather from the website analytical tools (e.g. Google Analytics), but also its own audience data collection methods. Where 3rd party cookies are in operation, the ad server will also communicate the cookie information for remarketing purposes.³⁸⁰

274. The ad server revenue model is to charge a variable fee per advert served, and a fixed fee based on the inventory volume of impressions regardless of whether ads are served or not. As the dominant ad server, Google Ad Manager (GAM) integrates ad server, SSP and advertising exchange services, it is sometimes difficult to distinguish where one service ends and the other service starts.

6.1.2. Supply Side Platforms (SSPs)

275. The SSP provides the programmatic sell side of the inventory, and from this perspective interfaces with the ad server to receive data and instructions on the sale of publishers' inventory, and the DSPs from the buy side, to receive bids and advertising creatives to serve for the winning bid. Historically, the SSP was separate from the advertising exchange, which facilitated auctions of bid requests issued by the SSP on the sell side to DSPs on the buy side. However, the SSPs have evolved to contain their own ad exchange services.³⁸¹

276. Auctions enable competition for inventory, but the quality of inventory on a website varies, and some advertisers are willing to pay a premium for different inventory. Advertisers may do direct deals for brand advertising, and open bidding for

performance advertising.³⁸² The SSPs have numerous transaction types for the sale of inventory, including:³⁸³

276.1. Open auctions:- this inventory is open to any advertiser to bid on the inventory. This may include other SSPs that inter-operate with the ad server.

276.2. Private auctions:- this is only open to a selection of advertisers, typically the larger brand advertisers known to the website publisher.

276.3. Preferred deals:- direct pre-negotiated deals, where a price is set for the advertiser on any impressions purchased.

276.4. Programmatic guaranteed deals:- directly pre-negotiated deals, where the total number of impressions purchased are guaranteed and programmatically delivered

277. The SSP revenue model is to charge a commission fee on the sale of any advertising inventory as a percentage of the advertising revenue. The percentage varies depending on the transaction type, with a higher fee for auctions and a lower fee on pre-negotiated deals, where the SSP does less work.³⁸⁴ SSPs contract with website/apps, and the selection of SSPs by the publisher is influenced by the selection of the ad server, as GAM is an integrated ad server and SSP. Publishers can select other SSPs to participate in open bidding auctions, which must then be capable of inter-operating with the ad server, and separately contract with the ad server. The selection of those SSPs is based on the fees, the advertising quality based on their DSP relationships, the inter-operability with the rest of the AdTech stack, the ability to provide its own data management, and

380 See Media24 public hearing presentation slide 27 for an example of the interfaces with the ad server.

381 Microsoft Xandr RFI 1

382 Taboola RFI 1

383 Google AdTech RFI 1

384 Google AdTech RFI 2. For instance, GAM charges [X] for auctions and [X] for pre-negotiated deals.

technology such as speed, latency, reporting and optimisation.³⁸⁵

278. Given that the selection of SSPs is in part based on its DSP relationships, SSPs can seek to attract DSPs by requesting bids based on knowledge of the type of inventory that each DSP is seeking. This can include bundling advertising inventory of a similar content type (e.g. travel or health) from different publishers, to help specific DSPs locate the inventory they need. SSPs will also provide data to the bidders, to enable better targeting which would attract higher bids where the audience matches the DSP advertiser targeting. The data exchanged with DSPs includes the request itself, the device information including the IP address, the GPS location, the date/time, URL and cookie IDs, mobile network, and event data. SSPs can integrate audience data and inferred interests from their own data management.³⁸⁶

6.1.3. Demand Side Platforms (DSPs)

279. DSPs contract with advertising buyers, either the advertiser itself or its media agency representative, and provide the interface with the supply-side of the AdTech stack. DSPs must integrate with SSPs for them to bid on inventory, and will inter-operate with SSPs that offer the inventory that matches that of their clients. Whilst some advertisers/media agencies may be more prescriptive to the DSP on the specific inventory they want, otherwise the advertising buyers will set up campaigns with DSPs where they set the broad parameters, such as the budget, KPIs and audience targeting strategy. The DSP will use this information to determine what inventory to bid on, and the size of the bid.

280. As the DSP may be operating a number of advertiser campaigns at the same time, when it receives a request to bid from an SSP, it needs to determine whether to bid, and which campaign to bid for. As multiple bid requests may be received every second, the first step for the DSP is to select the most promising bid request to respond to. The second step is to select the best advert to respond with, based on which campaign values the opportunity the most, and hence will have the highest bid most likely to win the impression. Lastly, the DSP must determine the bid for that campaign, based on the advertiser goals and budget constraints.³⁸⁷

281. In selecting a DSP, advertisers/media agencies consider the fees, range of inventory they have access to through SSP integration, the product functionality such as brand safety and targeting capabilities, the ease of use through the user interface, and the ability to track and report on campaign performance.³⁸⁸ The DSP business model is to charge a commission fee on the spend, and much like SSPs, will charge a higher commission fee on auctions compared to directly negotiated deals, which are then implemented programmatically.³⁸⁹

282. There are performance-based DSPs which seek to offer either performance-based sales, such as cost-per-click (CPC) or conversions (e.g. Google Ads), may make use of advertiser website data to understand consumer behavior, and do retargeting advertising (e.g. RTB House).³⁹⁰ These performance-based DSPs may proactively purchase inventory which is then resold to their clients, rather than simply bidding in a programmatic manner based on advertiser campaign objectives and budget. Performance-based DSPs take on risk, as they purchase on a CPM basis but sell on a CPC/conversion basis.

385 Google AdTech RF1 1

386 Google AdTech RF1 1

387 Google AdTech RF1 1

388 Google AdTech RF1 2

389 Google AdTech RF1 2. For instance, DV360 charges [X] for auctions and [X] for pre-negotiated deals.

390 RTB House RF1 1

6.1.4. Ad networks and performance-based advertising

283. For less popular websites/apps that hold too little inventory to warrant the individual attention of SSPs, ad networks have emerged, to pool the inventory to sell collectively to DSPs. For instance, Google's ad network products include AdSense for smaller websites, and AdMob for mobile apps are the largest, but both Meta (Meta Ad Network) and Microsoft (Microsoft Ad Network) have similarly used their internal AdTech capabilities and sales function to offer ad network services to smaller websites and apps. This inventory is then made available through their sales function to advertising buyers, alongside their own inventory. The benefit for the search and social media companies is being able to offer a larger and more varied inventory, whereas the benefit for the small websites and apps is the ability to get their inventory discoverable and sold.

284. On the buyer side, performance-based digital advertising companies have emerged which offer clients the opportunity to only pay for actual clicks or conversions, rather than simply impressions. They do this by taking risk themselves, through buying on an impression basis (or CPM – cost per thousand impressions) and selling on a cost per click or conversion basis. These companies make use of rich user and SSP data, along with sophisticated data analytics to build predictive models for user behaviour, informing them how to bid on impressions to build the clicks and conversions at least cost for themselves, and to price those clicks and conversions at a level that enables a return on their effort. These are not classic DSPs, but perform many of the same technical functions. Google Ads is the most well-known of these, but others have entered this space, such as RTB House.

6.2. Google dominance

285. A feature of the AdTech stack for the open web is the dominance of Google products across the entire value chain. It was not always this way, as independent companies emerged to build the opportunities to monetise digital advertising in the open web, foremost amongst them DoubleClick. However, through a series of acquisitions Google has acquired and developed these disparate capabilities, integrating them into a suite of products that now dominate the AdTech stack. These acquisitions include:³⁹¹

285.1. Urchin Software Corp. (2005) – website traffic software which formed the basis for Google Analytics, later integrating AdWords.

285.2. DoubleClick (April 2007) – Publisher ad server and ad exchange which formed the basis of Google's ad server Google Ad Manager.

285.3. AdMob (November 2009) – Technology for serving ads on apps, which formed the basis of Google's AdMob product.

285.4. Invite Media (June 2010) – Media buying optimisation technology for the display advertising market, which evolved into Google's main DSP product, Google DV360.

285.5. AdMeld (June 2011) – Supply Side Platform that was the leading yield manager, and allowed publishers to receive real-time bids from multiple

391 <https://crsreports.congress.gov/product/pdf/LSB/LSB10956>. [Accessed on 22 March 2024]

ad exchanges and demand sources, subsequently integrated into Google AdX, and shut down operations with non-Google exchanges and advertiser tools.

- 285.6. Adometry (May 2014) - Analytics and attribution provider integrated into Google Analytics, to provide improved attribution services.
286. The acquisition of DoubleClick has been seen as the key component to building dominance across the AdTech stack. This is because the ad server component of the market is key for holding market power across the AdTech supply chain, because it ultimately controls the advertising inventory and the sell side. Control of the advertising inventory provides the leverage to build the sell and buy side of the AdTech market, based on close integration that offers own properties an advantage in all parts of the supply chain. Therefore, whilst there are notionally competitors at each part of the AdTech supply chain, and Google products inter-operate with these competitors, control of the ad server market enables Google products to still dominate the supply chain.
287. From submissions from the media and agencies, it appears that Google's GAM is super-dominant in SA, accounting for over 90% of ad serving (incl. AdSense and AdMob) for SA websites/apps.³⁹² All the major SA news media are GAM ad server clients.³⁹³ Google has claimed that they estimate the share is no larger than in the UK,

but in the CMA study it was found that, for ad servers, Google had [80-90%] of the market, even if the CMA found that for SSPs and DSPs this was lower at [50-60%].³⁹⁴ Other ad server companies reporting to the Inquiry indicate little or no customers in SA.³⁹⁵

288. GAM is not only an ad server but also an SSP that is integrated with AdX, Google's ad exchange that undertakes auctions for the sale of programmatic advertising. Whilst publishers can bring in 3rd party SSPs to sell inventory alongside Google's AdX, these SSPs do not have access to all the inventory.³⁹⁶ It would appear that the vast majority of programmatic advertising inventory sold on Google SSPs/ad networks is through their own SSP.

288.1. For AdSense and AdMob, which are ad networks rather than SSPs, the inventory is sold through the ad network, and has historically not been open to rival SSPs until recently, when open bidding was introduced on AdMob, allowing 3rd party SSPs to bid on inventory.

288.2. For GAM, rival SSPs may take bids on the inventory sold through open bidding, mediation and header bidding only. Apart from reserved inventory, which would constitute direct sales and not be sold through programmatic advertising, the Inquiry estimates that AdX share of programmatic advertising revenues for GAM is [90-100%].³⁹⁷

392 Group M, Daily Maverick and Kagiso Media public hearings. This has been ascribed to Double Click ad server being offered for free initially resulting in it becoming entrenched but also the early focus of Google on smaller markets such as SA. [redacted]

393 Google RFI 1

394 CMA Online Platforms and Digital Advertising: Market Study Final Report (July 2020) at para 63 and Figure 2. Available at: https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf

395 [redacted].

396 Group M public hearing. Caxton public hearing.

397 This is based on dividing the share of DV360/Google Ads of AdX revenue by the share of those DSPs for GAM revenue (excl. reserved sales) resulting in a share of [redacted].

289. It would seem that there are a few reasons for this bias towards AdX.³⁹⁸ First is that 3rd party SSPs are only introduced for inventory subject to open bidding, mediation and header bidding, with other sales only being handled by AdX. Second, GAM charges the publisher a 5-10% fee on bids received from 3rd party SSPs, which effectively reduces their bid price by 5-10%, making it less competitive with the same bid received through AdX, even if the 3rd party SSP fees are the same or slightly lower than AdX. Third, GAM first takes the best bid from rival SSPs, and then passes that to AdX as the floor price for its own auction. So AdX has an advantage in knowing prior to the auction the floor price it needs to beat, unlike rival SSPs. This has been remedied in the EU in response to an investigation by the Autorité de la Concurrence (“FCA”), but not rolled out globally.³⁹⁹ As such, this conduct remains a feature of Google’s AdTech in SA, despite being found in other markets to have harmed competition. Given Google’s tools and dominance are the same in SA, the conduct will have the same effect on our market. Fourth, integrated SSPs are likely to have slight performance advantages, have an opportunity to be treated at any priority level, unlike pre-set priority for 3rd party SSPs, and GAM SSP may have easier access to publisher audience and behavioural data – through its integration with the ad server component.⁴⁰⁰

290. Coming from the advertiser side, media agencies are seeking to optimise the supply chain insofar as minimising and simplifying the route to the inventory. This results in lower costs and less complexity.⁴⁰¹ Media agencies have indicated that they only use a few DSPs as they do not want to duplicate, and only the more digitally mature clients will specify which DSPs they wish to use. Using

only a few DSPs also allows for the benefit of aggregation, and the ability to negotiate lower fees.

291. Media agencies and their advertisers can specify the SSPs that they would like to deal with, or just leave it to the DSP to optimise across all SSPs that they integrate with. As the majority of SSPs offer similar sets of websites/apps, media agencies are looking to optimise by using a smaller number of SSPs which offer the best inventory to grow their client’s share of voice.⁴⁰² In integrating and determining where to bid, DSPs will themselves consider the SSP range of ad inventory, the quality of that inventory (incl. invalid traffic and spam levels), the data matching through cookie syncing, the fee levels, and the DSPs win rate on that SSP.⁴⁰³

292. The advertisers or their media agencies are therefore selecting the DSPs in part based on their ability to deliver on quality inventory from SSPs, and their SSP relationships, and on the other side the publishers are selecting SSPs based on their ability to deliver demand from DSPs with quality advertisers. This represents a strong form of network effects for both sides, mediated through the DSPs and SSPs. As a result, both publishers and advertisers are looking through the immediate contracting party in the AdTech stack to understand the full supply chain they are integrated into, and the closeness of those relationships. Unsurprisingly, media agencies also indicate that the ease of inter-operability between the different AdTech components is a factor which builds loyalty over time. Google’s conduct ensures that publishers wanting to exploit the DSP relationships of AdX are discouraged from using ad servers other than GAM, as AdX charges an ad server fee where it is used as a

398 [3].

399 Google AdTech RFI 2

400 [3]

401 Group M public hearings

402 Group M public hearing. Taboola RFI 1

403 Google AdTech RFI 1

standalone SSP with 3rd party ad servers. This has been remedied in the EU in response to an investigation by the FCA, but not rolled out globally.⁴⁰⁴ This conduct will have the same effects in SA, given the same Google AdTech tools and its market dominance in ad servers.

293. The close integration of the different components of Google's AdTech stack products therefore provides both sides with an advantage, and ability to exploit the network effects of offering advertisers access to quality inventory, and publishers access to quality advertisers. Another advantage that Google products have on the DSP side is the sale of 'owned and operated' (O&O) inventory (search, maps, Play Store, etc), bundled with the inventory available through its 3rd party GAM clients.

293.1. Google Ads represents a clear example of the importance of integration. Google Ads is different to DSPs insofar as it takes risk itself, buying inventory from O&O and GAM clients on a CPM basis, but then selling to advertisers on a cost-per-click (CPC) basis, or other actions such as conversions. This requires Google Ads to accurately estimate the likely clicks on impressions it purchases. Google Ads is far more able to predict the CTRs for Google's O&O and GAM client inventory, due to the greater levels of integration, and initially only purchased inventory on O&O and GAM clients. This means the targeted take rate of Google Ads for those properties is 10-15%, whereas for inventory sold through 3rd party SSPs, Google Ads' targeted take rate is 30-40%.⁴⁰⁵ As a result,

Google Ads will sell more inventory from O&O and GAM properties as it targets a lower return, making them cheaper relative to 3rd party SSP inventory. This generates network effects insofar as Google Ads can attract quality advertisers to inventory sold through GAM ad server, which incentivises publishers to select GAM as their ad server, and AdX for their inventory sales - to access quality advertisers for their inventory.⁴⁰⁶ The more publishers that select GAM, the more Google Ads' position to attract quality advertisers is strengthened, as the range of quality inventory it can offer expands.

293.2. DV360 as a DSP has the advantage of exclusive DSP access to YouTube inventory since 2015. YouTube is growing in importance relative to linear TV, as data costs decline and the penetration of smart devices (TVs and phones) increases. YouTube also has substantially more consumer data on the audience, given users are logged in via Google. This has resulted in budgets shifting from linear TV to YouTube.⁴⁰⁷ This provides DV360 a material advantage where media agencies seek to reduce the number of DSPs they contract with, as DV360 has to be one of those DSPs simply to access YouTube inventory.⁴⁰⁸ Google's rationale was that 3rd party integration limited innovation on YouTube, and even prior to ceasing access, 3rd parties accounted for [10-15%] of YouTube inventory purchases. However, the small share 3rd parties hold is most likely a result of Google's integration,

404 Google AdTech RFI 2

405 Google AdTech RFI 2

406 [X]

407 Group M public hearing

408 [X]

as 3rd parties hold a similarly small share of AdX and even GAM. As DSPs simply purchase inventory and provide the creative ad, it is unlikely that they can stop format innovation on YouTube. Google would seem to recognise that YouTube exclusivity strengthens its position in the AdTech stack, as it offered to end the exclusivity in its discussions with the EU on remedies.⁴⁰⁹

293.3. DV360's preference for GAM client inventory, and the close integration with GAM, means it offers similar benefits to publishers, insofar as contracting with GAM and AdX enables access to quality advertisers which have selected DV360, in part to access YouTube inventory. The more publishers that select GAM, the stronger the position of DV360, as it is capable of offering advertisers a larger range of quality inventory.

293.4. The same network dynamics play out for AdSense and Admob network clients, and the advertisers that select Google Ads or DV360. For AdSense and Admob clients, their selection provides them with better access to quality advertisers, whereas the smaller the publishers/apps that join those two networks, the stronger is the position of Google Ads and DV360, given their ability to deliver a wider range of quality inventory.

294. The network effects in the AdTech stack resulting from the close integration of the Google products is evident from the high level of self-dealing that reinforces

dominance across the AdTech stack.⁴¹⁰

294.1. For AdSense, [90-100%] of the revenue spend is from DV360 and Google Ads.

294.2. For Admob, [90-100%] of the revenue spend is from DV360 and Google Ads.

294.3. For AdX, two different estimates place the share of DV360 and Google Ads at either [80-90%] or [90-100%].

294.4. For GAM ad server, [70-80%] of unreserved revenue spend is from DV360 and Google Ads.

294.5. For DV360, [70-80%] of advertising purchases, excluding O&O inventory, is from GAM, AdSense and Admob.

294.6. For Google Ads, it historically exclusively purchased inventory from O&O properties, GAM, AdSense and Admob.

295. Given the high level of self-dealing and the 90%+ share of Google for ad servers, it can be logically inferred that Google DSP and SSP are similarly super-dominant in SA, with shares in excess of the [50-60%] found for the UK. Moreover, revenue information provided by 3rd party DSPs and SSPs indicates that Google is by far the market leader in SA for DSPs⁴¹¹ and SSPs⁴¹² by revenue. Consistent with this, one DSP indicated that 50% of their ad spend is through Google AdX globally.⁴¹³ Google AdTech services in SA generated [R1bn- R2bn] in 2022, whereas other AdTech service providers operating in SA collectively accounted for [R200-R300m], giving Google AdTech an estimated [80-90%] share across AdTech as a whole.⁴¹⁴

409 <https://www.reuters.com/technology/exclusive-google-offers-let-ad-rivals-place-youtube-ads-eu-antitrust-probe-2022-06-13/>. [Accessed on 29 November 2024]

410 Google AdTech RFI 1 and RFI 2

411 This includes RFI information from Adform, The Trade Desk, RTB House, Xandr, Outbrain and Taboola

412 This includes RFI information from Microsoft Xandr, Taboola and Magnite.

413 [REDACTED]

414 Google generated [REDACTED] in 2022, third parties generated [REDACTED] in the same year. These third-party AdTech service providers are all non-South African and included Xandr, Outbrain, RTB House, Taboola, Adform and Magnite.

6.3. Impact on news publishers

296. Market features of AdTech, including the dominance of Google, have negative competitive implications for news publishers (and all other websites and apps). These include higher fees than would otherwise exist in a competitive market, an erosion of volumes and prices for direct sale, conflicts of interest in the provision of services, and informational disadvantages in competing for digital advertising sales.

6.3.1. Fees

297. The AdTech stack operates on a commission basis, with each part of the supply chain taking a percentage cut of the advertising spend regardless of CPM. Google indicates that publishers on average retain c.68c of every R1 of advertising spend sold programmatically through the AdTech stack. This exercise only considers the DSP and SSP/ad network fees, which Google uses to delineate as the AdTech component, namely a DV360 fee of c.15% and an AdEx fee of c.20%, or in the case of mobile apps and small publishers, a 20% Admob and AdSense fee. However, the full supply chain includes the media agency fees on the advertiser side, which are unavoidable given the complexity of digital media buying, and the ad server fees on the publisher side, which are essential to serve the ads into the sold inventory. Accounting for these fees, namely the GAM ad server fees for large publishers of [0-5%]⁴¹⁵ and the media agency fees to large advertisers of [5-10%],⁴¹⁶ the news publishers receive c.60% of the advertiser's actual media spend.

298. This aligns with the IAB/PWC 2020 UK study, which concluded that publishers only got 51% of the advertiser spend, accounting for the full supply chain from agency fees through to ad server fees, but with an unknown 15% component. This methodology was later revamped to exclude the unknown and agency fees in 2022, resulting in a higher estimated 65% takeout for publishers. However, adding back their estimated agency fee of 7% results in a c.60% takeout for publishers.⁴¹⁷ The unknown 15% in the original study has resulted in calls for greater transparency, and it appears Google has responded - with a global rollout of 'Confirming Gross Revenue' in 2022 which allows GAM 360 publishers to request a revenue verification report.⁴¹⁸ However, as part of the DMA implementation, Google provides the option of advertisement-level price data to publishers, in response to the requirement for greater transparency. This is only provided in the EU and not globally.⁴¹⁹ However, the SA media have expressed the same concerns over the lack of transparency in the AdTech value chain, and have called for similar measures to be implemented in SA. Unless that transparency is provided, concerns over hidden fees will remain.

299. Google has also stated that GAM fees overall only constitute 5% of news publishers ad revenue, based on a survey that looked at 100 news publishers globally.⁴²⁰ Google found that, on average, news publishers keep over 95% of the digital advertising revenue they generate when they use GAM

415 This is estimated to average [3%] based on the relative size of GAM and AdX revenues (Google AdTech RFI 1) but its financials indicate that GAM's global gross margin is [3%] which suggests an average fee of [3%].

416 Group M RFI 1

417 https://www.isba.org.uk/system/files/media/documents/2023_01/ISBA%20PwC%20programmatic%20supply%20chain%20study%2011%20%28summary%29-%2018%20January%202023.pdf. [Accessed on 16 March 2024]

418 <https://blog.google/products/admanager/advancing-transparency-for-buyers-and-publishers/>

419 <https://support.google.com/admanager/answer/13651366?hl=en>

420 <https://blog.google/products/admanager/news-publishers-make-money-ad-manager/>. [Date accessed on 29 November 2024]

to show ads on their websites. Google estimated that 75% of ad sales were direct, on which GAM takes only a 1% fee, and programmatic sales were only 25%, on which GAM takes an 18% fee. However, adjusting for the full supply chain on both, namely adding media agency and ad server fees for direct sales and applying the 60% takeout for programmatic advertising, the result would be c.79% for the instance where 75% of sales are direct. Using the 60:40 split cited by one media agency as their direct to programmatic spend ratio,⁴²¹ this reduces further to c.75% takeout for publishers and 25% for Google, or five times the Google 5% estimate. Using the share of reserved sales on GAM at [40-50%] of revenues⁴²² as a proxy for share of direct traffic revenue, the publisher takeout would be closer to c.70% across all advertising sales.

300. There is little reason to expect that the fees within the AdTech stack are competitive, given the dominance of Google.

300.1. At the ad server level, Google is super-dominant and publishers are motivated to use GAM to secure better-quality advertiser demand, for which compromises on fees will be made. For instance, the GAM fixed fee is based on volume categories of estimated inventory levels and not actual inventory served, resulting in charges for unserved inventory.⁴²³ The practice of charging an ad server fee when using AdX with a 3rd party ad server reinforces their dominance, because it hinders switching to an alternative ad server whilst still taking advantage of the AdX relationships with Google DSPs. This has been remedied in the EU as part of the FCA

investigation remedies, but not rolled out globally.⁴²⁴

300.2. At the SSP level, GAM's dominance allows them to charge publishers a 5-10% fee on 3rd party SSP bids, which has no credible basis given that inter-operability fees are not a feature of any other part of the AdTech stack or 3rd party competitors. This enables AdX to charge a higher fee, as those of its competitors are artificially inflated by the GAM charges. Evidence before the Inquiry shows that a competing SSP charged commission fees that were of c.15% relative to the 20% of GAM, indicating that absent the GAM fee on 3rd party bids, it would need to reduce its own fees.⁴²⁵

300.3. For DV360 and performance-based Google Ads, exclusivity on YouTube and informational advantages enable them to charge a higher fee than would be the case if 3rd party DSPs or performance-based advertising buyers had the same advantages. Evidence before the Inquiry shows a competing DSP charging fees of 10-15% relative to DV360.

301. For direct sales the AdTech stack does less work as these are pre-negotiated, and therefore do not require the auction functionality. However, direct sales still attract the same ad server fees as programmatic sales, at [0-5%] ad revenue, and if the creatives are delivered programmatically, which is increasingly the case, then the DSP fees add a further [0-5%] erosion to the advertising spend agreed with the news publisher. However, as the direct sales can attract CPMs of c.10 times that of programmatic advertising (discussed next),

421 [§<]

422 Google AdTech RFI 2

423 Caxton public hearing

424 Google AdTech RFI 2

425 [§<]

the implication is that, despite doing less work, the DSP and ad server earn a far higher Rand value for direct sales. This makes little sense in a competitive market context, and hence must be the product of market power in the AdTech stack.

6.3.2. Deterioration in CPMs

302. News publishers have a mixture of direct and programmatic sales. Direct sales are pre-negotiated, and news publishers are able to get considerably higher CPMs than those achieved for programmatic sales. Submissions from the news media indicate rate cards for display advertising within a R180-R250 range, and achieved CPMs for direct sales of around R50-R150.⁴²⁶ In contrast, the news media reported CPMs for programmatic advertising sold on open auctions in a range of R5-R15, or roughly a tenth of the direct sale CPMs.⁴²⁷ CPMs for preferred and programmatic guaranteed sales generally lie somewhere in-between these two extremes.⁴²⁸ Direct sales typically make up the bulk of revenue, because of the vast difference in CPMs.

303. Google states that programmatic sales are incremental to news publishers, providing revenues on remnant inventory that does not get sold directly. Whilst this may be how programmatic started, the news media have reported a shift in use whereby advertisers, or their representatives, the media agencies, have sought to reduce the costs of advertising campaigns by tapping into the lower CPMs of programmatic advertising - to secure the same impressions on the news media sites that they previously bought

through direct sales. This has resulted in a decrease in the share of direct sale volumes and a rise in programmatic advertising, with the overall effect of reducing Rand revenue for the same digital inventory. For instance, one media organisation reported that direct sales now constitute only 60% of inventory volumes,⁴²⁹ whereas one DSP indicated that private market deals constituted only 32% of its purchases.⁴³⁰ This is consistent with submissions from the media agencies, which indicate that direct purchases marginally exceed programmatic purchases, even in the context where the majority of clients are willing to pursue quality over quantity.⁴³¹

304. Google states that the news publishers have the opportunity to approach advertisers that have had inventory served through programmatic advertising, to do direct deals. The rationale is that if programmatic advertising matches the advertiser's campaign objectives to the audience on the news media site, then there is scope for selling guaranteed inventory. The news media acknowledge that this is the case, but indicate that the movement of advertisers is weighted far more strongly in the direction of programmatic advertising, and away from direct sales. The desire of advertisers to target through programmatic advertising is assisted by DSPs like DV360 allowing for the targeting of individual websites and apps, which means the advertiser that previously purchased direct deals can deliberately target the news publisher through programmatic sales.⁴³²

305. The news media also indicate that the information available from DSPs and GAM on the advertiser identity is limited, as there

426 This range is informed by the RFI 1 submissions of Media24, Arena, Mail and Guardian, Caxton, Daily Maverick and Moneyweb.

427 Ibid

428 Private marketplaces where a limited number of bidders are invited generate higher CPMs as advertisers pay for curated and targeted environment and the assurance of reach in a desired audience. RTB House RFI 2

429 [X]

430 [X]

431 Omnicom and Group M public hearings

432 <https://support.google.com/displayvideo/answer/2650521?hl=en>

is a long tail of 'unknown' advertisers. This is usually because the advertiser name is not passed in the bid response, but smaller competing ad servers such as Adform map the creative with their URLs, to get the recognised advertiser.⁴³³

306. The shift to programmatic advertising for inventory not only reduces the volumes of direct sales, but it also erodes the value of direct sales, resulting in a lower achievable CPM for direct sales. The news media report declining CPMs, in the face of inflation and increasing costs of news production, as indicative of the effect of programmatic advertising. In essence, the ability to source inventory programmatically erodes the bargaining power of the news media in negotiations over direct sales. This compounds the effect of programmatic advertising, and reduces advertising revenue further for the news media.
307. On the CPMs for programmatic advertising, the conduct of GAM in providing the best 3rd party bid to AdX as the price floor must have the effect of suppressing bids for auction sales. This is because the practice provides AdX bidders with an informational advantage over those bidders with 3rd party SSPs. This allows those bidders, which feature prominently Google's own properties, DV360 and Google Ads, to face less uncertainty in their bidding strategy, and hence be able to bid lower than they would otherwise. This is particularly the case as AdX provides information on the winning bid to assist DSPs with their bidding strategies, with DV360 and Google Ads the primary beneficiaries of that information exchange. The informational advantage of DV360 and Google Ads, relative to all 3rd party DSPs, is another factor that is likely to suppress bid levels for programmatic advertising. This is because more information on the user linked to the ad impression enables more accurate

bidding, as there is greater knowledge of the true value of the ad impression.

6.3.3. Conflicts of Interest

308. Google Ads and DV360 purchase inventory on Google's O&O properties, including YouTube, and that of 3rd party websites and apps. This does create a conflict of interest, because Google retains 100% of the spend on its O&O properties, whereas it retains only a share of the programmatic advertising purchased on news publisher websites/apps. Google therefore has an incentive to direct more purchases to its O&O properties using its dominant position in DSP and performance-based ad purchases. Google argues that this would be self-defeating, as acting on the incentive to make sub-optimal purchasing decisions would just result in a lower return on investment for the advertisers, and result in them switching to alternative DSPs. However, this assumes a competitive DSP market, multi-homing, and no integration advantages for DV360 and Google Ads. In reality, advertisers benefit from using only a few DSPs, and the Google DSPs are unavoidable for the O&O properties - but also the quality inventory available through GAM, AdSense and AdMob. As the probabilities of winning a bid on GAM, AdSense and AdMob are significantly greater with Google Ads and DV360, this creates barriers to switching to other DSPs, and is likely to reduce the return on investment through those alternatives.
309. Media agencies have expressed reservations about the potential for Google and the walled gardens of social media to manipulate the CPMs for digital advertising. For the open web, Google has access to considerable commercial information on the total inventory and average CPMs being achieved, given its dominant position on the ad server side. This information can be

433 Adform RFI 1

used to maximise its own revenues across its properties, given insights into supply and demand, and the ability to directly influence inventory on its O&O properties. Google AdTech also operates the auctions, and Google DSPs are the primary bidders on those auctions. Similarly, for the social media walled gardens, there is uncertainty as to whether the platform owner is driving CPMs up or down, as they control the inventory and the auction mechanism.⁴³⁴

6.3.4. Lack of data to compete

310. RTB House highlighted in the public hearings that despite the open web accounting for c.66% of all consumer time and traffic, the majority of digital advertising at c.60% is generated by the walled gardens of social media and search. IAB statistics also confirm that total ad spend is skewed to paid search and social media.⁴³⁵ Google itself estimates that AdTech is used for only 9% of all digital advertising sales, indicative of the share of the open web.⁴³⁶ Whilst potential self-preferencing, as outlined above, may account for some of the bias, the enormous mismatch most likely reflects the gulf in user data between these walled gardens and the publishers on the open web. Media agencies confirm the user data advantage of the walled gardens, insofar as their ability to offer far more granular targeted advertising.⁴³⁷

311. The one area where websites are able to do more targeted ad sales is with the aid of 3rd party cookies, where the browsing session history is available to all publishers and DSPs, allowing for remarketing to the same consumer. This was beneficial where their previous activity was retained in the cookie, enabling re-marketing to those users based on their prior browsing history.

312. The contrast between the data sharing practices of 3rd party cookies and the walled gardens is informative of the user data bias within the walled gardens. With 3rd party cookies, the browsing session history is available to all, and enables the news publishers to engage in more lucrative programmatic advertising in the form of remarketing. This history is based on all the websites browsed by the user, and the collective of websites that contributed to this user data are then able to collectively benefit. In contrast, the user data collected by Google search, YouTube and Discover – based on the interaction with the same content – is only available to Google, not the websites and content creators that collectively provided those insights into the actual and inferred interests of the user. This disparity is purely a product of who collects the information.

313. The move to end 3rd party cookies by Google on its browser can only harm news publishers and benefit Google, insofar as Google will still retain that information, based on its ability to track and build user profiles internally, whereas the rest of the market will not.⁴³⁸ Some estimate that c.40% of programmatic sales to publishers could be affected.⁴³⁹ The CMA is engaging with Google on the Privacy Sandbox, to find ways that ensure the cessation of 3rd party cookies does not disadvantage publishers and 3rd party DSPs. Whilst this process is examining how some anonymised information may still be shared, it is still considering how not to make the disparity in user data worse rather than better. The Inquiry is of the view that more of Google's own information should be shared with news publishers, given the advantage that Google gains in digital advertising from its information collected

434 Group M public hearings

435 Group M public hearing.

436 Google AdTech public hearings Google Public Hearings

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438 [3X]

439 Group M public hearing.

on users interests in 3rd party content. The Inquiry is of the view that privacy laws are not a barrier to greater levels of sharing, either on an anonymised basis or with consumer consent.

314. Google has submitted that the News Consumer Insights (NCI) product, which forms part of the Google News Initiative, offers news publishers enhanced data insights, to build audiences and traffic.⁴⁴⁰ NCI draws information from existing Google toolkits including Google Analytics and Google Ad Manager, along with benchmarking data from 1000 news organisations, to offer insights into website user behaviour. NCI

will provide AI-generated recommendations for content, audience and revenue development. However, the NCI does not provide news publishers with additional data to what they already have from Google, and in particular it does not provide data on user interests and purchasing intent. Google highlights that news publishers rarely make full use of Google Analytics functionality to build audiences, and this can improve their audience data, but this tool is also based on the existing data that the news publisher has on its users, and simply packages them into different audience groups for analysis.⁴⁴¹

6.4. Vernacular advertising

315. In the public hearings, vernacular publications highlighted that the Google AdTech stack prevented the serving of ads in SA vernacular languages. Google states that this is a product of its advertising vetting system, where it determines if the advert meets certain rules and requirements, such as misleading advertising, or advertising restricted products. As a result, vernacular news media can only have advertising served in English, which is likely to reduce the ability to compete for advertising, and the advertising revenue it is able to generate given Google's dominance in the AdTech stack, undermining vernacular news media in general.

316. Whilst the Inquiry has no reason to question Google's rationale, it would seem that this is a product of non-prioritisation and taking a sledgehammer approach, when less restrictive alternative policies are feasible. On non-prioritisation, it is apparent that Google

has considerable SA language capabilities, given its Google Translate service, and the fact that vernacular content is reviewed before screening on YouTube and provided with English subtitles. If Google were to prioritise SA vernacular languages then it would happen, as is evident on fixing this issue for Afrikaans advertising, post-public hearings. On the sledgehammer approach, it would seem that Google need not take on the policeman role itself, and could require DSP/media agency vetting beforehand, or permit credible DSPs/media agencies to serve vernacular ads' creatives.

317. The gap left by Google has helped produce at least one SA AdTech startup seeking to serve vernacular ads. This is positive, but seems unlikely to resolve the problems for the vernacular media - because Google AdTech is so dominant and offers access to quality advertisers.

440 <https://newsinitiative.withgoogle.com/en-gb/resources/analytics-tools/news-consumer-insights/>

441 <https://support.google.com/analytics/answer/12799087?hl=en>

6.5. Provisional findings and remedies

6.5.1. Findings

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

318.1. 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. These 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.

318.2. 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.

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

318.4. 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.

318.5. Vernacular news media are placed at an additional disadvantage by Google not prioritising ad reviews in SA vernacular languages and then self-imposing a complete prohibition of 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.

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

319.1. 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 these practices, despite higher fees than competitors in certain cases.

319.2. 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.

319.3. 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.

320. 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 harm to 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.

6.5.2. Remedies

321. 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 that 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.

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

322.1. 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.

322.2. 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.

322.3. GAM to cease charging publishers an additional 5-10% fee for bids by 3rd party SSPs.

322.4. GAM, DV360 and Google Ads to continually provide news publishers with information on the volumes of impressions purchased by different advertisers.

- 322.5. Google to implement the DMA remedies on price data transparency for news publishers.
- 322.6. Google to end DV360 exclusivity for YouTube.
- 322.7. GAM and DV360 to reduce fees for programmatically serving direct advertising.
- 322.8. Google AdTech to permit ads in vernacular SA languages, by either investing in the language capabilities or adjusting its policies on ad reviews.

7. The News Media and Government/Business

7.1. News media as a Public Good

323. It has been common cause in the Inquiry that the news media is a public good that provides positive social externalities in enabling citizens to realise numerous human rights enshrined in the Constitution. Indeed, the Constitutional Court itself has recognised the role of the media in a democratic society. The news media keeps the citizens informed, which empowers them to exercise informed choices and holds those in power to account. The news media in SA has played a significant role in the past ten years in uncovering state capture and corruption, as well as private sector corruption and fraud, to the benefit of all citizens. As many in the news media pointed out in the public hearings, the media has provided substantial benefits to business in SA, as its watchdog role sustains a democratic environment that is more conducive to economic growth, whilst exposing corruption that harms business.⁴⁴²

324. These represent what economists call positive externalities to the role of the news media, namely benefits that accrue to others and not directly to the media. The economic problem with externalities is that, because the benefits accrue to others, there will be the production of news below what is socially optimal. The only way to remedy this is to enable the news media to recoup some of that value it provides to others, much like what has been discussed in the relationship with the search, social media and AI platforms.

325. Historically, the news media benefited from

a technological restriction on advertising inventory, and also a government restriction in the form of broadcaster licences that limited the number of players. This natural and legislated protection ensured the media had sufficient means to recoup the value provided to others and thrive in SA. However, since the rise of the digital economy, advertising inventory has exploded and digital platforms have extracted much of the value from the news media. This has resulted in the news media seeing a substantial decline in revenue, and undermining of its ability to deliver on the social externalities. In fact, the news media expressed concerns in the public hearings that part of this decline has been the result of SA business chasing lower CPMs, rather than supporting direct spend with the news media, despite SA business benefiting materially from the role of the media.⁴⁴³

326. Whilst ensuring a fair share of value with digital platforms will improve the media's financial position, it only addresses a fair share from what the platforms have privately benefited, and does not address the broader positive externalities for citizens and business. Government and business have provided some support to the news media:

326.1. Government does support the public broadcaster through the TV licence fees, and outside of the SABC, government assistance has primarily focused on support for community media. Government helped fund the

442 SANEF and Daily Maverick public hearing
443 Daily Maverick public hearing

Media Development and Diversity Agency (MDDA) along with the major print and broadcast media, to develop community and small commercial media in 2003.⁴⁴⁴ The MDDA has placed more emphasis on radio and less on print media. However, as the print and broadcast media are now under financial pressure, they are less able to support the MDDA, placing greater pressure on funding from government. Government also committed to spending 30% of its media budget on community media,⁴⁴⁵ but has to date not implemented this commitment, and very little of that commitment reaches community print media.⁴⁴⁶

326.2. Corporate and NGO donations have been a feature of the SA media landscape for some time, assisting in the financial support of investigative and public interest journalism. These donations have proved essential at a time when the media has faced declining advertising and cover price revenues. The concern with corporate and NGO funding is the potential to influence the editorial independence of the media. Whilst SA editors are quick to assert that independence, the funding is still often earmarked for particular areas of investigation (e.g. government corruption and not business fraud) or topics (e.g. TB and not other prevalent diseases) which still shape the editorial priorities. Corporate funding is typically targeted at individual news organisations, although some industry funds exist.

327. However, given the distress in the news media, it is apparent that the extent of support has fallen short of what is required in the current digital environment, and will continue to be so absent changes to the support provided. Even though the Inquiry is provisionally recommending remedies to rebalance the share of value with the digital platforms, this will also not restore the levels of advertising revenue lost by news media in the past fourteen years. This is because there are other market factors at play that serve to permanently reduce news media advertising revenue, such as the growth in online content that competes for consumer attention, and expands the supply of digital advertising inventory, suppressing online CPMs. As such, even where news media has innovated and changed the business model to adapt to the new online environment, they still face financial losses (e.g. News24)⁴⁴⁷ or need to cut costs and staff to prevent losses (e.g. Daily Maverick)⁴⁴⁸.

328. It is unlikely that government will have the financial resources to support the broader industry, given current fiscal constraints and the need to still find a funding model for the SABC. But also, much like the SABC, there is a need to find more sustainable solutions other than constant transfers to the news media. The model also has to work for the entire industry, and not be selective. The industry domestically and internationally has proposed news media industry funds - to collate support from corporates, government and philanthropy to fund public interest media. The challenge is that this may disrupt current direct philanthropic donations, and the larger recipients don't support an industry fund. The benefit is of course a greater scale and pooling of resources,

444 <https://mdda.org.za/>

445 <https://www.gov.za/news/media-statements/minister-nomvula-mokonyane-community-media-outlets-advertising-21-sep-2018>

446 NCRF public hearing

447 Media24 public hearing presentation

448 <https://www.dailymaverick.co.za/article/2024-09-19-announcement-about-daily-mavericks-cost-reduction-and-reorganisation/>

enabling the building of an endowment to make funding sustainable.⁴⁴⁹

329. The media itself has made various proposals for interventions by both government and business, which they see as beneficiaries of the public interest role of the media.⁴⁵⁰ Some of these proposals draw on thinking by the news media globally, which is starting to gain traction in some jurisdictions, such as the recently passed journalism labour tax credits in Canada⁴⁵¹ and New York State.⁴⁵² The specific proposals include:

329.1. On taxation:

329.1.1. Making donations, subscription and membership contributions to journalism tax-deductible regardless of the organisational status.

329.1.2. Offering depreciation allowances to investors who invest in news media organisations, to encourage financial backing for journalism.

329.1.3. Zero-rating VAT for reader revenue, such as subscriptions and memberships.

329.1.4. Advertising rebates for businesses that buy direct advertising with the news media.

329.1.4.1. A journalism employee tax credit.

329.2. On the commitments to mainstream and community media:

329.2.1. Government implements the commitment of 30% advertising spend on community media.

329.2.2. SA businesses commit to support the SA news media through direct advertising sales for the placement of ads on the news media digital inventory, rather than programmatic advertising.

329.3. Other

329.3.1. Compensation for whistleblowing by investigative journalism.⁴⁵³

330. In addition to the news media itself, there is also a need for support for industry bodies such as the Press Council and Broadcasting Complaints Commission of South Africa (BCCSA) that self-regulate the news media, and which have historically been funded by the news media itself. As the news media come under increasing financial pressure, there is a risk that these important institutions become under-funded, threatening their important oversight role. Of course, if the media itself receives adequate support, then they may continue to provide sufficient funding for these institutions.

331. For community media, there appears to be an opportunity to collectively sell advertising inventory directly, to offer a national audience across community print, radio and television. In fact, consolidation of community media is often done on the basis of synergies in advertising sales, and reaching a broader audience. There has been consideration given to putting together such an offer, but it requires greater levels of coordination within the distinct community media types.⁴⁵⁴

449 IFPIM in-camera hearing

450 Daily Maverick public hearing

451 <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/canadian-journalism-labour-tax-credit.html>

452 https://www.cjr.org/the_media_today/new_york_local_journalism_funding.php

453 The Inquiry understands that does not have precedent globally and can theoretically compromise editorial independence if legislated rather than discretionary.

454 AIP in-camera hearing

7.2. Provisional findings and recommendations

7.2.1. Findings

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

332.1. 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.

332.2. 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 organised, engage 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.

332.3. 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.

333. The inability of the media to collectively organise 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.

7.2.2. Recommendations

334. The recommendations are limited to actions by the Commission to support collective industry funds and community national advertising 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.

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

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

335.2. 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 organisations 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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