

Comp Commission challenges Takealot, Google, Uber Eats and Mr D Food

 By [Karabo Ledwaba](#)

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On Monday the Competition Commission released its final report on the Online Intermediation Platforms Market Inquiry (OIPMI) that was launched on 19 May 2021. The inquiry was launched after it was suspected some online platforms were restricting competition specifically in relation to small and medium enterprises, as well as historically disadvantaged people who competed in these markets.



Source: www.unsplash.com

In the report platforms that are fingered are required to make remedial changes. These include platforms such as Google, Booking.com, Takealot, Apple, Uber Eats, Mr D Food, Property24, Private Property, AutoTrader, and Cars.co.za. Other businesses include national restaurant chains, Bolt Food and Prop Data.

First inquiry

Commissioner Doris Tshepe said:

“ The completion of this market inquiry is a momentous occasion in itself, particularly in this case as it is the first inquiry under the amended legislation and the first to delve into the increasingly important digital economy. ”

The report lays out a comprehensive set of remedies that digital platforms and select businesses must implement to tackle market features that adversely affect competition. These measures are primarily geared towards addressing challenges stemming from the business models utilised by digital platforms, rather than deliberate actions to suppress competition.

Furthermore, the report proposes recommendations to the Department of Trade, Industry, and Competition concerning funding initiatives aimed at supporting historically disadvantaged persons in their entrepreneurial endeavors.

Minister Ebrahim Patel applauded the OIPMI team led by chief economist James Hodge as the chairperson of the Inquiry, for their “enormous effort and quality of work” and said the government should consider a comprehensive response to the recommendations made by the inquiry. He said the inquiry is a first to be undertaken by a developing African country.

The Inquiry conducted extensive evidence-gathering, including public hearings in November 2021 and private hearings in February 2022. Afterward, in July 2022, the Provisional Report was released. Since then, the Inquiry has continued its efforts, gathering further evidence and engaging in in-depth discussions with all relevant stakeholders to validate the preliminary findings.

To enhance transparency and understanding, the Inquiry has also provided a summary of its findings and the proposed remedial actions, making it accessible to the public and businesses operating on these platforms. This summary aims to clarify the implications of the findings and how the suggested remedies would affect them.

Some of the findings include:

Google Search

The commission's investigation found that Google plays a crucial role as a gateway for consumers across various platform categories. However, its business model, which combines paid search with free results, tends to favour larger established platforms. Additionally, Google has been found to prioritise its own shopping and travel units on its search results page, potentially limiting the visibility of smaller South African platforms.

To address these concerns, the remedial action requires Google to offer increased exposure to both free and paid results for smaller South African platforms. This includes the introduction of a new platform sites unit that showcases relevant smaller platforms in search results. Google has also been directed to provide R180m in advertising credits to support smaller platforms.



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In an effort to support SMEs and black-owned online businesses, an additional R150m will be allocated for training, product support, and other measures. To aid consumers in identifying and supporting local platforms, Google will implement an SA flag identifier and search filter.

Furthermore, Google is required to cease self-preferencing its own products and services and must implement measures similar to those taken in Europe to comply with provisions in the Digital Markets Act.

These remedial actions aim to foster a more level playing field for all platforms and promote competition in the digital market while supporting the growth of smaller South African businesses.

Travel

The commission found that Booking.com's restriction on hotels and other establishments from pricing lower on their own website or on other travel platforms both limits competition from these sources and also creates a dependency that is used to extract higher commission fees from hotels.

The company is required to remove the restrictive pricing clauses from its contracts, allowing hotels and other establishments to price as they wish across different online channels, including their own.

E-commerce

Takealot faces a conflict of interest on its site as its own retail division competes with other sellers, and this has led to behaviour that has disadvantaged sellers in a number of ways.

The platform has been ordered to segregate its retail division from its marketplace operations, preventing its retail services from accessing marketplace seller data and unilaterally stopping marketplace sellers from competing for certain brands. Takealot must introduce a rapid dispute resolution mechanism and to extend the employee code of conduct and independent complaints channel to make unfairly harming marketplace sellers a conduct offence.

App stores

Google Play and Apple App Store are unconstrained in the commission fees they charge paid app developers, and their global business model limits the curation and visibility of local SA paid app developers.

They have been ordered to stop preventing apps from directing consumers to pay on the app's own website, and to ensure continued free use by consumers of content purchased from that website. Implementation in SA of measures taken in Europe to comply with similar provisions in the Digital Markets Act, including fair and reasonable pricing, will constitute compliance. Google and Apple must also provide a South African curation of apps on their app stores and advertising credits to SA app developers.

Food delivery

Local delivery platforms competing with Uber Eats and Mr D Food have faced challenges, including restrictions on restaurant franchisees listing with them and a lack of transparency on menu surcharges across platforms. These issues not only affect the platforms but also have a negative impact on consumers.

Independent restaurants often find themselves at a disadvantage when negotiating with Uber Eats and Mr D Food, leading to higher commission fees compared to restaurant chains. As a result, these independent establishments are forced to increase prices for consumers, limiting choice and potentially compromising service levels due to fee constraints.

To address these concerns, restaurant chains are now prohibited from restricting their franchisees from listing on local delivery platforms of their choice. Additionally, Uber Eats and Mr D Food are required to offer lower commission fees and enhanced value propositions for independent restaurants.

Uber Eats has taken steps towards implementing a standardised tiered commission fee structure for independent restaurants, providing various options with lower commission fees based on different service levels and ongoing costs. Similarly, Mr D Food aims to achieve the same outcome by introducing a promotional rebate on commission fees, which can be utilised for discounts and promotions on their platform, alongside advertising credits. Furthermore, both platforms are obligated to periodically inform consumers that pricing may vary from in-restaurant menus due to commission fees.

Online classifies

Property classifieds face a lack of choice due to restrictive features favoring *Property24* and *Private Property*. Issues include a lack of interoperability in feeding agency listings, long contracts locking in large estate agencies, and overt support for Private Property by the industry association, including shareholding by major agencies. Small agents and dealers face disproportionately high pricing, limiting their online visibility.

To address these concerns, *Property24* and *Private Property* must offer interoperability for estate agents to feed listings to other platforms without charge and not impose fees for incoming listings. Additionally, a recommendation has been made for national agencies to divest their shareholding in Private Property, and Rebosa has withdrawn its endorsement of one platform.

To level the playing field, all top property and automotive platforms are urged to substantially reduce prices for SME agents and dealers to a level within 10-15% of that charged to larger agents and dealers.

All SA platforms

The inquiry's findings revealed that the prevalence of undisclosed advertising on intermediation platforms has a detrimental effect on consumer choice and undermines fair competition.

In response to this issue, the inquiry has mandated that all South African platforms must clearly label paid-for listings or those that have received a boost in ranking as "promoted," "sponsored," or "ad," aligning with the Advertising Regulatory Board's Code of Advertising Practice. Additionally, these platforms are required to adopt a responsible advertising code to ensure transparency and accountability in their advertising practices.

HDP programme

All the leading platforms mentioned in the report must introduce an HDP programme that provides black-owned businesses a package of assistance to onboard and promote visibility on their platforms. The commission has made a recommendation to the government for a startup fund for black digital entrepreneurs with incubator support.

ABOUT KARABO LEDWABA

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