South Africa Competition Commission Remedies on Media and Digital Platforms Market Inquiry

Provisional Report Targets U.S. Companies and Faults Digital Services for Shift in News Consumption

In February 2025, the South Africa Competition Commission released its provisional report on the Media and Digital Platforms Market Inquiry (MDPMI).[1] The report contains findings and draft remedies that distort the business model of online news and the role digital services play in the online information ecosystem, recommending a handful of American companies pay domestic publishers a large sum annually for using news on search or social media websites.[2] The detrimental effects of these types of proposals are well-documented, and there is a clear history of unintended consequences that policymakers must consider for South Africa's innovation economy and for trade relations with the United States.[3] While local journalism is crucial for the free flow of information and keeping communities informed, the industry's challenges are nuanced and require thoughtful, evidence-based solutions rather than policies that risk making news outlets dependent on payments from other businesses and require special treatment in product designs.

Through remedies, including the sharing of sensitive company information, extreme proposals on artificial intelligence (AI) summaries and searches, and annual contributions to publications and gatekeeper institutions, the proposals contain numerous competition, trade, and copyright concerns, as detailed below. In addition to mandatory annual payments of R300 - R500 million imposed on companies, the proposal also threatens a 5-10% digital levy on digital advertising revenues should the organizations fail to implement the identified remedial actions, echoing Australia's similar proposal to impose a discriminatory tax to supplement its News Media Bargaining Code.[4]

Distorts the highly dynamic and competitive digital services and social media markets

While the report asserts a lack of competition among social media firms, it fails to fully consider how such services directly and indirectly compete with one another, leading to greater consumer choice and benefits. Further, the findings claim that particular firms have "deprecated news content" through the exertion of monopoly power in online markets. In the analysis and provisional remedies regarding the so-called deprecation of content, the report unfairly targets exclusively American companies. Additionally, the report fails to consider the broader competitive landscape in online search and advertising.[5] By advocating for artificially

[1] https://www.compcom.co.za/wp-content/uploads/2025/02/CC_MDPMI-Provisional-Report_Non-Confidential-Final.pdf
[2] https://ccianet.org/library/the-harms-of-forced-online-news-payments/
[3] https://ccianet.org/library/link-tax-failures-global-efforts-continue-to-uproot-internets-foundation-and-journalism-ecosystem/
[4] https://ccianet.org/library/news-media-bargaining-incentive-a-coercive-and-discriminatory-digital-tax/
[5] https://project-disco.org/competition/the-decision-in-googles-monopolization-case-may-benefit-competitors-more-than-consumers/

changing the parameters by which search results are generated, the report ignores consumer-oriented factors such as relevance, quality, location and language settings, and website usability. Furthermore, the proposed remedies would require digital services to preference South African publications over all publishers and likely require different algorithms exclusive to the country. The report instead seeks to promote a search methodology that would likely lead to preferencing some websites over others at the expense of consumer welfare.[6] By de-prioritizing consumer-oriented search results and imposing a digital levy on online search providers, the proposed remedies seek to distort a dynamic and competitive market for news media, picking winners and losers by favoring certain news providers over others.[7] Intervention in the market to discriminate against popular foreign news sources, in an effort to protect the local suppliers, has no basis in sound competition policy and as noted below, is inconsistent with core trade principles.

Undermines digital trade by targeting U.S. companies

The proposed remedies disproportionately target U.S. companies, with all but one of the firms (TikTok) subject to these onerous obligations coming from the United States. U.S. companies generated $1.9 billion in digitally deliverable services exports to South Africa in 2023,[8] a bright spot in an otherwise unbalanced trade relationship, where South Africa runs a significant trade surplus. To the extent that any new proposed measure would hobble this success, it would fall squarely within the United States Trade Representative's remit for countering unfair and non-reciprocal trade practices from foreign trading partners and scrutiny under Section 301 of the 1974 Trade Act. South Africa's proposal echoes other discriminatory frameworks in this arena, such as Australia's News Media Bargaining Code and Canada's Online News Act, which have previously caught U.S. trade policymakers' concern.[9]

South Africa has itself been a leader in Africa's growth in digital trade, which has brought with it broader economic benefits.[10] Unfairly targeting and seeking to restrict the operations of major U.S. partners in this key sector would threaten the positive relationship that brings mutually beneficial gains to both the U.S. and South African economies and technology industries.

The U.S. technology industry has invested heavily in South Africa in recent years, including significant payments to fund a new submarine cable landing in South Africa[11] that brought new jobs[12] to the country and helped finalize the highest-capacity cable, by far, to ever land on the continent.[13] In fact, the cable has 20 times the capacity of the cable that previously served the area and has the potential to boost internet speeds by more than five times in not only South Africa, but the entire region. This investment is also reflected by the recent construction of

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6 https://project-disco.org/competition/doj-google-ad-tech-alleging-anticompetitive-harm-where-none-found/
7 *Supra* n. 1, at 4.
8 https://apps.bea.gov/iTable/?reqid=62&step=9&isuri=1&product=4#eyJhcHBpZCI6NjIsInN0ZXBzIjpbMSw5LDZdLCJkYXRhIjpbWyJwcm9kdWN0IiwiNCJdLFsiVGFibGVMaXN0IiwiMzU5Il1dfQ==
9 https://www.politico.eu/wp-content/uploads/2021/02/10/Submission-17-U.S-Government-Office-of-the-U.S-Trade-Representative-1.pdf
10 https://www.wto.org/english/thewto_e/minist_e/mc13_e/policy_note_digital_trade_africa_e.pdf#page=10
11 https://www.datacenterdynamics.com/en/news/google-officially-launches-equiano-subsea-cable/
12 https://africapractice.com/wp-content/uploads/2021/10/Equiano-Regional-Economic-Impact-Assessment-6-October-2021.pdf
13 https://subtelforum.com/googles-equiano-cable-has-landed-in-south-africa/

local headquarters[14] for Africa-wide operations for one U.S. digital services provider, and the numerous data centers—many of which are relatively new—that U.S. companies operate in the country.[15] [16] However, if operating and investing in the market involves forced revenue transfers to local businesses and mandatory changes to companies' services and operations, the scale of these investments and their expansion could be stymied—harming both U.S. companies and the burgeoning South African digital economy.

Remedies on AI hinder innovation and access to information

The report offers multiple provisional remedies related to AI services, partially based on a finding that AI summaries in search results somehow represent a market distortion. However, high-quality links that appear in AI overviews tend to get more clicks than those displayed on traditional search alone.[17] Additionally, the underlying technology between AI summaries on search results is constantly evolving, and establishing conclusions about its impact on search results or consumer welfare at this point would be premature and risks distorting the rollout of beneficial offerings for consumers and publishers alike.

Moreover, the report recommends allowing news publishers to either opt-out of AI summaries on search results or "benefit from" a 1% "copyright levy" on content used by an AI large language model (LLM) to provide an AI summary. While search engine providers already enable publishers to opt-out of having their content crawled through the use of community-developed web standards such as robots.txt and other personalized functions,[18] a tax on developing AI summaries would not only be technically difficult but also impose costs for the broader media ecosystem. Furthermore, the proposed "copyright levy" could contravene international obligations under the Berne Convention that state "news of the day" and "miscellaneous facts having the character of mere items of press information" are not subject to copyright protections.[19] As such, summarizing this type of unprotected factual information does not infringe copyright and cannot be the basis for a copyright levy.

Digital advertising tax remedies risk violating international obligations and harming cross-border commerce

The proposal to impose a 5-10% digital tax on digital advertising revenue if the parties identified fail to implement the remedies would result in a discriminatory levy, inconsistent with international tax principles more broadly. First, it would, by nature of taxing revenue for cross-border services, be inconsistent with international taxation principles that favor taxing income at the permanent establishment associated with income generation. Such an effort would undermine efforts to address global tax fairness through the OECD/G20 inclusive framework, of which South Africa has been a strong proponent. Second, such a tax would

[14] https://www.biznews.com/sa-investing/2024/12/12/amazon-african-hq-cape-town
[15] https://www.cloudflare.com/network/
[16] https://cloud.google.com/blog/products/infrastructure/heita-south-africa-new-cloud-region
[17] https://www.sistrix.com/blog/ai-vs-seo-what-does-the-future-of-search-look-like/#Do-AI-reviews-lead-to-fewer-clicks-on-websites-than-before
[18] https://blog.google/technology/ai/an-update-on-web-publisher-controls/
[19] Berne Convention for the Protection of Literary and Artistic Works art. 2(8), Sept. 9, 1886, as revised July 24, 1971, and as amended Sept. 28, 1979, S. Treaty Doc. No. 99-27, 1161 U.N.T.S. 3 (1986).

generally undermine stable cross-border commerce, lowering investment and the supply of digital services while raising prices for consumers.[20] As a result, the proposal to impose a 5-10% digital tax on advertising revenue would provide net harm to South Africa's economy and consumers, and fail to achieve its intended outcome. Finally, to the extent that any such tax is discriminatory, South Africa risks exposing itself to countervailing measures from the United States, legitimate under the WTO: the United States negotiated an exception to Most-Favored-Nation (MFN) treatment in the General Agreement on Trade in Services (GATS) that is intended to specifically provide for redress against such taxes affecting U.S. suppliers.[21]

Fails to account for changing news consumption and industry

The definition of news continues to evolve, especially as researchers explore how new technologies, social trends, and even political contexts shape what qualifies as news and a newsroom. This is seen in the shifting boundaries between traditional journalism and user-generated content — intensified by the rise of the internet and the sharing of content on digital services. South Africa's proposal remains falsely built on the premise that claims and tries to remedy the perception that digital services somehow "siphon" revenue away from news sites by linking to them and then sending them traffic. In reality, digital services help citizens find and engage with a wider range of content than that available from its concentrated traditional media sector and help nascent, local, and community publications to engage audiences. People around the world are also changing where they go for their news, with additional social media services and websites steadily climbing in users year over year.[22] The remedies take a dated and stagnant approach to an ever-evolving industry and ecosystem.

Revenue transfers will not solve core issues in news ecosystem

The remedies proposed in South Africa's provisional report recommend subsidizing one industry at the expense of another, undermining the capabilities of fully independent journalism. These mandated wealth transfers essentially avoid funding a sustainable solution that effectively manages the disruption being faced by the news industry, functioning as a band-aid for these issues. This disruption has been seen throughout history, first with the introduction of radio and later with television. The news industry has undergone various forms of transformation which is especially apparent in advertising. Following the introduction of the internet, many news publishers shared their content for free online.[23] Since then, audiences have largely expected the news to be free and show little inclination to pay for news subscriptions except for narrow specialty interests.[24] The problems being faced by the news industry pre-date modern innovations and these proposed remedies assume that the targeted companies operate in a static market, overlooking competition dynamics and the fast-moving and dynamic nature of the technologies they operate.

[20] https://crsreports.congress.gov/product/pdf/R/R45532/2
[21] See the United States' MFN exception to address discriminatory taxation, available here (p. 6): https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/SCHD/GATS-EL/EL90.pdf&Open=True
[22] https://www.pewresearch.org/journalism/fact-sheet/social-media-and-news-fact-sheet/
[23] https://ccianet.org/library/ccia-harms-of-forced-online-news-payments-two-pager/
[24] https://ccianet.org/articles/panel-urges-policymakers-consider-past-lessons-link-tax-policies/

Conclusion

South Africa's provisional report reflects a concerning trend of regulatory interventions that can actively distort the digital news ecosystem and innovation economy. While ensuring means of sustainable aid for local and community news is a vital objective, proposals that mandate cross-industry subsidies and impose discriminatory levies could have unintended consequences, including harming the very publishers they seek to help. Governments must aim to support quality journalism in ways that maintain journalistic integrity and foster innovation. Overall, policymakers must consider alternative approaches that foster media innovation and ensure a balanced strategy that maintains the healthy information in South Africa and beyond.