

CCIA Comments in Response to the Competition Commission of South Africa's Draft Guidance Note for Online Intermediation Platforms

The Computer & Communications Industry Association (CCIA)¹ welcomes the opportunity to submit comments in response to the Competition Commission of South Africa's (SACC) draft Guidance Note for Online Intermediation Platforms (OIPs) (the Guidance Note),² released for public comment on October 31, 2025.³ These comments follow CCIA's previous submission in response to the SACC's Online Intermediation Platforms Market Inquiry.⁴

Online digital services platforms, referred to in the Guidance Note as "online intermediation platforms,"⁵ offer innovative and popular services to consumers, revolutionizing the way they interact with businesses.⁶ However, as the SACC notes, the Guidance Note is based on the concern that certain market features of online intermediation platforms may impede, distort, or restrict competition. In seeking to provide guidance to OIPs operating in South Africa, the SACC's Guidance Note likewise references international *ex-ante* regulatory frameworks and investigations.⁷

CCIA strongly believes that, when determining if there are any potential competition concerns that need to be addressed through regulation, it is paramount for South African policymakers to consider certain guiding principles. It is important for the SACC to reexamine some of the positions outlined in the Guidance Note, to fully reflect the market realities and underlying business models of these complex services.

These comments focus on the SACC's Guidance Note for OIPs, and offer some important guiding principles for South African policymakers to consider. When assessing the Guidance

¹ CCIA is an international, not-for-profit trade association representing a broad cross-section of technology and communications firms. For over fifty years, CCIA has promoted open markets, open systems, and open networks. The Association advocates for sound competition policy and antitrust enforcement. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.ccianet.org.

² Competition Commission of South Africa, "*Online Intermediation Platforms Guidance Note*" (Oct. 31, 2025), <https://www.compc委.co.za/wp-content/uploads/2025/10/Draft-Online-Intermediation-Platforms-Guidance-Note.pdf>.

³ Competition Commission of South Africa, "*Competition Commission: Input Sought On Two Draft Guidance Notes*" (Oct. 31, 2025), <https://legalacademy.co.za/news/read/competition-commission-input-sought-on-two-draft-guidance-notes#:~:text=the%20pre%20merger%20filing%20consultation,to%20impede%20or%20prevent%20competition>.

⁴ Computer & Communications Industry Association, "*CCIA Files Comments On South African Online Platforms Market Report*" (Aug. 24, 2022), <https://ccianet.org/news/2022/08/ccia-files-comments-on-south-african-online-platforms-market-report/>.

⁵ *Supra* n. 2, at 6.

⁶ Paul, J. et al., "*Digital transformation: A multidisciplinary perspective and future research agenda*" (2024), International Journal of Consumer Studies, 48(2), e13015, <https://doi.org/10.1111/ijcs.13015>; Kate Gibson, "*Digital Platforms: What They Are & How They Create Value*" (May 8, 2024), Harvard Business Review, <https://online.hbs.edu/blog/post/what-is-a-digital-platform>.

⁷ *Supra* n. 2, at 3.

Note, policymakers should keep in mind that the conducts that the Guidance Note considers as likely to raise competition concerns are common business practices that are often procompetitive or competitively benign.

I. Key Considerations and Principles to Guide Regulatory Proposals

Global digitalization across several industries of the economy has provided consumers and businesses with tremendous benefits. Numerous studies have confirmed the many ways in which digital services and multi-sided business models create and stimulate competition in the economy.⁸ Given the dynamic and innovative nature of digital markets, any proposed guidance needs to consider the wider potential implications for businesses, consumers, innovation, and the broader economy.

Digital technology is diffusing across the entire economy in industries as diverse as advertising, agriculture, automotive, manufacturing, and retail. With the ongoing digitalization across the global economy,⁹ several markets have digital components and digital offerings that also compete with physical ones, including retail and telemedicine.¹⁰ Businesses usually described as “digital” are companies that adopted early on the use of technology and digital tools across various industries. Hence, as the entire global economy moves towards increased digitalization, enforcing competition laws regarding specific conducts against certain digital companies could create asymmetric results in digital and other markets, leading to legal ambiguity and uncertainty for businesses of all sizes.

⁸ See, e.g., European Commission, “*Staff Working Document: Evaluation of the Vertical Block Exemption Regulation*” (Sep. 8, 2020), at 32, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020SC0172> (“[A]lternative online distribution models such as online marketplaces have made it easier for retailers to access customers. By using these third-party platforms, small retailers may, with limited investments and effort, become visible to potential customers and sell products to a large customer base and in multiple Member States.”); Oxera, “*How platforms create value for their users: implications for the Digital Markets Act*” (May 12, 2021), at 34, <https://www.oxera.com/wp-content/uploads/2021/05/How-platforms-create-value.pdf> (“The bundling and tying of different features and services by a platform can boost the efficiency of a market by reducing transaction costs, increasing choice for consumers, and helping businesses to achieve scale economies”).

⁹ See, e.g., Sarah Robson and Tim Cowell, AVEVA, “*The four pillars of a trusted industrial information infrastructure*” (2023), https://discover.aveva.com/paid-search-industrial-cloud-hybrid-saas/whitepaper-the-four-pillars-of-a-trusted-industrial-information-infrastructure?utm_term=industrial%20digitalization&utm_campaign=G_S_A_NA_All_Campaign_Solution_Cloud_Industrial%20Cloud%20Hybrid%20SaaS&utm_source=adwords&utm_medium=ppc&gad_source=1&gclid=Cj0KCQjwir2xBhC_ARIsAMTXk87r9vMQVFqoL15eh0XMKGAY_cDwx6mfund3avCiupvdLEEQ0UbGRnAaAmYmEALw_wcB; Yifat Perry, NetApp BlueXP, “*Digital Transformation: Examples from 5 Industries*” (Jun. 24, 2022), <https://bluexp.netapp.com/blog/cvo-blg-digital-transformation-examples-from-5-industries>.

¹⁰ Rosa Abrantes-Metz and Mame Maloney, CCIA Research Center, “*Competitive Dynamics of Online and Brick-and-Mortar Retail Prices*” (Aug. 2, 2022), <https://research.ccianet.org/reports/competitive-dynamics-online-brick-mortar-retail-prices/>; Trevor Wagener, Jeff Simpson, and David Kearns, Deloitte, InsightIQ, “*Consumer Preferences Embrace a Mix of Physical and Digital*” (Jan. 31, 2022), <https://ccianet.org/research/reports/consumer-preferences-embrace-mix-physical-digital-shopping/>; John Glaser and Kyle Zebley, Harvard Business Review, “*It’s Time to Cement Telehealth’s Place in U.S. Health Care*” (Jan. 20, 2023), <https://hbr.org/2023/01/its-time-to-cement-telehealths-place-in-u-s-health-care>; Prashant Gandhi, Somesh Khanna, and Sree Ramaswamy, Harvard Business Review, “*Which Industries Are the Most Digital (and Why)?*” (Apr. 1, 2016), <https://hbr.org/2016/04/a-chart-that-shows-which-industries-are-the-most-digital-and-why>.

I.1. Policymakers Should Carefully Consider the Potential Costs of New Regulations

Given the potentially significant economic impact of stricter regulatory scrutiny of digital markets, it is fundamental for policymakers to engage with stakeholders in the development of any *ex-ante* style regulatory guidelines. Introducing new guidelines is not costless, particularly given the dynamic and innovative nature of digital markets. As a result, the ultimate objective of any new guidelines should be to promote and stimulate competition and innovation.

As the Organisation for Economic Cooperation and Development (OECD) and the International Competition Network (ICN) have underscored, proposed guidelines and regulations should allow for clearly procompetitive or competitively benign conducts, and recognize justifications for legitimate business behaviors to ensure that the cost of any new guidance or regulation does not outweigh its benefits.¹¹ Without appropriate safeguards, these digital market guidelines may inadvertently harm South African consumers and businesses, particularly the micro, small, and medium-sized businesses (MSMBs) and historically disadvantaged persons (HDPs) who use and rely on digital services. Therefore, CCIA encourages the SACC to analyze the potential impact of the Guidance Note and whether its benefits would outweigh its potential harms to the country's consumers, businesses, and economy.¹²

I.2. Policymakers Should Be Cautious in Relying on Untested International Regulatory Experiments

As the SACC discusses in the Guidance Note, *ex-ante* digital regulatory proposals are currently being considered in several jurisdictions worldwide.¹³ However, it is important to underscore how, so far, there are only three jurisdictions with fully operational *ex-ante* digital regulatory frameworks: Germany, through the 10th amendment of the German Competition Act

¹¹ OECD, Key Issues in Digital Trade Review: OECD Global Forum on Trade 2023 “*Making Digital Trade Work for All*” (Oct. 2023), at 13, https://www.oecd.org/en/publications/key-issues-in-digital-trade-review_b2a9c4b1-en.html; ICN, ICN Advocacy Working Group, “Framework of Competition Assessment Regimes” (Apr. 2015), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_FrameworkCompetitionAssessmentRegimes.pdf.

¹² See OECD, Regulatory Policy Outlook (2021), https://www.oecd-ilibrary.org/governance/oecd-regulatory-policy-outlook-2021_38b0fdb1-en; OECD, Regulatory Impact Assessment (2020), <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>.

¹³ See, e.g., Center for Strategic and International Studies (CSIS), “*Digital Competition Policy Tracker*” (Apr. 2024), <https://www.csis.org/programs/scholl-chair-international-business/competition-policy-digital-era>.

(GWB)¹⁴ and Section 19a of the GWB,¹⁵ the European Union's Digital Markets Act (DMA),¹⁶ which became fully operational in March 2024,¹⁷ and the United Kingdom's Digital Markets, Competition, and Consumers Act (DMCC),¹⁸ which became fully operational in April 2025.¹⁹ Additionally, Japan's Mobile Software Competition Act is expected to become fully operational in December 2025.²⁰

Despite being fully operational for less than two years, the experience with the EU's DMA already suggests that rigid *ex-ante* regulations, which do not adequately consider their impact on consumers, can lead to worse user experiences and diminished access to beneficial digital services.²¹ Such regulations have not only negatively impacted consumers' access to information online, but they have also harmed smaller businesses in some cases by redirecting traffic away from them.²² Moreover, recent studies have found that the DMA's compliance costs for covered companies rise to around \$1 billion per year.²³ In addition, the DMA has led to unfit obligations for some designated companies, as well as unintended negative consequences for EU businesses, consumers, and innovation.²⁴ The negative impact of increased digital regulations

¹⁴ 10th Amendment to the German Competition Act (GWB), Federal Law Gazette Volume 2021 Part I No. 1, issued in Bonn on January 18, 2021, https://www.bgbler.de/xaver/bgbler/start.xav#/switch/tocPane?_ts=1755723013671.

¹⁵ *Id.*, Section 19a (“The Bundeskartellamt may issue a decision declaring that an undertaking which is active to a significant extent on markets within the meaning of Section 18(3a) is of paramount significance for competition across markets.”).

¹⁶ Regulation (EU) 2022/1925 of The European Parliament and of The Council (Sep. 14, 2022), https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=uriserv%3AOJ.L_2022_265_01.0001.01.ENG&toc=OJ%3AL%3A2022%3A_265%3ATOC.

¹⁷ European Commission, News Announcement, “*Designated gatekeepers must now comply with all obligations under the Digital Markets Act*” (Mar. 7, 2024), https://digital-markets-act.ec.europa.eu/designated-gatekeepers-must-now-comply-allobligations-under-digital-market-act-2024-03-07_en.

¹⁸ UK Legislation, “*Digital Markets, Competition and Consumers Act 2024*” (May 24, 2024), <https://www.legislation.gov.uk/ukpga/2024/13/introduction>.

¹⁹ Cooley, “*New UK Consumer Law Regime Comes Into Force*” (Apr. 14, 2025), <https://www.cooley.com/news/insight/2025/2025-04-14-new-uk-consumer-law-regime-comes-into-force>.

²⁰ Japan Fair Trade Commission, Press Release, “*Regarding the Passage of the Act of Promotion of Competition for Specified Smartphone Software*” (Jun. 12, 2024), <https://www.jftc.go.jp/en/pressreleases/yearly-2024/June/240612.html>.

²¹ See, e.g., Paola Talavera, Competitive Enterprise Institute, “*EU's Digital Markets Act: An obstruction to AI innovation?*” (Jul. 30, 2024), <https://cei.org/blog/eus-digital-markets-act-an-obstruction-to-ai-innovation/>; Bloomberg, Samuel Stolton and Mark Gurman, “*Apple Won't Roll Out AI Tech In EU Market Over Regulatory Concerns*” (Jun. 21, 2024), https://www.bloomberg.com/news/articles/2024-06-21/apple-won-t-roll-out-ai-tech-in-eu-market-over-regulatory-concerns?embe_dded-checkout=true; Lauren Feiner, CNBC, “*Threads, Meta's Twitter competitor, is not yet available in the EU due to regulatory concerns*” (Jul. 6, 2023), <https://www.cnbc.com/2023/07/06/metash-threads-not-available-in-the-eu-due-to-legal-complexity.html>; Jess Weatherbed, The Verge, “*Meta won't release its multimodal Llama AI model in the EU*” (Jul. 18, 2024), <https://www.theverge.com/2024/7/18/24201041/meta-multimodal-llama-ai-model-launch-eu-regulations>; Nanna-Louise Linde, Microsoft EU Policy Blog, “*Microsoft announces changes to Microsoft 365 and Office 365 to address European competition concerns*” (Aug. 31, 2023), <https://blogs.microsoft.com/eupolicy/2023/08/31/european-competition-teams-office-microsoft-365/>.

²² See, e.g., Javier Delgado, Mirai, “*DMA implementation sinks 30% of clicks and bookings on Google Hotel Ads*” (May 7, 2024), <https://www.mirai.com/blog/dma-implementation-sinks-30-of-clicks-and-bookings-on-google-hotel-ads/>; Adam Cohen, Google The Keyword, “*New Competition Rules Come With Trade-Offs*” (Apr. 5, 2024), <https://blog.google/around-the-globe/google-europe/new-competition-rules-come-with-trade-offs/>.

²³ Carl J. Schramm, LAMA Economic Research, “*Costs to U.S. Companies from EU Digital Services Regulation*,” CCIA Research Center (Jul. 25, 2025), <https://ccianet.org/research/reports/costs-to-us-companies-from-eu-digital-services-regulation/>.

²⁴ CCIA, “*Position Paper on the Review of the Digital Markets Act*” (Sep. 23, 2025), at 2, <https://ccianet.org/library/ccia-position-paper-on-dma-review/>.

has been particularly notable on MSMBs. EU and UK tech startups have experienced shrinking savings and higher costs associated with additional regulations, and bear measurable financial losses from regulatory-driven delays.²⁵

Although various jurisdictions are considering digital *ex-ante* frameworks, there is no international convergence or consensus on best practices or results. In the U.S., legislation targeting a handful of technology companies was introduced in 2022; however, it raised major concerns,²⁶ and has not been reintroduced in subsequent sessions of Congress. While Brazil's Congress is currently considering a proposal for a digital regulatory framework recently introduced by the Ministry of Finance,²⁷ the bill's fate remains uncertain.²⁸ Additionally, though India has been another jurisdiction considering adopting an *ex-ante* digital competition regulatory framework,²⁹ the proposal was withdrawn earlier this year,³⁰ allowing time for the government to launch a market study to assess the need for such a framework and its potential impacts.³¹

The Guidance Note heavily references these international digital regulations when setting out the specific conducts considered to be anticompetitive when engaged in by OIPs.³² Given the extremely limited international experience with *ex-ante* digital regulations, CCIA strongly recommends a cautious approach to implementing similar guidelines or regulations, giving full consideration to the potential risks and tradeoffs associated with heavy-handed *ex-ante* digital

²⁵ The App Association, “The Hidden Cost of AI Regulations for EU and UK Startups and SMEs” (Oct. 14, 2025), <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/> (“EU and UK tech startups, scaleups, and SMEs lose on average €94K / £81K / \$109K – €322K / £280K / \$375K annually per firm from delayed AI models and launches; for directly affected small-tech firms, the loss rises to €160K / £139K / \$186K – €453K / £393K / \$528K.”).

²⁶ See, e.g., Krisztian Katona, Project DisCo, “AICOA’s Data Security, Privacy, and Content Moderation Issues Call for Risk Assessment” (Jun. 7, 2022), <https://www.project-disco.org/privacy/060722-aicoas-data-security-privacy-and-content-moderation-issues-call-for-risk-assessment/>; Project DisCo, “AICOA’s Failure and the Future of Competition Policy in Congress” (Jan. 6, 2023), <https://www.project-disco.org/competition/010623-aicoas-failure-and-the-future-of-competition-policy-in-congress/>.

²⁷ Ministry of Finance, “The Federal Government sends a bill to the Chamber of Deputies for the competitive regulation of big tech companies” (Sep. 19, 2025), <https://www.gov.br/fazenda/pt-br/assuntos/noticias/2025/setembro/governo-federal-envia-a-camara-dos-deputados-projeto-para-regulacao-concorrencial-das-big-techs>.

²⁸ Alba Ribera Martínez, “Brazil Seeks to Amend its Competition Law: A Regulatory Model à la Allemande,” Kluwer Competition Law Blog (Oct. 20, 2025), <https://legalblogs.wolterskluwer.com/competition-blog/brazil-seeks-to-amend-its-competition-law-a-regulatory-model-a-la-allemande/>.

²⁹ Ministry of Corporate Affairs, Government of India, “Report of the Committee on Digital Competition Law – Draft Digital Competition Bill, 2024” (Feb. 27, 2024), at 151; <https://www.mca.gov.in/bin/dms/getdocument?mds=gzGtvSkE3zIVhAuBe2pbow%253D%253D&type=open>; The Hindu Business Line, “Digital Competition Bill faces potential delay as House Panel revisits digital framework” (Dec. 19, 2024), <https://www.thehindubusinessline.com/news/digital-competition-bill-faces-potential-delay-as-house-panel-revisits-digital-framework/article69003282.ece>.

³⁰ Financial Express, “Gov’t to withdraw draft Digital Competition Bill” (Aug. 10, 2025), <https://www.financialexpress.com/business/industry-govt-to-withdraw-draft-digital-competition-bill-3942328/>.

³¹ Aakriti Bansal, Medianama, “MCA Issues RFP for Study on Big Tech Thresholds and Core Digital Services” (Nov. 12, 2025), <https://www.medianama.com/2025/11/223-mca-rfp-digital-competition-bill/>.

³² *Supra* n. 2 at 3.

regulations and guidance. By allowing some time to gauge how these international experiments are working in practice and then evaluate whether the reforms end up benefiting or harming consumers and innovation,³³ South African policymakers would have the opportunity to carefully analyze whether these untested, experimental international regulatory frameworks are effective, and if they are fit for purpose for the South African digital ecosystem.

II. Impact on South Africa's Vibrant Startup Ecosystem

Digital startups have been a disruptive force in the way traditional service providers work and interact with customers. They are changing the dominant paradigms by which consumers access products and services.³⁴ Given the great importance of startups in the digital economy, it is paramount for policymakers and regulators to promote, not hinder, competition and innovation in these complex ecosystems.

African digital startups have grown tremendously over the past decade, with the continent experiencing one of the fastest startup growth rates in the world.³⁵ South Africa in particular has enjoyed one of the most advanced startup ecosystems in the region, and is home to at least 80 tech hub incubators and accelerators.³⁶ South Africa has established itself as Africa's leading destination for venture capital (VC) investment, with the number of tech firms receiving funding multiplying sevenfold to over seven hundred between 2015 and 2022.³⁷ As South Africa's startup ecosystem has matured, it has captured 30 percent of the continent's equity funding in 2025.³⁸ VC investment in South Africa demonstrates remarkable growth, climbing from \$142.4 million in 2020 to a projected \$550+ million in 2025, with an average deal size of US\$7.7 million in the first half of 2025, representing a 31-percent compound annual growth rate.³⁹ The

³³ See, e.g., “Interview with Alexandre Cordeiro Macedo, President, Administrative Council for Economic Defense (CADE),” Conducted by Krisztian Katona on behalf of the ABA Antitrust Magazine (Jun. 30, 2023), https://www.americanbar.org/groups/antitrust_law/resources/source/2023-jne/interview-with-alexandre-cordeiro-macedo/.

³⁴ See, e.g., Zhang K et. al., (2022), “Start-Up’s Road to Disruptive Innovation in the Digital Era: The Interplay Between Dynamic Capabilities and Business Model Innovation,” *Front. Psychol.* 13:925277, <https://doi.org/10.3389/fpsyg.2022.925277>; Maximilian Palmié et. al., “Startups versus incumbents in ‘green’ industry transformations: A comparative study of business model archetypes in the electrical power sector,” *Industrial Marketing Management*, Vol. 96 (2021), at 46, <https://doi.org/10.1016/j.indmarman.2021.04.003>.

³⁵ Lauren Field et. al., International Finance Corporation, “Venture Capital and the Rise of Africa’s Tech Startups” (May 2025), at 1 <https://www.ifc.org/en/insights-reports/2025/venture-capital-and-the-rise-of-africa-s-tech-startups>.

³⁶ Dario Giuliani and Sam Ajadi, GSMA, “618 active tech hubs: The backbone of Africa’s tech ecosystem” (Jan. 17, 2024), <https://www.gsma.com/solutions-and-impact/connectivity-for-good/mobile-for-development/blog/618-active-tech-hubs-the-backbone-of-africas-tech-ecosystem/>.

³⁷ Laurien Field et. al., International Finance Corporation (IFC) World Bank Group, “Venture Capital and the Rise of Africa’s Tech Startups” (May 2025), <https://www.ifc.org/content/dam/ifc/doc/2025/venture-capital-and-the-rise-of-africa-s-tech-startups.pdf>.

³⁸ Tekeida, “South Africa’s Start-up Ecosystem Quietly Leads Africa in Equity Funding” (Nov. 10, 2025), <https://www.tekedia.com/south-africas-start-up-ecosystem-quietly-leads-africa-in-equity-funding/?srsltid=AfmBOoqzfX99vZ4qXbQXiYuCnijuxJUmN3wzP4VmXwyo5m7fWSvhVInw>.

³⁹ African Private Capital Association (AVCA), “Q2 2025 Venture Capital Activity in Africa” (2025), <https://www.avca.africa/data-intelligence/research-publications/q2-2025-venture-capital-activity-in-africa/>; Southern African

country leads the African continent in startup exit activity with 56 recorded exits since 2019, demonstrating investor confidence.⁴⁰

Modern mobile networks and new technology have helped proliferate and expand online users across the country, with over 75 percent of South African households now reporting as having internet access, and 97 percent of households having at least one mobile phone.⁴¹

Expanded internet access has in turn led to explosive growth for South Africa's startups ecosystem: between 2019 and 2023, South African startups raised approximately US\$2.7 billion across 536 deals.⁴² South Africa has led the continent's startup ecosystem with a 24.9 percent increase in startups in 2025,⁴³ growing to over 630 startups, and enjoying an annual ecosystem growth rate of 19.5 percent.⁴⁴ While Africa's digital economy is projected to grow to an estimated 5.2 percent of GDP by the end of 2025,⁴⁵ South Africa's digital economy is expected to account for 15 to 20 percent of the nation's GDP by the end of the year.⁴⁶ South Africa's accelerated economic digitalization relative to the rest of the region reflects its role as a regional driver of tech innovation and development.

An important example of South Africa's regional leadership in digital ecosystems is the country's dynamic fintech sector, which is poised to reach a total value of US\$19.5 billion over the next five years.⁴⁷ In 2025, fintech firms accounted for eight out of nine of Africa's "unicorn" startups, companies less than ten years old but valued at over US\$1 billion.⁴⁸ South Africa is home to some of the continent's top fintech startups, including TymeBank valued at \$1.5 billion, and a number of other fintechs such as Yoco, Clickatell, and Onafriq in the US\$100 million to \$1 billion valuation range.⁴⁹ South Africa and its fintech sector has led the continent in venture

Venture Capital and Private Funding Association (SAVCA), "Venture capital sector hits R13.35bn with tech and health leading investment activity" (Jul. 13, 2025),

<https://savca.co.za/venture-capital-sector-hits-r13-35bn-with-tech-and-health-leading-investment-activity/savca-in-the-news/>.

⁴⁰ Partech, "2020 Africa Tech Venture Capital Report" (2020),

<https://partechpartners.com/africa-reports/2020-africa-tech-venture-capital-report>.

⁴¹ U.S. International Trade Administration, "South Africa Country Commercial Guide: Digital Economy Overview" (last updated Sep. 19, 2024), <https://www.trade.gov/country-commercial-guides/south-africa-digital-economy>.

⁴² United Nations Development Programme, "Meet the Toshikas: Startup Ecosystem Map South Africa 2024" (Aug. 2024), https://www.undp.org/sites/g/files/zskgke326/files/2024-08/meet_the_toshikas_-_startup_ecosystem_map_south_africa.pdf.

⁴³ 360Mozambique, "South Africa Among the Top Ten Countries Leading the Startup Ecosystem in 2025" (Jun. 27, 2025), <https://360mozambique.com/world/africa/south-africa-among-the-top-ten-countries-leading-the-startup-ecosystem-in-2025/>.

⁴⁴ StartupBlink, "The Startup Ecosystem of South Africa" (accessed Nov. 12, 2025), <https://www.startupblink.com/startup-ecosystem/south-africa?page=1>.

⁴⁵ Eric Gacuruzwa, "The Rise of Africa's Digital Economy: Numbers You Can't Ignore" Further Africa (Aug. 27, 2025), <https://furtherafrica.com/2025/08/27/the-rise-of-africas-digital-economy-numbers-you-cant-ignore/>.

⁴⁶ *Supra* n. 32.

⁴⁷ Bunmi Bailey, Finance in Africa, "South Africa's major banks face growing \$20bn fintech threat" (Oct. 23, 2025), <https://financeinafrica.com/news/south-africas-banks-fintech-threat>.

⁴⁸ Lauren Field et. al., International Finance Corporation, "Venture Capital and the Rise of Africa's Tech Startups" (May 2025), at 1 <https://www.ifc.org/en/insights-reports/2025/venture-capital-and-the-rise-of-africa-s-tech-startups>.

⁴⁹ Tage Kene-Okafor, TechCrunch, "Here are Africa's biggest startups based on valuation" (Mar. 29, 2025), <https://techcrunch.com/2025/03/29/here-are-africas-biggest-startups-based-on-valuation/>.

capital investment, securing US\$548 million across 83 deals in 2023,⁵⁰ and representing about 70 percent of funding value for startups.⁵¹ Given the continuing and rapid growth of South Africa's digital and startup ecosystems, policymakers must consider the potential effects that proposed regulatory guidelines can have on these highly dynamic and innovative markets.

South African startups in the AI, fintech, and e-commerce sectors would face particular challenges, as the restrictions imposed by the Guidance Note on service integration, data use, and platform functionality would likely prevent them from developing innovative business models that address local market needs and achieve the scale necessary for continental expansion.

Notably, South Africa's 2025 G20 presidency prioritizes digital innovation ecosystems for MSMBs and equitable AI development that respects diverse cultures and values.⁵² However, the Guidance Note seems to directly contradict these priorities by creating regulatory barriers that impose compliance burdens that discourage private sector investment, which is essential for AI development and digital infrastructure expansion. These barriers risk harming South African MSMBs and HDP-owned businesses by restricting their access to digital tools that enable market participation and growth. The Guidance Note would also contradict Africa's Digital Transformation Strategy for 2020-2030, which emphasizes harmonized policies, enabling regulatory environments, and regional integration through a Digital Single Market by 2030.⁵³

A particularly important point that policymakers should keep in mind is that there is global competition for technology investment and rollout. Companies want to operate in jurisdictions and economies with clear, fair, and principle-based regulatory environments, without extreme regulatory obligations and excessive operating expenses.⁵⁴ This is particularly important for the global digital export competitiveness of South African companies as well. The important question from a policy perspective is – how does South Africa want to position itself in this global competition for investment?

⁵⁰ Fintechnews Africa, “*Top 10 Fintech Startups in South Africa in 2024*” (Sep. 13, 2025), <https://fintechnews.africa/44236/fintech-south-africa/top-10-fintech-startups-in-south-africa-in-2024/>.

⁵¹ Mayowa Kuyoro et. al., McKinsey & Co., “*Redefining success: A new playbook for African fintech leaders*” (Dec. 10, 2024), <https://www.mckinsey.com/industries/financial-services/our-insights/redefining-success-a-new-playbook-for-african-fintech-leaders>.

⁵² G20 - South Africa, “*Task Force 3 – Artificial Intelligence, Data Governance and Innovation for Sustainable Development*” (accessed Nov. 25, 2025), <https://g20.org/task-forces/task-force-three-artificial-intelligence-data-governance-and-innovation-for-sustainable-development/>.

⁵³ African Union, “*Digital Transformation Strategy for Africa (2020-2030)*” (May 18, 2020), at 2, <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>.

⁵⁴ See, e.g., Christian M. Dippon and Matthew D. Hoell, NERA Economic Consulting, CCIA Research Center, “*A Quantitative Evaluation: The Economic Costs of Structural Separation, Line of Business Restrictions, and Common Carrier Regulation of Online Platforms and Marketplaces*” (Mar. 18, 2022), <https://research.ccianet.org/reports/economic-costs-regulation-online-platforms-marketplaces/#main-content>; Engine and CCIA Research Center, “*Tools to Compete Lower Costs, More Resources, and the Symbiosis of the Tech Ecosystem*” (Jan. 25, 2023), <https://research.ccianet.org/reports/tools-to-compete/#main-content>.

III. Specific Considerations on the Online Intermediation Platforms Draft Guidance Note

Given the importance of ensuring that businesses in South Africa can operate with clear and predictable guidelines, as part of the SACC’s ongoing consideration of the Guidance Note, CCIA would like to highlight a few key provisions that warrant further reconsideration.

III.1. Justifications

The draft Guidance Note imposes significant burdens on OIPs under investigation by shifting the burden of proof, requiring OIPs to demonstrate that there are “no less anticompetitive alternatives” to the conduct under scrutiny.⁵⁵ By adopting such a high standard for OIPs to justify regular business practices, the SACC risks chilling innovation and investment, ultimately harming businesses and consumers. Such a standard risks supplanting the judgment of developers and OIPs of what constitutes tolerable risk in protecting users, preventing cybersecurity breaches, or stopping malicious actors from gaining access to sensitive user data. To allow for increased flexibility in the application of the Guidance Note, CCIA recommends that the SACC substitute the “no less anticompetitive alternative” standard with a more flexible “reasonable and proportionate” standard in addition to the platform sustainability and investments standards. This more flexible standard allows for a more proportionate approach to addressing potential anticompetitive harms, reducing the risk that the recommendations made in the Guidance Note might stifle innovation and consumer welfare by curtailing otherwise procompetitive or competitively benign conduct.

III.2. Market Definition and Market Power

CCIA encourages the SACC to refrain from adopting a presumption for a distinct OIP market, and emphasizes the need for a fact-specific, individual approach to assessing relevant markets. In the U.S., enforcers define a relevant market on a case-by-case basis,⁵⁶ by considering the “area of effective competition,” based on empirical evidence of relevant product and geographic elements.⁵⁷

The Guidance Note’s presumption of a distinct OIP market risks constraining the SACC’s ability to fully consider market realities. As mentioned above, more than comprising specific

⁵⁵ *Supra* n.2, at 9.

⁵⁶ U.S. Dep’t of Just. and Fed. Trade Com’n., “2023 Merger Guidelines” (Dec. 18, 2023), at 2.10
<https://www.justice.gov/atr/merger-guidelines>.

⁵⁷ *Id.* at 4.3.

markets themselves, OIPs compete with brick-and-mortar competitors in different industries. These companies, considered to be part of the so-called “digital markets,” are actually companies that quickly implemented the digitalization of the economy in their respective markets.⁵⁸ Applying a one-size-fits-all approach to market definition can result in overly aggressive enforcement and misapplied remedies that risk chilling investment, leading to worse outcomes for businesses and consumers alike.

CCIA likewise encourages the SACC to avoid two distinct but related pitfalls when assessing an OIP’s market power: applying *ex-ante* style qualitative factors, and placing weight on a firm’s “overall global size and capabilities” regardless of its size or share in the South African market.⁵⁹ While qualitative factors are used by *ex-ante* style regulatory frameworks such as the DMA to designate firms as a “gatekeepers,”⁶⁰ they are not treated as evidence of a firm’s market power in a traditional abuse of dominance framework, as required under South African law.⁶¹ Similarly, assessing market power based on global scale rather than actual competitive constraints in the South African market risks overly aggressive enforcement that is not aligned with market realities of how firms possess or exercise market power. Instead, the Commission should focus on employing a rigorous, effects-based analysis of market conditions based on local competitive parameters. This would ensure that the SACC can maintain a proportionate and targeted approach to competition enforcement.

III.3. Competitively Sensitive Data

CCIA acknowledges the Commission’s aim to mitigate the potential harmful competitive effects resulting from the misuse of competitively sensitive data.⁶² However, it is important to recognize that OIPs have important business concerns related to ensuring that data, such as pricing, consumer information, and other sensitive data as defined by the Guidance Note, are used to help sustain and grow the platforms. Online platforms help consumers by creating “one-stop shopping” experiences, helping to reduce search costs. By maintaining access to product and pricing information as well as basic consumer information, online platforms use this

⁵⁸ *Supra* n. 9.

⁵⁹ *Supra* n. 2, at 8 (4.2).

⁶⁰ *Id.* at 8.

⁶¹ South African Competition Comm’n, “Final Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act,” 89 of 1998 (as amended) (Jan. 27, 2023), at 31

<https://www.compcom.co.za/wp-content/uploads/2023/02/Final-Guidelines-on-the-exchange-of-Competitively-Sensitive-Information-February-2023.pdf>

⁶² In Sec. 5.6 of the draft Guidance Note, the SACC defines “commercially sensitive information” while referring to “competitively sensitive information” in other sections. To ensure consistency with previously issued guidance and South African case law, CCIA recommends the SACC clarify the draft Note’s terminology and definition to refer to “competitively sensitive information.”

data to help cultivate better online experiences for consumers to ensure they receive relevant information for products and services they are shopping for. OIPs can also use relevant buyer data to help inform sellers, allowing sellers to better tailor their products.⁶³ As such, CCIA suggests that the SACC amend the Guidance Note to explicitly allow for consideration of efficiency justifications for the use of competitively sensitive data by OIPs, based in economic and financial evidence, related to ensuring the operation, sustainability of, and continued investment in online platforms. This ensures that online platforms subject to investigation are not barred from presenting evidence demonstrating the need for utilizing competitively sensitive data to improve the platform for both business and consumer users.

III.4. Pricing Parity Agreements

Price parity clauses play an important role in maintaining consumer confidence and trust in online marketplaces. As acknowledged in the draft Guidance Note, OIPs act as powerful price aggregators, which allow consumers to instantly compare a wide range of products and services across multiple sellers and brands. By ensuring that prices displayed on a given platform are the same or lower than elsewhere, price parity clauses help facilitate price transparency, increasing consumers' confidence that they are getting the best deals on any given platform. Studies have shown that increasing price transparency helps both consumers and competitors gain more information, reducing search costs for consumers,⁶⁴ leading to higher competition and lower prices,⁶⁵ and increasing overall consumer welfare.⁶⁶

Pricing parity clauses also help maintain consumer trust and protect businesses' reputations. As online sellers list different prices across various platforms, this can give consumers the impression of arbitrary pricing or inconsistent value, potentially resulting in increased consumer confusion and reduced trust. By helping standardize prices across platforms and other sites, the use of pricing parity agreements by OIPs can help foster long-term consumer confidence, particularly for small and medium-sized businesses that have less reputational

⁶³ Francesco Angelini et. al., “*Platform investment and seller competition in two-sided markets*” Journal of Economics (2025) 144:1–29, <https://doi.org/10.1007/s00712-024-00874-x>.

⁶⁴ Jose L. Moraga-Gonzalez et. al., “*Consumer Search and Prices in the Automobile Market*,” Indiana University Kelley School of Business (May 23, 2015) at 44, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2609338.

⁶⁵ Hyunjin Kim, “*The Value of Competitor Information: Evidence from a Field Experiment*” Management Science (Aug. 14, 2024), <https://doi.org/10.1287/mnsc.2022.04062> (“[F]irms that receive information on competitor pricing change their decisions by increasing alignment with competitors.”).

⁶⁶ See e.g. Nan Chen & Hsin-Tien Tsai, “*Price Competition Under Information (Dis)Advantage*” Nat'l. Univ. of Singapore (Apr. 25, 2023), at 79 ssrn.com/abstract=4420175 (“When competitors' sales information is available, FBA-vs-FBA and FBM-vs-FBM markets become more competitive, leading to average price reductions of 3.34% and 0.85%, respectively. Consequently, a larger share of welfare is allocated to consumers, resulting in a significant increase in consumer welfare by 35.84% and 2.5%, respectively. In addition, social welfare increases by 18.82% and 0.89% for each market type, respectively.”).

awareness among consumers. The prohibition of differentiated trading terms would prevent platforms from offering preferential services to small businesses, while compliance costs would be passed through to MSMB customers in the form of higher fees and reduced services.

III.5. Self-preferencing

The Guidance Note highlights that the SACC could have concerns with self-preferencing where an OIP has market power, as such conduct could potentially distort competition due to the dependence of business users on the platform.⁶⁷ However, the Guidance Note fails to consider how this is a business practice that commonly occurs both offline and online, and one that is often procompetitive and enhances consumers' welfare, or is at least competitively benign.⁶⁸ While these practices can, in some circumstances, raise competition issues, they often generate substantial procompetitive benefits in dynamic digital markets, improving service quality, lowering costs, enhancing interoperability, and delivering better user experiences.⁶⁹

Moreover, self-preferencing is widely recognized in antitrust economics as potentially generating substantial procompetitive benefits such as eliminating double marginalization, reducing transaction costs, and improving the user experience.⁷⁰ By treating these practices as presumptively harmful when undertaken by large OIPs, the Guidance Note risks promoting policies that punish ordinary, efficiency-enhancing business strategies rather than focusing on demonstrable harm to competition.

However, CCIA appreciates the SACC's recommendation for the consideration of efficiency justifications related to self-preferencing on grounds of innovation, investment, and consumer welfare.⁷¹ While the Guidance Note fails to fully consider the procompetitive business realities of self-preferencing, these grounds for justification allow companies to provide greater clarity to the SACC on the procompetitive or competitively neutral nature of their conduct.

⁶⁷ *Supra* n. 2 at 17.

⁶⁸ See e.g., Felipe Flórez Duncan, Oxera, "How Platforms Create Value for Their Users: Implications for the Digital Markets Act" (May 12, 2021), <https://www.oxera.com/insights/reports/how-platforms-create-value/>; D. Bruce Hoffman & Garrett D. Shinn, "Self-Preferencing and Antitrust: Harmful Solutions for an Improbable Problem" (Jun. 2021), <https://www.clearygottlieb.com/-/media/files/cpi--hoffman--final-pdf.pdf>; Sam Bowman & Geoffrey A. Manne, "Platform Self-Preferencing Can Be Good for Consumers and Even Competitors" (Mar. 4, 2021), <https://truthorthemarket.com/2021/03/04/platform-self-preferencing-can-be-good-for-consumers-and-even-competitors/>.

⁶⁹ Christopher Knittel, Juliette Caminade & Juan Carvajal, Analysis Group, "An Economic Analysis of the Self-Preferencing Debate" (2022), <https://www.analysisgroup.com/Insights/publishing/an-economic-analysis-of-the-self-preferencing-debate/>; Emilie Feyler & Veronica Postal, NERA, "Can Self-Preferencing Algorithms Be Pro-Competitive?" (Jun. 20, 2023), https://www.nera.com/insights/publications/2023/can-self-preferencing-algorithms-be-pro-competitive_.html.

⁷⁰ Yuta Kittaka, Susumu Sato, Yusuke Zennyo, Japanese Economic Review, Vol. 66, No. 3, "Self-Preferencing by Platforms: A Literature Review" (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0922142523000178>; Juliette Caminade, Juan Carvajal, and Christopher R. Knittel, Analysis Group, "An Economic Analysis of the Self-Preferencing Debate" (2022), <https://www.analysisgroup.com/globalassets/insights/publishing/2022-caminade-et-al-an-economic-analysis-of-the-self-preferencing-debate.pdf>.

⁷¹ *Supra* n. 2 at 20.

III.6. Cybersecurity and Data Privacy Concerns Related to Interoperability Mandates

As highlighted in the Guidance Note, interoperability measures can promote competition among digital platforms by allowing users to preserve network effects on new services, and within digital platforms, by allowing users to mix and match different complementary services from different providers.⁷² However, any interoperability considerations should be very carefully tailored to consider cybersecurity and data privacy concerns, which are exacerbated with forced interoperability mandates. When discussing the potential competitive benefits of interoperability mandates, as well as the anticompetitive effects of the lack of interoperability, the SACC highlights the international experience with the DMA, the DMCC, and the Australian Competition and Consumer Commission's (ACCC) Digital Platform Service Market Inquiry.⁷³ Nevertheless, these regulations' forced interoperability mandates have failed to consider the cybersecurity risks entailed with this conduct. Often referred to as "sideloading," forced interoperability requirements would require companies to allow unverified developers and unknown third parties to install apps and app stores in their mobile ecosystems, introducing significant national security, cybersecurity, and privacy vulnerabilities into these mobile ecosystems.⁷⁴ Sideloaded mandates would risk allowing malicious actors to access hardware, software, operating systems, and other sensitive and private consumer information.⁷⁵

Operators of mobile ecosystems invest a significant amount of resources to protect consumers and maintain their privacy and security systems by vetting all apps for security concerns and removing those that present user risks. These measures also benefit app developers by increasing the quality of apps and limiting counterfeits that appear in an app store. One of the key concerns with the DMA's implementation of forced interoperability mandates has been that of cybersecurity risks, and how users' private and sensitive information might be at risk.⁷⁶ More

⁷² *Supra* n. 2 at 14-15; see also OECD, Background Note by the Secretariat, "Data portability, interoperability and digital platform competition" (Jun. 9, 2021), [https://one.oecd.org/document/DAF/COMP\(2021\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2021)5/en/pdf).

⁷³ *Supra* n. 2, at 15.

⁷⁴ Cybersecurity and Infrastructure Security Agency, "Privacy and Mobile Device Apps" (Dec. 18, 2022), <https://www.cisa.gov/news-events/news/privacy-and-mobile-device-apps>; Cybersecurity and Infrastructure Security Agency, "Mobile Communications Best Practice Guidance" (Dec. 18, 2024), <https://www.cisa.gov/sites/default/files/2024-12/guidance-mobile-communications-best-practices.pdf>.

⁷⁵ Center for Cybersecurity Policy & Law, "Trusted App Stores: Protecting Security and Integrity" (Feb. 2024), https://assets.publishing.service.gov.uk/media/67c81e962ecc810ad1fc6567/Center_for_Cybersecurity_Policy_and_Law.pdf; Cesar Daniel Barreto, "The Hidden Risks of Sideloaded Apps: Why You Should Stick to Official App Stores" (Jun. 13, 2025), <https://securitybriefing.net/cybersecurity/the-hidden-risks-of-sideloaded-apps-why-you-should-stick-to-official-app-stores/>.

⁷⁶ See, Matthias Bauer and Dyuti Pandya, European Centre for International Political Economy (ECIPE), "The EU's Digital Markets Act: A Gift to Hackers – and a Threat to Competition?" (Feb. 2025), <https://ecipe.org/blog/dma-gift-to-hackers-threat-to-competition/>; Kim Chandler McDonald, "Navigating Uncharted Waters: The EU's Digital Markets Act and Its Impact on Security" (Mar. 19, 2025), <https://www.linkedin.com/pulse/navigating-uncharted-waters-eus-digital-markets-act-its-mcdonald-blmmc/>.

concerning is the fact that sideloading mandates under the DMA have resulted in allowing alternative app stores into the mobile ecosystems that have pushed pornographic content to minors in Europe,⁷⁷ despite clearly violating security and content requirements in major app stores.

These interoperability requirements would also force app stores to allow payment linkouts to external websites, which would allow third parties to lead users out of an app store's secure ecosystem, potentially exposing them to risks such as scams and fraudulent activities, where sensitive payment information may be exposed. These risks have already been highlighted in Europe,⁷⁸ and the U.S.⁷⁹ CCIA recommends that the SACC prioritize user safety and security, allowing companies the flexibility to meet the required defense justifications outlined in the Guidance Note proportionally, especially regarding the increased risk of fraud, financial crime, and other online malicious risks.⁸⁰

IV. Conclusion

CCIA appreciates the SACC's efforts to consult stakeholders on its draft Guidance Note for online intermediation platforms, and urges it to continue this dialogue to find the most workable solution to the identified issues that will benefit South African consumers and businesses alike. When analyzing the feedback to the draft Guidance Note, South African policymakers should consider the potential risks associated with borrowing from untested international regulatory experiments. To ensure that the country's competition policy and

⁷⁷ Mobile World Live, “*Apple sounds alarm over EU adult app*” (Feb. 4, 2025), <https://www.mobileworldlive.com/apple/apple-sounds-alarm-over-eu-adult-app/>.

⁷⁸ See, e.g., Lawfare, Mikolaj Barczentewicz, “*How the New Interoperability Mandate Could Violate the EU Charter*” (Jul. 6, 2023), <https://www.lawfaremedia.org/article/how-the-new-interoperability-mandate-could-violate-the-eu-charter#:~:text=But%20even%20proponents%20of%20legally.it%20makes%20services%20less%20secure.>; GIS, Henrique Schneider, “*A critical look at the Digital Markets Act*” (Oct. 29, 2021), <https://www.gisreportsonline.com/r/digital-markets-act/>; Kati Suominen, Center for Strategic & International Studies, “*Implications of the European Union's Digital Regulations on U.S. and EU Economic and Strategic Interests*” (Nov. 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/221122_EU_DigitalRegulations.pdf?VersionId=juEl9KteA1SKhjPCEWN8LlvqqORV02X.

⁷⁹ See, e.g., CCIA, Trevor Wagener, “*Mandated Tech and Data-Sharing: A Remedy to “Cure” Privacy, Innovation, and U.S. Leadership*” (Mar. 24, 2025), <https://ccianet.org/articles/mandated-tech-and-data-sharing-a-remedy-to-cure-privacy-innovation-and-u-s-leadership/>; National Taxpayers Union Foundation, Ryan Nabil, “*The Department of Justice's Proposed Remedies for the Google Search Lawsuit: Implications for Innovation and Consumer Welfare*” (Dec. 12, 2024), <https://www.ntu.org/foundation/detail/the-department-of-justices-proposed-remedies-for-the-google-search-lawsuit-implications-for-innovation-and-consumer-welfare#:~:text=While%20leading%20tech%20platforms%20like,sanctions%20and%20declining%20consumer%20trust.>; R Street, Brandon Pugh, “*What does the Google antitrust case mean for cybersecurity?*” (Oct. 7, 2024), <https://www.rstreet.org/commentary/what-does-the-google-antitrust-case-mean-for-cybersecurity/>.

⁸⁰ See, e.g., Kati Suominen, Center for Strategic & International Studies, “*New Costs and Cybersecurity Challenges Flagged as DMA Compliance Starts*” (Mar. 22, 2024), <https://www.csis.org/analysis/new-costs-and-cybersecurity-challenges-flagged-dma-compliance-starts>; Mikolaj Barczentewicz, Truth on the Market, “*Privacy and Security Risks of Interoperability and Sideloading Mandates*” (Jan. 26, 2022), <https://truthorthemarket.com/2022/01/26/privacy-and-security-risks-of-interoperability-and-sideloading-mandates/>.

regulatory framework are fit for purpose, these proposals should have a strong evidentiary basis, providing clarity and legal certainty to companies in the dynamic South African digital market, while supporting economic growth, promoting innovation, and delivering benefits to consumers.

CCIA thanks the SACC for inviting input on the Guidance Note and looks forward to continuing to engage in this important discussion with the SACC.