



**CAXTON & CTP** **LIMITED**  
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## **The Competition Commission of South Africa**

DTI Campus  
Mulayo (Block C)  
77 Meintjies Street  
Sunnyside  
Pretoria

Attention: James Hodge, Chairperson of the Media and Digital Platforms Market Inquiry

14 June 2024

Dear Mr Hodge

### **CAXTON AND CTP PUBLISHERS AND PRINTERS LIMITED ("CAXTON") // MDPMI**

1. We refer to the Media and Digital Platforms Market Inquiry's ("**MDPMI**" or "**Inquiry**") email on 23 May 2024 outlining that the Inquiry is at the next phase of evidence gathering and is accepting submissions of expert legal and economic reports.
2. Caxton is committed to assisting the MDPMI and to providing context to Caxton's specific experience in the digital landscape, as well as with the players who dominate the digital space.
3. To this end Caxton has made detailed submissions to the Inquiry, in its own name, and through the Publishers Support Services.
4. The Inquiry will appreciate the significant costs and resources expended in providing detailed submissions and responding to requests for information. Due to financial constraints (which are attributable to the structure of the digital media market, which is distorted as a result of the dominance exercised by big players in the digital space) Caxton is unable to provide full blown legal and economic submissions.
5. Caxton wishes to emphasize how the commercial imbalance between it, as well as other independent media publishers, and digital platforms, contributes greatly to the distortions in the digital media market. This imbalance also denigrates any possible solution to reaching fair and equitable commercial outcomes between all parties. There are a number of reasons for this bargaining imbalance. Caxton posits that the pertinent factors that maintain this asymmetric bargaining structure are (i) the lack of transparency in the commercial position of digital platforms; and (ii) the lack of cohesion, particularly in the context of collective bargaining, between all the independent media publishers in South Africa.
6. These factors are central to Caxton's submissions regarding the remedies it suggests that the MDPMI should consider implementing when the investigation is concluded.

**DIRECTORS:** PM Jenkins (Chairman), TD Moolman (Chief Executive), TJW Holden, L Witbooi,  
ACG Molusi, NA Nemukula, J Phalane, T Slabbert, J Edwards (Company Secretary)

7. In Caxton's view the Inquiry should consider, as a matter of urgency, implementing remedies aimed at correcting the distortions inherent in digital markets.

### **Caxton's suggested remedies**

#### *Transparency*

8. As outlined above, the lack transparency in the digital media market is central to the market's failure and distortion. Caxton has engaged with Google on a number of occasions in an attempt to reach a commercial agreement for Caxton's digital content. To date, these engagements have not provided anything by way of a solution to Caxton's challenges in the digital media market. In fact, these engagements have shown, in Caxton's view, Google's unwavering hold on the market, which manifests in the immense commercial bargaining position that Google is in compared to Caxton's bargaining position. Where Caxton is in a position of playing open cards to arrive at a *bona fide* commercial agreement with Google, the same cannot be said for Google.
9. In Caxton's view, throughout these engagements, Google has conducted itself in a *mala fide* manner that is dishonest and secretive. Google has done this, in Caxton's view, through exercising its dominant position, in all spheres of the digital space, to devalue the importance of news media to Google's business model and, in so doing, provide less than viable options for Caxton to combat the commercially unsustainable environment in which it currently finds itself.
10. The information asymmetry enables Google (and other digital platforms) to avoid entering into fair agreements with publishers as digital platforms in a position, to dictate terms based on untested figures provided by Google. This issue extends to both digital advertising and revenue sharing arrangements.
11. As the Inquiry is aware, Caxton has attempted to remedy the information asymmetry by launching a PAIA request<sup>1</sup> against Google in an effort to compel Google to provide information to Caxton to allow for more equitable commercial negotiations as well as other outcomes set out in the PAIA request. Caxton is in the process of laying a complaint to the Information Regulator to compel Google to provide records in relation to information relevant to determining the value Caxton's news content provides Google. The success of such efforts is not guaranteed.
12. The Inquiry should also consider providing that digital platforms have an obligation to disclose details of all commercial agreements entered into with news publishers to the Competition Commission ("**Commission**") in order for the Commission to monitor that there is fairness of such agreements across the industry.

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<sup>1</sup> In terms of the Promotion of Access to Information Act No. 2 of 2000 ("**PAIA**").

13. Caxton encourages the Inquiry to consider remedies which will prompt further transparency in the market and allow market participants to arrive at the true commercial value of news content and to reach an understanding of digital advertising within this digital ecosystem. There should be transparency on all matters concerning the news media on digital platforms including changes to algorithms, ranking, terms and conditions and the ad tech stack. Digital platforms leverage the information asymmetry to their advantage and leave news publishers, as players in the market, completely in the dark as to how the market operates. Such information asymmetry does not allow the pricing mechanisms of these digital markets to function naturally. Gaining clarity into digital platforms' commercial information is a vital step to allowing media companies to understand their commercial value.
14. However, increased transparency alone will not correct the bargaining imbalance and the Inquiry should consider the benefits of the final offer arbitration mechanisms as a remedy to allow the market to arrive at more equitable commercial outcomes. Further, an exemption to allow for publishers to collectively bargain will also assist in lessening the bargaining imbalance to an extent.

#### *Final offer arbitration and collective bargaining*

15. Caxton suggests that a "negotiate-arbitrate model", which involves final offer arbitration against the background of a designation regime be implemented as the mechanism to regulate negotiations between digital platforms and the media companies. In Caxton's view, this mechanism would allow the digital media market to function normally, absent Google and others providing the necessary transparency to enable fair negotiation.
16. A further mechanism which Caxton considers will improve the bargaining power imbalance between independent news media companies and digital platforms is for an exemption to be granted to publishers to engage in collective bargaining with these digital platforms. In order to give news media publishers any chance of concluding more fair and equitable agreements with these platforms, it is necessary to allow for collective bargaining so that the publishers can consolidate their bargaining power. An exemption could be granted upon industry participants making an application to the Commission (section 10(1) of the Competition Act), the Commission would be empowered to grant such an exemption due to the change in productive capacity in the news industry and that such an exemption could stop a greater decline in the industry (section 10(3)(b)(iii) of the Competition Act). Alternatively, the Inquiry could also recommend to the Minister that the news media industry be designated in terms of section 10(3)(b)(iv) of the Competition Act. The Inquiry could also include an exemption mechanism in any potential legislation.

#### *Behavioural remedies*

17. Caxton encourages the Inquiry to consider a number of behavioural remedies which Caxton is of the view will improve the distortions in the market.
18. In Caxton's view, these remedies should be implemented in relation to digital advertising, pricing and changes in digital platforms' ranking algorithms. In this regard, Caxton urges the Inquiry to consider encouraging dominant digital platforms to change how they conduct their businesses specifically when dealing with news media companies. These remedies tie into the transparency issues outlined above, however, it attempts to go further than coercing digital platforms to play fair and instead encourages change through organic commercial practices.
19. Caxton is particularly concerned with Google's dominance in both the supply and demand sides of the digital advertising markets. Ultimately structural remedies are likely best suited

for such a market dynamics. However, failing structural remedies being imposed in the digital advertising market, behavioral remedies that contain Google's ability to exercise its market power would be the next best solution.

### *Must-Carry*

20. Caxton notes the emergence of "must-carry" regulations being debated in the digital media space. In this regard, Caxton is of the view that "must-carry" regulations are not the solution to mending market distortions in digital markets in South Africa.
21. In Caxton's view, "must-carry" regulations will not allow the market to function naturally, nor do such regulations address the fundamental question of the value of news on digital platforms.
22. Resevering distribution capacity through Must-Carry regulations can bring about a host of unintended consequences that are not good for competition. Must-Carry regulations could actually protect established legacy media players from the increasing competition brought about by new technology. Other pitfalls include reduced incentive for innovation, platforms may have even less of an incentive to negotiate fees for content as the platforms carriage of such content is guaranteed and undesirable news will be carried regardless of consumer demand or performance, which can lead to less diversity and quality in news.
23. Further, in Caxton's view, there are existing provisions in the Competition Act that can be used to deal with digital platforms de-prioritizing or not carrying news content, such as the abuse of dominance provisions.

### **Conclusion**

24. Caxton is encouraged by the MDPMI's extensive engagements with media publishers during the Inquiry. Caxton is hopeful that the concerns, and suggested solutions, outlined above will be duly considered by the Inquiry when it makes its final determination. As emphasised in this submission, Caxton, along with other media publishers, is in an extremely vicarious financial situation in relation to its media business. The suggested remedies to the commercial imbalances that exist in the digital media market are taken from Caxton's tangible experiences with the dominant players in this space. Caxton hopes that this will factor into the Inquiry's investigation.
25. Caxton looks forward to continued engagements with the Inquiry.

Yours sincerely



Paul Jenkins  
Chairman  
Caxton and CTP Publishers and Printers Limited