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WORK PROGRAMME ON ELECTRONIC COMMERCE**CHALLENGES FOR DIGITAL INDUSTRIALIZATION IN DEVELOPING COUNTRIES***COMMUNICATION FROM SOUTH AFRICA*

The following communication, dated 1 December 2023, is being circulated at the request of the delegation of South Africa.

1. INTRODUCTION

1.1. A recently completed Market Inquiry into a broad range of Online Intermediation Platforms by the Competition Commission of South African (CCSA)¹ provides crucial insights into the challenges faced by developing countries to digitally industrialise in the face of dominant global tech companies, and the potential levers to level the playing field. In the process it provides important insights for the Work Programme on Electronic Commerce.

1.2. The Market Inquiry examined eCommerce, online travel agencies, software application stores, food delivery and online classifieds, along with the role of Google Search in mediating platform competition. The Inquiry examined (a) market features impeding platform competition, including that of domestic platforms in competition to global platforms, (b) market features arising from the platform business models impeding competition amongst businesses listing on the platforms, and (c) the ability of SMEs and historically disadvantaged persons to participate and compete at both platform and business user levels. The Market Inquiry completed its work on 31 July 2023 and issued remedial orders against leading platforms in all categories, the vast majority of which are being implemented and with only a few on appeal.

1.3. This submission builds on the Joint Submission by India and South Africa of 18 October 2023 ([WT/GC/W/902/Rev.1](#)). Although the Market Inquiry did make many similar findings on the source of market power, extent of dominance and entrenchment strategies, these are not repeated in this submission. Rather this submission seeks to draw out specific findings around digital de-industrialisation and potential remedial actions. This is an important issue for developing countries particularly so in the context of growing dominance of digital trade by big tech firms and at times to the disadvantage of developing country competitors, including small and medium enterprises and start-ups.

¹ Available at <https://www.compcom.co.za/online-intermediation-platforms-market-inquiry-final-report-launch/>

2. THE UNFAIR ADVANTAGE OF GLOBAL TECH AND THE DIGITAL INDUSTRIALISATION CHALLENGE

2.1. Access to cheap venture capital and global profit streams enable global tech platforms to enter developing country markets later than local entrepreneurs. Such access to capital accords them a dominant position. This dominance is aided by the gatekeeper role of Search which acts as the entry point to most digital commerce for most consumers, with paid ads dominating the search results page (SERP) and consumer clicks. The cheap capital and cross-subsidies from other markets enable global intermediation platforms to outspend developing country competitors and dominate the SERP. The subsequent network benefits from the consumer acquisition ensure that local and global business users then become dependent on the global intermediation platforms for sales. This dependency enables the global platforms to extract higher rents from business users, which in turn enables them to continue to outspend on consumer acquisition. This virtuous cycle enables the global tech platforms to tip the market towards monopoly, pushing out local competitors and erecting insurmountable barriers to effective competition. The result is that developing countries become customers and not participants in digital industries.

2.2. The absence of customs duties on electronic transmissions facilitates and exacerbates these advantages, and results in knock-on tax revenue losses. The ability to transact internationally absent custom duties is one of the factors that enables the global tech companies to execute their transactions through any legal entity located globally, locate their legal trading entities in low tax countries, and benefit from a low tax rate for all their global operations. This provides the global tech firms with a distinct unfair tax advantage over local competitors in developing countries whose corporate tax rates are higher to support development of their economies. The lower tax rate allows the global tech companies to reinvest the tax savings into outspending developing country rivals on customer acquisition and platform technological development, entrenching their dominance.

2.3. As the CCSA Market Inquiry identified, the global tech companies pay an average tax of c.17% globally, but this is often far lower on transactions in developing countries as these are directed through low tax countries. For example, transactions for Google and Apple in South Africa are done through their legal entities in Ireland, and Booking.com transacts through the Netherlands where it has benefited from an innovation rebate. Uber similarly directs its transactions through its international entity.

2.4. Moreover, as all transactions are channelled through to a global entity, this deprives the importing country of corporate tax revenue. As tax paying domestic entrepreneurs are squeezed out of the digital markets by the global tech companies, there is also a loss of tax revenue from domestic competitors. However, the impact goes far beyond just tax. The hollowing out of domestic competition results in digital de-industrialisation as there is a loss of employment and investment. The Market Inquiry found that many of the global tech companies made no material investments and employed relatively few people, if any, in South Africa (or Africa) relative to their domestic counterparts. Ironically, some of the global tech firms even used this lack of investment to argue a lack of jurisdiction. Even where some local investment and physical activity occurs, such as in food delivery or e-hailing, the transactions can and are channelled through the international entity facing lower tax rates due to the lack of customs duties.

2.5. The direct and indirect reduction in tax hinders developing countries from supporting other digital industrialisation initiatives. The lack of investment and exclusion of domestic competitors also hinders the ability of the private sector to build a greater depth of skills and more liquid venture capital market that are necessary to provide a base for digital industrialisation.

2.6. The OECD/G20 initiative² to address the tax challenges has resulted in a two-pillar solution that aims to subject multinationals to a minimum tax rate of 15% and to re-allocate profits to

² OECD/G20 Base Erosion and Profit Shifting Project

countries where they generate income and profits.³ However, whilst this is a useful step in the right direction, the target of 15% is low. Moreover, this narrows the benefits developing countries could derive individually from the initiative, especially relative to the instrument of customs duties on electronic transmissions. Nor does that initiative enable the sustainable promotion of investment in digital industrialisation through skills and venture capital by both domestic and global investors. Rather it only seeks to put a floor on the tax race to the bottom.

3. BUSINESS MODELS AND CONDUCT EXACERBATING THE UNFAIR ADVANTAGE

3.1. The CCSA Market Inquiry found that whilst some conduct deliberately harmed competition, the business models of many digital platforms can have unintended consequences, hampering inclusive participation and competition by developing countries and their SMEs. The moratorium on the imposition of customs duties on electronic transmissions (ET moratorium) exacerbates the effect of some of this conduct and entrenches the lead position of major digital platforms. The sooner the moratorium is removed, the better for reversing digital de-industrialisation and enabling developing countries to levy appropriate tariffs in line with the established multilateral trade rules. Tariffs are a proven instrument to promote industrialisation, and digital markets are no different.

3.2. On software application stores, dominated by Google Play and Apple App Store, the anti-steering provisions which prohibit app developers from directing consumers to their own website to pay for content and subscriptions, directs all trade by consumers through these two software application stores. This practice has anti-competitive effects insofar as it enables these software application stores to extract excessive commissions from app developers. The ET moratorium exacerbates these practices. By directing trade through the application store, anti-steering alongside the ET moratorium further denies developing countries taxation revenue on such commercial activity and reduces the revenue for domestic app developers to invest and grow.

3.3. For online travel agencies (OTAs), the dominant global OTAs such as Booking.com and Expedia make widespread use of price parity clauses which prevent the South African accommodation establishments from offering cheaper room rates on domestic OTAs. This is now widely recognised to have an anti-competitive effect as it eliminates OTA competition on room price to the consumer and on commission fees to the domestic accommodation establishments. However, it has also aided global travel platforms, which initially focused on US and EU travellers, to dominate domestic travel markets across the globe. By preventing competition on room price and commission fees by domestic OTAs, there is less reason for consumers to use these domestic platforms rather than the global OTAs with extensive loyalty programmes even for domestic travel. Furthermore, this makes it difficult for accommodation establishments in developing countries to develop marketing and pricing strategies that segment domestic and international travellers. The ET moratorium has removed one of the levers to address this reality.

3.4. As the global digital platforms become dominant in the local markets of developing countries, business users become dependent on them for online sales. Success on those platforms depends on where the business listing appears on the ranking in the search results page, as consumers tend to click on the first few results much like general search. The dependency and importance of ranking means that the global tech firms increasingly offer paid results or ranking boosts to business users. This increases the extraction of rents from business users, which reinforces their leading position by enabling more investment in customer acquisition. However, it also favours large and global business users in securing prominence with online customers and poses a barrier to digital competition from small and developing country business users.

3.5. For instance, on software application stores the role of ads is becoming increasingly important for discoverability and now is typically the first result on every consumer search. The Market Inquiry found that this favours discoverability of app developers in larger digital markets given the lower cost and greater availability of venture capital funding, relative to South African app developers.

³ See <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>

Once discoverability and trial occur through the advertising, the sales of those apps then start to feature in top seller curations and editor picks. The Market Inquiry identified that such was the disadvantage faced that there were only 500 paid app developer companies in South Africa, all of whom were SMEs. The effect of this business model on small and developing country business users is often exacerbated by rebates to multinational business users, distorting other trade flows.

4. REMEDIAL ACTIONS TO PROMOTE DIGITAL INDUSTRIALISATION

4.1. The CCSA Market Inquiry sought to negotiate and agree remedial actions that may offset these market features which hinder competition and reduce participation by South African businesses, in particular SMEs and historically disadvantaged persons. The legal standard is that the remedies must be reasonable and practicable, and that they must directly and proportionately address the cause of competitive harm. These remedies were then imposed as remedial orders and are already being implemented by most of the market participants, including global platforms such as Google.

4.2. Some of those remedial actions at a platform competition level resonate with other competition enforcement globally, such as an end to self-preferencing on Google Search, no anti-steering on Google Play and Apple App Store, and an end to price parity clauses across all platform categories. However, a substantial number of remedial actions were aimed at fair participation by South African platforms and business users in competition with global businesses, i.e., more inclusive digital industrialisation. These included:

- Enhancements to Google Search to promote the visibility of South African platforms to South African consumers, through search filters, domestic platform identifiers and a local platform search unit on the SERP.
- A Google Fund that will invest in developing domestic SME platforms to grow and mature through ad credits, technological support and capacity building, enhancements to customer acquisition campaigns and some venture capital.
- Similar enhancements to software application stores to improve the visibility of South African apps through a local app curation and provision of ad credits to enable promotion through a Fund.
- All leading platforms to promote greater levels of participation and promotion of historically disadvantaged SMEs on the digital infrastructure through funding via fee rebates for onboarding and subscription, and ad credits or targeted promotions.
- A recommendation that Government deepen local venture capital markets through providing first loss social impact funding to venture capital funds that can crowd in more risk averse institutional and private funding. This is a recommendation only given the fiscal challenges and competing priorities.

4.3. The remedial actions imposed by the CCSA Market Inquiry related to the specific platforms included in the Inquiry and were in respect of the specific powers of the CCSA. However, the principles underpinning those remedial actions relating to the promotion of more inclusive and competitive digital industrialisation have broad applicability. This includes the use of Funds to promote technical capacity, deepen venture capital markets, and then promote visibility and discoverability amongst consumers.

5. CONCLUSION

5.1. The CCSA Market Inquiry provides insightful findings on how the dominance of global tech firms and other features of these markets are undermining digital industrialisation in developing countries. This is causing growing global inequity and condemning developing countries to be a customer and not a participant in the digital economy. Moreover, it is evident that the ET moratorium both facilitates and exacerbates this outcome in numerous ways. For the stability of the global trading system it is important to find a path to more inclusive digital industrialisation.

5.2. The CCSA Market Inquiry focused on online intermediation platforms, but the insights in the findings on how the market features are impeding digital industrialisation outside of the home countries of global tech firms, and the role that the ET moratorium plays in facilitating and

exacerbating this effect is informative for a wider set of digital markets. The CCSA has recently launched another market inquiry into the impact of digital platforms on domestic digital media markets, a concern shared by many countries globally. The communications industry sector regulator, the Independent Communications Authority of South Africa, has fielded concerns that global streaming services have an unfair advantage over domestic rivals as they do not have the same regulatory requirements such as minimum local content levels. In gaming and music streaming the markets are dominated by global tech companies. The ability to operate remotely and trade through low tax countries is common in all these cases.

5.3. South Africa is not alone in reaching such conclusions. The Africa Heads of Competition Dialogue on digital markets initiated by the largest jurisdictions on the continent⁴ and expanded to other digitally industrialising countries and regions,⁵ has identified similar concerns across the continent and has called for a more inclusive enforcement approach to competition policy that promotes digital industrial development on the continent.⁶ Trade policy should do the same.

5.4. The findings of the CCSA Market Inquiry also provides useful insights for the Work Programme on Electronic Commerce.

- As the ET moratorium facilitates and exacerbates the market power and inequity in digital industrialisation, an end to that moratorium would provide developing countries with an important lever to promote domestic digital industrialisation and enhance competition in many of these markets to the ultimate benefit of consumers. Tariffs have always been an important part of the overall toolkit of policymakers to promote industrialisation, and it is evident that this is equally true of digital markets.
- While the moratorium on ET is facilitating and exacerbating the dependency of developing countries as consumers and not participants, it is also taking an important policy tool away from the governments which can be used to provide a level playing field to their SMEs in the digital sector vis-a-vis the digital giants. Tariffs on ET will not only allow governments an opportunity to promote domestic digital industrialization but will also provide finance for it as this is a rapidly growing revenue stream of the future.
- There are practices by global tech companies that may abuse the ET moratorium and distort trade flows, such as transacting through low tax countries or the use of anti-steering, which could either be the subject of trade rules or tariff adjustments to offset those practices, similar to anti-dumping in the trade of goods.
- Other tools can complement these trade measures to promote digital industrialisation in developing countries, including building technical capacity, deepening venture capital markets, and promoting visibility and discoverability amongst consumers.

⁴ This includes South Africa, Nigeria, Egypt, Kenya and Mauritius

⁵ The Dialogue was expanded to include Comesa, Gambia, Morocco and Zambia. See <https://comesacompetition.org/wp-content/uploads/2023/02/Joint-Statement-of-the-Africa-Heads-of-Competition-Dialogue-08-Feb-2023-Cairo83561.pdf>

⁶ See <https://www.compcom.co.za/wp-content/uploads/2022/02/Joint-Statement-of-the-Heads-of-Competition-Authorities-Dialogue-on-Regulation-of-Digital-Markets.pdf>