

COMPETITION

South Africa’s Digital Markets Regime Has Arrived and it Lives Inside Competition Law

26 March 20268 min read

by Ahmore Burger-Smidt, Director and Head of Regulatory

The debate about whether South Africa should regulate digital platforms is over. The Competition Commission has moved decisively from theory to operational enforcement, and the implications for any platform of scale doing business in the country are both immediate and far-reaching. Two landmark instruments, published within three months of one another, now define the compliance landscape: the Media and Digital Platforms Market Inquiry Final Report (the “**MDPMI Report**”), released on 13 November 2025, and the Online Intermediation Platforms Guidance Note (the “**OIP Guidance Note**”), gazetted on 6 February 2026 as a final guideline under the Competition Act.

Together, they represent a coherent, systems-based approach to platform regulation, built entirely within the existing architecture of South African competition law.

The practical consequence for leading or largest platforms is straightforward but significant: the compliance bar is no longer about reactive, case-by-case defence. It now demands proactive, evidence-backed governance across pricing parity, interoperability, self-preferencing, data use, and fairness, particularly where small and medium enterprises (“**SMEs**”) and historically disadvantaged persons (“**HDPs**”) are affected.

Two documents, one direction: enforcement as a system

It would be a mistake to treat these instruments in isolation. Read together, they reveal a regulator that is building an integrated enforcement framework.

The MDPMI Report demonstrates that a market inquiry is not, and was never intended to be, a soft policy exercise. Under the Competition Act’s market inquiry framework, the Commission is empowered to determine whether features of a market produce an adverse effect on competition, and to take remedial action accordingly, including recommending orders from the Competition Tribunal and initiating complaints based on inquiry findings. Crucially, the statutory test is whether a market feature has an *adverse effect on competition*, including impacts on SMEs and HDPs, rather than the more familiar threshold of a “substantial prevention or lessening of competition” applied in other enforcement contexts. That is a lower, more structural standard, one well suited to digital ecosystems where competitive harm tends to be cumulative and embedded in platform design rather than traceable to a single discrete act.

The OIP Guidance Note complements this by setting out the Commission’s view on specific categories of conduct that are likely to attract scrutiny. It is issued as a guideline and, as such, is not formally binding. However, the Commission has made clear that it will have “cognisance of this Guidance Note in assessing cases dealing with online intermediation platforms”. Anyone who has spent time in enforcement proceedings will recognise how this kind of instrument, notionally voluntary, practically determinative, shapes the course of investigations, settlement negotiations, and remedial design.

The MDPMI Report: what it signals about the Commission’s ambitions

Scope that mirrors the reality of platform power

The MDPMI was formally initiated on 17 October 2023, with Terms of Reference published in September 2023, and it spans the full breadth of how platforms interact with news media and audiences: search, social media, the adtech value chain, and the impact of generative AI. This matters because it aligns the Commission’s analytical lens with how platforms actually exert influence – not through a single product, but through interlocking layers of traffic capture, ranking, data aggregation, monetisation tools, and increasingly, AI-driven interfaces. The Commission found that major global platforms, Google, Meta, Microsoft, TikTok, X, and AI companies such as OpenAI, dominate the key gateways through which South Africans access information.

Product design and “zero-click” behaviour as competitive facts

One of the more striking aspects of the MDPMI Report is the Commission’s treatment of “zero-click” outcomes, instances where users obtain information or consume content within the platform interface rather than clicking through to a publisher’s site. The Commission treats these design choices not as neutral product improvements, but as market features capable of diverting traffic and value from downstream firms. The compliance implication is clear: the Commission is now scrutinising product design, algorithmic defaults, and interface architecture as potential sources of competitive harm, particularly when they degrade publishers, SMEs, and advertisers’ ability to monetise their content or reach audiences.

Concrete remedies, including financial interventions

The MDPMI Report does not confine itself to diagnosis. It sets out a substantial package of remedial actions, including a Media Support Package agreed with Google and YouTube valued at R688 million, which will fund national, community, and vernacular media through content licensing, innovation grants, and capacity-building initiatives. Whether one agrees with the design of these remedies or not, the lesson for platforms is instructive: market inquiry outcomes in South Africa can translate into specific, monitorable, and financially significant obligations.

Collective bargaining and the rebalancing of platform dependency

The MDPMI Report recommends that the Department of Trade, Industry and Competition issue a block exemption to enable collective bargaining by South African media over platform monetisation terms, AI content licensing, ad-tech pricing, and joint ad-sales for community media. This reinforces a broader theme running through the Commission’s recent work: in digital markets, the focus is not confined to conventional price effects. The Commission is equally concerned with structural dependency and the absence of countervailing power, particularly where fragmented suppliers face a concentrated platform gatekeeper.

The OIP Guidance Note: a conduct map for platform compliance

The OIP Guidance Note effectively consolidates six categories of conduct into a compliance baseline that leading platforms should treat as their minimum standard of internal review.

First, *price parity clauses*, both narrow and wide, which restrict business users from offering lower prices on their own channels or on competing platforms. Second, *interoperability* restrictions that limit the ability of business users to port data or integrate with competing platforms. Third, *self-preferencing*, including the ranking, indexing, or fee advantages a platform may accord to its own offerings over those of business users. Fourth, the *use of competitively sensitive business-user data* by a vertically integrated platform to advantage its own commercial operations. Fifth, *differentiated trading terms* across business users, including preferential visibility or sponsored listing arrangements. Sixth, *unfair treatment or unfair trading terms*, linked to imbalances in bargaining power and, in the South African context, to buyer power concepts.

Two aspects of the Guidance Note warrant particular attention from general counsel and compliance teams:

Efficiency claims must be substantiated, not merely asserted

The Commission anticipates that platforms will seek to justify contested practices on grounds of sustainability or efficiency. The Guidance Note makes clear, however, that the Commission may require financial and economic evidence to support such claims, not merely theoretical arguments. Moreover, the Commission may examine whether a platform could operate sustainably absent the practice in question, whether in South Africa or in other markets. In other words, pointing to global industry norms will not be sufficient if those norms are not demonstrably necessary in the South African context.

Market power assessment is qualitative and dependency-driven

The Guidance Note signals that the Commission’s approach to market power in digital and intermediation markets will look beyond traditional market definition and market share calculations. Factors such as the platform’s significance to its business users, the degree of business-user dependence, network effects, vertical integration, and the platform’s ability to harm rivals may all be considered. This is a deliberate departure from the kind of formalistic market-definition debates that, in some jurisdictions, have allowed platforms to avoid scrutiny by arguing for implausibly broad relevant markets.

The real question for platforms: not “are we dominant?” but “are we gatekeeping?”

A recurring thread across both instruments is the Commission’s focus on three structural features of platform ecosystems: *dependency*, where business users have no realistic alternative route to consumers; *conflicts of interest*, where the platform competes directly with the businesses that rely on it; and *design plus rules*, encompassing the contract terms, access conditions, ranking algorithms, interoperability restrictions, and data practices that collectively define the competitive environment on the platform.

The practical implication for compliance is a shift in the relevant question. The traditional inquiry – “can we win a market definition argument?” – is giving way to something more searching: what are the rules of our ecosystem, whom do they advantage, and can we defend them with hard evidence and less-restrictive alternatives?

Looking ahead: why this is not the final chapter

The architecture of the Competition Act is designed for iteration. A market inquiry can produce remedial action, which may in turn be appealed, lead to recommendations for legislative or policy change, and generate subsequent complaint proceedings. The MDPMI has already recommended inter-ministerial coordination, with the Minister of Trade, Industry and Competition committing to table the report in Parliament and take it to Cabinet. In parallel, the Commission continues to monitor compliance with the OIPMI remedies issued in 2023 across eCommerce, online travel, food delivery, app stores, and classifieds.

For platforms operating at scale in South Africa, the message is clear. Digital markets regulation is not a theoretical prospect to be monitored from a distance. It is here, it is being operationalised through competition law tools that carry real enforcement consequences, and the compliance standard it demands is one of proactive, documented, and evidence-based governance.

The businesses that recognise this early and build the necessary internal systems, across legal, commercial, product, and data teams, will be those best positioned to engage constructively with a regulator that has plainly signaled the direction of travel.



Ahmore Burger-Smidt

Head of Regulatory

[View Profile](#)