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5 December 2023

Chairperson of the Media and Digital Platforms Market Inquiry

The Competition Commission of South Africa
DTI Campus, Mulayo (Block C)
77 Meintjies Street, Sunnyside
Pretoria

Attention: Mr James Hodge

By email: JamesH@compcom.co.za

Dear Mr. Hodge

MEDIA AND DIGITAL PLATFORMS MARKET INQUIRY: SUBMISSION BY CAXTON AND CTP PUBLISHERS AND PRINTERS LIMITED

1. Caxton and CTP Publishers and Printers Limited ("**Caxton**") provides this submission in response to the Media and Digital Platforms Market Inquiry's ("**MDPMI**" or "**Inquiry**") Statement of Issues dated 17 October 2023 ("**Statement of Issues**").
2. Caxton prints, publishes and distributes over one hundred local newspapers and more than 50 related news websites across the country, serving local communities and national and local advertisers. It is the publisher of *The Citizen*, a national daily newspaper. It also services additional third-party newspapers through Spark Media, which sells national insert/catalogue advertising. Caxton is in the process of consolidating its websites under the Citizen URL (Citizen.co.za).
3. Caxton is listed on the JSE. It has operated within the South African news landscape for more than 45 years. Capital Newspapers Proprietary Limited, for whom Caxton provides digital news services under the Citizen URL, owns *The Witness* newspaper, which has been published since 1846 (more than 175 years). The Caxton group represents a proud tradition of newspaper publishing in South Africa, serving the public by bringing news, information and advertising to its audiences.

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



4. Caxton and its subsidiaries and affiliates are good corporate citizens. We provide transparent information about our finances and affairs to the public in our Integrated Annual Report¹, as part of our listings obligations to the JSE Securities Exchange.
5. Caxton is a registered taxpayer and contributes meaningfully to the fiscus. Caxton is B-BBEE compliant as a Level 3 contributor, with 25% black ownership.
6. Caxton's business as a printer, publisher and distributor of newspapers has been profoundly affected by the digital revolution. We have experienced the same stresses and upheaval that have been experienced worldwide. We are deeply affected by the very issues which are the subject of the MDPMI. Whilst we are still able to weather the storm, a number of our titles are loss-making and may not be sustainable in the long term. Our newsrooms are truncated, and our news-reporting function is affected by diminishing income from advertising revenues. This is attributable to the growth of digital markets.
7. Whilst it is not the intention of this submission to single out any scapegoats for the accelerating decline in news reporting, it is necessary to focus on the giants in the online industry, that dominate media and digital platforms and the 'adtech stack' - namely, Google and Meta (Facebook). The digital playing field is completely uneven and the extent of this issue is evident from the following facts / concerns pertaining to Google and Meta:
 - 7.1 they operate offshore in tax havens;
 - 7.2 they are not registered for and/or pay no South African income taxes despite generating unknown revenues from the South African market;
 - 7.3 they appear to have no place of effective management in South Africa, and avoid the jurisdiction of relevant South African legislation;
 - 7.4 they do not comply with B-BBEE regulations;
 - 7.5 they do not report on their earnings, revenue, income or benefits obtained from the South African market and generate no financial metrics for public or even governmental disclosure;
 - 7.6 they do not transparently disclose their business models and practices in South Africa;

¹ See https://caxton.co.za/content/2023/09/JOB027240_CAXTON_IAR%202023_WEB.pdf



- 7.7 it is unclear if and when they profile users in their interlinked ecosystems when users read publishers' content. Further, there is no way of determining what intelligence they gather about the users and how this intelligence is used to re-target users and offer targeted advertising offerings, thereby benefitting them commercially; and
- 7.8 they exacerbate their commercial dominance of media and digital platforms by capitalising on their non-disclosure of financial information, avoiding the discipline imposed by the South African regulatory framework, and opaquely applying business practices that advantage them at the expense of local publishers.
8. We refer to the attached response to the Statement of Issues authored by Webber Wentzel (attached as **Annexure A**). Caxton supports this response to the specific scope items of the Statement of Issues as well as additional items that should be considered by the Inquiry.
9. Beyond the submissions made in Annexure A, Caxton's position in media, particularly as a local news publisher, provides for a unique point of view when considering the scope of the Inquiry.
10. As such, Caxton wishes to outline a limited number of additional factors it considers relevant for the Inquiry to consider. The more granular, confidential details of Caxton's business operations relevant to the Inquiry will be provided in its response to the Inquiry's RFI dated 18 October 2023.

Caxton and press freedom

11. Caxton's media voice is constitutionally protected by Section 16 of the Constitution. Caxton seeks to exercise its right to freedom of expression for the public good. In this regard, in addition to our national news reach through the Citizen newspaper and URL (citizen.co.za), we specialise in informing community residents on hyper-local issues.
12. Caxton uses its media voice to protect and strengthen democracy in communities across South Africa. As a result, those on the grass-roots level have access to tested and verified information relating to where they live. This includes crucial information on community safety and security, service delivery and those in power.
13. It follows that the importance of a news publisher exercising its right to freedom of expression depends not on whether a publisher does so on a national, regional, or community or local level. It is a constitutional right that comes with a corresponding duty - to serve South Africa's democracy by reporting on matters in the public interest.



14. The right to freedom of expression cannot be unjustifiably curtailed. All voices have a right to contest the market and any attempt by anybody to place restrictions on our content, our audience appeal or our reach of our audience, or to prescribe our obligations to promote competing voices, constitutes an unjustifiable limitation of the right to freedom of expression. Any such attempts therefore fall foul of the South African Constitution. In exercising our right and duty, we commit to one sacrosanct principle - independent editorial freedom and independence from our competitors, politicians and commercial interests. In this way, our voice, reach and advocacy stand constitutionally protected.
15. However, protection of our voice is not the point of Caxton's complaint, nor does it fall within the remit of the Inquiry. In this regard, it is important to emphasise that Google, Facebook and other digital platforms are not voices- they do not produce original news and they have no voice of their own. Instead, they simply repeat the contents of others without verifying their accuracy or considering whether their aggregation serves the public interest. They host and cannibalise other voices without regard to the quality and integrity of the content. Their commercially driven aggregation does not entail the exercise of the right to constitutionally protected freedom of expression in a way that is necessarily in the public's interest.
16. Prior to the advent of news digitisation, the press was considered as 'potent and indispensable instruments for the creation and maintenance of a democratic society.'² Today, the press and its online extensions still fulfill the role it played prior to this digitisation.³ We are independent media owners, and this independence epitomises our representations to the MDPMI.
17. In the old vernacular, this Inquiry is about the digital form of printing presses for newspapers coupled with distribution and advertising sales. It is arguably not about news publishing *per se*.

Importance of local news

18. The local titles that are published by Caxton are crucial components to the South African media industry that should not be overlooked by the Inquiry. Local news is a vital resource that enables citizens to be informed of issues that directly affect them.

² *National Media Ltd and Others v Bogoshi* at 1208 G.

³ On 8 May 2023, President Cyril Ramaphosa stated in his letter titled 'A thriving democracy needs a free media' that: "Media freedom is a pillar of our democratic order. Our journalists continue to be the standard-bearers for accountability and the empowerment of citizens. Media investigations have shone a spotlight on corruption, the abuse of vulnerable people, the targeting of whistle-blowers, and all manner of wrongdoing within the state, the private sector, academia and other sectors." Available via <https://www.gov.za/blog/thriving-democracy-needs-free-media>.



19. The provision of local news requires a commercially viable business model. It is incredibly difficult to produce news in geographic areas that are too small to sustain commercial news operations. This reality is currently eradicating local newspapers, creating news deserts and information deficits in many local communities across the world. Caxton has supported and developed a commercially sustainable local news business model that serves millions of South Africans and will continue to do so.
20. However, there is a risk that local news becomes commercially unsustainable. This would be a catastrophic outcome for millions of consumers and indeed our democratic dispensation.
21. This risk emanates to a considerable extent from the transition from print to digital. The transition to digital is difficult for national and regional titles; however it is even more difficult for local new titles that do not typically have the financial and human resources needed for the transition.
22. Globally, there is a lack of commercial will on the part of local news publishers' owners to invest in digital capabilities, due to bleak commercial prospects in the digital space.⁴
23. There is a risk that certain consumers (particularly in South Africa) may be left behind, without access to reliable news, as the world becomes increasingly digital. Many consumers do not have the digital skills, technology or data to easily navigate the digital space.⁵
24. It is Caxton's submission that paywalls and subscriptions are not a viable option to replace lost revenue. The majority of our local printed publications remain available to readers free of charge, as is all our local digital content available on the web and mobile applications. The majority of local news in South Africa has traditionally been free. In a country where poverty robs millions of access to paid-for news, the provision of free news has become crucial to the democratic imperative. Expecting readers who cannot pay for news to do so via subscriptions or a paywall, would limit their access to information.
25. This increases the risk that local newspaper operations are unable to provide local journalism that audiences can afford or are willing to pay for.

⁴ According to the article titled "Stop the Press? Newspapers in the Digital Age" published by the Congressional Research Service, gains from online newspaper advertisements have failed to replace print revenue losses for two decades. Available via <https://sgp.fas.org/crs/misc/R47018.pdf>.

⁵ There are 60 million South Africans according to Statistics South Africa. According to Statista.com, only two-thirds of the population are internet users, and only 25.8 million use social media. See also [Research ICT Africa's report on The State of ICT in South Africa](#).



26. The local news media shapes common experiences among audiences. It promotes the shared discourse within communities crucial to a well-functioning democracy. The economic climate and issues articulated in the attached Webber Wentzel response illustrate that the media faces many challenges and reduced resources. While Caxton still delivers high-quality journalism that reflects a multiplicity of voices and sparks well-informed community dialogue, many fear that these challenges may disable it from doing so. At the same time, artificial intelligence-based personalised news recommender systems tend to provide readers with information echoing their biases.⁶ Without access to reliable local journalism, readers will be more likely to receive only content that lacks the multiplicity of voices and balance that local journalism offers.
27. The traditional local news business model, whereby advertisers pay for the content, needs to be replicated in the digital space. However, this is not possible under the current market features that distort competition. This places local news publishers at a significant disadvantage that needs to be rectified.
28. These concerns go not only to commercial considerations but also ones of equity. There are growing inequalities between citizens who are willing and able to pay for news behind a paywall and those who are not. The impact of technological advances negatively affects local newspapers' democratic and social role, as well as the broader considerations of journalism - especially local journalism, being a public good.
29. Local news provides vital information to citizens about events and issues in the locality, serving as arenas for political and social discourse, and mediating local identity and a sense of belonging.
30. Local news also fulfils an accountability role, that of the watchdog that holds power to account, exposes conflicts and scrutinises corruption and political scandals in line with the *Fourth Estate* ideals of the press.
31. Without local media, information about politics and local governance would be less accessible to citizens.
32. Digital platforms, such as Google, understand the importance of local news. However, instead of supporting local news, its dominance and anticompetitive conduct may well be contributing to its decline while contributing to the profits of this large multinational. Google says that it will start doing

⁶ Manyika, J Silburg, J and Presten B "What do we do about the biases in AI", published by Daily Maverick. Available via <https://hbr.org/2019/10/what-do-we-do-about-the-biases-in-ai>.



more to help local media outlets. However, in South Africa, it is Caxton's experience that no action by Google has had a meaningful impact on correcting the status quo.

33. Google has completed Showcase deals with local news titles internationally; South Africa should be no different. For example, Google has stated that "*Local newspapers make up 93% of the more than 240 titles that have signed up to News Showcase in the U.K.*"⁷
34. However, it is Caxton's view that digital platforms may downplay the significant value of local news and seek to disaggregate local news titles in an effort to further increase the bargaining imbalance and to scupper local news' digital transition.
35. Local news provides significant value to Google and this should be reflected in fair commercial terms between local news publishers and Google.
36. In towns and communities where there is an active local title, articles published by such titles consistently rank high up in search results. This is despite the fact that such titles lack the sophisticated technological expertise and significant resources required for search engine optimisation.
37. The reason that local articles rank higher on search results is because they are trusted sources of information for citizens that are up to date, reliable, provide good orientation and are highly relevant.
38. For example, when a resident searches for information on local corruption, for example in relation to the Mopani council, the *Letaba Herald* is one of the top results and a search for "*Nelspruit service delivery*" shows Caxton titles representing five of the top nine results.
39. There is value to having a local source of news. As it is gathered and processed by a newsroom located in the same area as the newsworthy event or circumstances, it generally tends to be more thoroughly informed, more accurate, have a good orientation, and be a frequent and trusted source of news for residents in local communities.
40. Local news is also a driver of local action and local user engagement. Users are more likely to have taken some kind of meaningful action on their local news platform/website property versus national

⁷ See [here](#).



platforms.⁸ This includes actions like signing up for a newsletter, sharing a story, or posting a comment. Local news users are particularly motivated to sign up for additional communications or to take advantage of a promotion. This provides an advantage to brands that are interested in direct responses and promotional advertising.⁹

41. Local news also provides value as it produces relevant content, creating a sense of connection with others, and otherwise making the experience personal.¹⁰
42. Despite the importance and benefits inherent in local news publication, the dominance of digital platforms is felt particularly hard on local news publishers.

Dominance of digital platforms

43. The dominance of the digital platforms in the media space creates barriers for Caxton to fully transition into the digital space. This is notwithstanding the fact that Caxton is a well-capitalised company. The current structure of the market is such that there is not enough of a financial incentive for Caxton to invest the required amount to transition fully into the digital space due to the dominance of digital platforms.
44. The barriers that these platforms create are to the detriment of consumers who should be able to enjoy quality news digitally in a way that is financially sustainable for news publishers.

Conclusion

45. Caxton has not made substantial submissions on the operations of its national title, *The Citizen*, in this covering letter as the Webber Wentzel submission sufficiently covers the items of the Statement of Issues that relate to national newspapers.
46. Caxton remains committed to engaging with the Inquiry as and when necessary.

⁸ According to the University of Pennsylvania's Penn Social Policy & Practice Center for High Impact Philanthropy, it is easier for local news organisations to engage citizens in public discourse. Available at: <https://www.impact.upenn.edu/democracy/local-media/>.

⁹ See [here](#)

¹⁰ See [here](#). See also footnote 8 above.



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Yours sincerely

Paul Jenkins
Non-executive Chairman
Caxton and CTP Publishers and Printers Limited

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

MEDIA AND DIGITAL PLATFORMS MARKET INQUIRY

5 December 2023

Introduction

1. On 17 October 2023, the Competition Commission of South Africa (the "**Commission**") launched the Media and Digital Platforms Market Inquiry ("**MDPMI**" or "**Inquiry**") and published the MDPMI's Statement of Issues ("**Statement of Issues**"). The Statement of Issues outlines the key elements that the Inquiry wishes to consider in its analysis of the media and digital markets.
2. The purpose of this submission is to comment on the items mentioned in the Statement of Issues and, in so doing, provide the Inquiry with further context to the relevant elements, as well as additional elements that the Inquiry may benefit from exploring in its analysis.
3. The purpose of the Inquiry, in many respects, is to understand the impact digital platforms have on the news media industry in South Africa. The Inquiry's regard to the importance of news media to our country and the health of its democracy is central to understanding the invaluable role news media plays in South Africa. In furtherance of this point, it is submitted that news media not only provides benefits to readers and viewers insofar as increasing their knowledge and understanding of the news, but also plays a central role in democratic South Africa as they enable "public interest journalism".¹ Public interest journalism is an invaluable mechanism used to hold those in power to account and facilitates the creation and maintenance of a well-informed society, capable of making change. This vital component in the democratic machine is rapidly failing. This is not due to lack of consumer interest, but rather due to the current structure of the market in which the news media finds itself.
4. There is little doubt that the current state of this industry is due, at least in part, to the challenging digital landscape that the news media now operates in. This digital landscape is dominated by a few players who have, in this submission's view, been distorting the market to benefit disproportionately from the content created by news publishers.²
5. The anti-competitive conduct of platforms, such as Google and Meta, is contributing to the decline of quality journalism, which ultimately undermines South Africa's democratic

¹ The Cairncross Review (2019, p17)

² Globally, regulators and other bodies have found these digital platforms to be dominant. See "*Competition Issues Concerning News Media and Digital Platforms*," OECD, 2021, OECD Competition Committee Discussion Paper, <https://www.oecd.org/daf/competition/competition-issues-innews-media-and-digitalplatforms.htm>.

dispensation. Digital platforms, especially Google, need to have their anti-competitive power, and conduct enabled by that power, curtailed. It is imperative that these issues be dealt with to lessen the devastating effects the current structure is having on the South African economy and democracy.

6. This submission will begin by outlining some preliminary points before addressing each scope item outlined in the Statement of Issues.

Preliminary Points

7. *Value of news media content to digital platforms*

- 7.1 The dependence that news publishers have on digital platforms is clear, but it is also important to understand the value that these news publishers provide to the digital platforms.
- 7.2 The central concern is that there is a commercial relationship between news publishers and dominant digital platforms. These dominant platforms are news publishers' suppliers of both digital advertising and news referral services. These essential services are distorted by the market power of digital platforms. The immense power of digital platforms in this commercial relationship has resulted in, *inter alia*, the free riding off news content, which draws consumers to the platforms and keeps them engaged on the platforms themselves. This has enabled digital platforms to amass the benefits of data collection, network effects and a disproportionate share of advertising profits to grow their platforms and ultimately entrench their dominant positions in these markets.
- 7.3 Digital platforms that are the subject of the Inquiry are likely to present a view that news-related content does not account for a large proportion of their respective revenues or profit. This despite the fact that Google search even has a "News" tab on their search home page.
- 7.4 News content contributes greatly to drawing consumers onto digital platforms and drives engagement on these platforms. The daily relevance of news facilitates a near constant flow of traffic toward these platforms, which in turn gain substantially from the engagement and data these consumers provide – not to mention the revenue gained in the digital advertising space, which, as the Inquiry has stressed, is a cause for concern. Web traffic is the most valuable currency in the digital market space as it plays a crucial role for websites, especially free websites, to attract interest from potential advertisers due to the vast amount of user data that is collected. Web traffic

creates "user impressions", which quantifies the number of times a user views a website where an advertisement is placed. Platforms monetise these impressions by using it to sell advertising.³

- 7.5 The dominance of various digital platforms permeates at every level of these digital markets. With the well-documented decline of print media,⁴ there is little choice but for publishers to direct their limited resources toward making content readily available on digital platforms, and it is not the case that a digital industry player dominates only this aspect of the news media industry's online presence. Instead, big players in the digital industry, particularly Google, derive significant profit from the advertising space on news media websites themselves.
- 7.6 The structural imbalance at play in this industry is essentially this: the news publishers draw consumers to Google, the dominant player in the digital search market, which in turn benefits from consumer engagement on its platform. However, even after a consumer has supposedly "left" Google and entered a news publisher's website, which is becoming more of a rarity as explained below, the advertising space on the website is controlled by a Google entity. This begs the question as to whether the consumer ever actually "left" the Google ecosystem.
- 7.7 This sheer dominance in every aspect of the news media's digital presence hinders the ability of news creators to derive revenue from their own content. The practices of Google in particular, given its dominance in the search and digital advertising space, has the effect of substantially preventing or lessening competition in the news media market.
- 7.8 By cutting off media content creators from the full benefits of their content, Google has the effect of foreclosing competitors, increasing costs for content creators to produce high quality content, and reducing opportunities for advertisers. All the while, Google is benefitting from this asymmetric relationship. This submission discusses the specifics of Google's anti-competitive behaviour in more detail below.
- 7.9 The knock-on effect of this inability of media publishers to derive revenue from their content is that many publishers are forced to cut costs to try to sustain their place in the market, or indeed function at all. This detracts investment into quality public

³ See *Paying for News: What Google and Meta Owe US Publishers* at page 13. Available at <https://policydialogue.org/files/publications/papers/LatestVersion.pdf>

⁴ Statement of Issues at page 10.

interest journalism, which is ultimately harmful to consumers, competition and our democracy.

7.10 For a more detailed explanation of the value digital platforms derive from news content please see the study conducted by Fehr Advice, attached as **Annexure "A1"**.

8. ***Structure of media houses in South Africa***

8.1 Before responding to each item outlined in the Statement of Issues, we discuss the structure of news media companies in South Africa, and how it differs from traditional corporate structures. In news media companies, shareholders traditionally do not influence the editorial content of the company. Having media companies structured in this way promotes the notion that public interest journalism needs to be independent and free from corporate "meddling" and external corporate agendas.

8.2 It is imperative that the Inquiry is cognisant of this structure when deliberating and assessing the central issues of the Inquiry. The health and sustainability of news media content is promoted through the protection of the editorial content itself and by extension the media houses that grant journalists the freedom to engage in independent public interest journalism.

8.3 It is trite that journalism is a public good, but its success and independence in our market economy rests on the commercial sustainability of publishers. Well-funded, commercially astute publishers have provided the jobs and enabling environment in which journalists can write the stories they do and keep the public informed on the issues of the day. The separation of the commercial operations and editorial decision making is the symbiotic relationship that enables news not only to be written, but to actually reach consumers in a sustainable way.

Scope items outlined in the Statement of Issues

Scope item 1: Evaluate trends, adoption and use of the relevant digital platforms to aggregate and display news content online and the importance of digital revenue sources for news media organisations

9. It is certainly the case, as expressed by the Inquiry, that news media content is tending toward a more digital centric model. Print media is certainly a declining source of revenue for media publishers, who have seen a dramatic overall decline in revenue derived from print media. Given this digital reality, news media businesses have embraced the

opportunity to engage in the digital attention economy by dedicating resources to building an engaging online presence to cater for this new digital marketplace.

10. The omnipresence of digital platforms and the dependence publishers have on these platforms to reach these consumers requires their participation in the digital economy. The challenge that media publishers are facing, is their inability to fully capitalise and monetise their content in the digital space.

11. **Digital advertising in South Africa**

11.1 Advertising has been a central revenue stream for news media publishers for well over a century, as exemplified by the traditional model of classifieds and advertising space sold by media publishers to third parties. This model is now vastly different. With consumers generally expecting that digital news content should be freely accessible, news content creators are heavily reliant on digital advertising revenue from advertisers on their sites.

11.2 Despite the massive and continuing growth of the digital advertising market in South Africa (see paragraph 11.4), news publishers have not participated proportionately due to the distortive features present in the digital advertising market.

11.3 Digital advertising involves publishers (websites or app owners) selling ad spaces (known as "inventory") to advertisers, either directly or through agencies, which purchase these spaces and their display ads are displayed on the ad spaces (these are known as "ad impressions").

11.4 The Interactive Advertising Bureau South Africa published, along with PricewaterhouseCoopers, the *2022 study – An industry survey conducted by PwC and commissioned by the IAB South Africa ("IAB SA Report")* in August 2023 and outlined the following key findings:⁵

11.4.1 Internet advertising has reached 34% of the overall advertising market, which is in line with 2021's figures, and is up from 30% in 2020;

11.4.2 Digital advertising spend is around 34% of total advertising spend in South Africa; and

⁵ Internet advertising revenue report, *2022 study – An industry survey conducted by PwC and commissioned by the IAB South Africa*, August 2023.

- 11.4.3 Total internet advertising revenue amounted to R14.51 billion, exceeding 2021's R13.21 billion.
- 11.5 The IAB SA Report also outlined the following areas of growth:⁶
- 11.5.1 Paid search dominates internet advertising in South Africa;
- 11.5.2 Paid social advertising is the second-largest category in the South African digital advertising market, with Meta being a dominant player; and
- 11.5.3 Finance, fast-moving consumer goods and alcohol remain the categories with the highest percentage of media spend while gaming, media and entertainment, apparel and footwear, and retail all increased from 2021.
- 11.6 These findings are in line with various reports conducted in a number of other jurisdictions. The Interactive Advertising Bureau Australia ("**IAB Australia**"), which is a jurisdiction that has focused on this topic extensively, estimates that in 2020 the spend on digital advertising was AUD 9.5 billion in Australia, which is a substantial increase from the estimated 2008 spend of AUD 1.7 billion.⁷ The Competition and Markets Authority in the United Kingdom ("**CMA**") estimated that in 2019 around GBP 14 billion was spent on digital advertising in the UK.⁸ Interestingly, the CMA estimated that around 80% of this expenditure on digital advertising was spent on Google and Facebook.

12. **Background into digital advertising**

- 12.1 Digital advertising itself can be categorised into two broad categories: search advertising and display advertising. Display advertising, through open web advertising, is not a straightforward transaction between the website owner and an advertiser. Digital advertising is more akin to traditional advertising, insofar as it involves the display of banners on websites and mobile applications. The open web advertising space is a complex market comprising many moving parts with many

⁶ Bizcommunity, *IAB SA/PwC SA Online AdSpend Report: Digital sees sustainable growth, social becomes a key contributor*, 14 September 2023 [accessed on 09 November 2023] <<https://www.bizcommunity.com/Article/196/16/241882.html>>

⁷ Australian Competition and Consumer Commission, *Digital advertising services inquiry final report* (August 2021) page 2. ("**ACCC 2021 Report**")

⁸ Competition and Markets Authority (the United Kingdom) *Online platforms and digital advertising Market study final report, 2020*, ("**CMA 2020 Report**") page 9.

participants, all culminating into the complex mechanism known as "advertising technology services" or "ad tech stack".

12.2 Search advertising comprises ads that are at the top of the search engine results page ("**SERP**") when a particular query is searched on a search engine. These are paid for by advertisers who bid on keywords to have their page(s) appear when the keywords are searched for on the search engine.

12.3 The Australian Competition and Consumer Commission ("**ACCC**"), in its 2021 report into digital advertising services ("**ACCC 2021 Report**"), estimated, using data obtained by ad tech providers and IAB Australia, that the digital advertising industry can be apportioned, by overall digital advertising expenditure for 2020, in the following way:⁹

12.3.1 Classifieds accounted for 16% of the overall digital advertising expenditure;

12.3.2 Display advertising accounted for 39% of the overall digital advertising expenditure; and

12.3.3 Search advertising accounted for 45% of the overall digital advertising expenditure.

12.4 Similarly, the CMA in the United Kingdom, estimated that in 2019:¹⁰

12.4.1 Classifieds accounted for around 10% of the overall digital advertising expenditure;

12.4.2 Display advertising accounted for around 39% of the overall digital advertising expenditure; and

12.4.3 Search advertising accounted for around 51% of the overall digital advertising expenditure.

12.5 From the respective studies done in Australia and the United Kingdom, it is clear that the market for display advertising accounts for a large proportion of expenditure in the digital advertising space. For South African news media businesses, display advertising is the most relevant type of digital advertising.

⁹ ACCC 2021 Report page 44.

¹⁰ CMA 2020 Report, page 10.

- 12.6 The display advertising category has within it two important variations. First are those ads which are placed directly on the "walled gardens" of a digital platform (otherwise known as "closed channels"). The concept of a "walled garden" involves a digital platform limiting the interoperability across their own products and services. They may involve a digital platform not allowing an advertiser to transfer information regarding their advertising campaigns to external digital platforms. Digital advertising of this nature is regarded as closed because they can only be used to purchase inventory from a single publisher who owns or operates the system or platform.¹¹ Closed channels digital advertising does not involve the complex mechanism known as the *ad tech stack*, which will be detailed below.
- 12.7 An example of closed channels display advertising is through Facebook. Facebook, according to the ACCC, is the largest publisher operating a closed channel.¹² It operates in this way by selling ads on its properties through its own system called, Facebook Ads Manager. Google also uses its own system when selling inventory on its own platform, this system is Google Ad Manager ("**GAM**").
- 12.8 In addition to the above, digital platforms that operate a closed channel will collect high quality user data from the advertisements on their platforms and use it to facilitate targeted advertising on their own sites.¹³ This data is not made available to the advertisers themselves.
- 12.9 The second type of display advertising is open web advertising (or open display channels), which consists of advertising inventory on the broader internet, which is bought and sold via third party platforms. This is primarily the type of advertising in which publishers in the news media space are involved.
- 12.10 Advertisers in this space make use of the ad tech stack channels to buy third party display inventory. It is important to note that these various parties that sit in between the publishers and advertisers in the ad tech stack soak up a lot of the advertising fees, leaving the publishers with substantially less than if they sold their inventory directly to the advertiser.¹⁴

¹¹ ACCC 2021 Report, page 27.

¹² ACCC 2021 Report, page 27.

¹³ News Corp Australia 2020 Submission page 5.

¹⁴ Ibid page 5.

13. **Background to the ad tech stack**

- 13.1 As the Inquiry has indicated, ad tech stack is the term used to define the mechanism that connects publishers' websites/apps to digital advertisers.
- 13.2 The development of the ad tech stack in the digital landscape has become an indispensable mechanism in the digital advertising space. Where the traditional advertisement model saw individual news publishers directly sell their ad space to advertisers, the digital landscape is significantly more complex.
- 13.3 The ad tech stack involves five central players:¹⁵
- 13.3.1 the publishers, which invest in the creation of content, such as news;
 - 13.3.2 the advertisers, which pay for advertising;
 - 13.3.3 the advertising agencies, which develop the content of advertisements and arrange for its distribution through different media;
 - 13.3.4 the ad tech business, which mediates the delivery of advertising with digital technology; and
 - 13.3.5 the online platforms, such as Google and Facebook, which aggregate content for users.

14. **Programmatic advertising and the ad tech stack**

- 14.1 Programmatic advertising refers to advertisements on publishers' websites that are bought and sold using the ad tech supply chain and where a deal is struck for the display of that advertising through a real time bidding auction.¹⁶ Programmatic advertising is used by ad tech firms as a solution to enable publishers to sell advertising inventory automatically as and when an ad impression is created or in advance of an ad impression's creation.¹⁷
- 14.2 In the past, programmatic advertising was predominately used for unsold or lower value inventory. However, in recent years it has found prominence in all types of open web display advertising. There is a sentiment that this increased prominence of

¹⁵ News Corp Australia, *Submission to the Australian Competition and Consumer Commission: Ad Tech Inquiry, 2020*, page 4. ("**News Corp Australia 2020 Submission**")

¹⁶ Ibid page 5.

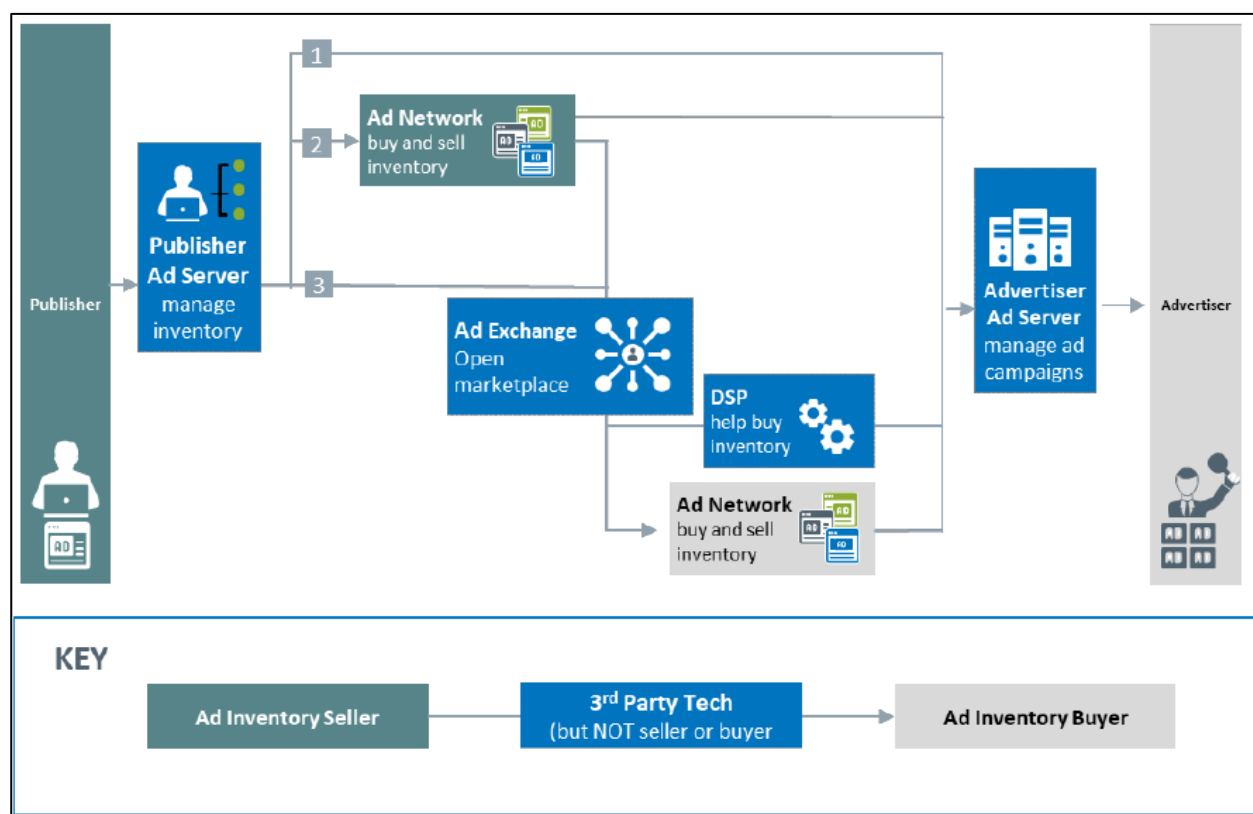
¹⁷ Ibid

programmatic advertising is due to the dominance of a few players in the ad tech stack space that have eroded the direct sales channels between advertisers and publishers. The use of programmatic advertising adds more players to the open web digital advertising equation and diminishes revenue for news publishers.

- 14.3 Importantly, the proportion of total advertising revenue attributed to programmatic advertising is generally significantly higher for smaller publishers, who are less likely to attract advertisers through direct sales, and therefore the only realistic option these smaller publishers have is to sell inventory through the programmatic avenue of display advertising.
- 14.4 At this stage it would be important to differentiate between direct sales and indirect sales in the ad tech stack model. Direct sales are those sales that do not typically involve the intermediaries and are instead the product of direct negotiations between publishers and advertisers. A sale of this kind would generally involve a publisher using a publisher's ad server to manage inventory and advertisers will load their ad impressions on an advertiser's ad server. This is generally a straightforward sale and more in line with the traditional methods of ad sales.
- 14.5 The complexity of the ad tech stack lies in indirect sales. These are sales that bring the features that underpin programmatic advertising to the fore. Indirect sales are 'open market' sales that involve the buying and selling of advertising inventory through advertising exchanges that uses real time bidding. There are further nuances to indirect sales insofar as some indirect sales may involve buying and selling through ad networks while other sales may avoid this.
- 14.6 The programmatic advertising model in the ad tech stack is made up of a number of participants who act as intermediaries between publishers and advertisers. The intermediary role is typically made up of service providers that link up the various steps required to expeditiously sell advertising inventory. The image below is a helpful guide to understanding the structure of the ad tech stack and the various intermediaries that make up the supply chain:¹⁸

¹⁸ News Corp Australia 2020 Submission, "Figure 2", page 8.

Figure 1



14.7 The various actors and service providers in the programmatic display ad tech supply chain, as well as a short outline of the steps that inform the programmatic procedure, are described as follows:¹⁹

14.7.1 First are the publishers. They initiate the process by selling ad inventory on their digital properties to advertisers. South Africa's news media businesses would occupy this role in the programmatic display ad tech supply chain.

14.7.2 Next are publisher ad servers. These are tools that publishers use to manage their inventory. A publisher ad server stores a publisher's ad inventory and records criteria about how the publisher wants to manage and fill their ad spaces. It essentially outlines the preferences of the type of ads a publisher wishes to show on its site.

¹⁹ News Corp Australia Submission 2020 pages 7 & 8.

- 14.7.3 At the other end of the programmatic display ad tech supply chain, is the advertiser. Advertisers buy ad inventory to display their ads to consumers on publishers' pages.
- 14.7.4 Similarly to publishers, advertisers rely on advertiser ad servers. These are tools that advertisers use to manage their ad campaigns. This allows for advertisers to place all their content (i.e. ad impressions) on a centralised platform where advertisers can track where their impressions are being served.
- 14.7.5 Importantly, these four parts of the programmatic display ad tech supply chain are the bookends of the full picture. Typically, direct sales, which do not make use of an ad network, described below, would only involve the four parts explained above. The parts that follow fulfil the intermediary role that comes with indirect sales.
- 14.7.6 A central piece to the programmatic display ad tech supply chain is the ad exchanges. These are digital marketplaces for the sale of ad inventory. In an ad exchange, ad inventory is supplied by publishers and advertisers bid on this inventory through Demand-side Platforms ("**DSPs**"). DSPs bid on and purchase ad inventories on behalf of advertisers. This bidding occurs in real time. The ad exchange has also, over time, fulfilled the function of Supply-side Platforms ("**SSPs**"). SSPs were traditionally used by publishers to automate the sale of their ad inventory. This role has, however, been absorbed by the ad exchange platform. As such, "ad exchange" will be used to define both the traditional "SSPs" and the "ad exchange".
- 14.7.7 DSPs operate according to preprogrammed criteria that outline targeting characteristics which have been defined by an advertiser. In other words, when an individual enters a website, information on the individual and the webpage is gathered from 'cookies' or from an online service provider with which the individual holds an account. This information is then incorporated into a 'bid request', which is sent to the ad exchange. The ad exchange platform runs an auction, whereby all the advertisers whose targeting criteria has matched with the information gathered about a user, bid for the right to display their advertising to the individual during the visit to the website/app. All this happens in milliseconds.²⁰

²⁰ News Corp Australia 2020 Submission page 9.

14.7.8 Finally, there are the ad networks. This network pools many ad inventories, as offered by publishers and then resells them to advertisers. Ad networks began as a mechanism to sell unsold inventory. It offered an important option for smaller publishers to be placed in a position to sell ad inventory. Ad networks can buy and sell inventory directly, on ad exchanges, or some combination of both.

14.8 The main features of programmatic advertising involve automation, targeting, aggregation and bidding.²¹ Automation speaks to the automated process of execution of trades with publishers. Targeting involves intermediaries in the ad tech stack who assess advertising impressions and provide advertisers with targeting options and campaign optimisation services. Essentially, these intermediaries leverage multiple data sources to provide advertisers with options to display their ads. Aggregation involves intermediaries that connect multiple buyers with multiple sellers. This aspect of the ad tech stack is the trading platform for the digital advertising market and allows for buyers and sellers to reach supply and demand sources efficiently. The final feature of the ad tech stack is the bidding. This involves intermediaries that facilitate bidding through digital advertisement auctions that can be public or private.

15. **Supply of ad tech services**

15.1 The supply of ad tech services in South Africa is the relevant market for the purposes of this Inquiry. This market can be broken down into the following segments:²²

15.1.1 First is the market for the supply of publisher ad servers. As outlined above, publishers make use of publisher ad servers to organise, manage and sell ad inventory on their websites. Publishers put forward information/criteria in the publisher ad servers, which determines how each inventory space on a publishers' website will be sold. The information/criteria inputs by the publisher also sequences the relative priority of the demand partners (i.e. ad exchanges or ad networks) and decides the order in which they will be contacted. Publishers are typically charged a monthly subscription fee or a cost per-impression rate, based on the volume of ads served (i.e. displayed on the publisher's site). Importantly, switching publisher ad servers is costly and commercially disruptive. This creates barriers to switching a publisher ad server, which illustrates the commercial imbalance between publishers and companies

²¹ IAB, The Programmatic Handbook, 2014

²² News Corp Australia 2020 Submission page 10.

who supply publisher ad servers. Publishers typically only use one ad server to manage all their web display inventory; attempting to use multiple servers would frustrate a publisher's ability to effectively optimise the management of their inventory and maximise their revenue.²³

15.1.2 Second is the market for the supply of online ad intermediation services, including ad exchanges and ad networks. Online ad intermediation services match advertisers with ad impressions to inventory offered by publishers. These platforms represent the coming together of the supply and demand side sources for the purpose of auctioning off ad inventory. Large publishers typically sell their indirect ad inventory through ad exchanges and smaller publishers usually sell their inventory to an ad network. Ad networks buy inventory from small publishers and then sell this inventory to advertisers.²⁴ For a publisher to sell on ad exchanges, they typically need to meet a minimum inventory threshold or there are spend requirements in place.²⁵ This means that ad exchanges are often out of reach for smaller online publishers.

15.1.3 Third is the market for the supply of DSPs. DSPs are utilised by advertisers to connect them to publisher ad servers through ad exchanges. These platforms additionally help advertisers target, bid and purchase ad inventory. This feature of DSPs to purchase ad inventory means that DSPs form a distinct market in the ad tech stack to that of ad servers. Where the ad exchange is the trading floor, DSPs are the brokers, attending to the purchasing of ad space on an advertiser's behalf.

15.1.4 Forth is the market for the supply of advertiser ad servers. Much like how publisher ad servers assist publishers with managing and storing their ad inventory, advertiser ad servers fulfil a similar function for advertisers. The target market for advertiser ad servers is therefore advertisers or their representatives.

15.1.5 Lastly, there is the market for advertising data and data management platforms ("**DMP**"). This market is worth mentioning as data in the digital advertising space is an important component for both publishers and advertisers as it assists with (i) targeting (reaching the relevant audience); (ii) deduplication (tracking

²³ United States District Court, Southern District of New York *In re: Google Digital Advertising Antitrust Litigation* page 19.

²⁴ *Ibid* page 25.

²⁵ *Ibid* page 23.

whether an individual has already viewed the ad); (iii) viewability (whether an ad is likely to be viewed or not and whether it is viewed); (iv) attribution (looking into what ads prompted a desired action); (v) fraud prevention (ensuring individuals are engaging with ads and not "robots"); and (vi) brand safety (to ensure that an ad is distinguishable from objectionable content).²⁶

16. As outlined above, the ad tech stack comprises of a wide range of distinct and noninterchangeable products which cater to the entire indirect sales market in the digital advertising industry. In a digitally reliant industry such as the South African news media, the ad tech stack forms an important part of the industry's revenue-making capabilities. However, this market is highly concentrated, as pointed out by the Inquiry.²⁷

17. ***Market concentration in the supply of ad tech services***

17.1 The Inquiry touches on the concentration of market players in the ad tech stack, particularly the presence of Google in the entire ad tech stack structure.²⁸ For the sake of this submission, it would be beneficial to outline the extent of this concentration in more detail.

17.2 In the ACCC's 2021 Report, it was stated that Google is the main provider of ad tech services in Australia.²⁹ This dominance is further exacerbated by the fact that Google is a major publisher as well, insofar as it sells ad inventory on its own platforms, such as YouTube, Gmail and Google Search, which attracts a slew of advertisers. This places Google in a favourable position, as it is not only a large player in the publishing side of the ad tech stack, but also has the infrastructure to facilitate the selling and buying of its own inventory given that Google provides services in every link of the ad tech services supply chain.

17.3 The specific Google products that service the ad tech stack supply chain are the following:

17.3.1 Publisher: Google has several platforms that sell ad inventory, which includes, **YouTube, Google Search, Gmail and Blogger.**

²⁶ News Corp Australia 2020 Submission page 14.

²⁷ Statement of Issues at page 13.

²⁸ Ibid

²⁹ ACCC 2021 Report, page 53.

- 17.3.2 Publisher ad Servers: Google previously serviced this step in the supply chain through **DoubleClick for Publishers (DFP)**. This module has since been absorbed by **Google Ad Manager (GAM)**.
- 17.3.3 Ad Exchange / SSPs: This aspect of the ad tech supply chain was previously provided by Google's **DoubleClick Ad Exchange ("AdX")** however it is now provided by **Google Ad Exchange** (a subset of Google Ad Manager).
- 17.3.4 Ad Network: **Google AdSense** and **Google AdMob** are large players in the ad network space.
- 17.3.5 DSPs: Google products in this field include **Google Ads** (previously **AdWorks**) and **Google Display & Video 360**.
- 17.3.6 Advertiser ad Servers: Google uses **Google Campaign Manager** to service advertisers in this step of the ad tech supply chain.
- 17.3.7 Data Management Platforms: Google previously used **Google Analytics 360 Suite** for DMP services. This module now falls within **Google Marketing Platform**.
- 17.4 The extent of Google's dominance in South Africa in each segment of the ad tech supply chain is not known. It is imperative that the Inquiry conducts a full analysis of the market players to determine Google's place in the market.
- 17.5 To get a sense of this market, it would be beneficial to look at various analyses done in foreign jurisdictions. For instance, in the UK, the CMA estimates that Google has a controlling share of 90 – 100% of the publisher ad server segment of the ad tech stack, 80 – 90% of the advertiser ad server market, 50 – 60% of the supply-side platforms (or ad exchange) segment and 50 – 60% of the demand-side platforms market.³⁰
- 17.6 In the United States, the District Court for the Southern District of New York estimated that Google Ad Manager (Google's publisher ad server provider) controlled 90% of the publisher ad server market in the United States, in 2021.³¹ The Court also found

³⁰ CMA 2020 Report, page 19.

³¹ United States District Court, Southern District of New York *In re: Google Digital Advertising Antitrust Litigation* page 22.

that, in 2019, AdX transacted over 60% of all display inventory sold through exchanges in the U.S.³²

17.7 The ACCC 2021 Report found that Google's share of impressions in the main services that make up the ad tech stack was between 70 – 100% and, for those ad tech services where revenue information is available, Google's share of revenue was between 40 – 70% in Australia in 2020.³³

17.8 To obtain a sense of Google's growth and dominance over the last decade in the ad tech stack supply chain, the following images, which are taken from News Corp's submission to the ACCC in 2020, offer a helpful representation of the market players in Australia. The first figure shows the landscape of the ad tech stack in 2008 and the second is the landscape in 2019.³⁴

³² United States District Court, Southern District of New York *In re: Google Digital Advertising Antitrust Litigation* page 54.

³³ ACCC 2021 Report, page 6.

³⁴ News Corp Australia 2020 Submission pages 99 and 100. Companies listed in dashed squares have merged since 2008.

Figure 1

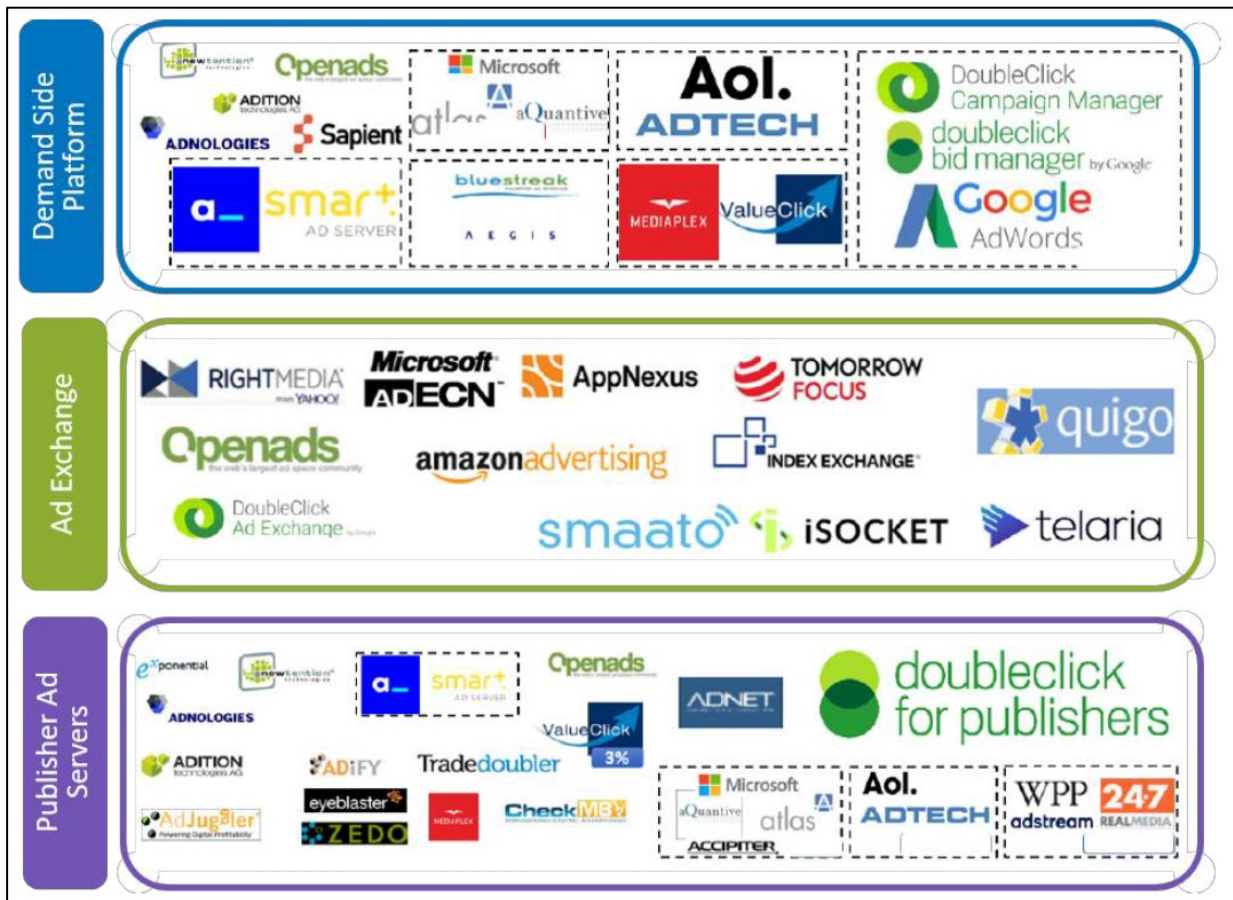
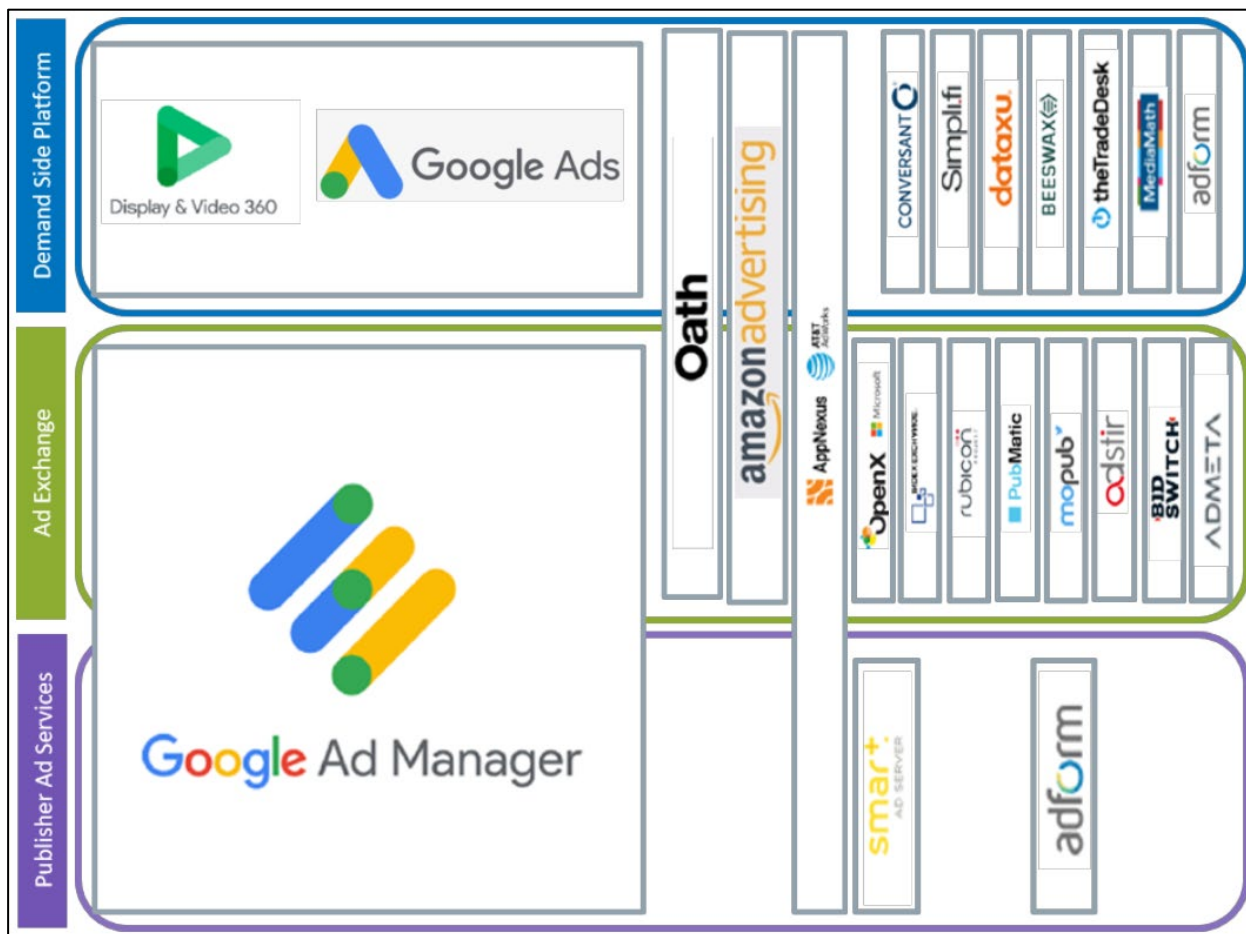


Figure 2



18. As is clear from the above, the ad tech stack supply chain is a highly concentrated market, with a central player that is plugged into every aspect of its supply chain. The sentiment is that this concentration will be even more significant in a country like South Africa. In this regard, developing countries typically do not have technologically advanced infrastructure capable of attracting competing players in the ad tech supply chain. If this concentration is occurring in developed economies with robust technological infrastructure, it is likely that the situation in developing countries is more dire.
19. The problematic and anti-competitive nature of this concentration will be expanded on under scope 5 of the Statement of Issues below.

Scope item 2: Evaluate whether market features distort competition for advertising revenue, consumer data and subscription fees between news media organisations and the relevant digital platforms that display and distribute news media content as intermediaries to consumers, including news aggregators.

20. There can be no doubt that traditional news media businesses have run on a similar basic business model to that of digital platforms: through growing audiences and selling

advertising. There are complexities and differences in the digital world, as news media has traditionally operated in a two-sided market, with its audience and advertisers, where democratic exchange was a significant positive externality. In the era of digital platforms, however, that two-sided market has become a multi-sided market and news publishers now increasingly compete for advertising spend and the precursor, audience engagement.

21. This increased competition among news publishers has been compounded as a result of both the broader reach of professional news content and the increasing number of non-professional sources such as bloggers and citizen journalists. Further, there has been a convergence of different publication formats. For instance, the boundaries between printed press and television have become blurred, where traditional newspapers produce video content for their digital distribution channels.³⁵
22. Not only has digitalisation increased competition among publishers, but as news content is distributed primarily through digital channels, it has also introduced digital platforms as competitors. With publishers dependent on news referral services from digital platforms, there is little doubt that digital platforms will have an ongoing and profound impact on the supply of news and journalistic content, and therefore the competition for advertising revenue, consumer data and subscription fees. Digital platforms' ability to control the distribution of news content significantly influences their ability to control audiences. Digital platforms, either voluntarily or by enforced action, can block or downgrade access to content.
23. On a vertical level, digital platforms derive significant value from having news content placed and shared within their ecosystems. This value is both indirect and direct. It contributes to the generation of revenue through advertising displayed within or adjacent to news content and directly by collecting valuable user data (which can be used to improve targeted advertising services).³⁶ Publishers will concede that digital platforms allow them to reach wider audiences in a much more cost effective manner than was possible with physical distribution and enables them to monetise, albeit not sufficiently nor in a proportionately fair manner, their own sites through the sale of advertising. However, it is well known that the digital platforms are also the key providers in the ad tech stack. They act as intermediaries between publishers and advertisers, which adds a further layer of complexity to the relationship.

³⁵ OECD (2021), Competition issues concerning news media and digital platforms, OECD Competition Committee Discussion Paper, <https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digitalplatforms.htm>, page 9.

³⁶ Ibid at page 10.

24. On a horizontal level, there is wide consensus that digital platforms and publishers are in fact competitors in these multi-sided markets:

A number of commentators recognise that there are attention markets in the digital economy, involving “competition in which platforms acquire time from consumers, with bundles of content and ads, and sell ads to marketers to deliver messages during that time.” Acting as “attention brokers”, digital platforms have become important competitors of news publishers (in particular of those with a digital advertising revenue model) for user attention and in the market for the supply of display advertising space. On one side of the market, users may decide whether to spend their limited time, in particular their attention dedicated to news content, on news outlets websites and applications or on digital platforms. On the other side of the market, advertisers that want to reach a particular audience have the choice to purchase advertising space on publishers’ websites (through open display advertising) or on “owned-and-operated” digital platforms, selling through their own ad tech interface. Moreover, the increasing multi-homing allows advertisers to reach consumers on multiple platforms.³⁷

25. Further, digital platforms perform many of the same editorial functions as news publishers, namely the selection, display and curation of news content. Digital platforms increasingly act as news curators, filtering and bundling content through algorithms as well as selecting and ranking in which order users see news content.³⁸

26. The dominance of digital platforms is a key distorting feature of competition in these digital markets:

- 26.1 In the market for news referral services, news publishers are dependent on traffic to their sites to ensure that there is adequate advertising revenue and to potentially acquire new digital subscribers. Digital platforms have become gatekeepers of this traffic, which has resulted in many news publishers becoming dependent on such platforms as key sources of referral traffic, while lacking alternative suppliers also as result of substantial entry barriers; and

³⁷ OECD (2021), Competition issues concerning news media and digital platforms, OECD Competition Committee Discussion Paper, <https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digitalplatforms.htm> page 11

³⁸ Ibid at page 12

- 26.2 In the digital advertising market, the concentration in the ad tech market also distorts competition. Digital platforms are taking more and more advertising revenue, competing with publishers and using news content to profit through advertising.
27. Lastly, it should also be noted that there is a greater competitive advantage afforded to international news publishers, such as the New York Times, Financial Times and the Washington Post, which are now receiving up to hundreds of millions of US dollars from Google in the form of partnership deals. These international publishers now have greater resources to enter the South African market and compete with South African publishers.

Scope items 3 and 4 will be addressed together

Scope item 3: Evaluate whether the commercial relationship between news media and relevant digital platforms is characterised by imbalances in bargaining power and the impact of such imbalances on competitive outcomes affecting the news media industry, including pricing and non-price outcomes

Scope item 4: Evaluate whether competition for the distribution, display and monetisation of news content online between news media organisations through relevant digital platforms is distorted by market features including, but not limited to, ranking algorithms, paid results, search engine optimisation, consumer and social network preferences and commercial relationships with news media organisations; and the effects of this on public access to credible news content as a public good.

28. The Inquiry's acknowledgement of the potential unequal bargaining power in the commercial relationship between news media publishers and digital platforms is encouraging.³⁹ At this point, this submission aims to underscore the asymmetric nature of this relationship by unpacking the conduct of big players in the digital market and how they contribute to distorting the market for media content. This starts with recognising that Google, in particular, holds an immensely powerful position in the digital media space, and this position is not influenced by the actions of individual publishers or indeed a group of publishers. There has been little development in creating a commercial relationship between Google and news publishers in South Africa who, as mentioned above, provide a valuable product for Google.
29. In addition to the below points, please refer to the PSS's initial submission on the Inquiry's draft terms of reference, dated 20 April 2023 ("**PSS Terms of Reference Submission**")

³⁹ Statement of Issues at page 19.

which includes substantive views in relation to the commercial relationship between news publishers and digital platforms.

30. **Importance of CTR**

30.1 This submission wishes to bring to the Inquiry's attention the importance of organic clickthrough rate (or "**organic CTR**"). Organic CTR is the number of times a link is clicked, divided by how many times a link is displayed.⁴⁰ In essence it provides a metric to better understand a website's success in attracting engagement on digital platforms.

30.2 There are many factors which can influence a website's CTR.⁴¹ Some of these factors are in the control of the content creators, while some are not. For instance, *Advanced Web Ranking ("AWR")*, a software company specialising in "keyword rank tracking" for search engine optimisation, outlines a number of measures a content creator can implement to influence its CTR. One of the methods it mentions is the use of "meta descriptions", which are short relevant summaries of what a particular page is about.

30.3 This tool is a quick and easy way for a website to market itself to consumers in the hope of enticing their engagement. However, a study in 2020 by *Ahrefs*⁴² found that Google rewrites meta descriptions 62.78% of the time. Google may argue that this is to assist websites by allowing for a meta description to be tailored by Google to a specific search and therefore bring attention to the website that it otherwise would not have received if its own meta description was used. This picture is not however a straightforward benefit for these websites, particularly websites who need traffic to monetise their content (such as news media websites). These actions illustrate the power of Google in its ability to curate and refine content, that it does not own, for its own benefit, while the content creators themselves are excluded.

30.4 Whether this rewriting of meta descriptions is done to intentionally keep users from clicking through to a particular website or not is irrelevant. In the context of news media, and the trends of consumer behaviour, this is the effect it is having. In the age of demand for immediacy in news media searches, coupled with the specificity of meta

⁴⁰ Sam Underwood, *Organic CTR*, *Advanced Web Ranking*, available at: <https://www.advancedwebranking.com/seo/organic-ctr/>

⁴¹ Ibid

⁴² Michal Pecanek, 2020, *How Often Does Google Rewrite Meta Descriptions? (New Data Study)*, *ahrefsblog*, available at: <https://ahrefs.com/blog/meta-description-study/>

descriptions to search queries, consumers are not engaging with the websites and are instead remaining on the digital platform.

- 30.5 Another way in which a content creator can influence its CTR is through the use of SERP features such as "featured snippets". A featured snippet is a tool aimed at providing an answer to the searcher's question as quickly and accessibly as possible.⁴³ The operation of this feature involves Google pulling content directly from the website, and in so doing takes away the need to click through to the site itself.⁴⁴
- 30.6 This tool can take the form of a paragraph, a numbered list, a bullet point list, a table or a video. While this may be a powerful marketing tool for many brands who are not reliant on digital advertising as a main source of revenue, for the media industry it actively hinders online engagement and by extension digital advertising opportunities.
- 30.7 The Inquiry is correct to identify the issue of news snippets, be it in the form of meta descriptions or featured snippets, as being a prominent problem for news media on digital platforms. The issue is akin to a "catch-22" situation, whereby the use of snippets or meta descriptions push a content creator's site further up the SERP, however these features do have the effect, particularly in the context of the media industry, of reducing CTR. Research conducted by AWR saw CTR drop 22% when comparing classic organic results to a SERP with both a featured snippet and "*People Also Ask Box*"⁴⁵.
- 30.8 Notwithstanding the above challenges, content creators are also at the mercy of Google's algorithms. The algorithm Google uses to determine what is at the top of the SERP is closely guarded and difficult to predict. As previously alluded to, a good CTR is highly dependent on how far up the SERP a webpage is. The unpredictability of Google's algorithms is further exasperated by the fact that these algorithms undergo unannounced and sporadic upgrades which undoes any progress a site may have made in pushing itself up the SERP.

⁴³ Sam Underwood, *Featured Snippets, Advanced Web Ranking*, available at: <https://www.advancedwebranking.com/seo/featured-snippets/>

⁴⁴ Ibid

⁴⁵ "People Also Ask Box" is a Google SERP feature that provides users with additional questions related to their original search query and quick answers to them. Generally, each question in the People Also Ask section contains a featured snippet for that query.

31. ***The prevalence of "zero-clicks"***

31.1 In 2019, *SparkToro*⁴⁶ conducted research into the CTR on Google and found that a majority of searches in the US resulted in "zero-clicks" (i.e. consumers mostly did not leave Google).⁴⁷ *SparkToro* followed-up this analysis in 2021, and found that in 2020, 64.82% of searches worldwide on Google ended in the search results without clicking to another web property.⁴⁸ The 2021 study made an interesting distinction between desktop and mobile searches, with the "zero clicks" percentage being around 46% for desktop searches as opposed to around 77% for mobile searches.⁴⁹ In a country like South Africa where mobile devices are more accessible than desktop devices this is a staggering percentage of users never leaving Google.

32. ***Historical anti-competitive behaviour of dominant digital platforms***

32.1 With specific reference to Google, it is important to outline the evolution of Google's role in the digital landscape over the last few decades. What started as a depository of information relevant to a particular consumer's internet search has, over time, become a major market player in many web-based industries – stifling competition and innovation in the process.

32.2 Dominant digital platforms have been able to leverage their dominance, as search engines or news aggregators, to take market share away from various companies operating in numerous web-based, or at the very least web-dependent, industries.

32.3 A study conducted by *The Markup*⁵⁰ in 2020, illustrates how Google has piled its own products to the top of searches on its own platform. The study conducted several search analyses and found that 41% of the first page of search results on mobile devices comprised of Google properties and "direct answers", which come from

⁴⁶ SparkToro is a software company which specialises in market and audience research in the tech space. <https://sparktoro.com/about>

⁴⁷ Rand Fishkin, 2019, *Less than Half of Google Searches Now Result in a Click*, SparkToro, available at: <https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/>

⁴⁸ Rand Fishkin, 2021, *In 2020, Two Thirds of Google Searches Ended Without a Click*, SparkToro, available at: <https://sparktoro.com/blog/in-2020-two-thirds-of-google-searches-ended-without-a-click/>

⁴⁹ Ibid

⁵⁰ *The Markup* is an American nonprofit news publication focused on the impact of technology on society.

Google taking information from other sources, sometimes without their knowledge or consent.⁵¹

- 32.4 In 2017, the European Commission conducted an intensive antitrust investigation into Google and its activities in the online shopping arena.⁵² The European Commission found internal memos and correspondence between Google staffers which indicated clear intent from Google to highlight and push its own products ahead of external ones. The European Commission identified that, in the early stages, Google's comparison-shopping service had been unsuccessful in gaining traffic and that in early 2007 it was losing traffic at a pace of 21% year on year, while Google's search service was gaining 23% of traffic year on year.⁵³ Google understood that "*Froogle*" (Google's comparison-shopping service) and its content was unlikely to organically rank highly in generic search results, with Google's Engineering Director underscoring that "*[Google would] probably have to provide a lot of special treatment to this content in order to have it be crawled, indexed, and rank well*".⁵⁴ With this in mind, Google attended to favouring *Froogle's* content which increased its traffic drastically, with staffers attributing "*most of this growth [to] improved google.com integration*".⁵⁵
- 32.5 This re-shaping of search by Google has severe implications for businesses and consumers alike. The above example of Google's manipulation of the comparison-shopping industry shows that consumers are left with less variety and in many instances with less favourable prices. *The Markup's* study shows that Google's conduct in the travel industry has made its products, Google Flights and Google Hotels, the market leaders in these fields. These sites had garnered almost twice as many site visits in the U.S in 2019 as each of their largest competitors, Expedia.com and Booking.com.⁵⁶ This is notwithstanding the fact that it has been found that Google

⁵¹ Adrienne Jeffries and Leon Yin, 2020, *Google's Top Search Result? Surprise! It's Google*, The Markup, available at: <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>

⁵² European Commission, *Google Search (Shopping)*, Case AT.39740, available at: https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf

⁵³ Ibid at pages 139 – 140.

⁵⁴ Ibid at page 140.

⁵⁵ Ibid.

⁵⁶ Adrienne Jeffries and Leon Yin, 2020, *Google's Top Search Result? Surprise! It's Google*, The Markup, available at: <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>

Flights does not always show users all the options, and in fact Google Flights did not even rank in Frommer's 2020 ranking of airfare search engines.⁵⁷

- 32.6 Another interesting assessment done by *The Markup* was on Google Translate and how its deficiencies as a translation tool does not impact its position at the top of the SERP.⁵⁸ This reality has meant that other market players are unable to derive ad revenue as their services receive as little as 2% of clicks when Google Translate is at the top of the SERP.⁵⁹
- 32.7 Google has also been taken to court in the U.S for scraping content from websites and displaying it in "featured snippets" results, without explicit permission. The song lyrics site *Genius* recently sued Google, on the basis that Google was providing song lyrics through one of its lyric providers, *LyricFind*, who, it was alleged, had stolen *Genius's* watermarked lyrics and that these lyrics were showing up in the "direct answers" box.⁶⁰ This resulted in *Genius's* CTR falling from 60 – 80% to 5 – 20% after Google started displaying the lyrics in the "direct answers" block.⁶¹ The U.S Supreme Court ultimately rejected the claim by *Genius* on the grounds that the matter involved a claim of copyright infringement and given that *Genius* are not the copyright owners of lyrics, the matter was not taken any further. This finding does not take away from the fact that Google was scraping content from *Genius's* site and displaying it in the "direct answers" box without permission.
- 32.8 The challenges faced by these industries are no different to that of news media publishers in South Africa. The central issue is the conduct of Google, through self-preferencing, meta description manipulation, use of featured snippets and sporadic and unpredictable algorithm upgrades, results in Google siphoning off quality traffic that would otherwise find organic websites but for this conduct. Google is essentially starving off many players in web-based or web-reliant industries, not through innovation but through its domineering tactics.

⁵⁷ Adrienne Jeffries and Leon Yin, 2020, *Google's Top Search Result? Surprise! It's Google*, *The Markup*, available at: <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Blake Brittain, 2023, *US Supreme Court lets Google win stand against Genius suit over song lyrics*, *Reuters*, available at: <https://www.reuters.com/legal/us-supreme-court-lets-google-win-stand-against-genius-suit-over-song-lyrics-2023-06-26/>

⁶¹ Adrienne Jeffries and Leon Yin, 2020, *Google's Top Search Result? Surprise! It's Google*, *The Markup*, available at: <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>

- 32.9 The current imbalance between the dominance of various digital platforms and content creators can be aptly summarised with the following quote from Sally Hubbard of the Open Markets Institute, "*[i]magine you go to the library, and the card catalogue is picking and choosing what book to get based on what makes the library the most money*".⁶² This is the current state of relations between digital platforms and content creators.

Scope item 5: Evaluate whether ad tech Supply Side Platforms (SSPs), Demand Side Platforms (DSPs) and intermediary Ad Exchanges (AdEx) used to surface digital advertising on websites or apps of the South African news media sector will impact on the adoption and competition considerations in scope items 1 to 4.

33. As outlined above, the South African media industry is heavily reliant on digital advertising as a source of revenue. As such, the Inquiry's recognition that the digital advertising market requires scrutiny is vital to understanding the distortions in this market.
34. The concentrated nature of the ad tech stack supply chain has been outlined above. As previously mentioned, Google in particular holds tremendous power in the ad tech supply chain, with every segment of the chain being dominated by a Google service. This dominance has created a closed shop in the ad tech stack, which has resulted in anti-competitive conduct by Google. The structure of the ad tech market in its current form is rife for abuse. The United States District Court *In re: Google Digital Advertising Antitrust Litigation* aptly described the situation as follows:

"[I]magine if the financial markets are controlled by one monopoly company, say Goldman Sachs, and that company then owns the NYSE, which is the largest financial exchange, that then trades on that exchange to advantage itself, eliminate competition, and charge a monopoly tax on billions of daily transactions. Obviously, no free, fair, and functioning market could operate that way. Yet, this is Google's role in today's world of online display advertising."

35. This is the current state of the display advertising market. This submission will now unpack certain instances where Google could be viewed as engaging in abuse of dominance behaviour in the digital advertising market.

⁶² Adrienne Jeffries and Leon Yin, 2020, *Google's Top Search Result? Surprise! It's Google*, The Markup, available at: <https://themarkup.org/google-the-giant/2020/07/28/google-search-results-prioritize-google-products-over-competitors>

36. *Tying/bundling*

- 36.1 Google sets up its dominance in the ad tech stack segments in such a way that participants are cornered into using a combination of Google products in the ad tech supply chain to fulfil their needs.
- 36.2 For instance, Google's combination with its AdWord services (the DSP that Google owns, now called Google Ads) and its ad exchange is set up in such a way to encourage closed use of Google products to buy and sell ad inventory. A key feature of Google's AdWord service is that it buys inventory primarily from Google's ad exchange. DSPs are buying tools that advertisers use to purchase inventory on ad exchanges. This service is set up to primarily purchase from Google's own ad exchange and it therefore creates a closed shop that impacts the rest of the supply chain. In this regard, publishers that wish to access higher demand from advertisers using AdWord need to have their inventory placed on Google's ad exchange.⁶³
- 36.3 Google also leverages its dominance in the ad tech supply chain to benefit its role as a publisher. This is done either through its search engine, or its various display networks, such as YouTube, which requires that Google products are used exclusively to advertise on these platforms.⁶⁴ Facebook has a similar structure in place. Facebook is the largest publisher operating a closed channel (i.e. it does not use the ad tech supply chain).⁶⁵ It sells ads on its properties, such as Facebook and Instagram through its own system, Facebook Ads Manager.⁶⁶
- 36.4 On the other side of the ad tech equation, Google also combines the functionality of its publisher ad server, GAM, and its ad exchange platform.⁶⁷ It does this by ensuring that the use of other publisher ad servers on Google's ad exchange do not allow for real time competition from other exchanges. This actively hurts publishers that do not use Google's publisher ad server, as it excludes their inventory from having access to a large pool of advertiser demand.
- 36.5 Google has also engaged in tying activities through its bringing together of its publisher ad server product and its ad exchange (Google Ad Exchange) under a

⁶³ News Corp Australia 2020 Submission page 30.

⁶⁴ Ibid

⁶⁵ ACCC 2021 Report page 27.

⁶⁶ Ibid

⁶⁷ News Corp Australia 2020 Submission page 31.

single entity known as GAM. This means one contract and one Google representative, meaning more tying of Google's products, leaving less scope to involve various suppliers.⁶⁸

36.6 The US regulators have similarly alleged that Google's tying arrangements affect a substantial volume of commerce in the ad server market and have substantially foreclosed competition in the publisher ad server market.⁶⁹ This, the court found, is a violation of the Sherman Antitrust Act.⁷⁰

37. **Self-preferencing**

37.1 The ACCC outlined the following instances where it found that Google, through its vertical integration and dominance across the ad tech supply chain, has been engaging in the following self-preferencing conduct:⁷¹

37.1.1 restricting the purchase of YouTube (which is Google-owned) inventory to its own DSPs;

37.1.2 directing demand from its DSPs (particularly Google Ads) to its own SSP or ad exchange platform;

37.1.3 using its publisher ad server to preference its own SSP (ad exchange) and, over time, restricting how its SSP works with third-party ad servers; and

37.1.4 using its control over auction rules in its publisher ad server to advantage its other services.

37.2 The conduct of self-preferencing often raises conflict of interest questions. For instance, where Google uses its publisher ad server to favour its own ad exchange over rival exchanges, it puts the interests of its own business over the interests of its publisher customers. In the ACCC 2021 Report, the ACCC considered that this conduct may well have reduced the revenue that publishers would have obtained if all exchanges were treated comparably by Google's publisher's ad server.⁷²

⁶⁸ ACCC 2021 Report

⁶⁹ United States District Court, Southern District of New York *In re: Google Digital Advertising Antitrust Litigation* page 185.

⁷⁰ *Ibid.*

⁷¹ ACCC 2021 Report, pages 7 – 8; 92.

⁷² ACCC 2021 Report, page 9.

37.3 This ties directly into the concern that news media publishers have with the structure of the ad tech stack. Notwithstanding the inherent challenges that come with undergoing a structural transition into the digital space, the closed off nature of the ad tech supply chain, which news publishers are heavily reliant on, means that they are not able to derive revenue at the fair value of their content.

38. ***Predatory pricing***

38.1 An example of Google partaking in conduct that may be viewed as predatory pricing can be found in Google's waiving of all publisher ad serving fees. It did this during the COVID-19 pandemic where it offered to waive all publisher ad serving fees for publishers globally for five months. Given Google's dominance in the ad tech space, it can afford to cross-subsidise segments of the ad tech supply chain to below cost, and then recoup its profit loss, through its other services further upstream.⁷³

38.2 Further to this, News Corp Australia found that Google offers its publisher ad server for free to publishers with fewer than 90 million monthly impressions.⁷⁴ Measures such as this could lure publishers into the Google ad tech ecosystem, and any free service they are getting now is capable of being recouped by Google through its other products in the chain. Other market players do not have this option as no one is ubiquitous enough in this space to be able to forgo revenue and be able to recoup losses down the line.

39. ***Free riding***

39.1 Digital platforms engage in free-riding to the extent that they are benefiting from content that they have not contributed toward making. With the current structure of the digital news market, the time and resources dedicated to producing quality content is not resulting in a reciprocal share of revenue with digital platforms.

39.2 While it is acknowledged that digital platforms provide an invaluable service to consumers, it is still apparent that the market is severely distorted insofar as the content that furnishes these digital platforms is often given freely to consumers, to the detriment of the creators. All the while the digital platforms are benefiting, disproportionately, from the traffic and engagement on their platforms that is driven by the content.

⁷³ News Corp Australia 2020 Submission page 36.

⁷⁴ Ibid page 88.

- 39.3 The measures that digital platforms are now taking to further draw profit from content they do not create is outlined in detail above. These measures, such as meta-description manipulation, further distort the market and allow for more siphoning of revenue away from content creators and toward the digital platforms.

Scope item 6: Evaluate whether the current and future integration of generative AI systems in relevant digital platforms, including the AI review and assimilation of news media content, will impact on the adoption and competition considerations in scope items 1 to 4

40. The application of AI as a content creating mechanism is still in its infancy. With the emergence of platforms such as ChatGPT and Bard, the media industry is concerned with the many issues that these platforms create.
41. These AI platforms are creatures of code and sophisticated data capturing mechanisms. In essence, Pandora's box has been opened and this technology is bound to throw up many challenges that are difficult to predict.
42. News media's direct concern with this technology is around its scraping of the internet, and the intellectual property ("IP") concerns that come with it. These platforms are capable of gathering news content and repackaging it for use on their platforms, and there is currently no mechanism to prevent these platforms from potentially infringing on IP laws. This will cause similar problems with the ones outlined above.
43. News media content will pull consumers onto these platforms, who will use the content to provide salient answers to individuals, all the while the publishers of the relevant content are left in the dark and have no traffic directed to their respective websites. The AI aspect of this scenario eliminates even the possibility of traffic ever being directed toward the relevant news media site.
44. In relation to AI and news media, there is concern in relation to the following points⁷⁵:
- 44.1 news creators' proprietary rights are not respected and that most of the use of publishers' original content by AI systems for both training and output purposes would likely be found to go far beyond the scope of fair use as set forth in existing copyright law;

⁷⁵ See Digital Content Next's *Principles for Development and Governance of Generative AI*. Available on <https://digitalcontentnext.org/wp-content/uploads/2023/06/DCN-Principles-for-Development-and-Governance-of-Generative-AI.pdf>

- 44.2 news publishers are unable to negotiate and receive fair commercial terms with AI platforms that use their content;
- 44.3 a lack of strong regulations and policies. Strong regulations and policies that impose proportionate transparency requirements are needed for publishers to enforce their IP rights where publishers' copyright-protected content is included in training datasets;
- 44.4 AI poses risks for competition and public trust in news publishers' content. This can be compounded by AI systems generating content that improperly attributes false information to publishers. Deployers of AI systems should be legally responsible for the output of their systems; and
- 44.5 it is not clear that AI systems are or will be designed, trained, deployed, and used in a way that is compliant with competition laws and principles.

Scope item 7: Evaluate the impact of scope items 1 to 5 on the quality and consumer choice of South African news media, as well as the impact on news media organisations that are small and medium-size enterprises (“SMEs”) and/or businesses owned by historically disadvantaged persons (“HDPs”)

- 45. The inability of news media companies to fully derive revenue from their own content is pushing many publishers to the brink of financial collapse. This reality is already taking shape, with many publishers, finding that their commercial operations are unsustainable and that many publishers may cease operating should the current market structure persist with no regulatory oversight.
- 46. Any loss in news publishing output will invariably be detrimental to consumers insofar as there will be less scrutiny in the public interest space and fewer voices speaking to power. News media is performing its function the best that it can in an industry that is exploiting news content and making disproportionate gains at the cost of the news publishers.
- 47. It is inevitable that smaller publishers will likely be the first to close. This outcome should be avoided at all costs. Small publishing houses fulfil a vital role in giving consumers insight into community stories and viewpoints that large publishers often neglect.
- 48. Smaller publishers often contribute to language-specific content as well. This allows for news media to be accessible to more segments of South Africa's population.

49. The concentrated nature of the ad tech supply chain and its consequential pricing means that many news publishers, particularly smaller publishing houses, are not even able to access the digital advertising market to derive revenue.
50. For the above reasons, and the reasons mentioned in the Statement of Issues, smaller publishers and new market players (often owned by HDPs) are facing an uphill battle, as the market is severely skewed against them.

Other issues to be considered by the Inquiry

51. The Inquiry should consider the prevalence of illegal distribution of media content through digital platforms. Publishers' content is illegally distributed on closed social media channels such as WhatsApp groups, Telegram groups and Facebook community groups. These digital social forums are operating as channels of distribution for illegally obtained content, including magazines, newspapers and books. Such content is being disseminated on these platforms on a daily basis.
52. Content creators suffer as consumers grow accustomed to free media content, which diminishes the value of the content created.
53. Conversely, digital platforms benefit from greater user engagement on their platforms, who are consuming media-rich content which has been illegally distributed. Therefore, digital platforms directly benefit from this arrangement and offer no assistance in providing solutions to stopping the illegal dissemination of media content on their platforms.
54. While the illegally distributed content is protected under copyright law, the only effective manner to enforce copyright protection would be for the digital platforms themselves to assist with protecting copyright due to the fact that the content is being distributed in closed groups.
55. The Italian authorities approached Telegram to assist in removing illegally distributed content. However, Telegram refused to respond. This may be because Telegram's website notes that they do not respond to "take down" requests related to private messages.⁷⁶ This may also explain why the WhatsApp IP policy does not provide for the filing of IP infringement complaints for private messages.
56. Nevertheless, in Portugal, Visapress appears to have been successful in shutting down copyright infringement in Telegram channels/groups. In a case brought in 2021 on behalf

⁷⁶ [Italian police investigate newspaper piracy on Telegram \(trademarksandbrandsonline.com\)](https://www.trademarksandbrandsonline.com/italian-police-investigate-newspaper-piracy-on-telegram/)

of several magazine and newspaper publishers and the movie industry, a Portuguese court ordered Telegram to close a number of groups.⁷⁷ Visapress raised the complaint in connection with 17 publicly accessible Telegram channels that facilitated the distribution of movies, TV shows, magazines and newspapers. Telegram did not defend the application, and the court granted the injunction, ordering Telegram to block access to these infringing channels.⁷⁸

57. The court in the above case did note that an injunction may be insufficient to deal with digital copyright infringements of this nature.⁷⁹ According to a study, 89% of internet users in Portugal use Whatsapp, and 10% of those who use Whatsapp use it to access newspapers and magazines,⁸⁰ thus illustrating the scale of this problem in Portugal.
58. While the success of Visapress in Portugal is encouraging, the scale of the issue is so vast that pursuing each individual infringement is impractical.
59. In South Africa, news publishers have had little success in clamping down on the illegal distribution of news content. The practice of illegally sharing media content is pervasive and has a hugely adverse commercial impact on publishers.

Remedies

60. ***Correcting a bargaining imbalance caused by market failure***

60.1 This topic has been dealt with in foreign jurisdictions.

60.1.1 The Cairncross Review in the United Kingdom considered both industry-wide negotiations and a code of conduct for the larger platforms. Ultimately, a code of conduct that would govern digital platforms' negotiations with publishers was favoured.⁸¹

⁷⁷ Court Orders Telegram to Block Access to Piracy Channels With Millions of Members available at <https://torrentfreak.com/court-orders-telegram-to-block-access-to-piracy-channels-with-millions-of-members-211123/#:~:text=A%20Portuguese%20court%20has%20ordered,taking%20no%20action%20at%20all>.

⁷⁸ Court Orders Telegram to Block Access to Piracy Channels With Millions of Members available at <https://torrentfreak.com/court-orders-telegram-to-block-access-to-piracy-channels-with-millions-of-members-211123/#:~:text=A%20Portuguese%20court%20has%20ordered,taking%20no%20action%20at%20all>

⁷⁹ Court Orders Telegram to Block Access to Piracy Channels With Millions of Members available at <https://torrentfreak.com/court-orders-telegram-to-block-access-to-piracy-channels-with-millions-of-members-211123/#:~:text=A%20Portuguese%20court%20has%20ordered,taking%20no%20action%20at%20all>

⁸⁰ [More Portuguese reading news on WhatsApp - The Portugal News](#)

⁸¹ Department for Digital, Culture, Media & Sport, *The Cairncross Review: A Sustainable Future for Journalism*, London, 12 February 2019, page 73.

- 60.1.2 To address the imbalance of bargaining power, the ACCC also recommended a code of conduct to govern the relationship between publishers and platforms.⁸²
- 60.1.3 Platforms are to be designated in order to be subject to the code of conduct. These codes are to be drafted by the platforms. However, there is a requirement that platforms demonstrate to the regulator how they have consulted with news media businesses and taken the feedback of news media businesses into account in drafting their code. There is a framework with objective criteria for negotiations between the platform and media businesses, and commitments by the platform in relation to certain principles.
- 60.1.4 There are certain minimum criteria that needs to be baked into the code that address issues such as data sharing with publishers, notice of changes to algorithms, and ensuring that platforms do not impede publishers' opportunities to monetise their own content. Additionally, where the digital platform obtains value directly or indirectly from content produced by news media businesses, they must fairly negotiate with news media businesses as to how that revenue should be shared or how the news media businesses should be compensated.⁸³
- 60.1.5 The ACCC 2021 Report additionally recommended the following proposals to address concerns about the transparency of the pricing and performance in the ad tech stack:⁸⁴
- 60.1.5.1 *Implementation of a voluntary standard to enable full, independent verification of DSP services. This involved industry developing a voluntary standard which would enable advertisers to assess DSP services and encourage competition.*
- 60.1.5.2 *Implementation of a common transaction ID to allow a single transaction to be traced through the entire ad tech supply chain.*
- 60.1.5.3 *Implementation of a common user ID to allow tracking of attribution activity in a way that protects consumers' privacy.*

⁸² ACCC 2019 Report, page 255.

⁸³ ACCC 2019 Report, pages 255 – 257.

⁸⁴ ACCC 2021 Report, pages 167 – 168.

60.1.5.4 *Industry should establish standards to require ad tech providers to publish average fees and take rates for ad tech services, and to enable full independent verification of demand-side platform services. This addresses transparency issues across the supply chain.*

60.1.5.5 *Google should provide publishers with additional information about the operation and outcomes of its publisher ad server auctions. This proposal is to address Google-specific transparency concerns around the information available about its publisher ad server auctions.*

60.1.5.6 *The ACCC additionally sought to be given powers to develop and enforce rules to improve transparency of the price and performance of ad tech services. The rules would apply across the Australian ad tech supply chain. Because the ad tech supply chain is complicated, this recommendation recognises and addresses that other measures may be necessary to address transparency concerns.*

61. This submission promotes the view that a South African solution should be sought. The fundamental part of the solution should be aimed at creating a sustainable environment in which publishers can compete on merit and where the imbalance of bargaining power is remedied. At the very least, publishers must be remunerated for the historic and future use of their content by digital platforms.

62. ***Collective bargaining in mandatory good faith negotiations and the formation of codes of conduct***

62.1 There is an inherent imbalance in bargaining power between digital platforms and South African publishers.

62.2 This imbalance has been caused by market failure and can only be remedied through intervention by South African regulators. This submission recommends that the Inquiry implement measures/make recommendations that require digital platforms to negotiate in good faith with all publishers of South African news media. These recommendations should include the passage of legislation, which has been drafted by the PSS.⁸⁵ To further strengthen the position of publishers, the negotiation process should allow for publishers to collectively bargain with the digital platforms.

⁸⁵ See the PSS Terms of Reference Submission

- 62.3 In order to facilitate negotiations, this submission recommends that a similar approach is taken to the Australian approach. In this regard, designated digital platforms that provide news referral services in South Africa must develop codes of conduct that regulate their relationships with South African publishers.
- 62.4 A further measure that could assist in addressing the market failures outlined above, is in the form of legislation. In this regard, it is important to draw the Inquiry's attention to the draft legislation that the PSS initially proposed in a submission to the Online Intermediation Platforms Market Inquiry and which was subsequently amended and submitted as an annexure to the PSS Terms of Reference Submission. The News Media and Digital Platforms Regulation Bill (the "**Proposed Legislation**") has been modelled according to similar legislation enacted globally. We attached a copy of the Proposed Legislation as **Annexure "A2"**.
- 62.5 The Commission should be empowered to monitor the implementation of the proposed legislation and there must be appropriate sanctions for any breach of the codes.
- 62.6 This submission supports the view that powers be given to the Commission to develop and enforce rules to improve transparency of the price and performance of ad tech services. Further to this, it is recommended that mandatory tracking and monitoring systems be set up within the ad tech stack, similar to those suggested by the ACCC, to facilitate further transparency within the industry.
- 62.7 This submission supports the ACCC's rationale for implementing a designation system under legislation, namely, that it provides some flexibility for different arrangements to be reached between digital platforms and news media publishers.
- 62.8 Any recommendations or remedies must, at a minimum, ensure that:
- 62.8.1 there are general principles of co-operation, including working collaboratively with publishers as to how content is used on digital platforms, access to digital platforms being provided to publishers on a fair, consistent and transparent basis and publishers being meaningfully informed of how ranking and algorithms function on the platform;
- 62.8.2 digital platforms come to an equitable and fair agreement with South African publishers, in terms of licencing fees for use of publisher's content for snippets or in other circumstances where a publisher's content is used in a similar way;

- 62.8.3 in circumstances where digital platforms obtain value, directly or indirectly, from content produced by publishers, digital platforms disclose the monetary value they gain and shall negotiate in good faith with publishers and come to an equitable and fair arrangement regarding revenue sharing;
- 62.8.4 digital platforms share relevant data that is generated from content provided by publishers, with publishers; and
- 62.8.5 digital platforms are to give reasonable advance warning of changes to algorithms to publishers.

63. ***Exemption for smaller publishers***

- 63.1 This submission is of the view that the Inquiry should advise that an exemption in terms of section 10 of the Competition Act, No. 89 of 1998 be granted by the Commission, particularly for smaller publishers. An exemption in this instance would allow smaller publishers to create a united force to engage with the digital platforms in potential negotiations. This would service the long-term goal of promoting the competitiveness of small businesses or firms controlled or owned by historically disadvantaged persons, insofar as the firms could collectively come together to fight for favourable terms against the digital platforms instead of engaging in delayed negotiations individually and confidentially.
- 63.2 As has been stressed above, time is of the essence in regard to the survival of smaller publishers. Should smaller publishers not be able to engage collectively, many may falter and collapse before they are individually able to negotiate with the respective digital platforms.

64. ***Remedies for AI***

- 64.1 Given the recency of the AI's development in the field of news media content, it is difficult to consider remedies and global developments for the Inquiry's to consider. However, the Inquiry should, at the very least, formulate remedies that address the concerns cited at paragraphs 40 to 44.

Conclusion

65. This submission concludes by expressing that the Inquiry has an opportunity to take appropriate measures to curtail the anti-competitive conduct of Google and Facebook, in relation to South African publishers. The status-quo, which has been articulated in this

submission, is ultimately detrimental to consumers, competitive markets and democracy. The sustainability of the South African publishing industry is at stake, and the Inquiry is urged to fully consider the issues raised in this submission.

WEBBER WENTZEL

The value of journalistic content for the Google search engine in Switzerland

A behavioral economics approach to ancillary copyright

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Zurich, March 2023

This study was carried out by FehrAdvice & Partners AG, an independent research and consulting company on behalf of the SWISS MEDIA publishers' association (VSM). The academic supervisors of the study were Ernst Fehr, Professor of Microeconomics and Experimental Economics at the University of Zurich and Stefano Brusoni, Professor of Technology and Innovation Management at ETH Zurich. The field time of the study ran from 26 January until 8 February, with 1573 respondents in Switzerland representative in terms of gender, age (18-64) and in German-speaking and western Switzerland.

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1 Introduction

Access to high-quality information and news is crucial for a sustainable society and a functioning democracy (The United Nations Correspondents Association, n.d.). Search engines have revolutionised the way in which we gather new information. In being able to find relevant answers to our questions in one place, an entire ecosystem of different stakeholders has developed. In the centre of this ecosystem are the people who have a need for current, **relevant and credible information**, and who access it several times per day. The role of aggregators, such as popular search engines like Google and Bing, is to connect users with the information they seek by bringing together the search and the answer. Meanwhile, content providers, including publishers and media houses, make their content available through these aggregator platforms. Advertising providers, on the other hand, benefit from the increased visibility and attention of users on these platforms. Collectively, these entities form a **dynamic information ecosystem** that can evolve through the continuous interaction of its participants.

In today's digital age, a majority of people use aggregators like Google as their first point of contact with the information ecosystem to search for relevant information. Often, people manage to find the answer to their search query directly on the platform without clicking further on the relevant source of the information (Höppner, 2017). As a result, **a large part of the added value remains in the platforms** and does not lead to the platforms of other stakeholders in the ecosystem. It is conceivable that this would create negative incentives for the production of high-quality journalistic content. This means that the **diversity and quality of reporting could decrease** and the balance of the information ecosystem could be affected, as described by Höppner (2017).

In order to ensure the quality and sustainable existence of this ecosystem, the ecosystem must remain as **robust, productive and innovative as possible** (Iansiti & Richards, 2006). To avoid an **imbalance within the ecosystem, cooperation between the media and platforms that produce, collect and disseminate information** is essential (Donovan & Boyd, 2021). If the balance in the ecosystem is disturbed and the users are no longer drawn in by attractive and quality content, they may switch to other platforms that are better adapted to their needs. It is therefore necessary that the profit generated on the platforms is distributed in a **fair and balanced relationship between all participants in the ecosystem**. This can be done within the framework of a **law on ancillary copyright protection**, as has already been implemented in some other European countries.

For this study, it is therefore crucial to find out whether the information ecosystem is currently balanced. This includes a review of the relationship between aggregation platforms and press publishers, as well as of the possible disadvantage of certain stakeholders in the ecosystem, which could entail the risk of a collapse of the entire ecosystem. It is also important to consider the different **roles and responsibilities of the different stakeholders within the ecosystem**.

This study therefore deals with the core question of **what is important to people** as users of this ecosystem, what value the individual providers in the ecosystem give to each other, but also to the people in Switzerland and **whether there is a balance in this ecosystem**.

2 Derivation of hypotheses

What kinds of searches are there?

The internet offers access to an inexhaustible amount of information and many ways to search and find information. However, there are different types of searches that have different objectives. As the research shows (cf. Broder, 2002; Rose & Levinson, 2004; Jansen, Booth & Spink, 2008), there are three main categories of search queries: **information search, transaction search and navigation search.**

The term “**Information search**” describes a search which is used to find information about a certain topic. For example, a person can look for a recipe for cooking a meal. **Transaction searches** are where people are looking for products and services to buy or simply to use. Typical examples of transaction searches are searches for a hotel room or an airline ticket. The third type of search is the **navigation search**, which is used to find a specific website. Here, the user enters specific words in order to quickly reach the desired page. An example of a navigation search would be to enter “Facebook” in the search engine to access the Facebook website. The distinction between these three types of searches is important because they have different objectives and methods.

The information search often requires **extensive research** and the use of various sources to get a complete answer. The transaction search often requires a quick and accurate search for a specific product or service. The navigation search often requires a detailed knowledge of the website and its functions. Of the categories above, the **information search is given the greatest significance.**

In their book, “Digitale Werbung und das Google Ökosystem” (2022, p. 264 ff.), Prof. Thomas Höppner and Tom Piepenbrock cite statistics showing the proportions of the various types of online searches:

According to these surveys, around 55% (between 50-60%) of internet searches are information searches. Some studies, such as Rose and Levinson (2004), even estimate that more than **80% of web requests are informative in nature**, with about **10% being navigation-related and 10% transaction-related**.

This indicates that the internet is considered by many people to be an essential source of information and a technical medium for obtaining information. Despite the social network boom and the discovery of the entertainment and social uses of the internet, the primary importance of the **internet as an information ecosystem** will remain (Schweiger, 2010).

What is important to people when looking for information (and more specifically for news)?

When searching for up-to-date information, people usually prefer a **convenient and time-saving method**. Aggregation platforms, such as search engines or news aggregators, offer a practical solution for this. According to Ofcom’s 2022 discussion document, **convenience** is a key factor in the use of such platforms (Ofcom, 2022). Users want a **quick and reliable overview of the desired information to save time and effort** (Höppner, 2017).

People tend to use sources that **they can trust**, because they provide them with the latest news in a clear and concise format. When using aggregation platforms such as Google to search for information, users rely on the search engine to sort and display the results according to their relevance. This trust in news portals or aggregators to curate content **saves the users the cognitive effort**.

Trust is therefore a critical factor in reducing the time and effort involved in finding relevant information, and is an important aspect of information gathering (American Press Institute, 2016).

Results from the research show that besides trust, the **quality and accuracy** of the content play an important role in a search. Around 85% of people consider it extremely or very important that the news they receive **correctly reflects the facts**. In addition, **three quarters of adults** consider it critical that the information helps them stay **up-to-date** with the latest news (American Press Institute, 2016).

Furthermore, about 72% of people value news that is concise and provides orientation. They prefer messages that are easy to **navigate and use** (American Press Institute, 2016). People are therefore looking for orientation. In the digital news environment, they want to find the right piece of information that provides them with this orientation, because they can only process a certain amount of information at once. (Eppler & Mengis, 2004).

77% of people say that **completeness**, that is, the fact that all important news and facts are included, is very important for them (American Press Institute, 2016). As research shows, news aggregators are able to present information in the form of headlines, images and short texts that enable users to **perceive it as complete** (Engelmann et al. 2021).

A large majority say that **transparency and independence** are important factors. This includes the organisation explaining how they came to the news. Research findings have shown that people may want to examine several sources to confirm whether the information is factual and verified (American Press Institute, 2016).

In summary, the **quality, relevance and up-to-dateness of information are of crucial importance to internet users in a search**. Other important factors are how **quick and easy** it is to find relevant information, as well as the **user-friendly and clear** presentation of the search results. The trustworthiness of the information sources is also crucial for this. The first hypothesis to be tested in this study is therefore:

When searching for information, people are concerned with the quality, completeness, trust, independence, up-to-dateness & orientation.

How is the “information ecosystem” structured?

In recent years, a **diverse ecosystem** of numerous stakeholders, providers and platforms has developed, which is tailored to the above **needs of users when searching for information (news)**. In the ecosystem, there are users who have a need for information and are actively searching for and sharing or commenting on it. There are also content providers that produce and publish content, and aggregators and gateways, such as search engines, which collect and structure that content. Advertising partners also play an important role by providing money to support the production and dissemination of information. **Together, these members form a complex information ecosystem that constantly evolves and adapts to the needs and expectations of users and society.**

The rapid development of technology plays a central role in the **further development of the information ecosystem**. Due to the rapid technological development, the digital world has become very important in almost all sectors.

Digital platforms in particular also play an important role in promoting competition and innovation in the information ecosystem (Ozalp et al. 2022). In Switzerland, digital channels are an important source of information for around **half of the population** (fög, 2022).

In a diverse information ecosystem, the **constellation of stakeholders and their content leads to positive network effects**, in which the value of an ecosystem increases as more users log in and use it. A well-known example of positive network effects is the social network Facebook. The more users Facebook has, the more advantages it offers, such as a greater variety of content, more interaction possibilities, and a greater reach for shared posts. In addition, the network is more attractive to companies because it can reach a larger target group. These advantages attract more users who make the network more valuable, which can lead to exponential growth. **Network effects create incentives for existing users** to stay on the platform as the value increases with the size of the user base. However, for the ecosystem to function, a balance must be struck which provides **incentives and opportunities for all stakeholders to be and to remain part of the ecosystem** (Ozalp et al. 2022).

What role do search engines such as Google play in this information ecosystem?

In this context, platforms such as Google have emerged as key players, enabling consumers in the ecosystem to **access a large variety of content** (Camacho et al., 2019), by collecting and presenting the news content in compressed form in their own locations (Ofcom, 2022). In the digital age, they play an important role in the information ecosystem and, as online intermediaries, take care of the **distribution of news content from the news creators and producers to their audience** (Ofcom, 2022). There are three main types of online intermediaries:

Search engines such as Google or Bing that help users to find content from available websites; **social media platforms** such as Facebook or Twitter, on which end users can create and share information and interact with content; and **news aggregators**, such as Apple News, that collect news content from multiple sources (Ofcom, 2022). The focus of this study is on the first type of online intermediaries: **the search engines**. These help the user to find relevant information in a clear place in this ecosystem. They connect information seekers with relevant content and offer media publishers the chance of visibility and via the links from their websites, they also offer the possibility of monetisation through advertising or paid content.

Recent studies suggest that **90% of people search for information via search engines** on the internet (Pew Research Centre, 2012). A high proportion of people start and stop searching for information on Google and **do not click on linked webpages from content providers such as the media**. A snippet is an example of a search engine function used by Google and other search engines to give users in search results a short summary of the content of a website. As a result, users can **see the search results directly in the search engine results** without having to click on another website. This practice is referred to as “zero-click search”, because the required information is displayed directly on the Google search results page and the user does not have to make any additional clicks on an external website (Ye et al., 2022).

The second hypothesis that we tested in our experiment is this:

A large proportion of people in Switzerland are informed about current topics via Google, and then remain in the Google ecosystem because the answer can be found there directly.

What role does the media play in this information ecosystem?

The **content creators** play a major role in information ecosystems, because without them there would be no information that a search engine can provide. Media companies, journalists and other content providers produce a wide range of high-quality content and ensure that the **public gets correct and trustworthy information**. They play an important role in maintaining a diverse and informed society. Through their **independent reporting and opinion formation**, they make an important contribution to the information ecosystem – and thus to the protection of freedom of expression and democracy (The United Nations Correspondents Association, n.d.)

Users appreciate the qualities of journalistic content. According to a study by the Reuters Institute, 45% of Swiss people want to stay up-to-date on news because it has personal relevance, and 39% see a possibility of learning new things when consuming news (Newman et al., 2021). In another study by the Reuters Institute, a “trust gap” can even be identified: people’s trust in news on platforms such as Google or Facebook is lower than trust in news in general (Mont’Alverne et al., 2022). **It is thus to be expected that the high level of trust that people have in news has a positive effect on trust in Google as a platform and thus creates an advantage for Google.**

But it is not merely the content of the media, but also its methods which create value for the information ecosystem. In particular, the method of the “inverted pyramid” in journalism proves to be extremely advantageous for users as well as search engines within this ecosystem. Here, the most important part of the story, particularly the title and the lead, is presented first, followed by less important details and background information (Pöttker, 2003). The “inverted pyramid” means that the essential parts of the story can be read right at the beginning, which allows search engines to use this structure and to present all relevant information in the displayed “snippets” of the search results (Giomelakis & Veglis, 2015).

This helps to ensure that users no longer have to click on the original source to obtain the required information – a zero-click search (Ye et al., 2022). Users thus appreciate the availability of journalistic content and therefore also use an ecosystem in which this content is contained. The third hypothesis we are pursuing in our experiment is this:

Journalistic content contributes to the attractiveness of Google, as it makes Google more valuable, more credible and more complete.

As a result: people choose to have a Google with journalistic content.

How can this ecosystem evolve?

As mentioned above, Google and the media play a central role together in the ecosystem. However, in order for the ecosystem to function sustainably, a balance must lie in the added value that benefits all stakeholders in the ecosystem (Ozalp et al., 2022). In order to achieve a successful **long-term and sustainable cooperation** of all stakeholders in the ecosystem, a balance is needed between competition among the participants in the ecosystem (Bhargava et al. 2022).

Digital platforms like Google are able to achieve power and scale through network effects by connecting producers and consumers. Google benefits from network effects by attracting more users and advertisers to its platform, which in turn increases the supply and demand, and sets a positive cycle in motion. The more users that use Google, the more data it can collect and analyse to improve its search results and advertising campaigns. This in turn leads to a better experience for users and a higher ROI for advertisers, which in turn attracts more users and advertisers and strengthens the cycle.

While the platforms, such as Google, frequently use a kind of (linear) revenue sharing model with a standardised commission rate to promote the involvement of producers of different sizes (e.g. media) (Bhargava et al. 2022), the question arises whether these companies return to their users and partners the same value that they derive from the analysis and use of data for their profits. The question remains whether big-tech companies can achieve a sustainable balance between their own profit and the benefit for others (Ozalp et al. 2022). As Bhargava et al. (2022) demonstrate, in the current constellation, the platforms in particular benefit. Technology companies operating in the information ecosystem can create added value by collecting and analysing data and by providing data infrastructure services. However, when large technology companies such as Google or Facebook gain access to this data, they can gain a competitive advantage over others in the ecosystem and become very influential in industries such as advertising or retail where they can use the acquired data (Ozalp et al. 2022).

It is important to note that control over data and content can also lead to the ecosystem becoming increasingly **out of balance**. A supremacy of big tech companies could lead to smaller media companies having difficulties in the future to be present on the platform and thus not be able to generate user loyalty and satisfaction. However, when more and more media companies hide their content behind payment barriers or withdraw from platforms, this can lead to a loss of diversity and quality of reporting (Höppner 2017), and at the same time change the behaviour of users when searching for information, but also have negative consequences for Google. **When the ecosystem is out of balance and there is no more attractive content for users, they may migrate to other platforms that are better suited to their needs.**

It is therefore crucial that the platforms ensure fair and equitable treatment of all participants in the ecosystem and create a balance between their own profits and the benefits for others. To keep pace with the ever-increasing innovations in the information ecosystem and with the arrival of new players such as ChatGPT, it is also crucial that the balance and stability are maintained. Another hypothesis tested in the present study is therefore:

When the ecosystem is out of balance, people leave it and look for better alternatives.

3 Empirical approach

The focus of the study is on the **search behaviour of Swiss people** searching for information online. The search behaviour refers to **cutting-edge topics from January 2023** and was presented in the form of realistic Google searches where participants felt like they were actually using Google and seeing search results, with the aim of gaining insights into how people search for information online and use the Google search engine.

The online experiment as the method of choice

The experiment was implemented in an online environment which, compared to conventional surveys and focus group discussions, not only captures the opinions of the participants, but also their **behaviour in decision situations**.

In Figure 1, classical surveys are compared with innovative online experiments on the axes of complexity and precision. In spite of the high degree of complexity required for online experiments, the expected results can be justified by the high degree of precision of the data. To ensure the validity of the results, a **real-life environment** is created and the experiment is designed to be entertaining in order to increase the motivation of participants. In this way, decision situations can be made realistic so that the answers serve as a valid indicator of actual behaviour. Furthermore, implicit association tests are also used in the experiment (Greenwald et al. 1998).

Where classical surveys often only capture so-called stated preferences, i.e. preferences chosen by people in hypothetical scenarios, experiments designed to resemble real-life conditions lay bare the so-called *revealed preferences*. These are a precise indicator of the actual behaviour of the participants, which can be observed in reality.

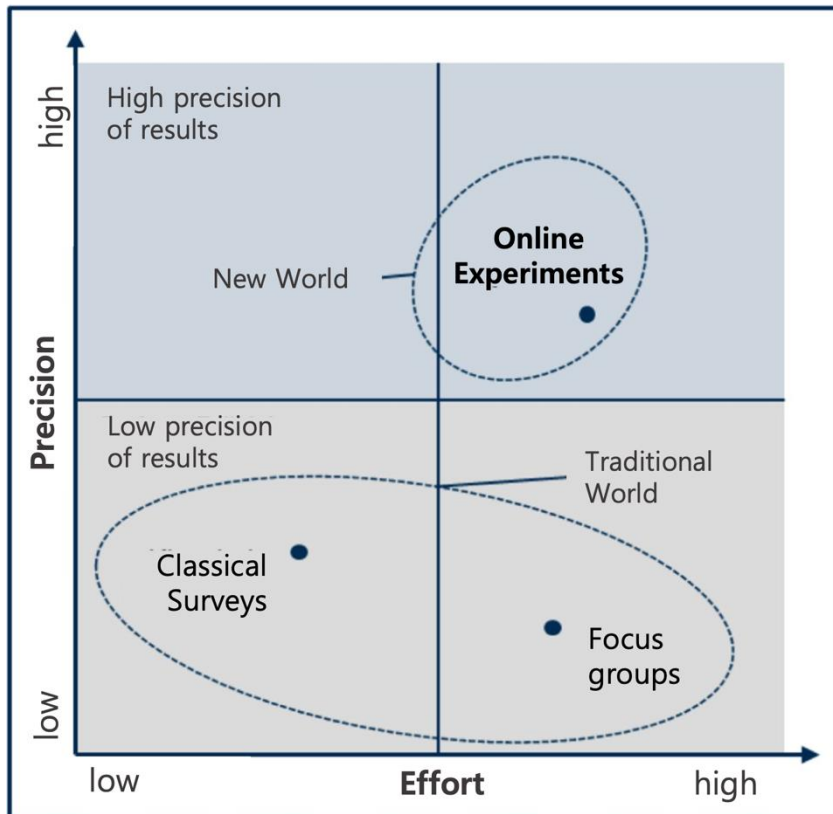


Figure 1 shows the comparison between traditional surveys and modern online experiments based on complexity and precision. Online experiments are more complex, but deliver more accurate results, while traditional surveys are less complex but also less precise.

Structure of the experiment

In the context of this study, the participants underwent an online experiment in which they experienced everyday situations on the computer and had to make decisions during an information search on Google. The users were assigned to one of three thematic groups – **society, politics and the economy** – based on their interests, which they were asked about at the beginning of the experiment. The participants were instructed to search for up-to-date information in a realistic everyday scenario. The division in the experiment is illustrated in the following figure:

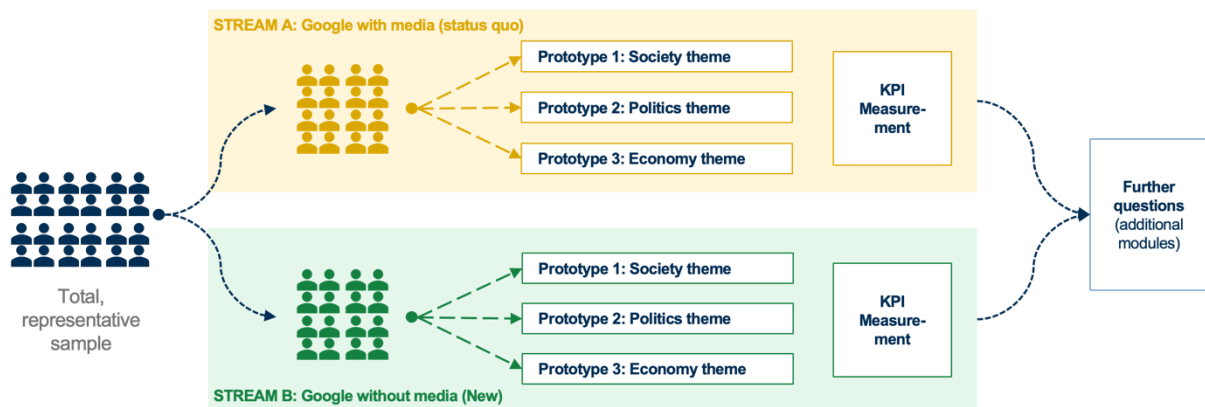


Figure 2: Basic structure of the experiment

The design of the experiment is a **between-subject concept**, where participants are randomly assigned to one of two groups: the “**Google WITH journalistic content**” group or the “**Google WITHOUT journalistic content**” group. Each group experiences a different version of the search engine, with one group seeing search results with journalistic content (e.g. snippets of online newspapers) as normal, and the other group seeing search results without journalistic content. This approach ensures that any perceived differences in perception of behaviour can be attributed to the embedding of journalistic content, rather than to other factors such as individual differences between participants.

A detailed look into the course of the experiment

The process is shown schematically in the figure below:

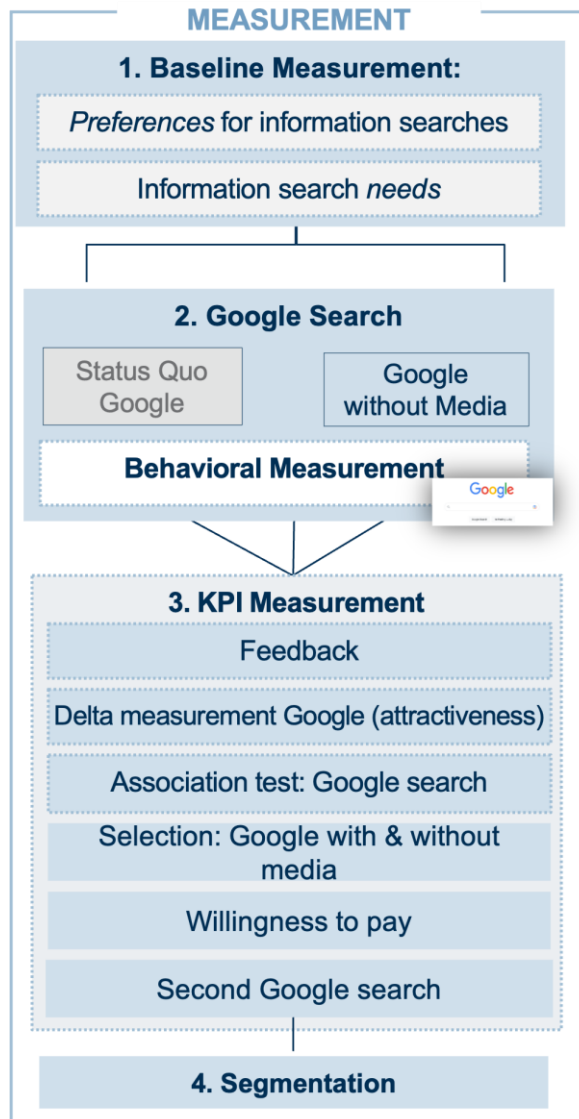


Figure 3: Flow of the experiment

1. Baseline measurement

At the start of the experiment, the users are asked how they usually **search for information** and which topics they prefer to research. In addition, the factors that are **relevant to them** when they search for information are also recorded.

2. Google search

During the experiment, the participants are placed in a realistic situation and asked to search for **relevant and current information** on a specific topic.

In order for the experiment results to reflect behaviour that is as real as possible, it was necessary to define search terms that exceed a certain relevance threshold among the Swiss population. Therefore, the selected search results should, as far as possible, **arouse the interest of the population, be up-to-date, and also relate to Switzerland.**

An introductory question in the experiment ensured that the participants were each assigned a **search term for a topic** they were **actually interested in** (the participants were able to select which of the three topics: politics, the economy and society, that they were most interested in and were given the respective search term on the basis of this answer). The search terms were then selected on the basis of various internet sources including Google Trends, which emphasised the relevance of the three search terms. In this way, it was possible to ensure that these are the topics on which people in Switzerland actually wish to obtain information.

In order to search for information, the participants see search results in the Google search engine, which they can search by clicking and scrolling. They can click on various terms in the search results list, such as media articles, social media posts, other websites such as Wikipedia, or items within the Google ecosystem (such as Google Images). The users can freely choose how they wish to proceed in order to carry out their information search. If they have already found an answer to the question by looking at the search results, they can also state this and stop the search without clicking on a website. In this essential part of the experiment, the behaviour and the decision is measured whether the way the search is presented to others (i.e. WITH or WITHOUT journalistic content) causes them to stay in the Google ecosystem or whether they decide to visit other websites.

How were the searches and answers put together? The searches shown in the online experiment are the results of real Google searches. Screenshots of the following search terms were taken very promptly before the start:

- Politics: “Swiss National Bank loss”
- Economy: “Credit Suisse crisis”
- Society: “Marco Odermatt”

The search topics were particularly timely relevant to the whole Switzerland at the time of the experiment. To include the screenshots of the relevant search results, the following settings were checked to ensure consistency:

- Search on: www.google.ch
- Location of the IP address from which to search: Zurich, Switzerland
- Country selection for search results: Switzerland
- **Language: German** or French (depending on the language version of the experiment)
- Browser: in private mode, with deleted cookies and cleared cache
- Search results per page: 10
- Personalisation of search results: no
- Log-in status for online services such as Google: no

These settings were selected for both desktop and mobile results. Suggestions for similar or other relevant search terms have been removed from all search results. Google generates these automatically and inserts them between the generic search results. However, it was not the focus of this experiment to measure the refinement or “drift” of the users during searches. Instead, it was a question of whether users can find an answer to their search query and whether they click on other links to do so. If the links to similar searches had been included in the treatments, we can assume that the proportion of people who stay in the Google ecosystem when searching would be **even higher**.

How were search results without journalistic content generated from the real Google search results which contained journalistic content? The results that were classified as media content were removed from the first search page. This resulted in gaps in the search results, for example, 6 out of 10 search results were missing from the first page. These gaps were then filled with results which cannot be classified as journalistic content, taken from the pages to follow, until the 10 search results on the first page were “filled” again. The order of the search results was strictly adhered to, since Google is known to rank search results according to criteria such as up-to-dateness and relevance, among other things.

How were the results from media defined as journalistic content? The decisive criterion for this definition was whether the **publishers of the content or operators of the website are a media company and also use the website as a channel for current content**. The following are sufficient conditions for a website to be counted as media content:

- The website is the digital channel of an existing analogue medium (e.g. Neue Zürcher Zeitung or Swissinfo)
- The contents of the website are created by a journalistic editorial team (and this is also indicated on the website, in the legal notice, for example).
- The content is mostly “news”, i.e. information with an up-to-dateness value. For example, an edited, digital photo wall with artistic photographs without any reference to current (global) events would not be media content in the sense of this study. The crucial question here is whether the content would lose relevance over time or not.

It was not decisive for the identification of media content, for example, whether the content is actively marketed on the website (e.g. via advertising or a paywall) or is available free of charge, whether the publishers or owners are based in Switzerland or abroad, exactly how the domain is and which “top level” it uses (.ch, .tv, .fm, .info, .com etc.), whether the website provides other services in addition to media content (e.g. a product comparison search function).

The treatments were thus compiled for three search topics (politics, economy, society), two languages (German, French), two device types (desktop, mobile), and two conditions (WITH media, WITHOUT media). In the experiment, users see the first page of the search results. For this, the assignment of the condition is chosen randomly (WITH media, WITHOUT media). All other parameters are “endogenous”, i.e. they are either actively selected by the participants (such as the language or the search topic) or determined from via the device which they are using to participate in the experiment (desktop, mobile).

3. KPI measurement

In the following part of the experiment, various variables were recorded which can better represent the behaviour and preferences of the participants.

First, we ask for **general feedback** on the search, to find out which version of Google is better for the participants. Subsequently, the **delta attractiveness** is measured as a proxy for how the version of Google viewed by the participants was perceived. Various aspects are compared, such as the general popularity, the completeness of the information, the credibility and the perceived quality. This examines whether there are differences between Google with and without media. The FehrAdvice & Partners Identity Study (2021) highlights three key aspects of why measuring attractiveness (identification with the company) is of central importance for companies today: a higher degree of identity (attractiveness) leads to lower price sensitivity and increases the loyalty of customers, customers spread the identity of the company to the outside world and thereby act as ambassadors for the brand and, especially in a dynamic and digitised world, customer identity is a central success factor.

Traditional survey methods such as questionnaires fail to capture implicit preferences (Brunnel et al., 2004, cited in Niemand et al., 2014). In order to reveal the implicit attitudes concealed from the classical survey methods, the method of the implicit association test (IAT) is largely used in research. (Hofmann et al., 2005 cited in Niemand et al., 2014). With the aid of predetermined assignment tasks, the IAT measures the reaction times of the subjects (Niemand et al., 2014). The association test measures the participants' beliefs about how well Google meets their needs when searching for information.

Furthermore, in order to capture the preferences between Google with media and Google without media, participants are asked to choose their preferred option (Google with vs. Google without media). Likewise, their hypothetical willingness to pay is measured for both versions of Google (they can freely specify what amount they would be willing to pay). Finally, participants are asked to imagine that they need to find information on an additional topic. This is a measure of how they would choose in an **information search in the future**.

4. Segmentation

A renowned external panel ensures that the population in Switzerland (German-speaking Switzerland and western Switzerland) is represented. Other than the representation of the Swiss population, there were no additional requirements for the sample. At the end of the survey, additional segmentation variables are queried, such as media usage or the use of different channels for message consumption. The specific questions and visualisation can be looked up in the appendix.

Characterisation of the experiment participants

The online experiment involved **1,573 participants**. The gender distribution was balanced with 50.2% female and 49.8% male participants. The age of the majority of the subjects was between 20 and 60 years (cf. Fig. 5).

With approximately 30% of the participants, the largest age group consists of persons aged between 30-39 years (474 persons), followed by the group consisting of subjects aged between 40-49 years with approximately 26% of all participants (407 persons). In addition, 254 persons (16.2%) aged between 20-29 years and 217 persons (13.8%) aged between 50-59 years participated in the online experiment.

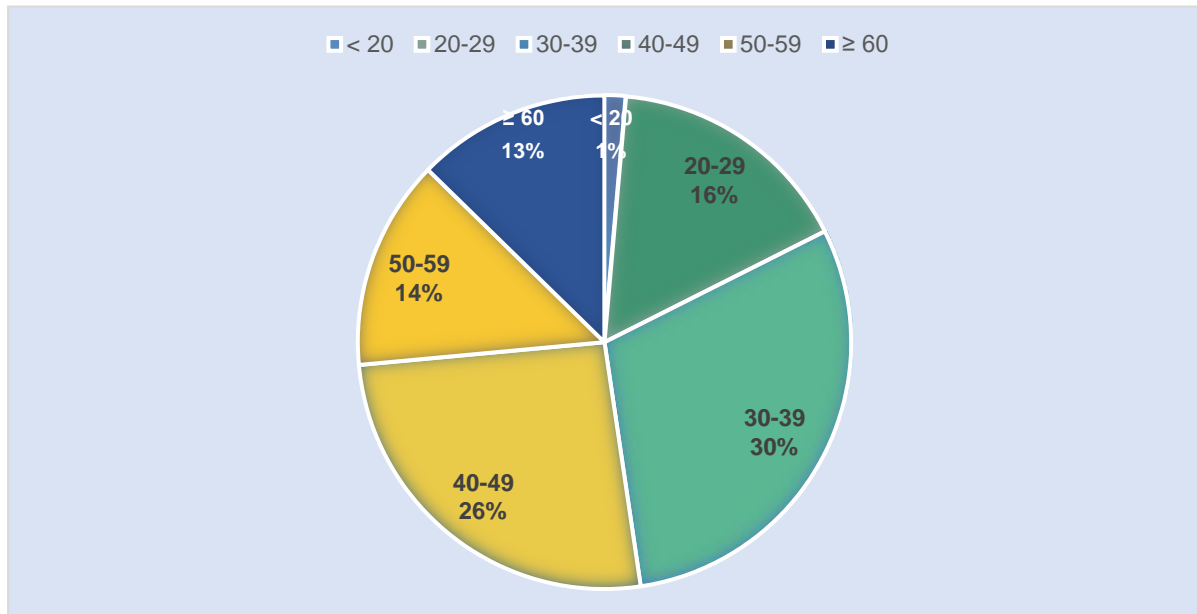


Figure 4: Age distribution in the online experiment

In total, approx. 78% (1224 persons) of the participants are resident in German-speaking Switzerland, while the remaining 22% (349 persons) reside in western Switzerland.

In terms of education, the majority (663 persons; 42.2%) of the participants of the online experiment have completed a vocational apprenticeship. At approximately 34.5% of all participants, the second largest group have university or technical college degrees, followed by those with a completed Matura, or higher education entrance qualification (138 persons; 8.8%). In addition, the sample consisted of participants with primary or secondary school leaving certificates (196 persons; 12.4%) and a few people with a different degree, or no degree (34 persons, 2.2%).

Income figures indicate a uniform distribution with a slight skew to the right. The majority of persons (58.4%) are on the interval of CHF 15-90 annual income, while approximately one in five persons has an annual income of over CHF 90k.

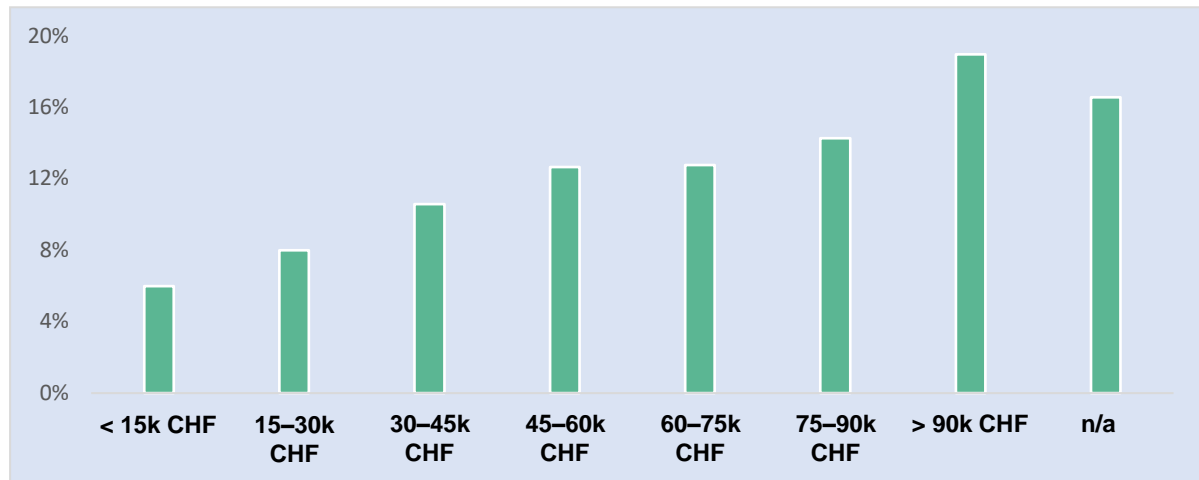


Figure 5: Distribution of income

A look at the media consumption of the experiment participants highlights the omnipresence of media contributions in the everyday life of people. Around four out of five participants (1250 persons; 79.5%) obtain information about current events daily or even several times per day using various channels. Only around one in 30 people (50 people; 3.2%) reported that they consume media less than once per week.

4 Testing the hypothesis

4.1 What is going on when people are looking for up-to-date information?

“When searching for information, people are concerned with the quality, completeness, trust, independence, topicality & orientation.”

The results of our experimental study show that the Swiss population has high demands on the results of an information search. For **over 90% of respondents**, it is important that the information they are looking for is complete, of high quality and objective. 96% of respondents also emphasise the importance of having confidence in search results. The vast majority also want the search results to reflect current events (92%) as well as easily understandable information (89%).

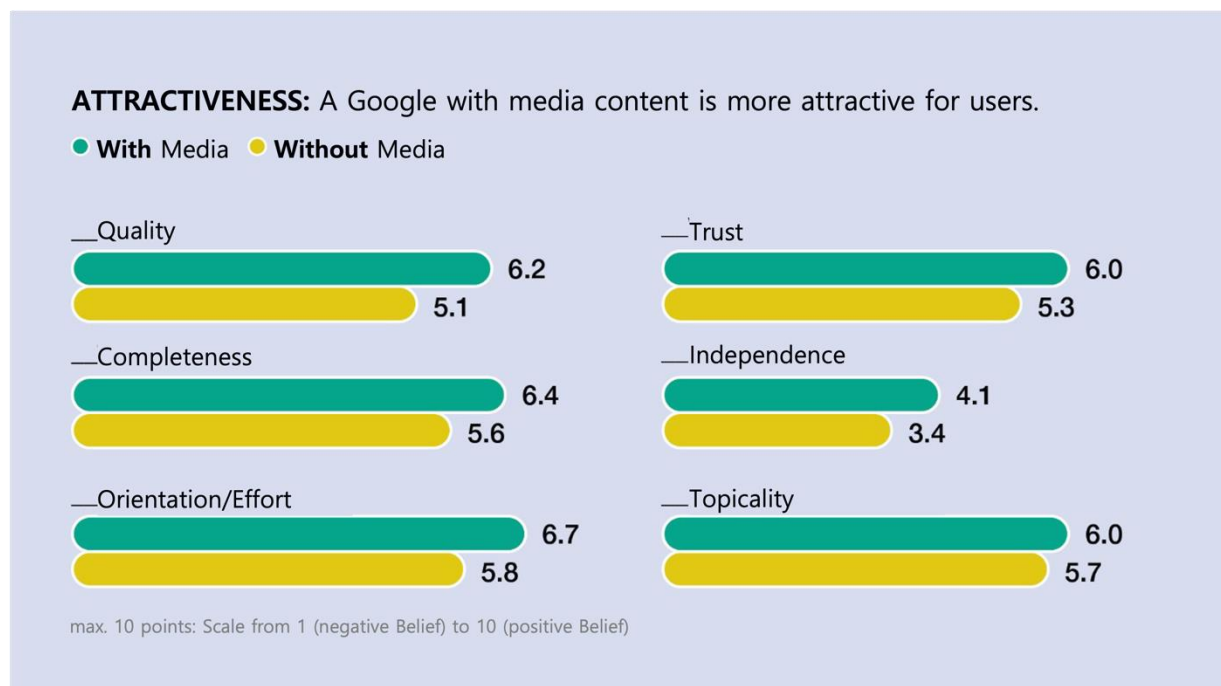


Figure 6: Attractiveness WITH and WITHOUT journalistic content

The fact that all aspects (quality, trust, completeness, independence, topicality and orientation) were considered important by the vast majority of participants underlines the complexity of the information needs of the people of Switzerland. It is therefore of great importance that the **search experience can meet these needs** and that high-quality, trustworthy, and relevant information is provided.

Thus, the hypothesis that people want quality, completeness, trust, independence, topicality, and orientation when searching for information can be confirmed.

4.2 How does Google benefit from the current media integration?

“A large proportion of people in Switzerland are informed about current topics via Google, and then remain in the Google ecosystem because the answer can be found there directly.”

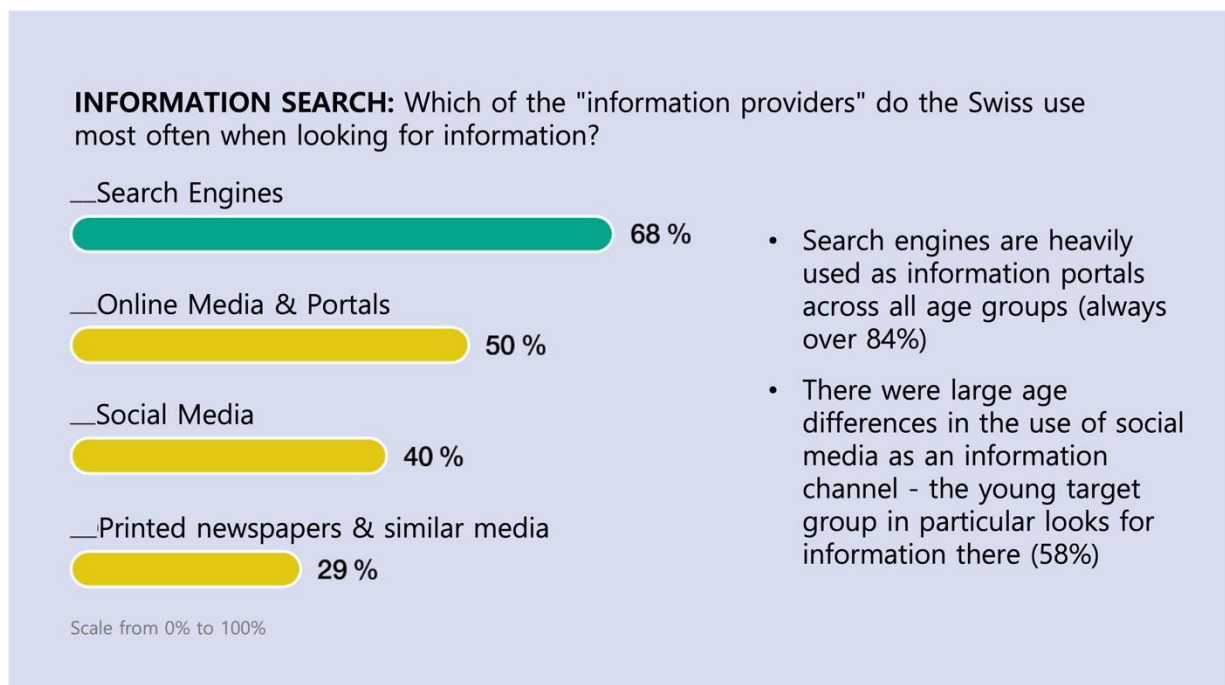


Figure 7: Sources for the information search

The results of the experiment show that search engines like **Google are by far the most used sources of information**. More than 86% of the participants use search engines, followed by online media and portals with a usage of 50%, social media is used by 40% of participants, while print newspapers and similar media are used by only 29% of participants to search for information.

The results show that **digital information sources**, especially search engines, are of great importance in Switzerland. Interestingly, search engines rank first across all age groups, while social media is a source of information with even greater differences between age groups (though generally at a lower level).

Overall, it can be concluded that the first part of the hypothesis, according to which a large proportion of people in Switzerland are informed about current topics on Google, was confirmed by the results of the experiment. In addition, the results suggest that digital information sources are generally preferred.

Does the majority also remain on Google when searching for information there?

Overall, we see in our experiment that the **majority (53%) remains** with Google when they go on a realistic Google search for information. This means that most people, after seeing the search results, leave the search (a so-called “zero-click search”) or continue to click on a Google product (such as Google Images).

CLICKING BEHAVIOR: Do people stay in the Google ecosystem or do they continue to click on external websites?

- On average, Google receives the majority of clicks.
- This is especially true for clicks from mobile devices (where 57% of people stay in the Google ecosystem).
- This channel has become increasingly important in the past and already accounts for the majority of traffic.
- Therefore, it can be assumed that Google's position will be cemented.

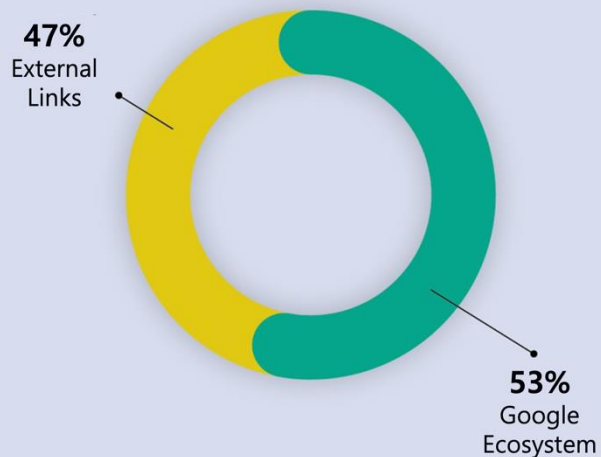


Figure 8: Google ecosystem and external links

Here, there is a focus on the increasingly important target group of mobile users. Google itself already changed its search engine indexing to “mobile first”.

This means that Google now uses the mobile version of a website as the primary source for indexing, which highlights the value of mobile users (Google n.d.).

The data from our experiment clearly proves that mobile users are increasingly staying with Google (“zero clicks” or clicking on a Google product). 57% of mobile users remain with Google, while 46% of desktop users remain with Google. Given the increasing importance of mobile users, it is likely that the number of people who stay with Google will continue to increase and thus the position of Google will be further strengthened.

It should therefore be noted that the majority of users stay with Google and do not click on external links, such as newspaper media or other sources. This becomes particularly clear in the increasingly important channel of mobile devices.

Thus, the second part of the hypothesis can also be confirmed, since a large proportion of the users remain in the Google ecosystem or “zero clicks”, especially on mobile devices.

4.3 Do people stay with Google when journalistic content is no longer integrated?

“Journalistic content contributes to the attractiveness of Google, as it makes Google more valuable, more credible and more complete. As a result: people choose to have Google with journalistic content.”

These characteristics (quality, credibility, completeness, independence, etc.) are particularly important for people with approval rates above 90% when searching for information. Therefore, the question arises whether the inclusion of journalistic content in the search results strengthens the perception of these positive characteristics of Google. In order to test this hypothesis, the data of the participants in the experiment who have seen Google WITH journalistic content (such as snippets from online newspapers) are compared with the data of the participants who have only seen Google WITHOUT journalistic content.

The results show that participants who saw Google with media are more satisfied and have a higher success rate in their Google search.

The satisfaction score shows a significant difference between groups: with journalistic content, the participants rated the search results with an average of 4.1 of 5 points, while the rating without journalistic content was only 3.9 points, which corresponds to a difference of 0.2 points.

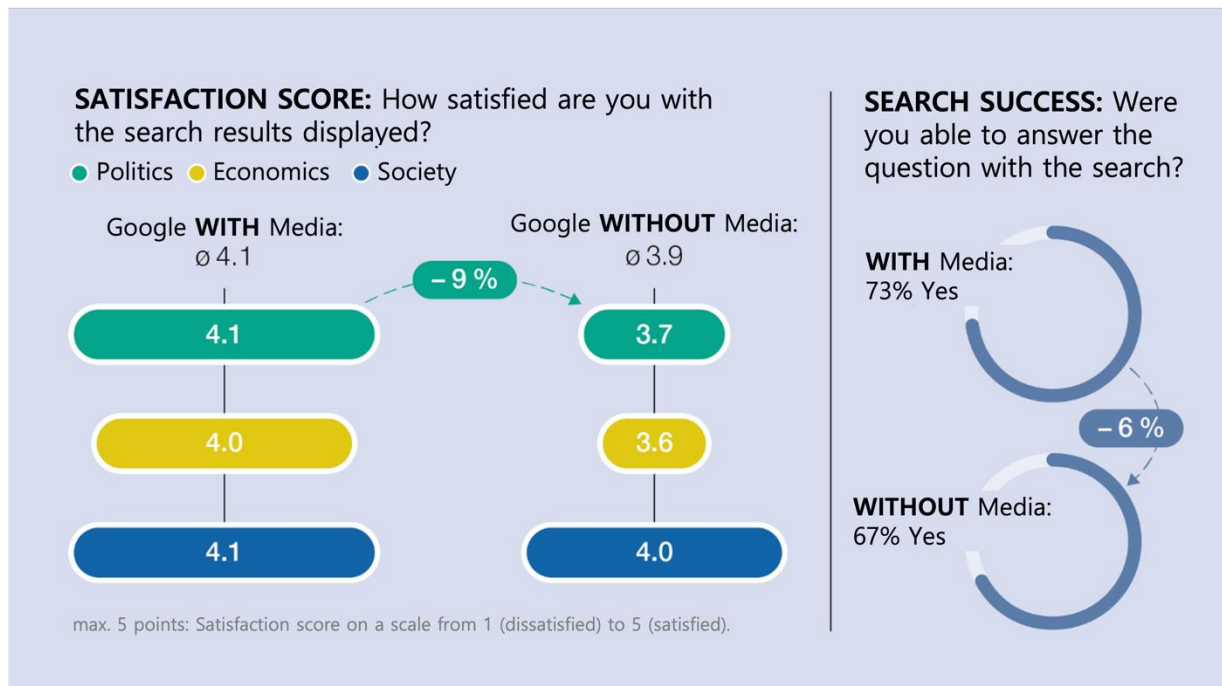


Figure 9: Satisfaction score

There is also a significant difference in search success: while 73% of people who saw Google with journalistic content were able to answer their query, only 67% of those who saw a version of Google without journalistic content were in favour.

The integration of journalistic content into the search results makes Google more attractive, more credible, more high quality and more complete for Swiss citizens throughout – albeit on a smaller scale. The beliefs of the people regarding the criteria quality, completeness, orientation/complexity, independence and up-to-dateness regarding Google with media were consistently better than regarding Google without media. **The results thus confirm the first part of the hypothesis that journalistic content contributes to the attractiveness of the Google search engine.**

But how do people decide when they have an explicit choice?

In order to answer this question, the participants of the experiment were able to make an explicit choice between a Google search engine with journalistic content and one without journalistic content.

This showed a clear preference for a version of Google with journalistic content: 70% of the respondents opt for journalistic content in their search engine. Only those in the segment of people who generally consume less media prefer Google without journalistic content. This result is not surprising, as participants who generally consume little or no journalistic content do not expect it in their Google search results.

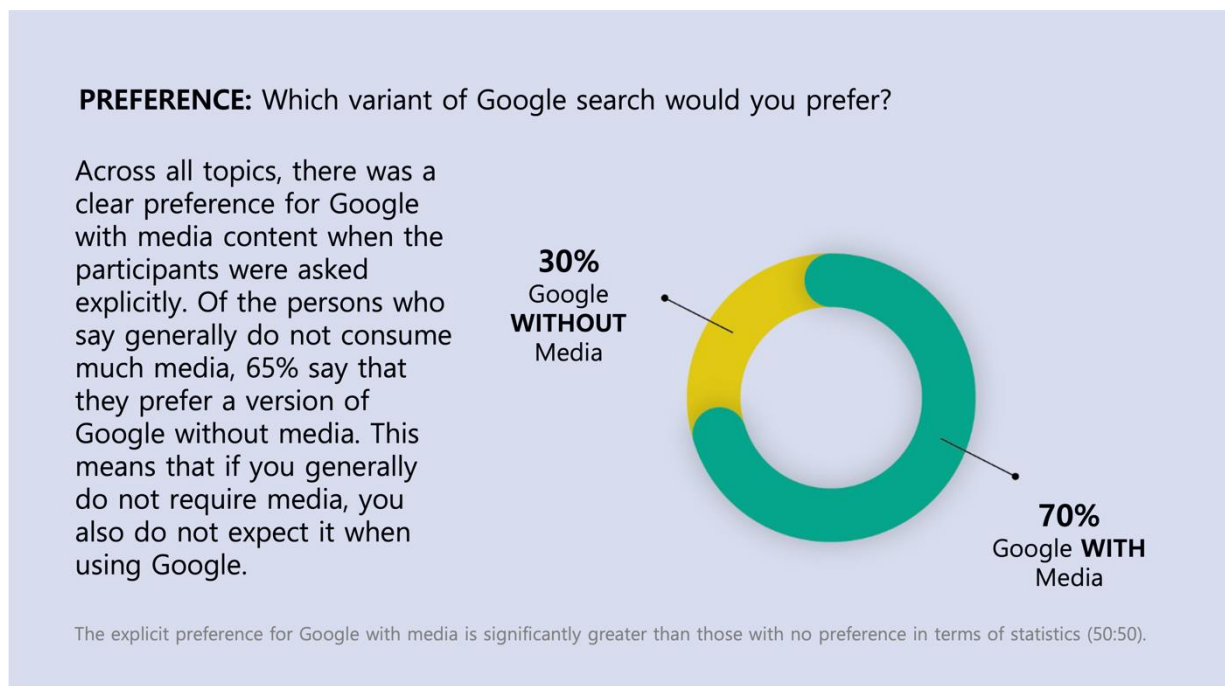
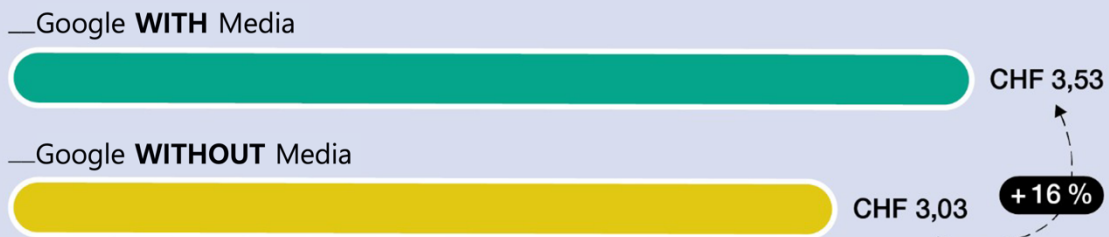


Figure 10: Preferred variant

Participants were also asked about their hypothetical willingness to pay for a version of Google WITH versus WITHOUT journalistic content. This hypothetical willingness to pay serves as a proxy for how much people value the product, in this case Google. Participants were therefore asked whether they would be willing to pay monthly for Google searches.

WILLINGNESS TO PAY: How much would you be willing to pay each month to use the Google search?

From a user's perspective, a Google search with media content is worth 16% more money than the Google search without media content. This difference is statistically significant.



*The willingness to pay for Google with media is significantly higher than for Google without media in terms of statistics.

Figure 11: Willingness to pay

This showed that more than half of the Swiss people are generally willing to pay monthly for Google's search engine offer. **On average, however, the willingness to pay for a version of Google with journalistic content is 16% higher than for a version of Google without journalistic content.** This difference is statistically significant. Journalistic content therefore makes search results more visible to users.

Overall, it can be said that users clearly prefer a Google search with journalistic content and rate it more highly than a Google search without journalistic content. The results thus confirm the second half of the hypothesis that people opt for a version of Google with journalistic content.

4.4 How would people decide when searching again?

“When the ecosystem is out of balance, people leave it and look for better alternatives.”

This hypothesis states that without journalistic content, Google could be harmed in the long term as customers would migrate from the Google ecosystem.

So, how would users react if the information ecosystem were out of balance and, as a result, no longer contained journalistic content? The results of the online experiment show: in a new information search, people who have just seen a version of Google without journalistic content are more likely to navigate media websites directly than they are to use Google again. In numbers, this means that even in the first search after seeing a version of Google without media, 8% fewer people would use Google again compared to those who saw a version of Google with journalistic content. From this data, it can be seen that there is an immediate effect on the behaviour and a proportion of the people change their search behaviour immediately and migrate away as soon as they see a Google search results page without journalistic content.

If you take this direct comparison between the two groups, it is noticeable that if you search again, around 55% more people would directly access the websites of the media providers if they have not seen any journalistic content on Google in the previous search. Based on this, media websites are used much more frequently during a second information search if no media content has been displayed on Google before.

This indicates that **an absence of journalistic content may have long-term effects on Google**. If the Google search cannot answer the question asked, this leads to frustration among users: in the future, they are more likely to inform themselves directly via the media websites about current events. **Overall, the results support the hypothesis that people would migrate from the Google ecosystem if the balance in the information ecosystem is disturbed.**

In summary, it can then be said:



When searching for information, people are concerned with the quality, completeness, trust, independence, up-to-dateness & orientation.



A large proportion of people in Switzerland are informed about current topics via Google, and then remain in the Google ecosystem because the answer can be found there directly.



Journalistic content contributes to the attractiveness of Google, as it makes Google more valuable, more credible and more complete. As a result: people choose to have a Google with journalistic content.



When the ecosystem is out of balance, people leave it and look for better alternatives.

5 Deriving value

From the academic literature and the newly gathered data, it becomes apparent that the interaction between news creators, search engines and aggregators as well as advertisers is ultimately **to the benefit of users** – that is, the people. Thanks to this system, users can find the desired information easier and faster. It also shows that users explicitly welcome the integration of news content into search engines such as Google.

In economic terms, **this ecosystem generates an added value of “advantage” for people.**

And if you think in terms of advantage to people, the question is clear: *how can the ecosystem be designed to function sustainably?* In this case, sustainable means: how can the ecosystem be operated in such a way that it can, in principle, continue to exist *ad infinitum* for the users under constant conditions without central stakeholders falling out of the ecosystem or being permanently disadvantaged?

The internet has given users easy access to an unprecedented variety of news and media content. In addition, this access is in many cases financed by advertising and thus largely free for the users. Diverse journalistic content makes the digital information ecosystem attractive to users. Without this, the information ecosystem would be **less trustworthy, independent, complete, and of a lesser quality** – and thus less relevant – to people.

The study presented here proves that the users want to find and consume journalistic content on the internet in a dedicated manner; on the other hand, the ecosystem of the web search, as it is currently organised, does not offer the media fair participation or participation in the long term. In order to be able to set up the ecosystem sustainably in the interests of the users, a **fair division of the value** generated online by the journalistic content is therefore required.

What is a fair division of value added and how can it be quantified? In order to be able to approach this division in an evidence-based manner, it is necessary to investigate the value which the stakeholders in the ecosystem really give to each other. This includes the key question of what value the media gives to search engines such as Google. In the following, this value is derived from the evidence gathered and publicly available data. In this case, both as a point estimator and a range (always indicated in brackets) are always calculated in order to contextualise the numbers of the derivation in a meaningful way. The derivation is carried out here as an example using Google as the market-dominant search engine. However, derivations for other search engines or aggregators can also be made according to the same principle. This derivation is limited to the value added in Switzerland but can also be carried out in other countries according to the same principle.

The first question is how much revenue is generated in Switzerland by Search Engine Advertising (SEA), the revenue source for web search. The representative of the digital advertising industry IAB (Interactive Advertising Bureau) estimates that this amount totals approximately CHF 1.1 billion (CHF 1.0-1.2 billion) net annually ([AdEx Benchmark 2021 Report](#), published in June 2022). For comparison: taken together, all advertising channels of the tech giant Google (YouTube, Search, etc.) generated just under CHF 2.5 billion in revenue in Switzerland in 2022. This is shown in the [2022 annual report by the analyst Mediafocus](#) (Fixle, 2023). Of course, not all SEA revenue is apportioned to Google. Since Google does not detail its own revenue with SEA in Switzerland, we have to approach this indicator via the market share in internet search.

According to Statista ([Statista](#), 2023), Google's market share for online searches in Switzerland was 90.8% in 2022. The other search engines such as Bing, Yahoo, Ecosia, DuckDuckGo etc. reach less than 10% when taken together. 90.8% of CHF 1.1 billion (CHF 1.0-1.2 billion) equals approximately CHF 999 million (CHF 908-1,090 million) SEA revenue attributable to Google.

Google, or its parent company Alphabet, says in its [latest global report](#) that in 2022 they had implemented more than USD 42 billion with "Search & other", approximately forty times the estimate for the corresponding revenue in Switzerland.

This suggests that the estimate is in the right order of magnitude.

Not all Google searches target information. As well as the information searches, there are also product searches and navigation searches (cf. Broder, 2002; Rose & Levinson, 2004; Jansen, Booth & Spink, 2008), for which the added value of the media content is somewhat lower. The revenue must therefore be reduced to the proportion of information searches relevant for journalistic content. In their book “Digitale Werbung und das Google Ökosystem” (Digital marketing and the Google ecosystem, 2022, p. 264 ff.) Prof. Thomas Höppner and Tom Piepenbrock cite surveys for the shares depending on the type of online search. According to this, about 55% (between 50-60%) of searches on the internet are information searches. Revenue with Google searches, for which media content is the most relevant, thus amounts to approximately CHF 549 million (CHF 454-654 million).

How much of the revenue from information searches does the media content contribute? In order to answer this question in an evidence-based manner, we must draw on the explicit preferences of the users of the ecosystem itself. **How many people want media content to be embedded in the responses of their Google searches?** How many people definitely do not want that? The logic behind this is simple: anyone who decidedly does not want any media content will not benefit from it, and also does not search on Google because of the presence of media content.

In the survey presented here, 70% (with a 95% confidence interval of 68% to 72.6%) of the participants explicitly state that they want Google searches with media content. This 70% could in turn migrate from Google as an answer engine for information searches if Google were to stop displaying media content. 70% is thus the share of revenue with information searches, where the media content makes a value contribution.

And this explicit presence of the users does not come about by accident. The data shows that this preference is related to changes in behaviour and other settings that demonstrate the added value of journalistic content for Google.

The most important contexts with explicit preference are summarised here: users who definitely want a version of Google WITH journalistic content...

- ...would also pay more for Google
- ...search twice as often directly on the media's websites if they don't find what they were looking for on Google
- ...find Google more attractive
- ...identify more strongly with Google
- ...are more likely to click on external links – both media and non-media links

...than users who definitely want a version of Google WITHOUT journalistic content.

At 70%, Google's media-relevant SEA revenue in Switzerland is CHF 385 million (CHF 309-475 million). But what is a fair distribution of this revenue that the media generate for Google? **What "fair share" can sustainably stabilise the ecosystem.**

The answer is a comparison with a similar ecosystem, in which Google does not have a market-dominant monopoly position and yet has been operating sustainably for decades. At this point, the function of the **advertising ecosystem** must be explained briefly:

Google brings the content of different media providers together at one point and thus creates such a high benefit for the people that they come back again and again, and markets this attention to advertisers. The content of the media is the crucial factor in its use and attractiveness. In summary, **four players are required: content providers (media), the attention of the people (users), the advertisers who bring in the revenue, and the platform (search engine or online marketer), which combines supply and demand.** Normally, content providers and platform providers (marketers) share the proceeds in a fair proportion that allows for balance.

What does this balance look like? As an operator, you can use Google AdSense to display advertisements on your website that generate revenue. In doing so, Google takes care of the allocation and playback of the advertisements and the distribution of the resulting income. The website operators, on the other hand, take care of the creation of attractive content, i.e. the reason users come to the website in the first place. In this online advertising market (online advertising marketing), Google is not a monopolist and has serious competition from providers such as Goldbach Group, Admeira, 20 Minuten Advertising, Teads, plista, Schaltplatz, adiro or even through the affiliate programs of Amazon or eBay.

How much AdSense revenue does Google retain and how much does it forward to content creators? **In this market, Google is willing to forward between 51% and 68% of its revenue to the website operators, depending on whether it is AdSense for “content pages” or “search results pages”**(source: [Google AdSense Support](#) for AdSense revenue share).

Another example of revenue sharing is the Microsoft Content Network. Microsoft integrates current content from media companies on its websites, for example on msn.com, in the Microsoft apps or in the search engine Bing and markets the advertising spaces all around. In the process, **Microsoft** offers content providers (publishers) a revenue share of **60 percent**.

It should be noted that in those markets where the platform does not have a monopoly-like position, Google is willing to share the proceeds with the content creators. Other market players, which have a market share of less than ten percent, such as Microsoft with its Bing search engine, and are therefore under strong competitive pressure, are also willing to share their proceeds.

Google does not currently share the proceeds from the integration of media content with publishers in Switzerland. It should therefore be noted that there is a market failure caused by Google’s monopoly-like position.

It should also be noted that the sharing of proceeds in the online advertising industry is based on revenue sharing rather than profit sharing. This may be related to increased transparency, traceability, practicability or even the decreasing marginal costs. For the study and the derivation, it is merely pointed out that there are industry-standard contracts which provide for a fair division between 30 and 60 percent on the basis of the generated advertising revenue.

If the market logic of fair revenue sharing between content providers and marketers is transferred to the search engine, recognising that the contribution of Google's search engine is higher because different information providers are brought together in one place, then the division ratio which was learned and found to be successful in the competitive environment should be applied. In analogy to the Google AdSense program, the fair and industry-standard division ratio is between 32% and 49% (on average 40%), which are passed on to the media. In other partnerships between technology platforms and media companies, such as Microsoft's news aggregator MSN, a revenue share model has also been established, in which the technology platform receives 40% and the content supplier receives 60% of the revenue generated.

We can then summarise the derivation of the added value of media content for Google in two simple steps: ***what SEA revenue does Google generate annually in Switzerland through media content? The answer is: approx. CHF 385 million (CHF 309-475 million). What is a fair share of this revenue, which is due to the media for the sustainable survival of the ecosystem? If we take Google's own willingness to share from AdSense as a benchmark for this, the payment to the media companies should be approx. CHF 154 million annually.*** This amounts to between a **minimum of CHF 99 million** and a **maximum of CHF 233 million** annually, if the calculation of "fair share" always assumes the smallest or largest extreme values.

6 Conclusion

The ecosystem, which consists of search engines, content creators and users, is a central building block of an enlightened and democratic society. This ecosystem currently generates a **wide variety of benefits for society** – allowing users to access reliable, high-quality and credible content that can be quickly found in one place.

However, in order to ensure that this ecosystem maintains its benefits for society, it is essential that stakeholders are **paid fairly and on an equal basis**. This means that content creators must also be fairly remunerated for the contributions in order to maintain an effective incentive structure or creating high-quality content. At the same time, search engines and aggregators should also receive some of the proceeds for the performance in compiling and ranking the content, and for making it available. It is therefore important to ensure a **market-oriented distribution of the proceeds within the ecosystem in the future, within the framework of ancillary copyright protection in Switzerland. For this purpose, there are also market-standard division ratios (40/60) based on the generated advertising revenue, which can be used to derive specific amounts.**

The present study deals with the question of what is important for users in this ecosystem, what value the individual providers create in the ecosystem and **where a sustainable balance can be found in this ecosystem**. With the help of a behavioural-economical optimised online experiment, the needs and behaviour patterns of the users could be examined more closely and the risks of imbalance in the ecosystem identified. In this experiment, a representative sample of the Swiss population was placed in a realistic situation with the help of immersive storytelling and asked to search Google for relevant and current information. Half of this sample saw their usual Google with all the familiar search results.

But the other half of the sample saw a version of Google WITHOUT search results based on journalistic content – no snippets of online newspapers, headlines from media outlets, links to media websites or the like – only non-media-based content.

The results show that Google has established itself in Switzerland as the first point of contact to meet information needs and has thus assumed a key role as gatekeeper for visibility in the competition for attention, and as a “distribution centre” for access for media. However, it is the integration of the media into the Google search results that strengthens the **positive user experience** as well as the **intensity of the usage** of Google. In addition, journalistic content increases the **attractiveness** of Google and increases the **willingness of users to pay** for Google. Conversely, the **probability of using Google** decreases if journalistic content is removed from the search results completely.

It also appears that Google distributes a smaller proportion of incoming visits to the (content-contributing) media, and the larger proportion of visits is retained in Google’s own ecosystem. **Google is thus holding back the much greater opportunities for commercialisation.** The division ratio of the “online traffic” relevant for the proceeds thus unequivocally works in favour of Google. In short: **media provides the content that positively improves the experience of using Google, but in the majority of uses, this is without gain in a commercial sense.**

How can the **media’s contribution** to the value-adding “Google Search” ecosystem be compensated in such a way that the ecosystem can also **sustainably** offer its clearly **positive benefits for people**? To this end, the value contribution of the media to the ecosystem must be measured in an evidence-based manner. This is based on two key questions: firstly, what is the right **benchmark** for Google’s revenue from media content? And secondly, what is a **“fair share”** of this benchmark that should be due to the media?

When search engine advertising revenue is reduced to the relevant market share of Google searches for information that are answered using the media content, a **benchmark of approximately CHF 385 million** (net) is shown annually.

If Google were not in a dominant monopoly position in web search, and instead had serious competition online as in other functioning advertising markets, **40% of this revenue** would be a **market-standard remuneration** of the media's value contribution. This puts the **"fair share"** that Google owes to the media at around **CHF 154 million per year**.

In Switzerland, the media make an **important contribution** to the formation of opinion with their high-quality and independent information. From a behavioural perspective, a **cooperative balance** of the shared contributions to this ecosystem is a sensible and realistic solution to guarantee added value for the users in the future. This study helps to ensure that possible solutions to this balance, such as ancillary copyright protection, as has already been implemented in many other European countries, can be found on the **basis of solid facts**.

With the current and rapid development of artificial intelligence and chat-based response systems, such as the recent ChatGPT and the Bing search engine from Microsoft, a particularly opportunistic window is opening up to lead the discussion about solutions. For example, if users are able to respond to their questions using chatbots or other tools instead of using Google, this may result in a decrease in search traffic on the Google platform. As search engines evolve into response engines in ever faster steps, Google may be facing serious competition in the Swiss search engine market for the first time in decades. This could introduce a **dynamic into the ecosystem** that makes finding a sustainable solution for the sharing of contributions even more urgent.

7. Further sources

Alphabet. (2023). Alphabet Earnings Release 2022 Q4. Alphabet Inc. Retrieved on 16/03/2023 from https://abc.xyz/investor/static/pdf/2022Q4_alphabet_earnings_release.pdf

American Press Institute. (2016). What makes people trust and rely on news? American Press Institute. <https://www.americanpressinstitute.org/publications/reports/survey-research/trust-news/>

Broder A. (2002). A taxonomy of web search. In ACM Sigir forum (Vol. 36, No. 2, pp. 3-10). New York, NY, USA: ACM.

Camacho, Idoia & Pastor, Jose-Mari & Urrutia Santi. (2019). The role of the media with regard to news aggregators. Their presence on Menéame. *Communication & Society*. 32. 17-28. 10.15581/003.32.4.17-28.

Donovan J., Boyd D. (2021). Stop the presses? Moving from strategic silence to strategic amplification in a networked media ecosystem. *American Behavioral Scientist*, 65(2), 333-350.

Engelmann, Luebke & Kessler. (2021). Effects of News Factors on Users' News Attention and Selective Exposure on a News Aggregator Website, *Journalism Studies*, 22:6, 780-798, DOI: 10.1080/1461670X.2021.1889395

Eppler M. J., Mengis J. (2004). "The Concept of Information Overload: A Review of Literature from Organization Science, Accounting, Marketing, MIS, and Related Disciplines." *The Information Society* 20 (5): 325–344.

FehrAdvice & Partners AG. (2021). Swiss Identity Index 2021: Wie stark sich Menschen in der Schweiz mit Unternehmen identifizieren. (How strongly people in Switzerland identify with companies) <https://fehradvice.com/identitaetsindex-oe21/>

Fixle T. (2023). Jahresrésumé Schweizer Werbemarkt und Werbemarkt Trend December 2022. (Annual résumé, Swiss advertising market and advertising market trends) MediaFocus Jahresrésumé 2022. Retrieved on 8 March 2023 from <https://mediafocus.ch/publikationen/werbemarkttrend/werbemarkt-trend-dezember-2022/>

Google. (n.d.). Mobile-first indexing for SEO. Google Developers. Retrieved on 2 March 2023, from <https://developers.google.com/search/docs/crawling-indexing/mobile/mobile-sites-mobile-first-indexing>

Giomelakis D., & Veglis A. (2015). Employing search engine optimization techniques in online news. *Studies in media and communication*, 3(1), 22-33.

Hemant K. Bhargava, Kitty Wang, Xingyue (Luna) Zhang. (2022). Fending Off Critics of Platform Power with Differential Revenue Sharing: Doing Well by Doing Good?. *Management Science* 68(11):8249-8260.

Höppner, Thomas. (2017). EU Copyright Reform: The Case for a Publisher's Right. *Intellectual Property Quarterly* 1/2018, pp. 1-21, Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3081733

IAB Europe. (2022). AdEx Benchmark 2021 Report. Interactive Advertising Bureau Europe. Retrieved on 16/03/2023 from https://iab europe.eu/wp-content/uploads/2022/06/IAB-Europe_AdEx-Benchmark-2021_REPORT.pdf

Iansiti M., & Richards G. L. (2006). The information technology ecosystem: Structure, health, and performance. *The Antitrust Bulletin*, 51(1), 77-110.

Jansen B. J., Booth D. L., & Spink A. (2008). Determining the informational, navigational, and transactional intent of Web queries. *Information Processing & Management*, 44(3), 1251-1266. Retrieved from <https://doi.org/10.1016/j.ipm.2007.07.015>

Mont'Alverne C., Badrinathan S., Ross Arguedas A., Toff B., Fletcher R., & Nielsen R. (2022). The trust gap: how and why news on digital platforms is viewed more sceptically versus news in general.

Newman N., Fletcher R., Schulz A., Andi S., Robertson C. T., & Nielsen R. K. (2021). Reuters Institute digital news report 2021. Reuters Institute for the study of Journalism.

Niemand T., Hoffmann S., & Mai R. (2014). Einsatzpotenziale und Grenzen bei der Anwendung des Impliziten Assoziationstests (IAT) in der Marketing-Forschung. (Potential uses and limits in the application of the Implicit Association Test (IAT) in marketing research). *Marketing: ZFP–Journal of Research and Management*, 36(3), 187-202. Retrieved from <https://www.jstor.org/stable/26426731>

Nosek B. A., Greenwald A. G., Banaji M. R. (2005). Understanding and using the Implicit Association Test: II. Method variables and construct validity. *Personality and Social Psychology Bulletin*. 31 (2): 166–180

Ofcom. (2022). Media plurality and online news. <https://www.ofcom.org.uk/research-and-data/multi-sector-research/media-plurality>

Ozalp H., Ozcan P., Dinckol D., 90 M., Gawer A. (2022). "Digital colonization" of highly regulated industries: an analysis of big tech platforms' entry into health care and education Calif. Manag. Rev. 10.1177/00081256221094307000812562210943

Pew Research Center. (2012). Search Engine Use 2012: Main findings. Retrieved on 02/03/2023, from <https://www.pewresearch.org/internet/2012/03/09/main-findings-11/>

Pöttker H. (2003). News and its communicative quality: the inverted pyramid—when and why did it appear?. Journalism Studies, 4(4), 501-511

Rose D. E., Levinson D. (2004). Understanding user goals in web search. In Proceedings of the 13th international conference on World Wide Web (pp. 13-19). Retrieved from https://dl.acm.org/doi/abs/10.1145/988672.988675?casa_token=XZoACkN4eloAAAAA:epI7G2bhuQHYpYENWAtWKf6kIRkrD26WHAiHuEI8HV7kITR5FMLvyIUW_EWpXmB9zx2w2rzwPZpHLA

Schweiger W. (2010). Informationsnutzung online: Informationssuche, Selektion, Rezeption und Usability von Online-Medien. Handbuch Online-Kommunikation, 184-210 (Online information usage: information search, selection, reception and usability of online media. Manual Online Communication, 184-210). Retrieved from https://link.springer.com/chapter/10.1007/978-3-531-92437-3_8

Statista Research Department. (2023). Market shares of the most used search engines in Switzerland 2022. Statista GmbH. Retrieved on 16 March 2023 from <https://de.statista.com/statistik/daten/studie/429680/>

The United Nations Correspondents Association. (n.d.). The United Nations Correspondents Association. <https://unca.com>

Ye Z., Xie X., Liu Y., Wang Z., Li X., Li J., ... & Ma S. (2022). Why Don't You Click: Understanding Non-Click Results in Web Search with Brain Signals. In Proceedings of the 45th International ACM SIGIR Conference on Research and Development in Information Retrieval (pp. 633-645).

8. Appendix

The following shows some excerpts from the survey. The aim is to provide an insight into the environment of the survey.

a. Baseline measurement

Question 1: Status quo information search

Welche der folgenden Anbieter nutzen Sie, wenn Sie nach Informationen suchen?

i Mehrfachauswahl möglich. Bitte wählen Sie die Anbieter aus, die Sie am meisten nutzen, wenn Sie nach aktuellen Informationen suchen.

Online-Medien & Portale (z.B. blick.ch oder srf.ch) 	Gedruckte Zeitungen & ähnliche Medien (z.B. 20 Minuten oder Tages-Anzeiger) 	Soziale Medien (z.B. Facebook) 	Suchmaschinen (z.B. Google) 
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Question 2: Interest query

Über welches der folgenden Themen lesen Sie am liebsten?

i Bitte wählen Sie eines dieser Themen aus.

Gesellschaft	Politik	Wirtschaft
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Question 3: Recognition

Which of the following information providers do you know?

Select:

- *20 Minuten, Blick, SRF, blue News, watson, Tages-Anzeiger, Luzerner Zeitung, Berner Zeitung, Aargauer Zeitung, NZZ*
- *20 Minutes, RTS, Le Matin, Le Nouvelliste, 24heures, Tribune de Genève, Blick, watson, Le Temps*

Question 4: Attractiveness measurement of various information providers / before being confronted with the information search

- Please rate the information providers listed below by how much you like them:
I don't like this information provider at all (1) – I like this information provider very much (9)
- How credible do you think the following information providers are?
Very low (1) – very high (9)
- How do you rate the quality of information from these providers?
Very low (1) – very high (9)
- What do you think? How complete is the information from these providers?
Very low (1) – very high (9)

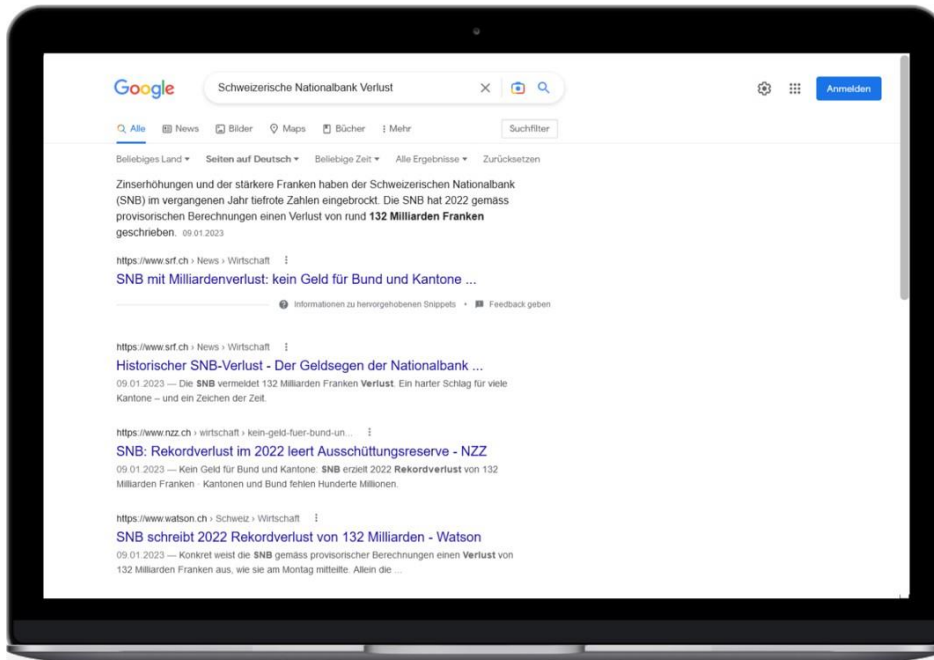
*Question 5: What is important to you when searching for information?
When searching for information, it is important to me that ...*

- ...the information is correct.
- ...the results are informative.
- ...the information is true.
- ...the information is of high quality.
- ...my question is answered.
- ...I am not frustrated by the search.
- ...little advertising is included.
- ...no clickbait is included.
- ...the information is complete.
- ...all aspects are highlighted.
- ...different opinions are represented.
- ...several sources are considered.
- ...the results are diverse.
- ...there are many results.
- ...the results are not superficial.
- ...the information comes from trustworthy sources.
- ...the information comes from well-known sources.
- ...the information is reliable.
- ...the information is credible.
- ...the information is serious.
- ...the information results were generated by experts.
- ...the information results can be trusted.
- ...the information comes from known sources.
- ...the information is neutral.
- ...the information is objective.
- ...the information sources are independent.
- ...only my own opinion is confirmed.
- ...not only paid content is shown.
- ...the information comes from regional sources.
- ...the results are relevant for my region.
- ...the results are in my language.
- ...the information is important for people in my region.
- ...the information maps out regional events.
- ...the information is new.
- ...the results take into account current events.
- ...current events are mapped out.
- ...innovative content is shown.
- ...it is on the pulse of time.
- ...I am offered orientation.
- ...information is relevant to me personally.
- ...I can find the answer quickly.
- ...the information is easy to understand.

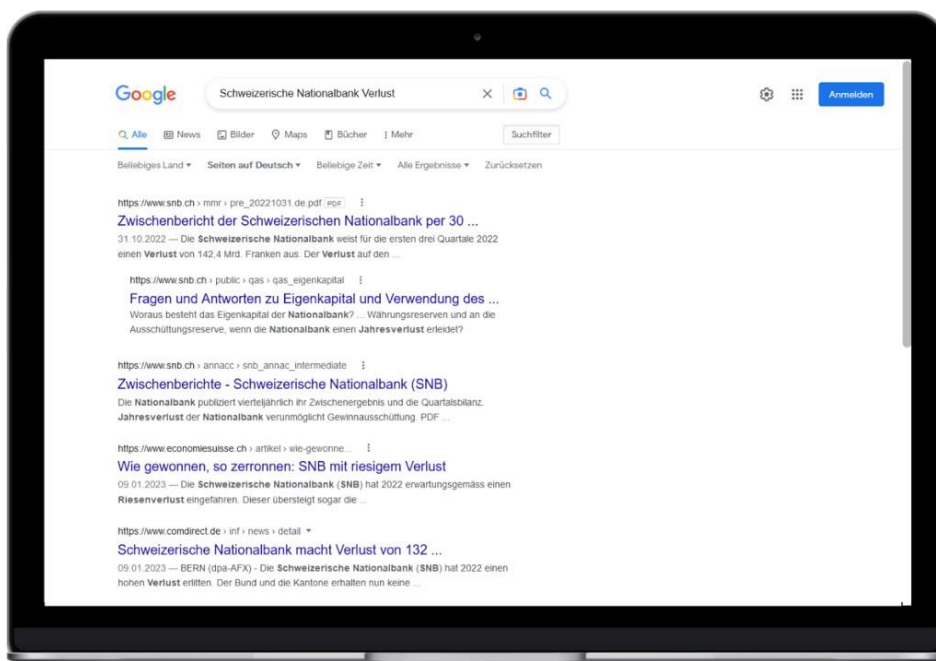
- ...the information can be consumed quickly.
- ...the content is free.
- ...it doesn't put me through any effort.

b. Google search

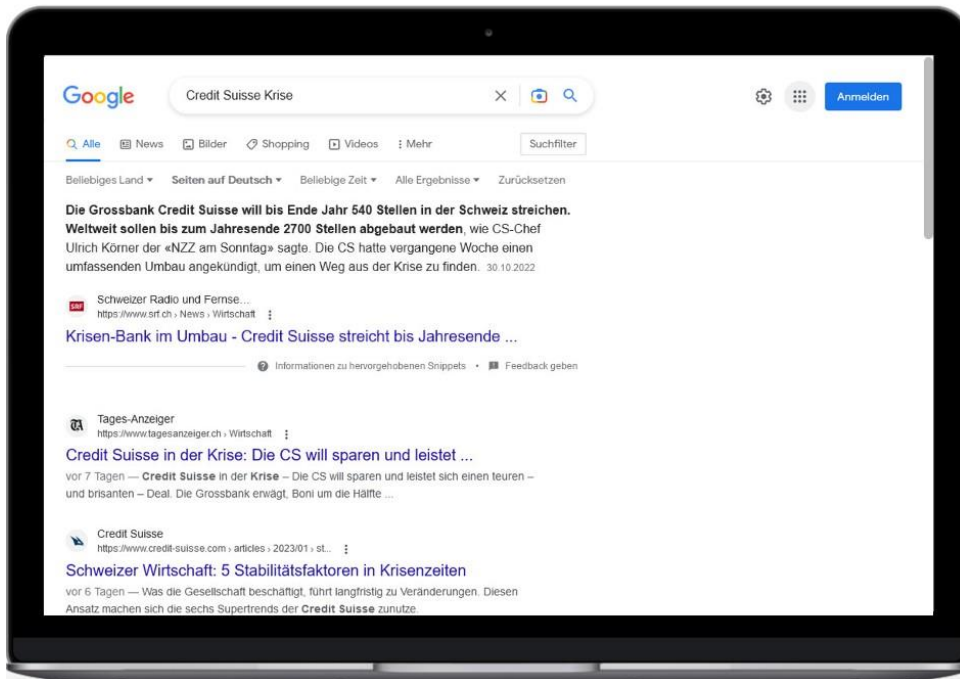
Topic 1: Swiss National Bank loss – with media



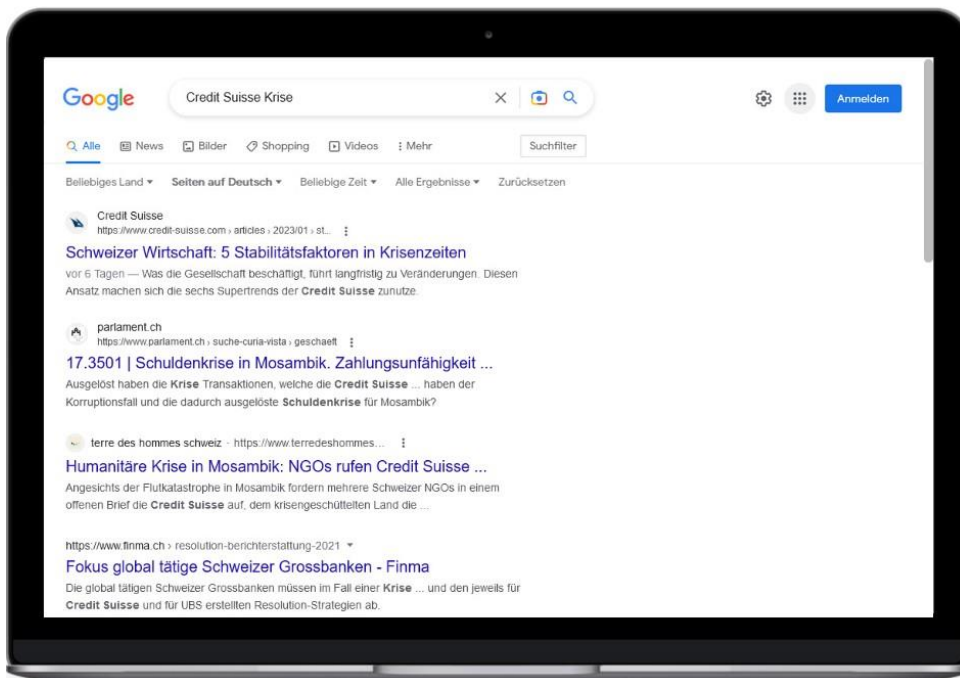
Topic 2: Swiss National Bank loss – without media



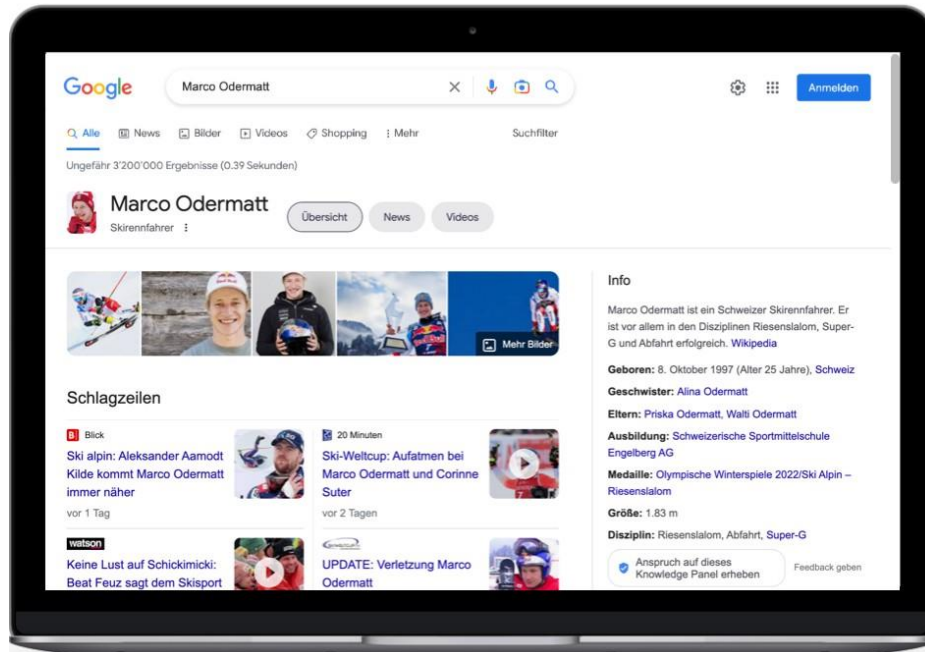
Topic 3: Credit Suisse crisis – with media



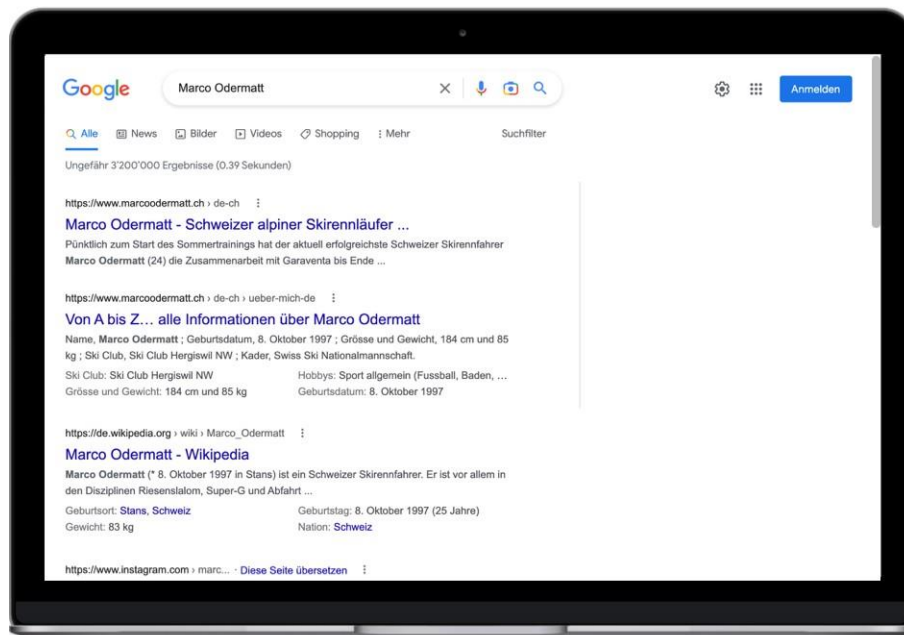
Topic 4: Credit Suisse crisis – without media



Topic 5: Marco Odermatt – with media



Topic 6: Marco Odermatt – without media



c. KPI measurement

Question 1: Feedback

Wie zufrieden sind Sie mit den angezeigten Suchergebnissen?

Bitte klicken Sie auf das Smiley, das am besten zutrifft.



Question 2: Were you able to answer the question using the search?

Response options: A) No, I did not find an answer, B) I don't think that one of the websites in the search results would answer the question C) Yes, I could see the answer directly in the search results.

Question 3: Delta

query Part A:

Gefällt Ihnen Google nun mehr oder weniger als zuvor?

extrem viel weniger genau gleich (viel oder wenig) extrem viel mehr

” Mir gefällt Google nun ... als zuvor.

A Likert scale for satisfaction with Google. It consists of nine circular icons, each containing a different number of hearts (1 to 9). The scale is labeled 'extrem viel weniger' on the left, 'genau gleich (viel oder wenig)' in the center, and 'extrem viel mehr' on the right. Below the scale is a text box with a quote icon and the text: 'Mir gefällt Google nun ... als zuvor.'

Part B:

Schätzen Sie Google nun mehr oder weniger als glaubwürdig ein?


extrem viel weniger genau gleich (viel oder wenig) extrem viel mehr

” Ich schätze nun, dass Google ... Glaubwürdigkeit besitzt.

A Likert scale for perceived credibility of Google. It consists of nine circular icons, each containing a different number of hearts (1 to 9). The scale is labeled 'extrem viel weniger' on the left, 'genau gleich (viel oder wenig)' in the center, and 'extrem viel mehr' on the right. Below the scale is a text box with a quote icon and the text: 'Ich schätze nun, dass Google ... Glaubwürdigkeit besitzt.'

Part C:

Schätzen Sie die Qualität von Google nun besser oder schlechter ein?



extrem viel weniger

genau gleich (viel oder wenig)

extrem viel mehr

” Ich schätze nun, dass Google ... Qualität hat.

Part D:

Schätzen Sie Google nun als weniger vollständig oder vollständiger ein?



extrem viel weniger

genau gleich (viel oder wenig)

extrem viel mehr

” Ich schätze nun, dass Google ... Vollständigkeit zeigt.

Question 4: Association test

In the Google search results I just saw, I am sure that ...

(response options identical to page 5)

Question 5: Direct choice between Google with and without media

Angenommen Sie führen eine Google Suche durch und können zwischen zwei Varianten der Google Suchergebnisse auswählen, nämlich eine **mit** Medieninhalten und eine **ohne**:


Welche Variante der Google Suchergebnisse würden Sie bevorzugen?

Google **mit**
Medieninhalten ⓘ

Google **ohne**
Medieninhalten ⓘ

Question 5: Willingness to

Angenommen Google würde seine Suchfunktion nicht mehr gratis anbieten, sondern nur noch gegen einen monatlichen Pauschalbetrag:

 **Wie viel wären Sie bereit für die Google Suche ohne Medieninhalten zu bezahlen?**


Ein Google ohne Medieninhalte zeigt keinerlei Ergebnisse aus Zeitungen, Zeitschriften oder anderen Medienunternehmen wie z.B. dem SRF an.

Bitte geben Sie nur ganzzahlige Werte ein, keine Kommazahlen! Es gibt ein Textfeld für Schweizer Franken und ein separates Textfeld für Rappen.

Franken

Rappen

Angenommen Google würde seine Suchfunktion nicht mehr gratis anbieten, sondern nur noch gegen einen monatlichen Pauschalbetrag:

 **Wie viel wären Sie bereit für die Google Suche mit Medieninhalten zu bezahlen?**

Ein Google mit Medieninhalten sieht so aus, wie das Google, das Sie kennen: Mit vielen Ergebnissen von Webseiten von Zeitungen, Zeitschriften oder andere Medienunternehmen.

Bitte geben Sie nur ganzzahlige Werte ein, keine Kommazahlen! Es gibt ein Textfeld für Schweizer Franken und ein separates Textfeld für Rappen.

Franken

Rappen

Question 6: Demographic questions

Part A:

Wie alt sind Sie?

19 oder jünger	20-29	30-39	40-49	50-59
60 oder älter				

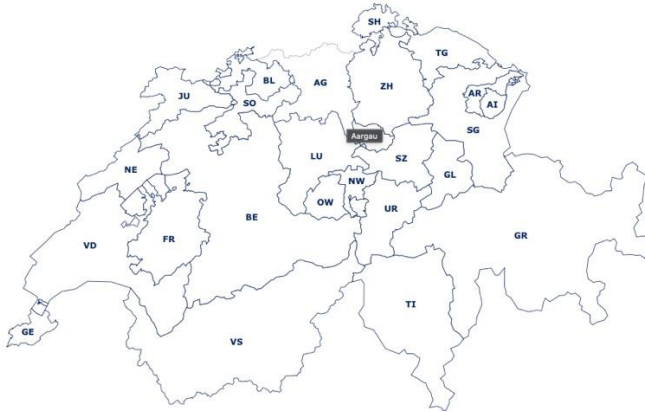
Part B:

Bitte geben Sie Ihr Geschlecht an.

Weiblich	Männlich	Divers
----------	----------	--------

Part

In welchem Kanton wohnen Sie?



Part D:

Was ist Ihr höchster Ausbildungsstand?

- ✓ Bitte auswählen..
- Grund-/Hauptschulabschluss
- Realschule (Mittlere Reife)
- Gymnasium (Abitur)
- Eidgenössische Fähigkeitszeugnis EFZ
- Universität/Fachhochschule
- Kein Schulabschluss
- Sonstige

WEITER

Part E:

Wie hoch ist Ihr jährliches Brutto-Einkommen?

Weniger als 15'001 CHF	Zwischen 15'001 und 30'000 CHF	Zwischen 30'001 und 45'000 CHF	Zwischen 45'001 und 60'000 CHF	Zwischen 60'001 und 75'000 CHF
	Zwischen 75'001 und 90'000 CHF	Mehr als 90'000 CHF	Keine Angabe/Ich weiss es nicht	

Question 10: Question about channel preference

Auf welchen Kanälen beziehen Sie am liebsten Ihre News

Mehrfachauswahl möglich.

Offline (gedruckte Zeitung)	Radio	TV	News-Webseiten	Newsletter
News-Apps	Facebook	Instagram	Spotify	Google
Twitter	Push-Notification	RSS Feed	Podcast Apps	

Question 11: Frequency of news consumption

Wie oft beziehen Sie News?

Mehrmals täglich	Täglich	Mehrmals wöchentlich	Circa 1x pro Woche	Circa 1x pro Monat
		Seltener als 1x pro Monat		

Question 12: Internet usage behaviour

Welche der folgenden Aussagen beschreibt Ihr Internet-Nutzungsverhalten am ehesten?

Ich fühle mich im Umgang mit dem Internet meistens unsicher.	Ich fühle mich bei einigen Aufgaben online sicher, bei anderen weniger.	Ich fühle mich im Umgang mit dem Internet meistens sicher.
--	---	--

«Alles Wirtschaften
beruht auf Verhalten. Des-
halb bezweckt jede
Wirtschaftsberatung die
Beeinflussung menschlichen
Verhaltens.»



DRAFT

NEWS MEDIA AND DIGITAL PLATFORMS REGULATION BILL

To provide a framework for the conclusion of agreements between designated digital platform services and registered news businesses; to mitigate the potential adverse effects of digital platform services on news businesses in the Republic; to provide for bargaining, mediation and arbitration proceedings in furtherance of these objectives; to provide for competitive markets; and to provide for matters incidental thereto.

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CHAPTER 1

Definitions and objects of the Act (ss 1-2)

1. Definitions

(1) In this Act, unless the context indicates otherwise—

“applicant entity” means the news business entity that lodges an application in terms of section 4(1);

“arbitral panel” means a panel appointed in terms of section 18;

“bargaining parties” means the bargaining representative and the responsible digital platform entity specified in a notification made in terms of section 14(1);

“bargaining representative” means, in relation to a registered news business, the person designated as such in terms of section 13 or, in the absence of such designation, the registered news business entity in respect of that registered news business;

“chairperson” means the chairperson of an arbitral panel appointed in terms of section 18;

“Commission” means the Competition Commission established by section 19(1) of the Competition Act, 1998 (Act 89 of 1998);

“core bargaining issues” means the issues specified in a notification contemplated in section 14(2)(d) and an agreement, if any, between the bargaining parties, made in terms of section 14(3);

“core news content” means content that reports, investigates or explains-

- (a) issues or events that are relevant in engaging South Africans in public debate and in informing democratic decision-making; or
- (b) current issues or events of public significance for South Africans at a local, regional or national level;

“covered news content” means content that is-

- (c) core news content; or
- (d) content that reports, investigates or explains current issues or events of interest to South Africans;

“days” means working days;

“designated digital platform entity” means an entity designated by the Minister in terms of section 3(1)(a);

“designated digital platform service” means a service designated by the Minister in terms of section 3(1)(b);

“digital platform service” means a service that functions as an interface through which users can access and interact with digital content and digitally-enabled services of or

provided by third parties, and includes an online marketplace, social network or online search engine;

“entity” includes-

- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
- (b) an association or partnership; or
- (c) a trust;

“family member”, in relation to a person, means his or her parent, child or spouse, and includes any person living with that person as if they were married to each other;

"ICASA" means the Independent Communications Authority of South Africa, established by section 3(1) of the Independent Communications Authority of South Africa, 2000 (Act 13 of 2000); [Drafting note: the Commission may prefer to specify another regulator for purposes of the registration of news businesses and news business entities, in which case the references to ICASA in the draft Bill should be revised]

"Minister" means the Minister of Trade, Industry and Competition;

"news business" means-

- (a) a news source; or
- (b) a combination of news sources;

"news source" means-

- (a) a newspaper, magazine, television programme or channel, radio programme or channel, a website or part of a website, or a programme of content designed to be made available over the internet; and
- (b) which predominantly delivers core news content that it either creates itself or buys at fair value;

“prescribed” means prescribed by regulation;

“register of arbitrators” means the register of arbitrators referred to in section 17;

"register of news businesses" means the register of news business entities and news businesses contemplated in section 4;

"registered news business" means a news business that is registered in terms of section 4(3)(a)(i);

“registered news business entity” means an entity registered in terms of section 4(3)(a)(ii);

"regulation" means any regulation made by the Minister under this Act;

“related entity” means an entity which is related to another entity in a manner described in section 2(1)(c) of the Companies Act, 2008 (Act 71 of 2008);

"**remuneration issue**" means the issue of the remuneration to be paid to a registered news business for the making available of the business' covered news content by a designated digital platform service;

"**represented registered news business**" means a registered news business specified in terms of section 14(2)(b);

"**responsible digital platform entity**", in relation to a designated digital platform service, means the designated digital platform entity that is designated in respect of such service as contemplated in section 3(1);

"**responsible news business entity**", in relation to a registered news business, means the registered news business entity that is endorsed in respect of that business as contemplated in section 4(3)(a)(iii);

"**subsidiary**" has the meaning set out in section 1 of the Companies Act, 2008 (Act 71 of 2008);

"**this Act**" includes any regulation made in terms of this Act; and

"**user**" means any person that accesses or interacts with covered news content by way of a digital platform service.

(2) For purposes of this Act, a digital platform service makes covered news content available if—

- (a) the content is reproduced on the service or is otherwise placed on the service;
- (b) a link to the content is provided on the service;
- (c) an extract of the content is provided on the service; or
- (d) the service otherwise makes content available.

(3) For purposes of this Act, a digital platform service distributes the covered news content that it makes available by—

- (a) ranking the content;
- (b) curating the content;
- (c) making the content more or less prominent;
- (d) making a user more or less likely to interact with the content; or
- (e) otherwise distributing the content,

and "distribution" has a corresponding meaning.

2. Objects of Act

- (1) The objects of this Act are to—
- (a) address the power imbalance between entities that provide digital platform services and South African news business entities in the best interests of the public;
 - (b) facilitate the exchange of information, negotiation and agreement between digital platform entities and South African news business entities;
 - (c) provide for the designation of digital platform entities and digital platform services;
 - (d) provide for the registration of news business entities and news businesses;
 - (e) provide for the mediation and arbitration of issues pertaining to designated digital platform services and registered news businesses;
 - (f) provide for competitive markets and
 - (g) protect the interests of registered news businesses and the public in relation to covered news content made available and distributed by digital platform services.

CHAPTER 2

Designation of digital platform entities and services and registration of news business entities and businesses

3. Designation of digital platform entities and digital platform services

- (1) The Minister may, after consultation with the Commission and ICASA, by notice in the *Gazette* designate—
- (a) a digital platform entity that, either by itself or together with one or more related entities, operates or controls one or more digital platform services, which make available news content provided by one or more South African news businesses; and
 - (b) in respect of each designated digital platform entity, the digital platform services referred to in paragraph (a).
- (2) The Minister shall make a designation in terms of subsection (1)(a) if a significant bargaining power imbalance exists between South African news businesses and the group comprised of the digital platform entity and its related entities.
- (3) The Minister may, after consultation with the Commission and ICASA, by notice in the *Gazette*, amend a designation contemplated in subsection (1) so as to—
- (a) add a digital platform service in respect of a digital platform entity if that entity, either by itself or together with one or more related entities, operates or controls such service; or

- (b) remove a digital platform service in respect of a digital platform entity if that entity, either by itself or together with one or more related entities, no longer operates or controls such service.
- (4) No less than two months prior to making a designation or amendment in terms of subsection (1) or (3)(a), the Minister must provide the digital platform entity that is the subject of the proposed designation with notice in writing, which must—
- (a) specify the particular digital platform services that are being considered for designation; and
 - (b) provide the digital platform entity with an opportunity to submit written representations in relation to the proposed designation.

4. Registration of news business entities and news businesses

- (1) A news business entity may apply to ICASA for—
- (a) registration of a news business that is not already registered and which the news business entity, either itself or together with other entities, operates or controls;
 - (b) registration of the applicant entity as a news business entity, if that entity is not already registered; and
 - (c) the endorsement of the applicant entity as the registered news entity for the news business.
- (2) The application contemplated in subsection (1) must—
- (a) be in writing;
 - (b) comply with the applicable requirements set out in section 5;
 - (c) detail the corporate structure of the applicant entity, including, where applicable, its shareholders and subsidiaries;
 - (d) list every news source that constitutes the news business, which business may be comprised of some or all of the news sources that the applicant entity, either by itself or together with other entities, operates or controls; and
 - (e) provide the prescribed details of the applicant entity's point of contact.
- (3) Within 20 days of receiving a completed application for registration, ICASA must—
- (a) if the application complies with the requirements in subsection (2)—
 - (i) if the news business is not already a registered news business, register the news business;
 - (ii) if the applicant entity is not already a registered new business entity, register the applicant entity; and
 - (iii) endorse the applicant entity as the registered news business entity for the news business; or

- (b) if not satisfied that the application complies with subsection (2), notify the applicant entity of this determination and invite it to submit a new or supplemented application demonstrating compliance with subsection (2).

(4) ICASA must—

- (a) maintain up-to-date registration records for all registered news business entities and news businesses, incorporating any amendments to the registrations contemplated in section 6;
- (b) prevent duplication, by ensuring that a news source is listed in the registration records of only one news business;
- (c) ensure that an updated register, including the names of the registered news business entities, the news businesses and their news sources and points of contact referred to in subsection (2), is made accessible to members of the public via ICASA's website.

5. Requirements for registration and endorsement

(1) The requirements for registration or endorsement, as the case may be, are as follows—

- (a) the application must comply with the requirements of section 4(2);
- (b) if the news business is not already a registered news business—
 - (i) none of the news sources set out in the application form part of another registered news business;
 - (ii) the news business is comprised only of news sources the primary purpose of which is to create core news content;
 - (iii) every such news source operates predominantly in the Republic and for the dominant purpose of serving South African audiences; and
 - (iv) every such news source is subject to—
 - (aa) a code of conduct contemplated in section 54(1) or (3) of the Electronic Communications Act, 2005 (Act 36 of 2005);
 - (bb) the Press Code of Ethics and Conduct for South African Print and Online Media published by the Press Council of South Africa;
 - (cc) analogous standards of conduct and ethics published and enforced by a similar regulatory body; or
 - (dd) internal editorial standards that are analogous to the standards referred to in subparagraphs (aa) or (bb) to the extent that they relate to the provision of quality journalism;
- (c) if the applicant entity is not already a registered news business entity, the entity regularly employs two or more journalists in the Republic;

- (d) the applicant entity operates or controls the relevant news business, either itself or together with other entities; and
 - (e) any other entity that operates or controls the relevant news business or a news source that forms part of the news business, consents in writing to the applicant entity making the application in respect of the news business.
- (2) In determining, for purposes of subsection (1)(b)(ii), whether the primary purpose of a news source is to create core news content, ICASA must take into account—
- (a) the amount of core news content created by the news source;
 - (b) the frequency with which the news source creates core news content; and
 - (c) the degree of prominence given to core news content created by the news source, compared with the degree of prominence given to other content created by the news source.

6. Changes to composition of registered news businesses

- (1) The news business entity that is endorsed in respect of a registered news business may apply, in writing, to ICASA to add a news source to, or remove a news source from, the news business.
- (2) The application must comply with any prescribed requirements.
- (3) Subject to compliance with subsection (2), ICASA may add the news source to the registered news business if—
- (a) the news source does not form part of another registered news business;
 - (b) the responsible news business entity would continue to meet the requirement in section 5(1)(d) if the news source is added;
 - (c) the news source complies with the criteria in section 5(1)(b); and
 - (d) any other entity that operates or controls the news source consents in writing to the responsible news business entity making the application to add that news source.

7. Revocation of registration and endorsement

- (1) A registered news business entity must, within 20 days of becoming aware of its occurrence, notify ICASA in writing if the requirements set out in section 5 are no longer met in relation to that entity or a registered news business for which that entity is endorsed.
- (2) ICASA must deregister a news business entity—
- (a) on written application for deregistration by that entity; or
 - (b) if the registered news business entity—

- (i) no longer meets the requirements in section 5(1)(c); or
 - (ii) the entity is not endorsed as the registered news business entity for at least one registered news business.
- (3) ICASA may deregister a news business—
- (a) on written application for deregistration by the responsible news business entity; or
 - (b) if the registered news business no longer meets the requirements in section 5(1)(b).
- (4) ICASA may revoke the endorsement of a registered news business entity in respect of a registered news business if the requirement in section 5(1)(d) is no longer met in relation to that news business.
- (5) ICASA may deregister a news business entity or a news business, or it may revoke an endorsement of a registered news business entity in respect of a registered news business, if it considers that the application for such registration or endorsement was false or misleading in a material respect, including as a result of the omission of material information.

CHAPTER 3

Obligations in respect of digital platform services

8. Information to be provided to registered news businesses entities

- (1) If a designated digital platform service makes available covered news content of a registered news business, the responsible digital platform entity must—
- (a) provide the responsible news business entity with data that relates to the interactions of users of the designated digital platform service with the covered news content of the registered news business;
 - (b) notify the registered news business, in writing and at least 10 days prior to implementation, if a change is planned to an algorithm of the designated digital platform service, if such change—
 - (i) has, as its dominant purpose, the bringing about of an identified alteration to the ways in which the designated digital platform service distributes content that is made available by the service; and
 - (ii) is likely to have a significant effect on the referral traffic from the designated digital platform service to the covered news content of registered news businesses, considered as a whole, that the service makes available.
- (2) The information referred to in subsection (1) must—
- (a) be provided in terms that are readily comprehensible and, to the extent necessary, accompanied by lists or explanations designed to aid comprehension;

- (b) relate specifically to the applicable designated digital platform service; and
 - (c) comply with any requirements that may be prescribed.
- (3) The data referred to in subsection (1)(a) must be provided no later than one month from the day on which the news business was registered in terms of section 4, for the 12 months preceding the day on which the news business was registered, and thereafter on an annual basis.
- (4) A change to an algorithm shall not have the dominant purpose referred to in subsection (1)(b)(i) if it is made as part of routine maintenance with the dominant purpose of ensuring the ongoing effectiveness of the algorithm or improving its efficiency.
- (5) Notwithstanding subsection (1)(b), if a change to an algorithm of a designated digital platform service contemplated in that subsection is urgently required in the public interest, the responsible digital platform entity may notify the responsible news business entity within 48 hours after the implementation of the change.
- (6) In ascertaining whether a change to an algorithm is likely to have a significant effect, as contemplated in subsection (1)(b)(ii), the following factors must be considered—
- (a) whether, as a result of the change, there is likely to be a significant variation in the amount of covered news content made available by the designated digital platform service;
 - (b) whether, as a result of the change, there is likely to be a significant variation in the proportion of content made available by the designated digital platform service represented by covered news content; and
 - (c) any other relevant matter, excluding—
 - (i) whether, as a result of the change, there is likely to be a significant variation in the proportion of covered news content of all registered news businesses made available by the designated digital platform service represented by the covered news content of a particular registered news business;
 - (ii) the relative turnover and relative financial position of registered news businesses whose covered news content is made available by the designated digital platform service; or
 - (iii) the relative volume of covered news content created by registered news businesses whose covered news content is made available by the designated digital platform service.
- (7) Nothing in this section shall require the disclosure of trade secrets or the disclosure of information contrary to the provisions of the Protection of Personal Information Act, 2013 (Act 4 of 2013).

9. Recognition of original covered news content

The responsible designated digital platform entity must ensure that—

- (a) a proposal is developed, after consultation with registered news business entities, for the designated digital platform service to recognise original covered news content when it makes available or distributes that content;
- (b) the proposal is published on the service's website for comment from interested parties within the prescribed period; and
- (c) the proposal is finalised within the prescribed period and published on the service's website.

10. Non-differentiation and undue preference or disadvantage

(1) The responsible digital platform entity must ensure that, in crawling, indexing, making available and distributing the covered news content of news businesses, the designated digital platform service does not differentiate—

- (a) between registered news businesses, or between registered news businesses and unregistered news businesses that regularly produce covered news content, on any of the following bases—
 - (i) whether or not the business representative of the news business has made a bargaining notification as contemplated in section 14;
 - (ii) whether or not the business representative of the news business has given a notification of referral to arbitration contemplated in section 16;
 - (iii) whether or not the news business is being remunerated for the making available its covered news content by a designated digital platform service; or
 - (iv) whether or not the news business is the subject of an agreement contemplated in section 12.
- (b) between unregistered news businesses on the basis that a news business or the applicable news business entity is eligible for registration, or the applicable entity has applied, in terms of section 4, for registration as a news business entity, for registration of the news business, or for its endorsement in respect of the news business.

(2) Subsection (1) is not contravened if an agreement has been concluded between the responsible digital platform entity and an entity that is registered in respect of the news business or is eligible for such registration—

- (a) in terms of which remuneration will be paid to the news business for the making available of its covered news content on the designated digital platform service, and the differentiation arises solely from the amount of that remuneration; or
- (b) in terms of which the news business entity agrees to ensure the provision of a specified type of covered news content to be made available on the designated digital platform service, which the designated digital platform entity agrees to

ensure will be ranked preferentially on distribution, and the differentiation arises solely from that preferential ranking.

- (3) A designated digital platform entity may not—
- (a) subject any news business which produces news content primarily for the South African market to undue or unreasonable disadvantage; or
 - (b) give undue or unreasonable preference to any such news business.
- (4) The prohibitions in subsections (1) and (3)(b) apply equally to the treatment of news businesses—
- (a) controlled or operated by the designated digital platform entity or a related entity; or
 - (b) in which such entity or a related entity has a financial interest.

11. Facilitation of communications between designated digital platform entities and registered news businesses

- (1) A designated digital platform entity is required to appoint a person as a point of contact in South Africa, and to ensure the provision of the details of its point of contact to every registered news business entity, within the time periods and in the manner prescribed.
- (2) A registered news business entity is required to appoint a person as a point of contact in South Africa, and to provide the details of its point of contact to a designated digital platform entity on receipt of the details contemplated in subsection (1), within the time periods and in the manner prescribed.
- (3) The points of contact must acknowledge communications from each other within the prescribed period.

CHAPTER 4

Standard offers and agreements

12. Standard offers and consequential agreements

- (1) The responsible digital platform entity shall, within the prescribed period from the date on which a digital platform service is designated in terms of section 3(1) and thereafter at prescribed intervals, make an offer in respect of that service which includes the following features—
 - (a) the offer is made, and communicated, to every registered news business entity;
 - (b) the offer is open for the prescribed period;
 - (c) the offer provides that an agreement resulting from it will have the following features—

- (i) the agreement covers the following specified entities—
 - (aa) the responsible digital platform entity or a related entity thereof; and
 - (bb) the registered news business entity or a related entity thereof;
 - (ii) the agreement has a duration of not less than one and not more than two years;
 - (iii) the agreement specifies one or more designated digital platform services of the responsible digital platform entity;
 - (iv) the agreement expressly provides that, for the duration of the agreement, the provisions of Chapter 5 (*Bargaining, mediation and arbitration*) and Chapter 6 (*Arbitration process*) do not apply to the extent that they would impose an obligation on an entity contemplated in subparagraph (i) in respect of another entity contemplated in that subparagraph in relation to a service contemplated in subparagraph (iii);
 - (v) the agreement specifies that the responsible digital platform entity will ensure the payment of remuneration to the entity referred to in subparagraph (i)(bb) for the making available of the registered news business' covered news content by one or more of the services contemplated in subparagraph (iii); and
 - (vi) any other features as to the form of the offer that may be prescribed by regulation.
- (2) If—
- (a) a registered news business entity accepts the offer contemplated in subsection (1) and the resulting agreement becomes binding on the parties; and
 - (b) the parties notify the Commission, in writing, that the agreement has become binding,

the provisions of Chapter 5 (*Bargaining, mediation and arbitration*) and Chapter 6 (*Arbitration process*) do not apply for the duration of the agreement, to the extent that the provisions impose an obligation on an entity contemplated in subsection (1)(i) in respect of another entity contemplated in that subparagraph in relation to a service contemplated in subsection (1)(iii).

CHAPTER 5

Bargaining, mediation and arbitration

13. Bargaining representative for registered news business

- (1) The responsible news business entity may, by written agreement, appoint a person as the bargaining representative for a registered news business.

- (2) In the absence of an appointment contemplated in subsection (1), the responsible news business entity is the bargaining representative for the registered news business.
- (3) A person may be a bargaining representative for more than one registered news businesses and such person may, notwithstanding the provisions of the Competition Act, 1998 (act 89 of 1998), bargain collectively for those new businesses.

14. Notification of bargaining

- (1) A bargaining representative may notify the responsible digital platform entity that it wishes to bargain in respect of one or more specified issues relating to the covered news content made available by a designated digital platform service, provided that:
 - (a) the represented news business or businesses, individually or collectively, earn annual revenue of more than the prescribed amount; and
 - (b) an offer contemplated in section 12(1)—
 - (i) has been made in respect of that service and the represented news businesses have not accepted that offer within the period specified in section 12(1)(b); or
 - (ii) not been made in respect of that service within the period contemplated in section 12(1).
- (2) The notification contemplated in subsection (1) must be in the prescribed form, and must set out—
 - (a) the particulars of the bargaining representative;
 - (b) the registered news business or businesses to which the notification relates;
 - (c) where the designated digital platform entity is responsible for more than one designated digital platform service, the platform service to which the notification relates;
 - (d) the issues that are the subject of the bargaining;
 - (e) such other matters as may be prescribed.
- (3) The bargaining issues identified in the notification contemplated in subsection (1) may be supplemented by the bargaining parties by written agreement.
- (4) The designated digital platform entity that is the subject of the notification contemplated in subsection (1) is required to indicate, in writing and within 10 days, a contact person for purposes of the bargaining process.

15. Bargaining negotiations and mediation

- (1) The bargaining parties must negotiate in good faith over each core bargaining issue.

- (2) If the bargaining parties reach agreement on one or more of the core bargaining issues, the bargaining representative is required to notify the Commission within 10 days of such agreement being reached.
- (3) Subject to section 16(1)(b)(i), each bargaining party must participate in good faith in mediation over the core bargaining issues if—
 - (a) the bargaining parties are unable to reach agreement on one or more of the core bargaining issues within three months of the notification made in terms of section 13; or
 - (b) the bargaining parties, in writing, agree to refer one or more of the core bargaining issues to mediation.
- (4) A mediator must be appointed by ICASA within 10 days of a request in writing by the bargaining parties.
- (5) The rules governing a mediation process contemplated in subsection (3), including liability for the payment of the costs of the mediation, shall be prescribed.
- (6) The mediation process terminates in the event that—
 - (a) two months have passed since the initiation of the mediation process, absent an agreement by the parties to extend the mediation process by a further two months;
 - (b) the extended period for mediation contemplated in paragraph (a) has elapsed;
 - (c) the mediator elects to terminate the mediation on the ground that he or she considers that there are no reasonable prospects of agreement between the bargaining parties; or
 - (d) the bargaining parties agree in writing to terminate the mediation.

16. Notification of referral to arbitration

- (1) The bargaining representative may refer the remuneration issue to arbitration, by notice to ICASA in the prescribed form, if—
 - (a) no referral to arbitration has been made in respect of the same registered news business and the same designated digital platform service within the preceding 24 months; and
 - (b) either—
 - (i) the bargaining parties have agreed to arbitration in order to resolve the remuneration issue no less than 10 days following the notification contemplated in section 14; or
 - (ii) a mediation process was terminated without agreement on the remuneration issue being reached.

- (2) The notice contemplated in subsection (1) must include the particulars of the bargaining representative and the key contact person identified by the designated digital platform entity in terms of section 14(4).
- (3) As soon as is practicable following receipt of the notice contemplated in subsection (1), ICASA must notify the bargaining parties that an arbitral panel will be formed in accordance with section 18.

17. Register of arbitrators

- (1) ICASA must establish and maintain a register of arbitrators for purposes of arbitrating the matters in terms of this Act.
- (2) Each person on the register of arbitrators is required to—
 - (a) have suitable experience in legal, economic, or industry matters;
 - (b) be a fit and proper person to be included in the register; and
 - (c) meet any additional criteria that may be prescribed.
- (3) ICASA may remove a person from the register of arbitrators if the person—
 - (a) so requests in writing;
 - (b) no longer meets the criteria in subsection (2);
 - (c) is unable to act as a member of an arbitral panel for health or other reasons;
 - (d) failed to disclose a material conflict of interest in terms of section 18(6) or (7);
 - (e) failed in a material way in the discharge of the responsibilities of a member of an arbitral panel.

18. Composition of an arbitral panel and conflicts of interest

- (1) An arbitral panel is required to comprise a chairperson and two other members, save for where the bargaining parties agree, in writing, that the sole member of the panel is the chairperson.
- (2) The members of the arbitral panel may be appointed by agreement between the bargaining parties, in which case they are not limited to persons included on the register of arbitrators.
- (3) The agreement referred to in subsection (2) is required to be reached within 10 days of the notification contemplated in section 16(3).
- (4) If the bargaining parties agree on the members of the arbitral panel, each of the bargaining parties must provide ICASA with a written notice confirming the date of the agreement and the names of the agreed members of the arbitral panel.
- (5) Where the bargaining parties are unable to agree on the appointment of one or more members of the arbitral panel, each bargaining party must notify ICASA of this within

10 days of the notification contemplated in section 16(3) and ICASA must then make the appointment or appointments from persons listed on the register of arbitrators.

- (6) Prior to making an appointment contemplated in subsection (5), ICASA must provide the potential appointee with a reasonable opportunity to declare any conflict of interest and the potential appointee must declare any conflicts of interest within 10 days of such a request by ICASA.
- (7) If, during the course of an arbitration, it becomes apparent that a member of the arbitral panel has a conflict of interest, the panel member must immediately and fully disclose this interest to ICASA and to the other members of the panel and withdraw from any further involvement in the arbitration.
- (8) If a member of an arbitral panel is unable to complete the arbitration because of a withdrawal from the process in terms of subsection (7), resignation, illness or death, ICASA must appoint a replacement member from the register of arbitrators.
- (9) A person has a conflict of interest contemplated in this section if that person or his or her family member has any interest, pecuniary or otherwise, that could conflict, or could reasonably be perceived to conflict, with the proper performance of the person's functions in relation to the arbitration.

CHAPTER 6

Arbitration process

19. Initiation of the arbitration process by the arbitral panel

- (1) The chairperson must notify the bargaining parties in writing that the process of arbitration to resolve the remuneration issue will start on a specified day that is no later than five days after the appointment of the chairperson.
- (2) The bargaining parties may agree, in writing, that specified services other than the designated digital platform service should be dealt with in the arbitration and must notify the chairperson in writing of any such agreement.

20. Obligation to participate in arbitration in good faith

Each bargaining party must participate in the arbitration in good faith.

21. Requests for information by the bargaining parties

- (1) Each bargaining party may request, in writing and within five days of the start of the arbitration, any specified information held by the other bargaining party and which is relevant to the issues that form the subject of the arbitration, provided that the request

- is reasonable and a copy is provided to the arbitration panel on the day that the request is made.
- (2) For purposes of subsection (1), “information held by the other bargaining party” means information held by that party and—
 - (a) if the other bargaining party is the responsible digital platform entity, information held by a related entity of that party;
 - (b) if the other bargaining party is the bargaining representative, information held by—
 - (i) the responsible news business entity for the represented news business; and
 - (ii) a related entity of the entity referred to in subparagraph (i).
 - (3) In response to a request made in terms of subsection (1), the other bargaining party must—
 - (a) subject to subsection (4), comply with the request within 15 days of receipt of—
 - (i) the request; or
 - (ii) the ruling of the arbitral panel in terms of subsection (6);
 - (b) provide the requested information in terms that are readily comprehensible; and
 - (c) if the other bargaining party is the responsible digital platform entity and it provides more than one designated digital platform service, ensure that the information given relates specifically to the designated digital platform service that forms the subject of the arbitration.
 - (4) The other bargaining party may apply to the arbitral panel, in writing, for a ruling that it is not reasonable for the bargaining party to make the request, in relation to all or a specified part of the information requested.
 - (5) An application under subsection (4) may be made no later than 10 days after the other bargaining party receives the request.
 - (6) If an application is made under subsection (4), the arbitral panel must make a ruling, which may relate to all or a specified part of the information requested, in relation to the application no later than 10 days after the application is made.
 - (7) In considering its ruling in terms of subsection (6), the panel must consider all relevant circumstances, including the matters referred to in section 25(1).
 - (8) Notwithstanding subsection (3), the other bargaining party may decline to provide the requested information on the basis that it is legally privileged, constitutes a trade secret or its disclosure would contravene the provisions of the Protection of Personal Information Act, 2013 (Act 4 of 2013).
 - (9) If a bargaining party disputes the other bargaining party’s reliance on subsection (8), or otherwise contends that the other bargaining party has not complied with subsection (3), the bargaining party may refer the dispute to the arbitral panel within 10 days of

being informed of that reliance, in which case the provisions of subsection (6) shall apply.

- (10) A bargaining party that receives information pursuant to a request in terms of this section must ensure that the information is not used for any purpose other than a purpose relating to the arbitration.

22. Termination of arbitration by agreement

- (1) If the bargaining parties agree, in writing, that the arbitration should terminate, each bargaining party is required to notify the chairperson in writing of such agreement as soon as is practicable.
- (2) The arbitration terminates in accordance with that agreement, but no earlier than the day on which the parties notify the chairperson of the agreement in accordance with subsection (1).

23. Final offer arbitration

- (1) Unless the arbitration terminates by agreement in terms of section 21, the arbitral panel must determine a lump sum amount for remunerating the registered news business for the making available of the news business' covered news content by the designated digital platform service for a period of two years.
- (2) The determination of the amount referred to in subsection (1) must be made in accordance with the following process—
 - (a) Each of the bargaining parties must, on the same day, submit to the arbitral panel a final lump sum offer for what the remuneration amount should be and provide a copy of the final offer to the Commission on the same day.
 - (b) A final offer may not be more than 30 pages in length, must comply with any prescribed requirements, and may not be submitted later than the latest of the following—
 - (i) 15 days after the day on which the arbitration starts;
 - (ii) 15 days after the last day on which a bargaining party may comply with an information request in terms of section 21(3);
 - (iii) 15 days after the day on which the arbitral panel makes a ruling in relation to an application made in terms of section 20(6) or (9);
 - (iv) if the arbitral panel considers that exceptional circumstances justify a different period, the end of such period.
 - (c) A final offer may not be withdrawn or amended once submitted.

- (d) The Commission must, as soon as is practicable and after the final offers have been received from both bargaining parties, provide each of the bargaining parties with a copy of the final offer it received from the other bargaining party.
- (e) Each bargaining party may give to the arbitral panel a written submission, not exceeding 20 pages in length, regarding the final offer of the other bargaining party, no later than 10 days after receiving that offer.
- (f) A submission referred to in paragraph (e) may only deal with issues that are dealt with in any material accompanying either of the final offers.
- (g) A submission referred to in paragraph (e) must be furnished to the Commission on the same day as it is submitted to the arbitral tribunal, and the Commission must, as soon as is practicable, provide each of the bargaining parties with a copy of the written submission received from the other bargaining party.
- (h) The arbitral panel must accept one of the final offers submitted by the bargaining parties, unless it considers that neither is in the public interest, in that both would be highly likely to result in serious detriment to—
 - (i) the provision of covered news content in the Republic; or
 - (ii) South African consumers.
- (i) If the arbitral panel does not accept one of the final offers, it must ascertain the remuneration amount by adjusting the most reasonable of those offers in a manner that results in that offer being in the public interest.
- (j) If one bargaining party does not submit a final offer as contemplated in paragraph (a), the arbitral panel must—
 - (i) accept the final offer submitted by the other bargaining party; or
 - (ii) ascertain the remuneration amount by adjusting the final offer submitted by the other party, in accordance with paragraph (d).
- (k) If neither bargaining party submits a final offer as contemplated in paragraph (a), the arbitration terminates on the day after the last day on which the final offer should have been submitted in accordance with paragraph (b).
- (l) The arbitral panel must make the determination no later than 35 days after the latest of the following—
 - (i) the last day on which a final offer may be submitted in accordance with paragraph (b);
 - (ii) the last day on which a submission may be made by a bargaining party in accordance with paragraph (e);
 - (iii) the last day on which a submission may be made by the Commission in accordance with section 26(1); or

- (iv) the last day on which a submission may be made by a bargaining party in accordance with section 26(4).
- (3) If the Chairperson is not the sole member of the arbitral panel, the arbitral panel must endeavour to make a unanimous determination and, where a unanimous decision is not possible, make a determination by majority vote.
- (4) The arbitral panel must, as soon as practicable, give written reasons for making the determination to the bargaining parties and ICASA.
- (5) The Commission may publish, on its website, guidelines relating to the conduct of a final offer arbitration, which guidelines may be taken into account by the arbitral panel but are not binding.

24. Information about contracts to be submitted with a final offer

- (1) A bargaining party submitting a final offer to the panel must, on the same day, submit to the arbitral panel information that—
 - (a) relates to any contracts that are in force between—
 - (i) the responsible digital platform entity or a related entity thereof; and
 - (ii) the responsible news business entity or a related entity thereof; and
 - (b) is relevant to the arbitration.
- (2) Information that is protected against disclosure by a duty of confidence is not required to be disclosed in terms of subsection (1).

25. Factors to be considered by the arbitral panel

In assessing the final offers submitted by each of the bargaining parties and in making a determination as to the lump sum amount in terms of section 23(1), the arbitral panel must have regard to the following factors, within the context of the bargaining power imbalance between South African news businesses and the designated digital platform corporation—

- (a) the benefit, whether monetary or otherwise, of the registered news business' covered news content to the designated digital platform service;
- (b) the benefit, whether monetary or otherwise, to the registered news business of the designated digital platform service making available the registered news business' covered news content;
- (c) the reasonable cost to the registered news business of producing covered news content;
- (d) the reasonable cost to the designated digital platform service of making available covered news content in the Republic; and

- (e) whether a particular remuneration amount would place an undue burden on the commercial interests of the designated digital platform service.

26. Role of the Commission in arbitration

- (1) The Commission may make a submission to the arbitral panel in relation to the arbitration, no later than 15 days following the receipt of both final offers by the Commission.
- (2) The information contained in a submission referred to in subsection (1) must be limited to—
 - (a) impartial factual information that relates to the relevant market; and
 - (b) impartial information that relates to relevant economic principles.
- (3) The Commission must provide each of the bargaining parties with a copy of any submission made in terms of subsection (1), on the same day the submission is made to the arbitral panel.
- (4) Each bargaining party may make a submission, of no more than 20 pages in length, in response to the Commission's submission, no later than 10 days after the bargaining party has received the Commission's submission, and must provide a copy thereof to both the Commission and the other bargaining party.

27. Effect of determination by the arbitral panel

A determination by the arbitral panel is binding on the bargaining parties and may be served, executed and enforced as if it were an order of the High Court.

28. Costs of arbitration

- (1) The arbitral panel may apportion the costs of the members of the arbitral panel as between the bargaining parties having regard to all relevant considerations, including each party's ability to pay and their conduct during the arbitration.
- (2) The costs of each member of the panel, as apportioned in terms of subsection (1), shall be paid within the prescribed period.
- (3) Each member of the panel is to determine that member's costs, worked out as daily costs, in compliance with any conditions that may be prescribed.

CHAPTER 7

General

29. Confidential information

No person may disclose any confidential information obtained in carrying out any function in terms of this Act, save where such disclosure is required for purposes of—

- (a) the performance of any function contemplated in this Act; or
- (b) the administration of justice.

30. Offences

(1) It is an offence to—

- (a) do anything calculated to improperly influence a member of an arbitral panel concerning any matter connected with an arbitration;
 - (b) knowingly provide false information to ICASA, the Commission or an arbitral panel in relation to matters contemplated in this Act;
 - (c) fail to comply with an order or determination of an arbitral panel;
 - (d) contravene section 8(1)(b), 10(1), 10(3) or 21(10).
 - (e) contravene section 7(1), 8(1)(a), 11(1), 11(2), 14(4), or 28(1).
- (2) A person convicted of an offence referred to in subsection (1)(a) to (d) is liable to a fine not exceeding R10 000 000,00 or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.
- (3) A person convicted of an offence referred to in subsection (1)(e) is liable to a fine not exceeding R200 000,00.

31. Regulations

The Minister may, after consultation with the Commission, make regulations regarding—

- (a) any matter that may or must be prescribed in terms of this Act;
- (b) requirements for the generation and keeping of records in relation to designated digital platform services and registered news businesses;
- (c) requirements with which requests for information and responses thereto contemplated in section 21 must comply;
- (d) generally, any ancillary or incidental administrative or procedural matter which is necessary or expedient to prescribe for the proper implementation or administration of this Act.

32. Reports on impact of Act

- (1) The Commission must cause an independent auditor to prepare an annual report in respect of the impact of this Act on the South African digital news marketplace.
- (2) The report must set out an analysis of the impact of the agreements entered into in terms of this Act on the South African digital news marketplace and must include the following—
 - (a) information relating to the total commercial value of the agreements entered into in terms of this Act;
 - (b) information relating to the distribution of the commercial value of those agreements among registered news businesses, including relative to the expenditures of those businesses on their newsrooms; and
 - (c) information relating to the effect of the agreements on those expenditures.

33. Short title and commencement

This Act is called the News Media and Digital Platforms Regulation Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette*.