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Market Inquiries for Digital Markets: Lessons from South Africa

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Abstract

South Africa has addressed digital platforms not through digital-specific regulation but through the Online Intermediation Platforms Market Inquiry and subsequent non-binding guidance by the Competition Commission. It thus offers a test case for how far a general market-inquiry instrument can perform the functions of such regulation. The article distinguishes between competition problems that the Commission has addressed and those it has not; for the latter, the absence of intervention may reflect the scope of the inquiry rather than a limit of the instrument. For the former, including price parity, self-preferencing and the use of business-user data, the South African framework reaches much the same conduct as the EU Digital Markets Act (DMA) and furthermore takes account of the participation of small firms and firms owned by historically disadvantaged persons. The differences from the DMA lie in what triggers intervention and in how obligations are specified, how long they apply and how they are enforced. The German and UK digital-specific regimes answer these questions differently from the DMA. How far South Africa's market-inquiry instrument performs the functions of digital-specific regulation therefore also depends on which regime serves as the reference point.

JEL codes: K21, K23, L40, L51.

Keywords: digital platforms; market inquiry; ex ante regulation; South Africa; Chapter 4A Competition Act; Online Intermediation Platforms Market Inquiry; Digital Markets Act; section 19a GWB; DMCC Act; contestability.

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1. Introduction

In February 2026, the Competition Commission of South Africa (the Commission) released its final Guidance Note on Online Intermediation Platforms (the Guidance). The document is striking in two respects. First, it places the South African framework explicitly alongside newer digital-market regimes elsewhere, including the European Union's Digital Markets Act (DMA), the United Kingdom's Digital Markets, Competition and Consumers Act 2024 and section 19a of the German Act against Restraints of Competition (GWB).¹ Second, the Commission is equally explicit that the Guidance is not intended to create ex ante regulation. It is non-binding guidance about the types of conduct that may raise concerns under the existing Competition Act and about the Commission's approach to market definition and market power. It confers no new powers, although anyone applying the Act must take it into account.² Yet the subject matter of the Guidance is familiar from the DMA debate: price parity, interoperability, self-preferencing, the use of business-user data, differentiated trading terms, and the treatment of smaller and historically disadvantaged business users.

This combination raises a question that is different from asking why South Africa chose a market inquiry rather than a DMA-type regulation. That historical counterfactual is not quite apt. South Africa already had a market-inquiry instrument before the current wave of digital-market legislation, and the instrument was significantly strengthened by the 2018 amendments to the Competition Act.³ The Online Intermediation Platforms Market Inquiry (OIPMI), launched in 2021 and completed in 2023, then applied that general instrument to digital platforms and produced binding and appealable remedial actions.⁴ The 2026 Guidance is the next step, but not a new instrument: it draws on the OIPMI and seeks to generalize the Commission's learning beyond the parties and markets directly subject to the inquiry. The relevant question is therefore how far this sequence of inquiry, remedial action and guidance can perform the functions of DMA-type regulation.

This article approaches that question by treating the DMA neither as a model to be copied nor as a benchmark of regulatory success. The comparison is functional. Similar competition problems can be addressed through different legal instruments, and formally similar rules can have quite different economic effects. The article therefore asks, first, which of the competition problems associated with the DMA have been addressed by South Africa's combination of market inquiry,

¹ Competition Commission South Africa, *Guidance Note: Online Intermediation Platforms* (Final Guidance Note, 6 Feb. 2026), paras 1–3 and nn. 32, 37, <https://www.compcom.co.za/wp-content/uploads/2026/02/Online-Intermediation-Platforms-Guidance-Note.pdf>; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022; Digital Markets, Competition and Consumers Act 2024, c. 13 (UK); Gesetz gegen Wettbewerbsbeschränkungen (GWB), s. 19a, inserted by the Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen für ein fokussiertes, proaktives und digitales Wettbewerbsrecht 4.0 und anderer Bestimmungen (GWB-Digitalisierungsgesetz) of 18 Jan. 2021, BGBl. I 2021, 2.

² Competition Act, s. 79(1), (4).

³ Competition Act 89 of 1998 (South Africa), Ch. 4A, as amended by the Competition Amendment Act 18 of 2018 (South Africa), with effect from 12 Jul. 2019.

⁴ Competition Commission South Africa, *Online Intermediation Platforms Market Inquiry: Final Report and Decision* (Jul. 2023) (hereinafter '*OIPMI Final Report*'), https://www.compcom.co.za/wp-content/uploads/2023/07/CC_OIPMI-Final-Report.pdf. On appeals against decisions under Ch. 4A, see Competition Act, s. 43F; for the appeal by Booking.com, settled in 2024, see Competition Commission South Africa, *Booking.com and Competition Commission Reach Settlement on Online Intermediation Platforms Market Inquiry Appeal* (Media Statement, 13 Aug. 2024) (hereinafter '*Booking.com Settlement Statement*').

remedial action and subsequent guidance, and through which mechanisms; and, second, which have not. The second category requires particular care. That a problem has not been addressed does not imply that it cannot be addressed with the market-inquiry instrument. A market inquiry is defined by its terms of reference,⁵ and the absence of an intervention may reflect the scope of a particular inquiry or the Commission's priorities and resources rather than a limit of the instrument. A gap that an additional DMA-type regime would fill exists only where the limits lie in the legal instrument itself, in terms of coverage, timing, legal force or remedial capacity.

This perspective connects two literatures that have largely developed in parallel. The first concerns market investigations as an instrument for digital markets. In the European debate on a New Competition Tool, expert reports for the European Commission examined the case for an instrument capable of addressing structural competition problems without a conventional infringement finding.⁶ Fletcher concluded that market investigations were likely to complement ex ante regulation rather than replace it,⁷ while Davies et al. argued that the European Union had missed an opportunity by abandoning a broader market-investigation route in favour of the more standardized DMA.⁸ Interest in market-investigation powers has since revived.⁹

The second literature concerns the South African experience and the proliferation of digital-market regimes. Bonakele, das Nair and Roberts, writing before the OIPMI was completed, emphasize the capacity of the inquisitorial process to identify competition problems and barriers to entry more expeditiously than ordinary adversarial enforcement.¹⁰ More recent work places South Africa in the international debate on digital-market regulation. Bietti, Bostoen and Mwangi warn against treating the DMA's concepts of fairness and contestability as context-free templates,¹¹ and Kigwiru and Georgieva draw on the OIPMI, the DMA and US experience to derive goals for future African digital-market regulation.¹² Murgatroyd, Lee and van Dijk, examining South Africa together with India, China and Brazil, argue for caution in transplanting the European approach to jurisdictions with

⁵ Competition Act, s. 43B(2), (4)–(5). The terms of reference must state the scope of the inquiry and the time within which it is expected to be completed, which may not exceed 18 months unless the Minister extends it.

⁶ Massimo Motta & Martin Peitz, *Intervention Triggers and Underlying Theories of Harm: Expert Advice for the Impact Assessment of a New Competition Tool* (Publications Office of the EU 2020); Gregory S. Crawford, Patrick Rey & Monika Schnitzer, *An Economic Evaluation of the EC's Proposed 'New Competition Tool'* (Publications Office of the EU 2020).

⁷ Amelia Fletcher, *Market Investigations for Digital Platforms: Panacea or Complement?*, 12 J. Eur. Competition L. & Prac. 44, 44–45, 55 (2021).

⁸ John Davies, Valérie Meunier, Gianmarco Calanchi & Angelos Stenimachitis, *A Missed Opportunity: The European Union's New Powers over Digital Platforms*, 67 Antitrust Bull. 504 (2022).

⁹ See Giuseppe Colangelo, *Trendy Antitrust for Digital Markets: Are Market Investigations the New Black?*, 15 J. Eur. Competition L. & Prac. 289 (2024); Aurélien Boronat, *The New Competition Tool: A Market Design Tool for Pro-competitive Industrial Policies in Europe?*, 16 J. Eur. Competition L. & Prac. 223 (2025).

¹⁰ Tembinkosi Bonakele, Reena das Nair & Simon Roberts, *Market Inquiries in South Africa: Meeting Big Expectations?*, in *Market Investigations: A New Competition Tool for Europe?* 291 (Massimo Motta, Martin Peitz & Heike Schweitzer eds., Cambridge Univ. Press 2022). See also Itumeleng Lesofe & Siphosethu Tetani, *Using Market Inquiries: A Sharper Tool for Competition Authorities?*, 35 S. Afr. Mercantile L.J. 327 (2023); Simphiwe Gumede & Phathutshedzo Manenzhe, *Competition Regulation for Digital Markets: The South African Experience*, 31 Afr. J. Info. & Comm'n 1 (2023) (predating the final OIPMI report).

¹¹ Elettra Bietti, Friso Bostoen & Jacqueline Mwangi, *Regulating Competition in African Digital Markets: From Form to Substance*, 27 German L.J. 476 (2026).

¹² Vellah Kedogo Kigwiru & Zlatina Georgieva, *Goals of the AfCFTA Competition Protocol Digital Market Competition Regulations: Lessons from South Africa's Online Intermediation Platform Market Inquiry (OIPMI), the EU's DMA and the US Experiences with Digital Platform Giants*, 2026 J.L. Tech. & Pol'y 101. The regulations are envisaged under the Protocol on Competition Policy to the Agreement Establishing the African Continental Free Trade Area (AfCFTA), adopted in February 2023.

less mature digital markets, particularly where market development and policy objectives differ.¹³ These contributions are close to the present subject, but the question pursued here is narrower and more institutional: rather than asking whether South Africa should emulate the DMA, it takes the completed OIPMI and, especially, the 2026 Guidance as the relevant South African framework.

In Germany and the United Kingdom, market-wide investigation powers and digital-specific instruments now exist side by side, and their relationship calls for careful analysis. Germany added remedial powers following sector inquiries after it had introduced section 19a GWB; the United Kingdom added a digital-specific regime despite possessing long-standing market-investigation powers (section 2.2). South Africa is informative because it has so far relied on its general market-inquiry instrument, extending its reach through guidance rather than through a separate statutory digital regime.

The article proceeds as follows. Section 2 sets out the market-inquiry instrument under Chapter 4A, places it in comparative perspective, and explains how the Commission applied it in the OIPMI and turned selected findings into compliance signals in the 2026 Guidance. Section 3 examines whom the South African framework reaches and what it protects, focusing on market power, business-user dependency and contestability. Section 4 compares the South African diagnosis and intervention with the DMA for a set of competition problems: price parity and alternative routes to consumers, interoperability, visibility and self-preferencing, the use of business-user data, and the treatment and participation of smaller business users. Section 5 compares Chapter 4A with digital-specific regimes, including section 19a GWB and the UK regime, with respect to what triggers intervention, how obligations are specified and how long they apply, and what they cover. Section 6 concludes.

2. A general market-inquiry instrument applied to digital platforms

2.1 The strengthened market-inquiry instrument

The Competition Amendment Act 18 of 2018 substantially strengthened the Commission's remedial powers in market inquiries under Chapter 4A of the Competition Act, with the relevant amendments taking effect in 2019.¹⁴ Under section 43A, a market inquiry is a formal inquiry into the general state of competition, the level of concentration and the structure of a market, without necessarily focusing on the conduct of any specific firm.¹⁵ An adverse effect on competition exists where a feature or combination of features of a market impedes, restricts or distorts competition.¹⁶ The statutory concept of a market feature is broad. It ranges from concentration, ownership and barriers to entry, through prices, customer choice, quality, innovation and entry and exit, to conduct, inside or outside the market, by firms supplying or acquiring goods or services in it.¹⁷

A market inquiry differs from the enforcement of the prohibitions in Chapter 2 of the Competition Act in both its object and the order of the analysis. Abuse-of-dominance enforcement normally

¹³ Richard Murgatroyd, Simon Lee & Theon van Dijk, *One Size Fits All? Competition Rules for Digital Markets Outside Europe*, 46 *World Competition* 459 (2023).

¹⁴ Competition Amendment Act 18 of 2018 (South Africa). The amendments to Ch. 4A came into force on 12 Jul. 2019. Chapter 4A itself was inserted into the Competition Act 89 of 1998 (South Africa) by the Competition Amendment Act 1 of 2009 (South Africa) and came into force on 1 Apr. 2013. See Lesofe & Tetani, *supra* n. 9.

¹⁵ Competition Act 89 of 1998, s. 43A(1).

¹⁶ *Ibid.*, s. 43A(2).

¹⁷ *Ibid.*, s. 43A(3). The statute lists concentration and ownership both as aspects of market structure and as observed outcomes (s. 43A(3)(a)(i), (b)(i)).

starts from a particular firm and a legal prohibition and asks whether the elements of the infringement are satisfied.¹⁸ A market inquiry can instead start with a market outcome or feature and ask whether it has an adverse effect on competition. The Commission need not first characterize the conduct of a specific firm as an abuse in order to examine, for example, the interaction of network effects, ranking rules, contractual restrictions and entry barriers. If it finds an adverse effect on competition, it must determine the action to be taken, having regard to ‘the need to achieve as comprehensive a solution as is reasonable and practicable’.¹⁹ It may then take action to remedy, mitigate or prevent the adverse effect.²⁰ That action must be reasonable and practicable, taking into account factors that include the relation between the adverse effect and the remedy, the likely effect of the remedy on competition and the availability of less restrictive means, which in substance amounts to a proportionality test.²¹

With the 2018 amendments, the South African instrument came to resemble the UK market-investigation regime,²² a model on which the European debate on a New Competition Tool later drew.²³ The overlap should not be overstated: procedure, legal standards and judicial review differ across jurisdictions. The underlying rationale, however, is the same. Where a competition problem results from the interaction of several market features rather than from a single clearly unlawful practice, an inquiry can generate information about the market as a whole and design remedies around the identified mechanism rather than around the limits of an infringement finding.²⁴ Bonakele, das Nair and Roberts identify this capacity as particularly valuable in the South African experience.²⁵

Two qualifications are important. First, the inquiry does not pursue different objectives from abuse-of-dominance enforcement, but it can pursue them more broadly. The participation of small and medium businesses and of firms controlled or owned by historically disadvantaged persons (HDPs) is a purpose of the Act as a whole and features in specific abuse provisions, but Chapter 4A requires the Commission to consider, in every inquiry, the impact of an adverse effect on competition on these firms.²⁶ This can affect the diagnosis of a market problem and the choice of remedy. Second, the instrument remains an inquiry instrument. Even with binding remedial powers, a particular inquiry is initiated with terms of reference, develops an evidentiary record and culminates in findings and remedies directed at the market and parties before it. The very flexibility that permits tailoring therefore creates a question of generalization: how far can the learning generated in one inquiry govern future conduct in adjacent markets or by firms that were not

¹⁸ Ibid., ss 8–9.

¹⁹ Ibid., s. 43C(3)–(4).

²⁰ Ibid., s. 43D(1).

²¹ Ibid., s. 43D(4).

²² Chapter 4A builds on the concepts of the Enterprise Act 2002 (UK), under which there is an adverse effect on competition if a feature of a market ‘prevents, restricts or distorts competition’ (s. 134(2); *see also* s. 131(1)–(2)). The Competition Act uses ‘impedes, restricts or distorts’ (s. 43A(2)). Section 43C(4) of the Competition Act also repeats the requirement in s. 134(6) of the Enterprise Act 2002 to have regard to ‘the need to achieve as comprehensive a solution as is reasonable and practicable’.

²³ *See* Crawford, Rey & Schnitzer, *supra* n. 5; *Market Investigations: A New Competition Tool for Europe?* (Massimo Motta, Martin Peitz & Heike Schweitzer eds., Cambridge Univ. Press 2022).

²⁴ Crawford, Rey & Schnitzer, *supra* n. 5; Fletcher, *supra* n. 6, at 45–48.

²⁵ Bonakele, das Nair & Roberts, *supra* n. 9, at 314–316.

²⁶ Competition Act, s. 43C(2). Under s. 3(2), historically disadvantaged persons are individuals disadvantaged by unfair racial discrimination before the 1993 Constitution took effect, and associations and juristic persons in which such individuals form a majority of members or hold majority ownership and control. The Act’s purposes include equitable participation by SMEs and a greater spread of ownership, in particular among HDPs (s. 2(e)–(f)); the concern also features in the abuse provisions (ss 8(4), 9(1)(a)(ii)).

subject to it? The 2026 Guidance can be understood as an attempt to address precisely that question.

2.2 Comparative perspective: Germany and the United Kingdom

Germany and the United Kingdom added broadly comparable instruments in opposite order. Germany first created an instrument directed at large digital firms. Section 19a GWB, introduced in January 2021, operates in two stages: the Bundeskartellamt first determines that an undertaking is of paramount significance for competition across markets and may then prohibit specified forms of conduct.²⁷ It was intended to permit earlier and more effective intervention than conventional abuse control.²⁸

Germany subsequently strengthened a different instrument. Since the 11th amendment to the GWB entered into force in November 2023, a sector inquiry no longer serves mainly to generate knowledge and prepare proceedings under existing rules. Under section 32f, the Bundeskartellamt may, following a sector inquiry and a finding of a significant and continuing disruption of competition, impose remedies ranging from behavioural measures to, under more demanding conditions, structural ones.²⁹ Section 32f did not replace or correct section 19a; the two instruments address different dimensions of the enforcement problem. Section 19a starts from the position and conduct of particular powerful undertakings, whereas section 32f starts from the functioning of a market.

The British sequence was the reverse. The United Kingdom has had a market-investigation regime with binding remedial powers under the Enterprise Act 2002 for more than two decades, building on an even longer tradition of monopoly and market references.³⁰ That regime did not prevent the conclusion that digital markets required an additional instrument, a conclusion that emerged from the use of the markets regime itself. In its 2020 market study of online platforms and digital advertising, the CMA found that the statutory test for a market-investigation reference was met but decided not to make one. Instead, it recommended legislation for a pro-competition regime with an enforceable code of conduct for firms with strategic market status.³¹

The CMA's reasons point to the potential limits of relying on market investigations alone. It emphasized the need to monitor, test and amend interventions on an ongoing basis, and to address underlying sources of market power through pro-competitive interventions such as interoperability, data access and defaults.³² The government accepted that existing competition tools were not equipped to address the systematic harms associated with dominant platforms and

²⁷ GWB, s. 19a(1)–(2).

²⁸ Jens-Uwe Franck & Martin Peitz, *Digital Platforms and the New Section 19a Tool in the German Competition Act*, 12 J. Eur. Competition L. & Prac. 513 (2021); *see also* Gesetzentwurf der Bundesregierung, GWB-Digitalisierungsgesetz, BT-Drs. 19/23492. Section 19a now operates alongside the DMA, which has applied since May 2023: the Bundeskartellamt applies it also to firms designated as gatekeepers under the DMA, for conduct the DMA does not cover.

²⁹ GWB, s. 32f, inserted by the Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen und anderer Gesetze, BGBl. 2023 I No. 294, in force since 7 Nov. 2023; Jens-Uwe Franck & Martin Peitz, *Germany's New Competition Tool: Sector Inquiry with Remedies*, 15 J. Eur. Competition L. & Prac. 515 (2024).

³⁰ Enterprise Act 2002, Pt 4; Richard Whish, *Market Investigations in the UK and Beyond*, in *Market Investigations: A New Competition Tool for Europe?*, *supra* n. 22.

³¹ Competition and Markets Authority (CMA), *Online Platforms and Digital Advertising: Market Study Final Report*, paras 109–113 (1 Jul. 2020).

³² *Ibid.*, para. 112 and Box 1 (Recommendation 4).

that a new regime would allow swift action.³³ The Digital Markets, Competition and Consumers Act 2024 (DMCC Act) implemented this approach through strategic-market-status designation, firm-specific conduct requirements and pro-competition interventions.³⁴ The new regime operates alongside, rather than replacing, the UK's general markets powers.

The two trajectories caution against treating market-wide investigation powers simply as an alternative to digital-specific regulation. That the two jurisdictions added comparable instruments in opposite order suggests that the question is how such instruments relate to each other and in which order they are adopted, not which of two mutually exclusive models to choose. South Africa occupies a particularly revealing position in this comparison. Like the UK, it has a market-wide instrument with binding remedial powers. Unlike the UK, it has so far responded to the perceived need to generalize inquiry findings through non-binding guidance based substantially on the OIPMI.

2.3 The OIPMI as an application of the instrument to digital platforms

The Commission described the OIPMI, whose Final Report and Decision was released on 31 July 2023, as the first market inquiry completed under the amended legislation and the first South African inquiry to focus on the digital economy.³⁵ It covered eCommerce marketplaces, online classifieds and price comparison services, software application stores, and intermediation services such as travel, accommodation and food delivery, as well as the role of Google Search in directing traffic to intermediation platforms.³⁶

The OIPMI's analytical framework already contains many of the elements that later reappear in the Guidance. It treats online intermediation as a two-sided activity in which network effects can make a platform's scale self-reinforcing and create barriers to expansion for entrants that fail to achieve adequate scale. The Final Report uses the category of a 'leading platform' to identify platforms whose scale and position allow them materially to influence platform competition and, through business-user dependency, competition among or treatment of business users. The relevant factors are the platform's significance in intermediation, its importance for business users seeking to reach consumers, its ability to benefit from network effects, and its ability to adversely affect rival platforms or business users.³⁷ Indicators include size, user numbers, business-user dependency and the scale of network effects.³⁸

The leading-platform concept is important for the later comparison with the DMA because it was developed within the inquiry rather than legislated as a new status. The OIPMI made clear that leading platforms may differ in size, entrenchment and market position, and that being a leading platform does not preclude a finding of dominance under section 7.³⁹ In effect, the category allows the inquiry to focus on platforms that function as important gateways even where dominance has not been established. This is closely connected to business-user dependency: the more difficult it is for sellers to reach consumers through alternative channels, the more consequential the platform's contractual, ranking and visibility decisions become.

³³ UK Government, *Response to the CMA's Market Study into Online Platforms and Digital Advertising*, para. 15 (27 Nov. 2020).

³⁴ DMCC Act, ss 2, 19 and 46. Part 1 of the Act came into force on 1 Jan. 2025 (S.I. 2024/1226).

³⁵ Competition Commission South Africa, *Commission Releases Final Report for Online Intermediation Platforms Market Inquiry* (Media Statement, 31 Jul. 2023), <https://www.compcom.co.za/wp-content/uploads/2023/07/Media-Statement-Final-digital-markets-report-released-31-july-2023.pdf>.

³⁶ *OIPMI Final Report*, *supra* n. 3, para. 2.

³⁷ *Ibid.*, para. 29.

³⁸ *Ibid.*, para. 30.

³⁹ *Ibid.*, para. 31.

Substantively, the inquiry used this framework across a heterogeneous set of practices. The Final Report addressed Booking.com's wide and narrow price-parity clauses; Google's treatment of intermediation services in search and measures affecting the visibility of South African platforms; Takealot's marketplace design, Buy Box, use of seller information and parity arrangements; app-store restrictions including anti-steering; paid visibility and ranking; and a range of practices affecting smaller and HDP-owned firms. The remedies consequently did not take a single form. Some removed contractual restrictions, some altered platform-design or ranking-related practices, some imposed transparency requirements, and some were directed at visibility and participation by smaller South African firms.⁴⁰

The OIPMI is useful for the present comparison not because it produced a South African list corresponding item by item to the DMA, but because it provides an observed application of a market-wide competition instrument, supplied with a large evidentiary record and remedial authority, to the same broad family of problems that led other jurisdictions to adopt digital-specific rules. Whether its findings and remedies remain confined to the inquiry is the question taken up by the 2026 Guidance.

The OIPMI has not remained the Commission's only inquiry into digital markets. The Media and Digital Platforms Market Inquiry (MDPMI), whose final report was published in November 2025, examined the relationship between news media and digital platforms, including search, social media, advertising technology and generative AI.⁴¹ It is not analysed here because its focus lies on news media rather than online intermediation, but it shows that the Commission uses Chapter 4A repeatedly in digital markets.

2.4 The 2026 Guidance: from inquiry findings to compliance signals

The 2026 Guidance should be read against this background. As noted in section 1, it places itself alongside foreign digital-market regimes and disclaims *ex ante* regulation. Its preface also makes its lineage clear: the OIPMI revealed that online intermediation platforms engaged in conduct impeding or preventing competition, and, drawing on these findings and on experience in other jurisdictions, the Commission considers guidance appropriate.⁴² The Guidance is prepared under section 21 of the Competition Act, which includes the Commission's function to issue guidelines under section 79. Such guidelines are not binding, but anyone interpreting or applying the Act must take them into account; the Guidance adds that each case will be decided on its own merits.⁴³

The Guidance nevertheless generalizes the OIPMI in two significant ways. First, its addressees are not limited to the firms that participated in the inquiry. It is directed at the leading or largest platforms in a category, understood as platforms with market power, including large global platforms entering South Africa whose global scale and capabilities may be relevant to their position there. Second, it extracts from the inquiry and from international experience six recurring practices, grouped into three categories: platform-related competition, where the document focuses on price parity and interoperability; competition among business users on vertically integrated platforms, where it focuses on self-preferencing and the use of competitively sensitive

⁴⁰ See *ibid.*, Chs 3–8.

⁴¹ Competition Commission South Africa, *Media and Digital Platforms Market Inquiry: Final Report* (13 Nov. 2025). The outcome included commitments by Google to support South African news media and to extend to South Africa certain transparency measures it applies in the EU; see Competition Commission South Africa, *Media and Digital Platforms Market Inquiry Releases Final Report* (Media Statement, 13 Nov. 2025).

⁴² Competition Commission South Africa, *supra* n. 1, paras 1–2.

⁴³ *Ibid.*, paras 2–3; Competition Act, ss 21(1)(gE), 79(1), (4).

data; and competition among business users affecting the participation of SMEs and HDPs, where it considers differentiated trading terms and unfair treatment.⁴⁴

In these two ways, the Guidance responds to the question of generalization raised by the inquiry instrument (section 2.1) by converting some inquiry-specific knowledge into prospective compliance signals. It thereby creates an intermediate layer between the OIPMI's binding remedial actions and ordinary case-by-case enforcement, but without changing the underlying legal standards and without creating directly enforceable obligations comparable to Articles 5–7 DMA: case-specific assessment and efficiency justifications remain.

The practical significance of the Guidance therefore depends on how much inquiry learning can actually be reused, which cannot be determined from legal form alone. If the Guidance changes firms' conduct prospectively and enables the Commission to establish market power, theories of harm and efficiency claims more quickly in later cases, the difference from a continuing digital regime may be smaller than the formal legal distinction suggests. Conversely, if market power, competitive harm and remedial necessity must largely be demonstrated afresh whenever conduct is challenged, or if important forms of intervention cannot be imposed without a new statutory duty, the informational gains from the OIPMI do not by themselves solve the problem of repeated and potentially slow enforcement. Before turning to particular practices, section 3 compares how the DMA and the South African framework identify the firms they reach and what role contestability plays in each.

3. The object of intervention: market power, dependency and contestability

3.1 Contestability in the DMA

As a reference point, the DMA places contestability at the level of regulatory objective: it is intended to ensure contestable and fair markets in the digital sector where gatekeepers are present.⁴⁵ Contestability relates to the ability of undertakings to overcome barriers to entry and expansion effectively and to challenge the gatekeeper on the merits. Fairness is distinguished analytically but linked to it, since weak contestability can enable a gatekeeper to engage in unfair practices.⁴⁶ Contestability thus helps explain why a set of prospective obligations is imposed once a platform has been designated as a gatekeeper.

This feature matters for the comparison. The DMA does not require the European Commission to establish dominance or an abuse each time an obligation is applied. Gatekeeper designation performs a screening function, after which the obligations in Articles 5–7 apply to the designated core platform services, those in Articles 6 and 7 being susceptible to further specification.⁴⁷ The DMA thus trades some case-specific economic assessment for speed, generality and legal force. Section 19a GWB strikes this trade-off differently, leaving more room for case-specific assessment after the status finding (section 2.2).⁴⁸

⁴⁴ Competition Commission South Africa, *supra* n. 1, paras 2, 20, 21.

⁴⁵ DMA, Art. 1(1). See Heike Schweitzer, *The Art to Make Gatekeeper Positions Contestable and the Challenge to Know What Is Fair: A Discussion of the Digital Markets Act Proposal*, 2021 ZEuP 503; Alba Ribera Martínez, *The DMA's Ithaca: Contestable and Fair Markets*, 46 World Competition 429 (2023).

⁴⁶ DMA, Recitals 32–34; see also European Commission, *Report from the Commission on the Review of Regulation (EU) 2022/1925 (Digital Markets Act)*, COM(2026) 178 final, at 3–4 (28 Apr. 2026).

⁴⁷ DMA, Arts 3, 5–8.

⁴⁸ Franck & Peitz, *supra* n. 27; Philipp Hornung, *The Ecosystem Concept, the DMA, and Section 19a GWB*, 12 J. Antitrust Enforcement 396 (2024).

3.2 Market power and business-user dependency in the South African framework

South African law does not create a DMA-like gatekeeper status through the OIPMI or the Guidance; the OIPMI's 'leading platform' category was an analytical device within the inquiry (section 2.3). The Guidance links the market power of the platforms it addresses to dominance under section 7 of the Competition Act.⁴⁹ That provision remains in place, with its market-share thresholds and the possibility of establishing dominance below them through proof of market power.⁵⁰ The Guidance therefore cannot create a new class of regulated firms but must work through the concepts and enforcement routes of the Competition Act.

At the same time, the Guidance takes a deliberately broad economic view of market power in digital intermediation. It regards market shares, and hence the market definition on which they depend, as of limited use in assessing market power in platform markets, and favours a holistic competitive assessment.⁵¹ In addition to market shares, the Commission may consider the same four factors that it used in the OIPMI to identify leading platforms (section 2.3). The indicators largely mirror those used in the OIPMI, including platform conduct and observed outcomes, and add transaction volumes and revenues.⁵²

A platform can possess substantial intermediation power when business users need access to the consumers whom it intermediates even if those business users multi-home or also maintain direct channels. The relevant question is not simply whether another channel exists, but whether it is an effective substitute for access to the platform's demand. This is why the Guidance treats business websites and offline channels cautiously.⁵³ Aggregation, search and comparison functions, lower unit costs and consumer convenience can make online intermediation a distinct proposition, while constraints that appear meaningful from the consumer side need not constrain the platform's bargaining position vis-à-vis smaller business users. In this respect, the Guidance moves toward an economic concept of gateway or bottleneck power rather than relying exclusively on conventional share measures.

There are, however, open questions that cannot be resolved by definition. Business-user dependency can itself be endogenous to the conduct under investigation: parity clauses, ranking rules and platform fees can change the relative attractiveness of direct channels and competing platforms. Global scale does not automatically translate into local market power unless relevant network effects, technology, data, brand or financial advantages carry over into South Africa. Similarly, the Guidance's suggestion that more than one differentiated platform may possess a degree of market power raises questions about how that economic observation fits section 7, which defines dominance by reference to a single firm.⁵⁴ Finally, reliance on conduct and observed outcomes as evidence of power can be valuable where conventional metrics are weak, but risks circularity if the same conduct is used both to infer power and to establish harm without an independent counterfactual. These are not objections to the Guidance's framework, but questions that its application in individual cases will have to answer.

⁴⁹ Competition Commission South Africa, *supra* n. 1, para. 17.

⁵⁰ Competition Act 89 of 1998, s. 7.

⁵¹ Competition Commission South Africa, *supra* n. 1, paras 9, 15; *see also* Jens-Uwe Franck & Martin Peitz, *Market Definition in the Platform Economy*, 23 Cambridge Y.B. Eur. Legal Stud. 91, 95–96 (2021).

⁵² *Ibid.*, paras 17–18; *compare OIPMI Final Report*, *supra* n. 3, para. 30.

⁵³ Competition Commission South Africa, *supra* n. 1, paras 11–12.

⁵⁴ *Ibid.*, para. 19, referring to situations 'where two platforms dominate online transactions collectively'.

3.3 Contestability: an implicit South African objective?

Contestability provides a promising analytical lens for this comparison, but it should not be imported into South African law as though it were already a freestanding statutory test. Chapter 4A does not organize market inquiries around the word ‘contestability’. Its language is broader and more concrete: as section 2.1 showed, barriers to entry, entry and exit, customer choice and innovation all figure among the features and outcomes of a market, and the inquiry asks whether market features impede, restrict or distort competition. The Competition Act uses the phrase ‘degree of contestability’ elsewhere, notably as a structural factor in the excessive-pricing provision of section 8,⁵⁵ which makes its absence from Chapter 4A noteworthy but not determinative. The market-inquiry regime can plainly address contestability problems without making contestability its legal criterion.

The same is true of the OIPMI. The Final Report does not employ contestability as its organizing vocabulary, but much of its analysis concerns the conditions under which rival platforms and alternative channels can enter, expand and constrain leading intermediaries. Its account of network effects as a barrier to expansion (section 2.3), and its analysis of the difficulty smaller platforms face in funding consumer acquisition and reaching sufficient scale, are concerned with exactly these conditions.⁵⁶ Its treatment of price parity, visibility and access to users can therefore be read as addressing the capacity of alternative platforms and direct channels to become effective competitive constraints, even though the report frames the legal finding in terms of adverse effects on competition rather than a lack of contestability.

The 2026 Guidance makes the relationship more explicit while retaining the distinction. At the outset, it describes the DMA as ensuring that gatekeepers operate fairly and ‘leave room for contestability’.⁵⁷ Yet when it turns to South Africa, it does not announce contestability as a separate domestic objective. Instead, it translates contestability concerns into the language of competition, market power, and entry and expansion. Parity clauses, a lack of interoperability and self-preferencing are assessed by their effects on the entry, expansion and exclusion of rivals and on the entrenchment of leading platforms, and favourable terms for SMEs and HDP-owned firms are justified partly by their potential to support entry and growth.⁵⁸

This is best described, at least provisionally, as contestability by function rather than by label. That characterization has two advantages. First, it permits a meaningful comparison with the DMA without assuming that the DMA’s normative categories should be transplanted into South African competition law. Second, it highlights where the South African approach may be broader. The OIPMI and the Guidance are not concerned only with the ability of rival platforms to challenge a gatekeeper. They also address competition among business users, bargaining asymmetries, participation by SMEs and HDP-owned firms, and distributive aspects of access to the digital economy.⁵⁹

⁵⁵ Competition Act 89 of 1998, s. 8(3)(e).

⁵⁶ *OIPMI Final Report*, *supra* n. 3, paras 21–24; *see also* Jens-Uwe Franck & Martin Peitz, *Market Power of Digital Platforms*, 39 *Oxford Rev. Econ. Pol’y* 34, 39–40 (2023).

⁵⁷ Competition Commission South Africa, *supra* n. 1, para. 1.

⁵⁸ *Ibid.*, paras 23–25, 31–32, 37–43 and 55.

⁵⁹ On why the South African context matters here, *see* Bietti, Bostoen & Mwangi, *supra* n. 10 (cautioning against a direct transplantation of the DMA’s objectives); Kigwiru & Georgieva, *supra* n. 11 (pointing, drawing in particular on the OIPMI, to high barriers to entry in African digital markets and to less favourable trading conditions for African than for international businesses).

4. Competition problems and the substantive reach of the South African framework

This section compares the South African framework with the DMA practice by practice. The appropriate unit of comparison is not the individual statutory provision but the competition problem that motivates intervention. For each problem, three questions matter. First, has the South African framework identified the problem in economically meaningful terms? Second, has it imposed or induced, or could it impose, an intervention that changes platform incentives in a way comparable to the DMA? Third, where the South African intervention differs from the DMA, is the difference attributable to the type of instrument (an inquiry followed by findings, remedial action and guidance, rather than designation followed by statutory obligations) or to a different competition problem or policy objective? The discussion follows the Guidance's grouping of practices by the competitive relationship that may be harmed (section 2.4). Table 1 summarizes the six practices, the corresponding OIPMI findings and the relevant DMA provisions.

Table 1. The Guidance's Practices, the OIPMI and the DMA

Practice (Guidance heading)	Guidance (paras)	OIPMI example	DMA provision
Price parity clauses	23–30	Booking.com: wide and narrow parity; programme criteria	Art. 5(3)
Interoperability	31–36	Property classifieds: listing feeds at no fee	Arts 6(7), 7
Self-preferencing (ranking and fees)	37–43	Google Search; Takealot	Art. 6(5)
Use of competitively sensitive data	44–47	Takealot: separation of marketplace and retail	Art. 6(2)
Differentiated trading terms across business users	48–55	Measures on visibility and onboarding of SME and HDP-owned firms	No direct counterpart
Unfair treatment	56–60	App stores: anti-steering	In part Arts 5(4), 5(7), 6(12)–(13)

Note: The Guidance column shows where the Commission has generalized an OIPMI finding; unlike the DMA provisions, the Guidance creates no binding obligations (section 5).

Source: Competition Commission South Africa, *supra* n. 1; OIPMI Final Report, *supra* n. 3; DMA.

4.1 Price parity and alternative routes to consumers

Price-parity clauses are the clearest case of substantive convergence. A wide parity clause prevents a business user from offering more favourable terms through competing platforms as well as through its direct channel; a narrow clause restricts only the direct channel. The concern is not simply contractual restriction. Parity can make retail prices less responsive to differences in platform commissions, weaken competition between intermediation and direct distribution, and reduce the ability of a lower-fee entrant to translate its lower commission into a lower consumer price. The platform may therefore protect its own position not by excluding rival intermediation

outright, but by making alternative routes less attractive. This mechanism is well established in the economic literature.⁶⁰

The OIPMI applied this logic concretely to Booking.com. It found that wide and narrow parity adversely affected competition and identified the use of parity as a condition for participation in the Genius and Preferred programmes as a ‘backdoor to parity’.⁶¹ Booking.com challenged the remedial action before the High Court and the Competition Tribunal. The 2024 settlement, which ended both proceedings, eliminated wide and narrow parity requirements from Booking.com’s contracts with South African accommodation providers and as conditions for participation in its Genius and Preferred programmes. It also committed Booking.com to fund a programme supporting accommodation providers that are SMEs owned by HDPs.⁶² Two features of the settlement matter for the comparison. First, it reaches beyond the contractual clause. Removing a parity clause does not necessarily remove other mechanisms that penalize a hotel for pricing more aggressively elsewhere: a platform can restore a similar incentive through ranking, visibility or programme eligibility. This is an instance of what Franck and Peitz call the ‘whack-a-mole’ challenge, in which an obligation is complied with formally while a different practice recreates much of the prohibited economic effect.⁶³ Second, the settlement combines a parity remedy with a participation measure that has no counterpart in the DMA.

The 2026 Guidance extends the OIPMI’s assessment beyond Booking.com and the accommodation sector. It treats both wide and narrow parity as capable of restricting competition, emphasizes entry and expansion by smaller platforms, and connects parity directly to business-user dependency.⁶⁴ It goes further in one respect: parity may raise concerns regardless of the size of the platform, because its use by many smaller platforms can have similar effects on price competition.⁶⁵ At least for parity, the Guidance is therefore not simply a dominance code for digital firms: it recognizes a market-wide mechanism that can matter independently of the power of a single platform.

The DMA reaches a similar substantive outcome through Article 5(3), which prohibits gatekeepers from preventing business users from offering different prices or conditions through other channels.⁶⁶ The route differs. Under the DMA the prohibition follows from designation and applies prospectively. Under the South African approach the OIPMI first established the problem in a particular market; the Guidance then signals that analogous clauses create enforcement risk, and that a platform relying on them must demonstrate, with financial and economic evidence, that they are necessary for its viability.⁶⁷ The two regimes have nonetheless dealt with non-contractual substitutes in a similar way. Following a regulatory dialogue with the Commission, Booking.com has confirmed that prices offered outside the platform are used neither for the default ranking of properties nor for eligibility for its Preferred and Genius programmes and, since September 2026,

⁶⁰ See in particular Benjamin Edelman & Julian Wright, *Price Coherence and Excessive Intermediation*, 130 Q.J. Econ. 1283 (2015). For an overview of theory and evidence, see Jens-Uwe Franck & Martin Peitz, *The Digital Markets Act and the Whack-A-Mole Challenge*, 61 Common Mkt. L. Rev. 299, 316–319 (2024).

⁶¹ *OIPMI Final Report*, *supra* n. 3, paras 95, 97.

⁶² *Booking.com Settlement Statement*, *supra* n. 3.

⁶³ Franck & Peitz, *supra* n. 59, at 320–322, discussing Recital 39 DMA, which extends Art. 5(3) to ‘any measure with equivalent effect, such as increased commission rates or de-listing’, and de-ranking as a possible circumvention.

⁶⁴ Competition Commission South Africa, *supra* n. 1, paras 24–25, 27.

⁶⁵ *Ibid.*, para. 30.

⁶⁶ DMA, Art. 5(3).

⁶⁷ Competition Commission South Africa, *supra* n. 1, paras 22, 27.

no longer for eligibility for its Booking Sponsored Benefit programme.⁶⁸ In both jurisdictions, the extension of the parity restriction beyond the contractual clause (to programme eligibility and, in the EU, also to ranking) was thus obtained through negotiation rather than a prohibition decision. The remaining difference is less about the substantive restriction than about legal force, speed and the need for subsequent enforcement: the DMA's prohibition does not have to be re-established in each investigation, whereas the South African approach depends on inquiry findings and guidance being applied case by case.

4.2 Interoperability and the ability of rivals to enter and expand

Interoperability provides a more demanding test of the market-inquiry-and-guidance model because it involves a positive obligation rather than merely the removal of a contractual restraint. It sits between behavioural and structural intervention: it requires technical decisions on interfaces, such as APIs, and on who bears the costs of opening them.⁶⁹ The Guidance describes interoperability expressly in contestability terms. It argues that interoperability can allow users to preserve network effects when adopting a new service and can permit users to mix and match complementary services supplied by different providers. Conversely, withholding interoperability may create an artificial impediment to competition by reinforcing a platform's market position.⁷⁰ This is one of the places where the implicit contestability objective identified in section 3.3 becomes explicit.

The Guidance contemplates several forms of restriction: technical limits on interoperability, restrictions on data needed for interoperability, preventing consumers from selecting competing complementary services, and charging for access to interfaces. A platform with market power may be asked to explain why interoperability is infeasible, with privacy, cybersecurity, technical constraints and cost recognized as possible justifications.⁷¹ In effect, whether access must be granted is decided case by case. The authority must identify the interface or complementary service at issue, establish the importance of interoperability, and evaluate the costs and risks of opening the interface.

Article 6(7) DMA instead imposes specified interoperability obligations on gatekeepers in relation to operating systems, hardware and software features, while Article 7 creates a particularly detailed interoperability regime for number-independent interpersonal communications services. Applying these obligations has itself required case-specific work. In March 2025 the European Commission adopted its first specification decisions under Article 6(7), setting out the measures Apple must take to make iOS features interoperable with connected devices and the process for handling interoperability requests,⁷² and the first third-party messaging services interoperable with WhatsApp were launched in November 2025.⁷³ The difference from the South African approach nevertheless marks a likely boundary of functional equivalence. An inquiry can identify a

⁶⁸ European Commission, *How the DMA Ensures Businesses Using Booking.com Are Free to Set Their Prices on and off Booking.com* (Factsheet, 28 Sep. 2026), https://digital-markets-act.ec.europa.eu/factsheet-how-dma-ensures-businesses-using-bookingcom-are-free-set-their-prices-and-bookingcom-2026-09-28_en.

⁶⁹ See Marc Bourreau, Jan Krämer & Miriam Buiten, *Interoperability in Digital Markets* (CERRE Report, Mar. 2022), <https://cerre.eu/publications/interoperability-in-digital-markets/>.

⁷⁰ Competition Commission South Africa, *supra* n. 1, paras 31–32.

⁷¹ *Ibid.*, paras 33–36.

⁷² Commission Decision C(2025) 3000 of 19 Mar. 2025, Case DMA.100203, *Article 6(7) – Apple – iOS – SP – Features for Connected Physical Devices*; Commission Decision C(2025) 3001 final of 19 Mar. 2025, Case DMA.100204 (process for interoperability requests).

⁷³ European Commission, *Messaging Interoperability*, Digital Markets Act (DMA) website, https://digital-markets-act.ec.europa.eu/developer-portal/messaging-interoperability_en (accessed 2 Oct. 2026).

refusal or restriction of interoperability as a market feature and can in principle devise a tailored remedy; the Guidance can announce the Commission's willingness to investigate such restrictions. What it does not create is a generally enforceable right of access to an identified interface for all qualifying users of a designated service. Fletcher points to a further difficulty: interoperability remedies call for regulator-like monitoring and may need adapting as technologies change.⁷⁴ Remedy design can mitigate this, for instance by entrusting implementation to an entity funded by the addressees, as in the UK's retail banking market investigation.⁷⁵ Chapter 4A's broad remedial power would appear to permit similar arrangements. A case in point is the OIPMI's interoperability remedy for property classifieds, which facilitated the distribution of listings to competing platforms at no fee.⁷⁶

4.3 Visibility, ranking and self-preferencing

The OIPMI's most distinctive substantive contribution concerns visibility. General search, marketplace ranking, Buy Box design, paid prominence and app-store curation all determine which suppliers receive effective access to demand. The OIPMI found, among other things, that aspects of Google Search favoured large and global platforms and Google's own vertical search services, while Takealot's marketplace design created advantages for its retail operation and disadvantaged some third-party sellers. The remedies consequently addressed search visibility, the separation of marketplace and retail functions, access to seller data, Buy Box design and paid prominence.⁷⁷

The 2026 Guidance takes up one part of this experience under the heading of self-preferencing. It covers favourable treatment in ranking, indexing and crawling as well as preferential fee treatment for the platform's own or affiliated products. It asks whether a platform with market power has the ability and incentive to self-preference and whether the conduct may exclude sellers or smaller platforms, raise rivals' costs, and reduce choice and innovation. It also allows for efficiency justifications.⁷⁸ The resulting standard is substantially more effects-oriented than the wording of Article 6(5) DMA, which requires gatekeepers not to treat their own products or services more favourably in ranking and related indexing and crawling.

For an economic assessment, neither approach should begin from the premise that a ranking favouring the platform's own offer is necessarily harmful. The platform is an intermediary precisely because it selects, orders and recommends. There is no uniquely neutral ranking benchmark: even a ranking that gives no weight to the platform's own surplus may serve end users, business users or their joint surplus.⁷⁹ The relevant question is the mechanism by which the ranking rule weakens a competitive constraint or extracts surplus. Peitz similarly argues that application of the DMA's self-

⁷⁴ Fletcher, *supra* n. 6, at 52, 55.

⁷⁵ CMA, *The Retail Banking Market Investigation Order 2017*, Art. 10 (2 Feb. 2017). See also Jens-Uwe Franck, *Competition Enforcement versus Regulation as Market-Opening Tools: An Application to Banking and Payment Systems*, 12 J. Antitrust Enforcement 148 (2024).

⁷⁶ Competition Act 89 of 1998, s. 43D(1), (4); Competition Commission South Africa, *OIPMI Final Report*, *supra* n. 3, para. 226.

⁷⁷ *OIPMI Final Report*, *supra* n. 3, paras 60–69 (Google Search: self-preferencing of Google's travel and shopping units and related remedial action); paras 144.4–144.5, 152.7–152.8 (Takealot: Buy Box and promotional treatment and related remedies).

⁷⁸ Competition Commission South Africa, *supra* n. 1, paras 37–43.

⁷⁹ Jens-Uwe Franck & Martin Peitz, *Recommendation Power: Platform Objectives and the Digital Markets Act* 10–11 (CRC TR 224 Discussion Paper No. 781, 2026). See also Pablo Ibáñez Colomo, *Self-Preferencing: Yet Another Epithet in Need of Limiting Principles*, 43 World Competition 417 (2020).

preferencing rule requires substantive judgments about the conduct captured by Article 6(5), notwithstanding the rule-like statutory formulation.⁸⁰

Control over visibility is what Franck and Peitz call recommendation power: where a platform is a bottleneck for access, the visibility it allocates determines business users' effective access to end users. That power can serve many objectives besides favouring own offers, including steering demand to high-commission sellers, selling prominence and preserving the platform's gateway position, whereas Article 6(5) DMA addresses only self-preferencing.⁸¹ An inquiry can examine control over visibility as a whole, as the OIPMI did. But the same flexibility produces a burden: an effects-oriented intervention requires a counterfactual and a theory connecting the design choice to weakened competitive constraints, and ranking design is continuously recalibrated, which can quickly overtake a remedy tied to the design examined. The DMA lowers that burden for self-preferencing, but at a cost: it excludes efficiency justifications that a case-by-case assessment would consider.⁸² Its anti-circumvention provision also allows the European Commission to address ranking choices that achieve what a prohibited practice would, such as de-ranking hotels that offer lower prices elsewhere.⁸³

4.4 Use of competitively sensitive data

The use of business-user data presents a closely related conflict of interest. A vertically integrated platform observes transactions, prices, consumer searches and other non-public information generated by third-party sellers and may use that information when deciding which products to enter, imitate or promote. The Guidance treats such use as potentially distorting competition because it can appropriate returns from business users' investment and innovation. It recommends organizational separation of access to competitively sensitive data and limiting the use of such data to what is necessary for operation of the platform, while treating aggregated, historical and generally available information more leniently.⁸⁴

The economic concern again overlaps strongly with the DMA. Article 6(2) restricts a gatekeeper from using non-public data generated or provided by business users when competing with those users.⁸⁵ The OIPMI had already confronted the issue in the Takealot context by requiring separation between the marketplace and retail operations and restricting the retail business's use of seller data.⁸⁶ The Guidance thus turns a firm-specific remedy into a general compliance signal. This is close to functional equivalence in substance, but not in enforceability: the Guidance describes how the Commission is likely to assess conduct under existing law rather than establishing a directly applicable duty.

Self-preferencing and the use of seller data are analytically distinct but can reinforce one another: data may help the integrated platform identify attractive products, and ranking control may then steer demand toward the copied or competing offer.⁸⁷ A market inquiry can examine these

⁸⁰ Martin Peitz, *How to Apply the Self-Preferencing Prohibition in the DMA*, 14 J. Eur. Competition L. & Prac. 310 (2023).

⁸¹ Franck & Peitz, *supra* n. 78, at 6–7, 40–41.

⁸² *Ibid.*, at 14.

⁸³ *Ibid.*, at 35; DMA, Art. 13.

⁸⁴ Competition Commission South Africa, *supra* n. 1, paras 44–47.

⁸⁵ DMA, Art. 6(2).

⁸⁶ OIPMI *Final Report*, *supra* n. 3, paras 144.2, 152.2–152.3 (Takealot: use of seller data and segregation and data-access remedies).

⁸⁷ See Erik Madsen & Nikhil Vellodi, *Insider Imitation*, 133 J. Pol. Econ. 652 (2025); Giuseppe Colangelo, '(Not So) Elementary, My Dear Watson': A Competition Law & Economics Analysis of Sherlocking, 47 World Competition 235 (2024).

mechanisms jointly, as the OIPMI did for Takealot. Both the OIPMI and the Guidance restrict the use of data rather than the platform's dual role itself. This is consistent with economic analysis suggesting that banning a platform from selling on its own marketplace can reduce welfare, whereas narrower restrictions on self-preferencing or imitation may preserve the benefits of the dual role.⁸⁸

4.5 Differentiated trading terms and unfair treatment

The greatest substantive divergence appears in the last of the Guidance's three categories, which comprises differentiated trading terms and unfair treatment and concerns the participation of SMEs and HDPs. The Commission is concerned that large business users may obtain lower commissions, better visibility, marketing support or more favourable payment and contractual terms because their scale gives them bargaining power, while SMEs and HDP-owned firms face less favourable conditions. The Guidance links this to concentration among business users and to the ability of smaller firms to expand. It goes further by stating that favourable differentiation for SMEs and HDP-owned firms is less likely to raise concerns because it can support entry and growth and thereby foster competition.⁸⁹

This part of the South African framework cannot usefully be evaluated by asking whether it reproduces a DMA obligation. The DMA contains fairness-oriented provisions and, for specified services, fair, reasonable and non-discriminatory access conditions, but its objectives are not designed around South Africa's statutory concern with participation by SMEs and HDP-owned firms (section 2.1). The OIPMI accordingly combined interventions directed at platform competition with measures intended to improve visibility, onboarding and commercial opportunities for South African and HDP-owned firms, as in the Booking.com settlement (section 4.1).

The 'unfair treatment' section of the Guidance is broader than its heading might suggest. It includes one-sided risk allocation, unjustified fee increases, lock-in, restrictions on alternative channels and ancillary services, restrictions on alternative billing systems, and lack of transparency over suspension, ranking and changes to terms.⁹⁰ Several of these concerns overlap with DMA obligations (Table 1), although the Guidance frames them in terms of dependency and unfair trading conditions.

The South African framework is thus narrower than the DMA in some respects and broader in others. It is narrower where the Guidance depends on market power and subsequent enforcement rather than designated status and directly applicable duties. It is broader in its statutory mandate, which extends to participation and the distribution of competitive opportunities.

5. Chapter 4A and digital-specific regimes: similar reach, different means

Section 4 used the DMA as the benchmark because the DMA's enumerated obligations provide concrete reference points and because the Guidance itself refers to the DMA for five of its six practices.⁹¹ As a type of instrument, however, the DMA is only one of several models. The DMA attaches predefined obligations to designation;⁹² section 19a GWB permits the prohibition of

⁸⁸ See e.g. Andrei Hagiu, Tat-How Teh & Julian Wright, *Should Platforms Be Allowed to Sell on Their Own Marketplaces?*, 53 RAND J. Econ. 297 (2022).

⁸⁹ Competition Commission South Africa, *supra* n. 1, paras 21, 48–55.

⁹⁰ *Ibid.*, paras 56–60.

⁹¹ *Ibid.*, paras 26.2, 33.1, 40.1, 45.1, 58.1.

⁹² Japan's Act on Promotion of Competition for Specified Smartphone Software, in force since 18 Dec. 2025, follows the DMA in specifying obligations in the statute for designated providers of smartphone operating systems, app stores, browsers and search engines.

specified practices following a finding of paramount significance for competition across markets; and the UK regime permits the imposition of firm-specific conduct requirements following strategic-market-status designation. Chapter 4A, in turn, shares with UK market investigations and German sector inquiries under section 32f GWB the power to impose remedies at the end of a market-wide investigation (section 2.2). The instruments differ in three dimensions.

The first is the trigger for intervention and the corresponding evidentiary burden. Under the DMA, designation rests largely on quantitative thresholds; the obligations then apply directly, and gatekeepers must ensure and demonstrate compliance, including through regular compliance reports. Section 19a GWB and the UK SMS regime also start from a firm-level status finding, but obligations follow only from a further decision addressed to the firm, which remains subject to case-specific examination and possible justification (section 3.1).⁹³ Like these regimes, a South African market inquiry does not require proof of a Chapter 2 infringement: the question is, as the OIPMI set out, whether any feature of the market impedes, restricts or distorts competition.⁹⁴ The instruments therefore lower the evidentiary burden in different ways: through status or designation, which targets a defined group of powerful firms, or through a market-level adverse-effects inquiry, which is not confined to such firms. The Guidance, however, does not lower the legal burden: it indicates how the Commission will assess cases under the Competition Act, so conduct it describes must still be established as a prohibited practice under Chapter 2, typically an abuse of dominance, even if platforms will in practice be expected to justify such conduct (section 4.1).⁹⁵

The second dimension is how obligations are specified, how long they apply and how they are enforced. The DMA specifies obligations in advance for designated core platform services and supplements them with anti-circumvention rules.⁹⁶ Under section 19a and the UK regime, the authority can add to or adapt the obligations it has imposed for as long as the designation lasts. Chapter 4A remedies, by contrast, are tied to the inquiry in which they were imposed.⁹⁷ The OIPMI could address parity, ranking, visibility, data and local participation together because the inquiry examined how these mechanisms interacted in the South African markets concerned; responding to new conduct, however, generally requires a new inquiry. The trade-off between standardization and tailoring is therefore not a simple contrast between the DMA and Chapter 4A: section 19a and the UK regime show that obligations can be both tailored and continuing. A market inquiry can also impose duties to grant access or interoperability, as the OIPMI did for property classifieds, whereas the DMA imposes such duties by statute on specified types of designated services (section 4.2).⁹⁸

Enforcement differs as well. The DMA, section 19a and the digital markets regime of the DMCC Act back their obligations with fines, and affected parties can bring civil claims.⁹⁹ Unlike orders following a UK market investigation, which affected parties can enforce through civil proceedings, Chapter 4A remedies have no private enforcement route: civil damages under the Competition Act require a finding that the conduct is a prohibited practice. For the OIPMI, the Commission stated that it would seek an order from the Tribunal in case of non-compliance.¹⁰⁰

⁹³ DMA, Arts 3, 5–8, 11; GWB, s. 19a(1)–(2); DMCC Act 2024, ss 2, 19, 29.

⁹⁴ Competition Act, s. 43C(1)(a); *OIPMI Final Report*, *supra* n. 3, paras 11–13.

⁹⁵ Competition Act, ss 21(1)(gE), 79(1); Competition Commission South Africa, *supra* n. 1, paras 2–3, 22.

⁹⁶ DMA, Art. 13; Franck & Peitz, *supra* n. 59, at 300.

⁹⁷ Competition Act, s. 43D(3).

⁹⁸ *See in particular* DMA, Arts 6(7), 7.

⁹⁹ DMA, Art. 30; GWB, ss 33(1), 33a(1), 81(2) no. 2(a); DMCC Act 2024, ss 85–86, 101.

¹⁰⁰ Competition Act, s. 65(6)(b); Enterprise Act 2002, s. 167; Lesofe & Tetani, *supra* n. 9. Administrative penalties are available only for prohibited practices, merger violations and breaches of orders of the Tribunal or the Competition Appeal Court: Competition Act, s. 59(1).

The third dimension is coverage and objectives. The Guidance is confined to B2C online intermediation platforms, whereas the digital-specific regimes extend to a broader range of digital activities. But the Guidance is not the source of the Commission's market-inquiry power. Chapter 4A is not confined to online intermediation, to B2C markets or indeed to digital markets; its potential field of application is wider, but the relevant problems and remedies must be developed through inquiry. The instruments also differ in the objectives they pursue: the Competition Act's concern with SMEs and HDP-owned firms allowed the OIPMI to build participation into remedy design (sections 2.1 and 4.5). A digital-specific regime could pursue the same objective, but the DMA, section 19a and the UK SMS regime do not do so expressly.

What difference an additional digital-specific regime would make in South Africa depends on two things. The first is whether a problem has been addressed. Where it has, intervention is already possible; what would differ is continuing application, which could be backed by fines and private enforcement, and, in a DMA-type regime, obligations specified in advance. Where it has not, the assessment must be more cautious, since the absence of an intervention may reflect the scope of the OIPMI and the Guidance rather than a limit of the instrument. The second is which model the regime would follow. A DMA-type regime would trade tailoring for standardization;¹⁰¹ a regime modelled on section 19a or the UK SMS regime would provide continuing obligations while retaining tailoring. None of these differences by itself establishes that the South African framework is deficient or that an additional regulatory layer is required.

6. Conclusion

In the European debate that preceded the DMA, ex ante regulation and a market investigation tool were considered as independent options; only ex ante regulation was adopted. South Africa offers a different vantage point: it already had a strengthened market-inquiry instrument; the Commission used it to investigate online intermediation in the OIPMI, imposed remedies across several platform markets and then sought to generalize the resulting learning through the 2026 Guidance.

In the OIPMI, the Commission addressed competition problems associated with all six practices that the Guidance later generalized, from price parity and interoperability to unfair treatment. A market inquiry can examine how these practices interact and tailor remedies accordingly. The differences from digital-specific regimes lie elsewhere. Chapter 4A remedies are tied to the inquiry in which they were imposed, responding to new conduct generally requires a new inquiry, and, unlike under digital-specific regimes, affected parties cannot enforce remedies themselves. The Guidance turns the OIPMI's findings into prospective compliance signals for all B2C online intermediation platforms with market power. Its contribution lies in transparency and legal certainty rather than in new means of enforcement: it is not binding and does not lower the burden of establishing a prohibited practice. In coverage, the OIPMI and the Guidance are narrower than the digital-specific regimes considered here; this marks the limit of what has been addressed so far, not necessarily of what Chapter 4A can address. In objectives, Chapter 4A is broader: it allows remedy design to promote the participation of SMEs and HDP-owned firms, an objective with no close counterpart in the DMA.

The broader implication is that the case for an additional digital competition instrument depends on the pre-existing competition toolkit; the opposite sequences in Germany and the United Kingdom show that market-wide investigation powers and digital-specific instruments can operate

¹⁰¹ The question whether South Africa should mirror elements of the DMA is raised by Erini Yemenitzis & Jing Wang, *Mirroring the EU Digital Markets Act to Tackle Gatekeepers' Anti-Competitive Conduct in South Africa? Case Study of Google*, 46(8) Eur. Competition L. Rev. 307 (2025).

side by side. For South Africa, the case for an additional layer cannot rest simply on the familiar proposition that conventional competition enforcement is slow and case-specific. Chapter 4A is not conventional case-by-case enforcement, and the OIPMI has already applied it to digital platforms. For the problems the Commission has addressed, a digital-specific regime would provide continuing application, which could be backed by fines and private enforcement, and, in a DMA-type regime, obligations specified in advance with less need for repeated competitive assessment; the ability to address the underlying problems already exists. For the problems it has not addressed, no comparable inference is possible: the absence of an intervention does not show that the market-inquiry instrument could not provide one, but nor does it show that it would. Whether these differences warrant an additional regulatory layer, and of which type, remains a question for the legislature. The answer will also depend on factors beyond those examined here, including regulatory capacity, the risk of regulatory capture and broader geopolitical and strategic considerations.

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