

Comment to the Provisional Report of the South Africa Competition Commission's Media and Digital Platforms Market Inquiry (MDPMI)
Center for Journalism & Liberty | Open Markets Institute

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Competition Commissioner Doris Tshepe,

The Center for Journalism & Liberty (CJL) at Open Markets Institute, based in Washington, D.C., welcome the invitation to submit expert feedback to the Commission's Provisional Report as part of its Media and Digital Platforms Market Inquiry (MDPMI). At CJL, we work to ensure that the news media industry of the 21st century is robustly funded and suited to the needs of citizens of the world's democracies.¹

Our feedback is focused on providing principles for proposed remedies to the findings of the Commission, and to make specific recommendations on proposed remedies in the following areas: [1\) Search](#), [2\) Generative Artificial Intelligence \(AI\)](#), 3) [Digital Advertising Technologies](#).

Introduction: The MDPMI Offers a Comprehensive, Accurate, and Urgent Vision to Reform Competition in Digital Markets Impacting Press Freedom in South Africa

- CJL welcomes the Commission's endeavor to unearth the various ways in which dominant digital platforms' business models have had materially adverse competition impacts for the news media market in South Africa. We commend the Commission's Provisional Report issued in February 2025, which reflects diligent research and a multidisciplinary consultation process that legitimizes the findings and discussions around the proposed remedies put forward by the Commission. It could serve as a model for similar efforts elsewhere.
- Upholding journalism and the news media as a public good with a foundational role in South African democracy, as it is laid out in the nation's Constitution, is a clear objective underlying the Commission's proposed remedies.
- CJL commends the Commission for clearly explaining in detail how specific anticompetitive behavior and dynamics cause harm to the news media in the digital age, helping us understand that much of the current journalism crisis is the result not of changing consumption habits but of unfair competition in digital advertising rooted in conflicts of interest.

¹ Center for Journalism & Liberty, "Our Mission at Center for Journalism & Liberty," Center for Journalism & Liberty, 2020, <https://www.journalismliberty.org/mission>.

As the report says (pg.28):

“[...] the other challenge in building digital advertising revenues is that users are mostly intermediated by the search and social media platforms that compete with the news media for digital advertising, while exercising a degree of control over directing traffic to their websites. In this way, the digital platforms exacerbate some of the market disruption through conduct that adversely affects the news media [...].

- However, having documented and participated in similar official inquiries and legislative work in other jurisdictions,² CJL would like to warn that the technology corporations affected by the Commission’s proposed remedies may try to undermine the credibility of the Commission’s work.³ Thus, we recommend that any attempts by dominant digital platforms to discredit the findings of these report, especially arguing ideological bias or “lack of understanding” of their business models, be met with a rapid, public-facing response by the Commission, to prevent further disinformation from proliferating in news coverage in South Africa on the impacts of the Commission’s remedies to restore competition.

Specific Comments and Recommendations

1) Search:

- **On collective bargaining and distribution of digital platforms’ compensation.** CJL supports the Commission’s approach to “fixing the competition problem rather than simply compensate the affected parties for a negative outcome,” and that in the short term, a media fund can address the financial power imbalance between digital platforms and news media. More importantly, if such a fund were to exist, the Commission is right to highlight that disbursements must consider media diversity and plurality by avoiding a preponderance of funds going to mainstream and more robust news media.

In this regard, CJL advises to review the following laws / bills that were drafted taking lessons learned from the Australian news media bargaining code, and that can illuminate the Commission’s intent in enabling collective bargaining in ways that compensation

² Center for Journalism & Liberty, “Technology & Media Fair Compensation Frameworks,” Text and Map (Center for Journalism & Liberty, September 27, 2023), <https://www.journalismliberty.org/tech-media-fair-compensation-frameworks>.

³ Center for Journalism & Liberty, “How Big Tech Extorts Anti-Democratic Control Over Information Ecosystems & Government Oversight,” Center for Journalism & Liberty, December 6, 2023, <https://www.journalismliberty.org/publications/center-for-journalism-liberty-director-courtney-radsch-testifies-today-on-how-big-tech-extorts-anti-democratic-control-over-information-ecosystems-government-oversight>.

from digital platforms support a plural and diverse news media market:

- **Canada: [Online News Act](#).** The law, crafted originally to govern mandatory bargaining between dominant digital platforms and news media, ended up creating a fund to which currently Google contributes C\$100 million annually, indexed to inflation. The fund is administered by an independent non-profit collective of media publishers, which has a steering committee with outlets representing French language, community Indigenous news, and publications that specifically represent Black and minority Canadians.⁴

To foster an inclusive and plural distribution of funds, the Online News Act tied the disbursements to the number of full-time journalists employed by news outlets, with small print and digital outlets expected to receive C\$17,000 per journalist employed. The law also set a limit for how much the public broadcaster (CBC/Radio-Canada) and other broadcasters can receive, to prevent the largest, most mainstream outlets from capturing a massive portion of the disbursements.

- **California, United States: [AB 886 - California Journalism Preservation Act \(CJPA\)](#).** This bill is essentially ‘on ice’ after Google negotiated a deal with the California governor to create a private-public fund (not implemented yet) with the goal to dodge this bill.⁵ However, AB 886 sets a good example for how bargaining codes have evolved to ensure that compensation from digital platforms benefits journalism jobs, and small and community outlets – rather than focusing on click-through traffic tied to ad revenues.

AB 886 compels compensation from dominant digital platforms to news media via either binding arbitration or paying an annual sum to be distributed among Californian news outlets. In both cases, the compensation depends on the number of employed journalists per outlet. A unique provision in this bill is the spending requirements for newsrooms after they have received the funds: depending on their size, news publishers would have to spend between 50 and 70 percent of the funds on employing journalists. Newsrooms would also be required to make public an annual spending report.

- **On the use of digital platforms’ compensation for special projects.** Regarding the Commission’s proposal that a compensation fund for South Africa include funding to “support projects that build digital news capabilities to improve revenue generation,” CJL recommends the Commission be more specific on how much of this fund will be used

⁴ Mickey Djuric, “Google Signs Deal with Organization to Distribute \$100M to Canadian News Companies,” *CBC News*, June 7, 2024, <https://www.cbc.ca/news/politics/google-canadian-news-companies-1.7228190>.

⁵ “Google Agreed to Pay Millions for California News. Journalists Call It a Bad Deal,” *AP News*, August 23, 2024, <https://apnews.com/article/california-google-news-funding-87d423a8a8bfe2730b27ee3e59f4f454>.

strictly to benefit journalism jobs versus other uses. The aforementioned California experience shows that Google will prioritize funding for “AI projects” rather than giving news organizations the ability to utilize those funds to pay journalists and boost other efforts that may just as well be more effective to create revenues than having journalists use Google AI tools.

- **On search engines providing SEO support.** Regarding the following proposal (pg.6): *“Google to provide dedicated SEO support for SA news publishers to assist with responding to core updates timeously to avoid traffic disruptions.”* CJL recommends exploring the language used in [Australia’s News Media and Digital Platforms Mandatory Bargaining Code](#) about notification of algorithm changes to news media, as this law created a specific process for designated digital platforms to notify and consult with news media outlets about how company policy decisions will translate into major updates to their algorithms before being launched.
- **On enabling opt-outs from AI products in search.** Regarding the following proposal (pg.6): *“Google and Microsoft to allow for news publishers to opt-out of AI summaries on search results on their own search engines, Chatbots and those of third parties that use API access to their search index. Those that choose not to opt out should benefit from a 1% digital tariff or copyright levy on content used by the AI LLM to provide an AI summary.”* CJL recommends reviewing the language used in the U.S. Department of Justice Final Proposed Judgement (revised in March 2025)⁶ and explore whether it can apply under South African competition law, considering that it puts forward a similar opt-out approach but it also protects news publishers from being erased from Google’s search index and *any other Google product* (e.g. YouTube, AMP, etc.)

In any case, the Commission may also see fit whether to recommend that Google should apply this same practice to the South African market since Google Search holds a similar monopoly there.

An opt-out approach that contains a non-retaliation provision (e.g. explicitly mandate that no digital platform can penalize news publishers from opting out of an AI-powered product) is a good starting point to redress the power imbalance at hand. However, **we consider it insufficient to truly foster competition in search and AI-powered search.** As CJL recommended the DOJ,⁷ this solution is not retroactive, which means Google can continue to use previously scrapped news content obtained without consent. **A better remedy would require Google’s AI crawler to obtain explicit permission**

⁶ Karina Montoya, “DOJ Sets Record Straight of What’s Needed to Dismantle Google’s Search Monopoly,” Tech Policy Press, March 13, 2025, <https://techpolicy.press/doj-sets-record-straight-of-whats-needed-to-dismantle-googles-search-monopoly>.

⁷ “CJL Urges DOJ to Break Google’s Search Monopoly and Address AI Risks,” Center for Journalism & Liberty, November 19, 2024, <https://www.journalismliberty.org/publications/google-search-remedies-doj-letter>.

through an opt-in provision. This would place the burden of obtaining consent on the dominant firm rather than the weaker party, and it would encourage the development of technical solutions to trace content and data provenance.⁸

2) Generative AI

- **On enabling opt-out from AI products and search web crawlers.** CJL recommends grouping recommendations 24.2 and 24.5 on page 15 of the report to convey that Google, Microsoft, OpenAI, and Meta should be required to obtain consent from news publishers and be revised to adopt an opt-in approach (which is in line with traditional copyright law) for AI model training, AI-assisted summaries in search, and AI chatbots, without impacting their presence in those platforms' current or future search web crawlers. In the case of Meta, a specific provision should establish that it cannot penalize news publishers that do not allow AI model training by impacting their presence in social media feeds or their ability to use messaging platforms it owns.
- **On AI-powered search and referral traffic.** CJL supports the Commission's approach to require Google, Microsoft, OpenAI, and Meta to design AI-powered search in ways that ensure the provision of significant referral traffic from news-related AI Chatbot queries in South Africa OR provide alternative monetization options instead of referral traffic. On the latter, CJL recommends clarifying that such alternative options should not be conditioned to news publishers abandoning content deals with other competitors or renouncing previous or current grants given such platforms.

Moreover, it should be clear that such alternative monetization options should include content licensing deals resulting from collective agreements that cover content both used for grounding AI-powered products and for AI model training – which would reaffirm your proposed recommendation on collective bargaining for AI systems (page 15, 24.7).

- **NEW PROPOSED RECOMMENDATION. Examine the role of copyright protections in South Africa to ensure remuneration and cultivate a domestic AI content licensing marketplace,** rather than relying on dealmaking, given that there will always be a power imbalance. This would empower South African news media to participate in a nascent market of AI content licensing startups and help support domestic AI startups seeking access to data, by cultivating a sustainable copyright-based content market that

⁸ Courtney Radsch, "The Case for Consent in the AI Data Gold Rush," Brookings, accessed April 3, 2025, <https://www.brookings.edu/articles/the-case-for-consent-in-the-ai-data-gold-rush/>.

supports original human-sourced journalistic publishing, documentary making, and creators.⁹

- **NEW PROPOSED RECOMMENDATION. Prohibiting exclusionary agreements between news publishers and dominant digital platforms.** CJL recommends the Commission examine the U.S. Department of Justice Final Proposed Judgement (revised in March 2025)¹⁰ and the language used to prohibit Google from striking agreements with publishers that block Google’s rival search engines from accessing that same content. Stopping this practice, which has already a documented case in the U.S.,¹¹ can protect news publishers from getting their content locked in by one player, opening opportunities for smaller AI start-ups to provide new avenues for compensation to news publishers.

3) Digital Advertising Technologies (ad tech)

- **On Google’s dominant position in ad tech.** CJL welcomes the Commission’s findings in this regard and supports the Commission’s call for Google to implement remedies to restore competition in ad tech that have stemmed from other globally relevant markets (specifically from the Autorité de la Concurrence in France), and that will result from pending antitrust cases in the U.S. and the European Union.
- **On transparency remedies.** CJL supports the Commission’s initiative to require Google to implement all the remedies in the EU Digital Markets Act on price data transparency for news publishers in South Africa as well.
- **On prohibiting self-preferencing.** CJL strongly supports the Commission’s proposal for Google to end DV360 exclusivity for YouTube. There is likely to be a remedy resulting from the Google Search antitrust case in the U.S. as well. But even if there is not, Google does have the technical capabilities to end this self-preferencing behavior on its own, specifically for the South African market. Additionally, CJL also supports requiring Google to admit digital ads in vernacular South African languages by either investing in the language capabilities or adjusting its policies on ad reviews.

⁹ Courtney Radsch, “Adaptive Partnerships in the AI Data Marketplace,” *Nieman Lab* (blog), December 2024, <https://www.niemanlab.org/2024/12/adaptive-partnerships-in-the-ai-data-marketplace/>.

¹⁰ Montoya, “DOJ Sets Record Straight of What’s Needed to Dismantle Google’s Search Monopoly.”

¹¹ Emanuel Maiberg, “Google Is the Only Search Engine That Works on Reddit Now Thanks to AI Deal,” 404 Media, July 24, 2024, <https://www.404media.co/google-is-the-only-search-engine-that-works-on-reddit-now-thanks-to-ai-deal/>.

Additional resources:

On Google's Monopolies:

- [CJL Urges DOJ to Break Google's Search Monopoly and Address AI Risks](#)
- [Google Ad Tech Monopoly Trial: A CJL Explainer and Special Coverage](#)
- [Beyond court remedies in the Google Search case: A competition reform for the search ecosystem \(Concurrences Magazine\)](#)
- [DOJ Sets Record Straight of What's Needed to Dismantle Google's Search Monopoly](#)

On Generative AI, market concentration, opt-in consent, and copyright for licensing deals:

- [Expert Brief - AI and Market Concentration](#)
- [The case for consent in the AI data gold rush](#)
- [Adaptive partnerships in the AI data marketplace](#)
- [Courtney Radsch: "AI will not solve the business model question"](#)
- [AI Needs Us More Than We Need It](#)