Draft Guidance Note on Online Intermediation Platforms

Summary of RBB's Key Comments

The Competition Commission's Draft Guidance Note on Online Intermediation Platforms (the "Draft Guidance") seeks to promote contestability and participation in digital markets. We support these objectives. As outlined in our full submission, online intermediation platforms ("OIPs") – ranging from e-commerce marketplaces to accommodation booking platforms to online classifieds – have been significant drivers of these very goals, lowering barriers to entry and expansion for SMEs and expanding consumer choice.[1]

Achieving these aims **requires a clear, predictable, and effects-based framework**, which is sensitive to the South African context. Without such a framework, there is a material risk of creating uncertainty for platform operators and business users, inadvertently chilling innovation and weakening the very competition and participation the Draft Guidance seeks to promote.

In our view, **the Draft Guidance risks introducing a form-based regulatory approach** that:

- presumes harm from a wide range of common platform practices; and
- places a very high evidentiary burden on platforms to demonstrate efficiencies.

This approach risks harming the very outcomes the Draft Guidance seeks to promote – competition, investment, innovation, and participation.

This summary outlines the core comments and recommendations detailed in our full submission.

The benefits and economic characteristics of OIPs

OIPs exhibit several features that are central to understanding incentives and effects. Any effective guidance must be based on a proper understanding of these economic characteristics.

- **Platforms' investments can increase competition and expand participation**. Platforms often invest heavily in logistics networks and delivery capabilities (e.g. for food delivery or e-commerce), payments and fraud-prevention systems, aggregation, and discovery tools (search, rankings, recommendations), and trust-building infrastructure (reviews, customer support, dispute resolution).

  For a small online seller, an online marketplace can provide immediate access to thousands of customers, integrated warehousing and national distribution services, and a trusted payment layer. For consumers, they aggregate offers onto a single platform, widening choice and aiding discovery.

  These mechanisms create **scalable routes to market for SMEs and HDPs** that would otherwise be prohibitively costly to build alone. They lower barriers to entry, expand participation, and intensify rivalry with offline incumbents by reducing search costs and making prices and quality more transparent.

- **Common platform practices often reflect efficiency incentives**. Practices such as ranking algorithms, price parity clauses, data usage, fulfilment integration, vertical integration and differentiated commercial terms are frequently chosen because they improve product discovery (e.g. ranking by relevance, quality, speed, and price), reduce fraud and poor-quality listings, and balance incentives across user groups on the platform (consumers, merchants, drivers, hosts, etc.).

1. Online intermediation platforms include a wide range of digital services that match buyers and sellers, such as e-commerce marketplaces, food delivery platforms, accommodation and travel aggregators, property listing services, online classifieds, and app stores. These platforms enable transactions between distinct user groups by providing aggregation and discovery, logistics, payment, and trust-building infrastructure.

For example, a travel booking platform may prioritise hotels or tour operators that provide real-time availability, instant confirmation, and flexible cancellation. This makes the platform more reliable for consumers and encourages suppliers to adopt systems that improve accuracy and reduce booking failures. As another example, an app store may restrict certain forms of interoperability to maintain security and privacy, and to avoid malware. This not only benefits consumers but also benefits SMEs: improved platform quality, and security and trust credentials serve to increase platform traffic and, in turn, the sales opportunities available to business users (disproportionately benefiting smaller users that often rely on platforms to a greater extent). In short, many practices that the Draft Guidance lists as "problematic" are also the **mechanisms through which platforms create value for consumers and SMEs**.

- **Two-sidedness and indirect network effects are fundamental for understanding platform incentives**.[2] OIPs are multi-sided: they must attract and retain **both** consumers and business users in order to create value. This gives rise to **indirect network effects**, such that the more listings on a property portal, the more attractive it is to consumers; the more consumers on the platform, the more attractive it is to estate agents.

  Because of these feedback loops, platforms are strongly incentivised to improve their offering on each side, since a deterioration on one side reduces usage on the other, and so on. If a delivery platform raises its commission, it may lose restaurants; reduced variety then makes the platform less attractive to consumers; lower demand may prompt more restaurants to leave or redirect effort. This feedback loop can make attempts to exploit market power more likely to be self-defeating. In other words, indirect network effects can constrain market power rather than amplify it.

  At the same time, some conduct that generates short-run disadvantages for certain business users can still increase overall participation if it ultimately serves to strengthen these feedback effects.

  For instance, tighter quality thresholds for restaurants might cause some sellers to leave in the short run, but improve consumer trust and usage, thereby ultimately expanding demand and sales opportunities for capable SMEs.

  An assessment that only examines immediate effects on a subset of business users – without considering cross-side effects and dynamics – will systematically misread incentives and outcomes.

- Large platforms often face strong competitive pressures, such that **scale is a source of value and not an automatic sign of entrenched market power**. Larger platforms can offer broader choice and better matching, spread fixed logistics and technology costs over more transactions, and provide stronger network benefits for SMEs and consumers.

  At the same time, platform markets can be **highly contestable** even when they might appear concentrated on a static view. As noted above, indirect network effects can serve to enhance the strength of competitive constraints compared to single-side market settings. **Multi-homing** is also common. Consumers often use several food apps, while merchants list on multiple marketplaces. Because of this, smaller or newer platforms do not need to "fully displace" a leading platform to grow. Instead, they can attract incremental usage from users who remain on other platforms. This supports entry and expansion by new players and enhances contestability.

  Moreover, **switching between platforms is typically easy**: closing one app and opening another is simple, and merchants can redirect effort to alternative channels. In addition, **offline and direct channels often matter**. For many restaurants, walk-in customers and telephone orders remain significant; for sellers, physical stores and own websites continue to be important.

These features underscore the need for **effects-based, context-specific assessment**, rather than form-based presumptions based on size or static measures of platform scale and concentration alone.

The Draft Guidance's shift from effects to form

In our view, the Draft Guidance departs from South Africa's traditional effects-based enforcement and moves towards a form-based regulatory regime through three key features:

1. **"Leading platform" designation based predominantly on scale**. The Draft Guidance equates size and frequency of use with market power, without adequately considering competitive constraints. It discounts constraints from offline alternatives and fails to consider market shares in a properly defined market. It also fails to consider broader contestability dynamics and competitive constraints emanating from multi-homing, indirect network effects, or dynamic rivalry. Platform scale is a particularly poor proxy for durable market power in markets characterised by such features.

2. See, for example, World Economic Forum, *Competition Policy in a Globalized, Digitalized Economy*, White Paper, December 2019

2. **A catalogue of presumptively harmful conduct**. A broad list of commercial practices (including price parity clauses, self-preferencing, differentiated terms and others) is treated as inherently problematic based on its form, irrespective of context or efficiency rationales.

3. **A materially heightened evidentiary burden for efficiency justifications**. Platforms must prove, with detailed financial and economic evidence, that a flagged practice is "essential" to sustainable operation or substantial future investment. This approaches a standard of indispensability. It risks prohibiting or deterring conduct that is highly likely to be pro-competitive and participation-enhancing (through the achievement of important ongoing, incremental efficiencies) even if not strictly "essential" to survival. In effect, certain forms of conduct are presumed harmful unless platforms can demonstrate objective justification, akin to the standard applied to per se prohibitions under the Competition Act.

These elements create an **asymmetric framework** where harm can be asserted based on generalised theories, whereas efficiencies require granular, case-specific proof of essentiality. In our view, this is not a balanced or coherent economic approach: it systematically downplays efficiencies and dynamic effects while giving substantial weight to form-based presumptions of harm.[3] It therefore risks discouraging practices central to competition and participation.

Although the Draft Guidance **mirrors provisions in the EU Digital Markets Act (DMA) and UK Digital Markets, Competition and Consumers Act (DMCC)**, it does not incorporate the institutional structures, safeguards, or clear designation criteria that help manage compliance burdens in those regimes.[4] It also imports these rules without sufficient regard for South Africa's specific context – including more nascent and rapidly evolving markets, smaller addressable markets and lower platform adoption, and higher operational and logistics costs. In such an environment, interventions applied in large, mature digital markets can have very different, and often counterproductive, effects, particularly because platform investment, scale-building, and iterative innovation are especially important for future competition and SME participation.

Why a form-based regulatory approach is problematic

Effective guidance must, in our view:

- **Promote competitive and participation outcomes**, by encouraging investment, innovation, rivalry, and SME/HDP participation while targeting conduct likely to cause material harm to competition or participation; and

- **Support ease of compliance and administrability**, so that firms can self-assess predictably and allocate resources efficiently.

A form-based rule – which treats the *type* of conduct as determinative of effects – fails to achieve this balance.

A wide range of commercial practices can, in some circumstances, have exclusionary effects. However, the same practices often generate substantial efficiencies and direct benefits for consumers and SMEs, even when undertaken by large firms. The only way to determine whether the net impact is positive or negative is to assess the effects thereof on prices, quality, output, and SME/HDP participation opportunities.

Form-based presumptions ignore this balance. They risk **over-enforcement**, by treating benign or pro-competitive conduct as harmful and, in so doing, may:

- create **uncertainty** for businesses, which may refrain from efficient practices rather than risk investigation; and

- **chill innovation**, especially in dynamic markets where experimentation is critical.

The multi-sided, dynamic nature of platform competition makes these risks particularly acute: the same practice may generate narrow, short-term disadvantages for some users but much larger long-run participation benefits via indirect network effects.

Why the risks are greater in South Africa

Market development and investment incentives

The Draft Guidance's one-size-fits-all design is particularly ill-suited to the stage of development of many OIP markets in South Africa.[5] Online adoption is uneven, local platforms face high customer-acquisition and trust-building costs, logistics with national reach are expensive due to transport costs and infrastructure gaps, and transaction densities are lower, making fixed-cost recovery more challenging.

3. In addition, the Draft Guidance effectively seeks to introduce an ex ante self-regulation regime that imposes compliance burdens that are significantly more onerous than those imposed under South Africa's existing effects-based framework. In practice, it would require large platforms (which may not even be dominant under the Competition Act) to prepare detailed financial and economic evidence, in advance, showing that a practice is essential to the platform's ongoing operation or necessary for substantial future investments.

4. See EU Digital Markets Act – Regulation (EU) 2022/1925 and UK Digital Markets, Competition and Consumers Act, 2024 (Chapter 13).

5. See, for example, Murgatroyd, R., Lee, S., van Dijk, T. (2023), *One Size Fits All? Competition Rules for Digital Markets Outside Europe, World Competition*, 46(2), 459–478.

In such markets, **platform investment, scale-building and iterative innovation are essential** for enhancing competition and expanding SME participation. A rigid framework that presumes harm from particular forms of conduct – without assessing context – risks distorting these investment incentives:

- In nascent markets, dynamic competition often depends on firms acquiring users aggressively, subsidising the user experience (e.g. free delivery, discounts), building logistics capacity, and developing features that reduce search and switching costs. Over-intervention can dampen innovation, reduce experimentation, and weaken the prospects of local firms emerging as effective challengers.

- Local platforms may face higher structural frictions than their counterparts in developed economies – including higher logistics and infrastructure costs, less dense demand, and greater difficulties in building trust with new users. The ability to spread fixed costs and price dynamically is important for growth and participation.

- Premature rigid rules may unintentionally protect entrenched offline incumbents or advantaged global platforms, by limiting the ability of local platforms to invest, scale and compete on quality or price.

Participation as a process, not guaranteed outcomes

Competition policy seeks to protect the **process of rivalry**, not guarantee the success of every firm. Some firms will expand; others will exit. That is not problematic if the competitive process is effective. Indeed, the prospect of gaining or losing market share incentivises firms to invest and drive efficiency.[6]

The same logic applies to SME and HDP participation. The goal should be to make it easier for capable firms to enter, grow and compete on merit – not to ensure identical terms or outcomes for all firms at all times. Aspects of the Draft Guidance **risk drifting from protecting the process of participation to protecting individual participants**:

- Restrictions on efficiency-enhancing conduct (e.g. integrated logistics, data-driven optimisation, discovery mechanisms) can reduce the quality, reach and cost-effectiveness of platform services that SMEs rely on. Short-term notions of "fairness" may come at the expense of long-term participation benefits (lower prices, better service, higher traffic).

- An emphasis on static "fair" outcomes (such as mandating uniform trading terms or prohibiting risk-sharing) may shield less efficient firms from competitive pressure, reducing incentives to build the capabilities required for sustainable participation.

Two illustrative examples: how form-based rules mischaracterise platform conduct

The Draft Guidance identifies several forms of conduct as presumptively harmful. Our full submission discusses each in detail. Here we highlight two examples to show how form-based presumptions can mischaracterise conduct that often supports competition and participation.

Self-preferencing: self-supply as a driver of competition and participation

"Self-preferencing" is broadly defined by the Draft Guidance as a vertically integrated platform giving more favourable treatment to its own products or services than to those of third-party sellers. It treats this as inherently suspect.

However, in many common scenarios, alleged self-preferencing **enhances platform value and expands opportunities for marketplace sellers**. By way of example:

- **Own-brand or self-supplied products in e-commerce**. A marketplace might stock its own private-label range to fill gaps in supply, offer cheaper alternatives, or compete with entrenched brands. This can draw more consumers onto the platform, who then also purchase from SMEs. Private-label products often increase choice and stimulate platform-wide demand.

- **Promotion of platform logistics and fulfilment services**. A platform may promote its own integrated warehousing and delivery service (e.g. "fulfilled by platform") because it fosters faster, more reliable delivery, and is subject to fewer errors. SMEs lacking their own logistics systems benefit from this, and all sellers gain from higher consumer traffic driven by improved reliability.

- **Ranking algorithms and the "Buy Box" in marketplaces**.[7] Algorithms typically highlight offers based on attributes that consumers value: price, delivery speed, stock availability, fulfilment reliability, and customer ratings. If the platform's own offer appears frequently, that may well simply be because it scores well on these metrics, not because of exclusionary design. Rewarding these attributes also encourages third-party sellers to improve their own performance.

6. See Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* (4th ed. & Supp) and Massimo Motta, *Competition Policy: Theory and Practice* (Cambridge University Press, 2004).

7. The "Buy Box" is the mechanism or placement on a platform's product detail page that identifies the offer deemed most relevant for consumers - typically based on objective criteria such as price, delivery speed, stock availability, fulfilment reliability, and customer ratings. When multiple sellers offer the same product, the Buy Box determines which offer is presented as the primary purchasing option, with other offers displayed separately.

While there may be contexts where self-preferencing raises legitimate concerns, **a blanket presumption** fails to distinguish between conduct that: (i) genuinely forecloses small business users, and (ii) improves platform quality and inter-platform competition, ultimately benefiting both consumers and SMEs.

Such a presumption risks discouraging investment in retail assortment, fulfilment, logistics, quality control, and discovery tools – with knock-on effects for prices, availability, and SME participation.

Differentiated trading terms: externalities and the process of participation

The Draft Guidance views offering lower fees or more favourable terms to large business users as presumptively unfair to SMEs and HDPs, except where necessary for platform survival.

This overlooks several important effects:

- **Positive externalities generated by large business users**. A national grocery chain or well-known estate agency can attract substantial consumer traffic to a platform. That traffic benefits SMEs who would otherwise struggle to gain visibility. Volume-based discounts or bespoke terms often reflect the greater contribution those large users make to platform value.

- **Impact on platform traffic and SME sales**. If large chains were required to pay the same fees as small outlets, they might reduce their platform presence, switch to rival channels, or cut platform-specific promotions. This would reduce total platform demand and harm SMEs who depend more heavily on aggregated platform traffic.

- **Investment incentives**. If all users must pay the same fee, average margins may fall because larger, more mobile users have more outside options. Furthermore, if large "anchor" users leave the platform, the platform loses the scale, which may be necessary to underwrite high-fixed-cost investments in platform services and quality. Platforms may respond by cutting back marketing, customer acquisition, payment systems, or logistics investment – precisely the investments that enable SMEs to participate at scale.

- **Competition between platforms**. Differentiated terms are often the result of competition between platforms to win high-volume sellers. A prohibition on differentiation may entrench the strongest platform and disadvantage smaller challengers who rely on flexible pricing to attract anchor tenants while maintaining profitability and growth.

Moreover, not all differential treatment materially harms SME participation. Whether it does depends on factors such as the *scale* of the fee differential, the *importance* of the platform to the SME's overall business, and whether platform sales are incremental in nature (such that the SME is still better off participating on the platform than not).

Modest fee differentials that help secure high-volume sellers, stimulate traffic and fund investments can generate dynamic benefits that far outweigh any limited, short-term impact on SME costs.

An effects-based framework would **ask whether differential terms materially impair efficient SMEs' ability to participate** and would weigh any such harm against the efficiencies and positive externalities generated.

A clear effects-based framework is essential

As set out in our full submission, a proportionate, administrable, and economically coherent framework should:

- **Define clear designation criteria** aligned with contestability and durable market power, not merely size or static measures of market structure.

- **Specify clear theories of harm** for competition faced by platforms, within platform rivalry, and the process of SME/HDP participation.

- **Use proportionate evidentiary standards** that recognise the realities of dynamic multi-sided markets, including that many efficiencies cannot be empirically proven or precisely quantified *ex ante*.

- **To the extent that form-based factors are considered, treat these as "aggravating indicators" within a clear effects-based framework**, and not presumptive abuses requiring *ex ante* justification.

Such an approach would provide regulatory certainty, preserve incentives for innovation and investment, and better align the Draft Guidance with its core aims of promoting contestability and inclusive participation in South Africa's digital markets.