Supplementary oral remarks to the South African Competition Commission's "Media and Digital Platforms Market Inquiry".

Guy Berger, 4 February, 2024.

The basics:

It's self-evident that competition is not an end in itself, but a mechanism to achieve outcomes of value to society. This is by fending off concentrations of economic power on the one hand, and fostering efficiencies and innovations on the other. The goal of competition therefore is not something that exists in isolation of its impacts on wider societal and constitutional issues.

In this context, let's look especially at competition in two distinct, but often interrelated, markets. Later in these remarks, I'll cover a third, and more and more relevant, market which is linked to the changes being wrought by the Generative AI business.

Two key markets – and who dominates:

Media, social media, and increasingly search[1], all compete in the market for our attention - for our hearts, minds and our time. They also compete in a second market: advertising – which is largely a function of how the first market operates vis-à-vis different sub-markets of attention.

A key link between these two markets are data markets – in which social media and search companies are major players: collecting, buying, selling data to dominate the attention market, and to power their primacy in the advertising market). But the media have barely entered this particular race.

Unpacking the market for mental and emotional attention, one can immediately compare it to markets for physically addictive attention. It is readily clear that purveyors of sugar, alcohol and tobacco are not allowed to have a free-for-all race to the bottom. The state has imposed safety rails on them. Thus, if companies in these spaces achieve dominant market status by subverting legal strictures, this status is not legitimately obtained. The Competition Commission in that instance would then need to assess complaints about dominance by examining the means by which this status was achieved. Similarly in the attention market, it is important to look at how big tech dominance has been achieved – something elaborated below.

Regarding the market for advertising, this mirrors much of the state of play in the market for attention. For those actors with commercial interests and wanting to earn the maximum advertising revenue, it is essential to win attention in relevant segments in the attention economy. Dominance in the attention economy is a surefire route to dominance in the advertising economy.

Of course, competition is always about who wins and, correlatively, who loses. The problem arises when the winners just get bigger and bigger, and no one has a realistic chance to challenge their power. History shows that monopoly – whether political or economic – is simply bad for society.

[1] Google used to be a quick stop on the way to the rest of the web. Nowadays, this facility privileges advertised ("sponsored") links. The service keeps users on the site by offering a supply of canned answers at the top of the results feed, followed then by links to its subsidiary (YouTube), before ultimately offering a way out of their ecosystem.

Compounding the contemporary situation is that several of the same players dominant in the attention market are also driving the advertising market. It's a two-fer. They control the major means of distributing content by optimising network effects and building lock-in to walled gardens. Then, in parallel, they also control the main mechanisms for digital advertising.

Very risky in both regards is the power of individual tech barons, who can – and do - single-handedly dictate policies on the fly. This would be serious in any industry, but it can have enormous societal impact in these markets which are at the heart of our wider communications ecosystem.

What the platforms say:

Although the companies like to argue that there is competition in both the attention and the advertising markets, this is open to question. For example, the entrance of TikTok into the attention market was only possibly through enormous sums of investment. And far from competing with TikTok in innovative ways, entities like Facebook, YouTube and Instagram are simply imitating key features.

It is also well known that these mega companies, as can be expected when entities become dominant, have used their resources not to innovate, but to buy up startups. Like Meta buying Instagram and Whatsapp; Google buying Double Click and YouTube. These examples are not evidence of the alignment of the market with one of the key purposes of competition.

Today, we see a further dynamic with both Google and Meta investing more in the generative AI business – and again there is copying of features, chat interfaces being one example. What then is the current and future innovation value-add to society from those players who have grown to dominate the attention and the digital advertising markets?

How the big became so big – by avoiding costs that others in the markets have to incur:

Imagine a scenario where manufacturers of trucks were, say over 10 years, to incrementally face increased competition from an importer who was able to undercut them through various measures. For example, by this importer presenting levels of pollutant emissions as being less than they are, by installing zero or poor quality safety belts and bags, and by taking no responsibility for the damage their vehicles cause to public roads. Imagine further that this importer was able to buy up the distribution channels for fuel, giving their own trucks preferential rates.

I think in this case we would say that at some point, dominance is a result of unfair competition.

In the same vein, one can point to the costs incurred by news media in their business, in comparison to the free rein enjoyed by social media and search. It is the case that the latter have found ways to make money out of content they don't generally have to pay for. One may perhaps say: Kudos to big tech. But there is a hidden benefit that social media and search companies have enjoyed.

News producers are legally liable for the content they produce and disseminate. But if you're big tech, you dodge responsibility for disseminating – for example - defamatory content. "It's not our content, it is posted by a third party," is their mantra. This is even when these platforms are not just carrying or indexing this content like a neutral postal service. It is also when their systems may well be algorithmically amplifying it and/or making money from it. And at the same time, they have been able to operate with minimal quality controls are in place. Under Elon Musk, X corp in particular has dispensed with most of its capacity to moderate content or to deal with user complaints. In contrast, new media in South Africa are legally liable even for readers' letters and posts on their websites.

So while news media have to spend money not only on creating content, and ensuring its legality and quality, the platforms to date have escaped the same burden of liability. This applies equally to big tech taking responsibility for the placement and content of digital advertising under their control.

We often hear from the platforms that they do spend money on quality control. They like to cite what they call "prevalence" metrics. This refers to how much "bad" content was caught by humans or by automated means, revealing then the relatively small percentage of their users who were exposed to it. But as the Integrity Institute has pointed out, such metrics do not show actual levels of engagement with this content (likes, shares, comments) or how these compare to the average. In addition, the prevalence metric does not give insight into even comparatively small groups who might be exposed – for example, people who are at risk of radicalisation, or who are vulnerable to anorexia.

All this is why the submissions by Sanef and partners request the Competition Commission to impose requirements on big tech to properly spend on quality assurance – so that there is a fairer playing field in the market for attention. It is not enough to hope they will honour a duty of care simply out of ethical considerations. It needs to be made part of the costs of their doing business in South Africa in the attention and advertising markets. And, of course, transparency is also essential to verify that the platforms do in fact do what they say they do.

To the extent that imposing some duties of care on big tech may go beyond the immediate authority of the Competition Commission, there is nothing to stop this body from recommending actions – like consumer protection measures - to other regulatory entities and indeed making proposals to the executive and legislative authorities of the country. In this way, we can move forwards from a situation where news media have one hand tied behind their back, while the platforms enjoy the advantage of having both hands free.

Give news a chance – for society's sake:

Sanef and partners have also raised another, distinct, point in their submissions: the political and economic value of news. The platforms also like to trumpet their value add to society. Indeed they do facilitate social cohesion amongst families and neighbourhoods. Yes, they do provide appreciated diversion and entertainment. Some of their services contribute to economic transactions, and a few of them offer revenue sharing with content producers.

But these benefits need to assessed against negative impacts – and the debits here can cancel out the credits. In the USA, the #MeToo and #BlackLivesMatter campaigns were social advances linked to social media; but the same means of communication also enabled a proto-facist attempt at insurrection which would also have wiped out these gains in one fell swoop. Social cohesion takes second place to promotion of engagement, which is well researched as a recipe for social polarisation. The social media companies say there is no hard evidence that the correlation between societal divisions and their services is causation. They present research that finds no difference in US-users' voting preferences whether a feed is delivered by engagement algorithms vs just chronological ordering of content. The question of reinforcement effects is not investigated. Fraud and illegal transactions contaminate honest economic exchange.

Of course, the platforms don't want these kinds of impacts. But such negative externalities, which society has to pay for, make moot the bottom line of societal value being contributed. This is another reason why Sanef and partners want the platforms to be required to do a similar job to the news media when it comes to weeding their patch.

There's more however. Ensuring additional resource goes into cleaning up social media and search, does not mean that nutritious crops are going to automatically flourish in that space as a result.

On the contrary, in the current configuration of big tech machinery, the possibility for news content to play a positive role is constrained. Both national and local level news producers experience disadvantages in terms of discovery and dissemination of their content on these services. The point by Sanef and partners is that platforms should be required to consider a fair showing for news in their content feeds, recommendations and search results.

This is in contrast to current algorithms that promote and recommend other kinds of content, and in many cases actively demote news and links to news. As the Sanef and partner submissions have spelled out, this is especially harsh for local and community news in indigenous languages. The playing field is this regard is more akin to standing at the foot of the Drakensberg mountains and trying to be visible to those at the top. The system is stacked against the discoverability and reach of all news media, and hence their monetization, with the most impact on small scale and potential new entrants. These entities are thus blocked from growth, job creation and enriching the supply of news as a public good.

For good reasons, in broadcast licensing in South Africa it is mandatory for stations to carry news services and local content. At present, in the online space, the big tech intermediaries are able to actively discriminate against news providers.

Sharing the pie?

So far, these remarks have covered the skew that exists between the obligations and costs of platforms on the one hand, and news producers on the other. There is grave inequality in the market for attention, and the longer it continues, this divide will grow exponentially.

I have also touched on the way that platform business models are deleterious in their effects on society and news producers (especially aspirants and those who are upcoming). But it is not beyond the resources of Big Tech to find ways to make money in ways that are more friendly to exposing users to news even if it may often be less viral than less ethical kinds of content.

To move to a third area now, it is worth examining the distinct issue of dividing the "pie". Much as big social media and big search are, increasingly, unfavourable to news, this kind of content still helps to make them money – directly and indirectly. Downgrading news and news links (which is opposed by Sanef and partners as per the previous section) serves platforms' interests in dodging payment claims by news publishers. But it still does not amount to meriting a free pass.

In the Canada case, where Meta has now banned news article references from its services, users have found workarounds. More illustratively, we only have to look at TikTok, a self-proclaimed entertainment platform, to find countless people talking about issues in the news. That is, amidst the profitable adverts the company runs – seeming after every 5-10 video clips.

The problem is not merely that people on social media (and increasingly on Google search) do not get easy access to the original news reports that are based outside of the de facto walled gardens. It is that the enterprises doing the hard work of newsgathering, verifying, editing and packaging news content cannot do so indefinitely without any financial support from those making money thanks to this work.

The one-way subsidisation of big tech by those producing the news is simply not sustainable. Just last week, the venerable Weekend Post serving Gqeberha was shuttered. In preceding weeks, we saw announcements of retrenchments at one large news company. The overall slide continues unabated.

Many countries have measures to ensure a flow of value to rebalance the ecosystem. In South Africa, commercial broadcasters pay a levy to support the work of the Media Development and Diversity Agency. In the USA, the cable TV industry has to fund the information channel C-Span. There are many other mechanisms being applied to the platform-publisher economic relationship. In a new example last week, Indonesia regulated compulsory co-operation between the two sectors, overseen by an independent committee.

Dancing in the digital advertising market:

A further distinctive issue in the submissions from Sanef and partners deals with ad-tech. They express concern over the pipers calling the tune, and the selection of dance partners in this market.

It is evident that research is needed to establish whether there is gatekeeper price gouging and self-preferencing in the ad-tech stack. Transparency is also needed to establish the control of data markets that underpin automated ads. And it is also essential if the Commission is to get a grip on the way the system can fund "junk news" websites. A recent podcast highlighted how AI-generated obituaries, even of living people, get into Google search, and the resulting traffic then results in Google-mediated adverts being shown on these sites. Meanwhile, data-based personalisation in advertising, and indeed in other content activities online, threatens to reinforce silos – a far cry from news which aspires to contribute to a shared public sphere.

So far, these remarks have covered:

- The unequal conditions in the attention market;
- The inhospitable systems in dominant gatekeepers for the distribution of public interest news, with negative impact on publishers and public;
- The revenue question: who gains from whom and how can value be more fairly and sustainably generated and shared;
- Ad tech.

It is therefore appropriate now to turn to two further interrelated considerations raised by Sanef and partners.

Disinformation and Generative AI:

It cannot go unnoticed that the past decade has not only worked out to the structural disadvantage of news providers; it has also gone hand in hand with the proliferation of lies, hate, misogyny and other potentially harmful content. This is not pure coincidence. The same system that works against news, also operates in favour of content harms. The logic of "engagement" as key to winning in the attention economy consistently trumps company attempts at mitigating the negative effects thereof. The combination of the two trends – media decline, harmful content ascent - is a perfect storm for the public. It means destruction of the communications ecosystem - when what is needed is development and deepening diversity in this sphere.

Incredibly, the seriousness of the storm is now further escalating. We are seeing more and more generative AI being used to create and target harmful content. We also see in this business the now familiar spectre of success being built, at least in part, on the backs of news publishers' content. Except this time, this is largely, as has been pointed out, without consent, credit or compensation to the content creators.

In the market of content generation, these new services are competing with a host of traditional content producers. As players in this market, news media themselves are experimenting to see if this technology can help them compete. At the same time, under current configurations, news media are caught in a pincer grip. If they exercise their right to block being scraped by AI, they also – under current tech options – cut themselves off from being listed on search engines.

It would be a loss for everyone if news publishers cut themselves off from both businesses. The result would be low quality content having a greater weight-ranking in the training of generative AI, while users of search and social media would receive even greater imbalances in the mix of content they consume.

Meanwhile, it is noticeable that some of the "usual suspects" implicated above are now also involved in this new – and often interlinked – business. As such, they are benefiting from news in both realms (by it feeding content production and by enriching their services in content availability). But in South Africa currently, this is without any requirement to put something back in.

Some of these generative AI services are outside of the attention economy and digital advertising markets. But much is already intersecting. The production of content using AI, is often aimed at distributing that content (which uses other forms of AI and related algorithms). Thus, even while many issues around generative AI are still in play, the control of content dissemination (which encompasses the markets for attention and advertising) cries out for timeous intervention by the Competition Commission.

What's to be done?

Sanef and partners have made many concrete suggestions in their submissions, including for specific research to be done in order to ensure that outcomes are to be evidence-based.

What is clear, however, is that the only alternative to the status quo's parasitic relationships that existentially threaten the hosts, is to have external interventions. These actions should aim to transform exploitative relations into synergistic ones, especially through requirements for fair competition.

In summary, the Commission should encompass competition issues – and their impacts – within and across markets: (a) the distribution of content and the no-win battle for attention by news producers (social media and search); (b) the monetisation of content (though digital advertising); and finally (c) the production of content (looking at dominance in generative AI services).

While the Commission will not itself be able to deal with the entire gamut of challenges, there is still a lot that it can do to help contribute to much needed solutions. This is not about propping up legacy news entities and their vested interests. It is about creating conditions where digital transformation and opportunity in the media space can yield real results. A very key action, as noted, is requiring much greater platform transparency and data-access – in all the markets under contestation. No effective redress is possible without this.

The ultimate outcome should secure existing media and levels of plurality and diversity, but more importantly it should facilitate innovation, investment and the expansion of the field. This can enhance competition with the news media sector itself, allowing also new entrants to have a chance to play in the markets for attention and advertising. In this way, the Inquiry can help news to thrive and enrich the South African communications ecosystem. The country deserves and depends on nothing less than a healthy, diverse and vibrant news sector.