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**Balancing Enforcement and Monitoring Activities in Digital Markets  
Throughout the Covid-19 Pandemic**

*Presentation*

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# UNCTAD IGE ON COMPETITION LAW AND POLICY

21 JULY 2022

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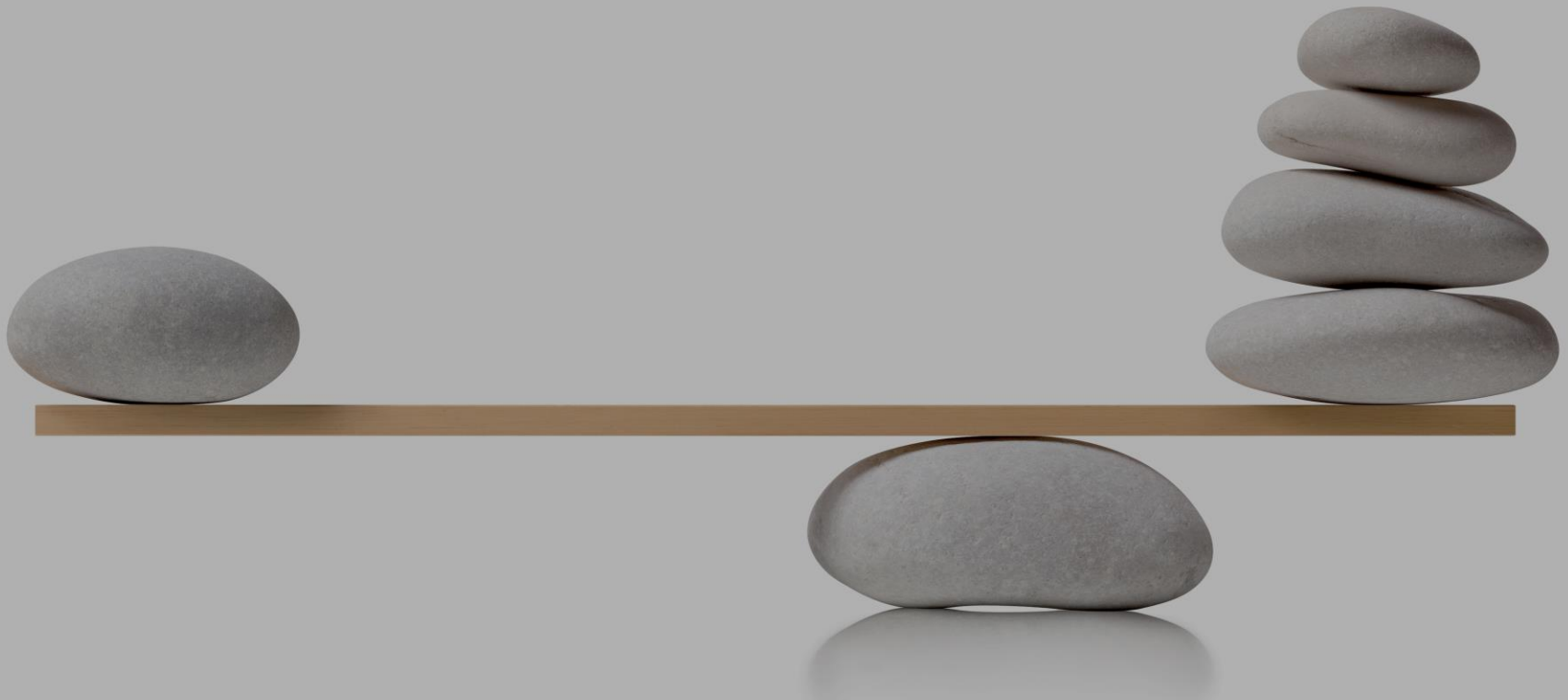
# QUESTIONS



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- How did Competition Authorities balance enforcement and monitoring activities in digital markets, vis-à-vis digital platforms, throughout the COVID19 period?
- How did COVID19 challenge international cooperation among competition authorities and what tools can be applied in the future?



**QUESTION 1:  
BALANCING ENFORCEMENT AND  
MONITORING ACTIVITIES IN DIGITAL  
MARKETS**

# COVID19 AND DIGITAL MARKETS

- The Covid19 period brought about much activity for the South African Competition Commission in the area of digital markets.
- It was during this period that we developed and finalised our position paper on digital markets which set out our policy on digital markets and mapped our likely approach to competition concerns in this market.
- It was also in this period that we initiated a market inquiry into online intermediation platforms. We recently concluded this inquiry and below I set out some of the findings from the inquiry's preliminary report.



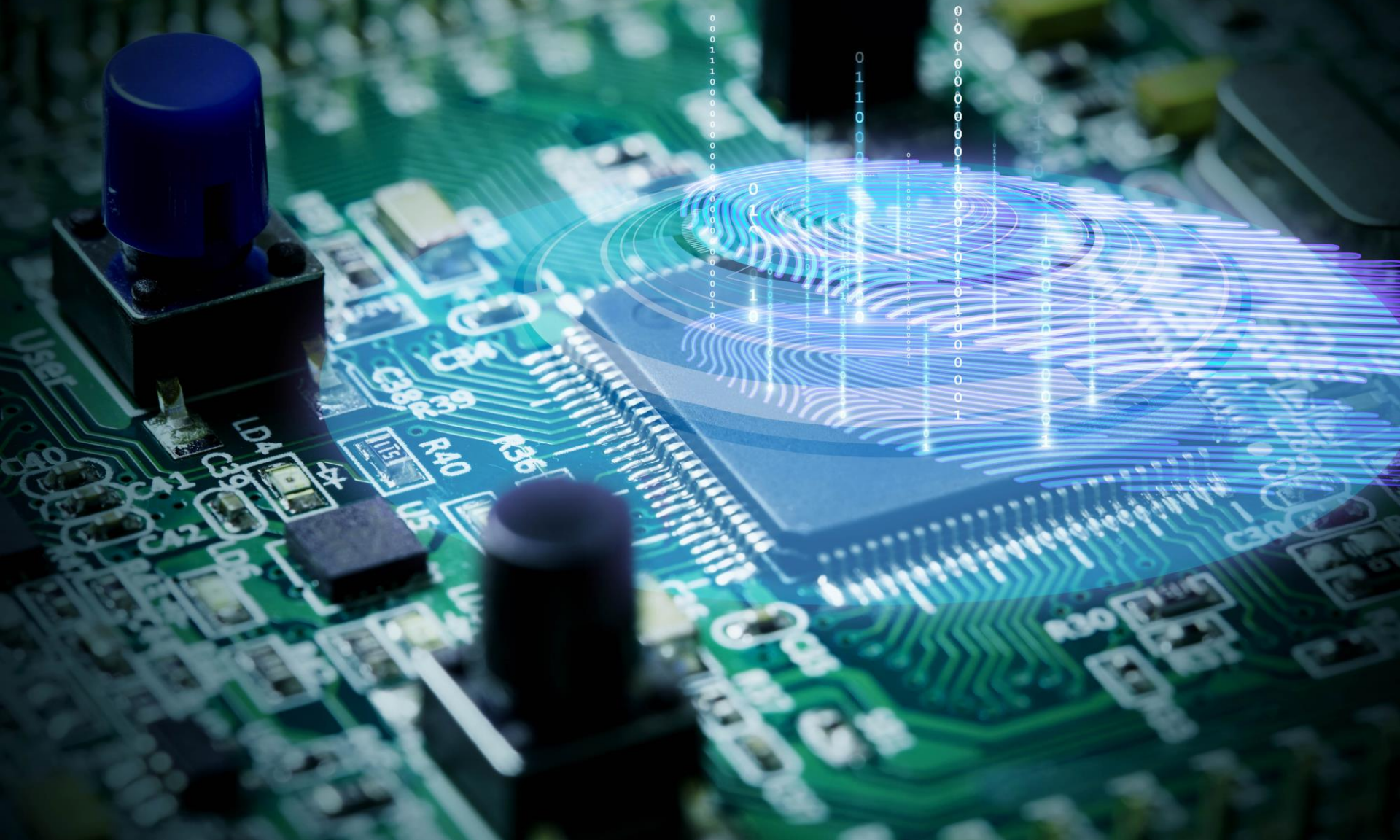
# COVID19 AND DIGITAL MARKETS

- One of the reasons for initiating the market inquiry was the rapid movement of commercial activity from physical to online platforms that Covid19 brought about.
- Our position paper – Competition in the Digital Economy – anticipated this shift and set out a range of actions that the Competition Commission would need to embark on in order to meet the challenges posed by digital markets.
- These actions covered mergers, cartels, advocacy, and other enforcement measures aimed at capacitating the Competition Commission to meet the demands of the digital market on competition.



# COVID19 AND DIGITAL MARKETS

- One of the actions we committed to in the paper was the initiation of a market inquiry into digital markets.
- We recognised that in order to position South Africa's digital markets for inclusivity and growth, we would need to know and understand the prevailing market dynamics. The purpose of the Inquiry was to identify market features that had adverse effects on competition amongst platforms, between businesses using these platforms.
- Below I highlight some outcomes of the inquiry, which I have taken from our preliminary report. However please note that our stakeholders have been given an opportunity to comment on the findings we have made.



# **PRELIMINARY FINDINGS OF THE DIGITAL MARKETS INQUIRY**



# PRELIMINARY FINDINGS

- Focus of the Inquiry was [online intermediary platforms](#)
- The Inquiry identified leading platforms in each category, which are those that get the most consumer traffic, upon which the business users are relatively dependent, and which are, or are likely to be, entrenched.
- These leading platforms are Apple App Store, Google Play Store, Takealot, Booking.com, Airbnb, Mr Delivery, Uber Eats, Property24, Private Property, AutoTrader, and [Cars.co.za](#) along with Google Search, including its specialist search units such as Google Shopping and Google Travel.
- The Inquiry's findings and recommendations apply to these platforms.

# PRELIMINARY FINDINGS

- Among other findings, the Inquiry provisionally found that **Google Search** plays an important role in directing consumers to the different platforms, and in this way shapes platform competition.
- The prevalence of paid search at the top of the search results page, without adequate identifiers as advertising, raises platform customer acquisition costs and favours large, often global, platforms.
- As such the inquiry has recommended that such advertising be more prominently marked as paid-for advertising so as not to mislead consumers.
- Moreover, preferential placement of their own specialist search units also distorts competition in Google's favour.
- The Inquiry also recommended Google should allow competitors to compete for prominence in a search by having their own specialist units and with no guaranteed positions for Google's specialist units.



# PRELIMINARY FINDINGS

In terms of **competition amongst platforms**, the Inquiry made the following provisional findings and recommendations, amongst others:

- In software application stores, there is no effective competition for the fees charged to app developers with in-app payments, resulting in high fees and app prices. The Inquiry's provisional recommendation was that apps should be able to steer consumers to external web-based payment options, alternatively a maximum cap should be placed on app store commission fees.
- Price parity clauses, evident in travel & accommodation, eCommerce and food delivery, hinder competition and create dependency, and the Inquiry therefore recommended their removal. Wide price parity clauses prevent businesses offering lower prices on other platforms and narrow parity prevents businesses from offering lower prices on their own direct online channel.

# PRELIMINARY FINDINGS

- In **property classifieds** and **food delivery**, new entrants and local delivery platforms face challenges signing up large national businesses, undermining their ability to compete. The Inquiry provisionally found, in property classifieds, this is a result of the investment and support of large estate agencies in Private Property and recommends the divesture of their stake. Facilitating the interoperability of listings on the leading platforms is a further recommendation to support entrants. In food delivery, national restaurant chains often prevent franchisees listing on local delivery platforms and the Inquiry recommends this practice ceases along with any incentives provided by national delivery platforms to steer volumes their way.
- In **food delivery**, the Inquiry found that the business model of substantial eater promotions alongside high restaurant commission fees can result in large surcharges on menu items which is not transparent to consumers and distorts competition with local delivery options. The Inquiry provisionally recommended greater transparency on either the menu surcharge or the share taken by the delivery platforms.



# PRELIMINARY FINDINGS

In terms of **competition amongst businesses** on the platforms and **consumer choice**, the Inquiry made the following provisional findings and recommendations, amongst others:

- We found that across all platforms there is a tendency to sell top ranking search positions to businesses which are not the most relevant to the consumer and constitute a form of advertising that is not transparent. We believe this impacts on consumer choice and competition, especially for small and medium sized businesses (SME's) that cannot spend as much as large businesses. The Inquiry recommended that advertising should be clearly displayed as such and the top results should be reserved for organic (or natural) search results.
- The Inquiry provisionally found that the extreme levels of fee discrimination against SMEs in online classifieds, food delivery and to a lesser extent travel & accommodation, hinders their participation and has no coherent justification. The Inquiry provisionally recommended that a maximum cap be placed on the fee differentials between large and small businesses, potentially at 10-15%. In food delivery we recommended that more equitable treatment should occur, in terms of marketing commitments made in exchange for lower commission fees.

# PRELIMINARY FINDINGS

- In **eCommerce**, the Inquiry found that conflicts of interest arise in operating a marketplace for third party sellers and selling your own retail products which can result in certain self-preferencing conduct such as product gating, retail buyers given access to seller data to target successful products, preferential display ads and promotions. The lack of a speedy resolution process also adds to the costs of sellers. The Inquiry provisionally recommended an internal structural separation of retail from the marketplace to implement equitable and competitively neutral processes.
- In **software application stores**, the Inquiry provisionally found that South African apps face challenges in being discovered in competition to larger global app development companies. The Inquiry provisionally recommended that app stores provide country-specific curation of app recommendations and provide free promotional credits to South African app developers to help get visibility.

# PRELIMINARY FINDINGS

- On the **participation of historically disadvantaged persons (or HDP's)** the Inquiry has found that the digital economy is far less transformed than many traditional industries, and there are considerably more challenges resulting from historic disadvantage, especially in funding and support.
- The Inquiry recommended specific commitments on HDP mandates from private investors and for government to channel funds for HDP digital entrepreneurs through mandates to the venture capital sector along with requirements for transformation of the sector.
- The inquiry also made a provisional recommendation that all leading platforms provide HDP businesses personalised onboarding, a waiver on onboarding costs and fees, free promotional credits, fees that are no higher than the best placed, and the opportunity for consumers to discover HDP businesses on the platform.

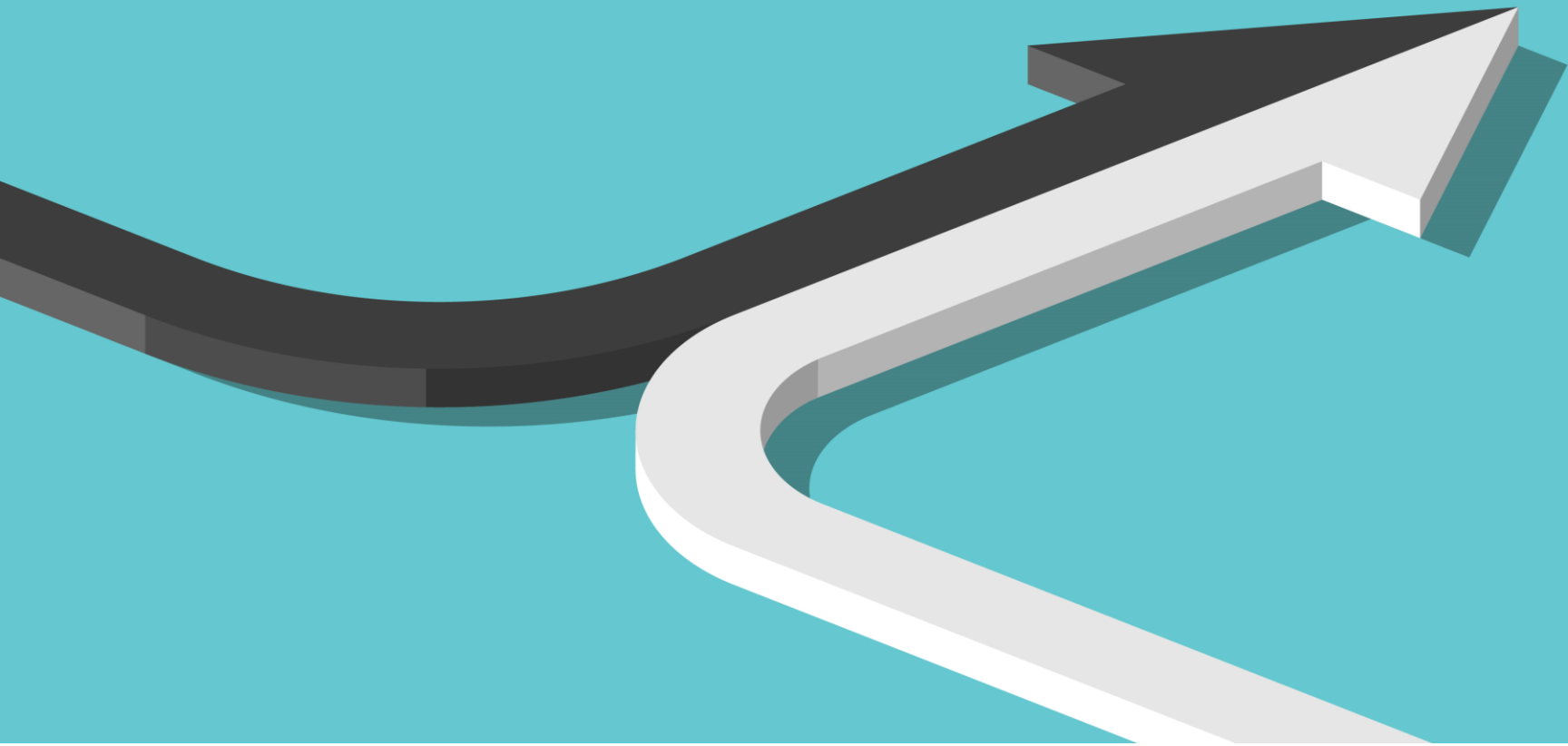


# PRELIMINARY FINDINGS

- Finally, the Inquiry has provisionally recommended that either **guidelines or regulations** be considered to address new leading platforms in established categories or new categories in future.
- These are all provisional findings and our stakeholders have been given six weeks to make their contributions to the findings. We believe all these recommendations will contribute to creating an inclusive digital economy in South Africa.







**QUESTION 2:  
COVID19 CHALLENGE TO INTERNATIONAL  
COOPERATION AMONG COMPETITION  
AUTHORITIES**

# CHALLENGE TO INTERNATIONAL COOPERATION?

- The Competition Commission experienced remarkable support and cooperation from other competition agencies during the Covid19 pandemic.
- While the agency was taken by surprise with the national lockdown at first, our technology ramped up in the early months of the lockdown – which in South Africa commenced in March 2020 – and soon we were able to collaborate remotely within the organisation and with our counterparts across the world.
- Our experience over the Covid19 period was one of greater and more frequent communication with international counterparts in which we shared lessons and experiences as they were unfolding.
- Technology made renowned competition experts available on short notice and this gave us the opportunity to learn from other agencies as well as share our own experience throughout.



# CHALLENGE TO INTERNATIONAL COOPERATION?

- I think the lesson for future cooperation here is that technology can make it much easier for us to cooperate with international counterparts in future and we no longer need to be hindered by time and space requirements when reaching out.
- Moreover, the global nature of digital economic activity means that competition agencies should be aware of developments in each other's markets so that competition agencies can regulate digital markets intentionally and with better coordination than in the past.
- If there is any one lesson from the outcome of our digital inquiry it is that digital markets tend to function on a global level, which makes isolated local remedies ineffective.
- For this reason, coordination amongst competition agencies is all important and should be pursued more urgently than ever before.





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# Thank You