

**Webinar on Competition law and policy approaches towards digital platforms and ecosystems in cooperation with the BRICS Competition Law and Policy Centre and the Brazilian Administrative Council for Economic Defense (CADE)**

3 June 2024

**Competition Law and Policy Approaches Towards Digital Platforms and Ecosystems**

*Presented by:*

Mr. Hariprasad Govinda  
Principal Economist  
Competition Commission of South Africa

*This material has been reproduced in the language and form as it was provided. The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.*

# Competition Law and Policy Approaches Towards Digital Platforms and Ecosystems

Hariprasad Govinda  
Principal Economist

Views expressed are personal and do not represent CCSA

*competition regulation for a growing and inclusive economy*



**competition commission**  
south africa

# Compendium of Digital Markets in South Africa

## Cases & Inquiries

- **MIH eCommerce / WeBuyCars Merger – Prohibition**
- **Google / Fitbit Merger – Conditional Approval**
- **Online Intermediation Platform Market Inquiry (OIPMI)**
- Media and Digital Platform Market Inquiry (MDPMI) – Ongoing
- Whatsapp/GovChat (Abuse) – At Tribunal for hearing
- Uber-Bolt/E-hailing Partners Council (Abuse) – Under Investigation
- Shoprite/ODD transaction Merger - Unconditional Approval
- Anchorage / Activision Blizzard Merger - Unconditional Approval
- Travelstart Online Travel Operations / Club Travel SA & Flightsite Merger – Unconditional Approval
- Babybug and Medmart (Cartel) – Consent agreement on cards

**Our focus will be on the highlighted ones..**

# MIH eCommerce / WeBuyCars Merger

## TOH

- Naspers Group had acquired a stake in Frontier Car Group Inc (FCG) (Berlin-based startup) and through this acquisition, the Naspers Group intended to enter the South African market for wholesale and online buying of cars from the public (utilising instant cash model) and selling to dealers in direct competition with WeBuyCars.
- FCG is a credible player in other markets where it operates. FCG's plans to enter the market were thwarted directly as a result of the merger (**Removal of potential competitor**).
- With respect to **exclusionary portfolio effects**, the Commission found that there were numerous ways in which Naspers can harness the complementarities between WeBuyCars and AutoTrader and/or OLX to the exclusion of effective competition against WeBuyCars rivals as well as other online platforms.
- ✓ **WeBuyCars** was considered as a **large and dominant wholesale and online buyer** of used cars from the public.
- ✓ On the other hand, **AutoTrader** was considered the **largest online classified platform** and generates significant customer traffic such that it is a key and important online platform for traditional used car dealers seeking to sell their car stock.
- ✓ Thus, it was the view of the Commission that the merged entity will have the **ability to leverage** the significant AutoTrader position as well as the OLX platform to exclude rivals of WeBuyCars.
- ✓ This conduct was also likely to result in the enhancement of Autotrader given that the merging parties can utilise the consumer traffic associated with the large WeBuyCars to further **enhance AutoTraders' dominance position** in the online classified vehicles advertising market.
- ✓ WeBuyCars can dominate the market for the retailing of second-hand cars by dominating the second-hand cars stock in the market through OLX model and Autotrader model.

# Google/Fitbit Merger

## TOH

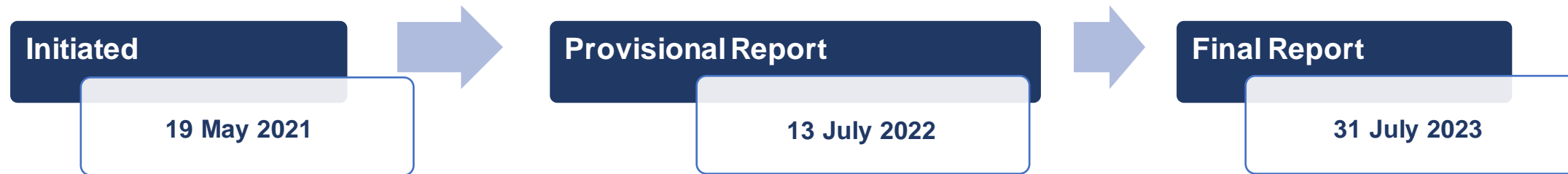
- Google will be **able to exclude Fitbit's competitors** in the market for wrist worn wearable devices.
- Google can **degrade the functionalities** of these competing apps through APIs which facilitate communication between a wearable device and a smartphone.
- Google can **exclude the competitors** of Fitbit or **frustrate the functionalities** of the companion apps of Fitbit competitors from operating optimally on Android OS.
- The acquisition of **Fitbit's database may provide an important advantage** in online advertising markets to Google to entrench its dominance.
- The combination and integration of Google and Fitbit's databases on individuals' data collected daily will create the **ability and incentive to foreclose downstream competitors' access to data** as an input in the markets for online advertising and digital health in South Africa.
- Google can collect health data required to enter the digital health market **making it difficult for potential entrants to enter the digital health market** and compete with Google.
- Google can also use other means including its advertising abilities to grow Fitbit and make it a significant player in the collection of health data collected through wrist worn wearable devices. This would also allow Google to **leverage its dominance into the digital health data market** and be able **to price discriminate and extract significant surplus** from health insurance firms.
- Commission was of the view that this would significantly alter the market structure for the supply of wrist worn wearable devices in SA and **increase barriers to entry for potential entrants** in the market.

# Google/Fitbit Merger

## Remedies

- Google commits to making the Core Interoperability APIs available, **without charge for access**, under the same license terms and conditions that apply to all other Android APIs that Google makes available and on a **non-discriminatory basis**, meaning without differentiating their availability or functionality depending on whether they are accessed by a First-Party Wrist-Worn Wearable Device or Companion App or a Third-Party Wrist-Worn Wearable Device or Companion App.
- Google commits **not to degrade the Core Interoperability APIs** by reducing their functionality to Third-Party Wrist-Worn Wearable Devices relative to First-Party Wrist-Worn Wearable Devices.
- Google further commits: **Not to discriminate against** Wrist-Worn Wearable Device OEMs **by withholding, denying, or delaying Wrist-Worn Wearable Device OEMs' access to functionalities of Android APIs** that Google makes generally available to other Android Smartphone App Developers for use with an Android App.
- Google commits **not to use any Measured Body Data or Health and Fitness Activity Location Data** in or for Google Ads.
- Google **will maintain access to users' health and fitness data** to software applications through the Fitbit Web API, **without charging for access** and **subject to user consent**.

# OIPMI



**Engagements**



~1200 engagements

**Public hearings**



4 weeks

**In camera hearings**



2 weeks

- Information request
- Responses on Provisional Report
- Meetings

- First inquiry under the 2018 amendments where remedial actions are binding
  - Months of negotiations on remedies to reach agreement and limit appeals
- **Google Search**, Google Play Store, **Takealot**, Mr D Food, Property24, Autotrader, Cars.co.za, Bolt Food, and the 10 largest restaurant chains have accepted the findings.

Key findings	Remedial actions
<ul style="list-style-type: none"> <li>▪ Google Search is a critical gateway to consumers for all platforms. Its business model of paid search and free results favour large businesses:                             <ul style="list-style-type: none"> <li>▪ Both paid &amp; organic search favours deep pockets &gt; Paid results drive traffic.</li> <li>▪ Google SERP features high concentration of clicks and duplications.</li> <li>▪ Raises barriers to expansion for small businesses and reduces visibility.</li> </ul> </li> <li>▪ Google gives preferential treatment to its own shopping and travel units on its search results page (self-preferencing)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Aim to enhance the visibility of SA, SME and black-owned platforms through                             <ul style="list-style-type: none"> <li>➤ giving smaller SA platforms R180m advertising credits</li> <li>➤ investing R150m in training, product support and other measures for SME and black-owned platforms</li> <li>➤ introducing a new platform site unit to display smaller SA platforms</li> <li>➤ Adding a SA flag identifier and search filter to enable consumers to easily identify and support SA platforms</li> </ul> </li> <li>▪ To address self-preferencing concerns, Google will implement in SA the changes required under the EU Digital Markets Act</li> <li>▪ Implementing</li> </ul>





Key findings	Remedial actions
<ul style="list-style-type: none"> <li>▪ Takealot runs a Retail division that competes with sellers that rely on its marketplace.</li> <li>▪ Takealot imposes narrow price parity preventing business users from selling cheaper on own direct online sites.</li> <li>▪ Numerous complaints from marketplace sellers on Takealot’s self-preferencing conduct:                             <ul style="list-style-type: none"> <li>• unilateral product gating which stops marketplace sellers from competing for certain products on its marketplace (Exclusivity)</li> <li>• unfair use of marketplace seller data to inform its own Retail division</li> <li>• exercising a degree of market power to pressure suppliers to favour its Retail division</li> <li>• ‘Buy Box’ favours Takealot Retail</li> <li>• seller’s applications for promotional participation are less likely to be successful</li> <li>• dispute resolution mechanism unfairly disadvantages marketplace sellers.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Takealot is to segregate its Retail division from its Marketplace operations.                             <ul style="list-style-type: none"> <li>○ this will prevent its Retail division from accessing and using marketplace seller data.</li> </ul> </li> <li>▪ Removal of narrow price parity clause by Takealot.</li> <li>▪ Takealot cannot enforce product gating but for from suppliers.</li> <li>▪ Takealot to introduce a 60-day dispute resolution process for sellers' complaints on returns and stock loss and end self-imposed product exclusivities.</li> <li>▪ Takealot must reconfigure its Buy Box to allow cheapest and fastest options for consumers.</li> <li>▪ Any large eCommerce player to enter the market will be expected to comply with provisions set out for Takealot (i.e Amazon’s potential entry)</li> </ul>
	<ul style="list-style-type: none"> <li>▪ For black-owned businesses                             <ul style="list-style-type: none"> <li>➢ Prioritised onboarding, 3 months fee waiver, R6000 ad credits, promotional rebates and targeted campaigns for black-owned businesses</li> <li>➢ Initiative to mentor, develop and promote black female and/or rural businesses</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>▪ Implementing</li> </ul>

Thank you



**competition commission**  
south africa