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Attention: Alistair Mokoena

By Hand and by email

By email: allymokoena@google.com

7 February 2024

Dear Mr. Mokoena

CAMPAIGN FOR FREE EXPRESSION NPC: REQUEST FOR INFORMATION

Introduction

1. Campaign for Free Expression NPC (“**CFE**”) is a registered Public Benefit Organisation, an independent non-profit body dedicated to defending and expanding the right to free expression for all in Southern Africa. Chief among its goals is the promotion of a free, fair, ethical and critical media culture in South Africa. This goal is rooted in a commitment to the promotion of human rights and the constitutional values of openness and accountability. In furtherance of these aims, CFE supports various initiatives and undertakes strategic litigation to promote access to information, specifically by South African news industry, better enabling the sector to fulfil its constitutionally ordained roll as a galvaniser of democracy.
2. CFE is aware of efforts by various South African media stakeholders to ensure that digital platforms do not cause or exacerbate inequitable market conditions for South African news publishers, both through South African Competition Commission’s Media and Digital

Directors

Carol Steinberg, Adriaan Basson, Prof Sizwe Mabizela, Dr Ismail Mohamed, Anton Harber (Executive Director)

Platforms Market Inquiry (“**Inquiry**”) initiated by the Competition Commission in terms of 43B(1)(a) of the Competition Act, 89 of 1998.

3. CFE understands the issues raised by these media stakeholders to be premised on establishing the extent of the value which digital platforms derive from their content, the degree to which digital platforms hamper access to and distribution of their content, and the appropriate means of correcting the market distortions created by a problematic power dynamic and information asymmetry that has been caused by an apparent market failure. If Google provides the Inquiry with the information required by South African media at large, such information will not be accessible by market participants due to the confidentiality regime imposed by the Competition Act, rendering such disclosure of limited value.
4. CFE and the South African news industry at large have the right to freedom of the press under section 16 of the Constitution of the Republic of South Africa. Currently, this right is under threat due to, in our view, the distorted features of digital markets in which Google plays a dominant role, which have caused a market failure and has resulted in inherent information asymmetry between market participants. These market distortions form the crux of the Inquiry's investigation, and it is CFE's right and duty to gather all the information it can to better inform both the Inquiry and South African media stakeholders generally, with a view to ensuring equitable access to a competitive and free press for to the South African public.
5. In order for South African news entities to continue fulfilling their constitutional role and for South Africans to enjoy an open and free media it is critically important that these market distortions do not persist; that news publishers are appropriately compensated for the benefits accrued by Google from the use of news content; and that news publishers are properly positioned to compete effectively. This exercise is crucial to ensure that South Africa's democratic hygiene, which hinges on an empowered media sector and which CFE is duty-bound to protect. This exercise cannot, however, be completed if the South African news industry is not provided with the information needed to appropriately address the issues described above.
6. In view of the above, CFE requires that Google must provide the information requested in annexure "**A**" to this letter, which is needed by the South African news industry in order to ensure that the right to freedom of expression is effectively realised by all South Africans.
7. The rights of CFE, and of all purveyors of South African news are prejudiced in that these entities have not been possessed of the information necessary to give effect to their rights under the Constitution.

8. Section 32 of the South African Constitution and the PAIA entrench CFE's right of access to this information.
9. If Google fails to provide the information requested below, CFE will proceed to seek the information by means of exercising the rights referred to in this letter.
10. On the above basis we require Google to provide the information set forth in the list annexed marked "A".
11. Please provide the information requested in Annexure A by close of business on 1 March 2024.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anton Harber', with a stylized flourish at the end.

Anton Harber
Executive Director
Campaign for Freedom of Expression

Annexure A**Information requested by CFE**

1. What is Google's gross annual revenue derived from all of Google's product offerings available to the South African market in the preceding financial year (i.e financial year 2023)?
2. How does Google determine its gross annual revenue derived from all of Google's product offerings available to the South African?
3. Does Google have any mechanism for attributing indirect revenues, which could include KPIs or other indirect revenue gains, for the use of information, such as news content?
4. What percentage of Google's total annual global revenue is attributable to South African activities on its platforms in the preceding financial year?
5. How does Google determine the percentage of global revenue that is attributable to South African activities on its platforms?
6. What is Google's gross annual profit derived from the South African market in the preceding financial year?
7. How does Google determine gross profit?
8. Please provide all sources of Google's revenue that could be directly or indirectly attributable to South African publishers either through direct or indirect advertising (or generated through any information collected or any use of any algorithm affected by any search or any individual).
9. How much did Google pay the South African Revenue Service in the preceding financial year (i.e financial year 2023)?
10. What is Google's market share in online search in terms of advertising revenue and advertising audience in South Africa?
11. How does Google determine its' market share in online search in terms of advertising revenue and audience in South Africa?
12. What is Google's revenue split between:
 - 12.1 advertising;

- 12.2 app store commissions;
 - 12.3 subscriptions; and
 - 12.4 profit before and after tax?
13. What is the nature of inter-group charges and amounts involved, particularly between Alphabet Inc, Google Ireland Limited and Google LLC (or any of its worldwide subsidiaries) and Google South Africa Proprietary Limited?
 14. How much has Google donated to South African political parties per annum in the last ten years?
 15. How much has Google's provided to South African government entities in the form of sponsorships (in cash and kind) in the last ten years?
 16. It has been alleged by news publishers globally that Google's Bard AI was trained on a dataset that included news, magazine and digital publications.
 - 16.1 Was any of South African's journalistic output used in the training of Bard AI?
 - 16.2 Has Google ever used any data from South African news publishers or its users for the purposes of constructing any algorithm or including a search algorithm, Bard AI, rubric, global rate setting algorithm or any other algorithm employed in any business activity of Google, Alphabet or Jigsaw?
 - 16.3 How was the value of the inclusion of this data in any way assessed or included in the profits or revenues attributed to South African news publishers?
 - 16.4 How does Google determine what data is used to train Bard AI?
 17. In Alphabet's 2022 annual report ("**2022 Annual Report**") it is stated at page 12 that: *"In the U.S., we launched a new feature to help readers discover local and regional news from different states so they could better understand election coverage of the races they most care about."*
 - 17.1 What steps does Google take to ensure the content related to elections is verified and accurate?
 18. In Google's submission to the Inquiry dated 15 November 2023 ("**Google's Submission**") a number of claims are made by Google which CFE requires clarity on:

- 18.1 At paragraph one of Google's Submission it is stated that "[w]hen the user is searching for news, our algorithms try to connect them with publishers of relevant, original, trustworthy and high quality journalism. In this way we drive traffic to publisher websites, helping to grow readership, and connect our users with relevant and useful information available on the web." (own emphasis added). Please provide the following information:
- 18.1.1 How is journalistic content affected by Google's algorithms, in terms of search results on the Google Search Engine Results Page?
- 18.1.2 Are Google's algorithms capable of identifying what content is news content?
- 18.1.3 How does Google's algorithms determine what content is news content?
- 18.1.4 How many referral clicks has Google directed toward South African news sites in the past 12 months?
- 18.1.5 What are "free referral clicks" and how does Google determine this?
- 18.1.6 Has Google ever intentionally deprioritised South African news content on the Google Search Engine Results Page, if so why?
- 18.1.7 Has Google ever intentionally deprioritised any news content on the Google Search Engine Results Page, if so why?
- 18.1.8 Does Google have any protocols for deprioritizing news in search results? What are the circumstances under which this is done?
- 18.1.9 How does Google determine whether news content should be deprioritized in search results?
- 18.1.10 What percentage of Google users conduct a search for news and merely review the results on the Google Search Engine Results Page and do not click through to a publisher's website? And how does Google determine this?
- 18.1.11 What mechanisms does Google use to ensure the news it displays is "*relevant, original, trustworthy and high-quality journalism*"?
- 18.1.12 How does Google mitigate against the unlawful use of news content (plagiarism) by unscrupulous news outlets?
- 18.2 At paragraph three of Google's Submission, it is stated that "[w]e do not earn material revenue from news." On this point, we ask that Google informs us:

- 18.2.1 of how much direct revenue Google has made from "news" in the preceding decade?
- 18.2.2 How does Google determine direct revenue?
- 18.2.3 How does Google determine what is "material revenue"?
- 18.2.4 How does Google define "news"?
- 18.2.5 How does Google define "news queries"?
- 18.3 At paragraph four of Google's Submission, it is stated that "...Google Search only makes advertising revenue when users click on ads.", further to this at paragraph 6 Google claims that "[s]earch queries with a news intent account for a very small portion of overall searches on Google Search, and are typically not commercialised." Lastly, at paragraph seven, Google states that "Google Search does not earn or seek to earn meaningful advertising revenue from displaying news results on the Google Search Engine Results Page." This seems to be in stark contrast with the statement made in Google Inc's 2010 Annual Report: "[Google] believe[s] the factors that influence the success of [it's] advertising programs include the following: The relevance, objectivity, and quality of our search results and the relevance and quality of ads displayed with each search results page number of searches initiated at our websites and our Google Network members' websites and the underlying purpose of these searches (for instance, whether they are for academic research, to find a news article, or to find a product or service)". (emphasis added).
- 18.3.1 Does Google derive any benefit from South African journalistic output being available within Google's ecosystem / on Google surfaces?
- 18.3.2 How does Google define "news searches"?
- 18.3.3 What percent of Google search results can be classified as news searches and how does Google determine this?
- 18.3.4 How does Google determine whether news content is trustworthy and does Google use data from South African news publishers to test if other sources are trustworthy in any way?
- 18.3.5 To the extent that Google labels content as trustworthy is this done using any of South African news publishers' data?

- 18.3.6 Would it be reasonable to conclude that the generally high level of trust that people have in news has a positive effect on Google's brand equity as a platform and thus creates an advantage for Google?
- 18.3.7 What percentage of searches made on Google in South Africa could be classified as "information searches"?¹
- 18.3.8 What percentage of South African Google search results have included journalistic content as part of the results on a Google Search Engine Results Page?
- 18.3.9 How does Google determine what news item or what item people are looking for at a search?
- 18.3.10 It could be argued that Google is able to achieve power and scale through network effects by connecting producers and consumers. Further, that Google benefits from network effects by attracting more users and advertisers to its platform, which in turn increases the supply and demand and sets a positive cycle in motion. To this end, the more users that use Google, the more data it can collect, and analyse, to improve its search results and advertising campaigns. This in turn leads to a better experience for users and a higher ROI for advertisers, which sequentially attracts more users and advertisers and strengthens the cycle. Does Google disagree with any of these statements?
- 18.3.11 How many keywords have been sold in the proceeding financial year in South Africa?
- 18.3.12 How much revenue did keywords contribute to the gross revenue generated in South Africa in the proceeding financial year?

¹ An "information search" describes a search which is used to find information about a certain topic and would exclude commercial searches and navigation searches.