

Annexure 3

Pre-Note:

The Competition Commission (and Act) is mandated to support:

- All South Africans in an equal opportunity and fair national economy.
- Improve the capacity for an environment where South Africans can compete effectively in international markets.
- Deal with trade practices that undermine a competitive economy.

The current business model of HelloPeter.com frustrates all three of the above objectives. In addition, their model operates within the realm of an 'exclusionary act.' HelloPeter.com abuses its market power and dominance on the web. If allowed to continue, HelloPeter.com will have a negative impact, especially for SMEs and entrepreneurs in South Africa, who in 2024 are attempting to use the internet and other technologies to compete with larger firms or bring new services and solutions to the market.

HelloPeter.com will have negative ramifications on objectives detailed in the Act, specifically:

- Promoting employment and advancing the social and economic welfare of South Africans.
- Ensuring small and medium-sized enterprises have an equitable opportunity to participate in the economy.

Mandate:

The Competition Commission is mandated to review and make a determination regarding HelloPeter.com, as the Act can be applied to any business registered within the jurisdiction of South Africa.

Direct extracts of concern.

And notes.

COMPETITION ACT

[Updated to 1 June 2023]

Note 1.

- (a) it has the effect of substantially preventing or lessening competition in a market, unless a party to the *agreement*, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or

HelloPeter.com is a technologically enabled business that knowingly facilitates a business model that profits from incorrect, fake, or harmful content. It has no financial incentive to manage its practices in a way that reduces harm. There are simple technical and operational changes that can be made to HelloPeter.com to ensure it becomes compliant with regulations and laws, as well as presents itself as an ethical and impartial service provider.

Note 2.

7. Dominant firms

A *firm* is dominant in a market if—

- (a) it has at least 45% of that market;

HelloPeter.com is the dominant web review business in South Africa, and its market share could be argued to be over 75%. HelloPeter.com advertises itself as the primary South African review website. Today, HelloPeter.com serves as the exclusive judge and executioner of all content on its platform, with the discretion to feature content as they see fit. Negative, false, or harmful content necessitates a business or person to respond. The HelloPeter.com 'review team' does not operate within the guidelines of regulation or law, and only adhere to their 'homemade' policies.

Note 3.

8. Abuse of dominance prohibited

(1) It is prohibited for a dominant *firm* to—

- (a) charge an excessive price to the detriment of consumers or customers;

HelloPeter.com has no local competitors. HelloPeter.com monopolises the web for search phrases by design and can set whatever fee they wish for anyone who wants to respond to negative, false, or harmful posts on their platform. Their content by design dominates search engine results, further extending the damage to a person or business. Simple changes to the website programming for meta tags, page descriptions, and page titles are just three examples of technical changes that can be made to reduce harm.

Note 4.

- (d) engage in any of the following *exclusionary acts*, unless the *firm* concerned can show technological, efficiency or other pro-competitive gains which outweigh the anti-competitive effect of its act—
 - (i) requiring or inducing a supplier or customer to not deal with a competitor;

Any fake, incorrect, or harmful content published and permitted to remain on HelloPeter.com can result in irrevocable damage to an SME or entrepreneur who cannot afford to pay fees to respond or pay for a counter positive online reputation management service to mitigate the damages. An example of abuse occurs when competitors falsely post negative reviews.

A simple change HelloPeter.com could implement is requiring any person who posts a review to be legally bound to the content they post through terms and conditions, ensuring that any fake, harmful, or misleading content posted would automatically be subject to the law and, when applicable, law enforcement. HelloPeter.com does not insist that people who post reviews abide by regulations or law. In fact, it does very little to ensure people and businesses are protected and enables a system that, by design, allows for anonymous or fake profiles to be used.

Knowingly hosting (on their website and domain) any fake, false, or harmful content is, in terms of certain laws, illegal and a criminal offence. The reason they have made little effort is because no challenge to their business practice has ever been made.

Furthermore, their business does not make provision for PoPIA, the Cybercrimes Act, or publishing and broadcasting regulations. There are simple changes that can be made to their website and systems to ensure compliance.

Note 5.

- (2) If there is a *prima facie* case of abuse of dominance because the dominant *firm* charged an excessive price, the dominant *firm* must show that the price was reasonable.

This point is relevant to HelloPeter.com, and they would not be able to satisfy the request for reasonable justification for their fees. Charging to respond to fake, false, or harmful content is extortion. Designing and promoting a system that allows content of this nature makes them fully liable.

HelloPeter.com has the option to generate income through other avenues such as, but not limited to, paid banners on their site.

Note 6.

- (d) the length of time the prices have been charged at that level;

HelloPeter.com once operated under a free-to-post and free-to-respond business model. This changed over a recent period of time. Today, they only charge businesses to respond, while there is no fee for people who wish to post. This creates an imbalance and a highly unequal and prejudicial practice towards businesses.

HelloPeter.com trades off negative content almost exclusively to generate income. Furthermore, to add salt to the wound, they also attempt to sell add-ons and additional services to businesses to improve online reputation management, despite their own website creating the harm.

Note 7.

- (1) The Competition Tribunal may—

- (a) adjudicate on any conduct prohibited in terms of Chapter 2, to determine whether prohibited conduct has occurred, and, if so, to impose any remedy provided for in *this Act*;
- (b) adjudicate on any other matter that may, in terms of *this Act*, be considered by it, and make any order provided for in *this Act*;

With:

- (d) make any ruling or order necessary or incidental to the performance of its functions in terms of *this Act*.

I request that the Competition Commission should put this issue before a Tribunal.

Note 8.

- (2) In making its decision in terms of subsection (1)(a), the Competition Commission must have regard to the impact of the adverse effect on competition on *small and medium businesses*, or *firms* controlled or owned by historically disadvantaged persons.

This term is relevant for reasons already explained within this document.

Note 9.

58. Orders of Competition Tribunal

- (1) In addition to its other powers in terms of *this Act*, the Competition Tribunal may—
 - (a) make an appropriate order in relation to a *prohibited practice* or an appeal referred to in section 43F, including—
 - (i) interdicting any *prohibited practice*;
 - (ii) ordering a party to supply or distribute goods or services to another party on terms reasonably required to end a *prohibited practice*;

With

- (v) declaring conduct of a *firm* to be a *prohibited practice* in terms of *this Act*, for purposes of section 65;

I kindly request that the Competition Commission makes a determination related to the above points in context of the concerns I have shared about HelloPeter.com