



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR189Mar22/DSC184Mar25

In the application to compel between:

<b>META PLATFORMS INC.</b>	First Applicant
<b>WHATSAPP INC.</b>	Second Applicant
<b>FACEBOOK SOUTH AFRICA (PTY) LTD</b>	Third Applicant

and

<b>GOVCHAT (PTY) LTD</b>	First Respondent
<b>HASHTAG LETSTALK (PTY) LTD</b>	Second Respondent

*In re:* the matter between:

<b>COMPETITION COMMISSION</b>	Applicant
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and

<b>META PLATFORMS INC.</b>	First Respondent
<b>WHATSAPP INC.</b>	Second Respondent
<b>FACEBOOK SOUTH AFRICA (PTY) LTD</b>	Third Respondent

and

<b>GOVCHAT (PTY) LDT</b>	First Intervenor
<b>HASHTAG LETSTALK (PTY) LTD</b>	Second Intervenor

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Panel	Geoff Budlender (Presiding Member) Imraan Valodia (Tribunal Member) Thando Vilakazi (Tribunal Member)
Heard on	02 December 2025

Date of last submission	15 December 2025
Order issued on	18 December 2025
Reasons issued on	20 February 2026

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## REASONS FOR DECISION

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### Introduction

1. This interlocutory application relates to the complaint referral proceedings brought before the Competition Tribunal (“Tribunal”) by the Competition Commission (“Commission”) under case number CR189Mar22 (the “Referral”).
2. On 02 December 2025, we heard an application by Meta Platforms Inc., WhatsApp Inc. and Facebook South Africa (Pty) Ltd, the first, second and third respondents (“Respondents”) against GovChat (Pty) Ltd (“GovChat”) and Hashtag Letstalk (Pty) Ltd, the first and second intervenors (“Intervenors”) for an order compelling the Intervenors to make further and better discovery in the Referral proceedings.
3. The Intervenors opposed this application on the basis that the relevant documents are not in their possession or control and/or not relevant. They further contended that all relevant documents in the possession of the Intervenors, which are responsive to the Respondents’ request for further and better discovery have been produced.
4. On 18 December 2025, we issued an order dismissing the application to compel discovery with no order as to costs.
5. Our reasons are set out below.

### Background

6. On 23 October 2024, the parties exchanged their initial requests for discovery (“Initial Requests”). On 18 November 2024, the Intervenors made discovery consisting of approximately 182 documents in response to the initial request from the Respondents.<sup>1</sup> The Intervenors submitted that they had, within the time available, made a diligent, reasonable and purposeful search for the documents which were discoverable in the matter.
7. In response, the Respondents submitted that the discovery provided was wholly deficient on the basis that the limited documents produced were only those the Intervenors had been able to identify within the time available.<sup>2</sup> Further, they submitted that it was implausible that the Intervenors were not in possession of further documents responsive to the Respondents’ request, in addition to the documents that had already been discovered by the Intervenors.<sup>3</sup>
8. The Respondents submitted that it is implausible that the Intervenors are not in possession of more documents responsive to the requests, having regard to the nature of the matter, the time period relevant to the complaint, the Intervenors’ claims of harm, the intended use of the government messaging services, and the basis upon which the Intervenors became contracted to provide such services.<sup>4</sup>
9. The Respondents contended that a reasonable and diligent search would have yielded more comprehensive documents, including business records, strategy documents and communications, which were not produced. They submitted that the absence of such documents signals a wholly inadequate and incomplete search for documents, and that the Intervenors are attempting to avoid their discovery obligations.<sup>5</sup>
10. On 28 February 2025, the Respondents therefore filed the present application in

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<sup>1</sup> Intervenors’ response to the First and Second discovery request, (Annexure I), consolidated hearing bundle, pages 118-150.

<sup>2</sup> Respondents’ founding affidavit, consolidated hearing bundles para 17, pages 10-11.

<sup>3</sup> Respondents’ founding affidavit, consolidated hearing bundles para 19, page 1.

<sup>4</sup> Respondents’ request for further and better discovery directed at the Intervenors, (Annexure A) dated 09 December 2025, consolidated hearing bundle, pages 34-35.

<sup>5</sup> Respondents’ founding affidavit, consolidated hearing bundle, paras 18-20, pages 11-12.

which they sought an order compelling the Intervenors to make further and better discovery.<sup>6</sup>

11. On 18 March 2025, the Intervenors filed their response to the Respondents' request for further and better discovery.<sup>7</sup> The affidavit of Ms Tandi Haslam ("Haslam")<sup>8</sup> and the confirmatory affidavit of Mr Bradley Sacks ("Sacks")<sup>9</sup> responded to the requests by (i) providing documents which were responsive to the requests, or (ii) confirming that other requested documents were not in their possession or control or (iii) declining to discover documents that they contended were not relevant or were legally privileged.<sup>10</sup>
12. On 06 May 2025, the Intervenors filed a supplementary discovery affidavit in which additional documents were discovered and produced.<sup>11</sup>
13. The Intervenors opposed the application on the basis that they had discovered all relevant documents requested which were in their possession or under their control in respect of the Respondents' request for further and better discovery, and that the application is moot.<sup>12</sup>
14. The Respondents filed a replying affidavit submitting that there are persistent deficiencies in the Intervenors' approach to discovery; that it is wholly implausible that so few documents exist; and that the Intervenors and their representatives have been engaged in a persistently obfuscatory, deficient and retentive approach to discovery.
15. On 14 August 2025, the Intervenors filed a further supplementary discovery affidavit (deposed to by Haslam together with a confirmatory affidavit deposed to

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<sup>6</sup> Respondents' founding affidavit, consolidated hearing bundle, pages 1-24.

<sup>7</sup> Intervenors' heads of argument, para 47.

<sup>8</sup> The former Chief Financial Officer of GovChat. Haslam discovery affidavit (Annexure AA1) dated 16 April 2026, consolidated hearing bundle, para 1.

<sup>9</sup> Chief Executive Officer of Capital Appreciation Limited ("Capital Appreciation").

<sup>10</sup> Haslam discovery affidavit (Annexure AA1) consolidated hearing bundle, pages 237-274 and Sacks confirmatory affidavit (Annexure AA2), consolidated hearing bundle, pages 275-277.

<sup>11</sup> Intervenors' supplementary discovery affidavit (Annexure AA4) dated 06 May 2025, consolidated hearing bundle, pages 307-311.

<sup>12</sup> Intervenors' answering affidavit, para 6.

by Sacks).<sup>13</sup>

16. We now turn to consider the legal principles related to this application.

### Legal Principles

17. The discovery process is not specifically provided for in the Competition Act<sup>14</sup> (the “Act”), and the Rules for the Conduct of Proceedings in the Tribunal (“Tribunal’s Rules”) do not explicitly address the process for compelling discovery. The Tribunal’s proceedings are *sui generis*, and the Tribunal has a discretion to order discovery where appropriate and in order to ensure a fair trial. Further, rule 55(1)(b) of the Tribunal’s Rules confers on the Tribunal a discretion to have regard to the High Court rules if “*a question arises as to the practice of procedure to be followed in cases not provided for*” by the Tribunal’s Rules.
18. The Tribunal in *Cape Gate*<sup>15</sup> confirmed that the overarching principle in determining whether documents ought to be discovered is relevance. The Tribunal cited *Goosen*,<sup>16</sup> where the High Court held that a document is relevant if it contains information which may – not which must – either directly or indirectly enable the party requiring the affidavit to advance its own case, or to damage the case of its adversary.
19. Where a party states in the discovery affidavit that any and all documents relevant to the issue have been discovered, the discovery affidavit is regarded as *prima facie* conclusive, save where it can be shown that there are reasonable grounds for believing that the documents are in the possession or control of the party making discovery, or the party has misconceived the principles upon which the affidavit should be made.

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<sup>13</sup> Intervenors’ second supplementary discovery affidavit dated 14 August 2025, consolidated hearing bundles, pages 423-511. Also see Confirmatory affidavit of Bradley Jonathan Sacks dated 14 August 2025, consolidated hearing bundle, pages 512-513.

<sup>14</sup> 89 of 1998, as amended.

<sup>15</sup> *Cape Gate (Pty) Limited v Emfuleni Local Municipality*, (CT Case No. CRP162Jan22/DSC131Oct22) [2 May 2024], para 14.

<sup>16</sup> *Goosen v Muller* (1224/2015) [2017] ZAFSHC 212 (3 November 2017), para 38.

20. The High Court judgment in *Swissborough Diamond Mines v Government of the RSA*<sup>17</sup> (“*Swissborough*”) is instructive in this regard. It sets out the following well-established principles:

20.1. courts are “*reluctant to go behind a discovery affidavit, which is prima facie taken to be conclusive*”;

20.2. the onus is on a party seeking to go behind what is stated on oath in a discovery affidavit to make out a case to do so;

20.3. in determining whether such a case has been made out, the court will have regard to (1) the discovery affidavit; (2) the documents referred to in the discovery affidavit; (3) the pleadings; (4) any admissions made by the party making the discovery affidavit; and/or (5) the nature of the case or documents at issue;

20.4. a discovery affidavit can be challenged on the grounds of *mala fides* in which event the *Plascon-Evans* rule applies; and

20.5. the party seeking to show *mala fides* can in principle seek a referral of disputes of fact to oral evidence.

21. In the judgment in *Liberty Group*,<sup>18</sup> the High Court stated the following general principle:

*“As a general principle, a court cannot and should not without more go behind the discovery affidavit of a party.”*

22. Having regard to these principles, we now assess the Respondents’ application to compel further and better discovery.

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<sup>17</sup> *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa supra* n62 (*Swissborough*).

<sup>18</sup> *Liberty Group v Clark* (43012/2018) [2023] ZAGPJHC (1 August 2023), para 16.

## Assessment

### *Documents not in the control or possession of the Intervenors*

23. As noted above, the Intervenors stated that they have provided all relevant documents under their control and in their possession. The Respondents contend that it is implausible that the Intervenors are not in possession of more documents responsive to the Respondents' request.
24. Haslam explained that GovChat was not a sophisticated corporate entity with "*thousands of documents that would be discoverable*", but instead a small startup technology company which operated with limited employees and resources.
25. Haslam also explained that technology development was outsourced to a development partner and that the Intervenors seldom prepared lengthy board packs and analyses detailing investment vectors. Haslam points to the Intervenors' growth during the COVID-19 pandemic and states that strategic decisions needed to be made quickly and often over telephone calls.<sup>19</sup>
26. The Intervenors were placed under business rescue around December 2023. The Business Rescue Practitioner ("BRP") advised that monthly subscriptions for the email service provider which the Intervenors used, called "GoDaddy", were not settled and as a result the account was cancelled and all data automatically deleted by the service provider. The Intervenors lost all access to the emails which were stored on this system, and no longer have access to a central repository of all emails sent and received by employees.<sup>20</sup>
27. Following the hearing, on 15 December 2025, we requested the Intervenors to confirm whether the emails and documents held by GoDaddy have been permanently deleted and therefore no longer exist, or whether they exist but are

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<sup>19</sup> Haslam discovery affidavit (Annexure AA1) dated 16 April 2026, consolidated hearing bundle, paras 6-7, page 239.

<sup>20</sup> Haslam discovery affidavit (Annexure AA1) dated 16 April 2026, consolidated hearing bundle, para 8, pages 238-239.

not accessible as a fee has not been paid.<sup>21</sup> In response, the Intervenors stated that the email data has been permanently deleted and no longer exists. They stated that the GoDaddy helpline informed them that the email data would have been permanently deleted 30 days after the account was suspended (i.e. early in 2023).<sup>22</sup>

28. Haslam also stated that she is not aware of any employees who have used cloud-based sharing systems for the storage of corporate documents. The BRP only retrieved one laptop from GovChat's premises, and it was subsequently sold during the business rescue process.<sup>23</sup>
29. Haslam explained, in some detail, the measures herself and Sacks employed to search for discoverable documents, including (i) a search of her personal filing system on her personal laptop and cell phone, (ii) a manual search of her consulting business's email account, (iii) the re-downloading of a data file created to receive GovChat emails, and (iv) a search through her WhatsApp conversations, amongst others.<sup>24</sup>
30. Haslam further stated that together with Sacks, they requested numerous employees, including former employees of GovChat, the former joint Chief Executive Officer of Capital Appreciation Limited ("Capital Appreciation")<sup>25</sup>, a non-executive chairman of Capital Appreciation and GovChat, a financial executive at Capital Appreciation and a cyber security consultant to GovChat, amongst others, to produce any relevant documents relating to the Respondents' discovery requests.<sup>26</sup>
31. During the hearing, we enquired the basis upon which, notwithstanding the

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<sup>21</sup> Email correspondence from the Tribunal to the Intervenors dated 15 December 2025.

<sup>22</sup> Email correspondence from the Intervenors dated 15 December 2025.

<sup>23</sup> Haslam discovery affidavit (Annexure AA1) dated 16 April 2026, consolidated hearing bundle, para 9, page 240.

<sup>24</sup> Haslam discovery affidavit (Annexure AA1) dated 16 April 2026, consolidated hearing bundle, paras 11-12.

<sup>25</sup> Capital Appreciation was the principal shareholder of GovChat. See GovChat's founding affidavit in the summons application (Annexure AA3), consolidated hearing bundle, para 2, page 279.

<sup>26</sup> Haslam's supplementary discovery affidavit dated 14 August 2026, consolidated hearing bundle, para 6.3.

statements under oath, we should go behind the discovery affidavits.<sup>27</sup> The Respondents' main contention was that it was implausible that key figures within the business were only in possession of a handful of documents.<sup>28</sup> They further contended that in respect of the additional employees who were engaged, the approach followed in obtaining the requested documents from them was unclear.<sup>29</sup> They contended that the affidavits filed by the Intervenors lacked clarity, detail and transparency with respect to the measures taken by them to conduct a diligent search for the discoverable documents.<sup>30</sup>

32. In their affidavits, the Intervenors stated that certain requested documents are not under their control or in their possession, for reasons such as (i) the startup nature of GovChat's business, (ii) the COVID-19 pandemic and the need to make quick strategic decisions that were not always accompanied by written correspondence, and (iii) the cancellation of GovChat's GoDaddy subscription which resulted in loss of all access to the emails which were stored on this system, amongst others. These explanations appear to us to be plausible. We do not think they can be rejected on the papers.
33. Applying the approach set out in *Swissborough*, we are of the view that the Respondents have not established a basis for going behind the affidavits filed by the Intervenors.
34. While we recognise that the Respondents harbour suspicions and consider it implausible that the Intervenors do not have control or possession of the requested documents, that does not warrant going behind the Intervenors' affidavits and the explanations that they provide.

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<sup>27</sup> Hearing transcript, pages 1-17.

<sup>28</sup> Hearing transcript, pages 18-19.

<sup>29</sup> Hearing transcripts, page 20.

<sup>30</sup> Hearing transcripts, pages 21, 24 and 34.

**Order**

35. In light of the above, we dismiss the application. We make no order as to costs.

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**Prof. Imraan Valodia**

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**20 February 2026****Date**

**Concurring: Prof. Thando Vilakazi and Adv. Geoff Budlender SC**

Tribunal Case Managers:

Andriza Liebenberg, Tarryn  
Sampson and Theresho Galane.

For the First to Third Respondents:

Jerome Wilson SC and Lerato  
Zikalala instructed by Derek Lotter  
and Claire Reidy of Bowmans

For the First and Second Intervenors:

Paul Farlam SC and Luke Kelly  
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