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Africa: The need for a new competition policy approach in digital economies

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ABSTRACT

Digital platforms in Africa have helped to lower costs and expand access to financial services and enabled new customer acquisition channels for small businesses, among other benefits. To keep pace with these innovations, African needs to develop new competition policy approaches which reflect African digital platforms and must not just mirror trends in markets like the European Union or the United States, whose digital connectivity, economic structure, and consumer base are substantially different. We propose four priority areas for policy action to ensure fair competition in Africa's digital platforms: 1. New market definitions and thresholds; 2. Addressing self-preferencing by digital platforms; 3. Joint market inquiries by jurisdictions facing similar competition challenges; 4. New data collection and analysis methods to measure digital platform conduct.

Les plateformes numériques en Afrique ont contribué à réduire les coûts et à élargir l'accès aux services financiers et ont permis de créer de nouveaux canaux d'acquisition de clients pour les petites entreprises, entre autres avantages. Pour suivre le rythme de ces innovations, l'Afrique doit développer de nouvelles approches en matière de politique de la concurrence qui reflètent les plateformes numériques africaines et ne doivent pas se contenter de refléter les tendances de marchés tels que l'Union européenne ou les États-Unis, dont la connectivité numérique, la structure économique et la base de consommateurs sont substantiellement différentes. Nous proposons quatre domaines prioritaires d'action politique pour garantir une concurrence loyale dans les plateformes numériques africaines : 1. de nouvelles définitions de marché et de nouveaux seuils ; 2. la prise en compte de l'auto-référencement par les plateformes numériques ; 3. des enquêtes de marché conjointes par des juridictions confrontées à des problèmes de concurrence similaires ; 4. de nouvelles méthodes de collecte et d'analyse de données pour mesurer le comportement des plateformes numériques.

Africa: The need for a new competition policy approach in digital economies

1. For consumers and small businesses in high-income countries, the ability to buy or sell goods on a digital platform like Amazon, Google, or WhatsApp is certainly beneficial compared to offline commerce, but for consumers and small businesses in Africa, these digital platforms¹ can be transformative. In Africa's leading economies, digital platforms have (i) lowered the cost and expanded access to formal financial services; (ii) enabled new customer acquisition and built more efficient distribution channels for small businesses; and (iii) facilitated integration of farmers into formal value chains, to name just a few examples. No wonder, then, that a 2023 GSMA survey on e-commerce in six African countries found that 90% of businesses reported an increase in sales due to the adoption of e-commerce, and two thirds reported e-commerce reducing the cost of running their business.² Our new report, Digital Platforms and Competition Policy in the African Continental Free Trade Area³ (and companion reading deck⁴), identifies how a new competition policy for the digital era can expand Africa's digital economies in a fair and Africa-centric manner.

2. Africa has the lowest mobile and internet penetration rates in the world,⁵ large informal and semi-formal sectors, high portions of employment in agriculture, and economies that are less driven by consumer spending than higher-income countries. Digital platforms' evolution and the competition policies to support this evolution must therefore be adapted to African markets, and not just mirror trends in markets like the European Union or the United States, whose digital connectivity, economic structure, and consumer base are substantially different. As Stephen Deng warns, the “disconnect between the conditions that drove the

1 Digital platforms are online services or ecosystems that bring together different types of actors to facilitate the exchange of goods, information, or interactions between users of those platforms, often without the direct intermediation of the digital platform.

2 N. Shahid et al., E-Commerce in Africa: Unleashing the opportunity for MSMEs. GSMA, October 2023, https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2023/10/E-CommerceInAfrica_R_WebSingles.pdf.

3 W. Kariuki, and R. Mazer. “Digital Platforms and Competition Policy in the African Continental Free Trade Area.” February 2024.

4 W. Kariuki, and R. Mazer. “Digital Platforms and Competition Policy in the African Continental Free Trade Area: Reading Deck.” February 2024

5 International Telecommunications Union (ITU), Measuring digital development – ICT Development Index 2023, 2023, https://www.itu.int/hub/publication/D-IND-ICT_MDD-2023-2/.

*growth of the digital economies in high[-]income countries and on-the-ground reality in frontier markets creates what we call the frontier blindspot. As Western markets digitized their economies, the world developed intuitions about how technology markets are structured, what successful technology companies look like, and so on.”*⁶

3. While Deng is mainly referring to the blind spots of technology investors, breaking down these preconceptions in Africa matters for competition policy, too. There are many important lessons to learn from competition policy for digital markets in high-income economies, and other emerging markets like India or Brazil. But not all the policy priorities these countries have focused on will be as urgent in African economies. Based on our global policy analysis and conversations with policymakers in Africa, we see six digital platform competition risks as particularly important in Africa, and identified several examples of actions to address these risks by domestic authorities across Africa:

- Network and ecosystem effects, where dominance in one industry or service facilitates dominance or market power in related industries and services. In Africa, this can be seen in the dominance of mobile network operators (MNOs) in digital payments (e.g., mobile money) and digital lending—as documented in the Competition Authority of Kenya’s 2021 Digital Credit Market Inquiry, which found high market concentration of the digital lenders that have partnerships with the dominant MNO Safaricom.⁷
- Gatekeeper or market-making power, which allows digital platforms to determine which firms and consumers participate in the digital economy. This is further complicated when these platforms offer their own competing services on their platform. In South Africa, the Competition Commission of South Africa (CCSA) found that e-commerce platform Takealot was favoring its own retail division over other sellers on its marketplace, harming those firms and impacting consumer choice.⁸
- Ability to restrict market entry of new entrants, such as requiring the use or purchase of the gatekeeper’s product to participate on the platform; reducing the quality of search, recommendation or allocation of the rivals’ products or services; or restricting a third party’s access to the platform entirely. In Africa, exclusivity contracts have been used to prevent mobile money and banking agents from providing the services of an MNO or bank’s rivals, which particularly impacted access to digital

finance for rural Africans in countries such as Kenya and Uganda.⁹

- Global and regional economies of scale and scope. This has resulted in the dominance of one or a few large firms globally in spaces such as app stores (Google and Apple) or social media (Meta, ByteDance, X). In Africa, there are fewer iPhone users than in other regions, making Google’s Android app store even more dominant within the continent.
- Expansive access to data and capacity to repurpose it. The centrality of digital platforms in e-commerce, social media, and search provides them access to data on consumers and firms that exceeds their competitors, affording them advantages in targeting consumers, setting prices, and capturing additional market share. In Egypt, Uber’s ability to use ride-hailing historical data to improve its algorithm was seen as a barrier to entry for other ride-hailing firms, leading to the requirement for Uber to share training data sets with new entrants in the ride-hailing space.¹⁰ In Nigeria, the Federal Competition and Consumer Protection Commission has conducted an investigation into personal data usage in instant messaging services (forthcoming).
- Influence on behaviors and choice architecture. Platforms can design the way choices are presented to consumers to steer their behaviors, such as by placing their products at the top of lists of relevant products, product rankings, or in the outputs of their own search algorithms. In South Africa, the CCSA found that Google’s listing of paid search alongside free results favored established platforms.¹¹

4. Regional competition authorities are also taking an interest in the competition concerns that digital platforms raise. For example, in the area of e-commerce, the Common Market for Eastern and Southern Africa (COMESA) Competition Commission, which enforces competition and trade matters amongst the 21 COMESA Member States, investigated consumer protection issues with e-commerce platform Jumia and implemented several remedial actions;¹² while the East African Community

6 S. Deng, *The Frontier Blindspot*, DFS Labs, November 15, 2023, <https://www.dfslab.net/research/the-frontier-blindspot>.

7 D. Putman, R. Mazer and W. Blackmon, *Report on the Competition Authority of Kenya Digital Credit Market Inquiry*, May 2021, https://cak.go.ke/sites/default/files/Digital_Credit_Market_Inquiry_Report_2021.pdf.

8 Competition Commission of South Africa (CCSA), *Online Intermediation Platforms Market Inquiry: Final Report and Decision*, July 2023, https://www.compcom.co.za/wp-content/uploads/2023/07/CC_OIPMI-Final-Report.pdf.

9 R. Mazer, R. Pillai and S. Staschen, *Agents for Everyone: Removing Agent Exclusivity in Kenya & Uganda*, CGAP, July 22, 2016, <https://www.cgap.org/blog/agents-for-everyone-removing-agent-exclusivity-in-kenya-uganda>.

10 Egyptian Competition Authority (ECA), *ECA’s Assessment of the Acquisition of Careem, Inc. by Uber Technologies, Inc.*, December 19, 2019, <https://www.docdroid.net/GXSIQ7c/ecas-assessment-of-the-acquisition-of-careem-inc-by-uber-technologies-inc-non-confidential11-pdf>.

11 CCSA, *supra* note 8.

12 COMESA Competition Commission, *Determination in the Matter Involving Investigation on Possible Misleading and Unconscionable Conduct by Jumia Group*, February 22, 2023, <https://comesacompetition.org/consumer-welfare-advocacy/determination-in-the-matter-involving-investigation-on-possible-misleading-and-unconscionable-conduct-by-jumia-group/>.

(EAC) has developed a full e-commerce strategy¹³ which includes plans for the formulation of competition policies related to e-commerce.¹⁴

5. At the continental level, the African Continental Free Trade Area (AfCFTA) has developed a Protocol on Competition Policy that prohibits certain gatekeeping activities by digital platforms. In particular Article 11, paragraph 3: “Abuse of economic dependence and any other anti-competitive practices” prohibits “*an undertaking or a group of undertakings or gatekeepers to abuse the relative position of economic dependence over a customer or supplier if the conduct substantially affects the functioning and structure of competition in the Market.*” Article 11 further identifies several prohibited undertakings for gatekeepers and core platforms (see Table 1).

Table 1. Nine prohibited undertakings for gatekeepers and core platforms under the AfCFTA*

Terms of service or usage	Favoring of firms or services	Use of data
Imposing price or service parity clauses on business users.	Self-preferencing of services or products offered by the gatekeeper on a core platform.	Using business user data to compete against the business user.
Differentiation in fees or treatment against small and medium-sized enterprises.	Requiring the pre-installation of gatekeeper applications or services on devices.	Combining personal data sources from different services offered by the gatekeeper.
Imposing anti-steering provisions, or otherwise preventing business users from engaging consumers directly outside of a core platform.	Failing to identify paid ranking as advertising in search results and allowing paid results to exceed organic results on the first results page.	Placing restrictions on the portability of data or other actions that inhibit switching platforms for business and end users.

6. Article 11 of the Protocol offers an opportunity for Africa to approach the challenges of fair competition in digital economies through a continental strategy instead of individually at the domestic level. Implementing all the aspects of Article 11, let alone the entire Protocol on Competition Policy, will likely take years, and is further complicated by the varying maturity of digital economies across Africa and the general lack of effective competition enforcement capacity—where they exist—and/or non-existence of competition authorities in nearly half of African economies.

7. Given the varying capacities and competition mandates at the domestic level, an incremental approach is needed to begin developing Africa’s digital economy competition policy. An incremental approach would prioritize the most urgent topics for immediate action, led by a selection of markets with mature digital economies and relevant authorities in place. Through consultation with

policymakers, industry, and researchers in Africa and beyond, we have identified four near-term research and policy priorities for interested countries, which we believe are the most urgent priorities for the operationalization of Article 11.

- New market definitions and thresholds. Traditional methods of market definition and merger threshold setting may not be suitable for digital platforms. Where markets are multi-sided, services can be free, and small firms are sometimes purchased to prevent future rivals, even if they have a small current market share. The AfCFTA can develop a set of new metrics based on global and continental cases to date, and test these approaches for their consideration as new policy tools—not replacing old metrics but complementing them.
- Self-preferencing in digital services. Self-preferencing behaviors can be some of the clearest

cases of anti-competitive behavior by digital platforms. The AfCFTA and its members can identify the most consequential self-preferencing behaviors in African digital platforms and determine what appropriate policy responses may be, possibly implementing cases against self-preferencing early in their policy activities given the direct harm and relative clarity of principles for some self-preferencing behaviors.

- Market inquiry collaborations and peer learning exchange. Market inquiries have proven an effective tool for initial actions regarding digital platforms where the issues are not well known or the subject matter new to the authority (see, for example, market inquiries in South Africa and Kenya on various components of the digital economy). Coordinated market inquiries by which multiple authorities can conduct similar investigations at the same time could be an efficient way to engage continent-level firms and issues.
- Data collection and analysis to measure digital platform conduct. Digital platforms and the digital economy run on data, and policymakers need to build their knowledge of the most relevant data types in the digital economy, and how to identify competition concerns through data collection and

13 East African Community (EAC), East African Community E-Commerce Strategy, July 12, 2022, <http://repository.eac.int/bitstream/handle/11671/24471/EAC%20E-Commerce%20Strategy%20Adopted%2012th%20July%202022%20%28003%29.pdf?sequence=1>.

14 The East Africa Community Competition Authority (EACA) is operational but not functional yet.

* AfCFTA Protocol on Competition Policy, draft of September 2022.

analysis. The first steps could include developing a long list of key indicators for the most relevant digital platforms in Africa and related data sources, then piloting a data collection and analysis exercise with selected countries.

8. Collaboration and coordination will be key to achieving the activities we have proposed. There is limited knowledge of digital platforms in many competition agencies, and these activities require new sets of analytical abilities and data sources. But there is strength in numbers for Africa's domestic and regional authorities. By sharing experiences and participating in joint training, they can reduce the costs to expand their mandate and skill. And by taking collective action on common issues, they may have greater leverage against large regional or global platforms, which have shown resistance to competition remedies in other countries like the United States. Scholars like Dawar and Lipimile (2020)¹⁵ and Kigwiru (2024)¹⁶ have proposed a continental-wide approach, but with much of the enforcement deriving from domestic and regional authorities for now. This makes sense as the AfCFTA Protocol remains to be ratified.

9. The competition risks and the economic development potential of digital platforms for the current key segments of African economies, such as small and medium-sized enterprises (SMEs), gig workers, and financially excluded consumers, are substantial. Experiences from the Global North so far show that the application of traditional competition assessment frameworks and focus on bilateral firm relationships are insufficient on their own to understand anti-competitive behavior in digital platforms, and to support designing proportionate and meaningful remedies to anti-competitive practices or outcomes. This reality is compounded further by the role of and usage of consumers' data by the platforms to entrench their market positions. Not only are these novel areas in competition regulation, they exacerbate the already existing enforcement challenges faced by competition agencies in Africa, most notably lack of appropriate skills, inadequate staff numbers, and ineffective regulatory frameworks. Informed by the North's existing enforcement experience and aware of the South's market realities, while appreciating their own capacity bottlenecks, competition agencies in Africa have an opportunity under Article 11 of the AfCFTA Competition Protocol to adopt a new competition policy approach that is modern but rooted in the structures of Africa's unique digital economies. ■

15 K. Dawar and G. Lipimile, Africa: harmonising competition policy under the AfCFTA, *Concurrences* No. 2-2020, art. No. 93472, pp. 242–250.

16 V. K. Kigwiru, Supranational or cooperative? Rethinking the African Continental Free Trade Area Agreement Competition Protocol institutional design, *Journal of Antitrust Enforcement*, Vol. 12, Issue 1, 2024, pp. 98–125.

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