Digital Platforms and Competition Policy in the African Continental Free Trade Area

Reflections on the development of a proposed model framework for competition in the digital economy under the AfCFTA Protocol on Competition Policy

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Executive Summary

Digital platforms are online services or ecosystems which 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. Digital platforms typically share several common attributes: 1. Economic activities primarily through digital channels; 2. Large firms at the center of networks that connect consumers, firms, and other service providers; 3. Multi-sided markets, where there is not one single buyer-seller relationship, including where the platform is not directly involved; 4. Network effects which lead to new innovations being built on top of existing connections and services.

Digital platforms are increasingly central to the economic lives of consumers and small firms in Africa and across the globe and have the potential to address some of the challenges for African economies such as access to markets, access to capital, verifiable business records, and secure transaction channels. Yet digital platforms also raise several competition risks:

1. **Network and ecosystem effects**. Dominance in one industry or service can facilitate dominance or market power in related industries and services.
2. **Gatekeeper or market-making power**. As a result of these network effects, digital platforms can act as a "gatekeeper" determining which firms and consumers participate in the digital economy, and often offer their own competing services which can incentivize them to restrict and/or degrade access for third-parties offering similar services.
3. **Ability to restrict market entry of new entrants**. Digital platforms can use their gatekeeper powers to deny market entry and limit consumers' utilization of the products and services of competing firms.
4. **Global and regional economies of scale and scope.** Platform economies can tend towards concentration and a winner-takes-all outcome. This has resulted in dominance of one or a few large firms globally in spaces such as app stores (Google and Apple) or social media (Meta, ByteDance, X).
5. **Expansive access to data and capacity to re-purpose it**. The centrality of digital platforms in activities such as e-commerce, social media, and search provides these platforms with access to data on consumers and firms that exceeds their competitors, creating competitive information asymmetry.
6. **Influence on behaviors and choice architecture**. Digital platforms can design the way choices are presented to consumers to steer their behaviors, such as through placing their products at the top of lists of relevant products, product rankings, or in the outputs of their own search algorithms.

The introduction of the draft African Continental Free Trade Area (AfCFTA) Protocol on Competition Policy (Protocol) provides an opportunity to shape a digital competition policy framework for the continent. In particular, "Article 11: Abuse of economic dependence and any other anti-competitive practices" of the draft Protocol establishes prohibited undertakings and activities of digital platforms deemed gatekeepers or core platforms. (See Table i)

Table i. Nine prohibited undertakings for gatekeepers and core platforms under the AfCFTA[1]		
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 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 to allow 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.

Through a global review of trends in competition policy in digital platforms, consultations with African policymakers and technology firms, we have identified three priority areas for operationalization of Article 11 of the Protocol and related competition issues in the digital economy: **1. Competition policy themes; 2. Competition measurement and enforcement; and 3. Regional policy coordination.** These three categories reflect both the need for new policy frameworks as well as the need for greater collaboration and cooperation by authorities across markets and sectors of the economy, at national and regional level, to successfully implement a digital platform competition policy framework in Africa. For each of these topics, the report briefly summarizes the most relevant issues and then propose possible next steps for policy actions. (see Table ii.)

Table ii. Competition policy priorities for Africa's digital platform economies		
Competition policy themes	**Competition measurement and enforcement**	**Regional and domestic policy implementation**
1. Economic dependence and gatekeeping of market entry and access. 2. Self-preferencing of products and services. 3. Use of third-party data for competitive advantage. 4. Consumer protection and market conduct.	1. Market definitions and control of Abuse of Superior Bargaining position (ASBP). 2. Mergers and acquisitions. 3. Behavioral design and user interface standards.	1. Institutional arrangements. 2. Coordinated regional actions.

Emerging experiences with digital markets globally show that the competition concerns and the economic development potential of digital platforms for key segments of Africans such as

[1] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.

SMEs, gig workers, and financially-excluded consumers are substantial. Experiences also show that past focus on traditional market definitions and bilateral firm-consumer relationships are insufficient on their own to understand anti-competitive behavior in digital platforms, and to design proportionate and meaningful remedies to anti-competitive practices or outcomes.

The nature of Africa's economies—higher degrees of informality, centrality of domestic platforms like MNOs, lower-income populations, and underdeveloped capital markets—means there is a limit to the relevance of policy solutions from Europe and other high-income, highly digitized economies. However, these are currently the main global examples available in this relatively new area of competition policy. The AfCFTA secretariat could help to lead this policy process for Africa, and may want to consider beginning with a subset of the most pressing policy challenges raised by digital platforms, such as those proposed herein. Our analysis has identified four near-term research and policy priorities, building towards the operationalization of Article 11.

1. **New market definitions and thresholds**. Traditional methods of market definition and merger thresholds setting may not be suited to 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.
2. **Self-preferencing in digital services.** Self-preferencing behaviors can be some of the most clear 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.
3. **Market inquiry collaborations and peer learning exchange**. Market inquiries may be appropriate for initial actions regarding digital platforms where the issues are not well-known or the subject matter new to the authority. 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.
4. **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 analysis. First steps could include developing a long-list of key indicators for the most relevant digital platforms in Africa and related data sources, then pilot a data collection and analysis exercise with select countries.

I. The economic potential and competition risks of digital platforms

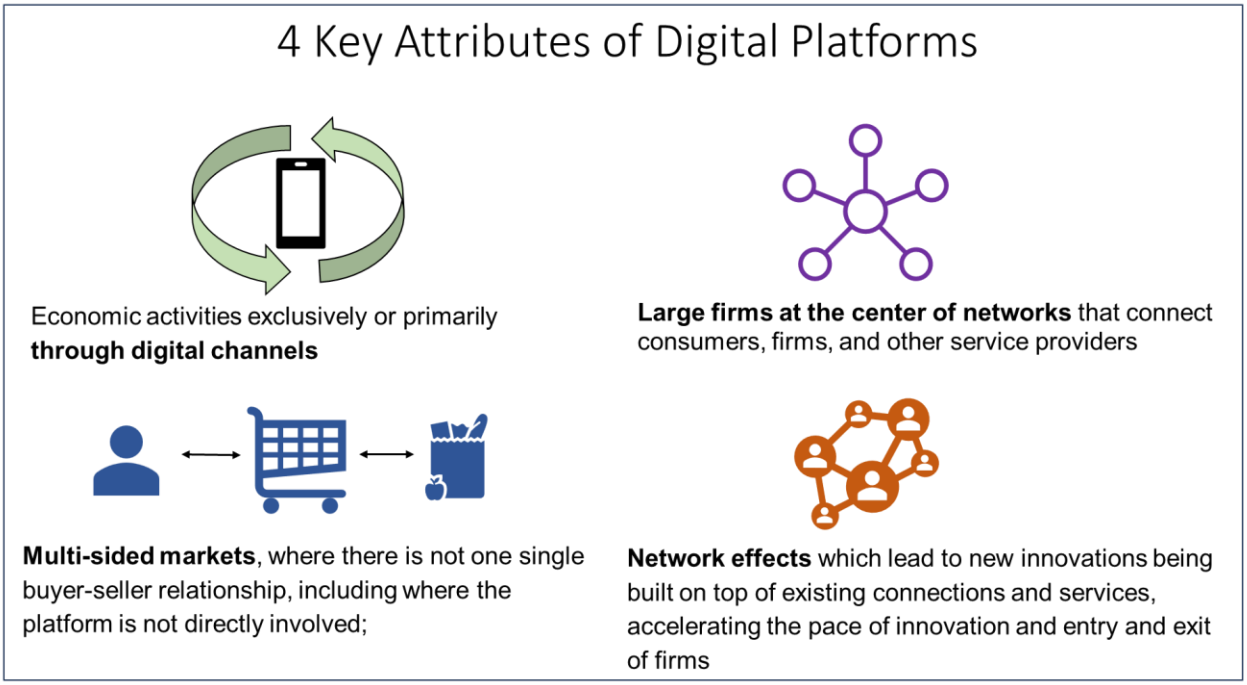

Figure 1: Key attributes of digital platforms

Digital platforms are online services or ecosystems which 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. Digital platforms are increasingly central to the economic lives of consumers and small firms in Africa and across the globe. Digital platforms—or the broader but connected term "digital economies"— encompass many different types of firms and industries, but typically share several common attributes (see Figure 1). Across Africa, digital platforms have lowered the cost and expanded the access frontier for formal financial services; enabled new customer acquisition and distribution channels for small businesses; and facilitated integration of smallholder farmers into formal agricultural value chains. **These and other opportunities within the digital economy could help to address some of the challenges for African economies such as access to markets, access to capital, verifiable business records, and secure transaction channels**. **Yet digital platforms also show tendencies towards market concentration and anti-competitive behavior.** Already policymakers in Africa and globally have identified a wide range of competition risks that these platforms raise, including: 1. Network and ecosystem effects; 2. Gatekeeper or market-making power; 3. Ability to restrict market entry of new entrants; 4. Global and regional economies of scale and scope; 5. Expansive access to data and capacity to re-purpose it; and 6. Influence on behaviors and choice architecture. Each of these are summarized in brief below.

1. **Network and ecosystem effects**. Dominance in one industry or service can facilitate dominance or market power in related industries and services. These network effects can occur in both one-sided (direct) and two-sided (indirect) markets. In the former, as more users join a network the value of the network increases for each user. In the latter, the more users that join a network, the more valuable the network becomes for firms seeking to sell products through this network.[2]

2. **Gatekeeper or market-making power**. As a result of these network effects, digital platforms can act as a "gatekeeper" determining which firms and consumers participate in the digital economy.[3] These gatekeepers, whether an MNO, a bank, a social media channel, or e-commerce website, can either facilitate or prevent entry of new providers and services (and sometimes do both at the same time). These platforms often offer their own competing services through vertical integration models, which can incentivize them to restrict and/or degrade access for third-parties offering similar services, so as to capture market power in multiple sectors at the same time.

3. **Ability to restrict market entry of new entrants**. Digital platforms can use their gatekeeper powers to deny market entry and limit consumers' utilization of the products and services of competing firms. This can include requiring the use or purchase of the gatekeeper's product to participate on the platform (such as an app store requiring payments be made via their payment platform); or restricting a third-party's access to the platform entirely (such as an MNO refusing to grant a USSD short code to a digital financial services provider.). This may include exclusionary tactics such as extinguishing competition on merits and foreclosing customers, hence raising rivals' costs. They may also apply non-monetary predatory practices such as reducing the quality of search, recommendation or allocation of the rivals' products or services.

4. **Global and regional economies of scale and scope.** Platform economies can tend towards concentration and a winner-takes-all outcome. This has resulted in dominance of one or a few large firms globally in spaces such as app stores (Google and Apple) or social media (Meta, ByteDance, X). Besides the obvious competition risks such market concentration raises, the size and resources of these firms also puts them at an advantage when engaging in legal disputes with competition agencies and other authorities. This resource and skills imbalance may be more pronounced in African economies due to limited government budgets, and the absence of competition agencies in 24 of the 54 countries in Africa.

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[2] Oxera Consulting. 2020. "Two-sided market definition: Some common misunderstandings." Oxera Consulting.

[3] The African Continental Free Trade Area (AfCFTA) Protocol on Competition Policy defines a "gatekeeper" as "an undertaking that has a significant impact on the Market, operates a core platform service that serves as an important gateway for business users to reach end-users, enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future." "AfCFTA Protocol on Competition Policy." Draft of September, 2022.

5. **Expansive access to data and capacity to re-purpose it**. The centrality of digital platforms in activities such as e-commerce, social media, and search provides these platforms with access to data on consumers and firms that exceeds their competitors. Further, because they may facilitate transactions of their competition, platforms can access data on their competition that gives them advantages in targeting consumers, setting prices, and capturing additional market share. In Africa's financial services sector, this advantage can be seen in the way mobile money providers can use mobile money payments from borrowers to third-party digital lenders to build their own scoring models to offer digital loans that compete with these third-party lenders, while the same third-party lenders are not able to access full records of customers' loans provided by the platform, creating information asymmetry.

6. **Influence on behaviors and choice architecture**.[4] Digital platforms design the interface and user experience for consumers and firms that interact on their platform. Platforms can design the way choices are presented to consumers to steer their behaviors, such as through placing their products at the top of lists of relevant products, product rankings, or in the outputs of their own search algorithms. This can enable personalized recommendations, but can also be used to manipulate the way product choices are presented—or shrouded—to steer consumers towards products or behaviors that benefit the firm, but do not necessarily maximize consumer welfare.

This report considers the needs and opportunities for competition policy to address the growing importance of digital platforms and the digital economy in Africa. The introduction of the draft AfCFTA Protocol on Competition Policy provides an opportunity to shape a digital competition policy framework for the continent. While levels of digitization vary widely across the continent, the competition issues African markets now face, or will face in the future, are quite similar, and the leading digital platforms often operate across the continent—if not globally. At the same time, existing tools for assessing competition may not always fit the competition priorities of digital economies. Section II of this report argues for what we call an "ecosystem approach" to competition policy for digital platforms, and how this differs from traditional approaches. Section III then considers the particulars of African markets and how they impact the competition concerns policymakers should prepare for. Section IV goes into detail in assessing the four key competition policy concerns for Africa's digital economies. Section V then identifies new approaches to measuring competition in digital economies. Section VI considers possible approaches to coordinating policy implementation across the continent, while Section VII concludes with recommendations for next steps in operationalizing new competition policy for digital platforms and Africa's digital economy.

[4] Fletcher, et al. 2023. "The Effective Use of Economics in the EU Digital Markets Act." Digital Regulation Project: Policy Discussion Paper No. 8. Tobin Center for Economic Policy, Yale University.

II. An ecosystem approach to competition policy development and enforcement for digital platforms

> *One of the most profound changes in the industrial landscape in the last decade has been the growth of business ecosystems—groups of connected firms, drawing on (digital) platforms that leverage their complementors and lock in their customers, exploiting the "bottlenecks" that emerge in new industry architectures.*[5]

To address the competition risks of digital platforms, a new approach to competition policy enforcement is needed. While in traditional competition policy the emphasis has been on market definition and consumer welfare impacts, specifically focusing on the bilateral relationship between firm A and firm B, digital platforms require an "ecosystem approach" to developing competition rules, conducting inquiries, and rendering decisions. Implementing such an approach requires shifts in policy approach, including three aspects we believe are particularly relevant for the work of the AfCFTA to formulate policy approaches to competition in Africa's digital economies.

1. **A greater appreciation of interconnected markets and stakeholders.** An ecosystem approach would not consider a bilateral market, or set of bilateral markets, but rather recognize that in digital platforms many markets, industries, firms, and consumers are interconnected in complex, multi-dimensional, and frequently shifting manners. This requires competition authorities to consider the impact of policy actions on several stakeholders, while at the same time identify the concomitant benefits to the end-user or consumer. Part of this approach is a shift in emphasis from widely applied economic concepts of competition restriction and consumer harm to the behavior of superior firms to inferior firms—in other words application of a fairness concept. An example of this would be assessing an app store's behaviors towards a new fintech app and applying principles of fairness to the assessment of the nature of this inter-firm relationship. However, fairness is a more subjective term than traditional competition metrics, which increases the complexity of assessing the competitive nature of digital economies, and will require new data analysis methods, policy frameworks, and enforcement tools to achieve. The concept also may create unpredictability because there are no clear beacons for interpretation, or invite opportunities for overzealous policymakers to over-regulate and hence curtail innovation due to non-recoupment by the providers, and so this approach needs to be measured in its implementation.

2. **New metrics for ecosystem economies.** Traditional metrics of competition may not always work for platform economies, where concentration can expand rapidly, many services are zero-priced, and markets are often multi-sided. Competition policies are now integrating new concepts to measure market power, concentration, and competition risks. One emerging response to the market power of gatekeepers is special rules and requirements for these firms.

[5] Michael G. Jacobides and Ioannis Lianos. 2021. "Ecosystems and competition law in theory and practice." *Industrial and Corporate Change*: Vol. 30, 1199–1229

Jurisdictions such as the United Kingdom, European Union, and Australia have established a Strategic Market Status (SMS) category for digital platforms that are of particular importance to the economy, and is determined through a range of metrics, not just revenues or market share. In Australia, an example of such an obligation is the requirement that SMS firms must provide advance notification for mergers, not just notifying if the merger passes a certain predetermined threshold as is typical in traditional competition policy. The European Union has designated Alphabet, Amazon, Apple, ByteDance, Meta, and Microsoft as gatekeepers, which triggers a range of new obligations for these firms and potential policy remedies for the European Commission.[6] Interestingly, the Digital Markets Act (DMA) in the European Union does not require that the European Commission prove economic dominance or market power of an SMS, it merely has to demonstrate an "entrenched and durable gatekeeper position." Nor does the DMA require the demonstration of case-specific harm. Authorities are also updating traditional tools such as the "small but significant and non-transitory increase in price" (SSNIP) test with metrics that may be better suited to markets where some services are free, such as the "small but significant and non-transitory decrease in quality" (SSNDQ) test.[7]

3. **Ex-ante not just ex-post policies.** Ex-post policy actions may need to be complemented with ex-ante regulations that can reduce the risk of concentrated markets emerging in digital economies. Increasing the use of ex-ante regulation alongside ex-post investigation and enforcement for digital platforms is due in part to the risk that these markets can "tip" to concentration too quickly for the time period required for ex-post investigations. In the United States, the Stigler Report proposed a new regulator responsible for imposing non-discrimination requirements and interoperability requirements on platforms, while the U.S. Congressional Research Service Report suggested sectoral regulation prohibiting self-preferencing by digital platforms.[8] The Indian Parliament's Standing Committee on Finance recommends that "systemically important digital intermediaries [SIDIs] require *ex-ante* competitive restraint. If such restraints are not applied, interconnected digital markets will rapidly demonstrate monopolistic outcomes that prevent fair competition."[9] Some of the examples of actual and proposed ex-ante regulations for digital platform competition emerging globally are listed in Table 1 below.

Table 1. Categories of ex-ante regulations for digital platforms		
Data portability and multi-homing rules.	Rules against steering of consumers to certain products or choices.	Removal of exclusivity arrangements.

[6] European Commission. 2023. "Digital Markets Act: Commission designates six gatekeepers." European Commission.

[7] A service being zero price does not remove the rationale for foreclosure, as firms can still exclude rivals to enable profits from integrated sales of other services linked to the zero-price service. Massimo Motta. 2023. "Self-preferencing and foreclosure in digital markets: Theories of harm for abuse cases." *International Journal of Industrial Organization.* Vol 90, September, 2023.

[8] Pedro Caro de Sousa. 2020. "What shall we do about self-preferencing?" CPI Antitrust Chronicle. June 2020. Competition Policy International.

[9] India Parliament Standing Committee on Finance (2022-2023). 2022. "Anti-Competitive Practices by Big Tech Companies."

Interoperability of products, platforms, and data.	Prohibitions on self-preferencing, bundling or tying, and requirements for platform neutrality.	Prohibit blocking of certain third-parties access to operating systems or platforms.
Mandatory review of all mergers for SIDIs, SMSs and other similar digital firms[10].	Prohibitions on unfair manipulation of rankings or search findings.	Prohibitions on unfair or exploitative contract terms.

4. **Shifting the burden of proof from competition agencies to firms.** The Competition Commission of South Africa, in the Final Report from their "Online Intermediation Platforms Market Inquiry," warns that

> *Scaled platforms can influence competition amongst businesses on the platform or exploit the businesses. This may be through, for instance, their fees, fee structure, ranking algorithms or terms and conditions. The platforms may not necessarily set out to influence competition, except in the case of self-preferencing, but it may emerge as a by-product of their monetisation strategy and business mode.*[11]

The view that digital platforms do not have to intentionally engage in anti-competitive activities to have anti-competitive impacts is a shift in how risks and harms are assessed. In some jurisdictions these platforms are required to demonstrate that certain activities of theirs do not or will not harm competition, moving the burden of proof from competition authorities to prove harm to firms to prove there is no harm. When the European Commission found Google practiced self-preferencing by giving more favorable positioning to their comparison-shopping service in its search results they held that "the Commission was under no duty to prove that anticompetitive effects occurred. Instead, it sufficed to demonstrate that the conduct was merely capable of having, or likely to have, foreclosure effects, regardless of its success in practice."[12]

Article 11 of the Protocol on Competition Policy of the AfCFTA has presented an opportunity and need for regional collaboration to develop a model framework on competition policy enforcement for digital platforms in Africa to address these highlighted issues. Section III. of this report expands upon these issues in the African context and proposes what we view as the most pressing policy issues to address in order to effectively operationalize and implement Article 11 of the Protocol and related elements of the AfCFTA.

[10] An important note regarding SIDI, SMS and other such designations, is that some argue for leaving the method for determination of these designations out of legislation, so the authorities have flexibility to adjust the definitions over time and as technologies evolve and enter the market.
[11] Competition Commission of South Africa. 2023. "Online Intermediation Platforms Market Inquiry: Final Report and Decision."
[12] Caro, 2020

III. Developing digital platform policies for African markets

> *Financialisation and futurity, therefore, create a virtuous feedback loop for these firms in which power in the digital economy precipitates financial power, which in turn enables them to deepen their power in the digital economy*.[13]

While most large global digital platforms have presence in at least some African countries, and important lessons can be learned from actions taken towards these platforms in markets such as the EU; **the structure of African economies, the composition of the technology and financial sectors, and their population demographics raise additional competition policy issues which will be important to consider in domestic and regional policymaking.**

First, many African economies are characterized by large informal and semi-formal sectors, with often blurred lines between individuals and firms. Second, access to the internet and use of smartphones and personal computers is significantly lower than most the rest of the world, more expensive, and highly varied across the region. This reduces the addressable market for over-the-top (OTT) technology and financial service firms, increasing the importance of access to channels such as USSD or SMS, and payments services such as mobile money. This affords mobile network operators, mobile money operators, and other financial service providers market power vis-a-vis the rest of the digital economy, increasing risks of gatekeeping and other anti-competitive behaviors in financial services compared to most other regions. Finally, the lower incomes in many African markets may shift the priorities of digital platform policy**.** This could mean less of a policy emphasis on digital consumer spending, such as conduct of e-commerce sites or search ranking algorithms, and more focus on how digital platforms do or do not facilitate service provision to enterprises and smallholder farmers, or unlock access to scarce capital through sharing of individual and business digital information.

The AfCFTA Protocol on Competition Policy has created a channel to advance competition policy across the region in a coordinated, cohesive, and indigenous manner. The Protocol seeks "to ensure that competition policy is a central element in promoting trade, supporting industrialization, innovation, sustainable economic development and enhancing the overall welfare of the people of Africa."[14]

As part of their obligations within the AfCFTA, each of the Member States would implement domestic policy that operationalizes the various provisions within the Protocol. Specifically, Article 11 of the Protocol on Competition Policy: Abuse of economic dependence[15] identifies nine prohibited undertakings for entities that authorities designate as "gatekeepers" or "core

[13] Ioannis Lianos and Andrew P. McLean. 2023. "Competition Law, Big Tech and Financialisation." *Intersections Between Corporate and Anti-Trust Law.* Cambridge University Press.
[14] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.
[15] The AfCFTA defines economic dependence as "where suppliers or purchasers of a certain type of goods or services are dependent on another undertaking or a group of undertakings in such a way that sufficient and reasonable possibilities for switching to third parties do not exist and there is a significant imbalance between the power of such undertakings or group of undertakings and the countervailing power of other undertakings."

platforms". These provisions are categorized across the themes they address as illustrated in Table 2 below.

Table 2. Nine prohibited undertakings for gatekeepers and core platforms under the AfCFTA[16]		
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 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 to allow 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.

To identify opportunities to address these prohibited undertakings, we consulted with policymakers from leading markets in Africa and regional policy bodies, select firms in Africa's digital economy, and global competition policy experts. During these conversations an initial set of competition policy priorities and approaches to supervision of digital platforms were presented to these experts for their reactions and additions. This has led to a long list of policy priorities which are discussed below. This list shares similarities with priorities from global reference markets, and includes most of the prohibited undertakings within the AFCFTA Competition Protocol. However, the list focuses on those issues we think are the most urgent and should be prioritized first in regional and domestic policy development.

[16] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.

Table 3. Competition policy priorities for Africa's digital platform economies		
Competition policy themes	**Competition measurement and enforcement**	**Regional and domestic policy implementation**
1. Economic dependence and gatekeeping of market entry and access. 2. Self-preferencing of products and services. 3. Use of third-party data for competitive advantage. 4. Consumer protection and market conduct.	4. Market definitions and control of Abuse of Superior Bargaining position (ASBP). 5. Mergers and acquisitions. 6. Behavioral design and user interface standards.	3. Institutional arrangements. 4. Coordinated regional actions.

These priorities are organized into three categories: 1. Competition policy themes; 2. Competition measurement and enforcement; and 3. Regional policy coordination. These three categories reflect both the need for new policy frameworks as well as the need for greater collaboration and cooperation by authorities across markets and sectors of the economy, at national and regional level, to successfully implement a digital platform competition policy framework in Africa. For each of these topics, we briefly summarize the most relevant issues and then propose possible next steps for policy actions.

IV. Competition policy concerns in Africa's digital platform economies

1. Economic dependence and gatekeeping of market entry and access

Digital platforms are a collective enterprise which creates an ecosystem that facilities the link between the highly decentralized consumers and the highly centralized producers. They are the architecture that ensures extension of supply chains and, due to the informality of the African economy, they have assumed the connective role between many producers and consumers. Firms using digital platforms extract value created by the platforms through reduced information asymmetry and better customer data compared to informal markets, helping firms appreciate their customers' needs, and availing customers' feedback. This places firms, especially the Medium and Small Enterprises (MSME), in a position of economic dependence to platforms.

The AfCFTA Protocol on Competition Policy sets forth four new determinants of "economic dependence":

1. The market share of the undertaking in the Market;
2. The relative strength of the undertaking;
3. The existence or not of alternative solutions; or
4. The factors that led to the situation of dependence.

The Protocol also prohibits 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."[17]

The four determinants of economic dependence from the Protocol provide substantial room for assessments that move beyond traditional market definitions. **Determining which new methods may best serve Africa's digital ecosystem is likely only to be determined through real-case application. It would seem plausible then for competition agencies, especially the more mature ones, to start exploring enacting provisions to effectively deal with economic dependence challenges.**

Channel access could be an appropriate first area of inquiry into such potential abuse. The lower penetration of smartphones and personal computers and tablets in Africa make a larger portion of the population dependent on basic phones and their technologies to participate in the digital economy. Even where smartphones are in use, several of the stakeholders we spoke to in the technology and financial services space believed that USSD would remain a vital channel for reaching customers for years to come.

There is a long history of issues with USSD access in Africa's digital financial services markets. This has included denial of channel access, discriminatory pricing, and poor quality or failed

[17] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.

USSD sessions. Even when access is provided, there can also be problems with implementation of this access for third-parties. An executive at one African technology platform interviewed noted that while the telecommunications regulator in their country of operation granted them a USSD shortcode, they were still at the mercy of the MNOs to implement access in a timely manner, and that some MNOs had in fact delayed integrating the shortcode onto their network, delaying their commerce and payments solution's ability to serve millions of consumers.

App stores have similar ability to deny access for rival firms. There is less regulation and enforcement of how these app stores review and approve or deny entry of different apps, although this is changing through noteworthy cases in jurisdictions such as the U.S. or Europe. In Africa there is a higher concentration of Android phones than the U.S. and Europe, so African app ecosystems are even more dependent on one app store than in duopolies like the U.S..

Gatekeeping concerns are also emerging in Africa's small but growing e-commerce sector. The Competition Commission of South Africa's "Online Intermediation Platforms Market Inquiry" found that e-commerce platform Takealot had conducted "Unilateral product gating not at the supplier's request which prevents marketplace sellers from selling certain brands on Takealot in competition with its own retail."[18] This both limits firms' abilities to compete in the online retail space, and reduces consumers' choices, which could allow Takealot to keep higher prices or offer lower-quality products. It is possible similar behaviors will happen in other commerce platforms in Africa, including retail sales to consumers and the growing number of wholesale distribution services active in key parts of the economy such as agriculture, healthcare, and retail shops.

Some channels like USSD have sector regulations in place in most countries that should guard against this kind of conduct, while supervision of app stores and e-commerce policies is not as developed**. A list of common, restricted gatekeeping practices and principles which could be applied across all channels at risk of gatekeeping behavior would be a good place for the AfCFTA to start. Taking stock of the abusive practices experienced in USSD access, app stores, and e-commerce could provide the data to formulate this set of prohibited behaviors including development of a Code of Conduct for gatekeepers.**

2. Self-preferencing

When a firm has vertical integration across industries they can use their control of the digital platform to unfairly benefit the services they offer over competing services. This creates obvious competition concerns. To quote one interviewee for this report: "Competition should not be on access to the customer, it should be on value." There are several self-preferencing behaviors observed in Africa's digital platform economies:

[18] Competition Commission of South Africa. 2023. Online Intermediation Platforms Market Inquiry: Final Report.

- **Exclusivity arrangements**, where platforms either offer select partners exclusive access to their customers or distribution channels, or where they require partners to only provide services through their platform.
- **Preferential placement of products on menus and sales channels**. Digital platforms control how consumers see the various products and services on their platforms. These platforms can give some firms preferential placement on their menus, manipulate listings of products or rankings to make certain products more visible to consumers, and use behavioral design approaches to increase the likelihood a consumer chooses the products they prefer.
- **Discriminatory pricing**. Where there are costs for access to, or use of, a digital platform to reach customers, firms can zero-rate or discount charges to their partners' products, giving them an unfair cost advantage against other firms selling on the marketplace. Discriminatory pricing can have the added effect of punishing smaller firms selling on platforms, who have less leverage to negotiate preferential rates and so pay a higher price for similar access to the marketplace.
- **Tying and bundling of products**. By requiring the use of one product to access another, firms can force customers to use inferior or more expensive products based on their affinity for a different product.

Policymakers in several markets have taken measures to address self-preferencing in spaces such as telecommunications and financial services, by prohibiting exclusivity clauses, standardizing costs of channel access, and setting rules regarding how similar products are listed or ranked. **In operationalizing the AfCFTA Protocol on Competition Policy, policymakers could focus on self-preferencing behavior in priority sectors such as telecommunications/internet, e-commerce, and digital financial services, due to their importance and the past evidence of self-preferencing behavior in those sectors.**

3. Use of third-party data for competitive advantage

Where a firm is both the digital platform and a service provider on that platform, they can use their greater visibility on consumers and competing providers' activities to their competitive advantage. In explaining their ruling regarding the merger of ride-hailing platforms Uber and Careem, the Egyptian Competition Authority noted "Companies operating in the digital markets use data to enhance their market position and become dominant in the relevant market, which could be at the expense of consumer data rights such as privacy and portability."[19] By providing digital platforms with information on consumers' willingness to pay for similar goods and services from their competitors, platforms can increase the price paid by some consumers compared to other consumers or the standard market rate. Platforms such as ride-hailing services or wholesale distributors generate large volumes of data on micro and small enterprises, and can also use this data to provide services such as insurance or asset financing,

[19] Government of Egypt. 2020. "Consumer Data Rights and Competition." OECD Directorate for Financial and Enterprise Affairs Competition Committee.

but may only offer this data to select partner insurers or financers on their platform if there are not data rights for consumers in place.

Two common types of remedies for use of third-party data are to put in place data firewalls or to mandate data portability. The first approach restricts the way that a platform can use the data generated within to benefit the goods and services it sells on the platform. The second approach requires that consumers and businesses be allowed to share the data generated with other firms.

For the Uber-Careem merger, the Egyptian Competition Authority determined that data on the behaviors of riders and drivers was "essential to ride-hailing activities" and so required Uber to share 12 months of preceding data with any new entrants wishing to enter the ride-sharing market in Egypt, "for the purpose of training algorithms for matching riders and drivers, dispatching drivers and pricing trips in Egypt" (subject to the General Data Protection Regulation and opt-in consent.) The ECA also required Uber to allow consumers and drivers to download their data and commit to share this data with other ride sharing providers, with the dual policy goals of preventing abuse of dominance via lock-in, and allowing consumers access to new value-added services.

The Egypt example is a case of static portability–transfer of information at one point in time. **For consumers to truly benefit though, authorities should push for dynamic portability.** As Tirole (2023) notes, dynamic portability makes it easier for consumers to "multi-home", using multiple competing services at the same time, because it is easy to link and port data across these accounts on a continuous basis.[20] Data portability provisions have been included in several of the recent data protection and privacy laws issued in African countries. Dynamic data portability and data sharing requirements are also central to policies promoting open finance or open data, which while still relatively nascent in Africa are in development in markets such as Ghana, Namibia, Nigeria, and South Africa.

Establishing rules regarding the use of third-party data by digital platforms could help address competition and data protection risks across the region. Some markets count with existing policy frameworks around data protection, data portability, and open finance, yet these frameworks are not present in all AfCFTA markets, and that could limit the development of regional standards. This may mean that data sharing regimes are rolled out in an uneven manner across jurisdictions with the AfCFTA, depending on the existence or absence of enabling policies such as data protection or open finance standards.

4. Consumer protection and market conduct

The AfCFTA does not contain a specific provision regarding consumer protection and market conduct. However, consumer protection is a cross-cutting theme that will be relevant to

[20] Jean Tirole. 2023. "Competition and the Industrial Challenge for the Digital Age." *Annual Review of Economics.* Vol. 15:573-605.

operationalizing the Protocol on Competition Policy. Conversations and review of cases across the region identified several consumer protection issues which should be integrated into the development and implementation of competition policy for digital platforms:

1. **Quality of goods sold in digital platforms**. The extensive use of third-party vendors and suppliers of goods on e-commerce platforms create risks of poor quality of goods, counterfeit goods, and non-delivery of items.
2. **Discriminatory pricing**. Digital platforms make it easier to customize pricing and offers for individuals or segments of consumers. This can allow them to offer certain consumers better or worse deals based on their perceived price sensitivity, past transactions, demographics or even contextual factors. In the Egypt Uber-Careem merger case discusses earlier, the ECA put a cap on surge pricing for ride-sharing services, both at 2.5 times normal rates, and to be applied on no more than 30% of a rider's annual trips.[21]
3. **Exploitation of vulnerable populations**. This includes targeting of consumers–such as an MNO marketing high-cost digital consumer credit to more of their lower-income than their higher-income customers (a real case shared by one of our interviewees)—and categorization of consumers—such as an algorithm using locational data which is a close proxy for ethnicity, thereby favoring more consumers of a certain ethnicity over others.
4. **Complaints handling, redress, and liability.** Digital platforms involve many actors, remote transactions, and lack of physical proximity between sellers and goods. This can make it more difficult to resolve disputes, especially when platforms refuse to serve as arbiter in these cases. In 2023 COMESA sanctioned Jumia for refusing to assume liability for the conduct of sellers on their platform, poor redress mechanisms, and poor returns.[22]

A challenge to implementing comprehensive consumer protection policies for digital platforms in Africa is that not all competition authorities have consumer protection mandates, and in some markets there are separate consumer protection agencies. **This will require coordination with consumer protection agencies, and perhaps with the consumer protection departments of sector regulators such as central banks, communications, and ICT authorities. These stakeholders should be engaged to help identify what the most important consumer protection issues may be beyond the four priorities we have proposed–including by sharing data on the digital platform consumer complaints they have received–and then work with competition authorities to ensure consumer protection concerns raised by digital platforms are reflected in the operationalization of the AfCFTA Protocol on Competition Policy.**

[21] Egypt Competition Authority. 2020. ECA's Assessment of the Acquisition of Careem, Inc. by Uber Technologies, Inc.

[22] COMESA Competition Commission. 2023. Determination in the Matter Involving Investigation on Possible Misleading and Unconscionable Conduct by Jumia Group. COMESA.

V. Measuring competition in digital ecosystems

Measuring and enforcing fair competition in digital platforms will require new competition metrics as well as new skill sets for the staff of competition authorities. **For Africa's digital platforms, three new approaches to measuring and monitoring competition could support digital platform competition policy: 1. Expanded metrics in market definitions; 2. New approaches to thresholds setting for review of mergers and acquisitions; and 3. Standards for behavioral design and user interfaces.**

1. Expanded market definitions

Across interviews with policymakers in Africa, there was a shared appreciation that prior market definition methods may not be sufficient for identifying and addressing competition issues with digital platforms. One interviewee noted policymakers will need to focus on the theory of harm–what negative outcomes may arise from limited competition–as much as they focus on defining the relevant market and how competition is affecting prices of goods and services. Another African regulator discussed shifts from metrics such as price, number of subscribers, and operators in the market to a "smaller market perspective", which looks at individual services not firms. In the case of a large digital platform, they could be operating in numerous services at the same time, with different levels of competition or anti-competitive practices in each. Analyzing the platform's impact on competition at the service level could assess the linkages between one service and another, how dominance in one service may be used to facilitate competitive advantage in another or to restrict consumer choice through strategies like bundling and tying, while not disrupting that platform's activities in other sectors where they are not dominant. This could in practice lead to more specific remedies, such as rules against self-preferencing of an e-commerce platform's own goods, and reduce the risk of unintended consequences of broad firm-level actions in areas where a platform is not engaging in anti-competitive behavior.

Another common reflection from interviewees was the decreasing centrality of price in their analysis. **Many of the services on digital platforms are free, and so a price-focused analysis might miss how a firm's dominance impacts non-price factors, or how free services enable dominance in adjacent services through network effects and vertical integration.** As one interviewee noted, "One of the key arguments you get from platforms is they provide these services for free. So we flipped this and said 'what is the commercial value for you for this free service?'" By looking at the value of the free service to the business' overall operations, policymakers may be able to unpack how a free service could still lead to anti-competitive outcomes.

Another challenge for market definition in digital economies is determining whether some digital services are competing with traditional services. A regulator consulted recalled that

voice used to be in a very different market than data and SMS, and we now classify all as mobile services. With regards to the digital economy, it will be harder and harder [to define

markets]. For example, in broadcasting, is online [e.g. YouTube] in the same market? Only consumers who can afford the internet would be in this market.

This regulator also felt that a focus on the service itself, not the type of platform, could help address these challenges of market definition. However, OTT services will be difficult to define against traditional sectors. The ITU has advised that, "Member States should consider the fundamental differences between traditional international telecommunication services and OTTs, including the cross-border and global nature of OTTs, low barriers to entry for OTTs and integration of the markets amongst other factors." They list control of access, substitution and complementarity, regulatory coverage, and services offered as examples of points of comparison between the two.[23]

Adding complexity to market definitions is the segmentation of physical and virtual markets due to the digital divide common in most African markets. The level of access to e-commerce, social media, or even digital financial services can vary greatly for urban and rural Africans, as well as by income levels–with smartphones still out of reach economically for many. This will create challenges in trying to implement remedies that are equitable for providers of similar services, since the nature of the distribution channel does influence cost, data availability, market size, and market access. Therefore, a truly "platform-neutral" analysis may not be realistic in all countries and all industries.

A final consideration is where the SSNIP test may or may not be useful for market definitions in digital economies. The multi-sided nature of platforms can make it difficult to measure costs[24] since platforms are setting prices and policies with several services and types of actors at the same time.[25] SSNIP tests will also be difficult to apply in the many cases where at least one side receives the service free of cost. Filistrucchi, et al (2014) distinguish between transaction and non-transaction two–sided markets, and argue that only when there is a transaction between both sides of the market can a single market be defined.[26] SNIPP tests may also be challenged by the importance and value of data in digital platforms. One regional policymaker shared that since "data is the new price," they now look at how data is commercialized and substitution costs for the customer: "for example, can I move information from WhatsApp to Signal, and are there any related decreases in quality or increases in cost?" One of the emerging alternatives to the SSNIP test is the SSNDQ test, which measures instead the potential decrease in quality of services. For zero-priced services, methods like SSNDQ may be worth integrating into the implementation of the AFCFTA's Competition Protocol.

As a next step, it would be useful for a select group of competition-relevant authorities to endeavor to test the use of these new methods of market definition and assessment of harm in their upcoming market inquiries and investigations.

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[23] International Telecommunications Union. 2019. "Collaborative Framework for OTTs."
[24] Tirole, 2023.
[25] Oxera, 2020.
[26] Lapo Filistrucchi, Damien Geradin, Eric van Damme, and Pauline Affeldt. 2014. "Market Definition in Two-Sided Markets: Theory and Practice." *Journal of Competition Law & Economics*, Volume 10, Issue 2.

2. Mergers and acquisitions

Traditionally mergers and acquisitions with minimal turnover or assets have been considered benign to competition in the relevant market. Therefore, policy makers have always set thresholds to exempt such mergers. This thinking was premised on economic concepts and analysis pertinent to competition law enforcement, namely definition of the market, identification of dominance, and consumer harm. Yet platforms analysis requires an ecosystem approach rather than review of bilateral relationships, making delineation of the relevant market more complicated. Further, some platforms may have acquired a crucial role in linking the supply chains, or have accumulated customers data but not any tangible market shares or even turnover directly associated to them. This means any acquisition that terminates this crucial supply chain link could distort the market dynamics. That is the reason the traditional threshold standard is increasingly considered insufficient for evaluating the competition impact of mergers with digital platforms. Some of the ways thresholds or review criteria are being changed globally include:

- In India the Competition Act has been amended to include a deal-value threshold for merger and acquisition review.[27]
- In the United Kingdom, firms deemed to have Strategic Market Status must provide the authorities with pre-notification for all proposed mergers.[28]
- The Australian Competition and Consumer Commission has proposed the potential removal from market of a competitor, and the nature and significance of the assets being acquired–including data and technology—as cause for review of mergers.[29]
- India's Parliamentary Standing Committee on Finance has recommended that any "Systemically Important Digital Intermediaries" inform the Competition Commission of India "of any intended M&A where the target provides services in the digital sector or enables the collection of data, irrespective of whether such transaction is notifiable to CCI as per the prescribed thresholds for the notification of M&As."[30]

Policymakers consulted in this research raised similar interest in updating the process for review of mergers and acquisitions to include more relevant metrics and thresholds. They also raised concerns over the practice of "killer mergers," where smaller start-ups are acquired by large digital platforms to remove a new potential competitor from the market (e.g. Facebook's purchase of Instagram.)

The AfCFTA's Protocol on Competition Policy specifies that "Threshold for notification and merger notification fees shall be calculated based on the combined annual continental turnover

[27] Competition Commission of India. 2023. The Competition (Amendment) Act, 2023.
[28] Government of the United Kingdom. 2022. "A new pro-competition regime for digital markets – Government response to consultation."
[29] Australian Competition and Consumer Commission. 2022. Digital platform services inquiry: Interim report No. 5 – Regulatory reform.
[30] "Government of India. 2023 "Theories of Harm for Digital Mergers – Note by India." OECD.

or combined value of assets" which is to be determined through future regulations.[31] This threshold proposal does not reflect recent thinking regarding thresholds for digital economy mergers and platforms discussed above. At the same time, the Protocol does state "a merger that is likely to prevent, restrict or distort competition within the Market or a substantial part of it, including by giving rise to the creation or strengthening of a dominant position, shall be declared incompatible with the protocol." Among the factors to make this determination, the Protocol includes barriers to entry, "dynamic characteristics including growth, innovation, and product differentiation," "the nature and extent of vertical integration", and "the removal of an effective competitor."[32] This may open space to assess digital platform mergers in the manner being developed in markets like Australia, India, or the United Kingdom. **Domestic policymakers may need to develop their own rules on when a review is triggered that are more expansive than the AfCFTA Protocol, so that they effectively cover significant mergers that do not meet specific turnover or asset thresholds. Otherwise, we note that rules shall be developed to support the AfCFTA competition protocol operationalization and implementation. We expect that these rules will be informed by the new thinking regarding different application of thresholds regime in mergers involving platforms.**

3. Behavioral design and user interface standards

Digital channels make it possible for firms to offer individual consumers a highly customized shopping experience, including the layout of the page, the products on offer, and even the marketing strategies employed. Large amounts of data on consumers, shopping preferences, and products on offer can be fed into tools like algorithms to automatically customize the user experience through easily modifiable digital interfaces.

The UK CMA has raised concerns of the impact of choice architecture in digital platforms on consumers and competition,[33] and the EU's DMA has integrated several behavioral concerns into their rules:

1. Obligations for firms to not just make it possible but make it easy for end users to switch services;
2. Allowing third party providers to prompt consumers to make their app or app store their default;
3. Requiring gatekeepers to give end users an active choice of search engines and web browsers; and
4. Prohibitions for gatekeepers "from using behaviourial techniques or interface design to undermine effective compliance."[34]

Authorities are also beginning to take actions against digital platforms for manipulation of interfaces and steering of consumers. According to a competition policy expert interviewed for this report, this can either include requirements for the platform to design behavioral remedies

[31] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.
[32] "AfCFTA Protocol on Competition Policy." Draft of September, 2022.
[33] Competition and Markets Authority. 2022. "Online Choice Architecture: How digital design can harm competition and consumers." CMA Discussion Paper.
[34] Amelia Fletcher. Forthcoming. "The Role of Behavioural Economics in Competition Policy."

themselves, or to implement remedies designed by the authority.[35] In that expert's opinion the second option is likely to be more effective, as there is room for further manipulation or limitation of the impact if the firm designs their own remedy.

Applying behavioral science and monitoring for behavioral bias in digital platforms will require a new set of skillsets that may not be common in some authorities across the continent. First, there is a need for familiarity with the concepts of behavioral design so that authorities know what to look for in monitoring the market for possible behavioral exploitation, and to subsequently implement appropriate remedies to such exploitation. Second, authorities will likely need to hire or train staff that can analyze these remedies to measure their impact on consumer behavior. Where that staffing may not be possible, partnerships with behavioral economists from academia or local sector regulators with those staffing resources could be explored. The other alternative is for the Governments to create a resource pool of skilled data scientists from which the national agency may outsource on need basis. One policymaker in the region spoke of a need "to define future markets based on consumer behavior." However, they felt this would require shifts in staffing and strategy, including staff "with the capacity to analyze big data, the data that platforms have… We need skilled people who will apply industry knowledge and we will then see how best to define these markets." **Building capacity in behavioral science and data analysis could be an area where policymakers across the region collaborate to develop common skill-building programs, reducing the costs for individual authorities and standardizing the methodologies used across AfCFTA jurisdictions.**

[35] Fletcher, 2023, pg 9.

VI. Regional and domestic policy implementation

To implement the reforms envisaged within the Protocol on Competition Policy requires both changes to domestic policy regimes and a new approach for regional coordination. Both of these are discussed in brief here, with initial considerations for how such policy changes might be implemented.

1. Domestic institutional arrangements

Much of the policy principles articulated in Article 11 of the draft AfCFTA Protocol on Competition Policy will require new domestic-level rules for their operationalization. The degree to which these rules will need to be developed and the path by which they can be developed will vary considerably across countries. **This means that while Article 11 can set a basic framework for competition on digital platforms, the rule-making process will need to cascade down to national competition authorities and other relevant regulators.**

There is substantial geometric asymmetry in the status of competition policy across the countries within the AfCFTA, which will impact what steps need to be taken. Generally, countries can be categorized as being in one of four levels of maturity of their competition regimes:

1. Operational and fully functional competition agencies;
2. Operational but not yet fully functional agencies;
3. Competition laws in place but no operational agency;
4. Competition laws in development, and/or dispersed across mandates of sector regulators.

After the development of the policy framework for Article 11, domestic authorities may find benefit in grouping according to levels of maturity in the development of their domestic rules. This would allow peers to learn from each other and harmonize processes, without requiring authorities to participate in activities that are either beyond the scope of their current mandate and operations, or related to a policy step they have already completed in their jurisdiction. This could allow some more advanced regimes to test new policy tools and data analysis methods sooner than later, which less advanced regimes can learn from and use to operationalize their competition mandates once they are in place.

The rules needed to address competition in digital platforms span the jurisdictions of different sector regulators. Determining the mechanisms for regulator coordination will be important to deliver on the potential of the AfCFTA Protocol on Competition Policy at the domestic level. The UK and Australia have created new units within their competition agencies which focused on digital markets. However, the UK's Digital Markets Unit of the Competition and Markets Authority is required to coordinate with other regulators "where proportionate and relevant" to ensure the new regime coordinates effectively with other regulatory systems. In Uganda, the draft Competition Bill is being discussed at the same time as there is a freeze on the creation of

new government agencies due to budget constraints. This has led relevant sector regulators to consider how they could collectively implement the provisions of the Competition Bill within their individual institutions. This has even prompted the Bank of Uganda to begin drafting their first ever competition guidelines, an important development for a central bank that has not previously engaged on issues of competition policy.

The member countries of the AfCFTA include countries with and without competition authorities, and different types of relationships between competition authorities and sector regulators–e.g. whether they have concurrent jurisdiction. **Prescribing a specific policy model for domestic implementation of the AfCFTA Competition Protocol would not be practical. A more palatable approach would be establishment of a joint regulatory committee, anchored in a legal instrument, responsible for developing policies and enforcement methods for policy issues related to digital platforms.** Such a committee would carry more weight and formality than the traditional cross-regulator MoUs and cooperation agreements. This would avoid the risk of inaction due to turf wars or reluctance of one regulator to collaborate with another—which can be driven more by personality challenges than policy needs. Where there is a domestic competition authority they could play the national role of convener and facilitator, and where there is not an entity such as the Ministry of Finance, ICT or Ministry of Trade could play this role.

2. Coordinated regional actions

The continental nature of many digital platforms and shared needs for capacity on digital competition policy issues means that regional activities will be needed to implement the Protocol across the signatory countries. The institutional arrangements for this coordination remain to be determined, and there are several options to consider. In "Africa: Harmonising competition policy under the AfCFTA", Dawar and Lipimile (2020) present three possible models the Protocol could adopt:

1. "the establishment of a nearly complete continental competition policy or code, along with a supranational enforcement agency that deals with cross-border anti-competitive practices";
2. "a policy of harmonising national competition laws incrementally through bottom-up convergence"; or
3. "developing and implementing continental wide minimum standard competition principles and strengthen cooperation between competition authorities."[36]

Kigwiru (2023)[37] presents similar choices for the AfCFTA's implementation of the Protocol:

[36] Kamala Dawar and George Lipimile. 2020. Africa: harmonising competition policy under the AfCFTA. Concurrences Review, 2020 (2).
[37] Vellah Kedogo Kigwiru. 2023. "Supranational or cooperative? Rethinking the African Continental Free Trade Area Agreement Competition Protocol institutional design." *Journal of Antitrust Enforcement,* 2023, 00.

1. A centralized supranational AfCFTA Continental Competition Regime (CCR), where the continental authority has full enforcement authority over continental cases;
2. A decentralized supranational AfCFTA CCR, where enforcement is shared between continental and domestic authorities;
3. A cooperative model, where the AfCFTA would facilitate cooperation among competition agencies.

Kigwiru argues that due to differences in the state of development of countries' regimes, the existence of regional competition authorities (e.g. COMESA), and continental preferences for less formal cross-border arrangements, the AfCFTA should be implemented alongside existing regional and domestic authorities, "and it should not supplant the jurisdiction of existing competition regimes at the regional and national levels."[38] However, the author does note that a supranational authority could have authority on a limited set of continental-wide issues which, due to their often continent-wide operations, could easily include issues related to digital platforms.

The AfCFTA Protocol appears to lend itself most to an initially limited scope of authority. This could be a minimum standards approach like what Dawar and Lipimile (2020) describe, or a decentralized or cooperative model as Kigwiru describes. This latter approach seems particularly useful since the AfCFTA has not yet established the Authority, and the Protocol is yet to be ratified. However, even if powers are limited, in order to implement this approach **the AfCFTA will need a strong central secretariat for competition issues, to coordinate efforts, support domestic policymaking processes, and build authorities' capacities.** Technical assistance and capacity programs to incorporate new issues into domestic legislation are in fact planned, beginning with the topics of mergers and acquisitions and digital platforms, and gradually expanding to other topics.

A complementary resource for implementation is the various sub-regional competition authorities across Africa, including COMESA, EAC, ECOWAS, SADC, and WAEMU. Dawar and Lipimile (2020) propose that "The Protocol on Competition could provide clear guidance on implementing these principles along common lines among the [Regional Economic Communities] RECs and State Parties. The Protocol could focus on those matters of principle in the State Parties or RECs that are currently incompatible, or run contrary to AEC trade policies."[39] These regional bodies could support the AFCFTA to build capacity amongst their sub-regional memberships, and to work with these members to harmonize competition policies. Within these regions the more advanced competition authorities could also help colleagues in markets with less developed competition regimes. It is encouraging to see that the AfCFTA treaty is guided by the 'Acquis principle', while the competition protocol highlights clearly the importance and the role of the RECs competition agencies in its implementation. As one senior competition policymaker interviewed remarked, "there is a need for experienced competition regulation markets' intentional efforts to come together and build consensus and carry the other markets along. If we don't do this right, we can potentially have two Africas."

[38] Kigwiru, 2023.
[39] Dawar and Lipimile, 2020

Even mature competition markets will still need to make considerable updates to their competition policies. This includes developing domestic policy frameworks that align with the Competition Policy Protocol's digital gatekeeper provisions. These mature markets will also benefit from coordination if they decide to take any actions against larger digital platforms. Several senior policymakers raised the high costs, resources, and time constraints of taking on these large platforms as a risk and constraint, and called for regional approaches when possible to pool resources, defray costs, and put themselves on a more even playing field with large global or regional platforms.

Another necessary approach at the regional level is engagement with industry stakeholders. Digital platforms and those who use these platforms often operate across multiple markets in Africa. These stakeholders will be able to share how country-level differences in competition, licensing, and other policy frameworks impact their current operations, and challenges they have experienced engaging with digital platforms. Engaging these actors at a regional level through AfCFTA will increase the voice of industry across more markets, and allow for comparative analysis of policy impacts. The complexity of digital economies makes it harder to assess potential adverse or unintended consequences of policies, and hearing how past or future policies may impact different industry can reduce this uncertainty before new rules and policies are implemented.

VII. Proposed next steps

This report summarizes initial conversations and policy analysis related to "Article 11: Abuse of economic dependence and any other anti-competitive practices" of the AfCFTA Protocol on Competition Policy. Article 11 presents an opportunity for African economies to collectively shape the future of competition policy in their digital economies. **Emerging experiences with digital markets globally show that the competition concerns and the economic development potential of digital platforms for key segments of Africans such as SMEs, gig workers, and financially-excluded consumers are substantial. Experiences also show that past focus on traditional market definitions and bilateral firm-consumer relationships are insufficient on their own to understand anti-competitive behavior in digital platforms, and to design proportionate and meaningful remedies to anti-competitive practices or outcomes.**

The nature of Africa's economies—higher degrees of informality, centrality of domestic platforms like MNOs, lower-income populations, and underdeveloped capital markets—means there is a limit to the relevance of policy solutions from Europe and other high-income, highly digitized economies. However, these are currently the main global examples available in this relatively new area of competition policy. The AfCFTA secretariat could help to lead this policy process for Africa, and may want to consider beginning with a subset of the most pressing policy challenges raised by digital platforms, such as those proposed herein. To support such efforts, the research team in 2023 began convening policy leaders and industry actors from

across the continent, through a series of webinars on competition topics and a regional workshop. These webinars and convenings have identified four research and policy priorities, building towards the operationalization of Article 11, summarized in Table 4.

Research and policy priority	**Description**
New market definitions and thresholds	Traditional methods of market definition and merger thresholds setting may not be suited to 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 most clear 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 may be appropriate for initial actions regarding digital platforms where the issues are not well-known or the subject matter new to the authority. 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 analysis. First steps could include developing a long-list of key indicators for the most relevant digital platforms in Africa and related data sources, then pilot a data collection and analysis exercise with select countries.

Article 11 of the Protocol on Competition Policy sets a bold path for ensuring digital markets in Africa contribute to equitable economic growth and innovation. However, the Protocol itself cannot ensure these outcomes. That will require coordinated implementation of a range of new policy tools, collaborative actions by regional and domestic authorities, and new methods for measuring competition risks and consumer and firm welfare. In 2024 we hope that the progress to date will continue, and the first steps towards operationalization of Article 11 begin to emerge.