



The development of the digital economy: Competition regulation in Africa

AFRICA CONNECTED

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Digital transformation is a driving force for innovative, inclusive and sustainable growth.¹ The digital economy encompasses the economic and social activities that are boosted by platforms such as mobile and sensor networks, including e-commerce.² The African Continental Free Trade Area (AfCFTA) represents an opportunity to boost growth, reduce poverty and expand economic inclusion in Africa. The implementation of the AfCFTA will open up a market of 1.3 billion consumers with a combined GDP of USD3.4 trillion, according to data sources.³ Digital trade will play a key role in boosting intra-African trade.⁴ Nowadays, business – like much of the African continent – is characterized by new competitive practices in the digital market, mergers and acquisitions of market shares and new forms of monopolies by major global companies. The question arises as to the state of the digital economy in Africa in the face of these new competitive practices and whether regulation of competition in Africa takes them into account.

Competition laws in Africa and the emergence of competitive practices

In Africa, the digital market is dominated by global research and social media giants. In each digital market, a single company usually has a large majority of users and establishes a dominant position.⁵ In this new era of the digital economy, the practice of “winner takes it all” is topical following the monopolization of digital markets by large platforms. Regulation and competition laws for most countries in Africa are not based on these new digital competition practices.⁶ As a result, there is insufficient regional competition, and this can affect the growth of the economy in Africa.

The role of data for large platforms and digital information in the digital economy

Companies built on the platform model have a major advantage in the data-driven economy. As intermediaries and providers of certain types of infrastructure, platform owners are able to record and extract data relating to events that occur between the users of the platform.

In the new business models of the digital economy, there are two emerging and related forces: the rise of platforms and the monetization of digital data. These two forces are expanding rapidly. Digital platforms are central players in this economy, and digital data is a key resource in economic processes and can lead to the creation of value.⁷

Digital data can be harnessed for development and company can use the processed data to increase the user experience of its services, it can also choose to use the data for offering targeted advertisement campaigns across its service platforms.⁸ In Africa, lack of possession of digital data remains a major development problem. Competition regulation and competition laws adapted to the digital economy could contribute to the emergence of national or regional platforms in Africa. As a result, it would enable African businesses to easily access digital data. Digital regulation at the continental

level would facilitate the control of buyouts, mergers or acquisitions of market shares, contributing to the development of the AfCFTA.

Regulation of mergers and acquisitions of digital market shares

The fact that competition laws as well as other laws and regulations are not adapted to some of the challenges of digital markets has a major impact on the digitization of the economy in Africa.

Regulatory issues and anti-competitive behavior are very different to reality in Africa. Mergers and acquisitions in the e-commerce sector are carried out in most African countries without regulation and without the knowledge of competition authorities. This is a major obstacle to the emergence of African digital champions. Competition issues in African digital markets will continue to distort the digital economy in Africa and foster market dominance by major global platforms.

These types of challenges indicate that a regulatory review process is imperative to allow Africa to “catch up” in the digital age.

Monopolization of markets by large platforms and its influence on digital competition

The structural opportunities behind all business purchases or repurchases are generally the search for growth, the protection of profitability and adaptation to new market conditions.⁹ In Africa, large global platforms dominate the digital markets. These global giants pose a particular problem for small markets in developing countries whose own economies are eclipsed by the valuations of these companies. There is limited ability to effectively challenge international mergers or pursue complex market conduct cases given the relative insignificance of African markets for these large platforms.¹⁰

Conclusion

First, a legal instrument at continental and global level should be developed to allow better coordination between competition authorities in the regulation of digital platforms. This would ensure control over the competitive behavior.

Africa's regional or continental coordination is imperative to control and regulate horizontal and vertical mergers and acquisition agreements. This would provide more leverage to address issues that may have a regional or continental dimension, such as development imperatives or digital businesses with a regional presence stronger than their position globally.

Finally, the adaptation of national laws and economic communities to the digital age is essential to promote the development of the AfCFTA and its digitalization.

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¹ Project of a digital transformation strategy for Africa 2020-2030 Page 1 (www.au.int)

² According to the Australian Bureau of Statistics, the digital economy is: "the global network of economic and social activities which are activated by platforms such as internet, mobile and sensor networks, including electronic commerce. Also activated by efforts to achieve efficiency and productivity in production processes, inventories and knowledge management."

³ The African Continental Free Trade Area

⁴ Digital processing strategy Project for Africa (2020 to 2030; p 32 (www.au.int))

⁵ C. A., SCHWERER, *competition in the digital challenge*, published by the foundation for political innovation, as part of its work on digital; p7

⁶ UNCTAD, intergovernmental group of experts on competition law and Policy "*Competition in the digital economy*" contribution by the Competition Commission of South Africa, Geneva, Switzerland, eighteenth session, July 2019, pp1-2 (<https://unctad.org/en/PublicationsLibrary>).

⁷ United Nations Conference on Trade and Development (UNCTAD), *Value Creation and Capture: Implications for Developing Countries*, Digital Economy Report 2019.

⁸ O.,Batura,VN., Nicolai and P.,Larouch, *online platforms and the EU digital single market, a response to the*

call for evidence by the house of lord's internal market sub-committee , Rotterdam, Pge4 ,2015 (<http://www.e-economics.eu/>; <http://www.e-economics.nl/>).

⁹ Fusions et acquisitions des entreprises. La fin de la concurrence?

¹⁰ Intergovernmental Group of Experts on Competition Law and Policy Competition in the Digital Economy Contribution by The Competition Commission - South Africa, 18th SESSION 10-12 July 2019 Room XVII, Palais des Nations, Geneva Thursday, 11 July, 2019 p2 & 3).