

Keynote speech of Hardin Ratshisusu, acting Commissioner of the National Consumer Commission and Deputy Commissioner of the Competition Commission, at the 3rd International Engaged Scholarship Conference, UNISA SBL & University of Rwanda

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Theme: Bridging Barriers to Cross-Regional Trade & Technological Development Synergies in the Africa Continental Free Trade Area

Topic: Competition and Consumer Protection Regulation in the Digital Economy

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University Deans present here day, Research luminaries, Speakers, Members of the Media, Esteemed Guests, Ladies and Gentlemen.

Good morning.

Thank you for the invitation to address you today.

It is an honour to be here at the 3rd International Engaged Scholarship Conference, co-hosted by the University of South Africa's School of Business Leadership (UNISA SBL) and the University of Rwanda.

I wish to extend my gratitude to Professor Pumela Msweli, Executive Dean and CEO of UNISA SBL, for her visionary leadership and commitment to advancing scholarship and collaboration across the continent.

This conference has consistently provided a unique platform for robust engagement, bridging gaps between the public and private sectors, urban and rural enterprises, and local, national, and regional players, all aimed at building sustainable economies in

the context of the African Continental Free Trade Area (AfCFTA). It is gratifying to see how, since its inception, this initiative has grown in stature and impact. And for this, Prof Nhlanhla Mlitwa, in particular, and many other academics of the SBL deserve credit.

To appreciate the importance of today's theme, "*Bridging Barriers to Cross-Regional Trade & Technological Development Synergies in the AfCFTA*", it is apt to briefly reflect on the journey of this conference series.

The International Engaged Scholarship Conferences have progressively advanced discussions on leveraging the Africa Continental Free Trade Area for sustainable economic development. The first conference in 2022, held in Muldersdrift, South Africa, brought together diverse participants to explore the AfCFTA's potential for industrial growth and regional integration. Building on this foundation, the second conference in 2023, hosted in Gaborone, Botswana, deepened understanding of trade liberalisation's regulatory, economic, and social dimensions, producing actionable recommendations on reforms, capacity building, and cross-border collaboration.

This third conference continues this trajectory by focusing on "Bridging Barriers to Cross-Regional Trade & Technological Development Synergies in the AfCFTA." This year's theme reflects the evolving challenges and opportunities of economic integration in the digital age, emphasising the role of technology in shaping Africa's trade future. The success of these conferences lies in their ability to foster meaningful dialogue and drive actionable outcomes, paving the way for a more integrated, sustainable, and connected African economy.

Introduction

It is therefore a privilege to address this distinguished gathering at the 3rd International Engaged Scholarship Conference, where we continue the journey of bridging barriers to cross-regional trade and fostering technological synergies within the framework of the Africa Continental Free Trade Area. Today, I will explore the critical role of competition and consumer protection regulation in the digital economy – a topic that sits at the intersection of policy, innovation, and economic inclusion.

Amidst the 4th Industrial Revolution (4IR), consider that in 2016 the global digital economy was valued at over US\$11.5 trillion, contributing approximately 15.5% to the world's Gross Domestic Product (GDP) – a figure projected to grow rapidly in the coming years. In fact, the World Bank expects this figure to reach 25% by 2026, quickly outpacing the growth of the overall economy.¹

In Africa, the digital economy presents an equally remarkable opportunity. Africa's digital economy, while still emerging, holds immense promise. The International Finance Corporation (IFC) forecasts that Africa's internet economy could add US\$180 billion to the continent's GDP by 2025, accounting for 5.2% of the continent's GDP, and this figure could potentially surge to \$712 billion by 2050, at approximately 8.5% of the continent's GDP.²

Yet, alongside these opportunities, the world must also navigate the inherent challenges of digital transformation, such as market power concentration, digital monopolies, data privacy concerns, and regulatory gaps.

In this rapidly evolving landscape, academia plays a pivotal role in shaping our understanding, driving innovation, and guiding policy development. Academia actually plays an essential role in unravelling these complexities. Providing critical analysis, and developing innovative solutions that bridge the gap between policy and practice.

Our discussions today are not just about identifying the challenges but also about seizing the opportunities presented by the digital economy. We explore how competition and consumer protection frameworks can be adapted to meet the unique demands of this new era, ensuring that the digital economy remains fair, inclusive, and growth-oriented.

¹ See the World Bank Report (2022) entitled “*Digital Economy for Africa – diagnostic assessment for the Republic of Sudan*”, available at: <https://thedocs.worldbank.org/en/doc/61714f214ed04bcd6e9623ad0e215897-0400012021/related/Digital-Economy-RepSudan-jun22.pdf>, accessed 13 September 2024.

² See IFC Report (2020) entitled “*e-Economy Africa – Africa’s \$180 billion Internet economy future*”, <https://www.ifc.org/content/dam/ifc/doc/mgmt/e-economy-africa-2020.pdf>, accessed 13 September 2024.

There is a business case for competition and consumer protection in the digital economy.

Recognising the importance of digital trade, the digital economy offers both immense opportunities and substantial challenges for the world, not just the African continent.

The digital economy is transforming the world, from the lowest to the highest economies of the world.

Africa's digital economy is at a crucial juncture, with significant growth potential that could redefine the continent's economic landscape. The South African Presidential Commission on the 4IR noted that the continent's digital economy is expected to grow to US\$300 billion by 2025.³ This growth will be driven by factors such as a 40% internet penetration rate, increasing mobile phone usage, and a rapidly expanding digital infrastructure. Africa is home to the world's youngest population, which presents immense opportunities for digital entrepreneurship and innovation.

Furthermore, the recent adoption of the AfCFTA's Digital Trade Protocol signals a clear commitment to harnessing digital transformation for inclusive economic growth across the continent.

However, this growth also brings substantial challenges. Digital markets are often characterized by high levels of market concentration, with dominant platforms exerting considerable power over both consumers and smaller competitors. These platforms often employ complex algorithms and data analytics to maintain their dominance, creating entry barriers for new market participants and potentially limiting consumer choice. The rapid pace of technological innovation also leads to regulatory gaps, where existing laws and frameworks struggle to keep pace with new digital business models.

Despite these challenges, the digital economy presents vast opportunities for economic development, job creation, and improved public services. Innovative business models, such as e-commerce, fintech, and digital health, are transforming

³ See also McKinsey (2013), also cited in the African Union report titled "the digital transformation strategy for Africa (2020-2030)", available at: <https://au.int/sites/default/files/documents/38507-doc-dts-english.pdf>, accessed on 13 September 2024.

how goods and services are delivered, enhancing efficiency, and reaching underserved markets. Yet, to fully realize these benefits, a robust competition and consumer protection framework is essential. Such a framework must evolve to address issues like data privacy, cybersecurity, digital monopolies, and platform accountability, while fostering an environment that encourages innovation and competition.

As we consider these opportunities and challenges, we must ask ourselves: How can competition and consumer regulators adapt their tools, skills, and approaches to effectively oversee this dynamic and complex landscape? How do we ensure that digital markets remain competitive, inclusive, and fair? These are the questions I hope to explore with you today, as we navigate the path towards a digitally empowered and economically integrated Africa.

I'll start with the impact of Artificial Intelligence (AI) on Markets and Regulation.

Artificial Intelligence (AI) is reshaping markets in ways that were previously unimaginable. As AI technologies become more integrated into business operations – ranging from pricing algorithms, personalised marketing to customer service chatbots – they bring efficiency gains⁴ but also raise complex concerns about market fairness, transparency, and accountability, as a World Bank Report of 2021 highlighted.

This report highlights that:

“Authorities in less-developed jurisdictions should ensure that they are adequately accounting for emerging economic features, theories of harm, and efficiencies associated with digital markets. Characteristics of digital markets and platform business models, like multihoming, winner takes-most dynamics,

⁴ For example, the South African Presidential Commission on the 4th Industrial Revolution (PC4IR) report 2020 looks at AI as a technology tool that will advance our social and economic prosperity.

zero-price behavior, and the use of algorithms, need to be analysed more frequently by authorities in developing countries.”⁵

Therefore, as markets change with the advent of AI, competition and consumer regulators must adapt by developing suitable tools to assess AI-driven market behaviours and detect anti-competitive practices. For example, algorithmic collusion – where AI systems independently learn to collude without human intervention – poses a unique challenge that traditional competition tools may not adequately address.

To respond effectively, regulators will need new skills, including data science, machine learning, and digital forensics, to better understand and scrutinise AI-driven activities. They may also require enhanced collaboration with other regulatory bodies, both domestically, regionally, continentally and internationally, to ensure a comprehensive approach to regulation in a globalised digital economy.

What needs to be done?

What, then, must be done to ensure that competition and consumer protection regulation remains effective in the digital age? I suggest the following areas for urgent focus:

First, *developing digital competencies*: Regulators must invest in building their digital capabilities. This includes training staff on digital market dynamics, AI technologies, and the use of data analytics tools for market assessment and investigations. Investing in new tools suited for the digital age is one of the key strategic factors that for example the Canadian Competition Bureau highlights in its strategic vision 2020-2024.

Second, *regulatory innovation and flexibility*: Traditional regulatory frameworks may need to be re-evaluated to ensure they are fit for purpose in the digital era. This could involve updating laws to explicitly cover digital market abuses, establishing new regulatory sandboxes to test innovative approaches, or adopting more agile, real-time monitoring systems.

⁵ See the World Bank Report (2021) entitled: “*Antitrust and Digital Platforms: An analysis of global patterns and approaches by competition authorities*”, accessed 12 September 2024.

Third, strengthening international cooperation: Given the cross-border nature of digital markets, collaboration between African and global competition and consumer protection agencies is crucial. This includes sharing intelligence, harmonising regulatory standards, and developing and conducting joint investigations and enforcement actions where necessary.

Last but not the least, enhancing public awareness and advocacy: It is also vital to increase public awareness about digital rights, competition principles, and consumer protections in the digital space. This practically means that consumers must be empowered with the knowledge to make informed choices and seek redress when necessary.

What is being done?

Across Africa, for instance, several countries have begun to address these challenges. There are case studies from across the continent that illustrate both the progress made and the challenges ahead:

In **Egypt**, the Egyptian Competition Authority (ECA) has tackled digital markets by scrutinising exclusive agreements and abuse of dominance by digital platforms. The authority initiated several cases against large tech firms, demonstrating a commitment to ensuring fair competition in digital markets.

One case example is the ECA's ground-breaking decision in 2022 concerning the abuse of a dominant position by an online food delivery platform. The ECA held that the respondent operator was prohibited from using any of the following contractual clauses in agreements with its partner restaurants:

- An exclusivity clause to prohibit a restaurant from partnering with other online food delivery platforms;
- Requiring a partner restaurant to also enlist on the respondent operator's online platform for an additional fee (i.e., tying the use of the delivery service to the purchase of further services); and
- Requesting an alignment of prices offered on the respondent operator's online platform with a restaurant's own offering.

In **Kenya**, the Kenyan Competition Authority (CAK) has investigated digital lending platforms, addressing consumer protection issues related to privacy, data use, and exploitative terms of service. These cases highlight the need for a comprehensive approach to both competition and consumer protection in the digital age.

For example, in May 2021 the CAK concluded its digital credit market inquiry which found amongst others the lack of a clear consumer protection strategy to ensure digital credit maximises its potential to benefit Kenyan consumers.⁶ In 2024 the CAK also concluded an inquiry into online food and groceries delivery platforms market study resulting in several notable recommendations.⁷ Amongst others, the study found that there are no explicit regulations on online platforms in Kenya highlighting the need to comprehensively address the glaring deficiencies in regulation of the digital platforms.

Nigeria has been active in the digital economy space, with the Federal Competition and Consumer Protection Commission (FCCPC) focusing on data protection and anti-competitive practices by telecom operators and fintech companies. Their actions have aimed at protecting consumers from data breaches and ensuring fair access to digital services.

Of particular importance is that recently, the FCCPC published its final order in which it imposed a penalty of US\$220 million and a reimbursement fee of \$35,000 on WhatsApp LLC and Meta Platforms, Inc. for violations of Nigeria's data protection regulation, competition and consumer protection laws.⁸ Meta faced similar investigations in other parts of the world.

Turning to **South Africa**, its regulatory landscape is evolving to meet these challenges. The Competition Commission of South Africa has been proactive in addressing anti-competitive practices in digital markets. Cases involving major online platforms and digital businesses highlight the commitment to ensuring fair competition and protecting consumers.

⁶ https://www.cak.go.ke/sites/default/files/Digital_Credit_Market_Inquiry_Report_2021.pdf, accessed 12 September 2024.

⁷ <https://www.cak.go.ke/sites/default/files/Online-Food-and-Groceries-Delivery-Platforms-Market-Study.pdf>, accessed 12 September 2024.

⁸ The FCCPC's final order can be accessed here: <https://fccpc.gov.ng/wp-content/uploads/2024/07/Final-order-FCCPC-Meta-18072024.pdf>.

South Africa's approach took shape in September 2020 with the adoption of a forward-thinking **Digital Markets Strategy**,⁹ which emphasises opening up opportunities for local digital firms and identifies key areas for enforcement, market inquiries, and advocacy. This strategy has been pivotal in shaping the Commission's approach.

The Commission's approach also reflects global regulatory trends, including approaches in the European Union's **Digital Markets Act (DMA)**.

In March 2022, the Commission referred a complaint against **Meta** to the Competition Tribunal. This complaint arose from Meta's threat to offboard a local firm from accessing the WhatsApp Business's Application Programming Interface, highlighting the importance of ensuring fair access and preventing anticompetitive conduct in platforms. This case is currently before the Competition Tribunal.

On the mergers front, the Commission updated its **guidelines** for merger notifications in September 2022 to introduce a "transaction value" threshold for notifications, targeting the so called "killer acquisitions." This enables the scrutiny of transactions that may otherwise evade mandatory notification but have significant competitive implications.

The Commission also initiated two significant **market inquiries** in the digital space. The *Online Intermediation Platforms Market Inquiry*, launched in May 2021 and concluded in July 2023, covered app stores, online search, classifieds, accommodation bookings, food delivery, and e-commerce. Key outcomes included recommendations for greater transparency, fair trading conditions and the prevention of anti-competitive practices.

The ongoing *Media and Digital Platforms Market Inquiry*, launched in October 2023, focuses on the distribution of media content on digital platforms, reflecting the Commission's continued commitment to scrutinise market dynamics in the digital era.

These inquiries are conducted under the expanded powers granted by **the 2019 Competition Amendment Act**, which allows the Commission to use market inquiries as a proactive "intervention" tool to address potential market distortions. The primary

⁹ Available at: <https://www.compcom.co.za/wp-content/uploads/2021/03/Digital-Markets-Paper-2021-002-1.pdf>.

purpose of these inquiries is to investigate factors that impede, distort or restrict competition, if such are identified, the Commission is required to remedy such.

South Africa's approach to regulating digital markets aligns with and does not diverge from international practice.

Collaborative efforts between South Africa and other agencies, particularly those in the European Union, US and BRICS, have provided invaluable insights into addressing cross-border competition issues effectively. This international cooperation highlights the importance of aligning regulatory approaches.

Some notable continental interventions

At the continental level, the African Union has adopted a competition policy protocol (the AfCFTA Competition Protocol). Relevant to today's address is article 11, which introduces a novel area in competition regulation – the abuse of economic dependence. This seeks to regulate the abuse of superior bargaining positions enjoyed by platforms, which create inefficiencies in the supply chain that negatively affect trade and the regional integration agenda.

The AU's adoption of the Digital Trade Protocol is equally a significant step towards creating a harmonised regulatory environment that can support these objectives. The Protocol aims to facilitate cross-border e-commerce, promote digital financial services, and foster a more integrated and competitive digital marketplace across Africa. Key provisions of the Protocol include market access, treatment of digital products, facilitating digital trade, data governance, and consumer trust.

It also emphasises digital inclusion, addressing the participation of underrepresented groups and small-medium enterprises in digital trade, and outlines institutional arrangements and transparency requirements.

In addition, African Competition Authorities, including South Africa, Kenya, Mauritius, Nigeria, and Egypt, established a Digital Markets Dialogue to explore solutions for the Africa.

Global trends and insights from selected leading agencies

Globally, leading competition and consumer protection agencies are also evolving to meet the challenges of the digital age. Looking beyond the African continent, there are important lessons to be drawn from leading competition and consumer protection agencies globally.

The **Australian** Competition and Consumer Commission (ACCC) has produced landmark reports on digital platforms, with the latest report released in March 2024, advocating for new regulations to address the imbalance of power between tech giants and users. The ACCC's digital platforms inquiry is an example of rigorous market study to inform regulation. Furthermore, in 2022 and 2023, the ACCC successfully litigated against Google for misleading consumers about personal location data collection on Android phones,¹⁰ and against Meta subsidiaries for misleading the public about the collection and use of data collected by the Onavo Protect VPN app.¹¹

The **European Union's** Digital Markets Act (DMA) and Digital Services Act (DSA) set new standards for competition and consumer protection in digital markets. These regulations seek to prevent gatekeeper companies from unfairly limiting market access or using consumer data without proper consent.

The **United Kingdom's** Competition and Markets Authority (CMA) has been at the forefront of regulating digital markets, recently launching the Digital Markets Unit to enforce pro-competitive measures. The CMA's approach includes a strong emphasis on data portability, interoperability, and transparency in digital advertising.

The Competition Bureau of **Canada** has also been active, recently focusing on digital health and online marketplaces, reflecting the growing importance of digital regulation in maintaining market fairness.

In the **United States**, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have taken an increasingly assertive stance on digital market

¹⁰ <https://www.accc.gov.au/media-release/google-llc-to-pay-60-million-for-misleading-representations>, accessed 11 September 2024.

¹¹ <https://www.accc.gov.au/media-release/20m-penalty-for-meta-companies-for-conduct-liable-to-mislead-consumers-about-use-of-their-data>, accessed 12 September 2024.

monopolies, with notable investigations and legal actions against major tech companies.

The **OECD** has emphasized the need for international cooperation to tackle digital challenges, while **UNCTAD** has called for stronger regulatory frameworks to ensure fair competition and consumer protection in digital economies, particularly in developing countries.

Conclusion

In conclusion, competition and consumer protection regulation in the digital economy is not just about addressing current challenges; it is about creating an environment where these markets are fair, transparent, and inclusive.

We are at a pivotal moment in shaping the future of competition and consumer protection in Africa's digital economy.

Regulators ought to be vigilant, adaptive, and forward-looking, drawing on regional, continental and global best practices while tailoring approaches to the unique contexts and challenges.

In the same vein, business should not stand back, wait and see, but should inform solutions to ensure an inclusive digital economy. Africa cannot afford further deepening of inequalities and perpetuation of dual economies of the haves and have nots.

There must therefore be stronger collaboration not only among regulators, but also with academia both in business schools and mainstream. In-depth research of the digital economy is required to create a body of knowledge in these markets and particularly on how these impact developing economies.

And more importantly how developing economies can be a significant part of this ecosystem not just as consumers but also as co-creators of value.

Thank you.